

**Negotiating Group on Trade Facilitation**

**WTO NEGOTIATIONS ON TRADE FACILITATION  
COMPILATION OF MEMBERS' TEXTUAL PROPOSALS**

Revision

*This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO*

**I. INTRODUCTION**

1. The twelfth revision of the compilation incorporates the following submissions:
  - TN/TF/W/144/Rev.1<sup>1</sup> from the United States;
  - TN/TF/W/147 from the Core Group, ACP Group, African Group and LDC Group;
  - TN/TF/W/148 from China.

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<sup>1</sup> In the case of revisions of previously submitted proposals, the earlier versions were replaced by the subsequently presented texts.

## II. SUMMARY TABLE OF MAIN MEASURES PROPOSED

*Related to GATT Articles V, VIII and X*

Main Areas Covered	Groups of Measures Falling Under Those Areas	Sub-Categories of Measures Falling Under Those Groups (Where Applicable)	Main GATT Article(s) Concerned	Third Generation Proposals
A. PUBLICATION AND AVAILABILITY OF INFORMATION	<b>1. Publication and Notification of Trade Regulations and of Penalty Provisions</b>		Article X with some proposals also relating to Art. VIII	W/114
	<b>2. Internet Publication</b>	(a) Internet "publication" of the elements set out in Article X of GATT 1994	Article X	W/132/Rev.1;
		(b) Internet "publication" of specified information setting forth the procedural sequence and other requirements for importing goods into a Member's territory	Article X	W/145
	<b>3. Notification of Trade Regulations</b>		Article X with some proposals also relating to Art. VIII	
	<b>4. Establishment of Enquiry Points /SNFP/ Information Centers</b>		Article X	W/114, W/129/Rev.1, W/132/Rev.1
<b>5. Other Measures to Enhance the Availability of Information</b>		Article X		
B. TIME PERIODS BETWEEN PUBLICATION AND IMPLEMENTATION	<b>1. Interval between Publication and Entry into Force</b>		Article X with some proposals also relating to Art. VIII	W/115
C. CONSULTATION AND COMMENTING ON NEW AND AMENDED RULES	<b>1. Prior Consultation and Commenting on New and Amended Rules</b>		Article X	W/115
	<b>2. Information on Policy Objectives Sought</b>		Article X	W/115
D. ADVANCE RULINGS	<b>1. Provision of Advance Rulings</b>		Article X	W/125, W/120/Rev.1

E. APPEAL PROCEDURES	<b>1. Right of Appeal</b>		Article X	W/116
	<b>2. Release of Goods in Event of Appeal</b>		Article X with some proposals also relating to Art. VIII	
	<b>3. Appeal Mechanism in a Customs Union</b>		Article X	W/122
F. OTHER MEASURES TO ENHANCE IMPARTIALITY, NON-DISCRIMINATION AND TRANSPARENCY	<b>1. Uniform Administration of Trade Regulations</b>		Article X	
	<b>2. Maintenance and Reinforcement of Integrity and Ethical Conduct Among Officials</b>	(a) Establishment of a Code of Conduct	Article X	
		(b) Computerized System to Reduce/Eliminate Discretion		
		(c) System of Penalties		
		(d) Technical Assistance to Create/Build up Capacities to Prevent and Control Customs Offences		
		(e) Appointment of Staff for Education and Training		
		(f) Coordination and Control Mechanisms		
	<b>3. Import Alerts/Rapid Alerts</b>		Article X	W/122
<b>4. Detention</b>		Article X	W/122	
<b>5. Test Procedures</b>		Article X	W/122	
G. FEES AND CHARGES CONNECTED WITH IMPORTATION AND EXPORTATION	<b>1. General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation</b>	(a) Specific Parameters for Fees/Charges	Article VIII	W/107
		(b) Publication/Notification of Fees/Charges	Article VIII	W/107
		(c) Prohibition of Collection of Unpublished Fees and Charges	Article VIII with some proposals also relating to Art. X	
		(d) Periodic Review of Fees/Charges	Article VIII	W/107

		(e) Automated Payment	Article VIII	
	<b>2. Reduction/Minimization of the Number and Diversity of Fees/Charges</b>		Article VIII	
H. FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION	<b>1. Disciplines on Formalities/ Procedures and Data /Documentation Requirements Connected with Importation and Exportation</b>	(a) Non-discrimination	Article VIII	
		(b) Periodic Review of Formalities and Requirements	Article VIII	W/124/Rev.1
		(c) Reduction/Limitation of Formalities and Documentation Requirements	Article VIII	W/124/Rev.1, W/130
		(d) Use of International Standards	Article VIII	W/131
		(e) Uniform Customs Code	Article VIII	
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		(i) Elimination of Pre-Shipment Inspection	Article VIII	W/108
		(j) Phasing out Mandatory Use of Customs Brokers	Article VIII	W/110
		(k) Same Border Procedures Within a Customs Union	Article VIII	W/121
		(l) Testing Methods Based on Specific Product Features	Article VIII	
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		(n) Option to Return rejected Goods to the Exporter	Article VIII	W/121
I. CONSULARIZATION	<b>1. Prohibition of Consular Transaction Requirement</b>		Article VIII	W/104
J. BORDER AGENCY COOPERATION	<b>1. Coordination of Activities and Requirements of all Border Agencies</b>		Article VIII	W/128
K. RELEASE AND CLEARANCE	<b>1. Expedited/Simplified Release and</b>	(a) Pre-arrival Processing	Article VIII	W/117

OF GOODS	<b>Clearance of Goods</b>	(b) Expedited Shipments	Article VIII	W/144/Rev.1
		(c) Risk Management/Analysis, Authorized Traders	Article VIII	W/109, W/121, W/140 W/148
		(d) Post-clearance Audit	Article VIII	W/134 +Add.1
		(e) Separating Release from Clearance Procedures	Article VIII with some proposals also relating to Art. X	W/136
		(f) Other Measures to Simplify Customs Release and Clearance	Article VIII	
	<b>2. Establishment and Publication of Average Release and Clearance Times</b>		Article VIII with some proposals also relating to Art. X	W/139/Rev.1 and Rev.1/Add.1
L. TARIFF CLASSIFICATION	<b>1. Objective Criteria for Tariff Classification</b>		Article VIII with some proposals also relating to Art X	W/126
M. MATTERS RELATED TO GOODS TRANSIT	<b>1. Non-Discrimination and Policy Objectives</b>	(a) Strengthened Non-discrimination	Article V	W/127, W/133
		(b) Legitimate Policy Objectives	Article V	W/133
	<b>2. Disciplines on Fees and Charges</b>	(a) Publication of Fees and Charges and Prohibition of Unpublished Ones	Article V	W/133
		(b) Periodic Review of Fees and Charges	Article V	W/133
		(c) More effective Disciplines on Charges for Transit – Reduction/Simplification	Article V	W/133, W/146
		(d) Periodic Exchange between Neighbouring Authorities	Article V	
	<b>3. Disciplines on Transit Formalities and Documentation Requirements</b>	(a) Publication	Article V	W/133
		(b) Periodic Review	Article V	W/133
		(c) Reduction/Simplification	Article V	W/133
(d) Harmonization/Standardization		Article V	W/133	

	(e) Promotion of Regional Transit Arrangements or Arrangements	Article V	W/133
	(f) Simplified and Preferential Clearance for Certain Goods	Article V	W/133
	(g) Limitation of Inspections and Controls	Article V	W/133
	(h) Sealing	Article V	
	(i) Cooperation and Coordination on Document Requirements	Article V	
	(j) Monitoring	Article V	W/133
	(k) Bonded Transport Regime and Guarantees/International, Regional or National Customs Guarantee System	Article V	W/133
<b>4. Improved Coordination and Cooperation</b>	(a) Amongst Authorities	Article V	W/133
	(b) Between Authorities and the Private Sector	Article V	W/133
<b>5. Operationalization and Clarification of Terms</b>		Article V	W/133
<b>6. Quota-free Transit Regime</b>		Article V	W/146

*Related to cooperation between customs and other authorities on TF and Customs Compliance*

Main Areas Covered	Groups of Measures Falling Under Those Areas	Third Generation Proposals
EXCHANGE AND HANDLING OF INFORMATION	<b>1. Multilateral Mechanism for the Exchange and Handling of Information</b>	W/123/Add.1

*Related to S&D Treatment, TA&CB, Capacity Assessment and other Implementation Matters*

Main Areas Covered	Groups of Measures Falling Under Those Areas	Third Generation Proposals
IMPLEMENTATION MECHANISM OF TF COMMITMENTS INCLUDING KEY ELEMENTS FOR TECHN. ASSISTANCE		W/137 and Add.1 – Add.4
IMPLEMENTATION MECHANISM FOR S&D AND TACB SUPPORT		W/142; Should be read in conjunction with W/147

### III. TEXTUAL PROPOSALS COMPILED

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A. PUBLICATION AND AVAILABILITY OF INFORMATION

**1. Publication of Trade Regulations and of Penalty Provisions**

Japan, Mongolia and Switzerland, TN/TF/W/114

*"Publication*

1. *Members shall publish promptly all laws, regulations, judicial decisions and administrative rulings of general application relating to or affecting trade in goods in such a manner provided for in Article X of GATT 1994 as to enable governments<sup>2</sup> and traders to become acquainted with them. The information to be published shall include:*

- (a) Procedures of border agencies (including port, airport, and other entry-point procedures and relevant forms and documents);*
- (b) Rate of duties and taxes imposed on or in connection with importation or exportation (including applied tariff rates);*
- (c) Decisions and examples of customs classification;*
- (d) Import and export restrictions;*
- (e) Fees and charges imposed on or in connection with importation or exportation;*
- (f) Penalty provisions against breaches of import and export formalities;*
- (g) Appeal procedures; and*
- (h) Agreements with any country or countries relating to the above issues.*

*Availability*

2. *Members shall ensure that the information referred to in paragraph 1 is made available to governments and traders in a non-discriminatory and convenient manner via an officially designated source notified to [the WTO Secretariat or a newly established body], including official gazette, official journal and whenever practicable, official website.*

*Outline of Major Trade-related Procedures*

3. *Members shall, whenever practicable, provide documents regarding outline of major trade-related procedures [in English, French or Spanish] and make publication and notification of them in a manner provided for in paragraph 2.*

*General Reservations*

4. *Nothing in these provisions shall be construed as requiring:*

- (a) the publication or provision of information referred to in paragraph 1 other than in the language of the Member except as stated in paragraph 3; or*
- (b) Members 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.*

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<sup>2</sup> *The term "governments" is deemed to include the competent authorities of any Separate Customs Territory Member and the European Communities.*



*Special and Differential Treatment*

5. *[Developing-country Members shall not be required to apply the provisions of paragraph 3 for a period of [ ] years from the date of application. [The Members or a newly established body] shall, upon duly motivated request by a developing-country Member, accord extensions of this period.*
6. *Least-developed country Members shall not be required to apply the provisions of paragraph 3 until their acquisition of the necessary capacity to implement such provisions.]"*

**2. Internet Publication**

- (a) Internet "publication" of the elements set out in Article X of GATT 1994

Turkey, TN/TF/W/132/Rev.1

*"ESTABLISHMENT OF A NATIONAL WEBSITE*

1. *Members shall ensure that a national website is established for the purpose of publication of legislation and procedures referred to in paragraph 2.*

*THE CONTENT OF THE WEBSITE*

2. *Members shall provide a copy of all laws, regulations, judicial decisions and administrative rulings of general application and trade-related procedures which are entered into force through official means and relating to or affecting trade in goods in such a manner provided for in Article X of GATT 1994 as to enable governments and traders to become acquainted with these. Information to be published should include:*

- (a) Procedures of border agencies (including port, airport, and other entry-point procedures and relevant forms and documents);*
- (b) Rate of duties and taxes imposed on or in connection with importation or exportation (including applied tariff rates);*
- (c) Decisions and examples of customs classification;*
- (d) Import and export restrictions;*
- (e) Fees and charges imposed on or in connection with importation or exportation;*
- (f) Penalty provisions against breaches of import and export formalities;*
- (g) Appeal procedures; and*
- (h) Agreements with any country or countries relating to the above issues.*

*PRIOR PUBLICATION AND CONSULTATION*

3. *Members shall ensure that new or amended trade-related legislation and procedures be published on the national website at least [ ] days before its entry into force so that the interested parties shall be able to submit their comments on the legislation and take necessary measures for the adaptation. Exceptions to this provision are the legislation requiring urgency [and cases where publication in advance may distort market conditions].*

*LANGUAGE OF THE PUBLICATION*

4. *Members shall provide a copy of their trade-related legislation and information on the procedures in one of the official languages of the WTO. Special and Differential Treatment provisions for developing and the least-developed country Members are defined in paragraphs 6 and 7.*

*NOTIFICATION*

5. *Members shall notify the Trade Facilitation Committee of the website addresses in order to make such information available to governments and interested parties.*

*SPECIAL AND DIFFERENTIAL TREATMENT*

*The least-developed country and developing country Members shall not be required to apply the provisions of paragraphs 2, 3 and 4 until they acquire the full capacity to do so through technical assistance and capacity building mechanism.*

6. *[Until their acquisition of the capacity to fully implement the provisions referred to in paragraphs 2, 3 and 4; Developing country Members shall provide a copy of their trade-related legislation and procedures in their own language on their national website. In addition, they shall provide the search keywords in one of the official languages of the WTO in a format to be decided by the Trade Facilitation Committee.]*

(b) Internet "publication" of specified information setting forth the procedural sequence and other requirements for importing goods into a Member's territory

United States, TN/TF/W/145

*"Internet Publication*

*Each Member shall make available and keep current, on a publicly accessible Internet website:*

- (a) *a full and precise description of its customs procedures, including procedures for the appeal of customs determinations; and*
- (b) *the forms and documents required for importation into or exportation from the territory of that Member."*

**3. Notification of Trade Regulations**

**4. Establishment of Enquiry Points**

Japan, Mongolia and Switzerland, TN/TF/W/114

*"Establishment of Enquiry Points*

1. *Members shall ensure that one or more enquiry points exist which are responsible for the provision of relevant information and documents related to trade procedures including the documents referred to in paragraph 3 to traders in a non-discriminatory and convenient manner.*

2. *[Members should, whenever practicable, establish a primary/initial enquiry point which facilitates coordination among competent border agencies in order that traders have access to necessary information more efficiently.]*

*Notification*

3. *Members shall notify [the WTO Secretariat or a newly established body] of the contact information of the enquiry points in order to make such information available to governments and traders.*

*Special and Differential Treatment*

4. *Developing-country Members shall not be required to apply these provisions for a period of [ ] years from the date of application. [The Members or a newly established body] shall, upon duly motivated request by a developing-country Member, accord extensions of this period.*

