

WORLD TRADE ORGANIZATION

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Negotiating Group on Trade Facilitation

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COMMUNICATION FROM HONG KONG CHINA, JAPAN, KOREA, MONGOLIA, AND SWITZERLAND

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

PROPOSAL ON PRIOR PUBLICATION AND CONSULTATION

1. The following textual proposal is submitted by Hong Kong China, Japan, Korea, 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/102 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.

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Textual Proposals

A. PRIOR PUBLICATION AND CONSULTATION

1. Prior Consultation

Members shall afford appropriate opportunities to interested parties to comment on proposed introduction or amendment of trade-related laws, regulations and administrative rulings of general application. Members shall provide information of their legitimate policy objectives pursued and allow reasonable period for interested parties to submit comments.

2. Prior Publication

Members shall ensure that a reasonable interval is provided between the publication of new or amended laws, regulations and administrative rulings of general application, or their drafts or summaries, and their entry into force in such a manner as to allow traders to become acquainted with and well prepared for the compliance with them.

3. Regular Consultation

Members shall hold regular consultations between border agencies and traders.

4. Reservations

Nothing in these provisions shall be construed to require Members to carry out any responsibility which is not within the competence of their respective government.

5. Special and Differential Treatment

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

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