

COMMUNICATION FROM UGANDA AND THE UNITED STATES

The following communication, dated 11 July 2008, is being circulated at the request of the Delegations of Uganda and the United States.

**PROHIBITING CONSULARIZATION REQUIREMENTS:
FULFILLING A LONGSTANDING TRADE FACILITATION OBJECTIVE**

1. In a joint communication (TN/TF/W/104 of 10 May 2006), Uganda and the United States submitted a textual proposal proposing that "a Member shall not require a consular transaction, including any related fee or charge, in connection with the importation of any good". Joint submissions had been made earlier, proposing elements of a commitment of this nature (TN/TF/W/22 of 21 March 2005 and TN/TF/W/86 of 4 April 2006).

2. The proposal defines "consular transaction" (also sometimes referred to as "consularization" or "legalization") as the procedure of obtaining from a consul of the importing Member in the territory of the exporting Member, or in the territory of a third party, a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shippers' export declaration, or any other customs documentation in connection with the importation of the good.

3. In light of the NGTF's move to more focused discussions of Member proposals, and to advance Members' understanding of the consularization proposal, Uganda and the United States are providing Members with additional information on the costs and burdens associated with consularization requirements, as well as the historical efforts to eliminate consularization.

Costs and Burdens Associated with Consularization

4. The utility of consularization requirements has long been questioned, at least since 1923. In the modern trading environment they are clearly obsolete. The fees and delays associated with consularization requirements have an inordinate impact on exporters from developing-country Members – particularly least-developed and landlocked countries. For small- and medium-sized enterprises (SMEs) from all Members, consularization requirements can present a barrier to market access in the following ways, among others:

- Consularization requirements add unnecessary *costs*, contributing to higher prices for importers and consumers. In some cases, consular fees amount to hundreds of dollars per shipment, which can exceed the invoice value of smaller consignments.
- Consularization requirements cause unnecessary, time-consuming *delays*, not only as a result of the stamping and signing process, but also the need to travel to the nearest embassy or

consulate, which may not always be located in the same city or country as the exporter, and the need to accommodate the working hours of the consular office. Such delays are generally unacceptable in an age where the delivery expectations of customers are demanding.

- Furthermore, businesses report that consular requirements all too often present a genesis for *corruption*, because of the inherent lack of transparency associated with the procedures. Frequently, it is unclear whether document A, B or both have to be legalized, and how many copies are needed. The frequent practice of paying cash for this formality, often without a clear basis for calculating the fees, presents opportunities for corruption.¹

5. For Uganda, a landlocked, least-developed country with an economy dependent on small-sized enterprises, consularization has been a great barrier to access into markets of countries applying that requirement.

6. Furthermore consularization requirements serve no discernible legitimate customs-related function. Consularization does not contribute to risk management, nor can it be defended for reasons of health, environment and security. Diplomatic and consular officials rarely, if ever, have scientific and technical expertise. Further, such inspections are usually conducted by technical experts at the point of entry into the importing Member and consularization requirements add an additional, unrelated burden.

Historical Efforts

7. In light of the costs and burdens associated with consularization requirements, there has been a long history of efforts to eliminate them, going back at least to 1923. Elimination of consularization has been a persistent theme under the GATT and WTO since 1948. Attachment 1 contains some key events in the nearly century-long effort to eliminate consularization requirements. Notably, the GATT CONTRACTING PARTIES recommended their elimination in decisions between 1952 and 1962 that remain in effect in the WTO today.²

8. Despite steady progress, however, the GATT/WTO recommendation has not been fully implemented by all Members. The fact that a few countries at any given time have not followed the recommendation has led to continued efforts by other countries over the years to eliminate the fees, whether bilaterally in regional trade agreements or multilaterally, including in the accession context. Eliminating consularization requirements would be a significant accomplishment of these trade facilitation negotiations.

Conclusion

9. Eliminating consularization requirements would result in cost savings to traders and administrators alike, and would remove a practice that continues to prevent traders in developing countries and LDCs from enjoying the maximum benefits from the WTO Agreement and the results of the Doha Round negotiations (including the Trade Facilitation negotiations). It would also achieve a long-standing goal of the GATT CONTRACTING PARTIES and WTO Members.

¹ See "Legalisation of trade documents as an unnecessary trade barrier"; Statement from the Committee on international trade facilitation, NorStella, Norway.

² The Abolition of Consular Formalities, and Code of Standard Practices, Recommendation of 7 November 1952 (BISD 01S/25); Consular Formalities, Decision of 17 November 1956 (BISD 05S/33); Consular Formalities, Recommendation of 31 October 1962 (BISD 11S/59). Article 1.b(iv) of the GATT 1994 incorporates the decisions of the CONTRACTING PARTIES; thus, the recommendation in the 1952, 1956 and 1962 decisions to abolish consular formalities remains in effect.