5. *Least-developed country Members shall not be required to apply these provisions until their acquisition of the necessary capacity to implement such provisions.]"*

Antigua and Barbuda, Barbados, Dominica, Fiji, Grenada, Papua New Guinea, the Solomon Islands, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines, TN/TF/W/129/Rev.1

*"Establish enquiry points at the national level or in the case of SVEs/developing countries involved in a Customs Union/RTA/FTA, the option of the establishment of enquiry points at the regional level, to provide relevant information on trade procedures to trade".*

*"Members and the WTO, within its competence, shall provide technical and financial assistance on mutually agreed terms to SVEs/developing countries to support the establishment, modification and maintenance of these national and/or regional enquiry points".*

Turkey, TN/TF/W/132/Rev.1

*"ESTABLISHMENT OF ENQUIRY POINTS*

*Members shall ensure that a national enquiry point be established.*

*DUTIES OF THE ENQUIRY POINTS*

*The enquiry point will be responsible for:*

- (a) *answering all relevant enquiries on trade-related legislation and procedures received from all interested parties through the National Enquiry Points or WTO Secretariat.*
- (b) *providing the specific information and documents related to trade procedures in a non-discriminatory and convenient manner in case of an inquiry.*
- (c) *operating through communication among national enquiry points.*

*OPERATION OF THE ENQUIRY POINTS*

*Interested parties shall submit their inquiries to their own National Enquiry Point in order to obtain information on legislation or procedures of other Members. Exchange of information between Members shall be carried out through national enquiry points. International Organizations shall submit their inquiries through the WTO Secretariat and national enquiry points shall respond through the same channel.*

*The enquiry points shall operate at no cost or at a cost commensurate with the cost of the service rendered.*

*The enquiry points shall reply all inquiries within at most [ ] days.*

*NOTIFICATION*

*Members shall notify the Trade Facilitation Committee of the contact information of the enquiry points in order to make such information available to governments and interested parties.*

*SPECIAL AND DIFFERENTIAL TREATMENT*

*The least-developed country and developing country Members shall not be required to apply the provisions regarding enquiry points until they acquire the full capacity to do so through technical assistance and capacity building.*

*Small Vulnerable Economies involved in a regional integration may establish enquiry points at the regional level."*

**5. Other Measures to Enhance the Availability of Information**

**B. TIME PERIODS BETWEEN PUBLICATION AND IMPLEMENTATION**

**1. Interval between Publication and Entry into Force**

Hong Kong, China, Japan, Korea, Mongolia and Switzerland, TN/TF/W/115

*"Prior Publication*

*Members shall ensure that a reasonable interval is provided between the publication of new or amended laws, regulations and administrative rulings of general application, or their drafts or summaries, and their entry into force in such a manner as to allow traders to become acquainted with and well prepared for the compliance with them".*

**C. CONSULTATION AND COMMENTING ON NEW AND AMENDED RULES**

**1. Prior Consultation and Commenting on New and Amended Rules (and Information on Policy Objectives Sought)**

Hong Kong, China, Japan, Korea, Mongolia and Switzerland, TN/TF/W/115

*"Prior Consultation*

*Members shall afford appropriate opportunities to interested parties to comment on proposed introduction or amendment of trade-related laws, regulations and administrative rulings of general application. Members shall provide information of their legitimate policy objectives pursued and allow reasonable period for interested parties to submit comments.*

(...)

*Regular Consultation*

*Members shall hold regular consultations between border agencies and traders.*

*Reservations*

*Nothing in these provisions shall be construed to require Members to carry out any responsibility which is not within the competence of their respective government.*

*Special and Differential Treatment*

*[Developing-country Members shall not be required to apply these provisions for a period of [ ] years from the date of application. [Members or a newly established body] shall, upon duly motivated request by a developing-country Member, accord extensions of this period.*

*Least-developed country Members shall not be required to apply these provisions until their acquisition of the necessary capacity to implement such provisions.]"*

D. ADVANCE RULINGS

**1. Provision of Advance Rulings**

Australia, Canada and the United States, TN/TF/W/125

*"A Member shall issue an advance ruling<sup>3</sup> in a time bound manner to an applicant submitting a written request which contains all necessary information.*

*An advance ruling applies in respect of the applicant<sup>4</sup> for a reasonable period of time after its issuance, unless:*

- i) the facts or circumstances supporting the original ruling have changed, and*
- ii) the Member notifies the applicant in writing of any revocation or modification of the ruling.*

*A Member shall publish, at a minimum, (i) the time period by which it will issue an advance ruling, (ii) the length of time for which the advance ruling is valid, and (iii) what information is necessary from the applicant to issue an advance ruling<sup>5</sup>.*

*A Member shall provide, upon the request of the applicant, for a review by the issuing authority of the advance ruling or the decision to revoke or modify the advance ruling<sup>6</sup>.*

*A Member shall endeavour to make available information on advance rulings which are considered to set a wider precedent applicable to other traders, taking into account the need to protect commercially confidential information".*

Turkey, TN/TF/W/120/Rev.1

*"An 'advance ruling on tariff' means a binding official decision, which provides the applicant with a tariff classification accorded to a particular good within a period.*

*An 'advance ruling on origin' means a binding official decision, which provides an assessment to the applicant of the origin accorded to a particular good within a period.*

*An exporter, importer, or any person with a justifiable cause can apply, in written format, in advance of import or export, the customs administration for issuing an advance ruling relating to implementation of customs rules on tariff and origin in a particular trade case.*

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<sup>3</sup> Defined as "a determination of a Member, provided in writing to an applicant, of the tariff classification [other subject matter such as customs valuation, duty drawback] of a good for customs purposes, prior to the commencement of trade in the good concerned."

<sup>4</sup> Defined as "an importer, exporter or producer, or a representative of an importer, exporter or producer."

<sup>5</sup> Note to the reader: This language may be dropped from the proposed article should it be adequately covered by the article on publication and availability of information.

<sup>6</sup> Note to the reader: This provision may be dropped from the proposed article should it be adequately addressed in the context of the current proposals designed to clarify appeal and review procedures under Article X, which also include an initial right to review within the issuing authority.

*An application for such an advance ruling must include relevant information such as a detailed description of the goods in question, tariff classification claimed, methods of analysis useful for classification, components, production process, the applicant's request for non-disclosure of confidential information, and sample(s) of the goods. If the information provided by the applicant is not sufficient to make clear judgement, customs authorities may require supplementary information to complete the application.*

*Provided that all the necessary information is submitted, an advance ruling shall be issued as soon as possible but no later than [X] days after receipt of the application.*

*Both advance rulings issued and rejections of the applications, subject to appeal, shall set out the grounds on which they are based and be communicated to the applicant in writing.*

*Advance rulings issues shall be immediately enforceable by the customs administration.*

*Advance ruling on tariff and origin shall be binding on customs administration to the holder of that advance ruling. Advance ruling on tariff and origin shall be valid for a period of [Y] years from the date of issue. Customs administration may require the applicant to submit the advance ruling during customs clearance.*

*The holder of an advance ruling must prove, when required,:*

- *for advance ruling on tariff: that the goods to be declared in the customs operations correspond to those described in the ruling in every respect;*
- *for advance ruling on origin: that the goods to be declared in the customs operations and the actual conditions which confer origin correspond to those described in the ruling in every aspect.*

*An advance ruling in favour of its holder shall cease to be valid if:*

- *it is issued on the basis of incorrect or incomplete information;*
- *one or more of the conditions laid down in the advance ruling were not, or are no longer, fulfilled;*
- *the holder fails to fulfil an obligation imposed by the ruling; and*
- *it is not compatible with any change in the legal provisions or general administrative acts.*

*The holder of the ruling shall be notified of its invalidity.*

*An advance ruling within the meaning of the previous paragraph is reviewable promptly by judicial, arbitral or administrative tribunals or procedures. An advance ruling shall be valid unless a decision contrary to it is made in a review.*

*The holder of an advance ruling already reviewed on tariff or origin may still use it for [Z] months from the date of notification provided that, before the date of invalidity, binding contracts for the purchases or sale of the goods in question relying upon the advance ruling have been concluded."*

E. APPEAL PROCEDURES

**1. Right of Appeal**

Japan and Mongolia, TN/TF/W/116

*"Right of Appeal*

1. *The legislation of each Member shall ensure that traders have the right of appeal, without penalty, against rulings and decisions by customs and other relevant border agencies concerning the specific importation, exportation, and transit of goods conducted by them. The appeal may be initially heard by the same agency or its supervisory authority prior to a review by separate and independent judicial, arbitral, or administrative tribunals.*

*Transparency*

2. *Members shall ensure that appeal procedures are carried out in a non-discriminatory manner, and that information concerning such procedures is made available to traders. Traders shall be allowed to be represented at all stages of appeal procedures by independent legal counsel.*

*Standard Period*

3. *Members shall ensure that customs and other relevant border agencies set out a standard period for their review and correction of decisions and rulings under the appeal procedures.*

*Opportunities to Raise Complaints*

4. *Members shall ensure that customs and other relevant border agencies afford opportunities for traders to raise complaints concerning rulings and decisions in an informal and convenient manner prior to the commencement of the appeal procedures. The relevant agencies shall, upon request, inform the traders of reasoning of the rulings and decisions including applied laws and regulations.*

*Special and Differential Treatment*

5. *[Developing-country Members shall not be required to apply the provisions of paragraphs 3 and 4 for a period of [ ] years from the date of application. [Members or a newly established body] shall, upon duly motivated request by a developing-country Member, accord extensions of this period.*

6. *Least-developed country Members shall not be required to apply the provisions of paragraphs 3 and 4 until their acquisition of the necessary capacity to implement such provisions.]"*

**2. Release of Goods in Event of Appeal**

**3. Appeal Mechanism in a Customs Union**

India, TN/TF/W/122

*"There shall be a mechanism for redress of adverse findings of inspection authorities, in particular for inspection decision relating to food items, at the import points of a customs union.*

*In order to ensure quick and uniform appellate decisions, appeals against findings of inspection authorities at the level of a member state of a customs union shall be heard and decided at the customs union level.*

*Such appellate decisions shall be binding on the inspection authorities of all member states of a customs union".*

**F. OTHER MEASURES TO ENHANCE IMPARTIALITY, NON-DISCRIMINATION AND TRANSPARENCY**

**1. Uniform Administration of Trade Regulations**

**2. Maintenance and Reinforcement of Integrity and Ethical Conduct Among Officials**

- (a) Establishment of a Code of Conduct
- (b) Computerized System to Reduce/Eliminate Discretion
- (c) System of Penalties
- (d) Technical Assistance to Create/Build up Capacities to Prevent and Control Customs Offences
- (e) Appointment of Staff for Education and Training
- (f) Coordination and Control Mechanisms

**3. Import Alerts/Rapid Alerts**

India, TN/TF/W/122

*"Import alert/rapid alert is a border control mechanism adopted by some countries as well as customs unions to monitor and ensure the quality of imported food product. This is operated by issuing a notification to all member states of a customs union/or to all ports of a country as well as to the exporter in case of detection of contaminated imports or import of products not meeting the required standards. As a result of such alert, a predetermined number of subsequent export consignments of the same exporter are subject to hundred percent inspection at the border of that country/every port of a customs union.*

*The following disciplines shall apply to a system of import alert/rapid alert:*

- *In order to ensure that the application of a system of import/rapid alert does not by itself create a barrier to trade, it shall be imposed across a customs union only if based on uniform standards and applied uniformly by all of its member states.*



- *A notification against a country/exporter under a system of import/rapid alert restricting or prohibiting imports shall be issued only after it has been established on the basis of positive evidence that imports from the country/exporter concerned have not fulfilled the prescribed objective standards.*
- *A notification issued under a system of import/rapid alert restricting or prohibiting imports shall not be maintained if circumstances giving rise to it no longer exist, or if changed circumstances can be addressed in a less trade restrictive manner. Circumstances giving rise to import/ rapid alert would be deemed to no longer exist if [six] successive consignments imported from the country/exporter concerned, after the issuance of import/ rapid alert fulfilled the prescribed objective standards.*
- *Announcement of termination of an import/rapid alert shall be made through a public notice to be issued no later than [15 days] after a decision has been taken to terminate the import/rapid alert.*
- *The speed and standard of publicity of de-notification of such alert shall equal the level applied at its issuance."*

#### **4. Detention**

##### India, TN/TF/W/122

*"In case imported goods are detained for inspection by customs or any other authority of a Member country, information regarding such detention shall be provided to the importer or his authorized agent promptly."*

#### **5. Test Procedures**

##### India, TN/TF/W/122

*"In case of the first test of a sample having shown an adverse finding, each Member conducting such a test shall grant the concerned importer or the exporter or their authorized agent the right to a second confirmatory test.*

*A clear procedure shall be laid down for such a confirmatory test including a validated test method.*

*A list of accredited laboratories shall be published where confirmatory tests can be carried out.*

*For a customs union, the results of a confirmatory test carried out in one member state of a customs union shall be valid for and be accepted in all other member states of the customs union".*

**Text Proposals Focussing on GATT Article VIII**

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G. FEES AND CHARGES CONNECTED WITH IMPORTATION AND EXPORTATION

1. **General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation**

European Communities, Korea and Switzerland, TN/TF/W/107

"Scope

*The provisions [of this article] apply to all fees and charges imposed by customs authorities or by any other government body of any Member, including tasks undertaken on their behalf, on or in connection with importation or exportation, or as a condition for importation or exportation.*

*Specific parameters*

*Fees and charges shall only be imposed for services provided in direct connection with the specific importation or exportation in question or for any formality required for undertaking such importation or exportation.*

*Fees and charges shall not exceed the approximate cost of the service provided.*

*Fees and charges shall not be calculated on an ad valorem basis.*

*Fees and charges shall not be imposed with respect to consular services and equivalent measures.*

*Information on fees and charges shall be published. This information shall include the reason for the fee or charge (the service provided), the responsible authority, the fees and charges that will be applied, and when and how payment is made. The information shall be made readily available to all interested parties and each Member shall inform, through the WTO Secretariat, all other Members where the information on its fees and charges is available. The information shall be published via an officially designated medium, and where feasible and possible, official website.*

*An adequate time period shall be accorded between the publication of information on new or amended fees and charges and their entry into force except when justified by legitimate public policy objectives.*

*New or amended fees and charges shall not be imposed until information on them is published and made readily available.*

*Each Member shall periodically review its fees and charges to ensure that they are in line with WTO commitments and with a view to consolidating them and reducing their number and diversity".*

## 2. Reduction/Minimization of the Number and Diversity of Fees/Charges

### H. FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION

#### 1. Disciplines on Formalities/Procedures and Data/Documentation Requirements Connected with Importation and Exportation

- (a) Non-discrimination
- (b) Periodic Review of Formalities and Requirements

#### Hong Kong, China and Switzerland, TN/TF/W/124/Rev.1

*"Each Member shall review its formalities and requirements at reasonable and regular intervals, taking into account relevant new information and business practices, availability and adoption of techniques and technology, international best practices and input from interested parties including the private sector<sup>7</sup>".*

- (c) Reduction/Limitation of Formalities and Documentation Requirements

#### Hong Kong, China and Switzerland, TN/TF/W/124/Rev.1

*"Members shall minimise the incidence and complexity of import and export formalities and decrease and simplify import and export documentation requirements to ensure that such formalities and requirements are no more administratively burdensome or trade restrictive than necessary<sup>8</sup> to achieve their legitimate objectives and are applied in an efficient manner so as not to constitute unnecessary obstacle to trade.*

*Any such formalities or requirements shall not be maintained if the circumstances or objectives giving rise to their adoption no longer exist".*

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<sup>7</sup> This self-initiated review shall not affect Members' rights and obligations under paragraph 2 of Article VIII of GATT 1994.

