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Negotiating Group on Trade Facilitation

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COMMUNICATION FROM THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA, THE REPUBLIC OF MOLDOVA, RWANDA, SWITZERLAND, AND SWAZILAND

Revision

The following communication, dated 7 February 2008, is being circulated at the request of the Delegations of the Former Yugoslav Republic of Macedonia, the Republic of Moldova, Rwanda, Switzerland, and Swaziland.

TRANSIT – CONSOLIDATION OF TEXTUAL PROPOSALS IN TN/TF/W/113 AND TN/TF/W/119

This submission consolidates the textual proposals made in TN/TF/W/113¹ and TN/TF/W/119² while deleting duplication between them. It is being circulated by the proponents to the Negotiating Group with a view to facilitating progress in the negotiations. The textual proposal does not intend to substitute, but complement the current GATT Article V.

(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 Agreement shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage).

¹ Communication from Armenia, the European Communities, the Kyrgyz Republic, Mongolia, the Former Yugoslav Republic of Macedonia, and the Republic of Moldova of 6 June 2006.

² Communication from Mongolia, Rwanda, Paraguay and Switzerland of 7 June 2006.

(b) General and security exceptions

3. Members recognize that the general and security exceptions provided for in GATT Articles XX and XXI shall be fully applicable.

(c) Freedom of transit

4. *Freedom of transit and choice of routes and means of transport 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. Only when it considers such a measure to be an important part of a measure taken in conformity with GATT Article XX or XXI, shall a Member:

- (i) require goods to follow a prescribed route; or
- (ii) require goods to be transported under escort.

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.

(d) Non-discrimination

5. *National treatment:* With respect to all fees and charges imposed on or in connection with transit, including transportation charges, 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.

6. *Most-favoured-nation treatment:* Without prejudice to paragraph 20, with respect to all laws, regulations, formalities 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.

7. *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 origin 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

8. Members shall exempt traffic in transit from all transit duties and other fees and charges imposed in respect of transit, except reasonable fees and charges for transportation or those commensurate with the administrative expenses entailed by transit or with the cost of the service rendered. Any transit fee and charge shall:

- only be imposed for transit services provided directly linked to the specific transit movement in question;
- not exceed the approximate cost of the transit service rendered; and
- not be calculated on an ad valorem basis.

9. *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 to be 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 to the extent practicable, an official website.

10. *Prior publication:* Except in urgent circumstances and other limited exceptions, which are made public, 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.

11. *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 reducing their number and diversity, where appropriate.

(f) Transparency

12. *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 where this information is available. The information shall be published via an officially designated medium, and to the extent practicable, an official website.

13. *Prior publication:* Except in urgent circumstances and other limited exceptions, which are made public, Members shall accord an adequate time period between the publication of new or amended transit formalities and documentation requirements and their entry into force.

(g) Transit formalities and documentation requirements

14. Any Member may require that traffic in transit through its territory be entered at the proper customs office without prejudice to the other commitments on transit, but, except in cases of failure to comply with applicable laws and regulations, such traffic in transit through their territory shall not be subject to any unnecessary delays or restrictions, inspections or controls and shall be granted expedited and simplified treatment at border crossing points, including sea, fluvial and air ports or inland terminals as applicable. Such expedited and simplified treatment implies, *inter alia*:

- (i) *Special border crossing facilities for transit:* To the extent practicable, physically separate transit lanes shall be made available for traffic in transit.
- (ii) *Formalities adjusted to the specificities of the goods in transit:* In designing and applying transit formalities and documentation requirements, Members shall take account of the inherent characteristics of the goods concerned.
- (iii) *Limited physical inspections of goods:* where goods not subject to restriction are placed under a transit procedure, 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. Furthermore, Members shall not apply quality controls or controls of compliance with technical standards. Unless such measures are necessary where there is a risk of contamination, Members shall not impose physical inspection on goods in transit. This shall not prevent Members from carrying out spot checks on the goods, based on risk management.

(iv) *Reducing the administrative burden for traffic in transit:* 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 permit the control of the operation and to ensure that all requirements relating to the application of relevant law have been complied with. 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, to the extent possible, of any commercial or transport document setting out clearly the necessary particulars as the descriptive part of transit declarations as a complement of the paper based transit declarations;
- the establishment of a single window; and
- the establishment of an authorised trader scheme with a view to grant simplified treatment to traders with a good track record of compliance with transit formalities and documentation requirements.

(h) Bonded transit regime and guarantees / international, regional or national customs guarantee system

15. Members shall not impose cash guarantees to secure revenue in case of inland diversion of goods. Where a Member operates a bonded transit system, this Member shall ensure that the 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; and
- released promptly and in full after the completion of the transit operation.

16. 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 rendered.

17. When a Member is satisfied that an obligation to its customs and other border agencies will be fulfilled it shall not require any guarantee.

(i) Cooperation and coordination

18. *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.

19. *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.

(j) Promotion of regional transit agreements or arrangements

20. 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. In particular, contracting parties to regional transit agreements or arrangements should agree on common, simplified documents, or electronic messages, that shall be aligned with international standards. Members involved in transit should allow the same set of documents or electronic messages to accompany the consignment from the country of departure to destination. Furthermore, 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 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 afford adequate opportunity for other interested Members to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it.

(k) Periodic review / Monitoring with a view to enhancing efficiency, transparency and predictability of the transit agreement or arrangement

21. *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.

22. *Monitoring:* 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.

(l) Special and differential treatment and technical assistance

23. The co-sponsors propose that S&D treatment and TA&CB be taken forward through the development of a horizontal mechanism that would take account of the needs, priorities, and implementation capacities of developing and least-developed Members in relation to commitments. Therein, special attention could be given to aspects of regional implementation of commitments.
