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**Negotiating Group on Trade Facilitation**

**WTO NEGOTIATIONS ON TRADE FACILITATION  
SELF ASSESSMENT GUIDE**

*Revision*

A guide to assist developing and least-developed Members to assess their technical assistance and capacity building support needs and priorities to implement Members' proposals on how to clarify and improve GATT Articles V, VIII and X.

This revision is based on the Draft Consolidated Negotiating Text TN/TF/W/165/Rev.17 (29 July 2013).

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## I. HOW TO USE THIS GUIDE

### 1.1 The Purpose of this Guide

The purpose of this Guide is to help you identify your needs and priorities in the WTO trade facilitation negotiations.

You will be asked to evaluate each of the substantive measures proposed in the draft trade facilitation agreement negotiating text<sup>1</sup> and to describe the possible impacts of these measures in your national environment.

In particular, for each measure, you will be asked to complete (i) a **situational/gap analysis** and (ii) a **questionnaire**.

In the **situational/gap analysis**, you will:

- i. describe your current situation (a “**situational analysis**”) relative to the proposed measure;
- ii. identify the actions necessary to comply with the measure (a “**gap analysis**”); and
- iii. identify the **technical assistance and capacity building** (TACB) support you will need.

Detail is important. The greater the specificity, the better able you will be to identify and quantify the impact of the proposed measures and the type and scale of technical assistance that might be required. This information can also provide a basis for you and/or a donor to calculate the cost of implementation.

Your answers to the **questionnaire** will provide your negotiators and potential donors with additional information about your national situation. Most importantly, this questionnaire asks you to identify a **Special and Differential Treatment (S+D)** category for each measure. This category generally indicates the time frame in which you expect to implement the measure and whether conditioned on receipt of technical assistance.

All of this information provides your negotiators with a better understanding about national priorities as well as areas where they might have flexibility as the negotiations progress.

### 1.2 Suggested Approach

With respect to each of the measures, we suggest the following approach:

**First: Read** the legal text of the proposed measure carefully.

Ask questions if the text is not clear.

**Second: Discuss** the potential impact of the measure with your colleagues.

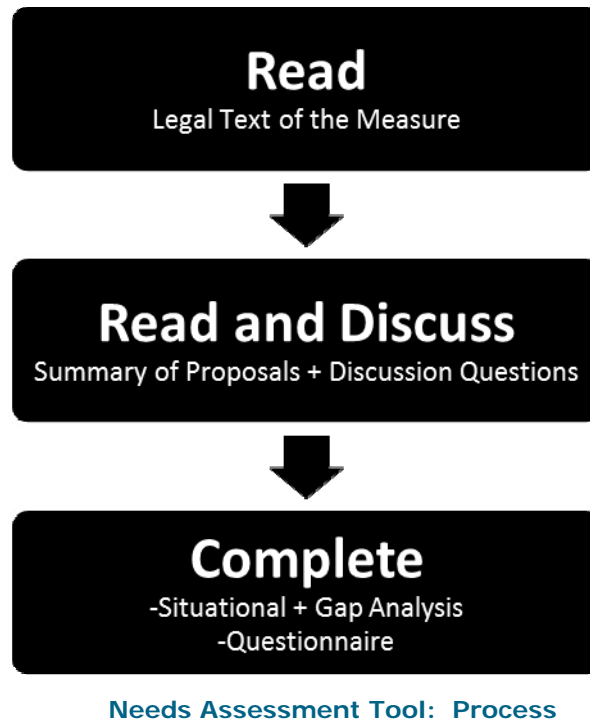
To aide you in that discussion, we have provided a summary of the proposed measure as well as questions that you may wish to consider in relation to your situational analysis.

This summary and the discussion questions should NOT be taken as legal guidance or as requiring a particular implementation. There is not a “one-size fits all” implementation method. Members can implement these measures in different ways depending on their particular national environment and priorities. You should use your own judgement to determine the key elements of each proposal and its impacts in your particular national context.

**Third: Record** the results of your discussion and conclusions in the forms provided.

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<sup>1</sup> Draft Consolidated Negotiating Text TN/TF/W/165 (see cover page above for version). The measures contained in this guide include all proposals contained in Section 1 of the draft text, with the exception of Article 4.2 (Appeal Mechanism in a Customs Union), Article 13 (Institutional Arrangements), and Article 15 (Preamble/Cross-Cutting Matters).



One caveat: The negotiations are on-going. Therefore you should check for any revisions to the proposed measures or if any new measures have been proposed. These can be found in the latest version of the Draft Consolidated Negotiating Text (TN/TF/W/165, as revised). These take precedence over the text of the proposals excerpted in this Guide.

**NEEDS ASSESSMENT TABLES**  
**INSTRUCTIONS FOR COMPLETION**

ARTICLE [Number]    [Title of Measure]

**I. Situational/Gap Analysis**

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<b>A. Policy/Legal Framework:</b> <b>1</b>	<b>2</b>	1. <b>3</b>	<b>4</b>
<b>B. Procedures:</b>		1.	
<b>C. Institutional Framework:</b>		1.	
<b>D. Human Resources/Training:</b>		1.	
<b>E. Communication/Information Technology:</b>		1.	
<b>F. Equipment &amp; Infrastructure:</b>		1.	
<b>G. Other Issues to Note<sup>2</sup>:</b>		1.	

<sup>2</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues, whether positive or negative.

### Table Key - Situational/Gap Analysis

#### [1] Describe Your Current Situation

Describe your current situation as it compares to the proposed measure.

Provide this information according to the seven categories set out in the chart, where relevant. That is, describe how your **Policy/Legal Framework** compares to the proposed measure; describe how your current **Procedures** compare to the proposed measure; describe your current **Institutional Framework** as it relates to the proposed measure, *etc.*

Provide a reference to the relevant legislation.

For purposes of this Guide, any reference to “legislation” should be understood to cover all provisions of general application enacted either by the legislature or by the executive and which are effective at the national level. It therefore includes existing laws, regulations, rules and administrative instructions.

Complete this section even if you are fully in compliance.

#### [2] Barriers

Give reasons for non-compliance or key barriers where your “current situation” is not aligned to the proposed measure.

#### [3] Actions/Resources Required & Cost

List the specific action(s) that must be taken in order to overcome the barrier.

Include the actions in the appropriate category (row). For example:

- if you determined in your situational analysis that the legal framework is deficient, you would include a reference to the laws that need to be changed in the “**A. Policy/Legal Framework**” row and describe the changes required.
- if you determined in your situational analysis that agency staff have not received the training necessary to implement a measure, you should indicate which staff needs to be trained in the “**D. Human Resources/Training**” row and describe the type of training required:

Quantify, if possible, the resources required to accomplish the actions. For example,

- If a change in the law, then you may need one or more lawyers for a certain period of time
- If training, the number and duration of the trainings
- If equipment, the type of equipment and number of units.

Finally, provide an estimate of the cost of such action, if possible.

#### [4] TACB Resources Needed (Specify Action Number)

Describe the technical assistance or capacity building support you will require in order to carry out the actions you identified.

***A sample fully completed situational and gap analysis chart is set out in the Appendix for your reference.***

<b>II. Questionnaire</b>	
1. Do you comply with this measure?	5 Fully: __ Substantially: __ Partially: __ No: __ Not Applicable: __
2. You expect to implement this measure by:	6 Category A (by date of entry into force): ____ Category B (with extra time): ____ Category C (with extra time and technical assistance): ____
3. If Category B or C approximately how much time will you need to implement?	7 6 Months: __ 1 Year: __ 3 Years: __ 5 Years: __ Other (Specify): ____
4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:	8
5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:	9
6. Stakeholders not participating in assessment of this measure that should be consulted:	10
7. National Priority Level (How important is it that this measure should be implemented in your country?):	11 High: __ Medium: __ Low: __ None: __ Explain:
8. Issues to note (any comments or recommendations for negotiators, <i>etc.</i> ):	12



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### Table Key - Questionnaire

**[5] Do You Comply with this Measure?**

Indicate your overall assessment of compliance with this measure (choose one).

You should complete this only after you have completed the Situational and Gap Analysis (fields 1-4).

**[6] You expect to implement this measure by:**

Indicate your estimate of the timeframe for implementation of this measure in terms of category A, B, or C (choose one). These categories, which are defined in Section II of the Draft Consolidated Negotiating Text, have the following meaning:

**Category A** = measures that the Member will implement by the time the agreement enters into force

**Category B** = measures for which the Member will need additional time to implement

**Category C** = measures for which the Member will need additional time and technical assistance/capacity building to implement.

**[7] If Category B or C, approximately how much time will you need to implement?**

If you selected Category B or C in the previous question, provide your estimate of the length of time required to implement this measure.

**[8] Identify technical assistance projects/agencies/international organizations that have or are helping you implement this measure****[9] Lead agency or organization and other stakeholders that would be responsible for implementation of this measure**

Identify which national agency or other organization should have overall responsibility to oversee implementation of the measure or implementation of technical assistance. Identify all stakeholders that would be affected by implementation.

**[10] Stakeholders not participating in assessment of this measure(s) that should be consulted:**

List the government agencies or private sector stakeholders relevant to the particular measure that did not participate in the needs assessment. This is needed in order to identify who needs to be consulted to finalize the results of the assessment and to participate in future updates.

**[11] National Priority Level**

Indicate whether this measure is one that your country considers important to be included in the final agreement (choose one).

**[12] Issues to note (any comments or recommendations for negotiators, etc.)**

This box is to allow comments for the Geneva negotiator, such as whether stakeholders are in support or oppose the measure. If a proposal or certain elements of a proposal are unclear then the negotiator can be requested to seek clarification through the negotiations.

This space can also be used to provide additional information that could be useful for the negotiations, for example: "legislation that would allow for implementation of this proposal is currently before the Parliament." Or, comments could be made on any difficulties in completing the needs assessment - for example - assumptions made if the standard is too general or vague.

## II. SELF ASSESSMENT GUIDE

### Article 1: Publication and Availability of Information

#### 1. Publication

##### **Legal Text**

1.1 Each Member shall promptly publish the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders and other interested parties to become acquainted with them:

- (a) Importation, exportation and transit procedures (including port, airport, and other entry-point procedures) and required forms and documents;
- (b) Applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
- (c) Fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;
- (d) Rules for the classification or valuation of products for customs purposes;
- (e) Laws, regulations and administrative rulings of general application relating to rules of origin;
- (f) Import, export or transit restrictions or prohibitions;
- (g) Penalty provisions against breaches of import, export or transit formalities;
- (h) Appeal procedures;
- (i) Agreements or parts thereof with any country or countries relating to importation, exportation or transit;
- (j) Procedures relating to the administration of tariff quotas.

1.2 Nothing in these provisions shall be construed as requiring the publication or provision of information other than in the language of the Member except as stated in paragraph 2.2.

##### **Notes**

##### ***What activity does this proposal regulate?***

The types of information that governments publish, and the manner of publication

##### ***Which authorities are directly concerned?***

- Executive Authority
- All border agencies
- Trade Authority
- Revenue Authority

##### ***What are the new requirements?***

- Members shall publish the general trade-related information listed in the proposal
- Members shall publish such information “promptly” and in a “non-discriminatory and easily accessible manner” that will allow other governments, traders and interested persons to become acquainted with them.

**What actions might be required to implement this proposal?****A. Policy/Legal Framework**

1. Has responsibility for publication of the trade information described in the proposal (subparagraph (a)-(j)) been delegated?

*A legal act or formal policy may be necessary to identify the government agency (or agencies) or other entity that shall be responsible for publication of trade information, to define the scope of their respective responsibilities, and to ensure coordination.*

2. Is a manner of publication prescribed that is non-discriminatory and ensures easy access by other governments, traders and interested parties?

**B. Procedures**

3. Have administrative procedures been established to implement publication?

*Typically, the authority (or authorities) responsible for publication would establish formal procedures that would, for example:*

- *identify the types of information that the authority will publish;*
- *specify the manner of publication per information type (e.g., official journal, website or other);*
- *establish processes to collect, compile and otherwise prepare documents for publication;*
- *ensure the information available is accurate, relevant and prompt; establish processes for periodic review and updating published information; and*
- *provide measures to ensure agency staff are aware of the obligation.*

*Paragraph 1.4 of Article 6 contains additional requirements that you should consider in relation to the publication of information on fees and charges (i.e., you must also publish the reason for the fees and charges, the responsible authority, and when and how payment is to be made).*

**C. Institutional Framework**

4. Has responsibility for administration of the publication obligation been assigned to a staff/unit (e.g., one or more "information officers" or an information unit) within the relevant agency or agencies?

**D. Human Resources and Training**

5. Is a sufficient number of competent/trained staff available to administer the publication obligation?

**E. Communication and Information Technology**

6. Are information technologies used for rapid amendment and communication of changes to all interested parties?

*Note that internet publication is covered under Article 1.2, below.*

## ARTICLE 1.1 PUBLICATION AND AVAILABILITY OF INFORMATION

### I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>3</sup>:</i>		1.	

<sup>3</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_ 1 Year:\_\_\_ 3 Years:\_\_\_ 5 Years:\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## 2. Information Available Through Internet

### **Legal Text**

2.1 Each Member shall [to the extent possible] make available and update as appropriate the following through the internet:

- (a) A description of its importation, exportation and transit procedures [, including appeal procedures][, that informs [governments and traders and other interested parties] of the practical steps needed to import and export, and for transit.]
- (b) The forms and documents required for importation into, exportation from, or transit through the territory of that Member.
- [(c) Relevant trade-related legislation.]
- (d) Contact information on enquiry points

2.2 Whenever practicable, the description referred to in subparagraph 2.1(a) shall also be made available in one of the official languages of the WTO.

2.3. Members are encouraged to make available further trade-related information through the internet, including items referred to in paragraph1.1.

### ***Notes***

#### ***What activity does this proposal regulate?***

The information a government provides to the public regarding import, export and transit procedures, and the manner by which it is provided

#### ***Which authorities are directly concerned?***

- Executive Authority
- All border agencies
- Trade Authority

#### ***What are the new requirements?***

- Members shall prepare practical guides to their import, export, and transit procedures including appeal procedures
- Members shall publish on the internet:
  - (i) the practical guides,
  - (ii) the documents or forms required for import, export or transit,
  - (iii) relevant trade laws, and
  - (iv) the enquiry point contact information.

#### ***What actions might be required to implement this proposal?***

##### **A. Policy/Legal Framework**

1. Has responsibility for internet publication of the trade information described in the proposal (Article 2.1 (a)-(d)) been delegated?

*A legal act or formal policy may be necessary to identify the government agency (or agencies) or other entity that shall be responsible for internet publication of the specified trade information, to define the scope of their respective responsibilities, and to ensure coordination.*

**B. Procedures**

2. The considerations described in the previous proposal (Article 1.1) would also apply here.

*That is, the authority (or authorities) responsible for publication, whether print or electronic, would typically establish procedures to:*

- identify the types of information that the authority will publish;*
- specify the manner of publication per information type (e.g., official journal, website or other);*
- establish processes to collect, compile and otherwise prepare documents for publication;*
- ensure the information available is accurate, relevant and prompt; establish processes for periodic review and updating published information; and*
- provide measures to ensure agency staff are aware of the obligation.*

**C. Institutional Framework**

3. Has an office or staff been assigned responsibility to prepare and keep updated the practical guides to import/export/transit procedures?
4. Has responsibility been assigned for updating the information described in the proposal on a website(s)?

**D. Human Resources and Training**

5. Are a sufficient number of competent subject-matter experts and support staff available to prepare and keep up to date practical guides to import/ export/ transit procedures?

*Staff resources from the customs administration and other relevant border agencies would likely be needed to prepare the practical guides to import/export/transit processes, if they do not already exist, and to keep them up to date. Similarly, forms, documents and trade laws must be collected and prepared for internet publication.*

*The proposal further would require resources to translate this material to one of three official WTO languages (English, French, Spanish), if practicable.*

**E. Communication and Information Technology**

6. Is an appropriate website available for publication of information of the kind described in the proposal?
7. Is there an online facility that takes an HS code as an input and provides as output all duties, taxes and fees broken down by the types of duties and taxes?

*Potentially, the facility can also identify other regulatory restrictions commonly found on products in the tariff-line.*

8. Are sufficient and competent technical staff available to maintain the relevant website(s)?

*Technical experts would be needed to incorporate and maintain this content on an existing internet site (or sites), if available and appropriate, or to design, develop and maintain a new web site.*

**ARTICLE 1.2 INFORMATION AVAILABLE THROUGH INTERNET**

**I. Situational/Gap Analysis**

<b>Describe Your Current Situation</b>	<b>Barriers (Give Reasons for non-compliance)</b>	<b>Actions/Resources Required &amp; Cost (Number the Actions)</b>	<b>TACB Resources Needed (Specify Action Number)</b>
<b><i>A. Policy/Legal Framework:</i></b>		1.	
<b><i>B. Procedures:</i></b>		1.	
<b><i>C. Institutional Framework:</i></b>		1.	
<b><i>D. Human Resources/Training:</i></b>		1.	
<b><i>E. Communication/Information Technology:</i></b>		1.	
<b><i>F. Equipment &amp; Infrastructure:</i></b>		1.	
<b><i>G. Other Issues to Note<sup>4</sup>:</i></b>		1.	

<sup>4</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).



## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_ Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_\_\_ 1 Year:\_\_\_\_\_ 3 Years:\_\_\_\_\_ 5 Years:\_\_\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

### 3. Enquiry Points

#### **Legal Text**

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

3.2. Members of a customs union or involved in a regional integration may establish or maintain common enquiry points at the regional level to satisfy the requirement of 3.1 for common procedures.

[3.3. Members shall not require the payment of a fee for answering basic enquiries. Members are encouraged not to require the payment of a fee for all other enquiries, including providing forms and documents. Each Member shall limit the amount of its fees and charges, if any, for answering all other enquiries and providing required forms and documents, to the approximate cost of services rendered.]

3.4 The enquiry points shall answer enquiries and provide the forms and documents within a reasonable time period set by each Member, which may vary depending on the nature or complexity of the request.

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#### **Notes**

##### ***What activity does this proposal regulate?***

The means by which an individual trader, a government, or any other interested person obtains specific information from a Member about import, export or transit requirements.

##### ***Which authorities are directly concerned?***

- Executive authority
- All border agencies
- Trade Authority

##### ***What are the new requirements?***

- A Member shall establish one or more "enquiry points" to respond to "reasonable" questions about the matters listed in Article 1.1, and to requests for required forms and documents.
- If a member of a customs union or involved in regional integration, a Member may opt to participate in a regional enquiry point, rather than establishing a national enquiry point.
- The Member shall respond to such enquires and requests within a "reasonable" time.
- [No fees shall be charged for answering basic enquiries.][Any fees charged for other enquiries or for providing forms or documents shall be limited to the approximate cost incurred].