<sup>8</sup> Determining whether formalities and requirements are more trade restrictive than necessary to fulfil their legitimate objectives involves a process of considering and weighing a number of factors. These factors include:

- (i) the importance of the legitimate objectives to the Member concerned;
- (ii) the extent to which the formalities and requirements contribute to the achievement of the legitimate objectives;
- (iii) the restrictive effect the formalities and requirements have on trade;
- (iv) the reasonable availability of alternative formalities and requirements that may achieve the legitimate objectives. In determining whether alternative formalities and requirements are reasonably available, the economic, technical and administrative feasibility of such alternative formalities and requirements would have to be taken into consideration by the Member concerned; and
- (v) the costs including administrative, implementation and compliance costs associated with the formalities and requirements and the benefits derived from them.

*After considering the above factors, the formalities and requirements in question would deem to be more trade restrictive than necessary if it is determined that*

- (a) alternative formalities and requirements are reasonably available and significantly less trade restrictive and they can achieve the legitimate objectives to the same or greater extent; or
- (b) the trade restrictiveness of the formalities and requirements being examined is disproportionate to the legitimate objectives; or
- (c) the costs of the formalities and requirements under examination are significantly excessive to their benefits.

Mongolia, Norway and Switzerland, TN/TF/W/130

*"Recognizing the need to minimize the incident and the complexity of trade documents, Members shall ensure that:*

1. *Documentation requirements are no more administratively burdensome or trade restrictive than necessary to achieve their legitimate objectives; and*
2. *The following is aligned with international trade facilitation standards and recommendations as set out in paragraphs 2(i) to (iii):*
  - (i) *National trade document formats with the UN-Layout Key or its future updated electronic counterparts in accordance with the Customs Co-operation Council Recommendations on the matter;*
  - (ii) *National data elements in trade documents with the UN Trade Data Elements Directory (UNTDDED) and future updated versions in accordance with the Customs Co-operation Council Recommendations on the matter; and*
  - (iii) *Electronic messages to be interchanged between Customs administrations and between Customs administrations and other trade users with international standards for electronic information exchange in accordance with the Customs Co-operation Council Recommendations on the matter.*

*In exceptional cases where this is necessary to pursue a legitimate objective, Members may deviate from the international trade facilitation standards under paragraph 2(i) to (iii), in conformity with GATT 1994 Articles XX and XXI".*

- (d) Use of International Standards

Mongolia, Norway, South Africa and Switzerland, TN/TF/W/131

*"Article [Use of International Standards]*

1. *Members shall use relevant international standards or parts thereof as a basis for their laws, regulations and administrative procedures that lay down requirements for formalities and procedures in connection with importation, exportation, transit or with the international transfer of payments therefore.<sup>9</sup>*
2. *In addition, where regional standards exist and would be a more appropriate means to facilitate international trade, Members of that region are encouraged to use them or relevant parts thereof as a basis for their laws, regulations and administrative procedures as provided for in paragraph 1.*
3. *Paragraph 1 does not apply where relevant international standards or relevant parts thereof would be inappropriate or ineffective to achieve the legitimate objectives set out inter alia in GATT Articles XX and XXI; the prevention of deceptive practices, or where such a relevant standard would pose fundamental technological problems.*

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<sup>9</sup> This relates in particular to formalities and procedures applied by customs and other agencies involved in border crossing activities.

4. *With a view to facilitating international trade, Members are encouraged to take part, within the limits of their resources, in the preparation and periodic review by appropriate international intergovernmental organization of standards relevant to the operation of this Agreement.*

*Annex to Article [Use of International Standards]*

1. *International standards, guidelines and recommendations*

- (a) *For the purposes of this Agreement, the term "international standards" shall be understood to refer [inter alia] to [a selection of] standards, guidelines and recommendations being parts of International Conventions or Agreements related to facilitating international trade and administered by relevant International intergovernmental organizations.*
- (b) *For the purposes of this Agreement, the "relevant international intergovernmental organizations" refers [in particular] to:*
  - (i) *Customs Cooperation Council (World Customs Organization – WCO)*
  - (ii) *United Nations Organizations Centre for Trade Facilitation and Electronic Business (UN/CEFACT).*
  - (iii) *...*
  - (iv) *[list to be developed].*
  - (vi) *For matters not covered by the above organizations other relevant international organizations open to all Members, as identified by [the Committee].*
- (c) *[For the purposes of this Agreement, "standards, guidelines and recommendations" refer to the following:*
  - (i) *International Convention on the Simplification and Harmonisation of Customs procedures (Revised Kyoto Convention) and its guidelines.*
  - (ii) *International Convention on the Harmonized Commodity Description and Coding System (HS Convention).*
  - (iii) *Convention on the Temporary Admission of Goods (Istanbul Convention)] or the Customs Convention on the ATA carnet for the temporary admission of goods (ATA Convention).*
  - (iv) *UN/CEFACT Trade Facilitation Recommendations related to the world standard of international trade data and documents.*
  - (v) *...*
  - (vi) *[list to be developed].*

(vii) *As appropriate other standards, guidelines and recommendations promulgated by other relevant international organizations open to all Members, as identified by [the Committee]*".

(e) Uniform Customs Code

(f) Acceptance of Commercially Available Information and of Copies

Hong Kong, China, Korea and Switzerland, TN/TF/W/112

*"Customs and other border agencies shall require only those documents necessary to permit control of the operation and to ensure that all requirements relating to the application of relevant laws have been complied with.*

*For goods subject to control of legislation conformity and documentation requirement, customs and other border agencies shall endeavour to accept copies of documents, in particular (a) commercial documents (invoices, bills of lading, etc.); and (b) where a government agency already holds the original and multiple authorities are involved. In the case of (b), Members shall accept authenticated copies by the agency holding the original in lieu of the original document.*

*Customs and other border agencies shall endeavour to use relevant information already available in the context of commercial transactions (e.g., quantity and commercial description of the goods) and submitted to customs and other border agencies as a means of foregoing the relevant information in supporting documents.*

*In cases where Goods declarations and other supporting documents are lodged electronically and authenticated by electronic signatures or electronic procedures and received by customs and other border agencies, no other original of these documents shall be requested by customs and other border agencies.*

*Customs and other border agencies shall endeavour to allow supporting documents not to be presented provided they are held available by the declarant, requisite information is provided by the declarant about the documents, and the documents are available from the declarant for a specific period.*

*Customs and other border agencies shall not require a translation of the particulars of supporting documents (e.g., invoices, bills of lading), except when necessary to permit processing of the Goods declaration".*

(g) Automation

(h) Single Window/One-time Submission

Korea, TN/TF/W/138/Rev.1

*"Members shall provide for the "single window", where documentation and data requirements for exportation and importation are submitted one time only. The single window shall undertake onward distribution of the aforementioned documentation and data requirements to all the relevant authorities or agencies.*

*In cases where documentation and data requirements have already been received by the single window, the same documentation and data requirements shall not be requested by other authorities or agencies.*

*Members shall notify other Members through the WTO Secretariat of the contact information of the single window.*

*Members are encouraged to use, to the extent possible, information technology to support the single window.*

*Members shall, where practicable, refer to relevant international standards and practices such as the WCO Revised Kyoto Convention and UN/CEFACT Recommendation No.33.*

*With regard to the scope of participating authorities or agencies and documentation and data requirements, Members are allowed to implement the single window in a progressive manner taking into account each Member's administrative capacity "*

(i) Elimination of Pre-shipment Inspection

European Communities and Chinese Taipei, TN/TF/W/108

- "1. Without prejudice to paragraphs 2 and 3, Members shall not require the use of pre-shipment inspections or their equivalent.*
- 2. Developing-country Members shall eliminate any requirements to use pre-shipment inspections or their equivalent not later than [X] years from the entry into force of this commitment.*
- 3. Least-developed country Members shall eliminate any requirements to use pre-shipment inspections or their equivalent not later than [Y] years from the entry into force of this commitment.*
- 4. From the entry into force of this commitment, Members shall not introduce or apply any new requirements to use pre-shipment inspections or their equivalent.*
- 5. During the transition periods in paragraphs 2 and 3, Members shall ensure that pre-shipment inspection companies or their equivalent, acting on their behalf or employed by them, act consistently with the relevant commitments of Members, including in the field of Trade Facilitation".*

(j) Phasing out Mandatory Use of Customs Brokers

European Communities, Mongolia, Chinese Taipei and Switzerland, TN/TF/W/110

- "1. Without prejudice to paragraph 2, Members shall not require the use of customs brokers.*
- 2. Developing country and least-developed country Members shall eliminate any requirements to use customs brokers not later than [X] years from the entry into force of this commitment.*
- 3. From the entry into force of this commitment, Members shall not introduce or apply any new requirements to use customs brokers.*
- 4. Members shall apply transparent, non-discriminatory and proportionate rules if and when licensing customs brokers".*



(k) Same Border Procedures Within a Customs Union

India, TN/TF/W/121

*"For border clearance of goods, and in particular for clearance of agriculture and food products, member states of a customs union shall adopt the same border procedures. This shall include adoption of same standards including specifications, terminologies and definitions, inspection, sampling and test methods".*

(l) Testing Methods Based on Specific Product Features

(m) Uniform Forms and Documentation Requirements Relating to Import Clearance within a Customs Union

India, TN/TF/W/121

*"All documentation requirements relating to import clearance shall be uniform for all member states of a customs union".*

(n) Option to Return Rejected Goods to the Exporter

India, TN/TF/W/121

*"In case of rejection of a food consignment on account of failure to meet certain standards, an option shall first be given to the exporter to return the rejected goods to the exporter; only upon failure by the exporter to exercise this option within a reasonable period of time, a different course of action, including destruction of goods can be considered by the appropriate authority of the importing Member".*

I. CONSULARIZATION

**1. Prohibition of Consular Transaction Requirement**

Uganda and the United States, TN/TF/W/104

*"A Member shall not require a consular transaction<sup>10</sup>, including any related fee or charge, in connection with the importation of any good".*

J. BORDER AGENCY COOPERATION

**1. Coordination of Activities and Requirements of all Border Agencies**

Canada, TN/TF/W/128

*"A Member shall endeavour to encourage its authorities and agencies involved in border controls to cooperate and coordinate in order to facilitate trade by, among other things, converging import and export data and documentation requirements, and establishing a single location for one-time documentary and physical verification of consignments.*

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<sup>10</sup> Defined as "the procedure of obtaining from a consul of the importing Member in the territory of the exporting Member, or in the territory of a third party, a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shippers' export declaration, or any other customs documentation in connection with the importation of the good."

*A Member shall endeavour to cooperate with bordering Members to coordinate customs procedures at specific border crossings by, among other things, aligning working hours and developing common customs facilities".*

K. RELEASE AND CLEARANCE OF GOODS

**1. Expedited/Simplified Release and Clearance of Goods**

(a) Pre-arrival Processing

Hong Kong, China, Japan, Korea, Mongolia and Switzerland, TN/TF/W/117

*"Pre-arrival Processing*

*Members shall maintain or introduce pre-arrival processing, which is defined as administrative procedures of customs and other relevant border agencies to accept and examine import documentation and other required information upon the submission by traders prior to the arrival of goods, in order to further expedite the clearance of goods where appropriate. In cases where it is decided that no further examination is required, goods should be cleared immediately upon arrival.*

*International Standards and Practices*

*Members shall draw on relevant international standards and practices<sup>11</sup> as a basis for pre-arrival processing.*

*Reservations*

*Nothing in these provisions shall affect the right of Members to conduct examinations where necessary or to maintain appropriate border control with the use of risk management.*

*Special and Differential Treatment*

*[Developing-country Members shall not be required to apply these provisions for a period of [ ] years from the date of application. [Members or a newly established body] shall, upon duly motivated request by a developing-country Member, accord extensions of this period.*

*Least-developed country Members shall not be required to apply these provisions until their acquisition of the necessary capacity to implement such provisions.]".*

(b) Expedited Shipments

United States, TN/TF/W/144/Rev.1

*" Customs Procedures for Expedited Shipments*

*Each Member shall adopt or maintain separate customs procedures for expedited shipments while maintaining customs control and selection. These procedures shall:*

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<sup>11</sup> International standards and practices include, Standard 3.25 of the Revised Kyoto Convention, WCO Guidelines for the immediate release of consignments by Customs.

