

WORLD TRADE ORGANIZATION

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Negotiating Group on Trade Facilitation

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COMMUNICATION FROM ARMENIA, THE EUROPEAN COMMUNITIES, THE KYRGYZ REPUBLIC, MONGOLIA, THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, AND THE REPUBLIC OF MOLDOVA

The following communication, dated 1 June 2006, is being circulated at the request of the Delegations of Armenia, the European Communities, the Kyrgyz Republic, Mongolia, the Former Yugoslav Republic of Macedonia, and the Republic of Moldova.

TRANSIT

1. The following textual proposal is submitted by Armenia, the European Communities, the Kyrgyz Republic, Mongolia, the Former Yugoslav Republic of Macedonia, and the Republic of Moldova for consideration by the Negotiating Group. It is closely based on the proposals on transit inspections made in the joint communication TN/TF/W/79 of 15 February 2006 and takes account of the discussion and other submissions on this issue in the Negotiating Group.

Textual proposal

"Transit

(a) Scope

1. *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.
2. *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).

(b) Freedom of transit

3. *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.

(c) Legitimate public policy objectives and traffic in transit

4. 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.
5. 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.

(d) Non-discrimination

6. *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.
7. *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.
8. *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.

(e) Fees and charges

9. 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.
10. *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.
11. *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.
12. *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.
- (f) Transit formalities and documentation requirements
13. Transit formalities and documentation requirements are all laws, regulations, requirements and procedures on or in connection with transit.
14. 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;
 - As far as possible, separate physical lines at the border for traffic in transit.
15. *Use of international standards*: Members shall draw upon international standards and instruments¹ as a basis for transit formalities and documentation requirements, where

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.

such standards and instruments exist, except when they would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued.

16. *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.
17. *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.
18. *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.
19. *Periodic review:* 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.
20. *Promotion of regional transit agreements or arrangements:* 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. 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 give positive consideration to reasoned requests to participate by other Members who meet the requisite participation criteria.
21. *Simplified treatment / risk management:* 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.
22. *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 and 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.

(g) Cooperation and coordination

23. *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 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.
24. *Between authorities and the private sector:* 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."

Special and differential treatment, technical assistance and capacity building

2. With regard to special and differential treatment, technical assistance and capacity building in relation to transit, TN/TF/W/79 set out some proposals in terms of what may be required by developing countries, least-developed countries and other countries in need, notably small low-income economies in transition. The issues could be taken forward through the development of a horizontal mechanism that would, among others, take full account of the needs, priorities, cost concerns and implementation capacities of developing and least-developed Members in relation to commitments. A number of relevant submissions on this issue have been made to the Negotiating Group, one of which contained a textual proposal. Such textual proposals should continue to be developed in parallel to the textual proposal set out above.
