

COMMUNICATION FROM MALAYSIA

The following communication, dated 13 June 2005, is being circulated at the request of the Delegation of Malaysia for consideration at the Negotiating Group meeting of 13-14 June.

TRADE FACILITATION: MALAYSIA'S EXPERIENCE

I. INTRODUCTION

1. The WTO Doha Ministerial Declaration identified four areas related to Customs in its work programme: Rules of Origin, Customs Valuation, Trade Facilitation and Capacity Building. The work program on trade facilitation will be beneficial for both the trade and Customs communities. With regards to Customs in particular, this can provide for political will and commitment which is indispensable in pursuing Customs reform and the simplification of procedures, thus ensuring predictability within the trading system and providing a basis for good governance.

2. The Articles in GATT 1994 set out the high principles for formalities and procedures for movement of goods, transit of goods and publication and administration of trade regulations. On the other hand, the instruments of Customs as guided by the WCO instruments, including the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention), through its legal provisions and implementation guidelines, provide the basis and practical guidance and information for the implementation of these high principles.

3. The purpose of this paper is to focus on Article VIII of the GATT 1994, looking at the integration of the principles of the Article with the standards provisions in the Revised Kyoto Convention 2000 and other WCO instruments. These integration principles become the basis for the Malaysian Customs to supporting national approach to trade facilitation.

II. MALAYSIA'S APPROACH TO TRADE FACILITATION¹

4. Trade and business facilitation, effective delivery of services and reducing the cost of doing business have always been key concerns of the Malaysian Government. This includes the need for an efficient civil service delivery system to ensure expedient and effective implementation of national development policies and to encourage further development of productive and assertive export-oriented businesses. Malaysia is firmly committed to the use of ICT in all areas including in trade facilitation. The Government has put in place, and is consistently up-grading, the physical and legal infrastructure to support an environment for trade and commerce using the electronic media.

¹ APEC 2004, Malaysian Individual Action Plan (IAP) for Chapter 6: Customs Procedures and Trade Facilitation.

5. In March 2004, the Government agreed on the development of a Trade Facilitation Portal (TFP). The TFP will provide a common web-based platform for the trading community, including the Customs, to share and access all trade-related information and services via the internet. The TFP will be electronically linked to the Customs Portal. The Ministry of International Trade and Industry (MITI) is overseeing the development of the TFP, including the identification of the best-fit operational model and implementation methodology. It is envisaged that the private sector will drive the TFP as it is basically a business-to-business (B2B) portal. MITI has already started work to review all existing e-commerce initiatives, with the objective of formulating a comprehensive and coordinated framework for e-commerce in the supply chain and trade facilitation.

6. To enhance efficiency and effectiveness in the delivery of goods and services, the Government is also promoting the growth of integrated logistics services. The provision of effective logistics services will increase efficiency in distribution and reduce production costs as manufacturers can adopt just-in-time practices and outsource their logistic requirements.

III. ARTICLE VIII OF THE GATT 1994: FEES AND FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION

1. Text

1. (a) All fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connection with importation and exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.

(b) The contracting parties recognize the need for reducing the number and diversity of fees and charges referred to in sub-paragraph (a).

(c) The contracting parties also recognize the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements.

2. A contracting party shall, upon request by another contracting party or by the CONTRACTING PARTIES, review the operation of its laws and regulations in the light of the provisions of this Article.

3. No contracting party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.

4. The provisions of this Article shall extend to fees, charges, formalities and requirements imposed by governmental authorities in connection with importation and exportation, including those relating to:

- (a) consular transactions, such as consular invoices and certificates;*
- (b) quantitative restrictions;*
- (c) licensing;*
- (d) exchange control;*
- (e) statistical services;*
- (f) documents, documentation and certification;*

- (g) *analysis and inspection; and*
- (h) *quarantine, sanitation and fumigation.*

2. Basic Obligations²

7. Article VIII seeks to limit the costs and complexity of the importation and exportation process by imposing specific legal obligations on Members with respect to the fees and charges that may be charged in connection with importation and exportation and the penalties that may be imposed for minor breaches of customs procedures; as well as by explicitly recognizing the need to reduce the number and complexity of import and export-related fees and formalities.