- (a) *allow for the submission and processing, including through electronic means, of information necessary for the release of an expedited shipment prior to the arrival of the expedited shipment;*
- (b) *allow for the submission and processing, including through electronic means, of a single manifest covering all goods contained in an expedited shipment;*
- (c) *to the extent possible, provide for the release of expedited shipments based on the manifest;*
- (d) *provide for expedited shipments to be released within 1 hour after the necessary customs documents have been submitted, provided the shipment has arrived;*
- (e) *apply without regard to weight or customs value;*
- (f) *allow for the release of expedited shipments before and without prejudice to the final determination of the applicable customs duties, taxes, and fees owed, if, where so required, the importer provides sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument, covering the ultimate payment of the customs duties, taxes, and fees in connection with the importation of the expedited shipment; and*
- (g) *provide that no customs duties or taxes will be assessed on an expedited shipment valued at US\$200 or less.*

*A Member may require that an expedited shipment provider shall, as a condition for the application of the procedures described in paragraph 1 to its expedited shipments:*

- (a) *provide adequate infrastructure to allow for the processing of the expedited shipment;*
- (b) *submit specified manifest information in advance of the arrival of an expedited shipment; and*
- (c) *be assessed fees limited in amount to the approximate cost of services rendered in providing the separate customs procedures in paragraph 1.*

*Nothing in these provisions shall prevent a Member from obtaining additional information, conducting screenings, or examining goods, where necessary to maintain appropriate border control, including through the use of systems that distinguish between low-risk and high-risk goods.*

### ***Definitions***

*'Expedited shipments' means goods designated as such by an expedited shipment provider.*

*'Expedited shipment provider' means a person that:*

- (a) *maintains a high-degree of control over expedited shipments through the use of internal security, logistics, and tracking technology;*
- (b) *tracks and controls expedited shipments at every point during their conveyance; and*

- (c) *maintains the capacity for the expedited shipment provider, sender and recipient to locate expedited shipments at any point in their conveyance and to obtain current information on the estimated delivery time of those shipments.*

*'Manifest' means a consolidated document or record issued by an expedited shipment provider which contains the following identifying information about each of the goods being shipped:*

- (1) the country of origin of the goods, if known;*
- (2) the shipper's name and address;*
- (3) the ultimate consignee's name and address;*
- (4) a specific description of the goods;*
- (5) the quantity of the goods;*
- (6) the shipping weight;*
- (7) the value of the goods; and*
- (8) an identifier or tracking number unique to a particular expedited shipment."*

- (c) Risk Assessment/Analysis, Authorized Traders

European Communities, Chinese Taipei and Switzerland, TN/TF/W/109

*"Members shall apply simplified import and export formalities for economic operators which meet specific criteria ("authorized traders"), providing in particular for more rapid release and clearance of goods, a lower incidence of physical inspections, and facilitations with regard to declarations, duty payments, documentation, documentation inspections and data.*

*The specific criteria may include the following: (1) an appropriate record of compliance with import and export requirements; (2) a system of managing records to allow for necessary controls; (3) financial solvency (including, where appropriate, provision of a sufficient security/guarantee); and (4) an appropriate system of security and safety standards.*

*The specific criteria shall not be designed or applied so as to afford or create arbitrary or unjustifiable discrimination or a disguised restriction on international trade. All economic operators, including small- and medium-sized enterprises, in the territories of all Members, including developing and least-developed countries, have the right to apply for authorized trader status.*

*Members shall use objective risk management techniques in the assessment of any application for authorized trader status.*

*The specific criteria to qualify as an authorized trader, along with all necessary information on how to apply for authorized trader status, shall be published and made readily available to all interested parties.*

*Members shall draw upon relevant international standards and instruments as a basis for authorized trader schemes<sup>12</sup>, where such standards and instruments exist, except when they would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued".*

India, TN/TF/W/121

*"Norms for authorized trader status shall be applied uniformly by all member states of a customs union".*

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<sup>12</sup> A relevant international standard for this purpose is Standard 3.32, Chapter 3 of the Revised Kyoto Convention.

India, TN/TF/W/121

*"A customs union shall generally apply a harmonized risk management system across the entire customs union".*

Chinese Taipei, Korea and Switzerland, TN/TF/W/140

*"Members shall conduct documentary and physical examination based on risk management<sup>13</sup> for the purpose of concentrating on the examination of higher risk<sup>14</sup> goods and facilitating the movement of lower risk goods.*

*In applying risk management techniques, Members shall examine imported goods based on appropriate selectivity criteria in order to provide compliant traders with greater facilitation and expedited customs procedures.*

*The selectivity criteria may include specific commodity code, country of origin, country whence consigned, licensing indicator, value of goods, compliance level of traders, type of means of transport and the traders' purpose of the stay in the Customs territory.*

*Members shall, where practicable, refer to relevant international standards and practices including the revised Kyoto Convention and the WCO Risk Management Guideline as basis for its risk management procedures.*

*Risk management procedures shall not be used as or have the effect of creating disguised discrimination and obstacles to trade.*

*Risk management procedures shall be applied, to the extent possible, to the relevant trade facilitation measures including pre arrival processing, post clearance audit, and authorized traders".*

China, TN/TF/W/148

*"Members shall apply risk management<sup>15</sup> techniques with the purpose to reduce, to the extent possible, physical inspections on goods.*

*Members shall concentrate physical inspections on high risk goods while expediting release of low risk goods and providing facilitation to the compliant traders.*

- (a) The application scope of risk management techniques includes but is not limited to the processes of customs supervision and control, post-clearance audit, tariff classification, valuation and analysis of customs statistics.*
- (b) Appropriate criteria to select traders to be eligible for different treatments shall be established accordingly.*

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<sup>13</sup> Defined as "the systematic application of management procedures and practices providing customs and other relevant border agencies with the necessary information to address movements or consignments which present a risk."

<sup>14</sup> The proposal defines "risk" as "the potential for non-compliance with customs and/or other relevant laws."

<sup>15</sup> Defined as "the systematic application of management procedures and practices providing customs and other relevant border agencies with the necessary information to address movements or consignments which present a risk."

*Selectivity of goods for physical inspections shall be in a manner of non-discrimination to avoid constitution of trade obstacles.*

*Wherever practicable, the standards and instruments developed by relevant international organizations such as WCO shall be applied."*

(d) Post-clearance Audit

China, Indonesia and Korea, TN/TF/W/134 and Add.1

*"Members shall carry out necessary PCA on the account books, vouchers, commercial documents, customs declaration forms and other trade-related information maintained by enterprises involved directly or indirectly in the transaction of international trade upon the risk analysis results.*

*Members shall conduct PCA through methods of regular audit<sup>16</sup> and targeted audit<sup>17</sup> to identify the risk and assess the compliance of traders.*

*The outcome of PCA shall be fed back timely to relevant Customs officers involved in clearance procedures to take further action. The most compliant traders or low risk commodities shall be granted simplest and fastest clearance treatment by Customs.*

*Members shall adopt the relevant international standards and instruments as a basis for PCA<sup>18</sup>, where such standards and instruments exist".*

(e) Separating Release from Clearance Procedures

Canada and Switzerland, TN/TF/W/136

*"(1) A Member shall allow an importer to obtain the release of goods prior to meeting all of the Member's import requirements if the importer provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument.*

*(2) A Member is not required to release goods in accordance with paragraph 1 where the Member's legitimate import requirements have not been satisfied<sup>19</sup>.*

*(3) The guarantee shall be limited to an amount reasonably calculated to ensure compliance with a Member's import requirements and shall not be calculated to protect domestic products or taxation of imports for fiscal purposes.*

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<sup>16</sup> Regular audit is performed periodically according to auditing programs set forth by Customs focusing on business system and routine operation and management situation.

<sup>17</sup> Targeted audit is performed on the selected traders and commodities with high risks resulting from the results of risk analysis and assessment.

<sup>18</sup> A relevant international standard is Standard 6.6 and 6.10 Chapter 6, General Annex of the Revised Kyoto Convention.

<sup>19</sup> "Note to the reader: This provision is intended to clarify Member rights in respect of the form of exceptions available under current GATT Article XX and XXI. As such, it may be modified or dropped from the proposed article should it be adequately addressed in the context of an article on general exceptions which would ensure that nothing in this Agreement shall be construed to prevent the adoption or enforcement of measures necessary to, inter alia, protection of human, animal or plant life or health, or to secure compliance with laws or regulations which are not inconsistent with the provisions of WTO Agreements."

*(4) Once the Member has determined that its import requirements have been satisfied, a guarantee shall no longer be required."*

(f) Other Measures to Simplify Customs Release

(g) Establishment and Publication of Average Release and Clearance Times

Korea and Japan, TN/TF/W/139/Rev.1 and Rev.1/Add.1

*"Members shall measure and publish their own average time for the release of goods in a consistent manner on a periodic basis, using tools such as the WCO Time Release Study.*

*Members shall endeavour to continuously reduce such average release time.*

*In case of a significant delay in the release of goods, Members shall provide the traders who have made written requests with the reasons for the delay except when such notification would impede the pursuance of legitimate policy objectives."*

L. TARIFF CLASSIFICATION

**1. Objective Criteria for Tariff Classification**

New Zealand, TN/TF/W/126

*"(a) Members shall apply criteria for the tariff classification of goods so that their classification decisions are not arbitrary or unjustifiable and do not constitute a disguised restriction on international trade.*

*(b) Decisions on tariff classification which are based on the Harmonised Commodity Description and Coding System of the World Customs Organization shall be presumed to comply with the requirements of paragraph (a)."*

**Textual Proposals Focussing on GATT Article V**

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M. MATTERS RELATED TO GOODS TRANSIT

1. **Non-Discrimination and Policy Objectives**

(a) Strengthened Non-discrimination

Cuba, TN/TF/W/127

*"Members shall not apply discriminatory measures to goods in transit, or to vessels or other means of transport of other Members, for non-commercial reasons. This does not exclude the right to resort to the exceptions already laid down in WTO Agreements, for valid reasons and provided that the measure concerned does not constitute a disguised restriction on international trade".*

Armenia, EC, the Former Yugoslav Republic of Macedonia, the Kyrgyz Republic, Mongolia, Paraguay, the Republic of Moldova, Rwanda and Switzerland, TN/TF/W/133

*"National treatment: With respect to all laws, regulations, requirements and procedures affecting the internal passage of traffic in transit across the territory of a Member, and all fees and charges imposed on or in connection with transit, including transportation charges ("transit fees and charges"), and without prejudice to the legitimate customs control and supervision of goods in transit, each Member shall accord to traffic in transit to or from the territory of any Member, treatment no less favourable than that accorded to domestic goods, exports and imports, and their movement.*

*Most-favoured-nation treatment: With respect to all laws, regulations, requirements, procedures and fees and charges, including transportation charges, on or in connection with transit, each Member shall accord to traffic in transit to or from the territory of any other Member treatment no less favourable than the treatment accorded to traffic in transit to or from any third country.*

*Treatment following transit: Each Member shall accord to products which have been in transit through the territory of any other Member treatment no less favourable than that which would have been accorded to such products had they been transported from their place of departure to their destination without going through the territory of such other Member. Any Member shall, however, be free to maintain its requirements of direct consignment existing on the date of the GATT 1994 in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of the goods at preferential rates of duty or has relation to the Member's prescribed method of valuation for duty purposes".*

(b) Legitimate Policy Objectives

Armenia, EC, the Former Yugoslav Republic of Macedonia, the Kyrgyz Republic, Mongolia, Paraguay, the Republic of Moldova, Rwanda and Switzerland, TN/TF/W/133

*"Members recognize that the legitimate public policy objectives set out in GATT Articles XX and XXI, including in relation to national security, health, safety and the environment, shall not be compromised in any way. To that end, Members recognize that the general and security exceptions provided for in GATT Articles XX and XXI shall be fully applicable.*

*Any Member may require that traffic in transit through its territory be entered at the proper customs house without prejudice to the other commitments on transit".*

## 2. Disciplines on Fees and Charges

### (a) Publication of Fees and Charges and Prohibition of Unpublished ones

Armenia, EC, the Former Yugoslav Republic of Macedonia, the Kyrgyz Republic, Mongolia, Paraguay, the Republic of Moldova, Rwanda and Switzerland, TN/TF/W/133

*"Publication: Members shall publish information on all transit fees and charges. This Information shall include the reason for the transit fee or charge (the service provided), the responsible authority, the transit fees and charges that will be applied, and when and how payment is made. Members shall make this information readily available to all interested parties and inform other Members where this information is available. The information shall be published via an officially designated medium, and where feasible and possible, official website.*

*Prior publication: Members shall accord an adequate time period between the publication of information on new or amended transit fees and charges and their entry into force except when justified by legitimate public policy objectives".*

### (b) Periodic Review of Fees and Charges

Armenia, EC, the Former Yugoslav Republic of Macedonia, the Kyrgyz Republic, Mongolia, Paraguay, the Republic of Moldova, Rwanda and Switzerland, TN/TF/W/133

*"Periodic review: Each Member shall periodically review its transit fees and charges to ensure that they are in line with WTO commitments and with a view to consolidating them and reducing their number and diversity".*

### (c) More effective Disciplines on Charges for Transit – Reduction/Elimination

Armenia, EC, the Former Yugoslav Republic of Macedonia, the Kyrgyz Republic, Mongolia, Paraguay, the Republic of Moldova, Rwanda and Switzerland, TN/TF/W/133.

*"Members shall exempt traffic in transit from customs duties, transit duties and other fees and charges, except transit fees and charges that are commensurate with the cost of the service rendered. Any transit fee and charge shall:*

- *Be reasonable, having regard to the conditions of transit;*
- *Not be charged with respect to consular services or the equivalent;*
- *Only be imposed for transit services provided in direct connection with the specific transit movement in question or for any formality required for undertaking such importation or exportation;*
- *Not exceed the approximate cost of the transit service provided;*
- *Not be calculated on an ad valorem basis".*

Turkey and Georgia, TN/TF/W/146

*"Charges for transit transport shall be commensurate with the cost of the services rendered and be equally applied for national and foreign transit transporters.*

*Foreign transporters should be charged equally irrespective of country of origin or destination."*

- (d) Periodic Exchange between Neighbouring Authorities

**3. Disciplines on Transit Formalities and Documentation Requirements**

- (a) Publication

Armenia, EC, the Former Yugoslav Republic of Macedonia, the Kyrgyz Republic, Mongolia, Paraguay, the Republic of Moldova, Rwanda and Switzerland, TN/TF/W/133

*"Publication: Members shall publish all transit formalities and documentation requirements, and regional transit agreements or arrangements. Members shall make this information readily available to all interested parties and inform other Members of where this information is available. The information shall be published via an officially designated medium, and where feasible and possible, official website.*

*Prior publication: Members shall accord an adequate time period between the publication of new or amended transit formalities and documentation requirements and their entry into force except where justified by legitimate public policy objectives. Transparency of transit release time: Each Member shall periodically publish the average time for release of traffic in transit at main points of entry and exit using tools such as the WCO Time Release Study".*

- (b) Periodic Review

Armenia, EC, the Former Yugoslav Republic of Macedonia, the Kyrgyz Republic, Mongolia, Paraguay, the Republic of Moldova, Rwanda and Switzerland, TN/TF/W/133

*"Each Member shall periodically review its transit formalities and documentation requirements to ensure that they are in line with WTO commitments and with a view to consolidating them and reducing their impact on trade. Such reviews shall allow for the participation of all interested parties and, as appropriate, may be held at a regional or international level."*

- (c) Reduction/Simplification

Armenia, EC, the Former Yugoslav Republic of Macedonia, the Kyrgyz Republic, Mongolia, Paraguay, the Republic of Moldova, Rwanda and Switzerland, TN/TF/W/133

*"Special border crossing facilities for transit: Traffic in transit shall not be subject to any unnecessary delays or restrictions and shall be granted expedited and simplified treatment at border crossing points, including sea, fluvial and air ports or inland terminals as applicable. As far as possible, physically separate transit lanes shall be made available for traffic in transit.*

*Members shall ensure that traffic in transit through their territory is not subject to any unnecessary delays, restrictions, inspections or controls. Transit formalities and documentation requirements shall be reasonable having regard to the conditions of transit, applied uniformly and be not more trade restrictive than necessary to achieve the legitimate public policy objective pursued. For traffic in transit, Members shall provide for:*