##### ***What actions might be required to implement this proposal?***

#### **A. Policy/Legal Framework**

1. Have you established a trade-information enquiry point?

*A legal act may be required to designate the authority (or authorities) that shall be responsible for setting up and operating the enquiry point and to define its functions.*

*Different organizational models are possible. Commonly, the enquiry point function is housed within the government authority (or authorities) responsible for the subject area*

*(for example, the customs administration for questions about import/export procedures and customs duties).*

*Alternatively, a central, government-wide enquiry point could be established that would be staffed with the relevant subject matter experts and/or would act as a "switchboard" to receive and route requests for information to the appropriate agency, and collect and compile the response to the requester.*

2. Are the responsibilities of your trade-information enquiry point consistent with the proposal?

*That is, is your enquiry point required to "answer reasonable enquiries...on matters covered by paragraph 1.1" and provide forms and documents on request within a reasonable time period?*

3. Are any fees and charges required to be paid for answering "basic" inquiries?
4. Are any fees and charges required to be paid for answering other inquiries or providing documents?
5. Are any such fees and charges limited to the approximate cost of the service rendered?

#### **B. Procedures**

6. Are formal procedures and work processes defined for operation of the trade-information enquiry point(s) (*i.e.*, standards for processing inquiries, including response times; standard templates and forms; modes of communication, *etc.*)?

*WTO members should have experience in setting up and operating enquiry points because these are already required by the WTO TBT and SPS agreements.*

#### **C. Institutional Framework**

7. Have the roles and responsibilities of staff within the agency (or agencies) charged with operation of the enquiry point been defined and implemented?

*A new unit to operate the enquiry point may be required to be established within the designated agency (for example, an information center within the customs authority). Alternatively, this function might be addressed as a collateral duty to any office that already has responsibilities in trade.*

8. Are the relevant border agencies required to cooperate and coordinate with the enquiry point as necessary to carry out its responsibilities?

#### **D. Human Resources and Training**

9. Are a sufficient number of staff available and trained to operate the enquiry point?

*Staff assigned to the enquiry point should be sufficient in number to handle the expected volume of enquiries, and trained/knowledgeable in the relevant subject matter and/or in coordinating with relevant agencies or experts to respond to enquiries.*

#### **F. Infrastructure & Equipment**

10. Does the enquiry point have the equipment and technical support required for its operation?

*Operation of an enquiry point requires a physical office space with appropriate equipment (*e.g.*, basic communication equipment, such as telephones and fax machines, computers with internet access and email).*

*ICT support may also be useful, such as a tariff and tax rate lookups or similar national trade information database.*

## ARTICLE 1.3 ENQUIRY POINTS

### I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>5</sup>:</i>		1.	

<sup>5</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_ Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_ 1 Year:\_\_\_ 3 Years:\_\_\_ 5 Years:\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## 4. Notification

### **Legal Text**

4.1 Each Member shall notify the Committee of:

- (a) The official place(s) where the items in subparagraphs 1.1(a) to (j) 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.

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### **Notes**

#### ***What activity does this proposal regulate?***

Communications to/from the WTO Committee on Trade Facilitation

#### ***Which authorities are directly concerned?***

- The government authority responsible for WTO notifications (e.g., the trade authority or foreign affairs ministry)

#### ***What are the new requirements?***

- A Member shall provide the Committee with the names of the official publications and the address(es) of the website(s) where the information required by Article 1.1 and 1.2 has been published
- A Member shall provide the Committee with the contact details of its enquiry point(s)

#### ***What actions might be required to implement this proposal?***

##### **A. Policy/Legal Framework**

1. Is responsibility for making the required notification assigned to a government authority?

*A legislative or administrative act may be required to designate responsibility to a government agency to carry out the notification.*

*The assigned functions of this entity may also include obtaining and distributing notifications made by other WTO members to interested parties, as well as maintaining records of notifications sent and received.*

##### **D. Human Resources and Training**

2. Are a sufficient number of staff available and trained to carry out the notification functions?

*Although the notification requirement is minimal, a Member may wish to designate staff to monitor notifications made by other WTO members and distribute and/or publish them to other government authorities, private sector or other interested parties.*

*All WTO members should have experience in making notifications to WTO committees, as this is a common obligation found under a number of current WTO agreements.*

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>6</sup>:</i>		1.	

<sup>6</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_ Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_ 1 Year:\_\_\_ 3 Years:\_\_\_ 5 Years:\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):



## Article 2: Prior Publication and Consultation

### 1. Interval between Publication and Entry into Force

#### Legal Text

1.1 Each Member [shall], [to the extent practicable], ensure that a reasonable interval is provided between the publication [or, where appropriate, pre-publication] of new or amended trade-related laws or regulations and their entry into force<sup>7</sup>.

1.2 [Changes to duty rates or tariff rates are excluded from this provision.]

#### **Notes**

##### ***What activity does this proposal regulate?***

The process by which national trade legislation is made

This includes the process for enacting laws on trade-related matters by the national legislative body (congress, parliament, legislature, *etc.*) as well as secondary legal acts (regulations, rules, orders, *etc.*) issued by executive or administrative bodies.

##### ***Which authorities are directly concerned?***

- All border agencies
- Trade Authority
- Executive Authority
- Legislative Authority

##### ***What are the new requirements?***

- There must be a "reasonable interval" between the date a new or amended law or regulation [other than the tariff] is published and the date it enters into force

##### ***What actions might be required to implement this proposal?***

#### **A. Policy/Legal Framework**

1. Do you publish new or amended trade laws and regulations prior to their entry into force?
2. Is the interval of time between the date of publication of such laws and regulations and the date of their entry into force "reasonable"?

*National legislation (including the national constitution, if relevant) should ensure that all trade-related laws and administrative regulations shall be published a reasonable period of time prior to their entry into force, subject to such exceptions as may be defined.*

*(Please note that paragraph 1.4 of Article 6 will also require you to publish any new or changed fees and charges on imports or exports an "adequate time" before they enter into force.)*

*Such legislation might also define the rights or remedies available to traders and/or other interested persons where this obligation is not observed (for example, rights to challenge the validity of the law in court).*

<sup>7</sup> This is without prejudice to specific timeframes established under other WTO Agreements and practices of WTO Committees.

## ARTICLE 2.1: INTERVAL BETWEEN PUBLICATION AND ENTRY INTO FORCE

### I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>8</sup>:</i>		1.	

<sup>8</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_ Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_ 1 Year:\_\_\_ 3 Years:\_\_\_ 5 Years:\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## 2. Opportunity to Comment on New and Amended Rules

### **Legal Text**

2.1 Each Member shall [, to the extent practicable,] [, as appropriate,] provide opportunities and a reasonable time period to traders and other interested parties [within its territory] to comment on the proposed introduction or amendment of [trade-related] [and] [customs] laws and regulations.

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### **Notes**

#### ***What activity does this proposal regulate?***

The process by which national trade laws and regulations are made

This includes the process for enacting laws on trade-related matters by the national legislative body (congress, parliament, legislature, *etc.*) as well as secondary legal acts (regulations, rules, orders, *etc.*) issued by executive or administrative bodies.

#### ***Which authorities are directly concerned?***

- All border agencies
- Trade Authority
- Executive Authority
- Legislative Authority

#### ***What are the new requirements?***

Traders and other interested parties must be given an opportunity and reasonable time to comment on proposals for new trade-related and customs laws and administrative regulations, as well as any amendments thereto

#### ***What actions might be required to implement this proposal?***

##### **A. Policy/Legal Framework**

1. Are traders and other interested parties [within your territory] required to be notified of any proposed trade-related and customs laws?
2. Are traders and other interested parties [within your territory] required to be notified of any proposed trade-related and customs administrative regulations?
3. Do traders and other interested persons [within your territory] have the right to comment on such proposals?
4. Is a reasonable period of time provided for submission of such comments?

*The right of traders and other interested parties to comment on legislative and regulatory proposals typically has a basis in legislation.*

*To allow traders and other interested parties the opportunity to exercise this right, legislation typically requires the administrative agencies to notify interested parties of proposed new regulations or amendments and to make copies publically available.*

*Legislation may also specify the permitted form and manner of notification, as well as the types of administrative acts that must be notified, a minimum comment period, and any exceptions to these obligations.*

##### **B. Procedures**

5. Are procedures defined for the notification of proposed legislation and administrative regulations to traders and other interested parties and processing comments?

*These procedures typically deal with such matters as:*

- *the particular manner by which interested parties will be informed of a proposal (e.g., publication on the internet, official journal, or newspaper; direct contact; holding open conferences or public hearings; etc.);*
- *the content of the public notification;*
- *the permitted methods and form for public comments (e.g., written comments, hearings on the record);*
- *managing the official record of comments received;*
- *public access to comments, etc.*

**C. Institutional Framework**

6. Are department(s) and/or staff designated responsibility for managing notification and public comment on proposed trade-related laws and regulations?

*Implementation of this measure would typically require staff – such as a legal office – within the legislative body and each administrative agency that is responsible for trade matters to:*

- *prepare and distribute or publish the proposed law or rule (including any explanatory materials);*
- *collect, review and assess the comments received;*
- *handle communications (including meetings or hearings) with the public; and,*
- *make any required adjustments to the proposal.*

**D. Human Resources and Training**

7. Are sufficient numbers of staff available and trained within legislature/executive or administrative bodies for this activity?

## ARTICLE 2.2 OPPORTUNITY TO COMMENT ON NEW AND AMENDED RULES

### I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>9</sup>:</i>		1.	

<sup>9</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_ Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_ 1 Year:\_\_\_ 3 Years:\_\_\_ 5 Years:\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

### 3. Consultations

#### **Legal Text**

Each Member shall, as appropriate, provide for regular consultations between border agencies and traders or other stakeholders within its territory.

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#### **Notes**

##### ***What activity does this proposal regulate?***

The process by which border agencies obtain the views of traders and other stakeholders on matters affecting them

##### ***Which authorities are directly concerned?***

- All border agencies

##### ***What are the new requirements?***

Border agencies must hold "regular consultations" with traders and stakeholders

##### ***What actions might be required to implement this proposal?***

#### **A. Policy/Legal Framework**

1. Are your border agencies required to engage in public consultation?
2. Has a public consultation strategy/policy been defined for your border agencies (*i.e.*, identifying matters subject to consultation, consultation techniques, persons to be consulted, *etc.*)?

*Public consultation is often implemented by means of formal government policy and procedures. Typically, a policy document would define or provides guidance to border agencies on such matters as:*

- *the matters that are subject to consultation*
- *the agencies responsible for undertaking consultation*
- *the groups or persons to be consulted*
- *who the consultations can be instigated by (customs, other border agencies, trade associations *etc.*) and how the agencies coordinate their consultation efforts in areas of common interest*
- *when consultation should take place; and*
- *the appropriate consultation mechanisms or techniques (e.g., periodic meetings with trade or industry groups; formal consultative committees; informal discussions or working groups; publication of documents for written comment; websites or social media, *etc.*).*

#### **B. Procedures**

3. Have the responsible border agencies established procedures for carrying out public consultation (*i.e.*, timing of consultation, modes of communication with interested parties, establishing consultative committees, *etc.*)?

#### **C. Institutional Framework**

4. Is a person/unit designated within each border agency with responsibility to oversee that agency's implementation of public consultation strategy/policy?



**D. Human Resources and Training**

5. Are sufficient numbers of staff within the border agencies available and trained to carry out public consultation?

*In order implement a useful and effective public consultation, the responsible border agencies should have sufficient staff and procedures to design/plan the consultations, prepare consultation documents, make notifications and other communications to interested parties, carry out the consultation, and provide follow-up and feedback on results.*

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>10</sup>:</i>		1.	

<sup>10</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_ Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_ 1 Year:\_\_\_ 3 Years:\_\_\_ 5 Years:\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## Article 3: Advance Rulings

### 1. Provision of Advance Rulings

#### Legal Text

1. Each Member shall issue an advance ruling in a reasonable, time bound manner to an applicant that has submitted a written request containing all necessary information. If [a Member/the competent authority of a Member] declines to issue an advance ruling it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

2. [A Member/The competent authority] may decline to issue an advance ruling to an applicant where the question raised in the application:

- (a) is already pending in the applicant's case before any governmental agency, appellate tribunal or court;
- (b) has already been decided by any appellate tribunal or court.

3. The advance ruling shall be valid for a reasonable period of time after its issuance unless the law, facts or circumstances supporting the original advance ruling have changed.

*3bis* Where the [Member/competent authority] revokes, modifies or invalidates the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where a [Member/competent authority] revokes, modifies or invalidates advance rulings with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false or misleading information.

*3ter* An advance ruling issued by [a Member/the competent authority] shall be binding on that Member in respect of the applicant that had sought it. The [Member/competent authority] may provide that the advance ruling be binding on the applicant.

4. A Member shall publish, at a minimum:

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

5. A Member [shall][may] provide, upon written request of an applicant, a review of the advance ruling or the decision to revoke, modify or invalidate the advance ruling.<sup>11</sup>

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

7. Definitions:

(a) An advance ruling is a written decision provided by a Member to an applicant prior to the importation of a good covered by the application that sets forth the treatment that the Member shall provide to the good at the time of importation with regard to [the following, where they are implemented by Members:]

- (i) The good's tariff classification;

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<sup>11</sup> [A Member is not required to provide the applicant with recourse to Article 4.1.1. of this Agreement following such a review.]

[(ii) The appropriate method and the application of the method to be used for determining the customs value under a particular set of facts;]

[(iii) The applicability of the Member's requirements for relief or exemption from customs duties;]

[(iv) The application of the Member's requirements for quotas, including tariff quotas;]

[(v) The origin of the good;]

[(vi)] Additional matters for which a Member considers it appropriate to issue an advance ruling.

(b) 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]. [A Member may require that an applicant have legal representation in its territory.]

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### **Notes**

#### ***What activity does this proposal regulate?***

The means by which a trader can obtain reliable "binding" information about the tariff classification or other customs treatment of his goods before he imports them

#### ***What authorities are directly concerned?***

- Customs

#### ***What are the new requirements?***

- Customs shall provide a written ruling on request of a trader concerning the tariff classification of his goods [or any other matters described in paragraph 1.7(ii) – (vi)] prior to their importation
- The ruling shall be binding on Customs and remain valid for a reasonable period of time
- A trader shall have rights to be notified if Customs takes certain actions adverse to his interests (such as a refusal to issue a ruling or a decision to revoke or modify a ruling)
- Customs must publish certain information about the ruling process

#### ***What actions might be required to implement this proposal?***

Members should have experience in implementing a binding rulings program because the WTO Rules of Origin Agreement requires governments to provide advance rulings on country of origin questions. These proposals seek to establish such a system of binding rulings on tariff classification [and the other customs matters listed in subsection 7 of Article 3].

#### **A. Policy/Legal Framework**

1. Does Customs have authority to issue advance rulings on all of the matters described in the proposal (tariff classification, valuation, origin, *etc.*)? If not Customs, do other administrative agencies have such authority?

*Customs (or another designated authority) should have legal authority to issue binding rulings on questions of tariff classification [and the other customs matters listed in subsection 7 of Article 3].*

2. Are such rulings considered binding on Customs (in respect of the applicant)?
3. If the validity period of a ruling is limited, is the length of time reasonable? Is the period published?

*For practical reasons (such as changes in products or legislation, *etc.*) Customs administrations often apply a maximum period of validity for the binding ruling. In practice this varies between one and five years.*

4. Does your legislation protect confidential information submitted in connection with applications for rulings?

*When providing specific information, decisions or binding rulings, Customs should have systems in place to ensure that confidential or commercially sensitive information received from traders or information that may adversely affect the Customs is not divulged to unauthorised persons. Provision may be made in national legislation for authorised disclosure in certain cases such as serious infraction or fraud.*

## **B. Procedures**

5. Are the requirements for submission of an application for a ruling documented and published?

*Such requirements typically define the persons who may request the ruling, the form of the application, and the particulars that must be supplied (i.e., name and address of applicant; details of the goods such as commercial description, nature, composition, quality, price, origin, end-use, packaging and, where applicable, manufacturing process; particulars of any previous importations of goods of the same kind by the applicant, together with the tariff heading applied; Customs office through which the goods are to be cleared, etc.).*

*Often, the Customs authority will define standard application letters or other templates. Customs will usually ask for a sample of the goods if practicable. Otherwise photographs, plans, drawings or a complete and exact description may be called for.*

6. Are the conditions and processes for revocation, invalidation, and amendment of rulings defined?

*The grounds and procedure for the revocation or invalidation of rulings should likewise be defined and published.*

7. Has Customs (or other authority) established policies/procedures for:

- processing applications for rulings?
- distribution/publication of rulings to customs offices and traders?
- monitoring proper use of rulings in clearance of goods?

*The rulings unit should establish working procedures to ensure quality and consistency in the rulings program.*

*Typically, these would cover such matters as the internal procedures and workflow to process an application for a ruling (include time periods); maintaining a ruling record-keeping system; monitoring proper use of rulings in clearance of goods; and conditions under which rulings will be published.*

8. Are the time limits for issuance of a ruling published?

*As indicated in paragraph 4 of the proposal, Customs (or the other designated authority) should define and publish the period of time within which it shall process and issue the ruling.*

## **C. Institutional Framework**

9. Has an administrative unit (or units) responsible for issuance and administration of rulings programs been designated/ established?

*Various organizational models that can be used for the administration of an advance rulings programs, and the choice may depend on the scope of the program and anticipated volume of applications.*

*Some customs administrations have established a separate functional unit with dedicated staff responsible for rulings; others add rulings to the existing responsibility of tariff departments of the customs administration; still others establish an ad hoc committee of experts to respond to applications for rulings.*

*Most administrations locate the rulings function at the customs central office; some administrations may allow rulings to be issued by local or regional customs offices.*

**D. Human Resources and Training**

10. Are rulings unit officers trained on administration of rulings program?
11. Are border officials trained on proper use of rulings in clearance of goods?
12. Are a sufficient number of qualified officers available/assigned to rulings unit(s)?

*Typically, the rulings function is staffed by subject-matter experts in tariff classification [and other relevant customs matters]. Their main activities include processing applications for rulings; research and writing decisions; disseminating the rulings to the applicant and relevant customs offices; and monitoring the proper use of rulings in clearance of goods.*

**E. Communication and Information Technology**

13. Has a rulings record-keeping system been established?

*Generally, specialized equipment or technology is not necessary to operate a rulings program.*

*However, a record-keeping system is essential, and some customs administrations use ruling databases or automated systems to track applications and search issued rulings.*

*Some administrations provide for electronic submission of applications, and some administrations publish rulings on-line.*

ARTICLE 3.1      PROVISION OF ADVANCE RULINGS

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>12</sup>:</i>		1.	

