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SECTION I

ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION

1. Publication

1.1 [In meeting its obligation under paragraph 1 of Article X of GATT 1994], each Member shall promptly¹ publish [via officially designated sources] the following information in a non-discriminatory and convenient manner, [in order to enable [[interested parties][governments and traders]] to become acquainted with them, [*inter alia*]]:

- (a) Importation, exportation or transit procedures² (including port, airport, and other entry-point procedures) and required forms and documents;
- (b) Applied rates of duties, taxes or charges of any kind imposed on or in connection with importation or exportation;
- (c) [Interpretative or implementing] rules for the classification or the valuation [or the determination of origin] of products for customs purposes [as well as, if readily available, examples or illustrations of such classifications and valuations and/or determinations of origin];
- (d) [Laws, [and] regulations [and administrative rulings of general application] relating to rules of origin;]
- (e) Import, export or transit restrictions or prohibitions;
- (f) [All] fees and charges imposed [[by the customs and other [[governmental][public and private] agencies][by Members]] on or in connection with importation, exportation [or transit³][[transactions] [formalities]];
- (g) Penalty provisions against breaches of import, export or transit formalities;
- (h) Appeal procedures;
- (i) Agreements or parts thereof with any [[country or countries] [Member or Members]] relating to the importation, exportation or transit.
- (j) Administrative procedures relating to the imposition of tariff quotas including quota size, in and out of quota rates, opening dates, allocation methods, licensing procedures and requirements, levels of utilisation, and additional terms and conditions, including any requirements imposed by state-importing authorities or other government bodies.

[1.2 General Reservations⁴: Nothing in these provisions shall be construed as requiring:

¹ The paragraphs of proposals TN/TF/W/115/Rev.1 and TN/TF/W/132/Rev.1 concerning prior publication provide further clarification of the term "promptly".

² [Including procedures collected on behalf of the Government by third parties.]

³ [Including procedures [fees and charges] collected on behalf of the Government by third parties.]

⁴ This paragraph may be dropped at a later stage if this aspect is properly dealt with in a cross-cutting manner throughout the TF Agreement.

- (a) The publication or provision of information other than in the language of the Member except as stated in paragraph 2.2; 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.]

2. Internet Publication/Establishment of Official Website

2.1 [In order to provide for transparency, predictability and access to information] Each Member shall [, for LDCs, to the extent possible,] [[to the extent possible]] [should]] make available and keep current [in one of the official languages of the WTO] on [[one or more][a]] [official] publicly accessible [internet] websites:

- (a) A description of its importation, exportation and transit procedures [and transit regulations] [[including appeal procedures] [that [[informs] [explains]] [[[governments [and][international] [[traders]] [international trade operators]] [[and other operators in international trade]] [[interested parties]] [of]] the practical steps needed to import and export, and for transit, including appeal procedures;]]and
- (b) The forms [,and] documents [and other duties and charges] [and data] required for importation into, exportation from, or transit through the territory of that Member, [as well as electronic links to them, [[where applicable][where practicable]].]
- [(c) Relevant trade-related legislation]

[(c)/(d) Contact information of the information services described in paragraph 4.1 ⁵]

[[[2.2] [2.3]] [Whenever practicable,] the description [and forms and documents] referred to in subparagraph 2.1[(a)] [and (b)] [and 2.2] shall [also] be made available in one of the official languages of the WTO.]

[[2.3][2.2]] Members are encouraged to publish further trade-related information [that they consider to be useful] on their websites, including items referred to in paragraph 1.1.

3. Establishment of Enquiry Points

3.1 [Each Member [[shall][should]] [to the extent possible] establish one or more enquiry points [which should be issue specific whenever possible]. Enquiry points shall [endeavour to] answer all reasonable enquiries on the issue covered by paragraph 1.1 from [[interested parties][governments and traders]] as well as provide the required forms referred to in subparagraph 1.1(a)].

[Each Member shall establish [or maintain] one or more enquiry points to answer reasonable enquiries [of [governments and] traders [and other interested parties]] [within their territories] on matters covered by paragraph 1.1.] [and provide the required forms and documents referred to in subparagraph 1.1(a).]

[Members shall ensure that where copies of forms and documents are requested by [[other Members] [governments and traders] [traders and other interested parties]] they are supplied at the same price, if any, apart from the cost of delivery, as to the nationals of the Member concerned.]

⁵ "La información de contacto de los servicios de información descrita en el párrafo 4.1" in the original Spanish.

3.2 [Members will not require the payment of a fee for answering inquiries.] [and/or providing forms and documents] [If a Member requires payment of a fee for enquiries [and/or providing the forms and documents], [except those available on the internet,] such fees shall [[not exceed] [be limited in amount to]] the approximate cost of the service rendered⁶.]

[Fees and charges, if any, for answering inquiries or for providing forms and documents referred to in subparagraph 1.1(a) shall be limited in amount to the approximate cost of the service rendered.]

3.3 The enquiry points shall reply to enquiries within a [reasonable] time period set by each individual Member [depending on the complexity or nature of the request⁷].

3.4 Members involved in a regional integration [process] may establish enquiry points at the regional level.⁸

[3.5 [Developing] countries which are members of a customs union or involved in a regional integration process shall have the option of establishing one or more enquiry points at the regional level.⁹ The existence of a notified regional enquiry point would satisfy the requirements for the existence of a national enquiry point under this current provision.]

4. Notification

4.1 Each Member shall notify [the Trade Facilitation Committee of]:

- (a) [The place[s]] where the items in subparagraphs 1.1(a) to (i) have been published, and
- (b) The URLs of website[s] referred to in paragraph 2.1, as well as the contact information of the enquiry points referred to in paragraph 3.1.¹⁰

ARTICLE 2: PRIOR PUBLICATION AND CONSULTATION

1. Interval between Publication and Entry into Force

1.1 Except in [proven] [urgent] circumstances [[and other limited exceptions][which are made public]] [[or] [and]] [when] justified by legitimate public policy objectives, Members [[shall] [should]] ensure [where possible and when deemed necessary that a [[reasonable interval] [of] [[at least] [a minimum [interval] of [[X days] [60 days]]]] is provided between the publication [or, where appropriate, pre-publication]of [new or amended trade related] laws, [[and][or]] [new or amended] regulations [and administrative rulings of general application] [relating to trade], [or their drafts or summaries], and their entry into force [in such a manner as to allow [Governments [and]] traders [[and other] [the] interested parties] to become acquainted with [and well prepared for the compliance with them].

⁶ This paragraph may be dropped at a later stage if this aspect is properly dealt with in a cross-cutting manner throughout the TF Agreement.

⁷ "dependiendo de la complejidad o la naturaleza de la solicitud."

⁸ This paragraph may be dropped at a later stage if this aspect is properly dealt with in a cross-cutting manner throughout the TF Agreement.

⁹ It is understood that individual Members benefiting from these recommendations will continue to be legally responsible and accountable for their individual notifications and other obligations under these Agreements.

¹⁰ This paragraph may be dropped at a later stage if this aspect is properly dealt with in a cross-cutting manner throughout the TF Agreement.

1.2 [[Laws related to duty rates or] changes to [duty rates or] tariff rates are excluded from this provision.]

2. Opportunity to Comment on New and Amended Rules

2.1 Except in [urgent] circumstances [and other limited exceptions [which are made public]] [[or] [and]] when] justified by legitimate public policy objectives], Members [[should] [shall]] [[afford] [provide]] [to the extent possible], [within the competence of their respective government,] appropriate opportunities [and a reasonable period] to [[governments] [and] [traders and] other interested parties] [stakeholders]] [within their territories] to comment on [the] proposed introduction or amendment of trade-related laws [and] regulations [and administrative rulings of general application.]

[2.2 Members [shall] [,where possible,] ensure that new or amended trade-related [legislation] [rules] [, regulations] and procedures be published on the national website [at least [[X] [60]] days] [[before] [prior to]] its entry into force so that [the] interested parties shall be able to submit their comments on the[se] [trade-related][[legislation][rules, regulations] [laws and regulations]] [and take necessary measures for the adaptation]. [This provision shall not apply [except] in cases of urgency.] [Exceptions to this provision are the legislation requiring urgency [[and cases where publication in advance [may distort market conditions][will unduly impede the pursuit of legitimate policy objectives]].] [This does not exclude the right to resort to the exceptions already laid down in WTO agreements.]]]

[3. Consultation[s]

3.1 Members shall, as appropriate, provide for [regular] consultations between border agencies and [[stakeholders] [traders] [international trade operators]] within their territories.]

ARTICLE 3: ADVANCE RULINGS

1. Provision of Advance Rulings

[[1.1] [1.2]] Each Member shall [in a reasonable, time bound manner] [in a reasonable time not exceeding a maximum period of 150 days] issue an advance ruling to [[an applicant][applicants with legal representation in the Member concerned]] submitting a written request which contains all necessary information. A Member that declines to issue an advance ruling shall promptly notify the applicant in writing [including by electronic means] setting out the relevant facts and the basis for its decision.

[1.1] [Each Member shall maintain or set up [[at least one] [an]] authority for [advance rulings for the purpose of] issuing, [in a time bound manner,] an advance ruling [to an applicant upon submission of a written application which contains all necessary information. The [[advance ruling][competent]] authority that declines to issue an advance ruling shall promptly inform the applicant in writing, setting out the relevant facts and the basis for its decision.]]

[Provided that no application shall be rejected under this paragraph unless an opportunity has been given to the applicant of being heard.]

[1.1 *bis* The competent authority shall not allow the application where the question raised in the application is, -

- (a) already pending in the applicant's case before any officer of customs, the appellate tribunal or any court;

- (b) the same as in a matter already decided by the appellate tribunal or any court.]

1.2 The advance ruling shall be valid for a reasonable period of time after its issuance unless the [law or] facts or circumstances supporting the original advance ruling have changed. [In cases where the information presented as the basis for the advance ruling was incorrect, the competent authority shall revoke or modify the ruling with retroactive effect.] Where [[a Member][the [[advance ruling][competent]] authority]] revokes or modifies the advance ruling it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision.

[On a request received from the applicant, the competent authority shall, before pronouncing the advance ruling, provide an opportunity to the applicant of being heard, either in person or through a duly authorized representative.]

[The advance ruling pronounced by the competent authority shall be binding only

- (a) on the applicant who had sought it
- (b) and the commissioner of customs and the customs authorities subordinate to him in respect of the applicant]

1.3 A Member shall publish, at a minimum:

- (a) The time period by which it will issue an advance ruling;
- (b) The length of time for which the advance ruling is valid, and
- (c) The requirements for the application for an advance ruling, including the information to be provided and the format.

1.4 A Member [[shall][may]] provide, upon the request of the applicant, an administrative review by the issuing authority of the advance ruling [or its higher authority,] or of the decision to [revoke or] [[modify][amend]] the advance ruling.¹¹ [In cases where the information presented as the basis for the advance ruling was incorrect, the competent authority shall revoke or modify the ruling with retroactive effect.]

1.5 A Member shall endeavour to make information publicly available on advance rulings which it considers to be of significant interest to other [[governments and] traders][interested parties]], taking into account the need to protect commercially confidential information.

[1.5 *bis* If a Member requires the payment of fees for the advance ruling, such fees shall [[not exceed the approximate cost of the service rendered] [be limited in amount to the approximate cost of the service rendered]].]

1.6 Definitions:

[An **advance ruling** is a written decision provided by the [[[competent] authority][Member]] to an applicant prior to the importation of the good covered by the application that sets forth the treatment the Member shall provide to the good at the time of importation.]

¹¹ [A Member is not required to provide a [[judicial] [right of]] appeal of an advanced ruling or a decision to revoke or modify an advance ruling.]

[An **advance ruling** is a written decision made by a Member that is provided to an applicant prior to the importation of the goods concerned into its territory that sets forth the treatment the Member [where possible or applicable] shall provide the goods in connection with an importation covered by the application, with regard to:]

- (a) The good's tariff classification [[including] the applied duty rate for the product [or, where appropriate, the way the applied duty rate for a product is calculated]];]
- [(b) The appropriate method, and the application of the method, to be used for determining the customs value under a particular set of facts;]
- [(c) The application of the Member's requirements for duty drawback, deferral, [or other relief from customs duties];]
- [(d) The application of the Member's requirements for quotas, including tariff quotas;]
- [(e) The origin of the good;]
- [(f) Additional matters on which a Member considers [[itself capable][appropriate]] to issue an advance ruling;]
- [(g) The fees and charges that will be applied [[[or] [and]], where appropriate, information on the way such fees and charges are calculated.]]]

An **applicant** is an importer, exporter [or producer], or a representative thereof [who meets the criteria specified in the national legislation] [of the importing Member].

ARTICLE 4: [[APPEAL] [REVIEW]] PROCEDURES

1. Right of Appeal

1.1 Each Member [[shall][may]] provide that any person to whom [the] customs [service] [or another relevant border agency] issues a decision has the right, within its territory[, without penalty,] to[:]

Alt. 1

- (a) Administrative appeal [independent of the employee or office] [to the next higher office] of the agency which issued the decision; and[/or]
- (b) Judicial appeal of the decision.

Alt. 2 [an application for reconsideration to the superior of the author of that decision or of the act prior to any contentious remedy.]¹²

1.2 The legislation of each Member may require administrative appeal to be initiated prior to judicial appeal.

[1.3 The decisions of administrative and judicial tribunals under paragraph 1.1 shall govern the practice of customs and other relevant agencies throughout [their jurisdiction] [the territory of the Member].]

¹² "à un recours gracieux auprès du supérieur de l'auteur de ladite décision ou de l'acte préalable à tout recours contentieux " in the original French.