- *The processing of transit documents and data prior to the arrival of the transiting consignment;*
- *The use by traders of commercially available information, documents and data wherever possible, including as part of transit declarations;*
- *The progressive establishment of a single window for traffic in transit."*

(d) Harmonization/Standardization

Armenia, EC, the Former Yugoslav Republic of Macedonia, the Kyrgyz Republic, Mongolia, Paraguay, the Republic of Moldova, Rwanda and Switzerland, TN/TF/W/133

*"Use of international standards: Members shall draw upon international standards and instruments<sup>20</sup> as a basis for transit formalities and documentation requirements, where such standards and instruments exist, except when they would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued".*

Armenia, EC, the Former Yugoslav Republic of Macedonia, the Kyrgyz Republic, Mongolia, Paraguay, the Republic of Moldova, Rwanda and Switzerland, TN/TF/W/133

*"Common customs documentation and procedures: For goods entering a Member under customs transit procedure, Members should accept commercially available information, including as part of transit declarations. Contracting parties to regional transit agreements or arrangements should agree on common, simplified documents that are aligned with international standards. In both cases, Members involved in transit shall allow the same set of documents to accompany the consignment from the country of departure to destination".*

Armenia, EC, the Former Yugoslav Republic of Macedonia, the Kyrgyz Republic, Mongolia, Paraguay, the Republic of Moldova, Rwanda and Switzerland, TN/TF/W/133

*"Members should give careful consideration to the possibility of acceding to international instruments relating to Customs transit<sup>21</sup>. Alternatively, they shall consider, when drawing up bilateral or regional agreements with a view to setting up international Customs transit procedure, the Standards and Recommended Practices of the Specific Annex E of the Revised Kyoto Convention."*

(e) Promotion of Regional Transit Agreements or Arrangements

Armenia, EC, the Former Yugoslav Republic of Macedonia, the Kyrgyz Republic, Mongolia, Paraguay, the Republic of Moldova, Rwanda and Switzerland, TN/TF/W/133

*"Members shall promote bilateral and regional transit agreements or arrangements which are consistent with all other commitments on Trade Facilitation and with a view to reducing trade barriers. Members agree to cooperate and coordinate in designing and applying bilateral and regional transit agreements or arrangements. Members shall take full account of international standards and instruments when designing and applying those agreements or arrangements. It is recommended that such agreements or arrangements go beyond customs matters which are relevant in the context of transit, such as road and transport issues. Members shall not enforce unilateral*

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<sup>20</sup> International standards and instruments on transit include the Specific Annex E of the International Convention on the Simplification and Harmonisation of Customs Procedures (the Revised Kyoto Convention), the UN TIR Convention, the ATA Convention, the Istanbul Convention, the International Convention on the harmonization of frontier controls of goods, the UN Layout Key for documentation and the WCO Data Model.

<sup>21</sup> E.g., the UN TIR Convention or equivalent

*rules affecting traffic in transit which are not in accordance with the bilateral or regional transit agreements or arrangements in which they participate. Members participating in regional transit agreements or arrangements shall give positive consideration to reasoned requests to participate by other Members who meet the requisite participation criteria."*

(f) Simplified and Preferential Clearance for Certain Goods

Armenia, EC, the Former Yugoslav Republic of Macedonia, the Kyrgyz Republic, Mongolia, Paraguay, the Republic of Moldova, Rwanda and Switzerland, TN/TF/W/133

*"Members shall use risk management techniques to enable any inspections to be targeted on the basis of the degree of risk attached to individual consignments. This shall include the establishment of authorized trader schemes which grant simplified treatment to traders with a good track record of compliance with transit formalities and documentation requirements. In designing and applying transit formalities and documentation requirements, Members shall take account of the inherent characteristics of the goods concerned."*

Armenia, EC, the Former Yugoslav Republic of Macedonia, the Kyrgyz Republic, Mongolia, Paraguay, the Republic of Moldova, Rwanda and Switzerland, TN/TF/W/133

*"Formalities adjusted to the specificities of the goods in transit: Members shall adapt the treatment of goods in transit to the expected degree and nature of the hazard, whether fiscal, sanitary or security related, that can be derived from the characteristics of goods in transit. Categories such as "normal goods", "dangerous goods", "perishable goods" and "sensitive goods" may be established at national level together with related procedures and shall be made publicly available."*

(g) Limitation of Inspections and Controls

Armenia, EC, the Former Yugoslav Republic of Macedonia, the Kyrgyz Republic, Mongolia, Paraguay, the Republic of Moldova, Rwanda and Switzerland, TN/TF/W/133

*"Members shall limit physical inspections of goods in transit to the case where circumstances may require them. Consignments secured by customs seals shall not as a general rule be subjected to customs examination. No quality control and no veterinary, medicosanitary or phytosanitary inspection shall be imposed on goods in transit, except in cases where risks have been identified. This shall not prevent customs from carrying out spot checks on the goods, based on risk management. Only when customs consider such measure indispensable in relation with the characteristics of the goods as referred in Article [2] shall they (i) require goods to follow a prescribed itinerary; or (ii) require goods to be conveyed under customs escort surveillance. Normally customs shall not impose such treatment to sealed consignments conforming with the national regulatory requirements"<sup>22</sup>.*

(h) Sealing

(i) Cooperation and Coordination on Document Requirements

(j) Monitoring

Armenia, EC, the Former Yugoslav Republic of Macedonia, the Kyrgyz Republic, Mongolia, Paraguay, the Republic of Moldova, Rwanda and Switzerland, TN/TF/W/133

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<sup>22</sup> Members shall consider using Annex E, Standard 3 of the Revised Kyoto Convention as the basis for the national requirements on seals and fastening.

*"Recognizing the importance of efficient implementation of such transit agreements or arrangements, the parties of such regional agreements or arrangements are encouraged to incorporate measures relating to the monitoring of transit into their agreements or arrangements. Such measures can foresee inter alia the appointment of national transit coordinators; performance indicators (e.g., target clearance times) or public private partnerships to manage and monitor the arrangement".*

- (k) Bonded Transport Regime and Guarantees/International, Regional or National Customs Guarantee System

Armenia, EC, the Former Yugoslav Republic of Macedonia, the Kyrgyz Republic, Mongolia, Paraguay, the Republic of Moldova, Rwanda and Switzerland, TN/TF/W/133

*"In order to avoid provisional taxation while securing revenue in case of inland diversion of goods, Members shall operate bonded transport regimes that allow the transit of goods through the territory of Members without payment of customs duties, taxes or other charges subject to the provision of an appropriate guarantee. Members shall ensure that guarantees required from transit operators are:*

- *Reasonable having regard to the conditions of transit and the characteristics and the nature and value of the consignment in question, and limited to the amount of customs debt or other charges which may be incurred in respect of the goods;*
- *Designed and applied on a regional or international basis to as great an extent as possible;*
- *Released promptly and in full after the completion of the transit operation.*

*Guarantees shall be renewable for subsequent consignments once a previous one is proved to have reached its destination. No fees and charges shall be imposed in relation to the use of bonded transport regimes and guarantees except for those directly related to the approximate cost of any service provided".*

#### **4. Improved Coordination and Cooperation**

- (a) Amongst Authorities

Armenia, EC, the Former Yugoslav Republic of Macedonia, the Kyrgyz Republic, Mongolia, Paraguay, the Republic of Moldova, Rwanda and Switzerland, TN/TF/W/133

*"Members shall ensure cooperation and coordination between all concerned authorities and agencies in their territory to facilitate traffic in transit. Members shall ensure cooperation with other Members on issues of traffic in transit, including with regard to standardizing transit formalities and documentation requirements and coordinating operations of border crossings. To this end, neighbouring Members shall, as far as necessary, meet periodically to discuss and come to an understanding on the fees and charges, formalities, legal requirements and practical operation of transit regimes relating to goods moving in transit between them".*

- (b) Between Authorities and the Private Sector

Armenia, EC, the Former Yugoslav Republic of Macedonia, the Kyrgyz Republic, Mongolia, Paraguay, the Republic of Moldova, Rwanda and Switzerland, TN/TF/W/133

*"Members shall provide opportunities for interested traders to comment on the transit regime and its operation, including with regard to the introduction of new or amended transit fees and charges, and*

*transit formalities and documentation requirements, with a view to minimizing unnecessary delays and restrictions on traffic in transit".*

## **5. Operationalization and Clarification of Terms**

Armenia, EC, the Former Yugoslav Republic of Macedonia, the Kyrgyz Republic, Mongolia, Paraguay, the Republic of Moldova, Rwanda and Switzerland, TN/TF/W/133

*"Scope*

*Definition of traffic in transit: Goods (including those moved via fixed infrastructure, inter alia pipelines, baggage and the personal belongings of the person operating the means of transport), and means of transport, shall be deemed to be in transit across the territory of a Member when the passage across such territory is only a portion of a complete journey beginning and terminating beyond the frontier of the Member whose territory the traffic passes. Traffic of this nature is termed 'traffic in transit' irrespective of (i) trans-shipment, short-term storage, breaking bulk, or change in the mode of transport, and (ii) whether the goods or means of transport, after passing across a territory of a Member, return to the territory of a Member in which they originate or through which they have previously transited.*

*Exception: The provisions of this [Article] shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage).*

*Freedom of transit*

*Freedom of transit and routes most convenient for international transit: There shall be freedom of transit through the territory of each Member via the routes most convenient for international transit. Traders have the freedom to choose the route subject to any reasonable restrictions imposed by Members consistent with paragraph 4. No distinction shall be made which is based on the choice of means of transport, the flag of vessels, the place of origin, departure, entry, exit or destination, or any circumstances relating to the ownership of goods or means of transport.*

*Transit formalities and documentation requirements*

*Transit formalities and documentation requirements are all laws, regulations, requirements and procedures on or in connection with transit".*

**6. Quota-Free Transit Regime**

Turkey and Georgia, TN/TF/W/146

*"With a view to facilitating trade, Members shall eliminate barriers to transit transport of goods.*

*Members shall establish a quota-free transit regime in road transportation."*



**Text Proposals Related to Customs/Other Agency Cooperation on Trade Facilitation and Customs Compliance issues**

**India and Sri Lanka, TN/TF/W/123/Add.1**

*"Co-operation Mechanism for Customs Compliance*

*Members shall, upon request, exchange information and documents on matters such as HS classification, full and accurate description, quantity, country of origin and valuation of goods in identified cases of import or export, where there is reason to doubt the truth or accuracy of a declaration filed by the importer or exporter.*

***Specific Parameters***

1. *The information shall be provided only to the extent it is available in the import or export declaration(s).*
2. *Documents filed in support of a goods declaration, such as commercial invoice, packing list, certificate of origin and bill of lading, in the form in which these are filed, whether paper or electronic, shall also be provided, if so requested.*
3. *The information and the documents exchanged shall be authenticated by the requested Member as having been submitted by the importer or exporter and accepted by it.*
4. *No such request for information or documents shall be made unless verification has been carried out by the requesting Member to satisfy itself that there are reasons to doubt the truth or accuracy of the declaration filed.*
5. *Such exchange of information shall not require the Members to –*
  - (a) *modify the format of their import or export declarations,*
  - (b) *call for documents other than those filed with the goods declarations,*
  - (c) *modify the period of retention of such information or documents, or*
  - (d) *introduce paper documentation where electronic format has already been introduced.*
6. *Any information or documents provided shall not be disclosed to any third party except to the extent required in judicial proceedings.*

***Procedure***

1. *Each Member shall designate and notify to the WTO a centralized agency within its customs administration for exchange of information and documents.*
2. *A Member making a request for information or documents shall provide a brief summary of the case in which information is sought, reasons for doubting the truth or accuracy of the declaration made before it, results of verification and specify information and/or documents required.*
3. *The request for information shall be made in one of the three official languages of the WTO.*
4. *Only certified copies of the requested documents shall be provided.*
5. *The request for information shall not be made later than two years after the importation or exportation of the goods.*
6. *The requested Member shall provide the information to the extent possible within a period of 90 days from the date of receipt of the request."*

**Textual Proposals Related to S&D Treatment, TA&CB, Capacity Assessment and other Implementation Matters**

Albania, Armenia, Canada, Chile, China, Colombia, Costa Rica, Dominican Republic, Ecuador, EC, Georgia, Guatemala, Honduras, Japan, Kyrgyz Republic, Mexico, Moldova, Nicaragua, Pakistan, Paraguay, Peru, Sri Lanka, Switzerland and Uruguay, TN/TF/W/137 and addenda.

*"Implementation Mechanism of Trade Facilitation Commitments Including Key Elements for Technical Assistance*

A. *TRANSITIONAL PROVISIONS*

0. ***Signing of the single undertaking (including the Trade Facilitation Agreement)***

1. *Provisions will be applicable after the signing of the single undertaking including the trade facilitation agreement. A Working Group is established for the duration of the transitional period to handle matters related to the implementation of the results of the trade facilitation negotiations*<sup>23</sup>.

1. ***Capacity self-assessment***

2. *For the purpose of ascertaining their capacity to meet the agreed obligations, each developing*<sup>24</sup> *and least-developed Member shall complete a capacity self-assessment in relation to the provisions in the trade facilitation agreement. On request, donors, including relevant international organizations*<sup>25</sup>, *shall assist Members in this exercise on mutually agreed terms and conditions*<sup>26</sup>.

2. ***Notification procedure***

3. *On the basis of its capacity self-assessment, each developing and least-developed Member shall notify all other Members, through the WTO Secretariat for which obligations it needs (i) technical assistance and capacity building, and (ii) additional time which shall not exceed [N] years, to implement and be made available on Members' site of the WTO Internet portal.*

4. *Members shall not notify other Members of (i) measures they are ready to implement from the date of entry into force of the agreement, (ii) measures regarding provisions they have already implemented, and (iii) provisions in the trade facilitation agreement which are designed to apply from its entry into force.*<sup>27</sup>

5. *For the sake of transparency and predictability, Members shall engage in a multilateral dialogue on the notifications [...] months before the entry into force of the Agreement at the latest. Notifications shall be made one month before the multilateral dialogue takes place. The Secretariat shall support Members in organizing this multilateral dialogue providing the necessary documentation they may request in order to facilitate the dialogue and to ensuring that it is completed before the entry into force of the trade facilitation agreement.*

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<sup>23</sup> [Remark: The functions of this body will be developed at a later stage].

<sup>24</sup> In the context of these provisions, the following countries shall enjoy the same rights and obligations as developing countries: Armenia, Georgia, Kyrgyz Republic and the Republic of Moldova.

<sup>25</sup> Relevant international organisations as referred to in Annex D of the July framework, including the IMF, OECD, UNCTAD, WCO and the World Bank.