<sup>12</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).



## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_ Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_ 1 Year:\_\_\_ 3 Years:\_\_\_ 5 Years:\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## Article 4: Appeal or Review Procedures

### 1. Right to Appeal or Review

#### Legal Text

1.1 Each Member shall provide that any person to whom customs [or another relevant border agency] issues an administrative decision<sup>13</sup> has the right, within its territory to:

(a) administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision;

and[/or]

(b) judicial appeal or review of the decision.

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

1.3 Members shall ensure that their appeal or review procedures are carried out in a nondiscriminatory manner.

1.4 Each Member [shall [endeavour to]] ensure that, in a case where the decision on appeal or review under subparagraph 1.1 (a) is not given either (i) within set periods as specified in its laws or regulations or (ii) without undue delay, the petitioner has the right to either further appeal to or further review by the administrative authority or the judicial authority or any other recourse to the judicial authority.

1.5 Each Member shall ensure that the person referred to in paragraph 1.1 is provided with the reasons for the administrative decision so as to enable such a person to have recourse to appeal or review procedures where necessary.

[1.6 The decisions on appeal or review under paragraph 1.1 shall govern the practice of customs and other relevant agencies throughout [their jurisdiction] [the territory of the Member].]

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#### **Notes**

##### ***What activity does this proposal regulate?***

The rights of traders to obtain review and correction of decisions made by Customs officials or officials of other border agencies

##### ***What authorities are directly concerned?***

- Customs
- [Other border agencies]

##### ***What are the new requirements?***

Members shall provide traders with the right to appeal decisions made by Customs [or other relevant border agencies] in an administrative and [/or] judicial proceeding.

##### ***What actions might be required to implement this proposal?***

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<sup>13</sup> An administrative decision in this Article means a decision with a legal effect that affects rights and obligations of a specific person in an individual case. [It shall be understood that an administrative decision in this Article covers an administrative action (within the meaning of Article X of the GATT 1994) or administrative omission as provided for in each Member's laws and regulations. For addressing administrative omissions, a Member may maintain an alternative administrative or judicial mechanism to receive complaints and to direct the customs authority to promptly issue an administrative decision in place of the right to appeal or review under subparagraph (a).]

**A. Policy/Legal Framework**

1. Do persons to whom Customs issues a decision have a right to appeal to an administrative authority who is independent of, or at a higher level than, the official or office who made the decision?

*The WTO agreements on customs valuation and rules of origin allow for use of an administrative appeal process; therefore, some Members may have already in place the necessary legal, organizational, and procedural infrastructure for customs administrative appeals.*

2. Are such rights of appeal provided with respect to decisions made by the other border agencies?
3. Are the types of administrative decisions that can be appealed defined?

*Legislation typically defines the types of administrative decisions that can be appealed, as well as the appeal procedures.*

*For example, these may include decisions made in connection with customs clearance of goods, such as the amount of duty an importer must pay (including decisions on tariff classification, customs valuation, or origin of the goods) or the admissibility of the goods (e.g., the application of import restrictions and prohibitions). They may also include decisions related to licenses or authorizations (e.g., a refusal to issue a broker's license or revocation of an authorization to use simplified procedures); decisions related to claims for refund or drawback of duty; and decisions related to assessment of administrative penalties and seizure of goods.*

*Legislation may define different appeal procedures for different types of claims (e.g., one procedure for appeal against assessment of duty; another for appeals against imposition of an administrative penalty).*

4. [Is there a right to appeal to the next higher administrative level or judicial authority if the administrative appeal decision is unduly delayed or delayed beyond a period specified in the law?]
5. Is there a right to appeal a decision issued by Customs [and other relevant border agencies] to a judicial body?

*A Member may require the trader make an administrative appeal before permitting access to the courts. Alternatively, the legislation may allow the administrative appeal as an option to a judicial appeal. In any case, the trader should have a right to bring the claim to [the next higher administrative level or judicial appeal] where the administrative appeal is denied or is [unduly] delayed [beyond the period of time specified in the law].*

6. Is Customs [and other relevant border agency] required to give reasons for its decisions to the persons directly affected thereby?

*To enable an effective appeal, legislation should require that Customs [or other relevant border agency] give the person the reasons for their decision.*

**B. Procedures**

7. Are the requirements and procedures for filing an administrative appeal defined and published?

*These might include such matters as the time periods for making an appeal, the information to be supplied, the offices or officials to which the appeal must be directed, and the time periods for lodging supporting evidence.*

8. Have the administrative appeal authorities established policies/procedures for the processing of appeals?

*To ensure quality and consistency of decisions, as well as the observance of required time periods, Customs and other appeal authorities should establish working procedures for processing of appeals.*

*Such procedures typically cover such matters as the form and manner by which notifications should be made to the appellant; rules for conducting hearings; and the*

*implementation of the decision by relevant customs offices. They may also define standard forms or templates for decisions and other communications.*

9. Are set time periods specified for review?
10. Where an appeal is allowed, do Customs ensure their decision or the ruling of the independent or judicial authority is put into effect as soon as possible, except in cases where the Customs appeal against the ruling?

### **C. Institutional Framework**

11. Has an administrative unit (or units) been designated responsibility for review and decision of administrative appeals? Has such unit/staff actually been established?

*The size and structure of the administrative appeal function will depend on national requirements.*

*In some countries, the initial appeal is made to a higher authority within the same customs office where the original decision was made (such as the officer's supervisor or the head of that local Customs office); other countries require or allow the appeal to be made to the central Customs administration or to a regional office with authority over the local office; and still other countries provide for the appeal to be made to the parent authority of the customs administration, such as a Ministry of Finance. Some countries have established independent, quasi-judicial tribunals with specialized expertise to hear appeals from administrative decisions.*

*In larger countries, appeals may be processed by a separate functional unit comprised of subject-matter experts (often lawyers) located at the central administration and/or at regional centers. Other countries operate on an ad-hoc basis, and rely on the expertise of existing customs operational units to respond to an appeal.*

### **D. Human Resources and Training**

12. Are a sufficient number of qualified officers available and assigned to processing administrative appeals?

### **E. Communications and Information Technology**

13. Has an administrative appeals record-keeping system been established?

Article 4: APPEAL OR REVIEW PROCEDURES

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>14</sup>:</i>		1.	

<sup>14</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

<p>1. Do you comply with this measure?</p> <p>Fully:___ Substantially: ___Partially:___ No:___ Not Applicable:___</p>
<p>2. You expect to implement this measure by:</p> <p>Category A (by date of entry into force):_____ Category B (with extra time):_____ Category C (with extra time and technical assistance): _____</p>
<p>3. If Category B or C approximately how much time will you need to implement?</p> <p>6 Months:_____ 1 Year:_____ 3 Years:_____ 5 Years:_____ Other (Specify):_____</p>
<p>4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:</p>
<p>5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:</p>
<p>6. Stakeholders not participating in assessment of this measure that should be consulted:</p>
<p>7. National Priority Level (How important is it that this measure should be implemented in your country?):</p> <p>High:___ Medium: ___ Low:___ None:___ Explain:</p>
<p>8. Issues to note (any comments or recommendations for negotiators, etc.):</p>

## Article 5: Other Measures to Enhance Impartiality, Non-Discrimination and Transparency

### [1. Notifications for enhanced controls or inspections]

#### **Legal Text**

Where a Member adopts or maintains a system of issuing notifications to its concerned authorities for enhancing the level of controls or inspections at the border in respect of foods, beverages or feedstuffs covered under the notification for protecting human or animal life or health within its territory, the following disciplines shall apply to the manner of their issuance and withdrawal:

- (a) A Member may issue the notification, to the extent practicable, only after it is established that such goods declared for importation from another Member as may be mentioned in the notification have not fulfilled the prescribed Sanitary or Phytosanitary regulations in at least one recent case.
- (b) A Member may issue the notification so that it applies only to those points of entry where the Sanitary and Phytosanitary regulations are uniform for such goods.
- (c) A Member shall either promptly terminate the notification or withdraw the enhanced controls or inspections when circumstances giving rise to it no longer exist, or if changed circumstances can be addressed in a less trade restrictive manner.
- (d) When a Member decides to terminate the notification or withdraw the enhanced controls or inspections, it shall either promptly publish the announcement of termination of the notification in a non-discriminatory and easily accessible manner or inform the competent authority of the exporting country.]

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#### **Notes**

##### ***What activity does this proposal regulate?***

Disciplines on any system of issuing notifications to concerned authorities to enhance controls and inspections on imported goods, particularly food products, beverages and feedstuffs

##### ***What authorities are directly concerned?***

- All border agencies

##### ***What are the new requirements?***

- The conditions under which notifications may be made and maintained on the system, and the actions taken as a consequence of the notification, shall be subject to certain disciplines

##### ***What actions might be required to implement this proposal?***

#### **A. Policy/Legal Framework**

1. Does your legislation allow information required for import control purposes to be shared among border agencies?

*This proposal does not require a system of such notifications but sets out disciplines in cases where such legislation or practice exists. If you have this requirement in your legislation please provide the legal citation and a brief description.*

#### **B. Procedures**

2. Are procedures established for notification to border authorities to enhance controls and inspection consistent with the proposal, including:
  - criteria under which a notification may be made (paragraph 1(a) and (b))?

- termination of alert (paragraph 1(c))?
  - notification of the competent authority of the exporting country (paragraph 1(d))?
3. Are procedures established to ensure publication of a notice of termination of an import alert in a non-discriminatory and easily accessible manner?

*If not already in place, procedures for cooperation and coordination among the offices of the relevant control authorities should be established.*

*These procedures might establish a network for exchange of notifications; define the triggering criteria (that is, when the notification shall be made); and specify the roles and responsibilities of participants in the network regarding the sending and taking actions on notifications. Such procedures might also define a standard form and required content of the notification and deadlines for various steps of the notification procedure.*

*For example, applying one model (the EU's Rapid Alert System for Food and Feed), the network might be comprised of all border posts plus a central coordinating authority. A border post is required to immediately notify the central authority, using defined standard forms and terminology, where an import consignment is rejected. After verifying the information, the central authority notifies the other border posts, which are then required to report back on actions taken. Each office in the network is required to designate a contact person who shall be responsible for ensuring communications are made and properly handled.*

*Any such procedures should likewise ensure compliance with the disciplines set out in the proposed measure.*

#### **C. Institutional Framework**

4. Has an authority (or authorities) been designated as responsible for administration of the notification system?

*A legislative or administrative act may be required to designate the agency (or agencies) responsible for administration of the notification system, the products covered by the alert system, as well as publication of information concerning alert notifications and terminations thereof.*

#### **D. Human Resources and Training**

5. Are staff within the relevant border agencies at the border posts trained in administration of the program, including proper termination of the notifications?

#### **E. Communications and Information Technology**

6. Is an appropriate means of communication of notifications between/among border posts available (i.e., common network, email, fax)?

*A common system for electronic exchange of messages among participants in the network can facilitate transmission and handling of the notifications. However, other forms of communication (e.g., email, fax) may also be sufficient.*



ARTICLE 5.1      Notifications for enhanced controls or inspections

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>15</sup>:</i>		1.	

<sup>15</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_ Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_ 1 Year:\_\_\_ 3 Years:\_\_\_ 5 Years:\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## 2. Detention

### **Legal Text**

[A Member shall inform the importer or his authorized agent promptly in case of detention of goods declared for importation, for inspection by Customs or any other competent authority.]

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### **Notes**

#### ***What activity does this proposal regulate?***

The "detention" of goods declared for importation by Customs or other border authority (e.g., health, safety, agriculture, etc.) for purposes of conducting an inspection

#### ***What authorities are directly concerned?***

- Customs
- Other Border Agencies

#### ***What are the new requirements?***

- If Customs or other border authority detains imported goods for inspection, it shall inform promptly the importer or his agent (such as the customs broker, acting on the importer's behalf).

#### ***What actions might be required to implement this proposal?***

#### ***B. Procedures***

1. Are procedures established to ensure that the importer or his agent are informed immediately when a decision is made to detain imported goods for inspection?

*Procedures should be defined to require border agencies to notify the importer or his agent when a decision is taken to detain goods.*

*These procedures might also define the timing, form, content, and manner of delivery of such notifications.*

#### ***E. Communications and Information Technology***

2. Does the customs automated processing system generate a notification to the declarant if goods are detained (by, for example, updating the consignment status)?

*Customs automated processing systems commonly generate a notification to the declarant where goods are detained by Customs (such as a consignment or declaration status message). Members may wish to consider whether their customs system contains this functionality.*

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>16</sup>:</i>		1.	

<sup>16</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

<p>1. Do you comply with this measure?</p> <p>Fully:___ Substantially: ___Partially:___ No:___ Not Applicable:___</p>
<p>2. You expect to implement this measure by:</p> <p>Category A (by date of entry into force):_____ Category B (with extra time):_____ Category C (with extra time and technical assistance): _____</p>
<p>3. If Category B or C approximately how much time will you need to implement?</p> <p>6 Months:___ 1 Year:___ 3 Years:___ 5 Years:___ Other (Specify):_____</p>
<p>4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:</p>
<p>5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:</p>
<p>6. Stakeholders not participating in assessment of this measure that should be consulted:</p>
<p>7. National Priority Level (How important is it that this measure should be implemented in your country?):</p> <p>High:___ Medium: ___ Low:___ None:___ Explain:</p>
<p>8. Issues to note (any comments or recommendations for negotiators, etc.):</p>

### 3. Test Procedures

#### **Legal Text**

3.1 A Member shall, upon request, grant an opportunity for a second test in case the first test result of a sample of goods declared for importation shows an adverse finding.

3.2 A Member shall publish, in a non-discriminatory and easily accessible manner, the names and addresses of laboratories where the second test can be carried out.

3.3 A Member shall give due consideration to the result of the second test in the release and clearance of goods.]

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#### **Notes**

##### ***What activity does this proposal regulate?***

Laboratory testing of goods for customs, food safety, agriculture or other regulatory purposes

##### ***What authorities are directly concerned?***

Border agencies that sample and test goods, such as:

- Customs
- Other border agencies (particularly, SPS and standards authorities)

##### ***What are the new requirements?***

- Traders shall have the right to a second test, where test results on a sample of goods declared for importation are adverse to the trader
- Members shall publish the contact information of laboratories where confirmatory tests can be carried out (*which may be regional or international laboratories, if there are no national accredited laboratories*)
- Members shall give due consideration to the results of the second test.

##### ***What actions might be required to implement this proposal?***

#### **A. Policy/Legal Framework**

1. If results of testing imported, exported, or transit goods are adverse, does the affected person have the opportunity to request that a second test is conducted?

*In addition to the right to retest, any conditions or limitations on the exercise of that right should be defined and published (e.g., who may request the confirmatory test; the time period in which the request must be made; the period allowed for retesting; liability for testing expenses, etc.).*

2. Does the declarant or other appropriate person have the right to take samples of goods under customs control for these purposes?

*To support this measure, legislation might provide traders with the right to obtain the results of the initial test conducted by or on behalf of the respective border agency. It might also allow the importer or exporter to access goods under customs control and take samples for purposes of the confirmatory test.*

3. Do you publish the names and addresses of national, regional or international laboratories where these second tests can be carried out?

**B. Procedures**

4. Are procedures prescribed for the situation where the second test results are different from the first test?

**D. Human Resources and Training**

5. Are sufficient and competent staff available to supervise confirmatory testing?

*Technical staff may be required to review the results of the second tests and resolve inconsistencies.*

ARTICLE 5.3 TEST PROCEDURES

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>17</sup>:</i>		1.	

<sup>17</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).



## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_ Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_ 1 Year:\_\_\_ 3 Years:\_\_\_ 5 Years:\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

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## **Article 6: Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation<sup>18</sup>**

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

#### **Legal Text**

1.1 The provisions of this paragraph 6.1 shall apply to all fees and charges (other than import and export duties and other than taxes within the purview of Article III of GATT 1994) imposed by [Members] on or in connection with importation or exportation of goods.

[1.2 No fees or charges [shall][should] be levied on an ad valorem basis [, unless the amount is limited to the approximate cost of the services rendered] ].

1.3 Information on fees and charges shall be published in accordance with Article 1 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.

1.4 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. Such fees and charges shall not be applied until information on these has been published.

1.5 Each Member shall periodically review its fees and charges with a view to reducing their number and diversity, where practicable.

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#### ***Notes***

##### ***What activity does this proposal regulate?***

The “fees and charges” that governmental authorities assess on, or in connection with, imports or exports for services provided to the importer or exporter

##### ***What authorities are directly concerned?***

- Customs
- Other Border Agencies

##### ***What are the new requirements?***

- The amount and purposes of any fees or charges imposed on imports or exports must be consistent with the GATT Article VIII restrictions.
- Members must
  - publish specified information about such fees and charges\*
  - publish any new or amended fees or charges an “adequate time” prior to their entry into force\*\*
  - periodically review their fees and charges in order to reduce the number and diversity “where practicable”

\*You should consider the impact of this requirement in connection your review of Article 1.1 (Publication).

\*\*You should consider the impact of this requirement in connection with your review of Article 2.1 (Interval between Publication and Entry into Force).

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<sup>18</sup> Members reserve the right to make proposals to treat fees and charges in connection with transit in this article depending on their final treatment in Article 11 on transit.

**What actions might be required to implement this proposal?****A. Policy/Legal Framework**

1. Are fees and charges imposed on imports and exports by Customs or by any other authority?

*For example, your legislation may provide for:*

- *customs “user fees” or “import transaction fees” for customs processing import declarations*
- *fees for processing goods at locations away from the customs office (such as the trader’s premises) or providing overtime services,*
- *charges for storage of goods in government warehouses pending customs clearance,*
- *fees for plant or animal quarantine or inspection services, etc.*

*Note that the “fees and charges” subject to this proposed measure do not include customs duties or taxes, which are subject to other GATT rules.*

2. Are any such fees or charges calculated on an *ad valorem* basis?

*If so, note that the proposal would prohibit such fees or charges [, unless the amount is limited to the approximate cost of the services rendered (see next provision)]*

3. Is a periodic review required of any such fees and charges for the purposes described in the proposed measure (*i.e.*, to reduce their number and diversity)?