¹³ Note: Grievances would be received, for example, at existing enquiry points, divisions, sections of customs and other border agencies concerned depending on each Member's situation.

- (a) 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].
- [(b) 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.]
- (c) A notification issued under a system of import/rapid alert [restricting or prohibiting imports] [[shall not be maintained] [shall be noted to have expired]] 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.]
- (d) 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.
- (e) The speed and standard of publicity of de-notification of such alert shall equal the level applied at its issuance.

[1.3 Customs unions should progressively adopt the provisions contained in paragraph 1.1 and 1.2.]

Definitions

[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][countries]] or to all ports of a country [or customs unions] 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][subject to a reinforced level of inspection]] at the border of that country [[every port of a] [or] customs union].]]

2. Detention

2.1 [[In case] [If]] imported goods are detained for inspection by customs or any other authority of a Member country, [[information] [notification] regarding such detention shall be provided to the importer or his authorized agent [[promptly] [as soon as practicable]].

[3. Test Procedures

- 3.1 (a) In case of the first test of a sample having shown an adverse finding, each Member conducting such a test [[shall][may]] grant the concerned importer or the exporter or their authorized agent the right to a second confirmatory test.
- (b) A clear procedure shall be laid down for such a confirmatory test including a validated test method.

- (c) A list of accredited laboratories shall be published where confirmatory tests can be carried out.
- [(d) 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.]]

ARTICLE 6: FEES AND CHARGES CONNECTED WITH IMPORTATION AND EXPORTATION

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

1.1 The provisions of this article shall apply to all fees and charges [including fees for cargo rights¹⁴] other than import and export duties and other than taxes within the purview of Article III of GATT 1994 imposed by customs and other [[border] [governmental]] agencies, [including those bodies that act on behalf of governmental agencies on matters of customs intervention] [in connection with importation, exportation [and transit] of goods]. Such fees and charges shall be imposed only for services rendered in connection with importation or exportation of goods or for any formality required for undertaking such importation or exportation.

[[a.)) [1.2]] Fees and charges shall be limited in amount to the approximate cost of the services rendered [including, where appropriate, an element for cost recovery]. [The cost of services rendered shall be understood to refer broadly to all costs related to the provision of services including reasonable infrastructure-related, capital cost recovery, and continuing personnel training, equipment and software upgrades and maintenance related costs and expenses.]

[[b.)) [1.3]] [No fees and charges [[shall] [should]] be levied on an *ad valorem* basis, unless [[such fee or charge is capped at a level not exceeding] [they are less than]] the approximate cost of the service[s] rendered]. [This upper cap shall be published according to provision 1.1.f of this agreement.]

[[c.)) [1.4]] Information on fees and charges shall be published [in accordance with Articles 1 and 2 of this Agreement]. This information shall include the fees and charges that will be applied, reason for such fees and charges, the responsible authority and when and how payment is to be made.

[[d.)) [1.5]] An adequate time period shall be accorded between the publication of new or amended fees and charges and their entry into force except in urgent circumstances [or] when justified by legitimate public policy objectives. Such fees and charges shall not be [applied] [imposed] until information on these has been published.

[[e.)) [1.6]] Each Member shall periodically review its fees and charges with a view to reducing their number and diversity, where practicable.

¹⁴ [Taxes or fees which are payable in respect of cargo rights by foreign carriers and levied on freight, often charged per container, and passed on as a charge to the importer.]

[2. Penalty Disciplines

[2.1 Each Member shall ensure that penalties for breaches of customs laws, regulations, and procedural requirements are based on the culpability of the legally responsible party for compliance with the relevant law, regulation, or procedural requirement.]

2.2 Each Member shall provide that any penalty for minor breaches, other than clerical errors, of customs laws and regulations shall be no greater than necessary to serve merely as a warning to avoid future breaches.

[2.3 Each Member shall provide that a clerical error in completing paper or electronic customs documents shall not be subject to penalties, unless the error is part of a consistent pattern of such errors over a significant period of time. A Member may require correction of the clerical error prior to payment of the duties, fees, and taxes.]

[2.4 Each Member shall ensure that it maintains procedures to avoid conflicts of interest, including ensuring that government officials do not personally benefit or receive a portion of any penalties or duties assessed or collected.]

[2.5 Each Member shall ensure that when a penalty is assessed for a breach of customs laws, regulations, or procedural requirements, an explanation in writing is provided to the legally responsible party upon whom the penalty is assessed specifying the nature of the breach, the products and/or means of transport involved, and how the penalty amount was determined.]

[2.6 Each Member shall provide for the reduction of civil or administrative penalties which would have otherwise been imposed on a legally responsible party, when that party voluntarily discloses the circumstances of a breach of customs laws, regulations, or procedural requirements prior to the discovery by the customs administration of the breach. Where the disclosing party can correct the breach, a Member may require that the party correct it within a reasonable period of time, including paying any duties, taxes, and fees owed.]

2.7 Each Member shall establish or maintain judicial, arbitral, or administrative tribunals and procedures for [prompt] review and, where warranted, correction of final administrative actions regarding matters covered by this Article. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.¹⁵]

2.8 Each Member shall specify a fixed, finite period within which it may initiate penalty proceedings in connection with a breach of a customs law, regulation, and procedural requirement.

[2.9 "Legally responsible party" is the person(s) that has the obligation to comply with a customs law, regulation or procedure.]

2.10 "Clerical error" shall mean a mistake made in copying, inputting or transmitting information.

[2.11 "Minor breaches" shall mean [inadvertent] omissions or mistakes, including mistakes in interpretation of a customs law, regulation or procedural requirement, [obviously] made without fraudulent intent or gross negligence.]]

¹⁵ This language may be dropped from the proposal should it be adequately addressed in the context of the Article X proposals on appeal procedures.

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

1. Pre-arrival Processing

1.1 [Members shall maintain or introduce pre-arrival processing, [[which is defined as]][or]] administrative procedures of customs and other relevant border agencies to [[accept][receive]] and examine import [[documentation or][data]] and other required information [[upon the submission][submitted]] by traders prior to the arrival of [goods] [[means of transport carrying the goods][goods and means of transport]], in order to further expedite the [[clearance][release]] of goods [and/or the immediate release of goods upon arrival] [[if][where] appropriate]] [and feasible, without prejudice to the right of Members to require further examination, physical inspection or the submission of any other requirement]. [In cases where it is decided that neither further examination, physical inspection nor any other submission is required, goods shall be [[released][cleared]] immediately upon arrival, provided that duties and taxes [and other relevant fees and charges] are paid or provided that a guarantee sufficient to ensure such payment is posted.]]

[Members shall maintain or introduce procedures allowing traders to submit import documentation and other required information to customs and other relevant border agencies prior to the arrival of the goods, where appropriate. [In cases where all the regulatory requirements have been complied with and inspection or examination of the goods is not considered necessary, the goods shall be released immediately upon payment of customs duties and taxes or, where deemed appropriate by the authorities concerned, upon submission of a sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of customs duties and taxes for which the goods may be liable.]]

1.2 Reservations: Nothing in these provisions shall affect the right of Members to [[conduct examinations where necessary][inspect or examine the goods]] or to maintain appropriate border control [with the use of risk management].

1.3 With respect to vessels subject to procedures for the declaration (by manifest or similar document) of the vessel and its cargo, such procedures [[will][shall]] be applied [immediately] prior to the vessels' arrival, [or as rapidly] as not to unduly delay the vessel and the unloading of its cargo.

1.4 Members [[will][shall]] provide for advance electronic lodging of documents in electronic format and for pre-arrival processing of such documents [appropriate to the procedure applicable] [prior to the arrival].

2. Separation of Release from Final Determination and Payment of Customs Duties, Taxes and Fees

2.1 Each Member [[shall][may]] adopt or maintain procedures allowing an importer [or its agent] to [[remove][ask][apply]] for the release of]] goods from customs' [[control][custody][charge]] [prior to the [final] determination and payment of [customs] duties, [and] taxes [and fees] [and charges]] [[when these [have to be paid but] [are not] determined [due to difficulties of determination] [at or] prior to arrival][where it is decided that neither examination, physical inspection, nor any other submission is required]] [subject to the commitment to produce, in addition to the guarantee for the amount owed, all documents subsequently required] [when there is dispute between the customs and the importer in determining the payment of duties, taxes and charges].

[In cases where all the regulatory requirements have been complied with and inspection or examination of the goods is not considered necessary, the goods shall be released immediately upon payment of customs duties and taxes or, where deemed appropriate by the authorities concerned, upon submission of a sufficient guarantee in the form of a surety, a deposit or some other appropriate

instrument, covering the ultimate payment of custom duties and taxes for which the goods may be liable.]

2.2 A Member may require sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument for this purpose. The guarantee shall [normally] be limited to an amount calculated to ensure compliance with a Member's requirements for customs duties, taxes and fees [and] [other charges.] [The Guarantee] [shall not represent an indirect protection to domestic products or a taxation of imports for fiscal purposes]. [[Once the Member has determined that these requirements have been satisfied, the guarantee for the goods shall be discharged without delay.][The guarantee shall be discharged without delay when it is no longer required.]] [Each Member may have an overall guarantee which would ensure compliance with the various transactions.]

2.3 A Member may detain and examine goods in a manner not otherwise inconsistent with the Member's WTO rights and obligations. [A Member is not obliged to release the goods where its import requirements have not been complied with.]

3. Risk Management

[3.1 A [[customs union][Member]] shall apply a [[harmonized] [common]] risk management system across the entire customs union.]

3.2

[Members shall concentrate customs and other relevant border agencies control, particularly documentary examinations and physical inspections, on high risk consignments while expediting the release of low risk consignments.]

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

[3.4 [[Members shall establish appropriate][The]] selectivity criteria [as a basis for identifying risk, which] may include [*inter alia*] the specific commodity code, country of origin, country whence consigned [or shipped], [licensing indicator,] [status of goods with regards to special requirements,] value of goods, compliance level or status of traders, type of means of transport and the traders' purpose of the stay in the Customs territory.]

[3.5 Members shall, where practicable, refer to relevant international standards and practices including the Revised Kyoto Convention and the WCO Risk Management Guideline as a basis for its risk management.]

[3.6 Risk management shall not be [[used as or have the effect of creating disguised discrimination and obstacles to trade][designed or applied to create arbitrary or unjustifiable discrimination between Members under the same conditions or a disguised restriction on international trade]].]

[3.7 Risk management shall be applied, to the extent possible, to the relevant [trade facilitation] measures including [but not limited to] pre-arrival processing, customs audit, [and] authorized traders [customs valuation, tariff classification and rules of origin].]

[3.8 Definitions:

- (a) **Risk** means the potential for non-compliance with customs and/or other relevant laws.

- (b) **Risk Management** means the systematic application of management [and statistical] procedures and practices providing customs and other relevant border agencies with the necessary information to address movements or consignments [[which present a risk][on the basis of risks they represent]].
- (c) **Customs Control** means measures applied by the customs to ensure compliance with the laws and regulations which the Customs is responsible for enforcing.]

4. Post-clearance Audit (PCA)/Customs Audit

4.1 [With a view to expediting the release of goods at borders] Members shall [facilitate] [, where possible,] [without any prejudice to the audit conducted by the constitutional audit] [[adopt customs audit] [customs control, notably by recourse to ex-post control¹⁶]] [, especially post-clearance audit,] [with a view to expediting the release of [goods] [[located in the primary zones of customs jurisdiction] [at borders]].

4.2 If a Member adopts customs audit, it shall [subject to domestic law] ensure that the customs audit does not infringe upon the [legitimate] [[legal interests][rights]] of the persons concerned¹⁷.

4.3 The customs audit shall be implemented in a transparent manner. [Members may notify the persons concerned of the relevant initiation of the case.] Members shall notify the persons concerned of the result of the case, the rights and obligations it has, and the evidences and reasons for the result. The person shall be provided the right to appeal against any specific customs audit case it is involved [in].

Alt.1

[4.4 Members may use the result of customs audit as a [legal] basis for further actions [that are permissible to local customs authorities], including investigations into the specific cases, dealing with the persons or goods concerned, etc.]

Alt.2

[4.4 Members acknowledge that the information obtained in customs audit may be used in further administrative or judicial procedures.]

4.5 Members shall, wherever practicable, use the result of customs audit in applying risk management and [[identifying authorized trader[s] status][granting authorized trader status]].

Definition

Customs audit means the [audit][control and exam] [and the effective verification in the offices of the enterprises of the goods]¹⁸ conducted by the customs [following customs release and during a determined period of time] [on the basis] of the account books and vouchers, customs declaration documentations or data, commercial documents [and goods] of the [[traders] [importers, consignees or their representatives]] [operators and the beneficiaries of this simplified procedure]¹⁹ including electronically stored information [[[for compliance with customs legislation²⁰] [with the purpose to

¹⁶ "... le contrôle douanier, notamment par le recours au contrôle à posteriori.... " in the original French.

¹⁷ "Persons concerned" include, importer, consignees or its agents.

¹⁸ "et la vérification effective dans les locaux des entreprises de marchandises" in the original French.

¹⁹ "... opérateurs et des bénéficiers de cette procédure simplifiée" in the original French.

²⁰ "(...) respect de la législation douanière" in the original French.

identify [the authenticity and validity of the trade]]].[[and guarantee the compliance with customs legislation.]]

4.6

Members [[shall][may]] conduct a customs audit through methods of regular audit²¹ and targeted audit²² to identify the risk and assess the compliance of traders.]

5. Establishment and Publication of Average Release [and Clearance] Times

5.1 Members [[shall] [may]] [where practicable] [urge to] measure and publish their average time for the release [and clearance] of goods [in a consistent manner on a periodic basis] [in a transparent manner on a periodic basis] [for major customs offices], [using tools such as the WCO Time Release Study]²³ [except where its imported goods are released instantly on arrival].

