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**Committee on Agriculture
Special Session**

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**TRANSPARENCY IN TARIFF RATE CHANGES, AND
THE TREATMENT OF SHIPMENTS *EN ROUTE***

MEMBERS PRACTICES AND PERSPECTIVES

SUBMISSION FROM AUSTRALIA, BRAZIL, CANADA AND UKRAINE

*Revision**

The following submission, dated 18 December 2020, is being circulated at the request of the delegations of Australia, Brazil, Canada and Ukraine.

Background:

1. Unexpected increases in applied tariffs by Members can create uncertainty for exporters, as well as additional costs for importers, and can be a significant disincentive to trade. In discussions in the Committee on Agriculture in Special Session, Members expressed interest in exploring this topic further. In November 2019, Australia and Canada circulated a paper (JOB/AG/168) asking Members a series of questions on their current practices regarding the treatment of shipments *en route* when a tariff changes. The objective of these questions was to gather information in order to deepen Members' collective understanding of current practices.
2. Since the paper was circulated in November 2019, Canada and Australia have engaged in consultations with interested Members on the basis of the questions in JOB/AG/168 in order to better understand the scope of potential problems resulting from changes to applied tariffs.
3. A wide cross-section of the Membership, including large exporters, large importers, small developing country exporters/importers/net food importers, and representative of all negotiating groups provided responses. A summary of the information grouped by themes is set out below.
4. The objective of this follow-up paper is to:
 - a. compile an inventory of current practices when an applied tariff changes;
 - b. share with Members the potential issues that arise when an applied tariff changes, and
 - c. propose an option to enhance predictability in applied tariffs.

Summary of General Comments from Members:

5. All acknowledge that a Member is free to adjust its MFN applied tariffs within its tariff bindings. Members identified a number of reasons that may lead to adjustments in applied tariffs. The reasons to lower applied tariffs include: to reduce costs of manufacturing inputs, address domestic product shortages, or to control prices on the domestic market. Applied tariff increases

* This revision is to add Ukraine as a co-sponsor to the submission.

may be implemented to protect a domestic industry, or to reflect seasonal changes in applied tariffs or changes in international prices for a product.

6. There is a desire to enhance predictability when applied tariffs are increased, in particular for shipments in-transit or *en route*. Members noted that it was only in limited circumstances that they would increase an applied MFN tariff.
7. Members should be encouraged to continue to liberalise and lower tariffs on all products, including agricultural products.
8. There is a general interest to enhance predictability in the application of applied tariffs.
9. If a Member increases applied tariffs within MFN bindings, there should be greater predictability for exporters and importers.
10. Discussions should focus on applied MFN tariffs and not on other measures such as anti-dumping/countervailing duties, excise taxes, safeguard measures, issues regarding tariff classification or preventing fraudulent actions, etc.

What are the Current Practices of Members:

11. Very few Members provide advance notice before an applied tariff increase. One Member notifies its applied tariff changes 30 days in advance, and another Member changes its applied tariffs only once a year, providing advance notice of the date. These Members do not usually include an *en route* provision.
12. Those Members that do not provide advance notice of an applied tariff change do so for various reasons, including domestic restrictions, or variable tariff rates based on international prices for a product. Some of these Members usually implement an *en route* provision with certain conditions or on a case-by-case basis when making applied tariff changes, but usually without advance notice of the change. One Member provides the ability to pre-clear customs at the time of shipping, in order to provide certainty on the applied tariff in force. In some cases, a Member may consult on proposed tariff changes.
13. A small number of Members noted that they provide neither an advance public notice nor an *en route* provision.
14. Depending on a Member's domestic process, an applied tariff can be changed at any time during the year and this appears to be the case for most Members.

Summary:

15. Based on the responses received and discussions with Members, there does not appear to be a uniform manner in which applied tariff changes are publicly notified. This is not surprising given the differences between Members with respect to their domestic processes. Members are open to discussing options with the objective of facilitating agricultural trade.
16. Based on domestic restrictions raised by several Members, it is clear that a one size fits all approach will not work. There are, however, at least three best practices that could achieve the goal of improved predictability for traders: (i) advance public notice of a change in applied MFN tariff rates or how an automatic applied tariff change is calculated, where practical/feasible, (ii) use of an *en route* provision when advance public notice is not provided, or (iii) provide certainty by providing the ability to pre-clear customs prior to shipping. Members may wish to consider adopting one or more approaches, as appropriate.

Potential Options to Enhance Transparency and Manage Shipments *en route*:¹**Option 1:**

Recognizing that Members have different domestic frameworks, and therefore differing abilities to adopt either prior public notice or *en route* provisions when an applied MFN tariff changes, Members are free to choose the best practice that works in their domestic framework, noting that the use of one or more of the methods below provides greater certainty for traders. Members have the option to choose one or more of the appropriate mechanism or mechanisms, which may differ depending on the circumstances:

1. **Provide a public notice [x] days prior to a change in an applied tariff.**
 - The notice should be public and readily accessible by importers and exporters.
2. **Provide clear prior guidance on how a tariff will change in response to defined factors, such as changes in market prices, indexation against inflation.**
3. **Provide an *en route* provision for shipments.**
4. **Provide the ability for shipments to pre-pay customs duties, according to domestic laws of the importing Member, so that so that the importer pays the tariff in effect at the time of the goods begin their final journey to the country of importation.**

Option 2:

Agree in-principle that Members having provisions in place for shipments where applied tariff changes are made would provide greater certainty for traders.

Recognize that Members may have provisions in place currently that provide this greater certainty through various mechanisms.

Develop best practices for customs authorities to facilitate the development of mechanisms, such as *en route* provisions or the ability to pre-pay customs duties, which could be implemented domestically by Members.

As a first step, Members shall provide responses to the questions in JOB/AG/168 to the Secretariat. By [MC12/MC13, a date to be determined], Members shall establish a series of best practice for customs authorities to implement in cases where applied tariff changes are made, with a view to improving predictability for traders.

Next steps:

Discuss options in more detail with interested Members to develop a workable/realistic approach to a cross-cutting issue.

¹ The Merriam Webster Dictionary defines *en route* as "on or along the way". It can be inferred that the product will soon be exported or has been exported to a destination market, and the exporter may thus not account for the impact of the applied tariff changes on the shipment in question. A Member may have a more precise definition or may provide guidance on its application.