**B. Procedures**

4. Have the relevant border agencies established procedures to carry out a periodic review of fees and charges?

*Procedures might define the frequency of the review, the standards and criteria to be used, and the review mechanism (public consultation, for example).*

**C. Institutional Framework**

5. Has responsibility for conducting the periodic review of fees and charges been assigned?

*For example, the legislation that established the fees and charges may also require that the border agency periodically review them. Or, a central executive authority may have this responsibility.*

**D. Human Resources and Training**

6. Are sufficient and qualified staff available to assess existing or new fees and charges for GATT Article VIII compliance?

*In evaluating any new or existing fees and charges for compliance with these rules, the main challenge may be to align the amount of the fee or charge to the approximate cost of the service given.*

*This generally requires that the agency have the accounting expertise to apportion relevant direct and indirect costs, as well as mechanisms to identify and capture relevant costs used in the calculation.*

7. Is sufficient and qualified staff available to periodically review and assess fees and charges for purposes of simplification/rationalization?

## ARTICLE 6.1 GENERAL DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION

### I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>19</sup>:</i>		1.	

<sup>19</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_ Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_ 1 Year:\_\_\_ 3 Years:\_\_\_ 5 Years:\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## 2. Specific Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation

### Legal Text

[2.1 For customs processing, fees and charges shall be limited in amount to the approximate cost of the services rendered on or in connection with the specific importation or exportation in question. A Member may levy fees and charges not linked to a specific import or export operation provided such services are closely connected to the customs processing of goods.

2.2 This provision is without prejudice to the right of each Member to levy fees and charges pursuant to article VIII of GATT 1994, including those mentioned in article VIII/4 of GATT 1994.]

### Notes

#### ***What activity does this proposal regulate?***

The "fees and charges" that customs authorities assess on, or in connection with, imports or exports

#### ***What authorities are directly concerned?***

- Customs

#### ***What are the new requirements?***

- Customs fees and charges must be limited in amount to the approximate cost of the services rendered.
- Fees not linked to a specific import or export operation must be closely connected to the customs processing of the goods.

#### ***What actions might be required to implement this proposal?***

#### **E. Policy/Legal Framework**

1. Are fees and charges imposed on imports and exports by Customs limited in amount to the cost of the services rendered?

*That is, have you assessed such fees and charges to ensure that they are:*

- *for services rendered [or requested] in connection with the importation or exportation of goods or for any formality required for undertaking such importation or exportation, and*
- *limited in an amount equivalent to the approximate cost of the service provided*

*These particular limitations on fees and charges generally restate paragraph 1(a) of GATT Article VIII, as interpreted by GATT panel decisions.*

## ARTICLE 6.2      SPECIFIC DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION

### I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>20</sup>:</i>		1.	

<sup>20</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_ Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance):  
\_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_ 1 Year:\_\_\_ 3 Years:\_\_\_ 5 Years:\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):



### 3. Penalty Disciplines

#### **Legal Text:**

3.1 Each Member shall ensure that penalties for a breach of a customs law, regulation, or procedural requirement are imposed only on the person(s) responsible for the breach under its laws.

3.2 The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.

[3.3 Each Member shall ensure that it maintains procedures to avoid conflicts of interest in the assessment and collection of penalties and duties.] [No portion of the remuneration of a government official shall be calculated as a fixed portion or percentage of any penalties or duties assessed or collected.] [other than the rewards approved under the national legislation.]

3.4 Each Member shall ensure that when a penalty is imposed for a breach of customs laws, regulations, or procedural requirements, an explanation in writing is provided to the person(s) upon whom the penalty is imposed specifying the nature of the breach and the basis for [determining] the penalty [amount].

3.5 When a person voluntarily discloses to a Member's customs administration the circumstances of a breach of a customs law, regulation, or procedural requirement prior to the discovery of the breach by the customs administration, the Member is encouraged to, where appropriate, consider this fact as a potential mitigating factor when establishing a penalty for that person.

[3.6 Each Member [shall] [is encouraged to] specify a fixed, finite period within which it may initiate penalty proceedings in connection with a breach of a customs law, regulation, or procedural requirement.]

[3.7 For the purpose of Article 6.3, the term "penalties" shall mean civil penalties or those imposed administratively.]

[3.8 The provisions of this paragraph shall apply [,mutatis mutandis,] to the penalties imposed by Members on traffic in transit.]

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#### ***Notes***

#### ***What activity does this proposal regulate?***

The assessment of civil or administrative penalties for violations of the customs laws

#### ***What authorities are directly concerned?***

- Customs

#### ***What are the new requirements?***

- Members who apply civil or administrative customs penalties shall:
  - impose penalties only on the person(s) responsible for the violation
  - ensure that the amount of such penalties are proportionate to the degree and severity of the violation
  - avoid conflicts of interest
  - provide the person with a written explanation
  - consider a "prior disclosure" as a potential factor to mitigate the penalty amount
  - establish a statute of limitations on assessment of penalty claims

**What actions might be required to implement this proposal?****A. Policy/Legal Framework**

1. Does the legislation specify which persons can be held responsible in connection with a customs offence?

*The persons responsible for a customs offence can be natural or legal persons. Customs offences frequently involve more than one person. The extent of their involvement can vary, and the legislation of countries varies in classifying the different degrees of participation. Even though a person may not have been directly involved in all the events constituting the offence, any person who was substantially involved is still considered to be a principal offender in many countries.*

*The theories used to arrive at the liability of legal persons vary widely. The range of natural persons whose actions or omissions can result in the liability of the legal persons differs from one country to another.*

2. Does the legislation allow Customs discretion or flexibility to fix customs civil or administrative penalty amounts in individual cases commensurate with the degree and severity of the breach?

*If national legislation provides for civil or administrative penalties for customs violations, the legislation should also provide Customs (or other decision maker) with the necessary authority to determine penalty amounts that are appropriate to the facts and circumstances of the individual cases.*

3. Is there a time limit on the initiation of civil or administrative penalty proceedings?

*There should be a limit on the period in which Customs or other authority can initiate a penalty proceeding, which is typically defined in legislation (i.e., a statute of limitations). However, the proposals recognize that the period may be suspended in situations where Customs lacks jurisdiction to initiate the case, such as where the person is not within the country.*

4. Is any remuneration of customs officials based on a fixed portion or percentage of any penalties or duties they assess or collect?

*Members will be required to maintain procedures to avoid conflicts of interest in assessment and collection of penalties. For example, an incentive system which increases the likelihood of self-dealing, such as where a customs officer is paid a percentage of penalties he collects, would present such a conflict of interest.*

**B. Procedures**

5. Are policies and procedures established for the assessment, mitigation or settlement, and collection of civil or administrative penalties by the competent authority?

*Customs administrations typically develop standardized mitigation factors or guidelines to determine appropriate penalty amounts for offenses (this is handled in some systems by penalty schedules that lay out the penalty amounts taking into account a number of relevant factors and reflecting those considerations in the amounts set out), as well as standard procedures for assessment and collection. These procedures may allow the person assessed the penalty to submit evidence or other claims within specified deadlines, and may provide for a right to a hearing prior to final disposition.*

6. Do such policies and procedures:

- provide guidelines or other criteria to assess penalty amounts commensurate with the degree and severity of the offense?
- allow a prior, voluntary disclosure of the violation to be considered in mitigation of the penalty amount?
- require written explanation be given to the person assessed with the penalty setting out the breach and how the amount of the penalty was determined?
- ensure that there is no conflict of interest in assessment and collection of penalties?
- ensure that a statute of limitations is established, or implemented?

**C. Institutional Framework**

7. Has an administrative unit responsible for processing administrative penalties been designated/ established?

*Administration of civil fines or penalties typically requires a specialized administrative unit within the customs authority, properly staffed and trained.*

*Typical functions of this unit include assessing appropriate penalty amounts based on report of the offense or investigation, notifying the person(s) penalized, processing any appeals or petitions for mitigation, and instituting any required collection action.*

**D. Human Resources and Training**

8. Are penalty administrative unit personnel trained in penalty offenses and the procedures for assessment and disposition of penalty claims?
9. Are a sufficient number of qualified officers assigned to the penalty administrative unit(s)?

ARTICLE 6.3      PENALTY DISCIPLINES

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>21</sup>:</i>		1.	

<sup>21</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_ Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_ 1 Year:\_\_\_ 3 Years:\_\_\_ 5 Years:\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## Article 7: Release and Clearance of Goods

### 1. Pre-arrival Processing

#### Legal Text

7.1.1 Each Member shall adopt or maintain procedures allowing for the submission of import documentation, and other required information, including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the [clearance and] release of goods upon arrival.

7.1.2 Members shall, as appropriate, provide for advance lodging of documents in electronic format for pre-arrival processing of such documents.

[7.1.3 For pre-arrival processing purposes, Members may require (additional) documentation and data [(such as tracking notes) only] to the extent that such documents and data (including tracking notes) are [necessary][useful, *inter alia*] for risk management purposes, [and to facilitate] [and for] the expedited release of goods upon arrival.]

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#### **Notes**

#### ***What activity does this proposal regulate?***

Submission of the documents required for clearance and release of imported goods to customs and other border agencies

#### ***What authorities are directly concerned?***

- Customs
- Other border agencies

#### ***What are the new requirements?***

- Traders shall be permitted to submit the import documentation and other information required for release of imported goods, in electronic format where appropriate, prior to arrival of the goods
- Members may require additional documents/data for use of the pre-arrival procedure only if such documents/data are necessary or useful for purposes of risk management or to facilitate expedited release of the goods

#### ***What actions might be required to implement this proposal?***

#### **A. Policy/Legal Framework**

1. Does legislation allow the submission of cargo and goods declarations, and any supporting documents, prior to arrival of the goods for processing purposes with a view to expediting the [clearance and] release upon arrival of the goods?

*Members should assess whether their legislation restricts the advance submission of the cargo and goods declarations, such as rules which allow the declaration to be lodged only when the goods are physically present or available to Customs.*

2. Does legislation allow electronic submission of cargo and goods declarations and required supporting documents?

**B. Procedures**

3. Are processes and procedures established to allow a declarant to lodge, and to require the customs and/or other relevant authorities to process, declarations and supporting documents prior to arrival of the goods?

*The policies and procedures of customs and other border agencies involved in the release decisions should ensure that such pre-arrival declarations are processed with a view to expediting release of goods upon arrival.*

4. If any additional documents are required for use of the procedure, are they limited to those necessary [useful] for purposes of risk management or expedited release of the goods?
5. Are the business processes/procedures of customs and other border agencies involved in the release decision aligned?

**D. Human Resources and Training**

6. Are the customs, and/or other relevant authorities, trained on processing pre-arrival declaration and documents?

**E. Communication and Information Technology**

7. Does an automated processing system(s) exist for processing import cargo and goods declarations?
8. Can such systems accommodate processing of pre-arrival cargo and goods declarations?

*Because pre-arrival processing is an "exception" to normal declaration processing and requires a different workflow, Members may wish to consider whether changes may be required to cargo and declaration processing system functionality to accommodate the lodging and processing of pre-arrival declarations.*

9. Do such systems allow electronic submission of supporting documents?

ARTICLE 7.1     PRE-ARRIVAL PROCESSING

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>22</sup>:</i>		1.	

<sup>22</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).



## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance):  
\_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_ 1 Year:\_\_\_ 3 Years:\_\_\_ 5 Years:\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## 2. Electronic Payment

### **Legal Text**

Each Member [shall, to the extent practicable], [shall endeavour to] adopt or maintain procedures allowing the option of electronic payment for duties, taxes, fees and charges collected by customs [incurred upon importation and exportation].

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### **Notes**

#### ***What activity does this proposal regulate?***

The means by which a trader can pay his duties, taxes, fees and charges

#### ***What authorities are directly concerned?***

- Customs
- Other Border Agencies
- Revenue Authority

#### ***What is the new requirement?***

To the extent practicable, Members should allow electronic payment of duties, taxes, fees and charges.

#### ***What actions might be required to implement this proposal?***

##### **A. Policy/Legal Framework**

1. Are electronic payments currently used for the payment of duties, taxes or other debts owed to the government? Has the potential use of any such systems been examined for the payment of tax and duties?

*"Electronic payment" covers a variety of different systems. In current customs practice, the most common methods are electronic fund transfer (EFT) and direct debit schemes, whereby funds are transferred (or automatically debited) from an account at one bank or financial institution to another pursuant to the order of the account holder. Also used are credit and charge cards issued by credit card companies and banks.*

*Other forms of electronic payment might include bank debit cards, where the cardholder authorizes a debit from his account either by entering a personal identification number (PIN) directly into an online terminal or by a written signature; "smart cards", or encrypted cards that contain a chip with a stored financial value (and possibly other information); "electronic money" (e-money/e-cash); and peer-to-peer payment systems, such as PayPal.*

*Each such payment system involves different parties (account holders, banks, credit card issuers) with rights and obligations, can require technical and administrative infrastructure (such as an electronic interbank network for communicating, clearing and settling EFT payments), and presents different risks, benefits, and administrative costs.*

*Where an electronic payment system is not currently used, these options should be investigated and analysed.*

2. Does national legislation provide for electronic payment of duties, taxes, fees and charges?

*Where legislation restricts the method of payment of customs duties, taxes, fees and charges to cash and certified or bank cheque (which is often the case), amendment would be required.*

*The legislation should specify the electronic payment systems that can be used for payment of customs charges, as well as any conditions on the use of such forms of payment.*

*For example, where customs legislation permits credit cards to be used for payment of customs debts, it also often limits their use to transactions not exceeding certain specified limits, or allow their use only with respect to non-commercial (e.g., traveller's) transactions, and/or requires the importer to pay the administrative charge assessed by the card issuer.*

*More generally, the rights and liabilities of persons involved in the particular electronic payment system should be sufficiently clarified in national legislation, such as commercial, banking or consumer protection laws. For example, in the case of EFT and direct debit schemes, does legislation define who bears the risk of loss in cases of errors (e.g., a computational error or numerical transposition leading to an overpayment), fraud (e.g., an unauthorized payment order), technical malfunctions, or delays/failures in making the payment? Similarly, in the case of credit cards, legislation commonly imposes rights and obligations for the protection of consumers, such as obligations of the issuer to disclose terms and conditions; limitations on card fees; consumers' rights to contest charges including (possibly) rights to refuse payment due to disputes with the vendor arising out of the underlying sales transaction.*

*Members may wish to consider if the appropriate legal framework is provided for the particular electronic payment system, and what adjustments might be required to existing law, if any, to accommodate payments to the government of customs duties and taxes.*

#### **B. Procedures**

3. Are procedures defined and published for use of the selected electronic payment system(s)?

*Instructions may be required for the billing and payment via the electronic payment system, as well as use of electronic payments in processing the declaration and release of goods.*

#### **E. Communication and Information Technology**

4. Is the electronic payment system integrated with the automated declaration/cargo processing systems?

#### **F. Infrastructure and Equipment**

5. Is infrastructure and equipment available for use of the selected electronic payment system?

*For example, if credit or debit card is allowed as a payment method for travellers, are a sufficient number of card readers installed and connected to the bank network at ports of arrival?*

ARTICLE 7.2 ELECTRONIC PAYMENT

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>23</sup>:</i>		1.	

<sup>23</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

<p>1. Do you comply with this measure?</p> <p>Fully:___ Substantially: ___Partially:___ No:___ Not Applicable:___</p>
<p>2. You expect to implement this measure by:</p> <p>Category A (by date of entry into force):_____ Category B (with extra time):_____ Category C (with extra time and technical assistance): _____</p>
<p>3. If Category B or C approximately how much time will you need to implement?</p> <p>6 Months:___ 1 Year:___ 3 Years:___ 5 Years:___ Other (Specify):_____</p>
<p>4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:</p>
<p>5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:</p>
<p>6. Stakeholders not participating in assessment of this measure that should be consulted:</p>
<p>7. National Priority Level (How important is it that this measure should be implemented in your country?):</p> <p>High:___ Medium: ___ Low:___ None:___ Explain:</p>
<p>8. Issues to note (any comments or recommendations for negotiators, etc.):</p>

### **3. Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges**

#### **Legal Text**

3.1 Each Member [shall] [is encouraged to] adopt or maintain procedures allowing the release of goods prior to the final determination of customs duties, taxes, fees and charges, [if such a determination is not done prior to or promptly upon arrival], [where upon arrival of goods there is an [unnecessary] delay in such determination], and provided that all other regulatory requirements have been met.

3.2 As a condition for such release, a Member may require:

- a) payment of customs duties, taxes, fees and charges determined prior to or upon arrival of goods and a guarantee for any amount not yet determined in the form of a surety, a deposit or another appropriate instrument provided for in its laws and regulations; or
- b) a guarantee in the form of a surety, a deposit or other appropriate instrument provided for in its laws and regulations.

3.3 Such guarantee shall not be greater than the amount the Member requires to ensure payment of customs duties, taxes, fees and charges ultimately due for the goods covered by the guarantee.

3.4 In cases where an offence requiring imposition of monetary penalties or fines has been detected, a guarantee may be required for the penalties and fines that may be imposed.

3.5 The guarantee shall be discharged when it is no longer required as set out in paragraphs 7.3.2 and 7.3.4.

3.6 Nothing in these provisions shall affect the right of a Member to examine, detain, seize or confiscate or deal with the goods in any manner not otherwise inconsistent with the Members WTO rights and obligations.

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#### ***Notes***

#### ***What activity does this proposal regulate?***

Release of imported goods from Customs

#### ***What authorities are directly concerned?***

- Customs

#### ***What are the new requirements?***

- Members shall allow importers to obtain release of their goods, under a guarantee, if required, prior to the final determination and payment of customs duties, taxes, fees and charges [where there is an [unnecessary] delay in that final determination]
- Any required guarantee shall be limited in amount to the equivalent of duties, taxes, fees and charges to which the goods may be liable, as determined by Customs
- If the importer commits an offense, Customs may require a guarantee for the potential fine or penalty as a condition for release of the goods (however, release of goods in cases of violations of law or fraud shall be determined by each Member's law)
- Customs shall discharge the guarantee without delay when no longer required for its intended purposes/when all requirements have been met

**What actions might be required to implement this proposal?****A. Policy/Legal Framework**

1. Does Customs have authority to release imported goods before the final determination and payment of duties, taxes, fees and charges under the conditions described in the proposal?

*Customs legislation should allow Customs to release imported goods prior to final determination and payment of duty and tax [where there is a delay in final determination of tax and duty], subject to provision of a security.*

*Note that the Article 7.3 proposals expand Member's existing obligations under the WTO customs valuation agreement. Article 13 of that agreement provides that if the final determination of customs value of goods is delayed, the importer shall be able to obtain their release from customs, subject to provision of a sufficient guarantee to cover the customs duties for which the goods may be ultimately liable, if so required.*

2. Does your legislation provide for use of customs guarantees? Are national rules and practices related to such guarantees consistent with the provisions of the proposed measure, namely

- are the permitted types of guarantees prescribed?
- are guarantee amounts limited to the amount of customs duty, taxes, fees and charges at stake (and penalties where an offence has been detected if your legislation allow for this)?
- are guarantees required to be discharged in a timely manner?