[Members are encouraged to measure and publish their average release time of goods periodically for the benefit of traders.]

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

5.3 In case of an undue delay in [[the release of goods], [customs clearance]] with respect to the average time published by the Member concerned Members [[shall], [may]] provide the traders who have made written request with the reasons for the delay [except when such notification would impede the pursuance of legitimate policy objectives or other limited circumstances that are made public].

[In case of an undue delay in the release of goods with respect to the average time published, Members may provide to traders the reasons for the delay whenever there is a request to so provide in writing]

6. [Authorized [[Traders][Operators]]]

6.1 Members [[shall][may]] apply [further] simplified import and export [and transit] formalities for [economic operators] [within its customs territory] which meet [[the criteria specified by the customs] [[specific criteria related to compliance with customs [and other border agencies] requirements criteria specified by [[the customs][domestic legislation]] [except where its imported goods are released instantly on arrival]:

[6.2 The specific criteria for obtaining authorised traders status [[will][may]] include the following:

- (a) An appropriate record of compliance with customs and other related laws and regulations;
- (b) A system of managing records to allow for necessary internal controls;

²¹ Regular audit is performed periodically according to auditing programs set forth by Customs focusing on business system and routine operation and management situation.

²² Targeted audit is performed on the selected traders and commodities with high risks resulting from the results of risk analysis and assessment.

²³ Each Member may determine the scope and methodology of such average release time measurement in accordance with its needs and capacity.

[(c) Financial solvency [including, where appropriate, provision of a sufficient security/guarantee]; and/or]

[(d) The status of the exporter or importer].]

6.3 [As determined by domestic legislation,] the [additional] facilitation measures for such authorised traders [[may][shall]] [where practicable] include [*inter alia*]:

Alt.1

[(a) [[The possibility of periodic [declarations and] payment of duties][Deferred payment]]];]

[(b) [[Reduced][A low incidence of]] physical inspections [and examinations] [in all but exceptional circumstances];]

[(c) [[Reduced][Minimal]] documentary and data requirements as determined by domestic legislation, and [[[including] the right to][when appropriate]] submit for processing a [single document] covering all goods contained in a consignment;]

[(d) [More] rapid release time [by way of reduced physical examination] [including], [and] [where appropriate, clearance at trader's premises];]

Alt.2

[(a) Simplified declaration [necessary to identify the goods followed by the final goods declaration];

(b) Reduced documentary and data requirements;

[(c) Reduced physical inspections and examinations;]

[(d) Rapid release time.]]

6.4 [Additional facilitation measures may [also] include:]

[[(a) Remote filing;]

[(b) A single goods declaration for all imports and exports in a given period;

(c) Deferred payment of duties, taxes, fees and charges;

(d) Reduced guarantees;

(e) Clearance of goods at the premises of the authorised trader or another place authorized by the customs.]

[6.5 The specific criteria to qualify as an authorized trader shall not be designed or applied so as to afford or create arbitrary or [unjustifiable discrimination] [or a disguised restriction on international trade].]

[6.6 Members [[shall]][may]] use risk management techniques in the assessment of any application for authorized trader status.]

[6.7 Members shall [[develop authorized traders schemes on the basis of international standards and instruments]][draw upon relevant international standards and instruments]] [as well as existing industry-specific standards, certification and verification instruments] as a basis for authorized trader schemes, where such standards and instruments exist, [except when they would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued].]

[6.8 [Whenever] norms for [the certification of] authorized trader [status] [are established [and implemented] at the customs union level] they shall [in as much as possible] be applied uniformly by all [of its] Member states [of a customs union].]

[6.9 In order to enhance the facilitation measures provided to traders Members shall afford to other Members the possibility to negotiate mutual recognition of authorized trader schemes on the basis of international standards and instruments.]

[7. Expedited Shipments

7.1 Each Member [[shall]][may]] adopt or maintain procedures allowing for expedited release of goods to [persons that apply for such [[service]][treatment]]], while maintaining customs control [and selection]. A Member may require that an applicant shall, as a condition for the application of the procedures described in paragraph 7.2 to its expedited shipments:

- [(a) Provide adequate infrastructure to allow for the processing of its expedited shipments;]
- [(b) Submit [the information necessary for [[release]][processing]]] in advance of the arrival of an expedited shipment [the information necessary for release];
- [(c) Be assessed fees limited in amount to the approximate cost of services rendered in providing the customs procedures in paragraph 7.2;
- [(d) Maintain a high degree of control over expedited shipments through the use of internal security, logistics, and tracking technology from pick-up to delivery; and]
- [(e) Assume liability [for payment of all customs, duties, taxes [charges] and fees] to the customs authority for the [[articles]][released goods]].

7.2 Subject to subparagraphs 7.1(a) and (c)²⁴, the expedited release procedure shall:

- [(a) Allow [as quickly as possible] for the submission and processing, including through electronic means, of information necessary for the release of an expedited shipment [prior to its arrival]]²⁵;

²⁴ This addition is intended to make clear that the treatment in paragraph 7.2 need not be provided if the conditions in paragraph 7.1 have not been met or, as provided in paragraph 7.3, if authorities consider it necessary to obtain additional information or conduct screening or examine goods. Also, paragraph 7.3 has been modified to confirm that expedited treatment need not be provided to restricted goods.

²⁵ This language may be dropped from the proposed article should it be adequately addressed in the context of the proposal on release and clearance.

- [(b) Minimize the documentation required for the [[release][processing]] of expedited shipments, including, to the extent possible, providing for release based on a single submission of information on all goods in the expedited shipments;]
- [(c) Provide for expedited shipments to be released [[in a time-bound manner][under normal circumstances within][within a time period set by each individual Member]] [[3 hours][6 hours][a reasonable period of time][rapid release time][a time frame(s) not exceeding 24 hours][an agreed time frame between the applicant and a Member]] [consistent with their national procedures] [after arrival] provided the [required] information [necessary] for release has been submitted;]
- [(d) Apply [[without regard to weight or value [in the light of the delivery of the goods]][with respect to the nature of the goods]];]
- [(e) Allow [under normal circumstances] for the release of expedited shipments before and without prejudice to the final determination [and payment] of the applicable customs duties, taxes and fees owed, if, where so required, the importer [or exporter] 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 [exportation] of the expedited shipments²⁶; and]
- [(f) Provide for a *de minimis* shipment value for which customs duties and taxes will not be assessed²⁷.]

7.3 Nothing in these provisions shall prevent a Member from obtaining additional information [[, applying other measures][conducting screenings, or examining goods, where]] necessary to maintain appropriate border control, [[including the use of risk management systems][including through the use of systems that distinguish between low-risk and high-risk goods]]. [Further], [for goods subject to licensing or similar regulatory requirements, nothing in [[this proposal][these provisions]] shall prevent a Member [from assessing customs duties or taxes or,] from requiring as a condition for release, [both] the submission of information additional to that in subparagraph 7.2(b) [and the fulfilment of non-automatic licensing requirements]]. [Further, a Member is not obliged to release the goods where its import requirements have not been complied with.]]

ARTICLE 8: CONSULARIZATION

[1. Prohibition of Consular Transaction Requirement

1.1 A Member shall not require a consular transaction²⁸, including any related fee or charge, in connection with the importation of any good. [To ensure the authenticity of all commercial documentation, the Member should strengthen customs cooperation.]]

²⁶ This language may be dropped from the proposed article should it be adequately addressed in the context of the proposal on release and clearance.

²⁷ By virtue of the fact that the goods described in the last sentence of paragraph 7.3 need not be provided expedited treatment, the *de minimis* provision would not interfere with collection of taxes of such goods (e.g., liquor).

²⁸ 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."

ARTICLE 9: BORDER AGENCY COOPERATION

1. Coordination of Activities and Requirements of [all] Border Agencies

1.1 A Member shall [[ensure][endeavour]] that its authorities and agencies involved in border [controls] and other import [, export and transit procedures] [[harmonize their procedures][cooperate and coordinate] [with one another] in order to facilitate trade.

1.2 Members [are encouraged to][shall, to the extent possible and practical] [should], [cooperate] with [their] [bordering] Members and coordinate their procedures at border crossings to facilitate cross-border trade. [Where possible and practical] Such cooperation and coordination may include:

- (i) Alignment of [procedures and formalities including] working days and hours;
- [(ii) [Development and sharing of common facilities or] setting up [of] juxtaposed customs offices;] [and correlating the competence of those offices]
- [(iii) [[Joint controls] [Development and sharing of common facilities]] ;]
- [(iv) [[Establishment of one stop border post control] [Alignment of procedures and formalities]] ;]
- [(v) Joint controls];
- [[[(v)] [vi]] [[Provision of expedited processes for goods in transit [such as a single channel]] [[To the extent practicable] [Making available]], physically separate transit infrastructure (such as lanes, berths and similar) [[[shall] [should]]] be made available] for traffic in transit [at border crossings]] ;
- [[[(vi)][(vii)]] Development of procedures for exchange of [non-confidential] information²⁹ [[subject to Article 1 of the Trade Facilitation Agreement] [for conducting joint controls and recognition of inspection results]]] ;

[[ARTICLE 9 BIS: DECLARATION OF TRANSHIPPED GOODS]

[[1.3][1.1]] When goods [[being transhipped][under customs transit]] are ultimately destined for the territory of [[that][a]] Member, the person concerned shall be permitted to declare the goods for the relevant customs procedure at the [[[[customs office]] of destination][place of entry]] where [[these obligations][customs formalities]] can be fulfilled.]

[[1.4.][1.2]] Reservations: Without prejudice to paragraph 1.3, nothing in the provisions of that paragraph shall affect the right of Members to board, search and/or rummage vessels where necessary, or maintain appropriate border control.]

ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION

[[1.][2]] [Periodic] Review of Formalities and Requirements

[[1][2]].1 [Each Member shall [periodically][as appropriate] review its formalities and [documentation] requirements [relating to import, export [and transit]] [at reasonable and [[regular] [periodic]] intervals], taking into account relevant new information and business practices, availability

²⁹ Subject to further negotiations on how a Trade Facilitation Agreement will coexist in relationship to GATT Article X.

and adoption of [new] techniques and technology, [[international best practices] and input[s] from [interested parties]³⁰.]][as appropriate]]

[[2][1]].2 The Trade Facilitation Committee shall develop procedures for sharing relevant information and best practices, as appropriate³¹.

[[2][1]].Reduction/Limitation of Formalities and Documentation Requirements

[[2][1]].1 Members shall minimize the incidence and complexity of import and export formalities [and transit] and decrease and simplify import and export documentation requirements [or data]. In doing so, Members shall consider whether alternative formalities and requirements that can achieve the legitimate objectives are reasonably available, and adopt those formalities and requirements which are significantly less trade restrictive. Members shall ensure that the formalities and requirements are applied in an efficient manner so as not to constitute an unnecessary obstacle to trade.

[[2][1]].2 Any such formalities or requirements shall not be maintained if the circumstances or objectives giving rise to their adoption no longer exist [or if changed circumstances can be addressed in a less trade restrictive manner].

[[2][1]].3 Recognizing the need to minimize the incidence and the complexity of trade documents, Members shall ensure that:

- [(a) Documentation requirements are no more administratively burdensome or trade restrictive than necessary to achieve their legitimate objectives; and]
- [(b) The following is aligned with international [trade facilitation] standards and recommendations as set out in subparagraphs 2.3(b), (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.]]]

(The following paragraph and subparagraphs (a) and (b) are proposed to replace the text for both 1. [Periodic] Review of Formalities and Requirements and 2. Reduction/Limitation of Formalities and Documentation Requirements.)

³⁰ This self-initiated review shall not affect Members' rights and obligations under paragraph 2 of Article VIII of GATT 1994.

³¹ This paragraph should be moved to the part of the Agreement dealing with the functions of the TF-Committee at a later stage.

[Members affirm the importance of minimizing the incidence and complexity of import, export, and transit formalities and of decreasing and simplifying import, export and transit documentation requirements. In furtherance of these objectives;

- (a) Each Member is encouraged to periodically review its formalities and requirements taking into account changed circumstances, relevant new information and business practices, availability and adoption of techniques and technology, international best practices and input from interested parties, and
 - [(b) The Trade Facilitation Committee shall (i) develop procedures for sharing relevant information and best practices as appropriate and (ii) consider what reasonable additional measures Members should take.]]
-

[[1][2]].1 The provisions of this article shall apply to all formalities and documentation requirements within the meaning of paragraph 4 of Article VIII of GATT 1994.

[[1][2]].2 Members shall ensure that formalities and documentation requirements are applied in an efficient manner so as not to constitute an unnecessary obstacle to trade.

[[1][2]].3 Members shall minimize the incidence and complexity of formalities and decrease and simplify documentation requirements.

[[1][2]].4 Members should ensure that the following is aligned with International trade facilitation:

- (a) 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;
- (b) 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
- (c) Electronic messages to be interchanged between Customs administrations and between Customs administrations and other trade users with international standards for electronic information exchange.

3. Use of International Standards

3.1 Alt. 1: Members [shall][shall, where practicable,] [may] base their importation, exportation [[and] [or]] transit [formalities and] procedures on [a relevant framework of] relevant international standards [or parts thereof] except as otherwise provided for in this Agreement [Article].

Alt. 2: Members [are encouraged to][shall][consider][shall use as reference] relevant international standards or parts thereof except as otherwise provided for in this [Agreement] [Article] for their importation, exportation and transit formalities and procedures.

3.2 [Members may use regional standards [whenever they are compatible with international standards and] for [the purpose of] facilitating international trade.]

