

**COMMUNICATION FROM MONGOLIA, NORWAY, SOUTH AFRICA, AND  
SWITZERLAND**

The following communication, dated 6 July 2006, is being circulated at the request of the Delegations of Mongolia, Norway, South Africa, and Switzerland. Mongolia, Norway, South Africa, and Switzerland reserve the right to revise, supplement or withdraw this proposal according to the results of further examinations.

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**THE USE OF INTERNATIONAL STANDARDS**

1. Following previous communications on standardization in the field of trade facilitation, e.g., TN/TF/W/85 presented by the delegations of Chile, Korea, Norway, and Switzerland, we hereby submit for consideration a textual proposal on the use of international standards.

**I. OVERVIEW AND EXPLANATION OF THE PROPOSAL**

2. The present proposal is based on the following premises:

- (a) Members shall use relevant international standards as the *basis* for their import, export and transit procedures. National procedures that are in conformity with international standards are presumed to be in conformity with the "Agreement on Trade Facilitation"<sup>1</sup> and relevant provisions of the GATT 1994. Harmonization is thus encouraged.
- (b) We suggest some limited exceptions. The exceptions refer to existing exception provisions under the GATT and TBT.<sup>2</sup>

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<sup>1</sup> The proponents have for the purposes of this document used the term "Agreement on Trade Facilitation" to cover the universe of suggested changes in the ongoing negotiations on Trade Facilitation. This is without prejudice to the name(s) of the instrument or instruments that will finally evolve, and is not an indication of a final position of the proponents of this document in that respect.

<sup>2</sup> We refer in particular to GATT Articles XX and XXI, and to Articles 2.2 and 2.4. of the TBT Agreement.

- (c) Members should be encouraged to *participate* in the work of international organizations active in the field of trade facilitation, to promote within these organizations the development and periodic review of relevant standards.<sup>3</sup> An indicative list of such organizations is attached as an Annex to the suggested provisions.<sup>4</sup> This will facilitate the understanding and the updating of such instruments in the relevant international organizations where standards are developed.
- (d) The way the use of international standards is dealt with in this communication does not modify Members' implementation of international obligations. As an example, no accession to other<sup>5</sup> international Conventions or Treaties is required.
- (e) The majority of the principles contained in the international instruments listed in the Annex to the suggested provisions are current practice in the bulk of Members who have implemented measures in the various areas of the future Agreement.
- (f) It is not suggested that the WTO develop standards, as this is better left to the relevant international organizations.
- (g) Through the obligation to "*use international standards as the basis for*" - but not to "*incorporate international standards into*" - national regulations, it will not be the WTO or the Dispute Settlement System that overtakes the role to interpret those international standards. The question for the WTO will be whether an international standard was used as the basis for the national regulation, or whether there was a legitimate reason to depart from that obligation, not to interpret the details of the underlying international standard. In this respect the proposal follows closely the model already employed in the TBT Agreement.
- (h) The scope of the general obligation to use international standards as the basis for national rules and regulations in the field of trade facilitation shall extend to those obligations covered by the new Agreement on Trade Facilitation.
- (i) The present proposal for a general obligation does not exclude that other Members may suggest more specific use of a particular existing international standard in respect of particular provisions of a new Agreement on Trade Facilitation.
- (j) The co-sponsors suggest that the institutional aspects such as the establishment of mutually supportive relationships with other international intergovernmental organizations, the implementation of the provisions of this Agreement in line with these organizations' ongoing work, the periodic review of the provisions in the agreement, etc., be addressed horizontally by the NGTF when discussing the functions of a Trade Facilitation Committee.

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<sup>3</sup> A similar obligation to participate in the work of international organizations developing standards exists currently under (i) the SPS Agreement, see SPS Article 3.4; and under (ii) the TBT Agreement, see TBT Article 2.6. We also refer to the participation by Members in the two technical committees established in cooperation with the Customs Cooperation Council (WCO) under the two agreements regarding (i) Rules of Origin, see Agreement on Rules of Origin Article 2 and Annex I; and (ii) Customs Valuation, see CV Article 18 and Annex II. Although these technical committees do not have standardization as their primary function, their uniform recommendations on the application of those agreements can help promote standardization.

<sup>4</sup> An example from an existing Agreement can be found in the SPS Agreement, Annex A, paragraph 3.

<sup>5</sup> Other than WTO.

- (k) The co-sponsors also suggest that the question of possible deferred implementation of this requirement for developing countries be addressed horizontally. This applies likewise to technical assistance and capacity building to review the requirements, including through assistance by relevant international agencies such as the WCO and the World Bank.

## II. TEXTUAL PROPOSAL

3. Below we suggest an Article setting out the general principle, coupled with an Annex with definitions. This Article should be placed in the Agreement in a way which makes clear that it applies to all obligations covered by the new Agreement. We do not yet suggest language for a preamble paragraph. However, if Trade Facilitation should be subject to an Agreement, then it would seem appropriate to include a paragraph in the *Preamble* describing the *aim* of using international standards, by stating their positive effect and importance to trade facilitation, and by recognizing the work of those international organizations engaged in developing them (cf. the Mandate in the July-2004 Framework, paragraph 9).

### 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>6</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.
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.

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<sup>6</sup> This relates in particular to formalities and procedures applied by customs and other agencies involved in border crossing activities.

- (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].
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