<sup>26</sup> [Explanation: This phase of the text is also dealt with in C-(A) Transitional Provisions under Key Elements of Technical Assistance and Capacity Building].

<sup>27</sup> [Explanation: The idea expressed here is that Members would negotiate a selection of obligations comparatively easier to implement, namely such obligations that already exist through GATT Articles V, VIII and X].

6. *Members may modify their Notification until the entry into force of the Trade Facilitation Agreement. Positive consideration should be given to comments by Members.*

7. *Members shall finalize their Notification before the entry into force of the trade facilitation agreement, which shall be published on the Members' site of the WTO Internet portal.*

**B. PROVISIONS OF THE TRADE FACILITATION AGREEMENT**

**3. Entry into force of the Trade Facilitation Agreement**

8. *Developing<sup>28</sup> and least-developed Members will enjoy special and differential treatment in accordance with the following provisions and other relevant provisions set forth in other articles of this agreement.*

9. *The obligations set forth in this agreement apply from the date of its entry into force, except for those contained in the Notification, which shall apply for each Member as from the end of the implementation period set out therein and from the Notifications of the capacity acquisition in accordance with paragraphs 20 to 22 hereafter.*

10. *The Notifications are hereby made an integral part of this agreement.*

**4. Formulation of the capacity building plans**

11. *For obligations requiring technical assistance and capacity building as contained in the Notification, each developing, least-developed Member shall detail its requests and enter into discussion with donors, including relevant international organizations. On this basis, capacity building plans shall be prepared by the parties involved. On request, donors, including relevant international organizations, shall assist Members in this exercise on mutually agreed terms and conditions.<sup>29</sup>*

**5. Notifications of capacity building plans**

12. *The capacity building plans shall contain: (a) the obligations for which the need for technical assistance and capacity building has been signalled in the Notification; (b) intermediary steps as necessary; (c) the implementation periods; (d) the donors; and (e) the implementation agency if appropriate. These as well as other relevant data shall be notified to the Committee on Trade Facilitation and made available on the Members' site of the WTO Internet portal.*

13. *Members shall, on request, be provided with the opportunity to engage in consultations with the notifying Member.*

14. *The Notifications shall be up-dated with the information contained in the capacity building plans no later than [...].*

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<sup>28</sup> In the context of the following provisions the following countries shall enjoy the same rights and obligations as developing countries: Armenia, Georgia, Kyrgyz Republic and the Republic of Moldova.

<sup>29</sup> [Explanation: This phase of the text is also dealt with in C-(B) Provisions of the trade facilitation agreement under Key Elements of Technical Assistance and Capacity Building].

**6. Implementation of trade facilitation commitments**

15. *Members shall take actions at the earliest possible moment to achieve compliance according to the implementation periods specified in the Notifications.*

16. *Progress in implementing notified obligations shall be reviewed by Members on a periodic basis.*

17. *Any request for modification of a Member's Notification needs to be brought to the Committee on Trade Facilitation for decision as soon as an implementation problem has been identified.*

**7. Verification of capacity acquisition**

18. *At the end of each implementation period related to the provision of capacity building and technical assistance contained in the Notification, the implementing developing and least-developed Member and, if so agreed, the other parties involved<sup>30</sup>, shall assess whether capacity building and technical assistance has been effectively provided according to the mutually agreed terms and conditions and whether capacity has been acquired.*

19. *Should this Member come to the conclusion that capacity has not entirely been acquired, this Member and the donor Members involved shall so report and make recommendations to the Committee, which will review the matter and decide on a case-by-case basis.*

**8. Notification of the acquisition of capacity**

20. *Members who successfully acquired the capacity to assume a certain provision shall notify this, at the latest 6 months after the capacity acquisition to the Committee on Trade Facilitation. The obligation shall apply after this notification.*

21. *The Notifications shall be up-dated with the notified information.*

22. *In case a Member fails to notify within this time period, the provision becomes applicable 6 months after the end of the implementation period of that obligation.*

**9. Full implementation**

23. *Members shall ensure full implementation of the obligations contained in the Agreement.*

**C. KEY ELEMENTS OF TECHNICAL ASSISTANCE AND CAPACITY BUILDING**

**C-(A) TRANSITIONAL PROVISIONS**

**1. Technical assistance and capacity building in the transitional provisions**

24. *Members shall carry out a clear and precise diagnosis of the situation in each developing and least-developed Member through capacity self-assessment with, upon request, donor support to assist this assessment on mutually agreed terms and conditions. The diagnosis could be done through existing tools developed for this purpose by relevant international organizations such as the World Bank and the World Customs Organisation. While carrying out the diagnosis relevant work done in the context of the Integrated Framework for LDCs and other international or regional development programmes shall be taken into account.*

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<sup>30</sup> The parties involved means: the recipient Member, donor Members providing technical assistance and capacity building in that Member as well as the implementing agency.

25. *Developing and least-developed Members that lack capacity to carry out a capacity self-assessment shall so inform the WTO Secretariat which shall circulate this information to Members and relevant international organizations in the field of trade facilitation.*

**C–(B) PROVISIONS OF THE TRADE FACILITATION AGREEMENT**

**1. General principles**

26. *Members shall endeavour to apply the following principles and elements for providing technical assistance and capacity building with regard to the implementation of this agreement:*

- (i) *Handle technical assistance and capacity building in a manner that is consistent with the relevant principles of good practices of the Paris Declaration on Aid Effectiveness (2005) including issues of ownership, harmonization, alignment, results and mutual accountability. Account should also be taken of the principles of good practices set out in the OECD/DAC guidelines on Harmonizing Donor Practices for effective Aid Delivery (2003 and 2006) in areas such as donor cooperation, diagnosis, sector-wide or program based approaches and reporting and monitoring.*
- (ii) *Take account of the overall developmental framework of recipient countries and regions.*
- (iii) *Design and strengthen targeted technical assistance and capacity building with mutually supportive components to build trade facilitation capacity also taking into account ongoing reform programmes. Particular attention should be paid to ongoing trade facilitation reform activities of the private sector when designing support programmes.*
- (iv) *Coordinate with and between Members and relevant international organizations coordinated with the Integrated Framework for LDC's. Avoid inconsistencies in reform activities through close coordination of technical assistance and capacity building interventions. In particular, strengthen coordination at national level and build capacities to plan, manage, implement and monitor technical assistance and capacity building.*
- (v) *Designate focal points to coordinate the implementation of the trade facilitation agreement both in donor as well as in partner countries.*
- (vi) *Facilitate in-country coordination structures such as round tables and consultative groups to coordinate and monitor implementation activities.*
- (vii) *Take into account developing countries' readiness to provide capacity building to other developing and least-developed countries and consider supporting such activities.*

**2. Joint platform for cooperation and coordination**

27. *Members, as part of the work of the WTO Committee on Trade Facilitation shall operate, without the creation of a new body outside the WTO, a joint platform on technical assistance and capacity building to facilitate the implementation of this Agreement. The platform shall not duplicate the activities of existing coordination mechanisms, but shall coordinate with them and use such instruments to help it fulfil its functions. It shall take into account relevant work being carried out in*

*the context of the Integrated Framework for LDCs, and other instruments for development. The platform shall:*

- (i) promote international transparency, cooperation and coordination of technical assistance in the field of trade facilitation, bringing together donor Members and recipient Members, relevant international organizations, regional groupings, as well as other intergovernmental organizations with a role to play; and*
- (ii) help ensure, where necessary, coordination of assistance between donors and recipients so that potential gaps are filled.*

28. *A role may be provided for the private sector in such transparency and coordination efforts, where the private sector is already providing assistance or investment in trade facilitation, is interested in doing so, or is directly affected by measures.*

### **3. *Technical assistance and capacity building in the phase of formulating capacity building plans***

29. *Members shall take into account the following elements when providing, on request, technical assistance and capacity building on mutually agreed terms and conditions:*

- (i) Capacity building plans should, as appropriate, provide for adequate long-term assistance and for post-implementation support.*
- (ii) Training, deployment of in-country advisors, particular attention to SMEs, could be reflected, as appropriate and as requested, in capacity building plans.*
- (iii) Technical assistance and capacity building could be also provided to support initiatives to overcome sub-regional divides and facilitate regional or sub-regional integration.*
- (iv) To the extent practicable, account should also be taken of the implementation plans of neighbouring countries.*

30. *A Member that has not managed to finalize the capacity building plan shall so inform the Joint Platform for Cooperation and Coordination, which shall take the necessary steps to facilitate interaction with donors. On request and within mutually agreed terms and conditions, relevant international organizations should assist developing and least-developed Members in formulating capacity building plans".*

#### Core Group of Developing Countries on Trade Facilitation, TN/TF/W/142

*"Proposal on Implementation Mechanism for Special and Differential Treatment (S&D) and Technical Assistance and Capacity Building (TACB) Support*

#### *Preamble – General Principles on Special and Differential Treatment*

*The principle of special and differential treatment shall be fully reflected and taken into account in the adoption and implementation of trade facilitation-related commitments by Members. Developing and least-developed Members, including low-income economies in transition, shall not be required to undertake obligations that would require investments in trade facilitation-related infrastructure projects beyond their means. The extent and the timing of entering into commitments shall be related*

*to the implementation capacities of developing and least-developed Members, including low-income economies in transition.*

*The provision of technical assistance and support for capacity building is vital for developing and least-developed countries to enable them to fully participate in and benefit from this Agreement. Members, in particular developed countries, therefore commit themselves to adequately ensure such support and assistance. In cases where required support and assistance is not forthcoming, and where a developing or least-developed Member continues to lack the necessary capacity, implementation will not be required*

*Least-developed Members have the right to undertake only those obligations that are consistent with their individual development, financial and trade needs or their administrative and institutional capabilities. Least-developed Members shall be accorded special consideration and attention in the provision of technical assistance and capacity building support under the provisions of this Agreement.*

*These general principles on special and differential treatment in trade facilitation shall guide, be taken into account, and be reflected in the implementation and interpretation of the provisions of this Agreement.*

A. *Transitional Provisions*

***Provisions applicable after signing of the Trade Facilitation Agreement***

1. *The provisions of paragraphs 1 to 9, 11(v), 20 to 25, 27 and 28, and 30 and 31 hereunder will be immediately applicable after the signing of the Trade Facilitation Agreement.*

***Establishment of the Trade Facilitation Technical Assistance and Capacity-Building Support Unit (TFTACBSU)***

*Ibis. Within three months from the date of the signing of the Trade Facilitation Agreement, the WTO Secretariat shall establish the TFTACBSU within its structure and reporting to the WTO Committee on Trade Facilitation, to:*

- (i) monitor and annually report on the compliance by developed Members with their obligations to provide technical assistance and capacity-building support to developing and least-developed Members, including low-income economies in transition, under this Agreement;*
- (ii) monitor and annually report on the extent, efficacy, and usefulness for the beneficiaries of the bilateral provision of trade facilitation-related technical assistance and capacity-building support among Members;*
- (iii) monitor and inform Members of the various trade facilitation-related technical assistance and capacity-building facilities being provided by other relevant international organizations which developing and least-developed Members, including low-income economies in transition, could access or resort to;*
- (iv) work with other relevant international organizations to establish and/or expand trade facilitation-related technical assistance and capacity building resources for developing and least-developed Members, including low-income economies in transition; and*
- (v) serve as the focal point for coordinating the provision of technical assistance and capacity-building by establishing a Trade Facilitation Register for the entry of notifications and requests for technical assistance and capacity-building provided by Members hereunder. The Register of notifications and technical assistance and capacity building requests shall be published on the WTO Members' Internet portal.*

**Capacity self-assessment**

2. For the purpose of ascertaining their capacity to meet the agreed obligations, developing and least-developed Members, including low-income economies in transition, shall commence, after the signing of the Agreement, a capacity self-assessment exercise in relation to the various processes and obligations involved in the provisions which form part of the Trade Facilitation Agreement. On request, developed Members, and other donors (including relevant international organizations to the extent appropriate and feasible within their organizational mandates<sup>31</sup>), shall assist Members in this exercise in accordance with the provisions of paragraphs 21 to 23. Developing and least-developed Members, including low-income economies in transition, shall commence the capacity self-assessment no later than [X] months from the start of receipt of support for such self-assessment from developed Members and other donors.

**Notification procedure for obligations subject to a transition period**

3. On the basis of their individual capacity self-assessment, developing and least-developed Members, including low-income economies in transition, shall, no later than [X] months after the conclusion of the capacity self-assessment exercise referred to in paragraph 2 above, through the WTO Secretariat's TFTACBSU, notify all other Members of the obligations under paragraph 11(ii) below for which it needs additional time which shall not exceed [N] years to implement. This Notification of obligations subject to a transition period for deferred implementation may indicate if technical assistance and capacity-building support should be provided by developed Members or other donors in order to shorten the transition period, and shall be made available on the WTO Members' Trade Facilitation Internet portal.

4. Members may modify their Notification pursuant to paragraph 3 above at any time prior to the entry into force of the Trade Facilitation Agreement and the deposit of their instrument of ratification. Such modification shall be notified to the TFTACBSU for information as soon as the problem has been identified.

5. Members shall finalise their Notification before the entry into force of the Trade Facilitation Agreement, which shall be published on the Trade Facilitation portal of the WTO Members' section of the WTO Internet portal.

5bis. The Notifications are hereby made integral parts of this Agreement.

**Formulation of the capacity building plans**

6. For obligations requiring technical assistance and capacity building under paragraph 11(iii), each developing country or least-developed country Member, including low-income economies in transition, shall detail its requests for technical assistance and capacity building and enter into discussions with developed Members and other donors, including relevant international organizations as appropriate and to the extent feasible within their organizational mandates. On this basis, capacity building plans shall be prepared and notified by the developing or least-developed Member concerned pursuant to paragraph 7 below. On request, developed Members and other donors, including relevant international organizations as appropriate and to the extent feasible within their organizational mandates, shall assist Members in this exercise of preparing capacity-building plans in accordance with the provisions of paragraphs 7 to 9, 21, 24 and 25. Developing and least-developed Members, including low-income economies in transition, shall commence the preparation

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<sup>31</sup> Relevant international organisations as referred to in Annex D of the July framework, including the IMF, OECD, UNCTAD, WCO and the World Bank.



of their respective capacity-building plans no later than [X] months from the start of receipt of support for such preparation from developed Members and other donors.

**Preparation and notifications of capacity building plans**

7. The capacity building plans referred to in paragraph 6 above shall be notified to the TFTACBSU no later than [X] months from the date of their finalization and made available on the Trade Facilitation Register and shall contain at least the following information:

- (i) the obligations for which technical assistance and capacity building will be required;
- (ii) intermediary steps as necessary;
- (iii) the capacity building implementation periods that may be needed for the provision of such technical assistance and capacity building for each specific obligation;
- (iv) the potential or identified donors, if any;
- (v) the implementation agency if appropriate;
- (vi) "benchmarks" that the technical assistance and capacity building support being provided must meet in order to ensure that such support delivers on developing the implementation capacity of the recipient country; and
- (vii) other relevant data.