[3.3. [Members are not required to use international standards [when the WTO Member is not a member of the organization that sets the international standard in question] that are not appropriate to their development, financial or trade [capacities] [needs] or that would pose fundamental technological or infrastructural problems for them] [or where these would be an ineffective or inappropriate means for the fulfilment of the legitimate objective pursued].]

3.4 Members are encouraged to take part, within the limits of their resources, in the preparation and periodic review of relevant international standards by appropriate international intergovernmental organizations.

3.5 Alt. 1: [The Trade Facilitation Committee³²:

- (a) [shall] [may] [monitor] [encourage] the [practical implementation and] [[use] [application]] of international standards by Members [to advance the objectives of this Agreement];
- (b) [shall][should][may] establish, in conjunction with the relevant international organizations, a list of relevant international standards.]

[Alt. 2: The TF Committee shall develop procedures for sharing relevant information and best practices on the implementation of international standards, as appropriate, including through invitations to relevant international organizations to discuss their work on international standards. As appropriate, the Committee may identify specific standards that are of particular value to Members.]

3.6 [Alt. 1: For the purposes of this Agreement, the term "international standards" shall be understood to refer to [international Conventions or Agreements] [standards, guidelines and recommendations] relating to facilitating international trade, *inter alia* those administered by the World Customs Organization (WCO) and United Nations Centre for Trade Facilitation and Electronic Business.]

[Alt. 2: For the purpose of this Agreement, the term "international standards" shall be understood to refer to standards promulgated by the relevant intergovernmental international organizations whose membership is open to all WTO Members.]

[International Standards [and Practices]³³: (moved here from Pre-arrival processing as agreed at the NGTF session of 9 February 2010)

- (a) Members recognize the need for using international standards [and practices] [[as efficient means to facilitate trade][as a basis of pre-arrival processing]].
- (b) Members shall, where applicable, draw on relevant international standards [and practices] as a basis for pre-arrival processing.]

4. Acceptance of Commercially Available Information and of Copies

4.1 Customs and other border agencies shall require only those [documents] [or data] [as are] necessary [to] [exercise border controls] [for the] [release and clearance of goods] [and to ensure that

³² This paragraph could be moved to the part of the Agreement dealing with the functions of the TF-Committee at a later stage.

³³ International standards and practices include Standard 3.25 of the Revised Kyoto Convention and WCO Guidelines for the immediate release of consignments by Customs.

all regulatory and legislative requirements have been complied with]]. [to exercise border controls for the release and clearance of goods]

[4.2 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. [Copies will be accepted only for processing pre-arrival clearance and not for the final release of goods.]]

4.3 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] [except in urgent circumstances and other limited circumstances that are made public].

[4.4 In cases where Goods declarations [and other supporting documents] are lodged electronically and authenticated by electronic signatures or electronic procedures and received [and accepted] by customs and other border agencies [for the release and clearance of goods], [[no other original of these documents shall be requested by customs and other border agencies.][customs and other border agencies shall endeavour to accept copies of commercial documents]]]

[4.5 Without prejudice to paragraph 4.4, customs and other border agencies may request for the original of these documents for other post-clearance activities.]

4.6 [As far as possible the] customs and other border agencies [[may][shall endeavour to]] [[allow supporting documents not][not insist upon supporting documents]] 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][with]] the [declarant] for a specific period.

4.7 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.

[4.8 Nothing in these provisions shall prevent a Member from requiring original documents or data in the course of exercising post entry audit.]

5. Single Window/One-time Submission

5.1 Members [where practicable]] [[shall][may]] [endeavour to] [maintain or] establish a "single window"³⁴ where documentation and/or data requirements for exportation, importation and transit [procedures] are submitted [by a trader resident in the Member state in question] [[one time only][to a single entry point]]. [[[The single window shall undertake onward distribution of the aforementioned documentation and/or data requirements to all the relevant authorities [and participating agencies]].][A single window will be responsible for distribution of documents [[and information] [and/or data]] for all the bodies involved in international trade.]]] [[The single window is generally managed centrally by a lead agency, enabling the appropriate governmental authorities and agencies

³⁴ A single window is defined as a facility that allows parties involved in trade and transport to lodge standardized documentation and /or data with a single entry point to fulfil all import, export, and transit-related regulatory requirements (UN/CEFACT Recommendation No.33).

to receive or have access to the information relevant for their purpose.]]³⁵[After the examination by the relevant authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.

5.2 In cases where documentation and/or data requirements have already been received by the single window, the same documentation and/or data requirements shall not be requested by [[other][participating]] authorities or agencies except in urgent circumstances and other limited exceptions which are made public.

5.3 Members shall notify [other Members through] [[the WTO Secretariat][the Trade Facilitation Committee]] the details [of operation] of the single window, [including the [lead agency,] participating authorities and agencies], [the functions of the single window, the contact point [of the lead agency] for the single window as well as the procedure of its usage³⁶.]

[5.4 Members shall, to the extent possible and practical, use information technology to support the single window.]

[5.5 Members shall, where practicable, use relevant international standards [and practices] [such as UN/CEFACT Recommendation No. 33] as a basis for the single window schemes.]³⁷

5.6 With regard to the scope of the participating authorities or agencies, and of the documentation and/or data requirements, Members [may] [are encouraged to] implement the single window in a progressive manner [[taking into account each Member's implementation capacity][subject to their requesting for and receiving from other Member(s), the requisite technical assistance and capacity building]].

6. Elimination of Pre-shipment [and Post-shipment] Inspection

6.1 Without prejudice to paragraph[s] 6.2 [and 6.3], Members shall [strive to] not require the use of [mandatory] pre-shipment [and post-shipment] inspections [[or their equivalent][or other similar bodies]] [[on customs matters such as valuation and classification][for customs classification and valuation purposes]].

6.2 Developing [and least-developed] country Members [which currently have pre and post-shipment inspection requirements] shall, [subject to their requesting for and receiving from other Member(s), the necessary technical assistance and capacity building] [to the extent possible [strive to] progressively] eliminate any [mandatory] requirements to use pre [and post] shipment inspections [or their equivalent] [[not later than [X] years from the entry into force of this [agreement][within the time period specifically agreed with such Member(s)]]].

[6.3 Least-developed country Members shall [to the extent possible [strive to] progressively] eliminate any [mandatory] requirements to use pre-shipment inspections [or their equivalent] not later than [Y] years from the entry into force of this agreement.]

6.4 From the entry into force of this agreement, Members shall not introduce or apply any new requirements to [[use][make mandatory the use of]] pre-shipment inspections [or their equivalent].

³⁵ This sentence is proposed to replace the two previous ones.

³⁶ Note to the reader: This article may be dropped from the proposed text should it be adequately covered by the Article on publication and availability of information.

³⁷ In case of being addressed as a cross-cutting issue, the bracketed wording will be deleted.

6.5 [During the transition periods in paragraphs 6.2 and 6.3,] Members shall ensure that [[pre-shipment inspection companies [or their equivalent], acting on their behalf or employed by them,][any entity acting on their behalf or employed by them to carry out compulsory inspection, verification or certification activity in relation with import, export or transit border procedures shall]] act consistently with the relevant commitments of Members, including in the field of Trade Facilitation.

[6.6 No Member shall require the provision of shipping notes [[(Bordereau de Suivi des Cargaisons)][Cargo Tracking Notes]] and associated documents as a condition for the import, unloading or transhipment of cargos.]

[7. Use of Customs Brokers

[7.1 Without prejudice to paragraph 7.2, Members shall [endeavour to] not require the mandatory use of customs brokers.]

[7.2 Subject to maintaining transparent and reasonable licensing requirements and procedures, a [developing country] Member may require the compulsory use of customs brokers.]

[7.3 Any person subject to licensing requirements in paragraph 7.2 shall be eligible for a license. In the case of legal persons, they may operate with their own in house brokers, licensed by the respective authority [of the country where the broker will develop its operations in accordance with paragraph 7.2 above].]

[7.4 [Developing country Members shall eliminate any requirements for mandatory use of customs brokers not later than [X] years from the entry into force of this commitment. Least-developed country Members shall eliminate any requirements for mandatory use of customs brokers not later than [Y] years from the entry into force of this agreement.]]

7.5 [Members, if and when licensing customs brokers, shall apply licensing rules that are transparent, [non-discriminatory] and reasonable, [having regard to the nature of the tasks which they are licensed to carry out].]

- (a) [Any person, subject to the licensing requirements in paragraph 7.4, shall be eligible for a licence. In the case of legal persons, they may operate with their own in-house customs brokers, licensed by the respective authority of the country where the broker will develop its operations in accordance with paragraph 7.2 above.]
- (b) [Developing country or LDC Members requiring mandatory use of customs brokers in accordance with paragraph 7.4 shall apply licensing rules, requirements and procedures that are transparent, [non-discriminatory] and reasonable [having regard to the nature of the tasks which they are licensed to carry out].]

[7.6 This commitment shall not undermine a Member's rights and obligations under the GATS.]

[7.7 Members should be given flexibility to determine the criteria which apply when licensing customs brokers.]]

8. Same Border Procedures within a Customs Union

8.1 For border clearance [and release] of goods, [and in particular for clearance of agriculture and food products,] member states of a customs union [[shall adopt [[common][the same]] border procedures][should progressively adopt harmonized border procedures]] [including inspection of

goods, release of goods, SPS and TBT measures, etc.]. [This shall include adoption of same standards including specifications, terminologies and definitions, inspection, sampling and test methods.]

[9. [[Similar] [Uniform]] Forms and Documentation Requirements Relating to Import Clearance within a Customs Union

[9.1] [8.2] All documentation requirements relating to import [export and transit] clearance shall be [[similar] [uniform]] for all Member states of a customs union.]

10. Option to Return [or Destroy] Rejected Goods to the [[Importer][Exporter]]

[10.1 In case of [[a customs authority or competent body of a Member rejecting³⁸] [rejection of]] a [[good] [food] [consignment]] on account of failure to meet certain standards [rather than those of health and environmental protection] [of a customs union], an option [[shall][may]] first be given [to the] [[importer][exporter]] to [[return][re-export]] the rejected goods [to the exporter]; [only] upon failure [by the [[importer][exporter]]] to exercise this option within a reasonable period of time, a different course of action, including [the return of the goods to the exporter, [re-export the goods to the 3rd party if the latter agrees to accept the goods in question] or] destruction of the goods [at the cost of the importer] can be considered by the appropriate authority of the importing Member.] [In cases where goods are proven to be in violation of Intellectual Property Rights, the goods will be handled in accordance to the TRIPS agreement (including destruction of the goods, where appropriate).]

[10.2 In the case of return of prohibited and restricted goods, the exporting Member shall accept the returned goods.]

11. Temporary Admission of Goods/Inward and Outward Processing

(a) *Temporary Admission of Goods*

- (i) Each Member shall allow temporary admission of goods [in accordance with the international standards [and practices]] [where applicable to a particular country and taking account of national legislation] [subject to terms and conditions as may be specified in the national legislation].
- (ii) For the purposes of this Article, the term “temporary admission” means the Customs procedure under which certain goods [as defined by each Member] can be brought into [or out of] a Customs territory conditionally relieved totally or partially from payment of import duties and taxes; [[such goods must be imported [or exported] for a specific purpose and must be intended for re-exportation [or re-importation]]] [[such goods must be imported for a specific purpose and with the intention of being re-exported]] ³⁹ within a specified period and without having undergone any change except normal depreciation [and wastage] due to the use made of them.

Alternative

³⁸ "En caso de que la autoridad aduanera o lo organismo competente de un Miembro rechace" in the original Spanish.

³⁹ Replace "...que han de importarse con un fin determinado y estar destinadas a la reexportación..." with "...importadas para un propósito específico y con intención de ser re-exportadas dentro..." in the original Spanish.

- (i) If certain goods as defined by each Member are imported for a specific purpose and must be indented for re-exportation within a specified period and without having undergone any change except normal depreciation and wastage due to the use made of them, a Member shall allow such goods to be brought into a customs territory.
- (ii) A Member shall conditionally relieve total or partial payment of import duties and taxes on such goods.

(b) *Inward and Outward Processing*

- (i) Each Member shall allow inward and outward processing of goods [in accordance with international standards [and practices]] [subject to terms and conditions as may be specified in the national legislation].
- (ii) For the purposes of this Article, the term "inward processing" means the Customs procedure under which certain goods can be brought into a Customs territory conditionally relieved [totally or partially] from payment of import duties and taxes [and trade policy measures], on the basis that such goods are [[destined to be exported once having been subjected to manufacturing, processing or repair]⁴⁰ [intended for manufacturing, processing or repair and [subsequent exportation] [receiving a different customs regime]]⁴¹] .
- (iii) For the purposes of this Article, the term "outward processing" means the Customs procedure [[under which goods which are in free circulation in a Customs territory may be temporarily exported for manufacturing, processing or repair abroad and then re-imported with total or partial exemption from import duties and taxes] [according to which goods which are in free circulation in a customs territory]].

ARTICLE 11: FREEDOM OF TRANSIT

1. Scope

[1.1 *Definition of traffic in transit:* [[Goods [– including [those moved via fixed infrastructure, *inter alia* pipelines and electricity grids –]] and means of transport (including baggage and the personal belongings of the person operating the means of transport),][Goods (including baggage), and also vessels and other 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 [across] whose territory the traffic passes. [[Traffic][Goods and means of transport]] of this nature is termed "traffic in transit" irrespective of (i) trans-shipment, warehousing, [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. [Means of transport shall be deemed to be traffic in transit also if they carry exclusively goods in transit, even if the means of transport are not in themselves in transit according to the above definition.]]

