

WORLD TRADE ORGANIZATION

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Council for Trade in Goods

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COMMUNICATION FROM THE UNITED STATES ON ARTICLE X OF GATT 1994

The following communication, dated 5 June 2002, has been received from the Permanent Mission of the United States.

With this submission, the United States welcomes the new phase of work within the WTO on Trade Facilitation, as the Council for Trade in Goods proceeds in meeting its mandate under the Doha Declaration to “review and as appropriate, clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 and identify the trade facilitation needs and priorities of Members, in particular developing and least-developed countries.” The United States intends to provide further submissions, as discussions advance.

Within the past decade, dynamic changes have been brought to how trade transactions are conducted— almost as a force of nature— and have contributed greatly to what has become a just-in-time global economy. Product cycles have been shortened as never before, and industrial sourcing patterns can now change between a morning and the afternoon. Small enterprises can increasingly use nimbleness as a quality for the effective entrance into markets previously unreachable except to the largest corporations.

At the core of this transformation in how business can be conducted is the revolutionary change in how information moves. One result of this is that each Member faces the need to ensure a regulatory infrastructure that is compatible and effective in today’s fast-paced economy. In an examination aimed to ‘improve’ or ‘clarify’ Article X of GATT 1994, it is important to recall that transparency is at the core of providing certainty and uniformity of treatment. Transparency is the starting point for ensuring the efficiency, and, ultimately, the stability of a rules-based environment for goods crossing the border. The United States makes this initial submission to give a brief overview of mechanisms it utilizes in ensuring transparency, along with citing related WTO provisions and noting the potential for practical application of technical assistance to operationalize these mechanisms.

Article X Provision	Mechanisms and Methodologies Utilized in the United States	Other relevant WTO provisions	Technical Assistance Activity
<p>1. "Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them.</p> <p>Agreements affecting international trade policy which are in force between the government or a governmental agency of any contracting party and the government or governmental agency of any other contracting party shall also be published. The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private."</p>	<ul style="list-style-type: none"> - Official publication is accomplished through the Federal Register. - Laws, Regulations, judicial decisions and administrative rulings are also available via Internet at: www.customs.ustreas.gov - Publication of regulations making effective changes to requirements and other matters pertaining to imports is accomplished under established specified time frames. - Advance binding rulings are issued to private sector traders upon request. Subject areas include, but are not limited to: tariff classification, valuation, admissibility, rules of origin, and duty drawback. Rulings are publicly available. 	<p>Article 2(g) of Agreement on Rules of Origin: "their laws, regulations, judicial decisions and administrative rulings of general application relating to rules of origin are published as if they were subject to, and in accordance with, the provisions of paragraph 1 of Article X of GATT 1994."</p> <p>Article 12 of Agreement on Customs Valuation: "Laws, regulations, judicial decisions and administrative rulings of general application giving effect to this Agreement shall be published in conformity with Article X of GATT 1994 by the country of importation concerned."</p> <p>Article 2(h) of Agreement on Rules of Origin: "Upon the request of an exporter, importer or any person with a justifiable cause, assessments of the origin they would accord to a good are issued as soon as possible but no later than 150 days* after a request for such an assessment provided that all necessary elements have been submitted. Requests for</p>	<p>U.S. provides technical assistance on developing Internet web sites to enhance transparency of requirements and other procedures.</p> <p>U.S. provides technical assistance on development of advance rulings program.</p>

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		<p>such assessments shall be accepted before trade in the good concerned begins and may be accepted at any later point in time. Such assessments shall remain valid for three years provided that the facts and conditions, including the rules of origin, under which they have been made remain comparable. Provided that the parties concerned are informed in advance, such assessments will no longer be valid when a decision contrary to the assessment is made in a review as referred to in subparagraph (j). Such assessments shall be made publicly available subject to the provisions of subparagraph (k);”</p> <p>Article 16 of the Agreement on Customs Valuation: Upon written request, the importer shall have the right to an explanation in writing from the customs administration of the country of importation as to how the customs value of the importer’s goods was determined.</p>	
2. “No measure of general application taken by any contracting party effecting an advance in a rate of duty or other charge on imports under an established and uniform	Regulations and other determinations of general application resulting in changes in requirements	Article 2(i) of the Agreement on Rules of Origin: “...when introducing changes to their	U.S. provides technical assistance on developing or improving

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practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefor, shall be enforced before such measure has been officially published.”	pertaining to importations are published in advance of their implementation. Procedures are also utilized to provides interested persons the opportunity to submit comments for review and consideration prior to the adoption of such changes.	rules of origin or new rules of origin, they shall not apply such changes retroactively as defined in, and without prejudice to, their laws or regulations”	administrative regulatory procedures.
<p>3. (a) Each contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.</p> <p>(b) Each contracting party shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement and their decisions shall be implemented by, and shall govern the practice of, such agencies unless an appeal is lodged with a court or tribunal of superior jurisdiction within the time prescribed for appeals to be lodged by importers; Provided that the central administration of such agency may take</p>	An administrative appeal or procedure is available relating to customs matters, with specific time frames under which decision making takes place. Matters may also be appealed to the United States Court of International Trade, a judicial tribunal.	<p>Article 2(j) of the Agreement on Rules of Origin:</p> <p>”...any administrative action which they take in relation to the determination of origin is reviewable promptly by judicial, arbitral or administrative tribunals or procedures, independent of the authority issuing the determination, which can effect the modification or reversal of the determination;”</p> <p>Article 11 of the Agreement on Customs Valuation: 1. The legislation of each Member shall provide in regard to a determination of customs value for the right of appeal, without penalty, by the importer or any other person liable for the payment of the duty.</p> <p>2. An initial right of appeal</p>	U.S. provides technical assistance on developing or improving administrative regulatory procedures.

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<p>steps to obtain a review of the matter in another proceeding if there is good cause to believe that the decision is inconsistent with established principles of law or the actual facts.</p> <p>(c) The provisions of sub-paragraph (b) of this paragraph shall not require the elimination or substitution of procedures in force in the territory of a contracting party on the date of this Agreement which in fact provide for an objective and impartial review of administrative action even though such procedures are not fully or formally independent of the agencies entrusted with administrative enforcement. Any contracting party employing such procedures shall, upon request, furnish the CONTRACTING PARTIES with full information thereon in order that they may determine whether such procedures conform to the requirements of this sub-paragraph.</p>		<p>without penalty may be to an authority within the customs administration or to an independent body, but the legislation of each Member shall provide for the right of appeal without penalty to a judicial authority.</p> <p>3. Notice of the decision on appeal shall be given to the appellant and the reasons for such decision shall be provided in writing. The appellant shall also be informed of any rights of further appeal.</p>	