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Council for Trade in Goods

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GATT ARTICLE X AND TRADE FACILITATION

Communication from the Republic of Korea

The following communication, dated 21 May 2002, has been received from the Permanent Mission of Korea.

Background

Korea made seven submissions on various trade facilitation issues leading up to the Doha Ministerial Conference last year (G/C/W/123, 134, 146, 150, 212, WT/GC/W/309, G/VAL/W/33). Throughout these contributions, Korea underlined the importance of transparency-related matters in facilitating trade. In Korea's view, transparency is one of the most basic principles of trade facilitation.

In this respect, Korea welcomes that the Ministers at Doha mandated the Council for Trade in Goods (CTG) to "review and, as appropriate, clarify and improve relevant aspects of " Article X of the GATT 1994, which is undoubtedly the key provision to promote and enhance transparency in international trade.

A number of WTO Members, including Hong Kong-China (G/C/W/231), Australia (G/C/W/233), Switzerland (G/C/W/234), Japan (G/C/W/236), Canada (G/C/W/238), Costa Rica (G/C/W/240, 265) and the EC (G/C/W/211), have put forward various ideas on transparency issues. These ideas provide a valuable groundwork for further discussions.

In examining various ideas, Korea finds it important to consider two basic criteria: (1) the level of contribution in facilitating trade, and (2) feasibility. Any proposal or idea should be evaluated and prioritized according to how much it can contribute and how easily it can be drawn into relevant WTO rules and be eventually implemented. What S&D or TA/CB package it offers should also be taken into account in assessing the feasibility.

Article X of the GATT 1994 and Proposals

Article X of the GATT 1994 consists of three paragraphs which principally deal with (1) the publication and availability of information, (2) the effect of such publication and (3) due process. It should be noted that the article seems to provide for the least common denominator in ensuring a minimum transparency without considering accessibility or the costs incurred in finding relevant information.

The accessibility of information *per se* has become increasingly relevant these days to trade, especially for individual traders. The costs incurred in seeking reliable, relevant information can be greatly reduced by introducing various facilitation measures.

In this context, Korea is of the view that the Members should give due consideration to the issue of enhancing transparency and further explore various possibilities to improve Article X of the GATT 1994, including those proposed by some aforementioned Members.

Bearing in mind the criteria set forth above, i.e. the level of contribution and the feasibility, Korea has carefully examined the papers tabled by the Members so far. As such, Korea believes that the following basic ideas, some of which are contained in those papers, merit serious consideration by the Members :

- Laws, regulation, judicial decisions and administrative rulings of general application, made effective by any contracting party and pertaining directly to international trade and customs administration, (referred to as ‘Measures’ for the rest of this paper) should be published in full and promptly in such a manner as to enable governments and traders to become acquainted with them. Also, any advance ruling of a binding nature could be included in the scope of Measures. Translation services can be considered as a part of CB package to be provided to the developing country Members.
- The media through which Measures are published should be notified to the Secretariat. The Secretariat is required to make the notified information available to all the Members. Donor Members could consider TA in assisting developing country Members to make use of electronic media, such as the internet, for this purpose.
- The Members should allow a reasonable period of time before the formal introduction of Measures. Predictability will be further enhanced by establishing a prior consultation mechanism among interested parties or major stakeholders. As an S&D measure, a relaxation of the allowed time could be considered.
- A non-discriminatory, legal right of appeal against customs and other agency rulings and decisions should be ensured.
- A single national focal point to respond to the inquiries by the Member governments and traders should be established.*
- The Members could consider a notification requirement of Measures (or their core subset) and their amendments in one of the official WTO languages to the WTO Secretariat.*

** These ideas are to be further elaborated upon in the following section.*

A Single National Focal Point (SNFP)

A Single National Focal Point should be established to respond to inquiries by Members and traders regarding Measures or any information directly related with the customs procedures, importation or exportation. The contact information relating to the SNFP should be notified to the WTO Secretariat. The Secretariat should make such information available to the other Members (and traders). The Single National Focal Point should respond to the inquiries within a reasonable period of time.