⁴⁰ In the original Spanish the proposal is to add "destinadas a ser exportadas luego haber sido sometida a una...." after "ciertas mercancías" followed by "transformación, elaboración o reparación" (as currently in the text) but without the "y posterior exportación" at the end.

⁴¹ ".... recevoir ultérieurement en autre régime douanier" in the original French.

[1.2 Each Member undertakes that if it grants to any enterprise [including state trading enterprises], formally or in effect, exclusive or special privileges, such enterprise shall, in its regulations, formalities [fees] and charges – including transportation charges –, on or in connection with traffic in transit, act in a manner consistent with the provisions on traffic in transit of this Agreement [and otherwise solely in accordance with commercial considerations.]]

1.3 *Exception:* The provisions on traffic in transit of this Agreement shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage).

[1.4 Consignments which are being transhipped⁴² shall [not] be subject to transit procedures⁴³.]

2. Basic Freedom of Transit

2.1 [There shall be freedom of transit through the territory of each Member [via [[designated routes][the routes most convenient for international transit]]] [for traffic in transit to or from the territory of other WTO Members] [provided the routes are acceptable to the member whose territory is being transited through]. No distinction shall be made in the treatment of traffic in transit which is based on flag of vessels, the place of origin, departure, entry, exit or destination, or any circumstances relating to the ownership of goods, [of vessels or of other] means of transport [providing for exceptions set out in bilateral or plurilateral agreements].

3. Regulations, Restrictions and Non-Discrimination

3.1 Regulation on Traffic in Transit: [All charges and] regulations [and limitations] imposed by [[a Member][Members]] on traffic in transit to or from the territories of other Members shall be reasonable, having regard to the conditions of the traffic.

[3.2 Disciplines on Restrictions to Freedom of Transit:

- [(a) Traffic in transit shall not be subject to any restrictions unless a Member takes a measure to fulfil [[one of the objectives][legitimate public policy objectives, inter alia, those]] laid down in GATT Articles XX and XXI [which shall include the protection and maintenance of transit infrastructure]. Members shall ensure that any such measure shall not be more restrictive than necessary.]
- [(b) The restriction shall not be maintained if the circumstances or objectives giving rise to its adoption no longer exist or if the changed circumstances or objectives can be addressed in a less restrictive manner.]
- [(c) Each Member shall notify the Trade Facilitation Committee on the objective and duration of the restrictions it applies on an [annual] basis. If the restriction is not notified, any Member may bring the restriction in question to the notice of the Trade Facilitation Committee.]

[3.3 Strengthened Non-discrimination:

- [(a) Members shall not apply discriminatory measures to goods in transit, or [to vessels or other means of transport] [which are based on the flag of the vessel, the place of origin, departure, entry, exit, or destination, or any circumstances relating to the ownership of the 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

⁴² Defined as "transferred under customs control from the importing means of transport to the exporting means of transport within the area of one Customs office responsible for import and export."

⁴³ [Such consignments nevertheless fall under the definition of transit in the sense of GATT Article V.]

and provided that the measure concerned does not constitute a disguised restriction on international trade.]

- [(b) With respect to all [laws, regulations, formalities] [fees] and charges, including transportation charges, imposed on or in connection with 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 its own export or import traffic [or domestic movements of goods] [import-, export-, or] [domestic traffic], under like conditions, within the territory of that Member⁴⁴. [This principle refers to like products being transported on the same route under like conditions.]]
- [(c) Members recognize that the general and security exceptions provided for in GATT Articles XX and XXI shall be fully applicable, but for valid reasons not constituting a disguised restriction on international trade.]
- [(d) Most-favoured-nation treatment: Without prejudice to paragraph 7.1, with respect to all laws, regulations, formalities, [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 favorable than the treatment accorded to traffic in transit to or from any third country. [This principle refers to like products being transported on the same route under like conditions.]]
- [(e) Treatment preceding and following transit: Each Member shall accord to products and means of transport which have been or will be in transit through the territory of any other Member treatment no less favorable than that which would be accorded to such products and means of transport if they were travelling 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.]]

[4. Disciplines on Fees and Charges

4.1 Publication of Fees and Charges:

- [(a) Publication: Members shall [to the extent possible] publish [promptly] information on [all] charges [imposed in respect of traffic in transit]. This information shall include the reason for the charge, the responsible authority, the charges that will be applied, and when and how payment is to be made. The information [to the extent possible] shall be published, [in one of the three official WTO languages,] via an officially designated [/accepted] [[medium][source]], and to the extent practicable, an official website.^{45]}
- [(b) Prior publication: Except in urgent circumstances [and other limited exceptions, [which are made public]] [or when justified by legitimate public policy objectives],

⁴⁴ This provision shall apply to any local (public or private) agencies acting on behalf of the government.

⁴⁵ [Note to the reader: this paragraph may be dropped at a later stage if the issue is properly covered in another Article of the Agreement.]

Members [shall accord] [where possible and when deemed necessary] [provide] an adequate time period between the publication of information on new or amended [fees and] charges and their entry into force.⁴⁶]]

4.2 Periodic Review of Fees and Charges:

- [(a) *Periodic review:* Each Member [where possible] shall [periodically] review its charges [to ensure that they are in line with WTO commitments and] [with a view to reducing their number and diversity, where] appropriate whenever deemed necessary⁴⁷.]

4.3 More effective Disciplines on Charges for Transit – Reduction/Elimination:

- (a) Members shall [[exempt][suspend]] traffic in transit from customs duties and from all transit duties⁴⁸ [[or][and]] [other] [fees and] charges imposed in respect of transit, except:
- (i) [Reasonable] charges for transportation (such as tolls, road charges and similar), [having regard to the conditions of the traffic], or
 - (ii) [[Reasonable] transit charges][those] commensurate with the administrative expenses entailed by transit or with the cost of the service rendered. Any transit charge shall:
 - [Only] be imposed for [the administrative procedures entailed or] [transit] service[s] provided in connection with the transit movement in question;
 - [[[Not exceed the approximate [administrative expenses entailed or]]][shall be limited in amount to the]] cost of the transit service rendered;] and
 - [Not be calculated on an *ad valorem* basis.]]

(The following sentence is proposed to replace paragraphs 4.1, 4.2 and 4.3)

Provisions on fees and charges under Article 6 shall apply to traffic in transit.

5. Disciplines on Transit Formalities and Documentation Requirements

5.1 Publication:

⁴⁶ [Note to the reader: this paragraph may be dropped at a later stage if the issue is properly covered in another Article of the Agreement.]

⁴⁷ [Note to the reader: this paragraph may be dropped at a later stage if the issue is properly covered in another Article of the Agreement.]

⁴⁸ One Member proposed for this part of the paragraph to appear right below paragraph 2 dealing with basic freedom of transit.

- [(a) Publication: Each Member [where possible] shall publish all transit formalities and documentation requirements, and regional transit agreements or arrangements [except if a non-Member-Party to such an agreement or arrangement opposes publication]. The information shall be published, [in one of the three official WTO languages,] via an officially designated source, such as the official gazette, the official journal or an official web-site.⁴⁹]
- [(b) Prior publication: Except in urgent circumstances and other limited exceptions, [which are made public] [where possible and when deemed necessary], Members shall provide an adequate time period between the publication of new or amended transit formalities and documentation requirements and their entry into force.⁵⁰]

5.2 Periodic Review:

- [(a) Each Member [[where practicable][where possible]] 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 [whenever deemed necessary]. Such reviews shall allow for the participation of all interested parties and, as appropriate, may be held at a regional or international level.]

5.3 Reduction/Limitation/Simplification/Adjustment:

- (a) Any Member may require that traffic in transit through its territory be entered at the proper customs office [but, except in cases of failure to comply with applicable customs laws and regulations] [without prejudice to the other commitments on transit, but] such traffic in transit through its territory not be subject to any unnecessary delays, restrictions, inspections or controls, and shall [to the extent possible] be granted [[expedited][expeditious]] 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* and where applicable:
 - (i) *Special border crossing facilities for transit:* To the extent practicable, physically separate transit infrastructure (such as lanes, berths and similar) [[shall][should]] be made available for traffic in transit at border crossings.
 - (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 characteristics of traffic in transit.
 - (iii) *Limited physical inspections of goods:* Where goods are placed under a transit procedure, Members shall use risk management techniques adapted to the specific risks of traffic in transit 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.]

⁴⁹ Note to the reader: this paragraph may be dropped at a later stage if the issue is properly covered in another Article of the Agreement.

⁵⁰ Note to the reader: this paragraph may be dropped at a later stage if the issue is properly covered in another Article of the Agreement.

- (iv) *Reducing the administrative burden for traffic in transit:* [Transit formalities and documentation requirements shall be reasonable having regard to the conditions of the traffic, 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][may]] 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 authorized trader scheme with a view to grant simplified treatment to traders with a good track record of compliance with transit formalities and documentation requirements.]

- [(b) Nothing in these provisions shall affect the right of Members to detain, restrict, inspect or control traffic in transit in a manner not otherwise inconsistent with the Member's WTO rights and obligations, in particular in cases of failure to comply with applicable laws and regulations.]

6. Bonded Transport Regime and Guarantees

6.1 Where a Member requires a guarantee to avoid inland diversion of goods in transit, any person required to provide security [[shall] [may]] be allowed to choose any form of security provided that it is [in accordance with the legislation of that Member⁵¹][acceptable to the customs and other border authorities]]. [[This][Each]] Member shall also ensure that the guarantees required from transit operators are:

- (a) Reasonable having regard to the conditions of traffic 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][shall normally be limited to the amount of the customs duties or other charges for which the goods may be liable]];
- [(b) Designed and applied on [[the basis of regional agreements or, by default, international agreements][a regional or international basis]] [to as great an extent as possible]; and]
- (c) Released or discharged promptly and in full after the completion of the transit operation.

6.2 Where a Member requires a guarantee for goods in transit, this Member shall allow guarantees to be renewed for subsequent consignments once a previous one is proved to have reached its destination [or made exit]. 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.

⁵¹ "... conforme con la legislación de ese Miembro" in the original Spanish.

[6.3 In cases where a Member chooses to apply other appropriate measures to prevent the inland diversion of goods, [[no guarantee shall be required for the transit of goods]][a member may decide whether or not a guarantee shall be required for the transit of goods]].]

7. Regional Transit Agreements or Arrangements

7.1 Members [[shall][may]] promote bilateral and regional transit agreements or arrangements with a view to reducing trade barriers and enhance freedom of transit. Members shall take full account of international standards and instruments when designing and applying those agreements or arrangements. In particular, Members that are contracting parties to regional transit agreements or arrangements shall strive to:

- (a) Agree on common, simplified documents, or electronic messages, [that shall be aligned with international standards];
- (b) Allow the same set of documents or electronic messages to accompany the consignment from the country of departure to destination;
- (c) Define common measures relating to the monitoring of transit, *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;
- (d) Include matters which are relevant beyond customs in the context of transit, such as road and transport issues.

7.2 Regulations and formalities in connection with transit agreed upon in such agreements or arrangements shall be reasonable, having regard to the conditions of the traffic. These agreements or arrangements shall be designed and implemented in such a way that they do not constitute a disguised restriction on international trade or an arbitrary or unjustifiable discrimination between Members.

7.3 Members participating in bilateral or regional transit agreements or arrangements shall afford opportunity for other interested Members [who demonstrate compliance with the conditions and substantive criteria] to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it.

[7.4 Nothing in this paragraph creates an obligation to participate in or conclude regional trade agreements or arrangements, nor does it permit any derogation from the Most-Favoured Nation obligation applicable to goods in transit.]

[8. Improved Coordination and Cooperation

8.1 Amongst Authorities: Members shall [endeavour to] ensure cooperation and coordination [[between][among]] 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, coordinating operations of border crossings and mutual recognition of authorized trader schemes. [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.⁵²]]

8.2 Between Authorities and the Private Sector: [To the extent possible] Members shall [[where possible][where practicable]] provide opportunities for interested traders or their representatives 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.]

ARTICLE 12: [CUSTOMS] COOPERATION [MECHANISM FOR [TRADE FACILITATION AND] [[CUSTOMS][TRADE]] COMPLIANCE]

Paragraph I

A.

[Members [shall] [endeavour] [in accordance with its domestic law] [in a manner consistent with its domestic law and procedures] [whenever practicable] [may] upon request, exchange information [and/or documents] on [Customs] matters [such as HS classification, [description, quantity,] country of origin and [[valuation][value]] of [import, export and transit] goods [specified on the import declaration]] 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].]

B.

[1. Recognizing that a Member may have to address cases where it has reason to doubt the truth or accuracy of information provided by traders in support of the declared value of imported goods;

2. Recognizing the importance of protecting commercially confidential information in safeguarding the commercial interests of traders;

3. (chapeau⁵³) Members may seek assistance from other Members in accordance with the following requirements:

- (a) If the Member has reasonable grounds to doubt the truth or accuracy of the supporting documentation referred to in paragraph II:B, it may request assistance from the exporting Member on mutually agreed terms consistent with the requirements of this proposal.
- (b) The requested Member [[should][shall][may]] offer cooperation and assistance, consistent with its domestic law and procedures [within its available resources]:
 - (i) If the requested Member is satisfied with the verification referred to in paragraph II:B;
 - (ii) If the requested Member is satisfied that the required confidentiality of the information will be maintained;

⁵² Note to the reader: this paragraph may be dropped at a later stage if the issue is properly covered in another Article of the Agreement.

⁵³ This chapeau language equally applies to all subsequent sections (in all subsequent paragraphs) referenced as "B", as well as to paragraphs V, IX, XIV, XV, XVI and XIX.