8. Article VIII requires each WTO Member to ensure that:

- (i) the non-tariff fees and charges that it imposes on or in connection with importation or exportation: (a) are limited in their amount to the approximate cost of the regulatory activities performed by that Member in connection with such importation or exportation; and (b) do not represent indirect protection to domestic products or taxation of imports or exports for fiscal purposes;
- (ii) upon request by another Member or by the relevant WTO Body, it reviews the operation of its laws and regulations in the light of the provisions of Article VIII; and
- (iii) it does not impose substantial penalties for minor breaches of customs regulations or procedural requirements, in particular when such breaches are the result of mistakes that are rectifiable and do not result from fraud or gross negligence.

9. In Article VIII, Members also "recognize", but undertake no explicit obligations with respect to:

- (i) the need to reduce the number and diversity of the fees and charges addressed by Article VIII; and
- (ii) the need to minimize the incidence and complexity of import and export formalities, and to decrease and simplify import and export documentation requirements.

IV. THE ALIGNMENT OF ARTICLE VIII WITH THE REVISED KYOTO CONVENTION AND OTHER WCO INSTRUMENTS.

10. Revised Kyoto Convention (RKC) adopted by the WCO in 1999 is the single WCO instrument which covers all the Customs procedures and formalities related to importation and exportation of goods as well as other procedures. It contains international best practices and standards that provide predictability and efficiency in modern trade and commerce requirements.

11. The RKC and its provisions and other WCO instruments are completely aligned with and respect the requirements that are set out in Article VIII (I) (a & c) of GATT 1994 in so far as they can be addressed by the Customs. These relate to the fees that are to be charged and the procedures and formalities to be applied to the goods that are imported or exported.

12. The alignment of Article VIII with some of the provision in RKC and other WCO Instruments are as follows:

² WTO National Seminar on Trade Facilitation, Kuala Lumpur Malaysia, 28-29 September 2004: *Secretariat Paper : 'Article VIII of the GATT 1994 – Scope and Application'*.

	GATT	RKC / Others Instruments
(i)	Article VIII (1) (A) – Fees and charges to be limited to the approximate cost of services rendered	General Annex Chapter 3 – Clearance and Other Customs formalities – Standard 3.2
(ii)	Article VIII (1) (C) – Requirements for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation.	General Annex Chapter 3 – Clearance and Other Customs formalities – Standard 3.3 (<u>Border agencies coordination</u>) Standard 3.4 (joint controls at common border crossings) - Standard 3.5 (juxtaposed customs office).

	GATT	RKC / Others Instruments
		<p><u>Standardization and simplification of the goods declaration and supporting documents</u></p> <p>Standard 3.11 (conform to UN Layout key). Standard 3.12 (limit data to only necessary for assessment/collection of duty/tax) Standard 3.14 (provisional incomplete declaration) Standard 3.15 & 3.16 (limit no. of copies & supporting documents) Standard 3.17 (allowing submission via electronic means) Standard 3.18 (translation not required) Standard 3.25 (allow lodge, register/checking prior to arrival) Standard 3.27 (allow amendment of declaration) Standard 3.28 (allow withdrawal of goods declaration lodged).</p> <p><i>WCO guides on Immediate Release; based on categorization of consignments:</i></p> <ul style="list-style-type: none"> - category 1: correspondence and documents - category 2 : low value with no duties / tax - category 3 : low value dutiable consignment - category 4 : high value consignments. <p><i>WCO guidelines on Express Consignment Clearance</i></p>
		<p><u>Special procedures for authorized persons/traders.</u></p> <p>RKC Transactional Standard 3.32</p> <ul style="list-style-type: none"> - <i>release of goods on the provision of the minimum</i>