*To enable the procedure, the legislation should provide for use of customs guarantees. This would typically include rules on the types of security permitted to be used; the calculation of security amounts; and the procedures for discharge of the security. Any such rules should be consistent with the disciplines concerning guarantees described in the proposed measure.*

**B. Procedures**

3. Are the rules and conditions for the importer's use of the procedure documented and published, such as:

- requirements as to provision of a guarantee
- time periods for completion of formalities
- form and content of required declaration(s)?

*The procedure may take the form of a two-step process. For example, in some countries, the importer submits a declaration with the minimal information required by Customs to determine if the goods can be released (e.g., the goods are not prohibited and comply with any restrictions), and later submits a supplementary declaration with all information Customs requires to assess and collect duties, taxes, fees and other charges. The form, content, and timing of these submissions should be prescribed.*

*Sanctions and penalties may be prescribed for failure to complete formalities within the specified period. Legislation may also set out rules for charging interest, if any.*

*Note however, that Members may have a one-step process in place (not the "simplified procedure" described above) under which the goods are released under a guarantee but the verification of the import declaration will be done at a later stage without the importer having to file a supplementary declaration.*

4. Are procedures established to ensure Customs processing and release of goods consistent with the proposed measure?

*Such procedures might define the conditions under which Customs may allow release of goods where offenses are found and the processes to ensure that all items released are properly accounted for and duty paid within required time periods following release.*

**E.      *Communication and Information Technology***

5. Is an automated processing system used to process import goods declarations?
6. If so, does such system provide functionality to allow the processing/control of an import transaction in two separate steps (*e.g.*, release under guarantee + final determination and payment of duties and taxes (and discharge of the guarantee))?



## ARTICLE 7.3 SEPARATION OF RELEASE FROM FINAL DETERMINATION OF CUSTOMS DUTIES, TAXES, FEES AND CHARGES

### I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>24</sup>:</i>		1.	

<sup>24</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_\_\_ 1 Year:\_\_\_\_\_ 3 Years:\_\_\_\_\_ 5 Years:\_\_\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## 4. Risk Management

### **Legal Text**<sup>25</sup>

4.1 Each Member shall [, to the extent possible,] adopt or maintain a risk management system for customs control in connection with importation, exportation and transit.

4.2 Each Member shall concentrate customs control [and other relevant border controls] on high risk consignments and expedite the release of low risk consignments. [The basis for the selection of consignments to be subject to customs controls may include a random element].

4.3 Each Member shall base risk management on assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, inter alia, HS code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport.

4.4 Each Member shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions to international trade.

### **Notes**

#### ***What activity does this proposal regulate?***

The methodology or practices that Customs uses to determine which import, export or transit transactions or operators should be subject to control and the type and degree of control to be applied.

#### ***What authorities are directly concerned?***

- Customs

#### ***What are the new requirements?***

- Members shall apply risk management to customs control in connection with import, export and transit of goods
- Members shall concentrate customs control [and other relevant border controls] on high risk consignments and expedite the release of low-risk goods
- Members shall use appropriate selectivity criteria in applying risk management

#### ***What actions might be required to implement this proposal?***

##### ***A. Policy/Legal Framework***

1. Does the legislation allow/require Customs to apply controls on import, export or transit goods selectively, on the basis of risk management principles?

*Legislation should allow Customs the discretion to exercise controls on a selective basis, including such controls as they perform on behalf of other border agencies.*

*Legislation that requires Customs to examine all or some specified number or percentage of transactions would generally not be compatible with risk management principles. Customs may conduct random sampling.*

2. Does Customs have a risk management strategy to make the best use of available resources?

<sup>25</sup> Includes similar issues relating to transit in L.4(c).

**B. Procedures**

3. Are policies established to ensure that customs controls (e.g., physical examinations) on imported, exported, or transited goods are based on risk management principles?
4. Are policies and procedures established for the development, use and regular review of formal risk management plans?
5. Are policies and procedures established to ensure that risk information (e.g., profiles and related control instructions) are disseminated to all relevant Customs offices and used in customs declaration processing?

*Customs should establish internal polices and working procedures to guide the risk management activity, to ensure cooperation and coordination of the unit responsible for risk management with customs operational offices, and to ensure that the application of customs controls are actually carried out on the basis of risk based decisions.*

**C. Institutional Framework**

6. Is a unit(s) established within the customs administration that is responsible for risk management and intelligence in connection with customs control of import, export and transited goods?

*Typically, a unit responsible for risk management and intelligence is established in the central customs administration. Regional or local risk units might also be established to coordinate and develop local risk criteria.*

7. Are policies and procedures established to ensure that risk analysts have access to relevant information held in customs systems and records (e.g., examination results, penalty and seizure reports, intelligence reports, investigation results, audits)?
8. Are policies and procedures established to allow risk analysts access to relevant information held by other government authorities or international sources?

*The risk management process involves identification of potential risks; analysis of the impact of the risks in terms of severity of their consequences and likelihood of occurrence; assessment or ranking those risks based on management priorities; and development and implementation of a plan to address the identified risks, balancing the priorities and the available resources. Moreover, because threats and priorities change over time, there will be a need to monitor the efficacy and efficiency of the risk system on a continuous basis.*

*Accordingly, the main activity of the unit is collection and analysis of information, from internal and external sources, concerning import and export operations and the persons involved therein, for the purpose of defining profiles of transactions that are most likely to be non-compliant. These risk profiles are created using appropriate selectivity criteria (risk indicators) that describe the properties of the suspect transaction type (e.g., country of origin, transport route, shipper, etc.). Risk profiles likewise may define the actions required to deal with the risk, which are carried out at the local offices.*

*The risk unit is usually responsible for inputting and testing these risk profiles in the customs processing system, as well as monitoring the operation of the risk system to ensure that profiles are kept current and that examination requirements are consistent with workload and resources.*

**D. Human Resources and Training**

9. Are a sufficient number of qualified officers available and assigned to the risk management unit(s)?
10. Do risk analysts have training and skills sufficient to carry out risk assessment (e.g., customs operational experience; risk management methodology; use of databases and spread sheet software; data analysis and research)?
11. Are the relevant customs operational offices trained to ensure they carry out controls on the basis of risk management?

*Customs operational offices may also require training to ensure proper coordination with the risk unit and that the outputs of the risk analysis are actually used to concentrate controls on the identified high risk shipments*

**E. Communication and Information Technology**

12. Is an automated processing system(s) used to process cargo and goods declarations?
13. Do such system(s) have selectivity functionality?
14. Do such system(s) allow customs users to record the results of examinations of import, export or transit transactions selected for control?

*Although not essential, and depending upon the amount and kinds of data available, the risk analyst's work can be usefully supported by automated tools, such as pattern or trend analysis tools.*

*Most automated customs processing systems include selectivity functionality, which automatically evaluates and selects for control those submitted declarations that match risk profiles. Most customs systems also include functionality to allow a customs officer to record the results of inspections of selected goods (an "inspection act"), which will be an important feedback to risk analysts to help them monitor the system and make necessary adjustments.*

*Nevertheless, selectivity and inspection can be operated as a manual/paper- based process.*

## ARTICLE 7.4 RISK MANAGEMENT

### I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>26</sup>:</i>		1.	

<sup>26</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_\_\_ 1 Year:\_\_\_\_\_ 3 Years:\_\_\_\_\_ 5 Years:\_\_\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## 5. Post-Clearance Audit

### **Legal Text**

#### Definition

Post-clearance audit is conducted by customs subsequent to the release of goods to ensure compliance with customs and other related laws and regulations.

5.1 Each Member shall [, where possible,] adopt or maintain post-clearance audit, with a view to expediting the release of goods.

[5.2 Each Member shall conduct post-clearance audits in a transparent manner. Members shall notify the person whose record is audited of the results, their rights and obligations and reasons for the results.]

5.3 Members acknowledge that the information obtained in post-clearance audit may be used in further administrative or judicial proceedings.

5.4 Members shall, wherever practicable, use the result of post-clearance audit in applying risk management.

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### **Notes**

#### ***What activity does this proposal regulate?***

Customs verification of compliance with customs and related laws and regulations through examination of the trader's books and records at his premises following release of the goods

#### ***What authorities are directly concerned?***

- Customs

#### ***What are the new requirements?***

- Members must use post-clearance audit [where possible] "with a view to expediting the release of goods" and, wherever practicable, to inform risk management
- Audits must be transparent and the persons subject to audit should be notified with information about audit results

#### ***What actions might be required to implement this proposal?***

##### ***A. Policy/Legal Framework***

1. Does Customs have authority to examine books and records at business premises?
2. Are the persons subject to post-clearance audit defined in your legislation?
3. Are persons with customs obligations required to keep and show books and records related to customs transactions for a defined period of time?
4. Is Customs required to conduct audits in a transparent manner including the notifications described in paragraph 5.2 (that is, persons audited shall be notified of audit results, including the evidence considered and reasons for the results, as well as their rights and obligations)?

*In addition to those mentioned in the proposal, these rights and obligations typically include the right to notification at the outset of the audit, right of administrative and/or judicial appeal, and right to protection of confidential information.*



5. Are penalties prescribed for audit-related or record keeping violations or offenses?

**B. Procedures**

6. Are policies and procedures established to ensure that audit results are incorporated in overall risk management?
7. Are standard policies and procedures established to guide field audits, including procedures to ensure the rights of persons subject to audit (*i.e.*, notification of audit, disclosure of audit report, notification of audit results)?

*Internal policies and procedures would guide the activities of the audit unit(s), including development of audit programs, the selection of persons/companies for audit, carrying out the audit at the trader's premises, and analysing audit results.*

*Procedures should also ensure coordination and cooperation between the audit units and other customs operational offices, including sharing of audit results for use in risk management.*

**C. Institutional Framework**

8. Is a dedicated unit designated/established for the administration of audit and carrying out post-clearance audits?

*Customs administrations generally establish a central functional unit responsible for customs audit, and may establish one or more subordinate units in local offices.*

*PCA has an interface with many other areas within the Customs administration, including risk management and intelligence, enforcement, debt/revenue collection and legal support. The organizational and management structure should therefore reflect this and facilitate close working and effective communication among these areas.*

**D. Human Resources and Training**

9. Are a sufficient number of qualified officers available and assigned to the audit unit?
10. Is the Customs audit staff properly trained?

*Post-clearance audit requires specific expertise and training in accounting and audit standards and techniques, an understanding of trader financial systems, computer-based accounting systems, as well as knowledge of customs rules, particularly customs valuation, classification and origin.*

*In some cases, external support may be necessary to provide the specialist skills. With regard to knowledge of transfer pricing, assistance may be sought from direct tax officials.*

**E. Communication and Information Technology**

11. Does the Customs audit staff have sufficient analytical tools to support the audit function?

*Auditors may require specific software tools or programs to capture and analyze audit results or make audit selections.*

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>27</sup>:</i>		1.	

<sup>27</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_\_\_ 1 Year:\_\_\_\_\_ 3 Years:\_\_\_\_\_ 5 Years:\_\_\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## 6. Establishment and Publication of Average Release Times

### **Legal Text**<sup>28</sup>

6.1 Members are encouraged to measure and publish their average release time of goods periodically and in a consistent manner, using tools such as, *inter alia*, the WCO Time Release Study.<sup>29</sup>

6.2 Members are encouraged to share with the Committee their experiences in measuring average release times, including methodologies used, bottlenecks identified, and any resulting effects on efficiency.

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### **Notes**

#### ***What activity does this proposal regulate?***

Measuring the performance of customs and other border agencies with respect to the release of goods

#### ***What authorities are directly concerned?***

- Customs
- Other Border Agencies

#### ***What is the new requirement?***

- Members are encouraged to measure and publish, on a periodic basis and in a consistent manner, the average time it takes to release goods;
- Members are encouraged to share their experience in carrying out these measurements with the WTO trade facilitation committee;

#### ***What actions might be required to implement this proposal?***

##### ***A. Policy/Legal Framework***

1. Has Customs (or other responsibility authority) established a formal policy to implement and publish the results of a time release study on a regular basis?

*Policy and procedures for undertaking the study should be established by Customs but Customs should coordinate with other border agencies in order to improve the accuracy. This policy may define the goal, scope and frequency of the study, as well as roles and responsibilities of the relevant staff in carrying out the study and publication of results.*

*The general goal of a study is to determine the average time elapsed between the arrival of the goods to the country (or, possibly, a later point in the process, such as when the goods declaration is submitted to Customs) and their release to the importer or agent. Some studies also measure the time to complete the intermediate steps in that process to better find the bottlenecks. Activities that relate to the calculating and recording of the time needed by Customs and other border agencies to release goods can provide pertinent information to guide any necessary process improvements or identify desirable regulatory changes to ensure the effective facilitation of trade.*

*Accordingly, measurement is made on the basis of all or a sample of import transactions over some representative period of time at all or some customs offices. Some or all of the necessary information might be extracted from the customs and/or port automated processing system(s), if available.*

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<sup>28</sup> This section does not apply to a Member where imported goods are generally released instantly on arrival.

<sup>29</sup> Each Member may determine the scope and methodology of such average release time measurement in accordance with its needs and capacity.

**B. Procedures**

2. Has the Customs Administration, in coordination with other border agencies, established procedures for periodic carrying out and publishing the results of the Time Release Study?
3. Has customs, in coordination with other border agencies, already conducted any Time Release Study (TRS)?

*The WCO Time Release Study is a tool used by Customs administrations to develop procedures for periodic measuring of time required for release of goods. The tool has been initially designed for inbound goods, but has been updated in 2011 to respond to the current realities and demands (measuring efficiency of export procedures, coordinated border management, customs-business partnership programmes, customs-to-customs cooperation, regional integration etc). The WCO TRS Version 2 also includes a model press release, as well as a number of national practices, guide for the TRS on-line software and other practical guidance.*

**C. Institutional Framework**

4. Has Customs (or other responsible authority) formally delegated responsibility for periodically carrying out and publishing the results of the periodic time release study?

*Typically the time measurement study is led by the Customs authority, which usually controls most of the relevant data and processes.*

*Coordination and cooperation with private sector actors or other border authorities may be required to take the measurement where, for example, cargo arrival processes are under the responsibility of a port authority or are captured by the port system or involve other border agencies.*

**D. Human Resources and Training**

5. Are a sufficient number of qualified persons available/assigned responsibility for planning, design, and implementation of the time release study and analysis of results?
6. Are the persons assigned responsibility for the task trained in the design, implementation and analysis of a time release study?

*Customs management would assign qualified persons who are trained in the measurement methodology (such as the WCO Time Release Study), and who will be responsible to scope, design and carry out the survey and to analyze and publish the results. Typically, this requires a small team only.*

**E. Communication and Information Technology**

7. Does the customs automated processing system (if any) include the functionality to support a time release study?

*If a customs automated system is available, does it capture and allow a user to access the data required to support a time release study (e.g., time-stamps declaration events or processing steps)?*

8. Does Customs use the TRS Online Software?

*The WCO has developed the TRS Online Software in cooperation with the World Bank for the use of WCO Members. The software has functions for developing a survey questionnaire in order to collect data, completing an analysis and producing a report on a TRS. A Basic Guide to use the WCO TRS Online Software is attached in Appendix 4 to the TRS Version 2.*

ARTICLE 7.6 ESTABLISHMENT AND PUBLICATION OF AVERAGE RELEASE TIMES

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>30</sup>:</i>		1.	

<sup>30</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

<p>1. Do you comply with this measure?</p> <p>Fully:___ Substantially: __Partially:___ No:___ Not Applicable:___</p>
<p>2. You expect to implement this measure by:</p> <p>Category A (by date of entry into force):_____ Category B (with extra time):_____ Category C (with extra time and technical assistance): _____</p>
<p>3. If Category B or C approximately how much time will you need to implement?</p> <p>6 Months:___ 1 Year:___ 3 Years:___ 5 Years:___ Other (Specify):_____</p>
<p>4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:</p>
<p>5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:</p>
<p>6. Stakeholders not participating in assessment of this measure that should be consulted:</p>
<p>7. National Priority Level (How important is it that this measure should be implemented in your country?):</p> <p>High:___ Medium: ___ Low:___ None:___ Explain:</p>
<p>8. Issues to note (any comments or recommendations for negotiators, etc.):</p>

## 7. Trade Facilitation Measures for [Authorized Operators<sup>31</sup>]

### Legal Text<sup>32</sup>

7.1 Each Member [shall][may] provide additional trade facilitation measures related to import, export and transit formalities and procedures, as listed in paragraph 7.3, to operators who meet specified criteria, hereinafter called authorized operators.

Nothing in this section precludes a Member from offering any of these facilitation measures to all operators.

7.2 The specified criteria shall be related to compliance, or the risk of non-compliance, with requirements specified in a Member's laws, regulations or procedures. The specified criteria, which shall be published, may include:

- (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,
- (c) Financial solvency, including, where appropriate, provision of a sufficient security/guarantee and
- (d) Supply chain security.

The specified criteria to qualify as an operators shall not:

- (a) be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail;
- (b) [unduly] [to the extent possible] restrict the participation of small and medium-sized enterprises.

7.3 The trade facilitation measures provided to authorized operators [shall] [may] include [at least X] measures, *inter alia*:

- (a) Reduced documentary and data requirements as appropriate;
- (b) Fewer physical inspections and examinations [as appropriate];
- (c) Rapid release time;
- [(d) Deferred payment of duties, taxes, fees and charges;]
- (e) [Use of comprehensive guarantees] [and/or reduced guarantees];
- [(f) A single customs declaration for all imports or exports in a given period;] [and]
- (g) Clearance of goods at the premises of the authorized operator or another place authorized by customs.]

7.4 Members are encouraged to develop authorized operator schemes on the basis of international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfillment of the legitimate objectives pursued.

7.5 In order to enhance the facilitation measures provided to operators, Members shall afford to other Members the possibility to negotiate mutual recognition of authorized operator schemes.

<sup>31</sup> When there is an agreement on the terminology for the beneficiaries of the measures foreseen in this article, the terminology will be adapted throughout the article.

<sup>32</sup> Includes similar issues relating to transit in L.4(c).