- (iii) If the requested Member has obtained the prior consent of the person furnishing the information, where there is such a requirement under its domestic laws and regulations;
- (iv) If the disclosure of the information is not otherwise prohibited by the domestic laws and regulations of the requested Member; and
- [(v) Only to the extent that the information is available.]]

[Paragraph II

[A Member shall not require an original or copy of export declarations issued by the authorities of the exporting Member as a requirement for importation.]⁵⁴

Paragraph III

A.

[A Member making the request shall ensure that, [to the extent possible], all appropriate internal verification has been undertaken including, *inter alia*, verification of the status of the importer/exporter and inspection of the relevant documents made available to or obtained by the customs administration.]

B.

[A Member shall seek to obtain and review the relevant and necessary documentation from the importer respecting the declared value of goods and shall conduct a verification before it requests assistance from another Member.]

Paragraph IV

A.

[A Member making the request shall provide a [brief] summary of the case in respect of which information is sought including the reasons for doubting the truth or accuracy of the declaration made before it; [the results of verification made]; and, specify the information and [/or documents] required.]

B.

[1. The requesting Member shall provide the requested Member with a [[written]][brief] summary of the request, including:

- (a) The matter at issue and reasons for the request;
- (b) The specific information [[and/or documents][, including documents,]] requested;
- (c) The purposes for which [[it] [the Member]] requires the information [and/or the documents];
- (d) A confirmation that [[it] [the requesting Member]] [had] conducted the [required] verification required by paragraph III];

⁵⁴ It was proposed to move this section to another part of the Draft Consolidated Text (such as the one on the GATT Article VIII-related measures).

- [(e) An explanation of why [[it] [the requesting Member]] still has doubts regarding the truth or accuracy of information provided by the importer after conducting the verification required by paragraph II:B;]
- (f) The identity [and the legal mandate] of the official making the request;
- (g) The names and addresses of the persons to whom the request relates, if known; and
- [(h) The applicable legal provisions in the domestic law, including provisions relating to confidentiality, of the requesting Member.]

Paragraph V

[1. The requested Member [[shall][may]] [in accordance with its domestic law] [in a manner consistent with its domestic law and procedures]:

- (a) Provide information only to the extent it is available in the import or export declaration(s) [within the available resources of its respective authorities] [[as well as in the additional documents][and, if required, at least the details listed below:
 - Exporter;
 - Consignor;
 - Carrier;
 - Importer;
 - Consignee;
 - Notify party;
 - Delivery destination;
 - Country(ies) of routing, to the extent known;
 - Agent, if applicable;
 - Tariff code number;
 - Description of Goods;
 - UNDG Number (Dangerous Goods Code), if applicable;
 - Type of packages identification;
 - Quantity of goods/Number of packages;
 - Total gross weight;
 - Equipment identification number, if containerized and available;
 - Equipment size and type identification;
 - Seal number, if applicable and available;
 - Total invoice amount; and
 - Unique consignment reference number.]]
- [(b) [subject to the provisions in Paragraph XVI] [If requested,] provide documents [[filed][submitted]] [[in support of][with]] a[[goods][import/export]] 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;]
- [(c) Confirm that the documents provided are true copies of the documents submitted by the importer/exporter [and accepted by the requested Member]; and]
- (d) [[Provide the information] [and/or documents] [respond to the request]] [to the extent possible,] [[within a period of [[60][90][150]] days] [within reasonable time]] from the date of receipt of the request.]]

Paragraph VI

Such exchange of information [[and/]or documents] shall not require [a] [requested] Member[s] to:

- (a) Modify the format of their import or export declarations or their procedures;
- (b)
 - (i) [[Call for] [Require]] documents other than those [[filed][submitted]] with the goods declaration[s];
 - (ii) [Initiate inquiries to obtain the information];
- (c) Modify the period of retention of such information [[and/]or documents];
- (d) Introduce paper documentation where electronic format has already been introduced;
- [(e) Disclose prohibited or restricted information in line with national legislation;]
- [(f) Provide any information for which disclosure is not permissible under their domestic laws and regulations; or
- (g) Provide any information furnished by any person pursuant to their domestic laws and regulations where such person has not given consent to the disclosure of the information, where there is such a requirement under its domestic laws and regulations.]

Paragraph VII

A.

[The request for information [and/or documents] shall be made [in one of the three official languages of the WTO or] in a language mutually acceptable to the requesting and the requested Member.]

B.

[Such exchange of information [[and/]or documents] shall not require [a] [requested] Member[s] to translate into any language the information or documents.]

Paragraph VIII

A.

[Information [and/or documents] exchanged shall not be used for purposes other than that for which it was sought, unless the requested Member agrees otherwise]

B.

[Subject to paragraph XV], the requesting Member shall use the information [and/] [or documents] solely for the purposes stated in the request, unless the requested Member agrees otherwise [in writing]. [The requesting Member shall be subject to any restrictions imposed by the Member providing the information.]

Paragraph IX

A.

[First alternative

[Any information [and/or documents] exchanged shall be treated as [strictly] confidential and shall [[not be disclosed to any third party except to the extent required in [administrative or] judicial proceedings]][be granted at least the same level of protection provided under the laws and regulations of the requested Member]]. Such information [and/or documents] shall not be [[used in a criminal]][disclosed to any third party except to the relevant law enforcement agencies of the requesting Member and shall not be used as evidence in a judicial]] proceeding unless specifically authorized by the requested Member.]

Second alternative

[Any information [and/or documents] exchanged on matters mentioned in paragraph I:A which are by nature confidential or which are provided on a confidential basis shall be treated as [strictly] confidential by the authorities concerned who shall not disclose it to any third party without the specific permission of the government providing such information or documents, except to the extent that it may be required to be disclosed in the context of judicial proceedings.] [Exchanged information shall not be used as evidence in judicial proceedings unless specifically authorized by the requested Member. In case the government of a requesting Member is ordered to provide such information as evidence for a judicial proceeding by the court or intends to disclose it to any 3rd party the requesting Member must ask the requested Member for specific authorization through diplomatic channels.]

Third alternative

[Any information or documents exchanged on matters mentioned in paragraph I:A, which are by nature confidential or which are provided on a confidential basis, shall be treated as [strictly] confidential and shall be granted at least the same level of protection provided under the laws and regulations of the requested Member. In case the government of a requesting Member is ordered to provide such information as evidence for a judicial proceeding by the court with the intention to disclose it to any 3rd party, the requesting Member must ask the requested Member for specific authorization. The requested Member shall consider whether the confidentiality of the information required will be taken care of before providing such information. The requested Member shall deny providing such information if its laws and regulations will be offended by providing the information.]]

B.

[(a) Where a Member requests information from the exporting Member respecting the declared value of goods being imported, the requesting Member shall protect [commercially] confidential information. For greater certainty, the protection of [commercially] confidential information means the treatment required by Article 10 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, 1994.

(b) The requesting Member shall provide the information only to its customs administration. In the case that the requesting Member is required by its domestic law to share the information with a governmental agency other than its customs administration or in a judicial or quasi-judicial proceeding, the requesting Member shall [[inform the][get approval from][seek prior consent from]] the requested Member.]

Paragraph X

Each Member shall notify to the WTO a contact point [within its administration] for exchange of information [and/or documents].

Paragraph XI

[The request for information [and/or documents] shall not be made later than [[one year][two years][three years][four years][the time required by the national legislation of the Member requested]] after the importation or exportation of the goods.]

Paragraph XII

A.

[A Member shall not [[make][request]] more than [X] [[consignments for information] [requests for information [and/or documents] from another Member in a calendar year.]] [A requested Member shall respond in writing, whether paper or electronic means, to a request made [pursuant to this proposal].]

B.

[(a) A requested Member shall respond in writing to a request made pursuant to this proposal.

[(b) A Member shall not make more than [X] requests for information [and/or documents] from another Member in a calendar year [except for requests that are made in cases of highest relevance⁵⁵]].]

Paragraph XIII

[A requested Member may postpone or refuse providing more than [X] requests for information [and/or documents] from [[another][the same]] Member in a calendar year. [Reasons for such a postponement or refusal shall immediately be communicated to the Member making the request.]]

Paragraph XIV

The requesting Member should inform the requested Member about the result of the exchange of information if there was a request from the latter [to so provide].

Paragraph XV

[Notwithstanding what is contained in the preceding paragraphs], a requested Member may postpone or refuse providing information [and/or documents] if the provision of such information [and/or documents] would interfere with an ongoing administrative or judicial investigation, prosecution or proceeding. [Reasons for such a postponement or refusal shall immediately be communicated to the Member making the request.]

Paragraph XVI

[In cases where the requested Member is of the opinion that exchange of information under these provisions is prohibited by its laws and regulations or would infringe upon its sovereignty, security, public policy, or other substantial interest, [or would violate a commercial, industrial or professional secret] the request may be refused or has to be withheld, or may be subject to the satisfaction of certain conditions or requirements.]

⁵⁵ "A excepción de que las solicitudes sean de casos de suma relevancia" in the original Spanish.

Paragraph XVII

[1. If exchanged information is improperly disclosed on one occasion, it precludes the Member who disclosed the information from receiving further information.]

[2. If a requesting Member does not treat information received from another Member in accordance with the requirements of this proposal, the requested Member may refuse any further requests for assistance pursuant to this [[proposal][Agreement]].]

Paragraph XVIII

A.

[If the requesting Member would be unable to comply with a similar request in case such a request was made by the requested Member, it shall state that fact in its request. Execution of such a request shall be at the discretion of the requested Member.]

B.

[The requested Member shall verify that the requesting Member is able to provide the requested Member with information of a nature similar to the information requested.]

Paragraph XIX

[A Member has a right to not cooperate with a non-cooperative Member.]

Paragraph XX

Nothing in this proposal shall be construed to prevent a Member from entering into [or maintaining] a bilateral [regional or international] arrangement regarding sharing of customs information. [In the case of an inconsistency between a provision of such an agreement and this proposal, that agreement shall prevail to the extent of the inconsistency].

ARTICLE 13: INSTITUTIONAL ARRANGEMENTS

1.1 A Committee on Trade Facilitation is hereby established.

1.2 The Committee shall be open for participation by all Members. The Committee shall elect its own Chairman.

1.3 The Committee shall meet as needed and envisaged by the relevant provisions of the Agreement, 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.

1.4 The Committee shall carry out such responsibilities as assigned to it under this Agreement or by the Members.

1.5 The Committee may set up such subsidiary bodies as may be required. All such bodies shall report to the Committee.

1.6 The Committee shall maintain close contact with other international organizations in the field of trade facilitation with the objective of securing the best available advice for the administration of this agreement and in order to ensure that unnecessary duplication of effort is avoided. Representatives of such organizations may be invited to meetings of the Committee and the Committee may, through appropriate channels, invite the relevant international organizations or their subsidiary bodies to examine specific matters related to the administration of this agreement.

1.7 The Committee shall review the operation and implementation of this Agreement [X] years [from the entry into force of this agreement]. [During this period of review of the operation and implementation of [X] years, Members shall not resort to the provisions of the Dispute Settlement Understanding and only raise before the Committee all questions and queries relating to issues relating to compliance with the obligations under the agreement, including issues relating to technical assistance and capacity building, and all efforts should be undertaken to ensure the use of good offices under the Committee's auspices during this period.]

[1.8 The Committee shall have its own rules of procedures.]

ARTICLE 14: NATIONAL COMMITTEE ON TRADE FACILITATION

1.1 In order to facilitate the process of domestic coordination of trade facilitation needs, priorities and implementation [of the Agreement on Trade Facilitation], Members shall [establish] [and] [or] [maintain] a national committee [on trade facilitation] [or a similar] mechanism on trade facilitation [or designate an existing mechanism/body/Committee] [with the objective of assisting in the implementation of the Agreement on Trade Facilitation].

ARTICLE 15: PREAMBLE/CROSS-CUTTING MATTERS

[1.1 [Small [and vulnerable] [economies]] developing [and least developed] countries which are Members of a customs union or a regional economic arrangement may adopt regional approaches to assist in the implementation of their obligations under the Trade Facilitation Agreement including through the establishment and use of regional bodies.]

[1.2 Recognizing that a Member may have to address cases where it has reason to doubt the truth or accuracy of information provided by traders in support of the declared value of imported goods;

1.3 Recognizing the importance of protecting commercially confidential information in safeguarding the commercial interests of traders⁵⁶;

Cross-Cutting Issues

- (a) Relationship to other WTO Agreements
- (b) Institutional Provisions and Dispute Settlement
- (c) Final Provisions
- (d) Implementation Schedules

[Exceptions

The provisions of Articles XX and XXI of GATT 1994 apply to the provisions of this Agreement.]

[Dispute Settlement

The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided for in this Agreement.]

⁵⁶ This language stems from a proposal on customs cooperation that was originally tabled by Canada.

SECTION II

SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS FOR DEVELOPING COUNTRY MEMBERS AND LEAST DEVELOPED COUNTRY MEMBERS

1. [[Guiding principles] [General provisions]]

1.1

Alt. 1

[[Every Member shall implement all provisions or subparts of provisions contained in the Trade Facilitation Agreement subject to the flexibilities contained in this section .] [in accordance with [the principles] [the modalities] agreed in Annex D of the July [2004] framework Agreement.]]

Alt. 2

[The provisions [[or sub- parts of provisions contained in this Agreement] [of Articles 1-11 above]] shall be implemented by developing country Members and LDC Members [taking fully into account the principle of special and differential treatment] [in accordance with the [[flexibilities contained in] [provisions of]] this section.]]

[Members recognize that the principle of special and differential treatment for developing and least developing countries should extend beyond the granting of traditional transition periods for implementing commitments. In particular, the extent and the timing of entering into commitments shall be related to the implementation capacities of developing and least-developed Members, who would not be obliged to undertake investments in infrastructure projects beyond their means.