		<p><i>information necessary to identify the goods and permit subsequent completion of final declaration.</i></p> <ul style="list-style-type: none"> - <i>Clearance of goods at the declarant's premises or another place authorized by the Customs,</i> - <i>and in addition, to the extent possible, other special procedures such as:</i>
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	GATT	RKC / Others Instruments
		<ul style="list-style-type: none"> - <i>Allowing a single goods declaration for all imports or exports in a given period where goods are imported or exported frequently by the same person.</i> - <i>Use of the authorized person's commercial records to self-assess their duty and tax liability and, where appropriate, to ensure compliance with other Customs requirements;</i> - <i>Allowing the lodgement of goods declaration by means of an entry in the records of the authorized person to be supported subsequently.</i>
		<p><u>Co-ordinate intervention (Convergence of official control)</u></p> <p>Standard 3.35 of General Annex Chapter 3 Requires that Customs should ensure that their inspections are co-ordinated with other competent authorities and are carried out at the same time. It could establish an inspection service or compliance verification process that is integrated with other authorities. Such a convergence of controls into a single control to meet all government requirements is an important trade facilitation measure.</p>
		<p><u>Use of Risk Management Techniques.</u></p> <p><u>Chapter 6 General Annex</u></p> <p>Standard 6.3 – 6.10 (The importance and requirements to use risk management, risk analysis supported by information technology as tools for Customs control)</p>

V. MALAYSIAN CUSTOMS PRACTICES IN TRADE FACILITATION (BASED ON ARTICLE VIII OF GATT AND RKC/WCO GUIDELINES)

1. Based on Article VIII of GATT and RKC/WCO guidelines, the Malaysian Customs has been practicing the following procedures and formalities for trade facilitation, categorized by the those guidelines / agreements / standards.

- (a) Article VIII (1) (A) : requirements for minimum / limited fees and charges.

Malaysian Customs has fulfilled this requirement of the WTO to have reasonable and appropriate fees and charges for any services rendered. Standard 3.2 of Chapter 1 General Annex (Revised Kyoto Convention) has been practiced. The current issue is "over time charges". Malaysia has already abolished over time charges since 2001. Therefore, Customs services are now rendered on request, including outside the designated business hours or / and away from Customs office; without charges for overtime services.

- (b) Article VIII (1) (C) : Requirements for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation.

(i) Border agencies coordination

Malaysian Customs cooperates with neighbouring countries to have Customs presence to ensure compliance with import and export requirements. Currently, Malaysia and Thailand have been coordinating on a single inspection system, information technology interfacing and sharing of cost for equipment.

(ii) Standardizing and simplification of trade / clearance procedures

Malaysian Customs forms are aligned according to the UN layout key. Most of the Customs procedures and documentations for import/export are done electronically via the EDI system. Import permits from MITI are transmitted electronically to the Malaysian Customs. Efforts are currently being undertaken to link the rest of other permit issuing agencies to submit their import and export permits electronically to Customs depending on their readiness.

Malaysia's export transactions are paperless in the major seaports and airports.

(iii) Immediate release based on categorization of consignments

Malaysia has done some improvements to expedite the process of Customs clearance such as:

- a. Direct release of non-dutiable express shipments below RM2,000.00 without formal declaration.
- b. Consolidated declaration for non-dutiable express consignments for export.
- c. Express consignments with de minimus value of RM500.00 exempted from payment of duties.
- d. Post release submission of Customs form for express consignments to free zones.

The services for immediate release facilitation are rendered through the Express Handling Unit (EHU) at all major International Airports to cater for the release of express consignments. The EHU operates on a 24-hour basis.

Malaysia also participates in the ASEAN Customs Clearance Services (ACCESS) project since year 2000. Apart from KLIA, the services has been extended to Airports at Bayan Lepas Penang, Senai Johor, Kota Kinabalu Sabah and Kuching Sarawak.

(iv) Special procedures for authorized persons / traders

Malaysia has implemented a special procedure to expedite clearance for some authorized trader who have shown a good record of compliance. This procedure is called the Customs Golden Clients programme and it allows for trusted traders to import goods without going through the normal physical examination or minimum Customs intervention.

Malaysia's Customs Golden Client programme does not discriminate between Multinational Companies (MNCs) and Small Medium Industries (SMIs).

