

COMMUNICATION FROM JAPAN, MONGOLIA, AND SWITZERLAND

The following communication, dated 2 June 2006, is being circulated at the request of the Delegations of Japan, Mongolia, and Switzerland.

PROPOSALS ON PUBLICATION AND AVAILABILITY OF INFORMATION

1. The following textual proposal is submitted by Japan, Mongolia, and Switzerland for consideration by the Negotiating Group. It is closely based on the proposals on publication and availability of information made in the joint communication TN/TF/W/96 of 10 May 2006 and takes account of the discussion and other submissions on this issue in the Negotiating Group.

2. We acknowledge that some provisions require transitional implementation by developing-country Members because of their lack of capacity to meet the obligations. However, several core elements such as publication of trade-related law and regulations in accordance with Article X of GATT 1994 should be implemented by all the Members immediately upon the entry into force of the Trade Facilitation Agreement because of the basic nature of such provisions and the fact that the new agreement does not add any new obligations to the current system of GATT 1994. Similarly, we believe that national treatment, most-favoured-nation treatment, general and security exceptions provided for in Articles I, III, XX, and XXI of GATT 1994 should apply to all the Members immediately even if those concepts are not stipulated in the new agreement. The following is an example of text which explicitly incorporates Articles XX and XXI of GATT 1994 into the new agreement:

With regard to general and security exceptions, the provisions of Articles XX and XXI of GATT 1994 shall apply.

3. Please note that the textual proposal of the S&D provisions in this paper is merely preliminary and that this paper lacks the TA&CB provisions. We recognize the need to have an intensive discussion to reach a consensus on how to specifically elaborate the S&D treatment and TA&CB based on communications from Members such as TN/TF/W/81, TN/TF/W/82 and TN/TF/W/95 once the Negotiating Group comes up with a certain level of obligations clarified or improved through the negotiations.

Textual Proposals

I. PUBLICATION AND AVAILABILITY OF INFORMATION

A. PUBLICATION

1. Members shall publish promptly all laws, regulations, judicial decisions and administrative rulings of general application relating to or affecting trade in goods in such a manner provided for in Article X of GATT 1994 as to enable governments¹ and traders to become acquainted with them. The information to be published shall include:

- (a) Procedures of border agencies (including port, airport, and other entry-point procedures and relevant forms and documents);
- (b) Rate of duties and taxes imposed on or in connection with importation or exportation (including applied tariff rates);
- (c) Decisions and examples of customs classification;
- (d) Import and export restrictions;
- (e) Fees and charges imposed on or in connection with importation or exportation;
- (f) Penalty provisions against breaches of import and export formalities;
- (g) Appeal procedures; and
- (h) Agreements with any country or countries relating to the above issues.

B. AVAILABILITY

2. Members shall ensure that the information referred to in paragraph 1 is made available to governments and traders in a non-discriminatory and convenient manner via an officially designated source notified to [the WTO Secretariat or a newly established body], including official gazette, official journal and whenever practicable, official website.

C. OUTLINE OF MAJOR TRADE-RELATED PROCEDURES

3. Members shall, whenever practicable, provide documents regarding outline of major trade-related procedures [in English, French or Spanish] and make publication and notification of them in a manner provided for in paragraph 2.

D. GENERAL RESERVATIONS

4. Nothing in these provisions shall be construed as requiring:

- (a) the publication or provision of information referred to in paragraph 1 other than in the language of the Member except as stated in paragraph 3; or
- (b) Members to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

E. SPECIAL AND DIFFERENTIAL TREATMENT

5. [Developing-country Members shall not be required to apply the provisions of paragraph 3 for a period of [] years from the date of application. [The Members or a newly established body] shall, upon duly motivated request by a developing-country Member, accord extensions of this period.

¹ The term "governments" is deemed to include the competent authorities of any Separate Customs Territory Member and the European Communities.

6. Least-developed country Members shall not be required to apply the provisions of paragraph 3 until their acquisition of the necessary capacity to implement such provisions.]

II. ENQUIRY POINTS

A. ESTABLISHMENT OF ENQUIRY POINTS

7. Members shall ensure that one or more enquiry points exist which are responsible for the provision of relevant information and documents related to trade procedures including the documents referred to in paragraph 3 to traders in a non-discriminatory and convenient manner.

8. [Members should, whenever practicable, establish a primary/initial enquiry point which facilitates coordination among competent border agencies in order that traders have access to necessary information more efficiently.]

B. NOTIFICATION

9. Members shall notify [the WTO Secretariat or a newly established body] of the contact information of the enquiry points in order to make such information available to governments and traders.

C. [SPECIAL AND DIFFERENTIAL TREATMENT]

10. Developing-country Members shall not be required to apply these provisions for a period of [] years from the date of application. [The Members or a newly established body] shall, upon duly motivated request by a developing-country Member, accord extensions of this period.

11. Least-developed country Members shall not be required to apply these provisions until their acquisition of the necessary capacity to implement such provisions.]