8. Members shall, on request, be provided with the opportunity to engage in consultations with the notifying Member.

9. The Notifications shall be up-dated with such additional information as may be needed to be included in the capacity building plans in the course of their implementation.

**B. PROVISIONS OF THE TRADE FACILITATION AGREEMENT**

**Entry into force of the Trade Facilitation Agreement**

10. This Agreement shall enter into force at the same time as the entry into force of all other agreements under the single undertaking of the Doha Work Programme; provided, however, that for developing and least developed Members, including low-income economies in transition, under the principle of special and differential treatment, the obligations under this Agreement will not apply unless the provisions of paragraphs 2 to 9 above have first been complied with.

**Applicability of Trade Facilitation obligations**

11. The obligations set forth in this paragraph shall apply to Members in accordance with the provisions below:

- (i) All obligations shall be immediately implemented by developed Members upon the entry into force of this Agreement or the deposit of their respective instruments of ratification, whichever is later;
- (ii) The following obligations shall immediately apply to developing and least-developed Members, including low-income economies in transition, from the date of the entry into force of this Agreement or the deposit of their instruments of ratification, whichever is later:
  - (a) Xxxxxx
  - (b) Yyyyy
  - (c) Zzzzzz

*Provided, however, that those obligations covered by this sub-paragraph (ii) which are listed under a Notification submitted by a developing or least-developed Member, including low-income economies in transition, pursuant to paragraph 3 above shall be applicable only after the expiration of the transition period indicated in such Notification. The provision of technical assistance and capacity building support to shorten the transition period for obligations listed under such Notification shall be in accordance with the provisions of paragraphs 21 and 26;*

- (iii) *Obligations not covered under paragraph 11(ii) above shall, without need for prior notification, be deemed as requiring the acquisition of capacity to implement by individual developing or least-developed Members, including low-income economies in transition. These obligations shall be implemented by such Members only after: (a) the entry into force of the Agreement or the deposit of their respective instruments of ratification, whichever is later, (b) the provision of the necessary technical assistance and capacity-building support hereunder; and (c) the submission of the Notifications of acquisition of implementation capacity in accordance with paragraphs 16 to 18 hereafter;*
- (iv) *All Members shall endeavour to implement to the extent practicable, taking into account their individual capacity, as soon as possible after the entry into force of this Agreement or the deposit of their respective instruments of ratification, whichever is later, the following obligations:*
  - (a) *Aaaaa*
  - (b) *Bbbbb*
  - (c) *Ccccc*

*Developing or least-developed Members may prepare capacity building plans and submit their requests for technical assistance and capacity building support to implement the obligations under this sub-paragraph to developed Members and other donors, including relevant international organizations as appropriate and to the extent feasible within their organizational mandates. Such capacity building plans shall conform to paragraph 7. On request, developed Members and other donors, including relevant international organizations as appropriate and to the extent feasible within their organizational mandates, shall assist Members in this exercise of preparing and implementing capacity-building plans for obligations under this sub-paragraph in accordance with the provisions of paragraphs 24 to 26.*

- (v) *Least-developed Members shall not be required to implement any of the obligations under sub-paragraphs (ii), (iii) and (iv) above unless their requests for the provision of technical assistance and capacity-building support in the course of negotiations, including prior and up to the signing of the Agreement (such as, but not limited to, support for travel and training of officials to enhance participation in the negotiations) and for needs and priorities assessments have been adequately responded to promptly and in a timely manner by developed Members on a demand-driven, need-based, and sustainable basis, specifically tailored to the needs and requirements of each individual recipient country, and in accordance with paragraph 21. In addition, special consideration and attention shall be provided to least-developed Members with respect to the provision of the requisite technical assistance and capacity building support after the signing and entry into force of the Agreement, including but not limited to the provision of such additional time periods as they may require, for the conduct of capacity self-assessments, provision of notifications, the preparation and implementation of capacity-building plans, and the implementation of their obligations.*

### ***Implementation of trade facilitation capacity-building plans***

12. For obligations under paragraph 11(iii) above, Members shall take actions at the earliest possible moment to achieve compliance according to the implementation periods for the acquisition of capacity specified in the Notification under paragraph 7 above. In this regard, on request, developed Members and other donors, including relevant international organizations as appropriate and to the extent feasible within their organizational mandates, shall assist developing and least-developed Members, including low-income economies in transition, in implementing their capacity-building plans in accordance with the provisions of paragraphs 21 and 26. Developing and least-developed Members, including low-income economies in transition, shall commence the implementation of their capacity-building plans no later than [X] months from the start of receipt of support for such implementation from developed Members and other donors.

13. Progress in implementing notified capacity building plans shall be reviewed by Members on a periodic basis.

### ***Verification of capacity acquisition***

14. At the end of each implementation period related to the provision of capacity building and technical assistance with respect to each obligation as contained in the Notification under paragraph 7, the implementing developing or least developed Member and, if so agreed by the parties, the other parties involved<sup>32</sup>, shall assess whether capacity building and technical assistance has been effectively provided according to the mutually agreed terms and conditions and whether capacity has been acquired.

15. Should this implementing developing or least-developed Member comes to the conclusion that capacity has not been satisfactorily acquired, this Member shall so notify the TFTACBSU. The latter shall, upon receipt of such notification, immediately assist the Member concerned in taking the necessary steps to satisfactorily acquire capacity as soon as possible.

15bis. Should such implementing developing or least-developed Member still deem itself as lacking in implementation capacity after the assistance referred to in paragraph 15 above has been provided, the TFTACBSU shall, within [X] months from the end of the initial implementation period for the capacity building plan notified under paragraph 7, report and make recommendations to the Committee on Trade Facilitation, which will review the matter and decide on a case-by-case basis on the appropriate action to take.

### ***Notification of the acquisition of capacity and applicability of implementation of trade facilitation obligations***

16. Members who deem themselves as having successfully acquired the capacity to implement a certain obligation falling under paragraph 11(iii) shall notify this, at the latest 6 months after the capacity acquisition to the TFTACBSU. The obligation shall apply after this notification from a date to be indicated by the concerned Member.

17. The Notifications of capacity acquisition may be modified as needed with up-dated information at any time prior to the date of application of the obligation. The date of application of the obligation may not, however, be modified unless such modification has been approved by the WTO Committee on Trade Facilitation.

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<sup>32</sup> The parties involved means: the recipient Member, donor Members providing technical assistance and capacity building in that Member as well as the implementing agency.

18. *In case a Member fails to notify within the time period under paragraph 16, the obligation becomes applicable 6 months after the end of the capacity building implementation period of that obligation*

**Full implementation**

19. *Members shall ensure full implementation of the obligations contained in the Agreement in accordance with the provisions herein.*

**C. KEY ELEMENTS OF TECHNICAL ASSISTANCE AND CAPACITY BUILDING**

**Obligations of developed Members relating to technical assistance and capacity building support**

20. *Developed Members, no later than [X] months from the date of the signing of the Trade Facilitation Agreement but prior to the entry into force thereof, shall:*

- (i) *establish appropriate mechanisms or modalities for the provision of technical assistance and capacity-building support to developing and least-developed countries that lack the necessary implementation capacity to adopt and implement such obligations. Such mechanisms or modalities shall provide for simple and time-bound procedures to be followed for such assistance and support to be accessed, and shall also identify the financial and technical assistance resources that they are going to make available taking into account the elements in paragraphs 22, 24 and 26; and*
- (ii) *notify the WTO Secretariat's TFTA CBSU of the mechanisms or modalities and of the resources to be made available for technical assistance and capacity building support referred to in sub-paragraph (i) above.*

21. *Developed Members shall provide the requested technical assistance and capacity-building support no later than [X] months from the date of receipt of the request from a developing or least-developed Member, including low-income economies in transition, for such assistance and support.*

**Technical assistance and capacity building in the transitional provisions**

22. *Members shall carry out a clear and precise diagnosis of the situation in each developing and least-developed Member, including low-income economies in transition, through capacity self-assessment with, upon request, developed Member and other donor support to assist in this assessment exercise. Such assistance from developed Members shall be prompt, timely, demand-driven, need-based, sustainable, and specifically tailored to the needs and requirements of each individual recipient country. Such diagnosis shall assess and identify factors that need to be addressed which would otherwise compromise the success of domestic implementation of the obligations. While carrying out the diagnosis relevant work done in the context of the Integrated Framework for LDCs and other international or regional development programmes may be taken into account, such as existing tools developed for this purpose by relevant international organizations such as the World Bank and the World Customs Organisation.*

23. *Developing and least-developed Members, including low-income economies in transition, that lack capacity to carry out a capacity self-assessment shall so inform the TFTA CBSU which shall circulate this information to Members and relevant international organizations in the field of trade facilitation.*

***Technical assistance and capacity building in the phase of formulating capacity building plans***

24. *Members shall take into account the following elements when providing on request technical assistance and capacity building:*

- (i) *Capacity building plans shall provide for adequate long-term assistance and access to sustainable funding and also provide for post-implementation support.*
- (ii) *Training, deployment of in-country advisors, particular attention to SMEs, to be reflected, as appropriate and as requested, in capacity building plans.*
- (iii) *Technical assistance and capacity building could be also provided to support initiatives to overcome sub-regional divides and facilitate regional or sub-regional integration.*
- (iv) *To the extent practicable, account should also be taken of the implementation plans of neighbouring countries.*

25. *A developing-country Member that has not managed to finalize the capacity building plan shall so inform the TFTACBSU, which shall take the necessary steps to facilitate interaction with developed Members and other donors. On request, developed Members and other donors, including relevant international organizations as appropriate and to the extent feasible within their organizational mandates shall assist developing country Members in formulating capacity building plans.*

***General principles for technical assistance and capacity building support in implementing capacity building plans***

26. *Members shall apply the following principles and elements for providing technical assistance and capacity building with regard to the implementation of this agreement:*

- (i) *Provide technical assistance and capacity building in a manner that is demand-driven, need-based, and specifically tailored to the needs and requirements of each individual recipient country. Further, such technical assistance and capacity-building shall be sustainable, i.e. provided over a reasonable period of time with adequate funding that will allow for the development of domestic implementation capacities in the recipient country.*
- (ii) *Reflect the overall developmental framework of recipient countries and regions.*
- (iii) *Design and strengthen targeted technical assistance and capacity building with mutually supportive components to build trade facilitation capacity also taking into account already ongoing reform programs. Particular attention should be paid to ongoing trade facilitation reform activities of the private sector when designing support programs.*
- (iv) *Coordinate with and between Members and relevant international organizations coordinated with the Integrated Framework for LDCs. Avoid inconsistencies in reform activities through close coordination of technical assistance and capacity building interventions. In particular, strengthen coordination at the national level and build capacities to plan, manage, implement and monitor technical assistance and capacity building.*
- (v) *To the extent practicable, assign focal points to coordinate the implementation of the trade facilitation Agreement both in donor as well as in partner countries.*
- (vi) *Facilitate in-country coordination structures such as round tables and consultative groups to coordinate and monitor implementation activities.*
- (vii) *Take into account developing countries in a position to do so to provide capacity building to other developing and least developed countries and consider supporting such activities.*
- (viii) *Make efforts to reduce administrative burdens for partner countries in the management of technical assistance and capacity building including for requests.*
- (ix) *Provide trade facilitation-related technical assistance and capacity building support which is additional and complementary to the developed Members' existing or already allocated resources for official development assistance. Developed Members shall ensure that the*

*provision of such assistance and support shall be adequate, responsive to, commensurate with, and based on the capacity-building plans and requirements of the developing or least-developed Member requesting such assistance and support.*

- (x) *Donors shall make efforts to organize availability of the required technical assistance identified in the capacity building plans as necessary to achieve implementation capacity. To the extent possible, financial assistance needed to put in place the necessary capacity, structures or processes for the implementation of required procedural changes by Customs or other border agencies should be provided.*

### **Joint Platform for Cooperation and Coordination**

27. *Through the TFTACBSU, Members, as part of the work of the WTO Committee on Trade Facilitation, shall operate, without the creation of a new body outside the WTO, a joint platform on technical assistance and capacity building to facilitate the implementation of this Agreement. TFTACBSU shall not duplicate the activities of existing coordination mechanisms, but shall coordinate with them and use such instruments to help it fulfil its functions. It shall take into account relevant work being carried out in the context of the Integrated Framework for LDCs, and other instruments for development. The TFTACBSU shall, in addition to its terms of reference under paragraph 1bis above:*

- (i) *promote international transparency, cooperation and coordination of technical assistance in the field of trade facilitation, bringing together donor Members and recipient Members, relevant international organizations, regional groupings, as well as other intergovernmental organizations with a role to play (e.g. UNCTAD, UN regional economic commissions, etc.); and*
- (ii) *help ensure, where necessary, coordination of assistance between donors and recipients so that recipients' needs are matched with donors, and that potential gaps are filled.*

28. *A role may be provided for national and international trade federations in such transparency and coordination efforts, where such trade federations are already providing assistance or investment in trade facilitation, are interested in doing so, or are directly affected by measures.*

### **D. EXCEPTIONS**

29. *Nothing in this Agreement shall be construed to prevent the adoption or enforcement by any developing or least-developed Member of measures that may be justified under GATT Article XX (General Exceptions) or GATT Article XXI (Security Exceptions).*

### **E. DISPUTE SETTLEMENT**

30. *No developing or least-developed Member, including low-income economies in transition, shall be brought by any other Member to dispute settlement proceedings under the Dispute Settlement Understanding in order to enforce compliance with obligations that such developing or least-developed Member, including low-income economies in transition, is not yet obliged to implement.*

31. *Members shall prioritize the use of consultations, good offices, conciliation or mediation as mechanisms for ensuring compliance with the obligations, including the obligations relating to the provision of technical assistance and capacity building support under paragraphs 20 and 21, which they are implementing. As the last resort, the Dispute Settlement Understanding may be resorted to in order to settle disputes in this regard."*

TN/TF/W/142 should be read in con-junction with TN/TF/W/147.