(v) Coordinate intervention (convergence of official control)

Standard 3.35 of General Annex Chapter 3 in line with Article VIII (1) (C) requires the Customs to ensure that their inspections are co-ordinated with other competent authorities and are carried out at the same time. It could establish an inspection service or compliance verification process that is integrated with other authorities.

The Malaysian Customs has provided this facility and operates on a 24 hours basis at major exit and entry points. However, this requirement should be made on a best endeavour basis, not to be made mandatory, as some permit issuing authorities might have stringent procedures in inspection for valid reason. For example, inspection procedures by the Department of Health and Quarantine.

(vi) Use of Risk Management Techniques

Malaysia introduced the risk assessment on a selective basis in terms of examination of goods at the points of import/export. Risk assessment is done based on the sources/information obtained from previous records of post-audit and preventive cases.

A Customs Intelligence Center (CIC) is located at the Customs Head Office since its establishment in August 2003 and performs its function on an on-going basis. An "Operational Risk Management Committee" is been set-up in all states of Malaysia.

(vii) Collateral or monetary security

The Malaysian Customs has considered an enhanced clearance system that includes security provisions (bonds, financial guarantees, surety bonds) or other forms of collateral to ensure the obligations to customs of importers, warehouse operators or international transporters of good record, are properly discharged. The system can be used to secure payment of duties and taxes where payment is deferred or where goods are provisionally released pending completion of final clearance procedures.

For these facilitation, the Malaysian Customs has provisions for deferred payment for specific clientele. Electronic Fund Transfer (EFT) for duty payment has been introduced and is currently practiced in Port Klang, Selangor and Federal Territory of Kuala Lumpur.

2. Other Trade Facilitation Initiatives: [Highlights of APEC 2004 trade facilitation work in Individual Action Plan for Malaysia – related to Customs Procedures].

- (i) Malaysia implemented the Container Security Initiative in March 2004 to facilitate movement of goods and enhance legitimate trade.
- (ii) Malaysian Customs conducts a Biannual Customs-Private Sector Consultative Panel exercise to obtain feedback and recommendations from stakeholders. There is a feedback mechanism on action taken.
- (iii) Permits for imported vehicles are transmitted electronically via SANCRT (International Movement of Goods Government Regulatory Message) from the Ministry of International Trade and Industry to Customs Department. Paperless export is already being implemented at major ports and airports.
- (iv) Re-engineering of customs procedures in a paperless environment is in progress. The Customs Information System will be modified accordingly.
- (v) The Government has agreed that the Malaysian Customs also develop a web-based Customs Portal, to give users the choice of two electronic means to access the Customs Information System; either through the Customs Portal or the existing EDI system.

The Customs Portal will provide all Customs related services, which include electronic transmission of import/export Customs declarations, interactive services, information services, and information exchange services with relevant Government agencies in the country as well as foreign Customs authorities.

Work is currently underway to develop the Customs Portal to: interface with the national trade facilitation portal towards the establishment of a "single window" for cross-border trade; provide informational as well as transactional services over the internet; and to interface with Permit issuing Agencies and other government agencies.

VI. CONCLUSION

13. As stated by a study on future customs environment³, the main aim of Customs' long term vision is the development of a harmonized simplified process, which facilitates the movement of goods internationally and assists in the enforcement of Customs laws. This is to be achieved by recognizing that an international shipment is both an export and an import, using international standard data in automated data processing, allowing traders to supply information once in a seamless integrated process, minimizing the impact of Customs information requirements on business, by limiting the Customs information needed for authorized traders for non-controlled or restricted goods and utilizing commercial system and data stream.

³ Appendix 7 Draft Cargo Processing Model : Case Study by H.M.Customs and Excise, United Kingdom on International Trade – a blueprint for future Customs environment.

14. Malaysia as a founding member of the WTO by virtue of its membership in the GATT since 1957, and as in the process to Revised Kyoto Convention accession, has already made and continuously in on-going effort to adhere to its WTO obligation in facilitating the international trade.