Least-developed country Members will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.]

⁵⁷[The extent and timing of implementation shall be related to the implementation capacities of these countries. Support and assistance should be provided to them for implementation of commitments in accordance with their nature and scope. In the case of commitments whose implementation would require support for infrastructure development on the part of some Members, developed country Members and other donors shall make every effort to ensure such support and assistance directly related to the nature and scope of the commitments in order to allow implementation. Members agree that in cases where the required support and assistance for such infrastructure development is not forthcoming, and where a developing or least-developed Member continues to lack the necessary capacity, implementation will not be required.]

2. [[Definitions [of Concepts]] [Categories of Commitments]]

[For the purpose of definition, categories of commitment are all commitments implemented under the present Agreement in keeping with the following implementation plan]

2.1 Category A commitments [[include] [refer to]] [[provisions or subparts of provisions] [TF measures]]⁵⁸ that a developing country Member and a least developed country Member, [[have

⁵⁷ According to the proposal, this language would follow the second alternative of section 1.1

⁵⁸ It was proposed for this replacement to be made throughout the entire S&D section.

to)[shall] implement upon entry into force of the Agreement [including all provisions or subparts of provisions that a developing country and a LDC Member already implements].

2.2

Category B commitments [include] [refer to] [provisions or subparts of provisions that a developing country Member and a least developed country Member

- Alt 1 [will] [shall] implement after the entry into force of the Agreement] [in a transitional period of time which shall be specified in the notification]
- Alt 2 [shall implement after a transitional period of time of the entry into force of the Agreement.]

[A Developing Country Member or LDC may include under Category B, the provisions and sub-parts of provisions for which a technical assistance agreement with a donor has been concluded and is being carried out.]

2.3

Category C [commitments] [include] provisions or sub-parts of provisions

- Alt. 1 [[that require technical assistance and capacity building to be implemented in a transitional period of time which shall be specified in the schedule]
- Alt. 2 [that a developing country Member and a least developed country Member, will implement after the entry into force of the Agreement, the provision of adequate and effective technical assistance and capacity building measures by donors and the acquisition of implementation capacity]
- Alt. 3 [that a developing country Member and a least developed country Member, will require additional time and technical assistance and capacity building to implement beyond the date of entry into force of the Agreement]].
- Alt. 4 [that a developing country Member and a least-developed country Member shall implement upon acquisition of implementation capacity through provision of adequate and effective technical assistance and capacity building measures by donors.]
- [, in order to ensure that sustainable measures are in place for that Member to implement provisions of the Agreement autonomously.]

2.4

Developing countries and LDCs shall determine, on an individual basis, the provisions or subparts of provisions to be included under Categories A, B and C⁵⁹.

3. [[[Implementation]][Notification]] of Provisions (or Sub-part of Provisions) Listed under Category A][Establishing Implementation Periods]]

3.1 [The commitments included in Category A shall be legally binding.]

3.2 [Developing country Members shall notify to the Trade Facilitation Committee the provisions or sub-part of provisions under Category A:

⁵⁹ It was proposed to move this paragraph to the section on general principles.

- Alt. 1 [at the time of the signature of the Agreement or, at the latest, by the time of entry into force of the Agreement]
- Alt. 2 [at the time of entry into force of the Agreement]]
- Alt. 3 [Upon entry into force of this Agreement, each developing country Member [and each least developed country Member] shall implement the provisions and sub-parts of provisions it has designated in Schedule A. Each Member's Schedule A is hereby made an integral part of this Agreement.]

3.3 A least developed country Member, shall notify to the Trade Facilitation Committee the provisions or subparts of provisions under Category A at entry into force of the Agreement or, at the latest, by [X] time after the entry into force of the Agreement⁶⁰.

4. [[Notification of Provisions (or Sub-part of Provisions) under Category B [Establishing Implementation Periods]]

4.1

Alt. 1

[At the entry into force of the Agreement, developing country Members and least developed country Members, shall submit their Schedule for implementing provisions or subparts of provisions under Category B. The Schedule shall include the provisions or subparts of provisions, the provisional period of time for implementation and the implementing national authority.]

Alt. 2

[Developing country Members [[shall][may]] notify to the Trade Facilitation Committee the provisions (or sub-part of provisions) under Category B [[at [X] time after the entry into force of the Agreement][at [X] time after the time provided for developing country Members][[at the entry into force of the Agreement or, at the latest, by [X] time after the entry into force of the Agreement,] taking into account the possibility to shift commitments from one category to another]]. [At [X] months after the submission of Schedules of implementing provisions or subparts of provisions under Category B, developing country Members shall notify the definitive specific period of time for the implementation of measures under Category B.]]

Least-Developed Country Members

A least developed country may notify to the Trade Facilitation Committee the provisions (or sub-part of provisions) notified under Category B at the entry into force of the Agreement or, at the latest, by [X] time after the entry into force of the Agreement, taking into account maximum flexibilities for LDCs, and, particularly, the possibility to shift commitments from one category to another.

Alt. 3

[With respect to those provisions or subparts of provisions that it has not designated in Schedule A, a developing country Member or LDC Member may delay implementation of such provisions or sub-parts of provisions in accordance with the process set forth in this paragraph.

⁶⁰ This is the position of the LDC Group.

- (a) No later than [90] days after entry into force of this Agreement, each Member shall notify to the Trade Facilitation Committee in draft Schedule B/C an indicative time period for implementation of each provision or subpart of a provision that is not designated in Schedule A⁶¹.
- (b) No later than [300] days after entry into force of this Agreement, the Member concerned shall notify to the Trade Facilitation Committee in final Schedule B/C the definitive time period for implementation of each provision or subpart of a provision.
- (c) If a Member does not notify a time period for a provision or sub-part of a provision in final Schedule B/C, the Member shall implement that provision or sub-part of a provision within [one year] after entry into force of this Agreement.
- (d) Notifications submitted in draft and final Schedule B/C may also include such further information as the notifying Member deems appropriate. Members are encouraged to provide information on the domestic agency/entity responsible for implementation and, for those provisions or subparts of provisions for which a Member considers that technical assistance and capacity building is required, the donor agency with which the Member has an agreement to provide assistance.
- (e) Members experiencing difficulties in submitting indicative and definitive time periods [under subparagraphs 4.1(a) and (b)] within the deadlines set forth therein because of the lack of a donor should notify the Trade Facilitation Committee of those difficulties as early as possible prior to the expiration of those deadlines. Members agree to cooperate to assist in addressing such difficulties, taking into account the particular circumstances and special problems facing the Member concerned. The Committee may take appropriate action to address the difficulties, including, where necessary, extending the deadlines [under subparagraphs 4.1(a) or (b)] for the Member concerned.
- (f) [One year] after entry into force of this Agreement, and then 60 days after an extended deadline established [above], the Committee shall meet to ratify each Member's final Schedule B/C. Upon ratification, each Member's Schedule B/C will become an integral part of this Agreement.]

4. *bis* Notification of Implementation Plans for Provisions (or Sub-part of Provisions) Notified under Category B

Developing country Members shall notify to the Trade Facilitation Committee the implementation plan for provisions or subparts of provisions notified under Category B at time after they submitted the notification of the provisions or subparts of the provisions under Category B.

This plan sets forth:

The period of time required for the acquisition of implementation capacity in respect of each provision or subparts of provisions included in the plan; and

The national agencies responsible for implementing the provisions or subpart of provisions included in the plan.]

Least-Developed Country Members

⁶¹ The format for Schedule B/C is set forth in [Annex A].

A least developed country shall notify to the Trade Facilitation Committee the implementation plans, for provisions (or sub-part of provisions) notified under Category B, taking into account maximum flexibilities for LDCs, and, particularly, the possibility to shift commitments from one category to another.

5. [[Notification of Provisions (or Sub-part of Provisions) under Category C] [Establishing Implementation Periods]]

Alt.1

5.1 [Any implementation of provisions or sub-part of provisions notified or re-notified under Category C by developing country Members and least-developed countries is conditional on the provision of adequate and effective technical assistance and capacity building measures by donors as well as the acquisition of implementation capacity by developing and least-developed country Members.]

5.2 [At the entry into force of the Agreement, Developing Country Members shall submit the Schedule for implementing provisions or sub-parts of provisions under Category C.

Alt. 2

[Developing country Members [[shall][may]] notify to the Trade Facilitation Committee the provisions (or sub-part of provisions) under Category C [[at [X] time after the time provided for developing country Members][at [the latest by] [X] time after the entry into force of the Agreement][in respect of only those measures for which they have received adequate and effective technical assistance AND/OR in respect of which they have acquired the capacity to implement]]. [Members shall also include, as an annex to these notifications, a listing of the provisions or subparts of provisions under Category C in terms of priorities for technical assistance and capacity building.]

5.3

Least-Developed Country Members

A least developed country shall notify to the Trade Facilitation Committee the provisions (or sub-part of provisions) notified under Category C at the entry into force of the Agreement or, at the latest, by [X] time after the entry into force of the Agreement, in respect of only those measures for which they have received adequate and effective technical assistance AND/OR in respect of which they have acquired the capacity to implement.

5.bis [Notification of Implementation Plans for Provisions (or Sub-parts of Provisions) Notified under Category C]

At [X] Months after the entry into force, Developing Country Members and least developed country Members shall submit the implementation plan for provisions under Category C. The implementation plan shall include:

- (a) The provisions or sub-parts of provisions under Category C;
- (b) The definitive specific period for implementation; in cases where the assistance by a donor has not yet been agreed for some provisions or sub-parts of provisions the implementation plan shall include, as a minimum, the provisional period for implementation;

- (c) The implementing agency; and
- (d) The donor, if any⁶².

For the provisions or sub-parts of provisions that at the time of the submission of the implementation plan as referred to in the paragraph above did not include the donor, Members shall update the implementation plan with information regarding the donor committed to assist in the implementation of a provision or sub-part of provision and the definitive period for implementation. The TF Committee shall review periodically the implementation plans for Category C in order to monitor and resolve any difficulties or delays in obtaining TA/CB.]

[Developing country Members and] least developed country Members shall notify to the Trade Facilitation Committee the implementation plan for a provision (or sub-part of a provision) notified under Category C [[in respect of only those measures for which they have received adequate and effective technical assistance AND/OR in respect of which they have acquired the capacity to implement][after an agreement with a donor has been reached to assist in the implementation of the provision or sub-part of the provision concerned.

Least-Developed Country Members

A least developed country shall notify to the Trade Facilitation Committee the implementation plans, for provisions (or sub-part of provisions) notified under Category C, in respect of only those measures for which they have received adequate and effective technical assistance AND/OR in respect of which they have acquired the capacity to implement.

The implementation plan sets forth:

- (a) The period of time required for the acquisition of implementation capacity in respect of each provision or subpart of provision included in the plan;
- (b) The technical assistance and capacity building measures required for the acquisition of implementation capacity in respect of each provision or subpart of provision included in the plan;
- (c) The donors that agreed to provide the technical assistance and capacity building measures required for the acquisition of implementation capacity in respect of each provision or subpart of provision included in the plan; and
- (d) The national entities responsible for implementing the provisions or subparts of provisions included in the plan.]]]

6. [[Use of the Early Warning Mechanism][Extension for the Implementation Period of Provisions under Categories B and C]]

6.1

Alt. 1

[Any developing country Member, including any least developed country Member, may extend the time required to implement a provision or sub-part of a provision notified under Category B and Category C. Any extension shall be notified to the Trade Facilitation Committee X time prior to the

⁶² This notification shall include the donors that, at the date of submission of the implementation plan, have agreed to provide the necessary assistance to help with the implementation of a provision or sub-part of a provision. The notification shall include information where a donor has not been identified for provisions or sub-parts of provisions.

expiration of the date of implementation for the provision or sub-part of the provision concerned which was notified to the Trade Facilitation Committee

Any developing country Member, including any least developed country Member, that wishes to extend the time required to implement a provision or sub-part of a provision notified under Category B and Category C beyond the time extended and notified under the paragraph above, has to submit a request to the Trade Facilitation Committee prior to the expiration of the date of implementation, as extended and notified in accordance with the paragraph above. The Trade Facilitation Committee shall [[take a decision on][review]] the request, taking into account any specific circumstances of the Member submitting the request.]

Alt. 2

[A Developing Country Member or LDC may request an additional period of time to implement a provision or sub-parts of provisions contained in the Schedule for Category B and C.

The request for an additional period of time shall be submitted to the Trade Facilitation Committee [X] months before the implementation date listed for such provisions or sub-parts of provisions and shall include the specific period of time to extend the transitional period of implementation. The first extension shall be granted automatically, when not exceeding [X] months. [If the period of the extension sought in the first request exceeds "X" months, it should be dealt with in the same manner as with subsequent requests.]

Subsequent requests for an additional period of time to implement a provision or sub-parts of a provision shall be reviewed by the Trade Facilitation Committee.]

Alt. 3

[A developing country or LDC Member experiencing difficulty in implementing a provision or sub-part of a provision by the date set forth in Schedule B/C may, no later than [X] days before that date, request that the Committee extend the time period for implementation of that provision or sub-part of a provision. The request shall include the additional time requested and the reasons for the request. Such reasons may include the need for assistance where not earlier anticipated.

The Committee shall give sympathetic consideration to requests under paragraph 7.1, and may decide to grant the extension for good cause. Good cause may include difficulties and delays in obtaining assistance.]

Alt. 4

[With a view to ensuring that developing country Members are able to comply with this Agreement, the Committee on Trade Facilitation provided for in Article 14 (referred to in this Agreement as the "Committee") is enabled to grant, upon request, specified, time-limited exceptions in whole or in part from obligations under this Agreement.