Core Group, ACP Group, African Group, LDC Group, TN/TF/W/147

**"A. Introduction and General Concepts – Development-friendly Approaches to Trade Facilitation**

*DEVELOPING A TF PARTNERSHIP: LINKING TACB TO TF COMMITMENTS*

- 1. To ensure a win-win and development-friendly outcome that mutually benefits all Members, especially developing and least-developed Members, in the Trade Facilitation (TF) negotiations, there is a need for balance between the contributions of developed and developing Members in terms of mutually beneficial commitments. In this regard, the submitting Members recall that Annex D of the July 2004 Framework (WT/L/579) and Annex E of the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC) stress the importance and necessity of providing precise, effective, and operational TACB to developing Members during the negotiations and for the implementation of the results thereof by such Members.*
- 2. This means that there must be clearly defined operational mechanisms established to ensure that TACB is actually provided to those Members that need them. A mutually beneficial win-win outcome of the TF negotiations requires that Members engage in a partnership in which TACB is provided by developed Members to assist developing Members in the implementation of new TF commitments. Such TACB should be tailored to the specific needs, circumstances and priorities of the recipients in order for it to be effective, precise and operational. TACB should be equitably provided to all those that require it. The importance of TACB also necessarily implies the equal importance of ensuring that any new TF agreement incorporates a strong role for the WTO in coordinating and facilitating the provision of such TACB from donors, and for the donor community, including developed Members, to commit to providing adequate modalities and mechanisms through which such TACB could be accessed by those who need it. Developing countries should not be required to implement TF commitments for which TACB is needed if such TACB is absent.*

*PROPOSED MEASURES ON TF*

- 3. The various proposals submitted by Members reflect valuable and useful ideas on improving TF in Members and thereby enhance cross-border trade in goods. The proponents of this communication believe that these proposals have to be studied and agreed upon on their individual merits, in order to ensure that their inclusion in any negotiated outcome provides development benefits to developing Members, and so that the appropriate S&D treatment can be incorporated in such proposals.*
- 4. The assessment of the proposals submitted reveals that there will be implementation difficulties faced by developing members either individually or collectively.*
- 5. These implementation issues will need to be considered and addressed. New TF commitments should therefore be approached in a way that would enable developing Members to commit to a specified minimal level or standard of implementation of commitments, with appropriate flexibility for least-developed Members, and subject to the provision of TACB where needed. Developing Members could then, at their discretion, progressively go into higher levels or standards of implementation as and when capacity exists to do so taking into account their development context. For example, developing Members could agree to a commitment requiring mandatory publication in government gazettes of relevant existing customs procedures in the local or national language, but Internet publication of such procedures would be at their discretion as and when capacity arises to enable them to do so.*

6. *All developed Members should undertake all commitments upon entry into force of the any TF agreement. There should be two categories of commitments to be implemented by developing Members, subject to the provision of TACB where needed. These categories would be:*
  - (i) *A minimal set of commitments which would be determined individually by developing Members to be implemented after entry into force; and*
  - (ii) *A set of commitments that would be implemented after the conclusion of a transition period of X years determined on the basis of Paragraph 10 below after the entry into force of the TF agreement.*
7. *Other commitments that do not fall under either category above would be implemented by developing and least developed Members as and when appropriate in their development context.*

#### **B. Needs Assessment and TACB before signing**

8. *The proponents recall Paragraph 5 of Annex D of the 2004 July Framework and Paragraph 6 of Annex E of the Hong Kong Ministerial Declaration that stress the importance of the provision of TACB to assist developing Members in fully participating in the negotiations. Such commitments have yet to be made operational. Full and effective participation by developing Members in the TF negotiations is an essential prerequisite towards ensuring that the negotiated outcomes reflect their issues and concerns. In this regard, TACB must be provided to support effective involvement of developing Members' experts in the negotiations, provide for policy research and analysis (especially with respect to specific proposals), and identify individual country-specific TF needs and priorities.*
9. *The other area of focus for TACB is to assist developing members to undertake capacity self-assessment to determine the commitments for which domestic implementation capacity already exists and where technical assistance is required.*

#### **C. Needs Assessment and TABC Post-entry into Force and the Role of the WTO TF TACB Support Unit**

##### **NEEDS ASSESSMENT AND TRANSITION PERIODS FOR IMPLEMENTATION**

10. *In addition to the conduct of TACB-supported capacity self-assessment prior to the signing of the TF Agreement, the transition period referred to in Paragraph 6(ii) above should be of sufficient duration after the entry into force of the TF agreement within which to: (a) develop a plan for the implementation of commitments; and (b) undertake the domestic measures that may be needed to enable developing Members to implement these mandatory commitments. The determination of acquisition of implementation capacity should be at the discretion of the individual LDC concerned.*
11. *For both sets of commitments under Paragraph 6(i) and (ii) above, implementation by developing Members should be deferred if they continue to lack implementation capacity.*

##### **PROVISION OF TACB**

12. *In the spirit of mutual partnership, donors and developed Members should provide TACB support to those developing Members that require and request such support in connection with: (i) the conduct of the negotiations; (ii) the conduct of the self-assessment for the*



*determination of commitments for which implementation capacity already exists; and (iii) the building of implementation capacity for the other commitments referred to in Paragraphs 9 and 10 above.*

13. *Requests for TACB support for implementation of commitments identified by individual developing countries should be submitted to the WTO TF TACB Support Unit. The procedures for requesting TACB should be simple, transparent and not unduly burdensome for developing Members, especially for LDCs, given their financial means and other constraints.*
14. *The TACB to be provided should be on the basis of the request and specifications of the requesting Member. Developing Members requesting TACB could also consult with donors to determine the TACB projects or activities that will be required to build implementation capacity for specific commitments. The developing Member who is a TACB recipient should be the one to determine to its satisfaction when such implementation capacity has been acquired, or it may also choose to work out a mutual arrangement with the donor concerned for joint determination of the acquisition of implementation capacity.*
15. *Such support shall be on the basis of the requesting Member's needs and capacity-building plan and shall be provided in coordination with donors and developed Members. It should also be without prejudice to supplemental TACB requests as further TACB needs may arise. TACB should be provided, with the assistance of the WTO TF TACB Support Unit, to least-developed Members to enable them to prepare their TACB requests.*
16. *The implementation of mandatory commitments shall be undertaken by developing Members after X months after they have concluded that individual implementation capacity has been acquired pursuant to the provision of the necessary TACB support. Verification of capacity acquisition shall be self-determined or, if agreed by the developing Member concerned, in consultation with the donor or developed Member that provided the relevant TACB support.*

#### THE ROLE OF THE WTO TF TACB SUPPORT UNIT

17. *Providing adequate, effective, precise and operational TACB is a question of mutual partnership between the donors and the recipients. The WTO should assist Members in coordinating and facilitating TACB resources that must be provided by developed Members with the TACB needs that may be identified by developing Members. A TF TACB Support Unit could be created within the WTO Secretariat to handle this function.*
18. *Furthermore, the TF agreement should contain clear and operational commitments by developed Members to provide TACB support to developing Members. Operational modalities that facilitate and improve the delivery of such TACB to the recipients, and which are appropriate to the requirements and resource constraints of developing Members, should also be incorporated in a TF agreement.*

#### ***D. Flexibility and Special and Differential Treatment in Levels of Commitments***

19. *Appropriate special and differential treatment should be provided to developing Members under which they can identify the specified minimal level of implementation of a measure to which they will commit to be bound. Any further progressive implementation of such measure beyond the bound level would be undertaken at the discretion of the developing Member as appropriate and necessary for their domestic needs and capacity. Developed Members, as appropriate and to the maximum extent possible, may wish to support such progressive*

*implementation of measures beyond the minimum bound levels by providing additional TACB support as needed.*

20. *Previous proposals from developing Members (such as the African Group in TN/TF/W/95) have stressed that GATS-rules type provisions could be used as the possible template for making binding commitments in a new TF agreement. This means that for each specific obligation, developing Members could also indicate the limitations or restrictions that they wish to place on their commitment to implement such obligation. This would provide for effective, precise and operational special and differential treatment that goes beyond transition periods, as provided for in Annex D of the 2004 July Framework.*

21. *Such special and differential treatment is necessary because of the varied development and economic conditions and circumstances that developing Members face. Domestic regulatory flexibility continues to be required as a key element of national economic policymaking so as to allow them to take into account and respond to country-specific circumstances and situations. One other way of ensuring special and differential treatment is to include a specific provision that safeguards domestic regulatory flexibility for developing Members when required for reasons of national development policy.*

#### **E. Exceptions to Commitments**

22. *GATT Articles XX and XXI will apply to any TF agreement.*

#### **F. LDC Provisions**

23. *Least-developed Members would not be required to implement any commitments unless their requests for the provision of the necessary TACB support have been adequately responded to in a timely manner by developed Members on a demand-driven, need-based, and sustainable basis, specifically tailored to the needs and requirements of each individual recipient country.*

24. *When an LDC Member has acquired capacity to implement any Trade Facilitation commitments, the implementation of these commitments shall be determined by the Least Developed Member concerned.*

#### **G. Early Warning Mechanism**

25. *Consideration could be given to an early warning mechanism under which developing and LDC Members can inform the WTO that there is going to be a delay in implementing a commitment.*

#### **H. Dispute Settlement**

26. *Members should first exhaust the use of Consultations, Good Offices, Conciliation or Mediation as mechanisms for ensuring compliance with commitments, including commitments on the part of developed Members to provide both TACB modalities and TACB support itself, which they are implementing. As the last resort, the Dispute Settlement Understanding may be resorted to in order to settle disputes in this regard.*

27. *Finally, no developing or least-developed Member should be brought by any other Member to dispute settlement proceedings under the Dispute Settlement Understanding in order to*

enforce compliance with commitments that such developing or least-developed Member is not yet implementing."

Chinese Taipei, TN/TF/W/141

*"Establishing a Committee on Trade Facilitation*

*A Committee on Trade Facilitation is hereby established, and shall be composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall meet as necessary, but no less than once a year, for the purpose of affording Members the opportunity to consult on any matters related to the operation of this Agreement or the furtherance of its objectives. The Committee shall carry out such responsibilities as assigned to it under this Agreement or by the Members. The WTO Secretariat shall act as the secretariat to the Committee.*

*The Committee shall establish working parties or other bodies as may be appropriate, which shall carry out such responsibilities as may be assigned to them by the Committee in accordance with the relevant provisions of this Agreement."*

**III. ANNEX A: TEXTUAL PROPOSALS ON GATT ARTICLES V, VIII AND X**

<b>Symbol (TN/TF/..)</b>	<b>Sponsor(s)</b>	<b>Title</b>
W/107	European Communities, Korea and Switzerland	Fees and Charges
W/108	EC and Chinese Taipei	Pre-shipment Inspections
W/109	EC, Chinese Taipei and Switzerland	Authorized Traders
W/110	EC, Chinese Taipei and Switzerland	Customs Brokers
W/111	New Zealand	Objective Criteria for Tariff Classification
W/112	Hong Kong, China, Korea and Switzerland	Acceptance of Commercially Available Information and of Copies
W/114	Japan, Mongolia and Switzerland	Proposals on Publication and Availability of Information
W/115	Hong Kong, China, Japan, Korea, Mongolia and Switzerland	Proposals on prior Publication and Consultation
W/116	Japan and Mongolia	Proposals on Appeal Procedures
W/117 and Add.1	Hong Kong, China, Japan, Korea, Mongolia and Switzerland	Proposals on Pre-Arrival processing
W/120 and Rev.1	Turkey	Advance Rulings
W/121	India	Proposal on Article VIII
W/122	India	Proposal on Article X
W/124/Rev.1	Hong Kong, China and Switzerland	Reduction/Limitation and Periodic Review of Formalities and Documentation Requirements
W/125	Australia, Canada and the United States	Draft Text on Advance Rulings
W/126	New Zealand	Objective Criteria for Tariff Classification
W/127	Cuba	Improvement and Clarification of Article V of the GATT: Strengthening of the Principles of Non-discrimination and Most-Favoured Nation Treatment
W/128	Canada	Draft Text on Border Agency Cooperation
W/129/Rev.1	Antigua & Barbuda, Barbados, Dominica, Fiji, Grenada, Papua New Guinea, the Solomon Islands, St. Kitts and Nevis, St. Lucia, St. Vincent and the Grenadines	Regional Approaches to Trade Facilitation: Enquiry Points

<b>Symbol (TN/TF/..)</b>	<b>Sponsor(s)</b>	<b>Title</b>
W/130	Mongolia, Norway and Switzerland	Simplification and Harmonization of Trade Documents
W/131	Mongolia, Norway, South Africa and Switzerland	The Use of International Standards
W/132/Rev.1	Turkey	Proposal on Internet Publication
W/133	Armenia, EC, the Former Yugoslav Republic of Macedonia, the Kyrgyz Republic, Mongolia, Paraguay, the Republic of Moldova, Rwanda and Switzerland	Transit – Compilation of Textual Proposals on TN/TF/W/113 and TN/TF/W/119
W/134 and Add.1	China, Indonesia and Korea	Proposal on Post-Clearance Audit
W/136	Canada and Switzerland	Draft Text on Separation of Release from Clearance
W/138/Rev.1	Korea, Singapore and Thailand	Proposal on Single Window
W/139/Rev.1 and Rev.1/Add.1	Korea and Japan	Proposal on Release Times of Goods
W/140	Chinese Taipei, Korea and Switzerland	Proposal on Risk Management
W/144/Rev.1	United States	Draft Text on Expedited Shipments
W/145	United States	Draft Text on Internet Publication
W/146	Turkey and Georgia	Quota-Free Transit Regime in Road Transportation
W/148	China	Draft Text on the Introduction of Risk Management

**IV. ANNEX B: TEXTUAL PROPOSALS ON CUSTOMS/OTHER AGENCY COOPERATION ON TRADE FACILITATION AND CUSTOMS COMPLIANCE ISSUES**

<b>Symbol (TN/TF/...)</b>	<b>Sponsor(s)</b>	<b>Title</b>
W/123/Add.1	India and Sri Lanka	Cooperation Mechanism for Customs Compliance

**V. ANNEX C: TEXTUAL PROPOSALS ON S&D TREATMENT, TA&CB, CAPACITY ASSESSMENT AND OTHER IMPLEMENTATION MATTERS**

<b>Symbol (TN/TF/...)</b>	<b>Sponsor(s)</b>	<b>Title</b>
W/137 and Add.1 – Add. 4	Albania, Armenia, Canada, Chile, China, Colombia, Costa Rica, Dominican Republic, Ecuador, EC, Georgia, Guatemala, Honduras, Japan, Kyrgyz Republic, Mexico, Moldova, Nicaragua, Pakistan, Paraguay, Peru, Sri Lanka, Switzerland and Uruguay	Implementation Mechanism of Trade Facilitation Commitments Including Key Elements for Technical Assistance
W/141	Chinese Taipei	Establishing a Committee on Trade Facilitation
W/142	Core Group of Developing Countries on Trade Facilitation	Proposal on Implementation Mechanism for Special and Differential Treatment (S&D) and Technical Assistance and Capacity Building Support
W/147	Core Group, ACP Group, African Group, LDC Group	Technical Assistance and Capacity Building