

**COMMUNICATION FROM THE SEPARATE CUSTOMS TERRITORY OF
TAIWAN, PENGHU, KINMEN AND MATSU**

The following communication, dated 28 June 2002, has been received from the Permanent Mission of the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.

ENSURING TRANSPARENCY

1. Following up the discussions in the Working Group meeting on April 18 and 19, 2002, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu considers that some additional inputs on the issues raised in the Secretariat's note on transparency might be of help for participants to further consider this issue.

I. PUBLICATION OF RULES

2. There has been a general consensus among delegations regarding the importance of transparency. We concur with such view. We consider, however, that mere publication of rules might not be adequate at times for Members and their industry to acquire a sufficient degree of knowledge on the domestic investment environment, regulatory or otherwise, of other Members. Increased transparency is not only for the purpose of allowing foreign investors to understand more about the business environment in host countries so as to evaluate their opportunities and future operations there, but also for the host countries to create a more attractive environment for foreign investors. It is therefore preferable that in the future rules on investment, Members be required to ensure that other Members and their firms will be given the opportunity to further information as regards investment in respective jurisdictions. From this perspective, establishing an enquiry point and unifying various offices to answer enquiries may be a workable way to meet this particular need. The relevant provisions of the GATS, for instance, may be used as a reference in this regard.

II. NOTIFICATION

3. Under the existing WTO framework, notification in addition to publication is required under, for example, Article III of the GATS. Notification in advance of adopting a regulation is called for under Articles 2:9 and 7 of the TBT Agreement. However, such advance notification, which only applies to specific matters, is unique in itself in those circumstances and perhaps should not be used as a future reference in the rules on investment. While we appreciate the importance of transparency by way of notification, the administrative burden posed on developing Members by such obligation should be taken into special account while considering the question of notification.

III. TRANSPARENCY IN ADMINISTRATIVE PROCEDURES

4. The existing WTO framework requires not only transparency on the regulations themselves, it also requires transparency on the implementation of such regulations including the right to due process and administrative/judicial review in order to ensure consistency, fairness and reasonableness. It seems that it is difficult to find reasons for a deviation from such general requirements with respect to investment matters. We consider that the future rules on investment perhaps should not make any exception on this issue.

IV. DEVELOPING COUNTRIES

5. We note that under the existing WTO framework, a relatively longer period of time is usually given to developing Members in setting up their respective enquiry points. Apart from such concessionary measures given to developing Members, we consider that developed Members should also make definite commitments on rendering technical assistance meeting the specific needs of developing country Members in this particular aspect.

V. CONFIDENTIAL INFORMATION

6. Protection of confidential information is vital in ensuring that public and legitimate commercial interest will not be affected by such notification obligation. As the existing WTO framework already provides for protection of confidential information, there is no reason why future rules on investment should make an exception.

VI. NON-BINDING COMMITMENT

7. Since there is little experience or practice of having non-binding rules under the existing WTO framework, such kind of arrangement should probably be avoided so as to ensure consistency. In addition, non-binding rules on transparency would impair the positive aspects of having transparency with regard to ensuring an attractive investment environment. Assuming that the specific concerns of developing Members, such as the capacity of establishing an enquiry point, are well taken care of and confidential information is excluded from transparency obligation, we are of the view that there is no need to have non-binding rules as regards transparency.