[7.6. In order to promote trade facilitation benefits, Members shall share information within the Committee about authorized operator schemes in force.]<sup>33</sup>

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### **Notes**

#### ***What activity does this proposal regulate?***

Special or preferential customs treatment provided to reliable traders

#### ***What authorities are directly concerned?***

- Customs

#### ***What are the new requirements?***

- Members shall provide certain additional trade facilitation benefits to “authorized operators,” or those traders who Customs has determined present a low risk of non-compliance with legal requirements.
- Members shall publish the qualification criteria
- Members’ are encouraged to base authorized trader schemes on international standards, unless inappropriate or ineffective
- A Member shall afford other Members the possibility to negotiate a mutual recognition of their respective authorized trader schemes

#### ***What actions might be required to implement this proposal?***

##### ***A. Policy/Legal Framework***

1. Is Customs authorized to provide qualifying traders with additional facilitations in connection with their imports, exports, and transits?

*Customs should have authority to vary or simplify the usual import, export and transit formalities for the benefit of the authorized operators. Typically, this authority is given in the customs legislation.*

2. Have international standards been taken into account in the design of the authorized trader program?

*Customs should document and publish its authorized trader scheme. As indicated in the proposal, Members are encouraged to design their scheme on the basis of international standards unless such standards are found to be inappropriate or ineffective to fulfilment of legitimate objectives.*

*An authorized trader scheme would typically set out the scope of the authorized trader program, the eligibility criteria, the potential simplifications authorized operators may utilize, as well as the conditions and procedures for granting, modifying or terminating authorized trader status.*

3. Are the criteria for qualifying as an authorized trader defined and published? Do such criteria include any of those prohibited by Article 7.2 of the proposal?
4. Do the additional facilitations provided under your authorized trader program include some or all of the facilitations listed in Article 7.3 of the proposal? Which are not provided?
5. Are the conditions and procedures for granting, modifying or terminating authorized trader status defined?
6. Does Customs have authority to enter into agreements with other WTO Members for the mutual recognition of authorized trader schemes?

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<sup>33</sup> Members agreed that the question of the work of the Committee should be considered for discussion in a cross-cutting manner at a later stage.

**B. Procedures**

7. Are procedures defined for submission and review of applications for authorized operator status?

*Typically, these procedures would require Customs to assess the risk of the applicant's non-compliance with customs rules [if he were permitted to use the additional facilitations], taking into account such factors as the trader's record of compliance with customs requirements over a period of time, the trader's financial stability, and the reliability of the trader's internal customs controls and systems.*

*A customs audit or review of the trader's operations may be a pre-condition to approving the application; a financial guarantee may also be required from the trader for use of simplified procedures.*

*Accordingly, a functioning risk-management and customs audit capability within the customs administration would be important to the effective operation of an authorized trader program.*

8. Are rules or procedures defined for the simplified customs processing of imports/exports or transits allowed authorized operators?
9. Are procedures defined for Customs monitoring authorized operators to ensure continued compliance with eligibility criteria?

**C. Institutional Framework**

10. Has responsibility for administration of the authorized operator program been delegated to a customs administration functional unit?

*Responsibility for administration of the authorized trader program should be formally established, as well as the cooperation and coordination with other customs functional units.*

*Frequently, the program is managed by the same functional unit within the customs authority that is responsible for oversight of customs risk management.*

**D. Human Resources and Training**

11. Are customs clearance officers trained in the simplified procedures allowed authorized operators?

*The additional trade facilitation measures offered to authorized traders may require implementation of new or modified customs procedures related to clearance of goods or to payments. Training of customs border officials in these new or modified procedures may therefore be required.*

**E. Communication and Information Technology**

12. Can customs automated processing systems accommodate the clearance and/or payment-related simplifications that are provided to authorized operators?

## ARTICLE 7.7 TRADE FACILITATION MEASURES FOR [AUTHORIZED OPERATORS]

### I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>34</sup>:</i>		1.	

<sup>34</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_ Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_ 1 Year:\_\_\_ 3 Years:\_\_\_ 5 Years:\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## 8. Expedited Shipments

### Legal Text

8.1 Each Member [shall][may] adopt or maintain procedures allowing for expedited release of at least those goods entered through air cargo facilities to persons that apply for such treatment, while maintaining customs control.<sup>35</sup> If a Member employs criteria limiting who may apply, the Member may, in published criteria, require that the applicant shall, as conditions for qualifying for the application of the treatment described in paragraphs 8.2 (a) - (f) to its expedited shipments:

- (a) Provide adequate infrastructure [and reimbursement of customs-related expenses<sup>36</sup> to allow customs to process its expedited shipments], in cases where the applicant fulfills the Member's requirements for such processing to be performed at a dedicated facility;
- (b) Submit 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 treatment described in paragraph 8.2 (a) – (f);
- (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;
- (e) Assume liability for payment of all customs duties, taxes, and fees and charges to the customs authority for the goods;
- (f) Have a good record of compliance with customs and other related laws and regulations;
- [(g) comply with other conditions directly related to the effective enforcement of the Member's laws, regulations and procedural requirements, if necessary for reasons attributable to differences between the Member's expedited release procedures and its non-expedited release procedures.]
- [h. register with relevant authorities within the customs territory subject to the domestic legislation;
- i. fulfil the obligations of visual examination of goods in receipt thereof for the purpose of trade security;
- j. actively report suspicious information to the customs to ensure the compliance with relevant laws and regulations; and
- k. assume liability to customs for the goods in the same manner as if it is the sole carrier.]

8.2 Subject to paragraphs 8.1 and 8.3<sup>37</sup>, Members shall:

- (a) Allow, prior to the arrival of an expedited shipment, for the submission and processing, including through electronic means, of information necessary for the release of the shipment<sup>38</sup>;

<sup>35</sup> In cases where a Member has an existing procedure that provides the treatment in paragraph 2, this provision would not require that Member to introduce separate expedited release procedures.

<sup>36</sup> Consider reimbursement of customs-related expenses at non-dedicated facilities.

<sup>37</sup> This addition is intended to make clear that the treatment in paragraph 8.2 need not be provided if the conditions in paragraph 8.1 have not been met or, as provided in paragraph 8.3, if authorities consider it necessary to obtain additional information or conduct screening or examine goods. Also, paragraph 8.3 has been modified to confirm that expedited treatment need not be provided to restricted goods.

<sup>38</sup> 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 of expedited shipments, [as appropriate], [including, to the extent possible, providing for release based on a single submission of information on all goods of *de minimis* value in the expedited shipments;]
- (c) Provide for expedited shipments to be released under normal circumstances within [[3][6][24] hours][a reasonable period of time] [consistent with national rules and procedures] after arrival, provided the information required for release has been submitted;
- [(d) Apply [without regard to weight or value][with respect to the nature of the goods], [without prejudice to the right of the Member to differentiate documentation requirements based on value or consider value as part of its risk management decisions];]
- [(e) Allow [under conditions deemed fit by the customs] for the release of expedited shipments before and without prejudice to the final determination and payment of the applicable customs duties, taxes, fees and charges owed, if, where so required, sufficient guarantee is provided 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 of the expedited shipments,<sup>39</sup>] and
- [(f) Provide for a *de minimis* shipment value [, to the extent possible,] for which customs duties and taxes will not be collected [aside from certain prescribed goods]<sup>40</sup>.]

8.3 Nothing in paragraphs 8.1 and 8.2 shall affect the right of a Member to examine, detain, seize, [confiscate] or refuse entry to goods, or to carry out post-clearance audits, including in connection with the use of risk management systems [, in a manner not otherwise inconsistent with the Member's WTO rights and obligations]. [Further, for goods subject to [excise taxes, or] import licensing or similar requirements, nothing in paragraphs 8.1 and 8.2 shall prevent a Member from collecting customs duties or taxes, or from requiring, as a condition for release, the submission of additional information and the fulfillment of non-automatic licensing requirements.]

### **Notes**

#### ***What activity does this proposal regulate?***

Documents and goods imported by air express-delivery operators and other expedited shippers

#### ***What authorities are directly concerned?***

- Customs
- Airport owner/operator

#### ***What is the new requirement?***

- Members shall establish special facilitative procedures (as described in paragraph 8.2) to allow expedited release of at least those goods entered through air cargo facilities
- Members may permit only those persons or firms who fulfil the criteria listed in subparagraphs 8.1 to apply for expedited release treatment
- Criteria for application for expedited release treatment shall be published

<sup>39</sup> This language may be dropped or modified in light of the language used in Article 8.2, release and clearance.

<sup>40</sup> By virtue of the fact that the goods described in the last sentence of paragraph 8.3 need not be provided expedited treatment, the *de minimis* provision would not interfere with collection of duties and taxes of such goods (e.g., liquor). Furthermore, this provision would not require Members to introduce separate *de minimis* shipment value for goods subject to expedited release procedures.

**What actions might be required to implement this proposal?****A. Policy/Legal Framework**

1. Does Customs have the authority to provide expedited release of goods entered through air cargo facilities on the request of an operator?
2. If a person is required to make a prior application to use the expedited release procedures described in Article 8.2(a)-(e), are the application criteria documented and published? Are they consistent with those listed in Article 8.1(a)-(k)?
3. Are qualified persons permitted to use all of the simplified procedures that are listed in Article 8.2, including:
  - pre-arrival processing;
  - release prior to final determination and payment of duty and taxes, subject to provision of a guarantee;
  - one advance declaration covering all consignments that do not exceed a specified *de minimis* value
  - a *de minimis* shipment value for which duties and taxes will not be collected?

*There should be a legislative basis to allow each of the expedited release simplifications listed in paragraph 8.2 (and subject to the qualifications described in paragraph 8.3).*

*For example, legislation should provide for use of pre-arrival submission and processing of import documents; for submission of a consolidated declaration for all goods of de minimis value; for waiver of collection of duty on low-value goods; etc.*

*Finally, there should be a legislative basis for the operator's provision of a financial guarantee, which is typically a condition for use of these simplified procedures.*

4. Does Customs have authority to carry out customs processing and controls at the premises of an operator (if required)?
5. Are the conditions and procedures for Customs modification or termination of a person's authorization to use expedited release procedures documented and published?

**B. Procedures**

6. Are procedures defined for the person's submission of, and Customs review and decision on, applications for use of expedited release procedures (*e.g.*, form and content of the application; period for Customs decision, the form and manner of notification of decision, rights of appeal, fees, *etc.*)?

*These procedures would be required for Customs evaluation and decision of applications (which may involve Customs checks of the operator's physical facility and control systems) as well as Customs monitoring approved operators to ensure continued compliance with conditions.*

7. Are procedures/policies defined to ensure Customs rapid release of expedited shipments?

*Procedures for declaration, release and customs control under the expedited shipment procedures should be defined. Many countries follow the WCO immediate release guidelines, which provide for different declaration processes and data requirements depending on the value and nature of the goods.*

8. Are coordination mechanisms in place with other relevant border agencies?

**C. Institutional Framework**

9. Has responsibility for implementation and oversight of an expedited shipper program been delegated to a functional unit within the customs administration?

**D. Human Resources and Training**

10. Are customs clearance officers trained in the expedited release procedures?
11. Is a sufficient number of qualified customs officers available and assigned to oversee expedited shippers?

**E. Communication and Information Technology**

12. Is there an automated system for electronic submission and processing of cargo and/or goods declaration data?
13. Can such systems accommodate the expedited release procedures listed in Article 8.2 (e.g., pre-arrival declaration; release on limited data; release without payment of duty/tax subject to provision of a guarantee)?

*Changes may be required to customs automated cargo (manifest) and goods declaration systems to accommodate the expedited shipment channel.*

**F. Infrastructure and Equipment**

14. Are facilities or resources required by Customs for implementation of expedited release?

*Customs and other border agencies may allow processing and release of expedited shipments to be carried out at the operator's facility or other specialized facilities, such as a designated courier shed or terminal, and outside Customs normal business hours. This may have impacts on Customs and other border agency personnel resources, as well as costs in maintaining at that location the facilities and equipment necessary to carry out supervision and control.*



ARTICLE 7.8      EXPEDITED SHIPMENTS

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>41</sup>:</i>		1.	

<sup>41</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_\_\_ 1 Year:\_\_\_\_\_ 3 Years:\_\_\_\_\_ 5 Years:\_\_\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## 9. Perishable Goods<sup>42</sup>

### **Legal Text**

1. With a view to [preventing][allowing an importer to prevent] avoidable loss or deterioration of perishable goods, and provided all regulatory requirements have been met, each Member shall:

- a. provide for the release of perishable goods under normal circumstances within the shortest possible time;
- b. [provide for the release of perishable goods, where appropriate, outside the business hours of Customs and other relevant authorities]

2. [Each Member shall limit the controls and procedures related to the importation of perishable goods to the minimum necessary, while ensuring compliance with its import requirements.]

3. Each Member shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

4. [Each Member shall allow an importer of perishable goods to arrange for proper storage of the goods pending their release. The Member may require that any storage facilities arranged by the importer have been approved by its relevant authorities for such a purpose. The Member shall, where practicable and upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.]

5. [Whenever the release of perishable goods is unjustifiably delayed and the timeframe or the storage conditions are not appropriate for the preservation of the goods to be imported, the importing Member shall, to the extent practicable, provide, upon written request, a communication on the reasons for the delay.]

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### ***Notes***

#### ***What activity does this proposal regulate?***

Customs clearance and release of imported "perishable goods"<sup>43</sup>

#### ***What authorities are directly concerned?***

- Customs
- Other Border Agencies involved in the release of perishable goods

#### ***What is the new requirement?***

Members shall adopt or maintain procedures for the importation of perishable goods that:

- allow release within shortest possible time;
- provide for release, where appropriate, outside Customs normal business hours;

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<sup>42</sup> [For the purposes of this provision, perishable goods are goods that require release within the shortest possible time, as well as appropriate conditions when stored, to preserve their quality and commercial value and prevent avoidable loss or deterioration.]

<sup>43</sup> "The co-sponsors recognize that a definition for perishable goods may be necessary for the sake of more clarity about the coverage of the proposal. At this stage, the co-sponsors opted for not including a definition in the proposed text, since this issue could benefit from a broader and more detailed discussion among all Members. The co-sponsors, however, take this opportunity to share their views on the possible coverage of this proposal. For us, the trade facilitation measures proposed below should be limited only to those goods that decay quickly, especially if not stored properly (e.g. fruits and vegetables, meat, fish, cut flowers *etc.*). Furthermore, Members may consider the possibility of extending the coverage of the proposal, or parts thereof, to live animals." TN/TF/W/184 (5 December 2012).

- limit controls to the minimum necessary to ensure compliance;
- give priority to such goods when scheduling examinations;
- allow such goods to be stored in appropriate conditions for their conservation, where facilities approved by the relevant authorities are available;
- where practicable, and upon request, allow release to occur at these storage facilities; and
- require Customs to give a prompt written explanation to the importer, on request, where delays in release or clearance result in damage to the goods.

**What actions might be required to implement this proposal?**

**A. Policy/Legal Framework**

1. Does Customs have authority to provide for the expedited release of imported perishable goods?

*For example, the legislation of a number of countries allows Customs to release perishable goods directly on arrival, and prior to formal entry and payment of duty, upon the importer's submission of application or simplified declaration with the minimal information required to determine whether the goods are admissible. Typically, the importer is also required to provide a guarantee to ensure subsequent completion of clearance formalities and payment of any duty and taxes determined to be due.*

*Other procedures that might be used to expedite release of perishable goods include, for example, pre-arrival processing of goods declarations, of the type described in Article 7.1.*

2. Do Customs, and other relevant border agencies, have authority to clear imported perishable goods outside usual business hours?

*Absent 24/7 service, national customs legislation typically authorizes the customs administration to provide import processing services on request outside of normal business hours, subject to reimbursement of customs overtime costs. Other conditions may include provision of a guarantee to ensure payment of costs and the availability of customs staff.*

*Members may wish to ensure that its legislation contains such authority for overtime services related to clearance of perishable goods, both with respect to customs services and those of other relevant border agencies (the animal health and food safety authorities, for example).*

3. Does Customs have authority to clear goods at storage facilities arranged by the importer?

*For example, the legislation of some countries allows Customs to authorize importers to move perishable goods directly to their premises, where they are held pending submission of required import documentation and completion of customs clearance. This procedure is typically subject to a prior authorization.*

*As stated in the proposal, this procedure also may be conditional on Customs approval of the premises, based on reasonable criteria (for example, physical security of the premises and/or proximity to a customs office).*

4. Is Customs required to provide the importer, on request, with a written explanation for delays in release and clearance of perishable goods in cases where the timeframe or storage conditions are not appropriate for the preservation of the goods?

**B. Procedures**

5. Have Customs and the other relevant border agencies established operational procedures to ensure that examination and clearance of imported perishable goods are carried out as a matter of priority?

*Such procedures may provide for exchange of information among the relevant border authorities and coordination of controls to ensure expedited treatment.*

6. Are controls on imported perishable goods limited to the minimum necessary to ensure compliance with import requirements?
7. Has Customs established procedures to allow importers to remove and store perishable goods in appropriate facilities pending results of examination (including facilities located outside the customs area)?

**D. Human Resources and Training**

8. Are customs and other relevant border agent officers trained in procedures for the expedited release and clearance of perishable goods?

**E. Communication and Information Technology**

9. If automated processing systems are used for clearance of goods, can they accommodate procedures/data requirements for expedited release of perishable goods?

*Expedited release of perishable goods may involve adoption of simplified procedures such as the "immediate delivery" or "special" or "prior" release described above under policy and legislative framework. These procedures would vary the usual workflow for clearance of goods (e.g., release prior to submission of an entry and the calculation/payment of duty, etc.). Members may wish to consider whether existing cargo and declaration processing systems can accommodate such procedures.*

**F. Infrastructure and Equipment**

10. Are appropriate facilities available to importers - whether maintained by Customs or otherwise - for the storage of perishable goods pending their release?

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>44</sup>:</i>		1.	

<sup>44</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_ Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_\_\_ 1 Year:\_\_\_\_\_ 3 Years:\_\_\_\_\_ 5 Years:\_\_\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## Article 8: Consularization

### 1. [Prohibition of Consular Transaction Requirement]

#### Legal Text

1.1 A Member shall not require a consular transaction<sup>45</sup>, 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.]]

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#### **Notes**

##### ***What activity does this proposal regulate?***

Authentication of documents required for the importation of goods

##### ***What authorities are directly concerned?***

- All border agencies

##### ***What are the new requirements?***

- Consular transactions are prohibited

##### ***What actions might be required to implement this proposal?***

#### **A. Policy/Legal Framework**

1. Does the legislation require consularization of any document that is submitted in connection with the importation of goods?