The Single National Focal Point should be distinguished from “single window access” for customs procedures. It should function no more than as “a focal point”, “a contact desk”, which liaisons with the other domestic competent authorities in order to respond to the inquiries.

The SNFP can contribute to TF by reducing the costs of securing necessary information. It will improve the accessibility of information by private traders. It is easy to implement, since each government should only designate an office, which receives the request for information, finds which government branch is responsible for the question, requests a response to the question, and delivers it to the inquirer (see the figure 1).

Since it is easy to implement, it does not require much S&D treatment. However, a flexible implementation period for establishing and notifying the SNFP and a relaxation of the responding period could be considered.

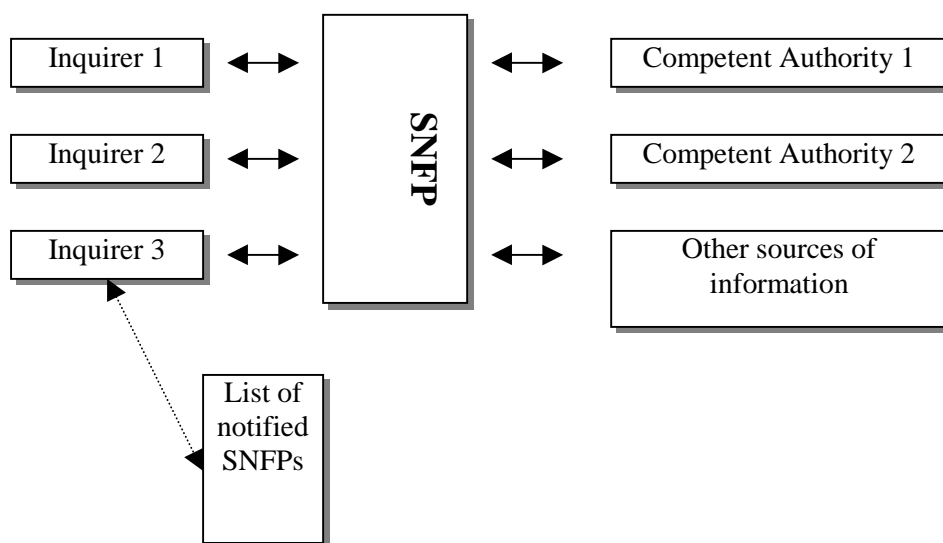


Figure 1 : Function of SNFP

Notification of Core Measures

The Members could consider a notification requirement of Measures (or their core subset) and their amendments in one of the official WTO languages to the WTO Secretariat. The Secretariat can make the notified information available to all Member governments. The Members could further consider allowing access to such information by private traders through an electronic means managed by the Secretariat.

This obligation should be constructed to be the same as TBT and SPS. Even though *the Decision on Notification Procedures* and *An Understanding Regarding Notification, Consultation, Dispute Settlement and Surveillance* invite the Members “to submit notifications [...] in particular when notifications covering the measures are not made under other GATT procedures,” Korea believes that such an invitation is insufficient to ensure a minimum level of implementation and, in fact, it has been widely ignored. Thus, Korea proposes that we introduce the same level of notification requirement as is used in the TBT/SPS.

Korea notes that many of the core Measures are required to be notified by various WTO instruments, which would relieve some administrative burden, and that the burden is also dependent on the scope of the core Measures, which Korea expects to be further discussed in the future consultation. Taking into account that the effective implementation of such requirements would

significantly improve the accessibility of information and contribute to TF, as it has done in the case of the TBT and SPS, we believe this proposal deserves serious consideration by the Members.

As a CB package, the donor Members can support the provision of translation services to the developing country Members. Or as an S&D package, the period for notification can be relaxed for developing countries.