Attachment 1

Efforts to Abolish Import-Related Consular Formalities in the GATT and WTO

1923: International Convention Relating to the Simplification of Customs Formalities, Article 11(8) provides that consularization fees should be as low as possible. (Cited in US – Customs User Fees, BISD 35S/245, para. 71).

1927: World Economic Conference affirms 1923 Convention on consularization fees, stating that such fees should be fixed, not exceed costs and not be a source of revenue. (Cited in US – Customs User Fees, BISD 35S/245, para. 71)

August 1948: The Chairman of the GATT CONTRACTING PARTIES states that consular taxes were covered by Articles I and VIII of the GATT. (BISD II/12)

November 1952: GATT CONTRACTING PARTIES recommend the abolition of consular formalities by 31 December 1956. (BISD 01S/25)

December 1954: A GATT Technical Group examining the notifications of countries maintaining consular formalities notes that some progress towards the removal of consular fees had been made and expresses the hope those countries would gradually reduce existing measures and provide for final elimination by December 31, 1956. (BISD, 3S/91)

November 1956: Only nine Contracting Parties continued to generally impose consular formalities. Seven other Contracting Parties maintained consular formalities only in a few exceptional circumstances. (L/595 p.9)

Just before the deadline for the abolition of consular formalities, the CONTRACTING PARTIES issue a Decision to maintain their 1952 recommendation. They recommend that countries still applying consular formalities examine *urgently* the possibility of introducing measures to abolish or reduce them at the earliest possible date. (BISD 05S/33)

November 1957: The CONTRACTING PARTIES again reaffirm their recommendations of 1952 regarding the abolition of consular formalities. They further recommend that consular invoices be abolished in favor of commercial invoices and that fees for certifying or visaing commercial documents be kept free-of-charge or at a nominal rate. (BISD 06S/25)

March 1962: A Panel of Experts on Consular Formalities reported that Argentina, Chile, Cuba and the United States had suppressed entirely their previously expansive use of consular formalities. Only eight Contracting Parties continue to normally require consular intervention in trade. (L/1743 p. 2)

October 1962: Ten years after the recommendation to abolish consular formalities, the CONTRACTING PARTIES again recommend that they be removed. (BISD 11S/59)

March 1966: Contracting Parties maintaining requirements for consular formalities were invited to report on their reasons for maintaining these requirements and on their future policy. Six countries submitted reports, including one stating consular formalities had been removed. (L/2563 and Add./1-4)

December 1969: Consular Fees & Formalities were included on the Illustrative List of Non-Tariff Barriers to be addressed by the GATT Committee on Industrial Products. (L/3298 p. 8)

February 1971: The report of the GATT Committee on Industrial Products Working Group on Customs and Administrative Entry Procedures summarizes the proposal of countries not maintaining consular formalities to phase out consular formalities and fees over five years and a maximum flat-rate cap in the interim. (L/3496, p. 12)

November 1988: The Uruguay Round Negotiating Group on Non-Tariff Measures includes consular formalities in the category of measures proposed for a multilateral rule-making approach. (MTN.GNG/13 p.6)

May 1989: The Secretariat prepared a background note on Customs and Consular Formalities for the Negotiating Group on Non-Tariff Measures, recording past efforts in the GATT and elsewhere to abolish consular formalities, which continued to be perceived as a barrier to trade. (MTN.GNG/NG2/W/29)

June 1989: A study prepared for the Working Party on Facilitation of International Trade Procedures of the United Nations Economic Commission for Europe and submitted to the Negotiating Group on Non-Tariff Measures recommends that appropriate steps be taken to press for the abolition of consular formalities. (MTN.GNG/NG2/W/34)

January 1995: The GATT 1994 entered into force. Article 1.b(iv) incorporates the decisions of the CONTRACTING PARTIES; thus, the recommendation in the 1952, 1956 and 1962 decisions to abolish consular formalities remains in effect.

March 2005: Uganda and the United States submit a proposal to prohibit import-related consular requirements to the Doha Round Negotiating Group on Trade Facilitation, followed up with proposed text in May 2006. (TN/TF/W/22; TN/TF/W/104)

November 2005: Egypt reports in a national experience communication to the Negotiating Group on Trade Facilitation that consular fees and invoices were phased out by a Ministerial Decree in 2005. (TN/TF/W/75)

2003-2006: Notifications of Non-Tariff Barriers to the Negotiating Group on Market Access include consular formalities measures (e.g. TN/MA/W/46/Add. 1-17).