A developing country Member may request additional time, beyond the timeframe in its Schedule, to implement a provision or sub-part of provisions under Category B and Category C. The developing country Member shall submit a formal request not less than [X months] before the end of the timeframe in its Schedule to the Committee. The Committee shall normally grant the requested extension provided it is the first time the developing country Member requests the extension for that provision (or sub-part of provisions). Future requests for extensions for the same provision (or sub-part of provisions) shall be subject to a decision by the Committee.]

[6.2

⁶³A first time extension shall not exceed [X] years. Where an extension is granted for more than [X] years it shall be subject to annual review by the Committee.] [Requests] [and/or notifications] for extensions under this Article shall contain sufficient information to enable other Members to assess them.

6.3

Alt. 1

[Any provision or sub-part of a provision initially notified under Category B or Category C may be re-notified under Category C or Category B respectively. A re-notification of a provision or sub-part of a provision has to be notified to the Trade Facilitation Committee accordingly.]

Alt. 2

[Under exceptional circumstances,] a developing country Member may [request the application of the Early Warning Mechanism to] [[move][re-notify]] a provision or sub-part of provisions from Category B to Category C or from Category C to Category B through the submission of a notification to the Committee.

[6.4

Where a Member proposes to move a provision or sub-part of provisions on its Schedule from Category B to Category C, the request shall contain information on the technical assistance, capacity building and other financial needs required to ensure implementation of the obligation, as well as a plan for its implementation.]

7. Grace Period for the Application of the Understanding on Rules and Procedures Governing the Settlement of Disputes

[7.1

Alt.1

[A Member shall not initiate a procedure pursuant to Articles XXII and XXIII of GATT 1994 and the Understanding on Rules and Procedures Governing the Settlement of Disputes against a Developing Country Member or a LDC for provisions or subparts of provisions under Category A for a period of [X] after entry into force of the Agreement.]

[Alt.2

For two years after entry into force of this Agreement, Articles XXII and XXIII of the GATT 1994 shall not apply to the settlement of disputes arising under any provision or sub-part of a provision of this Agreement listed in Schedule A of a Member with respect to a measure of that Member.]]

Alt. 3

[A member shall not invoke any actions based on Articles XXII and XXIII of GATT 1994 and the Understanding on Rules and Procedures Governing the Settlement of Disputes against a developing or least developed Member to enforce compliance:

⁶³ It was proposed for this language to also pertain to the area of category shifting.

- a. With provisions or sub-part of provisions that the developing or least-developed Member is not yet implementing.
- b. With provisions or sub-part of provisions which it has not itself implemented.
- c. For a period of [X] years after entry into force of the Agreement for provisions or subparts of provisions under Category A.
- d. For a period of [X] years after a provision of subpart of provision has been notified under Category A.
- e. During the transition period of implementing provisions or subpart of provisions under Categories B and C, and a period of two years after implementation has been notified.]

[7.1 *bis*

Each Member shall nevertheless provide adequate opportunity for consultation with respect to any issue relating to the implementation of this Agreement]

[7.2

LDC Members shall be exempt from any actions based on Articles XXII and XXIII of GATT 1994 and the Understanding on Rules and Procedures Governing the Settlement of Disputes for period of "Y" years after a provision or subpart of provision has been notified under Category A.]

[7.3

Alt. 1

[Developing country Members, including least developed country Members, shall be exempt from any actions based on Articles XXII and XXIII of GATT 1994 and the Understanding on Rules and Procedures Governing the Settlement of Disputes for a period of [[X][two]] years after notification by a Member to the Trade Facilitation Committee that a provision (or sub-part of a provision) notified or re-notified under Category B and under Category C has been implemented.]

Alt. 2

[A Member shall not invoke any actions based on Articles XXII and XXIII of GATT 1994 and the Understanding on Rules and Procedures Governing the Settlement of Disputes against a developing country Member or an LDC Member under Category B and C during the transition period of implementation of the provisions or subpart of provisions and a period of two years after implementation has been notified.]]

[7.4

LDC Members shall be exempt from any actions based on Articles XXII and XXIII of GATT 1994 and the Understanding on Rules and Procedures Governing the Settlement of Disputes for period of [Y] years after a provision or subpart of provision has been notified under Category B and Category C]

[7.5

A Member shall not invoke or apply any Dispute Settlement procedures, including panel proceedings, against a developing country Member for any provision (or sub-part of provisions) under Category B and Category C during the period of implementation of the provisions.]

7.6

Alt.1

[Notwithstanding the [grace period for the Application of the Understanding on Rules and Procedures Governing the Settlement of Disputes]], Members shall exercise due restraint in raising matters under the Understanding on Rules and Procedures Governing the Settlement of Disputes involving least-developed country Members.]

Alt. 2

[Before making a request for consultations pursuant to Articles XXII or XXIII, and at all stages of dispute settlement procedures with regard to a measure of an LDC Member, a Member shall give particular consideration to the special situation of LDC Members. In this regard, Members shall exercise due restraint in raising matters under dispute settlement procedures involving an LDC Member.]

7.7

The Committee shall encourage and facilitate ad hoc consultations or negotiations among Members on specific issues relating to trade facilitation, with a view to reaching a mutually satisfactory solution promptly.

[7.8

Nothing in this Agreement shall affect the right of Members to take action under Articles XXIII of GATT 1994 and the Understanding on Rules and Procedures Governing the Settlement of Disputes against another Member for provisions contained in other WTO-Agreements, including for GATT Articles V, VIII and X.]

[7.9

No Member shall have the right to initiate a procedure pursuant to Articles XXIII of GATT 1994 and the Understanding on Rules and Procedures Governing the Settlement of Disputes against [another Member] [a Developing Country Member or an LDC Member] for provisions or sub-part of provisions which it has not itself implemented.]

8. [[Implementation][Registering Implementation][Full Implementation of Provisions or sub-part of provisions under Categories B and C] [Information on Implementation of Provisions listed under Categories B and C]]

8.1

[[[Alt.1][8.1]]

It will be understood that a Member has implemented a provision or subpart of provision if the time period for implementation contained in its [implementation plan], including any agreed extended time period under the Early Warning Mechanism, expired.

[A Member's commitment under category B and C shall be deemed to have been implemented at the time of the expiry of the time period for implementation ~~[[contained]]~~~~[stipulated]]~~ in ~~[[its]]~~ [the member's]] implementation plan, including any agreed extended time period under the early warning mechanism.]

~~[[[Alt.2] [8.2]]~~

Upon the end of the ~~[[implementation period]]~~ [transitional period of time to implement]] [of] a provision or sub-part of a provision, a Developing Country Member or LDC shall report to the Trade Facilitation Committee that the provisions or sub-parts of provisions have been implemented.]

[At the end of the implementation of a provision or sub-part of a provision, a developing country member or LDC shall notify the Trade Facilitation shall notify the Trade Facilitation Committee that the provisions or sub-provisions have been implemented.]

9. ~~[Provision of Technical Assistance, [financial assistance] and Capacity Building]~~

~~[[9.1] [9.2]]~~

The provision of technical assistance and capacity building measures by developed country Members and relevant international organizations [and other agencies of cooperation], including the IMF, OECD, UNCTAD, WCO and the World Bank, is a precondition for the acquisition of implementation capacity by developing country Members and least-developed country Members in respect of provisions or sub-part of provisions notified or re-notified under Category C.]

~~[[9.2] [9.1]]~~

Annex D of the 2004 July Framework Agreement clearly states that "support and assistance should also be provided to help Developing and least-developed countries implement the commitments resulting from the negotiations, in accordance with their nature and scope".]

9.3

[Members agree to facilitate the provision of technical assistance and capacity building to developing country Members [and LDCs], on mutually agreed terms and either bilaterally or through the appropriate international organizations. The objective of such assistance is to assist developing country Members to comply with the Agreement's commitments.]

[9.4 [In line with the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action:]

Members shall endeavour to apply the following principles for providing technical assistance and capacity building with regard to the implementation of this Agreement:

- (a) Take account of the overall developmental framework of recipient countries and regions and, where relevant and appropriate, ongoing reform and technical assistance programs;
- (b) Include, where relevant and appropriate, activities to address regional and sub-regional challenges and promote regional and sub-regional integration;
- (c) Ensure that ongoing trade facilitation reform activities of the private sector are factored into assistance activities;

- (d) Promote coordination between and among Members and other relevant institutions, including regional economic communities, to ensure maximum effectiveness of and results from this assistance. To this end:
 - (i) Coordination, primarily in the country or region where the assistance is to be provided, between partner Members and donors, and among bilateral and multilateral donors, should aim to avoid overlap and duplication in assistance programs, and inconsistencies in reform activities through close coordination of technical assistance and capacity building interventions;
 - (ii) For least developed country Members, the Enhanced Integrated Framework should be a part of this coordination process; and
 - (iii) Members should also promote internal coordination between their trade and development officials, both in capitals and Geneva, in the implementation of the Agreement and technical assistance.
- (e) Encourage use of existing in-country and regional coordination structures such as round tables and consultative groups to coordinate and monitor implementation activities; and
- (f) Encourage developing countries to provide capacity building to other developing and least-developed countries and consider supporting such activities, where possible.]

[9.5

In cases where technical assistance and capacity building measures are not provided or lacks the requisite effectiveness, developing country Members and least-developed countries are not bound to implement the provisions or sub-part of provisions notified or re-notified under Category C.]

9.6

[There shall be a specific Technical Assistance Unit [linked to Trade Facilitation Committee] that shall, *inter alia*, provide a [forum][framework] for:

- a) [Matching of Developing countries and LDCs' requests with donor competencies;] [receiving requests for TACB, examining them and matching the demands of TA and [[FA][CB]] with donors' capabilities.]
- b) [Discussions on TA/CB][and S&DT]
- c) Discussion of any problems regarding implementation of provisions or subparts of provisions;
- d) Review of progress in the provision of TA/CB including on any developing country Member or LDC not receiving adequate TA/CB at all or with respect to a specific measure
- e) Establishing the procedures for the provisions of technical assistance and [[financial assistance][capacity building]];

[There shall be a specific item on the agenda of the Trade Facilitation Committee] [In addition to its responsibilities under Articles 12.3 and 12.7, the Trade Facilitation Committee shall [have a specific agenda item in its agenda that shall provide] [The Trade Facilitation Committee shall provide] a forum to discuss TA/CB including, *inter alia*,:]

- a) Issues related to requests and offers of TA/CB to or by donors and/or international organizations,

- b) Discussion on any problems regarding implementation of provisions or sub-parts of provisions;
- c) Review of progress in the delivery of TA/CB including any developing or least-developed Members not receiving adequate technical assistance and capacity building,
- d) Delivery of TA/CB by donors and international organizations.
- e) On technical assistance and capacity building during implementation periods, including sharing experiences and information on ongoing assistance and implementation programs, including challenges and successes]

10. [[Actions by Donors]][Information to be Submitted by Members to the Trade Facilitation Committee]]

10.1

Alt. 1

[[[Developed country Members]][Donors]] shall [, developing country Members declaring themselves in a position to do so should, and other organizations providing technical assistance in the area of Trade Facilitation are invited to] submit to the Trade Facilitation Committee a notification containing the following information:

- (a) Contact points for aid providers and aid agencies related to trade facilitation;
- (b) The necessary channels and mechanisms to request assistance.]

Alt. 2

[Members shall submit to the Committee the following information, or internet references that provide the following information:

- a) For Members assisting developing and LDC Members with implementation through bilateral channels: a contact point or points for facilitation of assistance; and information on the process to request assistance.
- b) For developing country and LDC Members: a contact point or points for the office responsible for coordinating and prioritizing assistance and arranging assistance with donors.
- c) Because assistance will primarily be arranged within the country or region where the assistance is to be provided, the contact information provided under (a) and (b) should normally be provided for donor and partner officials in that country or region.]

10.2

[[Members] [Donors]] shall update the information in paragraph 10 .1 as necessary. The Secretariat shall make this information easily accessible to Members.]

10.3

Alt. 1

[[Developed Country Members] [donors]] shall submit, [where possible through the OECD Creditor Reporting System] once a year, to the Trade Facilitation Committee a notification on technical and financial assistance and capacity building provided to Developing Country Members and LDCs in relation to [the Trade Facilitation Agreement] [funding related to Trade Facilitation]. [International Organizations may [also] submit information as referred to [above]]].

[Alt.2

A Member assisting developing and LDC Members with implementation should submit to the Trade Facilitation Committee information on technical and financial assistance and capacity building provided to developing country Members and LDCs in relation to the Trade Facilitation Agreement. Members should update this information as necessary.]

[10.4

Alt. 1

International Organizations [or other agencies of cooperation] [[may] [are encouraged to]] submit information as referred to above.]

Alt. 2

[The Committee [[may] [shall]] invite international organizations to submit the information referred to above.]

[10.5

[[Developed country Members] [Donors]] shall initiate contacts with developing country Members and LDCs to reach an agreement on providing TA/CB for provisions or subparts of provisions Scheduled under Category C.]

[10.6

The Trade Facilitation Committee [[may] [shall]], [on the basis of an initiative from one of the Members], invite the relevant international organizations (including the IMF, OECD, UNCTAD, WCO, UN Regional Commissions and the World Bank or their subsidiary bodies) [and other agencies of cooperation] to provide information [and to examine specific matters with respect to the effective and efficient provision of technical assistance and capacity building[, including with regard to requests made under the early warning mechanism.]]

Annex [1]
Format for Schedule B/C

Provision/Sub-part of Provision	Time Period	Assistance Required and Other Information
