

COMMUNICATION FROM INDIA

The following communication, dated 21 October 2005, from the Delegation of India, is being circulated in advance of the Negotiating Group meeting of 24-25 October 2005.

COOPERATION MECHANISM FOR CUSTOMS COMPLIANCE

I. INTRODUCTION

1. The joint proposal by India and the United States in TN/TF/W/57 sets out the basic approach to establish a multilateral mechanism for exchange and handling of information between Members. The present paper deals with exchange of trade transaction information consisting of the data elements and document(s) that are usually collected by customs, at the time of importation or exportation. It proposes a cooperation mechanism for exchange of specific information, in a limited number of cases upon request, when there is reason to doubt the truth or accuracy of the declaration filed by the importer or exporter.

II. PROPOSAL

2. Establish a mechanism to facilitate cooperation between customs authorities by:
- (i) Exchanging specific information upon request on matters such as customs valuation, HS classification, full and accurate description, quantity, origin of goods in identified cases where there is reason to doubt the truth or accuracy of the declaration filed by the importer or exporter. The request for information would be limited to the data elements contained in the import or export declaration.
 - (ii) In appropriate cases, providing document(s) filed in support of goods declaration to the requesting country for investigative and/or judicial processes.

III. JUSTIFICATION

3. The objective of the present negotiations is to simplify and liberalize border controls to ensure expeditious clearance of the legitimate trade without compromising on the controls that have to be exercised. A multilateral cooperation mechanism for exchange of information among customs administrations would be an important step in achieving this aim.

4. There are existing arrangements for exchange of information through negotiating bilateral agreements. However bilateral agreements are not always easy to enter into, and at times, they are limited in nature. It is also not possible to have bilateral agreements with all countries on account of

logistical limitations or due to unwillingness of either party to enter into such an agreement. The bilateral approach also has inherent limitations on account of limited negotiating capacity of some Members. These negotiations present an opportunity to provide a multilateral underpinning to customs cooperation which would complement the existing bilateral cooperation mechanisms.

IV. METHODOLOGY

5. The form of cooperation envisaged under this proposal would be in a limited number of cases where the requesting administration, after carrying out necessary internal verification, has reasons to doubt the truth or accuracy of any element of the import or export declaration or supporting document(s). There will be an inbuilt mechanism to ensure that the requests are not made in a routine manner. Further, most of the information that may be required by the requesting administration could be readily obtained from the export or import documentation. In a few cases where the supporting document(s) is requested, the same is usually in the possession of the requested administration as it is submitted by the trader for processing the entry documents. Thus the exchange of requested information may not involve any additional burden in terms of resources to the requested administration. For making such requests, a time limit could be considered to avoid any hardship for retrieving old documents.

6. The nature of information to be requested would be specific details (e.g., description of goods, grade or specification, HS classification, value, quantity, country of origin, etc.) concerning the transaction. Supporting documents wherever required would include commercial invoice, packing list, certificate of origin etc. These documents would be mostly certified or authenticated copies. The information sought could also be for confirming authenticity of supporting document(s).

7. The procedure to be followed for the proposed exchange of information could be through a nodal agency to be designated by each Customs administration and notified to the WTO. The designated nodal agency would be required to confirm that all necessary internal checks have been carried out within the country of import or export, as the case may be, and that the information sought is necessary to secure compliance with the customs requirements of the requesting country. The request for assistance should be made in one of the three official languages of the WTO. Such requests could be made in writing or electronically. Any request for information should include brief details of the case, nature of doubt and reasons for doubting the truth or accuracy of the declaration, results of internal verification carried out, and the details of information required from the requested administration. It would be desirable to lay down a reasonable time limit for furnishing information so that the requesting country is assured of a response.

8. This proposal envisages that the information exchanged should be subject to a confidentiality clause, namely, that the information supplied should not be disclosed except to the extent required in judicial proceedings. A similar provision exists in Article 10 of the WTO Agreement on Customs Valuation. The information exchanged through this cooperation mechanism can hardly be effective unless it could be used as evidence in judicial proceedings to secure customs compliance. Under various GATT and WTO provisions (Article X of GATT, Article 11 of the Agreement on Customs Valuation), Members are obliged to have strong judicial systems for review of decisions taken by customs authorities. During the present negotiations, too, there are proposals to improve the system of judicial review. All this puts a strict burden of proof on the customs administration to establish a violation. Evidence gathered from other administrations can at times be crucial to discharge this burden of proof. It is therefore essential that information obtained through the proposed cooperation mechanism is allowed to be used as evidence in judicial proceedings without bringing in the cover of confidentiality.

9. A related issue is the concern of some Members to share information on account of domestic confidentiality laws. There is a need for greater clarity on this issue. The declarations presented before the two customs administrations (importing and exporting) ought to be based on identical

information relating to the transaction. All the relevant particulars in respect of goods are in any case to be presented to customs administrations in both the countries. In case of a true and accurate declaration, the same information would in any case be available with the requesting customs administration as well. Hence, confidentiality concerns should not be in terms of sharing such information with customs administration of another Member, but should only be in terms of making it public. In this regard, a general principle can be adopted that information obtained under this mechanism shall be afforded the same degree of confidentiality by the receiving Member that it applies to similar information in its custody. We should be mindful that any blanket denial to exchange information on grounds of confidentiality would only help the cause of non-compliant traders. In many cases the information provided supplements the results of investigation and acts as crucial evidence in establishing the offence in judicial proceedings. In view of the above, it is proposed that Members should claim no immunity under domestic confidentiality laws for providing information and the information provided should be allowed to be disclosed in judicial proceedings.

10. Implementation of the cooperation mechanism for Customs compliance should be facilitated by an appropriate body in the WTO. In addition, Members shall have the freedom to raise issues concerning non-compliance of requests for information exchange.

V. TECHNICAL ASSISTANCE

11. As indicated above, the information exchange is required only in a limited number of cases where the truth or accuracy of declaration by importer or exporter relating to value, HS classification, description, quantity or origin of goods is reasonably suspected after necessary internal verification has been carried out. Retrieval of requested information will be generally from the data and documents already available with the customs. Transaction data and documents may be needed as evidence in certain cases to establish violations of customs law in judicial proceedings. Technical assistance needs in this area are not likely to be significant as such cooperation can be effected through the existing administrative set up of the customs administrations. However, this issue can be considered if such need is projected by any Member.
