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Negotiating Group on Trade Facilitation

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COMMUNICATION FROM ARMENIA, CANADA, THE EUROPEAN COMMUNITIES, THE KYRGYZ REPUBLIC, MONGOLIA, NEW ZEALAND, PARAGUAY, AND THE REPUBLIC OF MOLDOVA

The following communication, dated 14 February 2005, from the Delegations of Armenia, Canada, the European Communities, the Kyrgyz Republic, Mongolia, New Zealand, Paraguay, and the Republic of Moldova, is being circulated in advance of the Negotiating Group meeting of 15-16 February.

PROPOSALS ON TRANSIT

I. INTRODUCTION

1. With a view to clarifying and improving GATT Article V disciplines on freedom of transit, and developing a set of multilateral commitments, the following proposals are being submitted to the Negotiating Group on Trade Facilitation. The proposals have been based on the compilation document TN/TF/W/43/Rev.4. The subsequent exchange of views on proposals has also been drawn on, including as reflected in the compilation of questions and answers on Members' proposals in document JOB(05)/222. The proposals are without prejudice to the possible format of the final result of the negotiation.

II. SPECIAL AND DIFFERENTIAL TREATMENT AND TECHNICAL ASSISTANCE

2. In taking proposals forward, Members must establish precise, effective and operational special and differential treatment which relates the extent and timing of entering into commitments to implementation capacities. For potentially resource demanding commitments, such as those concerning bonded transport regimes and authorized trader schemes, special and differential treatment, for example in the form of transition periods, or even specific exemptions until capacity exists, would probably be required for some developing countries, notably the LDCs, and other countries in need, notably small low-income economies in transition. This may be in conjunction with technical assistance and capacity building as a means to obtain requisite implementation capacity. Special and differential treatment and technical assistance in relation to transit are of particular importance to landlocked developing countries given their specific needs and challenges, including in terms of lack of territorial access to the sea, remoteness from world markets and high costs associated with trading. The further identification of Members' needs and priorities in relation to the proposals can help take all the above issues forward in parallel to and as a key element of discussions on the proposals set out below.

III. SPECIFIC PROPOSALS

(a) Legitimate public policy objectives and traffic in transit

- 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. Members recognize that arbitrary or unjustifiable discrimination or disguised restrictions on international trade must not be applied to traffic in transit.

(b) Non-discrimination

- *National treatment:* With respect to all laws, regulations, requirements, procedures and fees and charges, including transportation charges, affecting the internal passage of traffic in transit across the territory of a Member, without prejudice to the legitimate customs control and supervision of goods in transit, Members 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.

(c) Fees and charges

- *Publication:* Members shall publish information on all fees and charges imposed on or in connection with transit, or as a condition for transit, including transportation charges, ("transit fees and charges"), along with their justification and basis. Members shall make this information readily available to all interested parties and inform other Members of where this information is available. 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. In no event will new or amended transit fees and charges, which are more burdensome than those previously applied, enter into force until information on them is published and made readily available.
- *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.
- *Reduction / Simplification:* 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 services rendered. Any transit fees and charges shall:
 - Be reasonable, having regard to the conditions of transit;
 - Not be charged with respect to consular services;
 - Only be charged for transit services related to the specific transit movement in question;
 - Not exceed the approximate cost of the transit service provided;
 - Not be calculated on an ad valorem basis.

(d) Transit formalities and documentation requirements

- *Publication*: All laws, regulations, requirements and procedures on or in connection with transit, or as a condition for transit ("transit formalities and documentation requirements"), along with their justification and basis, shall be made public. Members shall make this information readily available to all interested parties and inform other Members of where this information is available. 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. Members 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.
- *Periodic review*: Members shall periodically review their transit formalities and documentation requirements to ensure that they are in line with WTO commitments and with a view to consolidating 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 bilateral, regional or international level.
- *Reduction / Simplification*: 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;
 - Separate physical lines, as far as possible, at the border for traffic in transit.
- *Use of international standards*: Members shall draw upon international standards and instruments¹ 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.
- *Promotion of regional transit agreements or arrangements*: Members shall promote bilateral and regional transit agreements or arrangements 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 bilateral and regional transit agreements or arrangements. Members shall not enforce unilateral 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

¹ 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.

give positive consideration to reasoned requests to participate by other Members who fill the requisite participation criteria.

- *Simplified treatment:* Members shall use risk management techniques to enable any inspections to be targetted 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 goods.
- *Bonded transport regime and guarantees:* Members shall operate bonded transport regimes that allow the transit of goods through the territory of Members without payment of customs duties 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 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 after the completion of the transit operation;
 - Released in full after the completion of the transit operation.

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.

(e) Cooperation and coordination

- *Amongst authorities:* Members shall ensure cooperation and coordination between all concerned authorities and agencies in their territory to facilitate traffic in transit. Members shall ensure co-operation with other Members on issues of traffic in transit, including with regard to standardizing regulations, formalities, documentation and other requirements and procedures in connection with transit, including working hours at and operations of border crossings. To this end, Members neighbouring each other shall, as far as possible, meet periodically to discuss and come to an understanding on the fees, formalities, legal requirements and practical operation of transit regimes relating to goods moving in transit between them.
- *Between authorities and the private sector:* Members shall provide opportunities for interested parties to comment on the transit regime, including with regard to the introduction of new or amended fees and charges, regulations, formalities, documentation and other requirements and procedures in connection with transit, with a view to minimizing unnecessary delays and restrictions on traffic in transit.

(f) Operationalization and clarification of terms

- *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. Members shall ensure that traders have the right to choose the route most convenient for international transit subject to any reasonable restrictions they impose for legitimate public policy objectives. 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.

- *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 (1) trans-shipment, warehousing, breaking bulk, or change in the mode of transport and (2) whether the goods or means of transport, after passing across a territory of a Member, return to the territory of a Member which they have already left. This definition shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage).

(g) Final comments

3. Not all GATT Article V disciplines have been addressed in the commitments proposed above, for example the existing commitments in GATT Articles V:5 and V:6. We believe that these Articles should remain broadly unchanged but are, of course, ready to discuss and explore proposed clarifications and improvements to them. Furthermore, while some issues related to transit, for example appeal procedures, are not addressed in this submission, they may of course be addressed in future submissions.
