

**COMMUNICATION FROM JAPAN AND MONGOLIA**

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

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**PROPOSALS ON APPEAL PROCEDURES**

1. The following textual proposal is submitted by Japan and Mongolia 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/97 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. APPEAL PROCEDURES**

**A. RIGHT OF APPEAL**

1. The legislation of each Member shall ensure that traders have the right of appeal, without penalty, against rulings and decisions by customs and other relevant border agencies concerning the specific importation, exportation, and transit of goods conducted by them. The appeal may be initially heard by the same agency or its supervisory authority prior to a review by separate and independent judicial, arbitral, or administrative tribunals.

**B. TRANSPARENCY**

2. Members shall ensure that appeal procedures are carried out in a non-discriminatory manner, and that information concerning such procedures is made available to traders. Traders shall be allowed to be represented at all stages of appeal procedures by independent legal counsel.

**C. STANDARD PERIOD**

3. Members shall ensure that customs and other relevant border agencies set out a standard period for their review and correction of decisions and rulings under the appeal procedures.

**D. OPPORTUNITIES TO RAISE COMPLAINTS**

4. Members shall ensure that customs and other relevant border agencies afford opportunities for traders to raise complaints concerning rulings and decisions in an informal and convenient manner prior to the commencement of the appeal procedures. The relevant agencies shall, upon request, inform the traders of reasoning of the rulings and decisions including applied laws and regulations.

**E. SPECIAL AND DIFFERENTIAL TREATMENT**

5. [Developing-country Members shall not be required to apply the provisions of paragraphs 3 and 4 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.

6. Least-developed country Members shall not be required to apply the provisions of paragraphs 3 and 4 until their acquisition of the necessary capacity to implement such provisions.]

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