*Members should ensure that there is no legislative, policy, procedure or practice that would require consularization of documents that are submitted to Customs or other authority in connection with the importation of goods.*

*If Customs or other border authority wishes to authenticate a particular a commercial document, the proposed measures suggests that a better approach will be through cooperation with the customs administration of the country in which the document originated (see Article 12).*

#### **B. Procedures**

2. Is there any policy, procedure or practice to require consularization of any document that is submitted in connection with the importation of goods?

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<sup>45</sup> 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."



I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>46</sup>:</i>		1.	

<sup>46</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or approximately how much time will you need to implement?

6 Months:\_\_\_ 1 Year:\_\_\_ 3 Years:\_\_\_ 5 Years:\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## Article 9 Border Agency Cooperation

### **Legal Text**

1. A Member shall ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade.

2. Members shall, to the extent possible and practicable, cooperate on mutually agreed terms with other Members with whom they share a common border with a view to coordinating procedures at border crossings to facilitate cross-border trade. Such cooperation and coordination may include:

- (i) Alignment of working days and hours;
- (ii) Alignment of procedures and formalities;
- (iii) Development and sharing of common facilities;
- (iv) Joint controls;
- (v) Establishment of one stop border post control.

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### ***Notes***

#### ***What activity does this proposal regulate?***

- The activities of the different national border agencies in connection with an import, export or transit transaction
- The activities of the border agencies of two Members in connection with trade across a shared border

#### ***Which authorities are directly concerned?***

- All border agencies

#### ***What are the new requirements?***

- National border authorities/agencies shall cooperate and coordinate border controls and procedures to facilitate trade
- Countries with common land borders shall cooperate and coordinate procedures to facilitate cross-border trade

#### ***What actions might be required to implement this proposal?***

##### ***A. Policy/Legal Framework***

1. Does legislation or government policy enable or require national border agencies to coordinate, cooperate and assist each other in carrying out border control operations?
2. Is there an inter-agency agreement or memorandum-of-understanding that defines modes of cooperation among national border authorities?

*Coordination of activities of the domestic border authorities requires a legal basis. Some countries have created a single border authority responsible for carrying out all functions related to import, export and transit of goods. In other countries, where individual border authorities continue to administer their regulatory requirements independently, or in cooperation with customs, inter-agency regulations and/or MOU's are commonly used.*

*Such agreements typically concern the exchange of information and intelligence; exercise of joint operations and controls; common risk management; sharing of equipment/facilities; controls performed on behalf of other agencies, etc.*

3. Are the tasks and competencies of each border agency clearly defined?

*A clear definition of the respective tasks and competencies of the border agencies reduces the possibility of overlapping or redundant activities and controls.*

4. Does your legislation provide Customs and/or other border authorities with the authority to enter into international agreements for mutual assistance and/or border control matters?

*The co-operation measures described in Article 9.3 would be normally based on official mutual assistance arrangements or MOU signed between the customs administrations or higher levels of government. National legislation should thus authorize Customs or the government to enter into such agreements on mutual assistance or border cooperation.*

#### **B. Procedures**

5. Have the national border authorities aligned or integrated their respective activities?

*Border processes and workflow of the different border authorities might be re-engineered in order to synchronize or harmonize data capture, controls and formalities across agencies. This could lead to a "one-stop shop" or a single location for one-time documentary or physical verification of consignments (where required) by all concerned authorities and agencies.*

#### **C. Institutional Framework**

6. Is there an inter-agency working group or similar body to develop strategy and oversee implementation of border agency cooperation?

#### **D. Human Resources and Training**

7. Are border agency officials trained on inter-agency cooperation requirements and procedures?

#### **E. Communication and Information Technology**

8. Are procedures and mechanisms established to ensure timely exchange of information required for control among the relevant border agencies?

ARTICLE 9: BORDER AGENCY COOPERATION

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>47</sup>:</i>		1.	

<sup>47</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_ 1 Year:\_\_\_ 3 Years:\_\_\_ 5 Years:\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

**[Article 9 bis: Declaration of Transhipped or in transit goods] [domestic transit]****Legal Text**

1. Each Member shall allow goods intended for import to be moved within its territory under customs supervision from a customs office of entry to another customs office in its territory.

[2. Each Member shall allow customs declarations for goods under paragraph 1 to be made at any designated customs office where the goods are presented or at any other place if authorised by the customs authorities]

[3. Each Member shall take into account the flow of international trade, in designating a customs office under this Article. A Member shall not limit the number of designated customs offices in a manner so as to create a disguised restriction to international trade.]

**Notes*****What activity does this proposal regulate?***

Imported goods arrive at one customs office (for example, an international airport or a seaport) for delivery to an inland destination within the same country, where the importer will declare and clear the goods. The goods may be offloaded from the international carrier at the point of entry and loaded on another means of transport (truck or rail, for example) for carriage to the final destination.

The proposal is intended to allow the goods to be moved under a simplified procedure to the inland customs office, and permit the importer to clear them at the destination rather than at the port of arrival.

***Which authorities are directly concerned?***

- Customs

***What are the new requirements?***

- A declarant should be able to move goods from a customs office of entry to another customs office within the same customs territory and file a declaration at any designated customs office where the goods are presented, or any place authorized by Customs
- Customs offices where goods can be presented for "domestic transit" should accommodate the flow of international trade and should not be limited in order to restrict trade.

***What actions might be required to implement this proposal?******A. Policy/Legal Framework***

1. Does customs legislation provide or allow for a "domestic transit" procedure as set out in this article?
2. Does the importer have the right to make an import declaration at any customs office where the goods are presented, or other places that are authorized by Customs?

*The importer should have the right to make the customs declaration that will put goods under the import procedure (free circulation, temporary admission, warehouse, etc.) at the destination or any other customs office where the relevant formalities can be fulfilled.*

3. Are imported goods required to be declared for an import customs procedure at the port of entry?

*Neither the legislation nor administrative procedures should require goods to be declared for the import customs procedure at the customs office of arrival.*

**B. Procedures**

4. Are conditions for the use and discharge of the "domestic transit" procedure documented and published?

*These conditions might include obligations to provide a security, data/documentation requirements; allowed period and place for transshipment; etc.*

*According to the proposal, the requirements should be "less onerous" than a transit procedure. This might mean, for example, that an indication in the cargo manifest of an inland final destination could suffice as a "declaration" for this procedure.*

5. Have coordination mechanisms been put in place with other border agencies to ensure the admissibility of the goods destined for domestic transit operations?

**D. Human Resources and Training**

6. Are customs border officers trained in the procedure?

**E. Communication and Information Technology**

7. Can customs automated processing systems accommodate the domestic transit operation?

*Changes may be required to customs cargo and/or goods declaration processing systems in order to accommodate new workflow or data requirements of the procedure.*



**ARTICLE 9B/IS: DECLARATION OF TRANSHIPPED OR IN TRANSIT GOODS [DOMESTIC TRANSIT]**

**I. Situational/Gap Analysis**

<b>Describe Your Current Situation</b>	<b>Barriers (Give Reasons for non-compliance)</b>	<b>Actions/Resources Required &amp; Cost (Number the Actions)</b>	<b>TACB Resources Needed (Specify Action Number)</b>
<b><i>A. Policy/Legal Framework:</i></b>		1.	
<b><i>B. Procedures:</i></b>		1.	
<b><i>C. Institutional Framework:</i></b>		1.	
<b><i>D. Human Resources/Training:</i></b>		1.	
<b><i>E. Communication/Information Technology:</i></b>		1.	
<b><i>F. Equipment &amp; Infrastructure:</i></b>		1.	
<b><i>G. Other Issues to Note<sup>48</sup>:</i></b>		1.	

<sup>48</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_\_\_ 1 Year:\_\_\_\_\_ 3 Years:\_\_\_\_\_ 5 Years:\_\_\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## Article 10: Formalities Connected With Importation And Exportation And Transit

### 1. Formalities and Documentation Requirements

#### Legal Text

1.1 With a view to minimizing the incidence and complexity of import, export, and transit formalities and of decreasing and simplifying import, export and transit documentation requirements [,while taking into account the legitimate policy objectives to be fulfilled,] and taking into account factors such as changed circumstances, relevant new information and business practices, availability of techniques and technology, international best practices and inputs from interested parties, each Member shall review such formalities and documentation requirements, and [ensure that]:

- (a) they are adopted and/or applied with a view to a rapid release and clearance of goods;
- b) they are adopted and/or applied in a manner that aims at reducing the time and cost of compliance for traders and operators;
- c) the least trade restrictive measure is chosen, where two or more alternative measures are reasonably available for fulfilling the policy objective/s in question; and
- d) they, or parts of them, are not maintained if no longer required. ]

1.2 The Committee shall develop procedures for sharing relevant information and best practices as appropriate.<sup>49</sup>

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#### **Notes**

##### ***What activity does this proposal regulate?***

Import, export and transit formalities and documentation requirements

##### ***What authorities are directly concerned?***

- All border agencies

##### ***What are the new requirements?***

- Members must periodically review formalities and documentation requirements with a view towards simplifying or reducing them
- Documentation requirements or formalities should be as fast and efficient as possible. They should not be adopted if a less trade-restrictive solution is available. They should be eliminated or modified if no longer necessary

##### ***What actions might be required to implement this proposal?***

#### **A. Policy/Legal Framework**

1. Are all relevant border agencies required to carry out a periodic review of their documentation requirements and formalities relating to import, export and transit?

*Legislation or policy would typically designate the particular agencies responsible for conducting a periodic review (which may include a central coordinating/oversight body); the subjects and time frames for review; the rights and modes of private sector participation; and the general standards to be used by agencies to evaluate their documentation and formalities.*

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<sup>49</sup> Some Members have suggested that this paragraph could be addressed in a cross-cutting manner. Text on 10.1.2 could be modified accordingly.

2. Are border agencies authorized to engage in consultations with private sector stakeholders?
3. Do Customs and other relevant border agencies assess the trade impact of proposed import, export and transit formalities and documentation requirements prior to adoption?

*A legislative or administrative framework may be required to ensure that border agencies undertake an evaluation of the trade impacts of proposed new document requirements or formalities, and to conduct a continued evaluation of existing requirements.*

*This legislative or administrative framework would typically cover matters such as the responsible border agencies, the general criteria to be used for evaluation, and the participation of the private sector in the evaluation.*

## **B. Procedures**

4. Are policies/procedures established within the relevant border agencies for undertaking the periodic review?

*The proposal does not require use of any particular analytical method to carry out these periodic reviews. It was deliberately written in general terms given that circumstances vary from one Member to another and from one measure to another. However, there are a number of different tools that governments typically use for analysis of this kind. These include:*

- *Business Process Re-Engineering (BPR), which is a methodology to document and analyse import/export or transit workflows in order to identify inefficiency and unnecessary complexity;*
- *Regulatory Impact Analysis (RIA), which is “a process of systematically identifying and assessing the expected effects of regulatory proposals, using a consistent analytical method, such as benefit/cost analysis,”<sup>50</sup> and,*
- *Standard Cost Model, which can be used to measure the impact of government regulation on business in terms of administrative cost of compliance.*

*In addition, the review process might incorporate or rely upon the private sector consultation process provided under Article 2.3(Consultations) and/or Article 2.2 (Opportunity to Comment on New and Amended Rules) to obtain the necessary information from interested parties.*

*Procedures would typically include consultation and coordination with other border agencies as other “interested parties” to reduce duplication and avoid inconsistencies in formalities and documents.*

5. Are policies/procedures established to guide Customs or other border agencies’ assessment of trade impacts of proposed formalities and documentation requirements?

*In assessing whether a particular formality or documentation requirement is the “least-trade restrictive” solution to achieving a given policy objective or to respond to a particular set of circumstances, the same process and analytical tools mentioned in connection with the Article 10.1 proposals would be applicable.*

*However, as also noted in that previous section, no particular tools are mandated by the proposal.*

6. Are policies/procedures established to ensure that Customs or other border agencies monitor and review their formalities and documentation requirements to determine if they remain necessary or whether less-trade restrictive measures are available?
7. Are policies/procedures established to amend the relevant legislation accordingly?

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<sup>50</sup> OECD Introductory Handbook for Undertaking Regulatory Impact Analysis

**C. Institutional Framework**

8. Is there an office/person designated, within each of the relevant border agencies (and/or a central oversight authority) responsible for periodic review of trade formalities and documentation?

*Responsibility for the periodic review process will require a person/office within each relevant border agency (or, possibly, a single central government authority) with relevant training and expertise.*

*For greater credibility, this activity is often established in an office independent from the office that requires or uses the document or formality, and may be a central regulatory oversight body, the competition authority or other body with the relevant expertise.*

9. Does the designated office/person have access to information relevant to the review (e.g., information on new business practices, techniques, technologies, international best practices, etc.)?
10. Is there a body(ies)/staff designated, within the Customs administration and other relevant border agencies, or a central government authority, responsible for assessing trade impact of proposed formalities and documentation?

**D. Human Resources and Training**

11. Are a sufficient and qualified staff appointed for undertaking periodic review of trade formalities and documentation?
12. Are persons responsible trained in methods for analysis of trade formalities and documentation?
13. Are persons responsible trained in methods for analysis of impact of trade formalities and documentation?
14. Are a sufficient and qualified staff appointed for assessing trade impact of formalities and documentation?

**I. Situational/Gap Analysis**

<b>Describe Your Current Situation</b>	<b>Barriers (Give Reasons for non-compliance)</b>	<b>Actions/Resources Required &amp; Cost (Number the Actions)</b>	<b>TACB Resources Needed (Specify Action Number)</b>
<b><i>A. Policy/Legal Framework:</i></b>		1.	
<b><i>B. Procedures:</i></b>		1.	
<b><i>C. Institutional Framework:</i></b>		1.	
<b><i>D. Human Resources/Training:</i></b>		1.	
<b><i>E. Communication/Information Technology:</i></b>		1.	
<b><i>F. Equipment &amp; Infrastructure:</i></b>		1.	
<b><i>G. Other Issues to Note<sup>51</sup>:</i></b>		1.	

<sup>51</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_ Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_ 1 Year:\_\_\_ 3 Years:\_\_\_ 5 Years:\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## 2. Acceptance of Copies

### **Legal Text:**

2.1 Each Member shall, where appropriate, endeavour to accept paper or electronic copies of supporting documents required for import, export or transit formalities.

2.2 Where a government agency of a Member already holds the original of such a document, any other agency of that Member shall accept a paper or electronic copy, where applicable from the agency holding the original, in lieu of the original document.

2.3 [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.]<sup>52</sup>

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### **Notes**

#### ***What activity does this proposal regulate?***

Presentation of supporting documents for import, export or transit formalities

#### ***What authorities are directly concerned?***

- All border agencies

#### ***What are the new requirements?***

- Border agencies shall endeavour to accept copies of supporting documents that may be required for import, export or transit formalities.
- If the original document has been provided to one government authority, other government authorities shall accept a copy authenticated by the agency holding the original.
- Neither an original nor a copy of the export declaration issued by authorities in the country of export shall be required for importation of the goods.

#### ***What actions might be required to implement this proposal?***

##### ***A. Policy/Legal Framework***

1. Do Customs and other border authorities have authority to accept copies of supporting documents in lieu of the original (including a copy certified by the national authority that holds the original)?

*A Member's national legislation may require traders to present certain specified supporting documents to Customs or other border agencies with their declaration for clearance and release of goods. Some of these may be commercial documents (e.g., invoices, bills of lading, packing lists, etc.); others may be forms issued by authorities in the country of export or elsewhere (e.g., certificates of origin).*

*Such legislation should authorize Customs and other border agencies to accept copies of such documents in lieu of the original, subject to such exceptions or conditions as may be justified. In any event, an authenticated copy of an original held by another government authority shall be accepted.*

*The Member may require that the importer or exporter retain and produce the original document in the course of a post-clearance audit (see Article 7.4, above).*

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<sup>52</sup> Some Members have requested to revisit Art. 10.3.4, following further discussions on Art. 12 on customs cooperation.



2. Does Customs, or other border authorities, require presentation of an export declaration issued by the authorities of the exporting country as a condition of importation of goods?

*Legislation should not permit border authorities to require presentation of the export declaration issued by authorities in the country of export for importation of goods (see Article 12 proposals on customs cooperation).*

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>53</sup>:</i>		1.	

<sup>53</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_\_\_ 1 Year:\_\_\_\_\_ 3 Years:\_\_\_\_\_ 5 Years:\_\_\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

### 3. Use of International Standards

#### **Legal Text**

3.1 Members are encouraged to use relevant international standards or parts thereof as a basis for their importation, exportation or transit formalities and procedures except as otherwise provided for in this Agreement.

3.2 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 organizations.

3.3 The Committee shall develop procedures<sup>54</sup> for the sharing by Members of relevant information, and best practices, on the implementation of international standards, as appropriate. The Committee may also invite 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.

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#### ***Notes***

##### ***What authorities are directly concerned?***

- All border agencies

##### ***What activity does this proposal regulate?***

Import, export and transit formalities, procedures and data/documentation requirements

##### ***What is the new requirement?***

- Members are encouraged to use "relevant international standards" as the basis for their import, export and transit formalities and procedures.
- Members are encouraged to take part in preparation and periodic review of standards through the "appropriate" international organizations.

##### ***What actions might be required to implement this proposal?***

###### ***A. Policy/Legal Framework***

1. Is your legislation aligned to the WCO Revised Kyoto Convention and other international standards relating to import, export and transit formalities and procedures?

*Customs and other border authorities should have an understanding of the relevant international standards, the extent to which their national legislation, procedures and formalities align to those international standards, and the extent to which such standards can or should be applied.*

*Although the proposal does not specify all international standards or standards-setting organizations Members could take into account, they might include such international standards/organizations as:*

###### **World Customs Organization (WCO):**

- *International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention)*
- *Convention on the Temporary Admission of Goods (Istanbul Convention)*
- *International Convention (1986) on the Harmonized Commodity Description and Coding System (HS Convention)*

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<sup>54</sup> Members agreed that the question of the work of the Committee should be considered for discussion in a cross-cutting manner at a later stage.

- *WCO Data Model*

*International Maritime Organization (IMO):*

- *Convention (2005) on Facilitation of International Maritime Traffic*

*International Civil Aviation Organisation (ICAO):*

- *Convention (2006) on International Civil Aviation*

*United Nations Economic Commission for Europe:*

- *UN layout key for Trade Documents*
- *UN Trade Data Elements Directory*

*Centre for Trade Facilitation and Electronic Business:*

- *UN/EDIFACT*

**B. Procedures**

2. Are your import, export, and transit procedures and formalities aligned to relevant international standards?
3. Are policies/procedures established to ensure review of import, export, transit procedures and formalities for alignment with new or changed WCO and other relevant international standards?

*The relevant standards can change over time. Members should stay apprised of developments in the appropriate international organizations and periodically re-assess their national procedures and formalities.*

**C. Institutional Framework**

4. Has an administrative unit been designated responsibility to monitor/participate in the activities of WCO and other relevant standards organizations?

**D. Human Resources and Training**

5. Are a sufficient number of qualified persons assigned to monitor and/or participate in the work of the relevant international standards organizations and to evaluate the impacts on national formalities and procedures?

Article 10.3      USE OF INTERNATIONAL STANDARDS

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>55</sup>:</i>		1.	

<sup>55</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_ 1 Year:\_\_\_ 3 Years:\_\_\_ 5 Years:\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

#### 4. Single Window

##### **Legal Text**

4.1 Members shall, [where practicable] [endeavour to], establish or maintain a single window, enabling traders to submit documentation and/or data requirement for importation, exportation or transit of goods through a single entry point to the participating authorities or agencies. After the examination by the participating 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.

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

4.3 Members shall notify the Committee the details of operation of the single window.

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

[4.5 Members shall, where practicable, use relevant international standards as a basis for the single window schemes.<sup>56</sup>]

4.6 With regard to the scope of the participating authorities or agencies, and of the documentation and/or data requirements, Members may implement the single window in a progressive manner.

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##### **Notes**

##### ***What activity does this proposal regulate?***

Traders' submission of documents/data to multiple government agencies to allow import, export or transit of a goods shipment

##### ***What authorities are directly concerned?***

- All border agencies

##### ***What is the new requirement?***

- Members shall establish a "*single window*" to which a trader can submit all documents and/or data required by customs and all other border or licensing authorities for the import, export or transit of goods, and from which the trader will receive all notifications.
- "*One-time submission*:" where a trader submits required data and/or documents to the single window he/she shall not be asked again for the same information other than in exceptional cases.
- Members shall use ICT to the extent possible and practicable, and may implement the single window by phases.

##### ***What actions might be required to implement this proposal?***

##### ***A. Policy/Legal Framework***

1. Has your government defined its single window policy/strategy?

*Policy/strategic decisions required would typically include*

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<sup>56</sup> The bracketed wording can be deleted subject to the issue being addressed in a cross-cutting manner.



- designation of the single window authority or lead agency (e.g., the customs administration, a firm established under company law, a public-private partnership, a newly-established government authority or government corporation);
  - establishment of governance and consultative structures;
  - the agencies who will participate and the services to be provided by the single window;
  - the technical form of the single window (e.g., a manual paper-based system, an electronic centralized system, or an integration of the existing systems); and
  - the financial model (e.g., budget-financed, paid for by a transaction fee, etc.).
2. Have you completed a feasibility study/master plan for the implementation of a national single window?

*Establishment of a single window can require a government to re-organize the manner in which its border and licensing authorities interact with traders and with each other to fulfil requirements related to imports and exports. This usually requires analysis and action on a range of issues, including policy and legislation, business processes, data/documentation requirements, and technical systems.*

*Given the general complexity and the fact that the conditions vary widely, a feasibility study or needs analysis is often recommended as a first step to investigate these or other policy, legal, and technical issues, and to estimate costs, required resources, and timing or phasing of the implementation under different scenarios. The output may be a high level master plan that defines project phases, activities and deliverables.*

3. Have you assessed your national legislation for readiness for a single window implementation?

*Legislation should define the roles, rights and obligations of the single window authority, the participating agencies, and traders that access or exchange information with the single window.*

*This includes the conditions on rights to access to information held by the single window, including the protection of confidential business information and personal data. Typically, the participating agencies will enter into agreements that define obligations to share, protect, and retain information, as well as to define their respective functional responsibilities.*

*Changes to one or more of the participating border authority's enabling laws also may be required to take into account changes made through simplification and harmonization of business processes (see "Procedures," below).*

*If an electronic single window is to be established, then the usual legislation to enable electronic transactions also should be in place (e.g., recognition of electronic signature; use of electronic records in place of paper documents; privacy and data protection and security, etc.)*

## **B. Procedures**

4. Have the participating authorities or agencies analyzed and harmonized their business processes and data/documentary requirements required for import, export or transit of goods?

*To achieve the goal of a "one-time" submission to a single entry point, the multiple and possibly overlapping and redundant processes, as well as the documentary and/or data requirements, of the different border authorities should be simplified and harmonized.*

*This would typically require existing processes to be modelled and analyzed in order to identify bottlenecks and redundancies, and simplified processes designed, which then must be agreed by the participating agencies. Harmonization of data and documentary requirements will also likely require an analysis and simplification effort.*

5. Are agreed procedures and processes established among participating authorities/agencies to ensure the re-use of documents/data submitted by the trader?

**C. Institutional Framework**

6. Is there a governance framework, with defined roles and lines of responsibility, to oversee the design, implementation and operation of the single window?

**D. Human Resources and Training**

7. Are sufficient numbers of staff with the relevant expertise available for the implementation, deployment, and operation of the single window?

**E. Communication and Information Technology**

8. If electronic, to what extent is the system designed, implemented, or put into operation?

*A single window can be a manual, paper-based system. However, if in part or in whole an electronic system, a single window implementation is also a software engineering project, and therefore the usual software development phases will apply (e.g., capturing and analysing requirements; design of the system, implementation or coding, and testing). This may be a green-field project where the system is built from scratch or, if there will be re-use of the participating agencies' existing systems, the project may be primarily integration.*

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>57</sup>:</i>		1.	

<sup>57</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

<p>1. Do you comply with this measure?</p> <p>Fully:___ Substantially: ___Partially:___ No:___ Not Applicable:___</p>
<p>2. You expect to implement this measure by:</p> <p>Category A (by date of entry into force):_____ Category B (with extra time):_____ Category C (with extra time and technical assistance): _____</p>
<p>3. If Category B or C approximately how much time will you need to implement?</p> <p>6 Months:_____ 1 Year:_____ 3 Years:_____ 5 Years:_____ Other (Specify):_____</p>
<p>4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:</p>
<p>5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:</p>
<p>6. Stakeholders not participating in assessment of this measure that should be consulted:</p>
<p>7. National Priority Level (How important is it that this measure should be implemented in your country?):</p> <p>High:___ Medium: ___ Low:___ None:___ Explain:</p>
<p>8. Issues to note (any comments or recommendations for negotiators, etc.):</p>

## 5. Pre-shipment [and Post-shipment Inspections]

### **Legal Text**

5.1 Members [where applicable] shall not require the use of pre-shipment inspections [in relation to tariff classification and customs valuation] [other than in instances specified by the national legislation].

[Likewise, Members shall not require the use of post-shipment or destination inspection in relation to tariff classification and customs valuation. This is without prejudice to checks and controls performed by customs or other government agencies in the framework of risk management.]

[5.2 From the entry into force of this agreement, Members shall [endeavour] not [to] introduce or apply any new requirements to use pre-shipment [or post-shipment inspections] referred to in paragraph 5.1.]

[5.3 Developing Country Members, including Least Developed Country Members, shall [to the extent possible] [progressively] implement the provisions of paragraph 6.1 subject to their requesting for and receiving from other Member(s), the necessary technical assistance and capacity building within the time period specifically agreed with such Member(s).]

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### **Notes**

#### ***What activity does this proposal regulate?***

Use of pre-shipment or destination inspection firms to carry out customs-related controls on imported goods

#### ***What authorities are directly concerned?***

- Revenue Authority
- Customs

#### ***What is the new requirement?***

- If a Member presently requires pre-shipment [or destination inspection] of imports [in relation to tariff classification or customs valuation], it shall end such requirements
- Members shall not introduce any such pre-shipment [or destination inspection] requirements in the future.

#### ***What actions might be required to implement this proposal?***

It is not necessary to analyse the impact of this proposed measure unless you now require use of pre-shipment or destination inspection.

### **A. Policy/Legal Framework**

1. Has the government defined a strategy and/or action plan for the transition from pre-shipment and/or destination inspection regime?

*Elimination of a PSI or destination inspection regime requires a capable and functioning customs administration to take over the role played by the PSI or destination inspection firm. Customs should have the technical competence in customs valuation and tariff classification, as well as the legal and administrative framework required to support duty assessment (such as capacity for customs audit, risk management, commercial fraud investigation, etc.).*

*To manage the transition, a government would typically develop a strategy and action plan, taking into account such matters as:*

- *the role of the PSI/destination firm in the transition period and in subsequent operations (e.g., training support, provision of price data, inspection or audit support, etc.)*

- the staging and timing of Customs take-over of customs valuation and/or tariff classification responsibilities (e.g., will it be a “big-bang” implementation or a phased approach and, if phased, the manner of the phasing)
- the (re)organization of the Customs administration as required to carry out the new tariff classification and/or customs valuation functions (e.g., establishment of central tariff and valuation units responsible for oversight/support of local offices)
- the roles and responsibilities of other customs administrative units in support of tariff classification and valuation functions (particularly audit, risk management, and commercial fraud investigation)
- the staffing and training requirements
- the public outreach/information strategy.

### **C. Institutional Framework**

2. Is the customs administration properly organized to implement the tariff classification and customs valuation functions?

*Tariff classification and customs valuation of goods is generally carried out by Customs officers at the local offices where declarations are made. These officers may be customs generalists or, more often, are specialized in tariff classification and/or valuation matters and are organized as such in the local offices. In some larger countries, further specialization of tariff classification and valuation is made on the basis of commodity groups.*

*It is also typical that a dedicated administrative unit is established within the central (or, possibly, regional) customs authority with responsibility for valuation and tariff classification policy and for oversight/support of local offices (often, separate central units are established for tariff classification and valuation). Often, these central customs units act as the administrative appeal authority with respect to tariff classification and valuation disputes and the issuance of advance rulings on such matters.*

3. Has the post-clearance audit function been established within the customs administration?

*Post-clearance audit is essential to effective implementation of the WTO customs valuation system. The considerations related to establishment of post-clearance audit are described in connection with Article 7.4 (5. Post-Clearance Audit), above.*

4. Has the risk management function been established within the customs administration?

*Risk management is essential for the proper and effective exercise of Customs interventions for purpose of ensuring compliance with customs valuation and tariff classification rules. The considerations related to establishment of the risk management function are described in connection with Article 7.3 (4. Risk Management), above.*

### **D. Human Resources and Training**

5. Do the relevant customs officers have the necessary expertise in tariff classification and customs valuation rules and procedures?

*All officers who are responsible for determining or verifying goods declarations for customs valuation and tariff classification purposes should have this expertise. Similarly, customs officers responsible for post-clearance audit should have expertise in customs valuation and tariff classification rules. Local clearance officers also should have understanding of WTO valuation procedures related to clearance operations (e.g., release under guarantee pending final determination of value; rights to written explanation of valuation decisions).*

### **E. Communication and Information Technology**

6. Are decision-support tools available to the customs officers who are responsible for tariff classification and/or customs valuation?

*ICT tools often used by customs administrations to support tariff classification and customs valuation work include customs valuation or price databases, tariff code look-ups, and customs advance rulings databases.*

ARTICLE 10.5. PRE-SHIPMENT [AND POST-SHIPMENT INSPECTIONS]

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>58</sup>:</i>		1.	

<sup>58</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_ Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_ 1 Year:\_\_\_ 3 Years:\_\_\_ 5 Years:\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):



## 6. Use of Customs Brokers

### **Legal Text**

[6.1 [Members [shall not] [are encouraged to not] [may] require the mandatory use of customs brokers.]

[Members, if and when licensing customs brokers, shall apply licensing rules that are transparent and reasonable.

Legal persons may operate with their own in-house customs broker, licensed by the competent authority.]

Alt. [6.1 Without prejudice to paragraph 6.2, Members shall not require the mandatory use of customs brokers.

6.2 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 Agreement. 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.]]

### **Notes**

#### ***What activity does this proposal regulate?***

The use of customs brokers in import, export or transit operations

#### ***What authorities are directly concerned?***

- Customs

#### ***What is the new requirement?***

- Members shall not require mandatory use of customs brokers.
- Developing and least developed country Members shall eliminate any existing requirements for mandatory use of brokers within a specified period following entry into force of the Agreement.
- Any broker licensing rules shall be transparent and reasonable.

#### ***What actions might be required to implement this proposal?***

##### ***A. Policy/Legal Framework***

- Do persons [other than legal entities] have a right to submit declarations and transact customs business in their own name and on their own behalf?

*National legislation should allow [natural] persons to transact business directly with Customs, on their own behalf and in their own name, rather than through an agent. [Legal entities may use an employee or officer of the firm to conduct its customs business if such person is licensed by Customs or other competent authority.]*

- If customs agents are required to be licensed, are such requirements reasonable and transparent?

*The proposal would allow Members to license customs brokers. However, any such licensing requirements must be "reasonable," set out in legislation or administrative policy, and made publicly-available.*

ARTICLE 10.6    USE OF CUSTOMS BROKERS

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>59</sup>:</i>		1.	

<sup>59</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_ 1 Year:\_\_\_ 3 Years:\_\_\_ 5 Years:\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## 7. [Common Border Procedures and Uniform Documentation Requirements]

### **Legal Text**

7.1 Each Member shall apply common customs [and other border] procedures and uniform documentation requirements for release and clearance of goods throughout its territory.

7.2 Nothing in this Article shall prevent a Member from:

- (a) differentiating its procedures and documentation requirements based on the nature and type of goods, or their means of transport;
- (b) differentiating its procedures and documentation requirements for goods based on risk management;
- (c) applying electronic filing or processing; or
- [(d) differentiating its procedures and documentation requirements in a manner consistent with the Agreement on Sanitary and Phytosanitary Measures].

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### ***Notes***

#### ***What activity does this proposal regulate?***

The import/export procedures applied by Customs [and other border agencies], and documentation requirements, at the different entry and exit offices within the customs territory (including those procedures applied by countries that constitute a customs union)

#### ***What authorities are directly concerned?***

- Customs
- [Other Border Agencies]

#### ***What is the new requirement?***

- Customs and other border agencies (such as food safety and agriculture) shall apply uniform documentation requirements and uniform release and clearance procedures - including standards for inspection, testing, and sampling of goods - at each point of entry or exit where conditions are the same

#### ***What actions might be required to implement this proposal?***

##### ***A. Policy/Legal Framework***

1. Are single, uniform procedures for the release and clearance of goods, applicable to all entry and exit offices of the same nature, formally established?
2. Do such uniform procedures cover:
  - standards
  - fees and charges
  - specifications
  - terminologies and definitions, and
  - inspection, sampling and text methods?

3. Are such procedures published?
4. Does legislation authorize or require a central administrative authority to ensure the uniform application of such procedures by local offices at different entry and exit offices?

*The border agency's enabling law might specifically require or authorize the central agency head (or designate another high-level official) to take the necessary measures to ensure the law is applied uniformly by all local offices. These measures might include publication and dissemination of information and periodic evaluations or audits of the activities of the local officials.*

*Formal rights of administrative appeal, where a central administrative authority has the authority to correct decisions and actions taken by local officials, can also serve to promote uniformity.*

1. Does legislation clearly define (or authorize the competent authority to define) the documents required for import, export and transit procedures, and the conditions under which each is required?
2. Does legislation clearly define (or authorize the competent authority to define) the form, content and layout of such required documents?

*The proposal would prohibit Members from allowing one customs office to require presentation of documents for an import, export or transit procedure that are not required by other offices under the same conditions. Where conditions vary, requirements may also vary (for example, supporting documents required for imports made by sea may vary from those made by road).*

*Similarly, where presentation of a document is required, customs offices or other border agencies in the territory of the Member should not require different form or content (the layout and data elements) where the same conditions are present.*

*The proposal does not prescribe the means by which Members should enforce uniformity of these documentation requirements. However, the same actions that a Member might consider to ensure uniform application of clearance and release procedures, described above, would generally also apply here.*

## **B. Procedures**

5. Does the central administrative authority take measures to promote uniformity, such as:
  - publish operations manuals, guidelines, directive or instructions for proper implementation of release and clearance procedures?
  - periodically evaluate or audit the activities of local offices to ensure consistent treatment?
  - provide for an ombudsman to hear and resolve importers/exporters complaints?
  - take other oversight measures?

*The possibility of local office discretion and disparate treatment of importers and exporters can be reduced if the central office publishes formal policies and guidance that clearly define the standards to be used and the conditions for their application. These may take the form of guidelines, directives, operations manuals, etc.*

*Some countries have established a central agency ombudsman with responsibility to hear and resolve citizen's complaints about their treatment by agency officials (such as inconsistent treatment).*

3. If not defined in legislation, do policies/procedures:
  - clearly define documents that shall be required for import, export and transit procedures, and conditions under which required?
  - clearly define the form and content of such required documents?

4. Are such policies/procedures published or otherwise made available to all customs clearance offices and other relevant border authorities and to traders?

***D. Human Resources and Training***

6. Is a single, uniform course of instruction defined for the training of officials on proper application of release and clearance procedures?
7. Are officials actually trained and tested (and periodically evaluated)?

*Training and testing of inspectors and other officials on practical enforcement of laws, rules and regulations on the basis of a single, uniform course of instruction can promote consistency in the application of the law.*

ARTICLE 10.7 COMMON BORDER PROCEDURES AND UNIFORM DOCUMENTATION REQUIREMENTS]

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>60</sup>:</i>		1.	

<sup>60</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_\_\_ 1 Year:\_\_\_\_\_ 3 Years:\_\_\_\_\_ 5 Years:\_\_\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):



## 8. Rejected Goods

### **Legal Text**

[8.1 When any goods declared for import are rejected by the competent authority of a Member on account of their failure to meet prescribed Sanitary and Phytosanitary regulations or technical regulations, the Member shall, except as provided for in its laws or regulations, give an option to the importer to re consign or return the rejected goods to the exporter or any other person. When such an option is given and the importer fails to exercise it within a reasonable period of time, the competent authority may consider a different course of action to deal with the goods.]

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

### **Notes**

#### ***What activity does this proposal regulate?***

The re-export or return of imported goods that have been rejected by government authorities

#### ***What authorities are directly concerned?***

- Customs
- Other Border Agencies (particularly, the Food Safety authority)

#### ***What is the new requirement?***

- [The importer shall have the right to return to the exporter, or any other person, imported goods that have been rejected by competent authorities due to failure to comply with prescribed Sanitary and Phytosanitary regulations or technical regulations]
- [The exporting country shall accept the returned goods]

#### ***What actions might be required to implement this proposal?***

##### ***A. Policy/Legal Framework***

1. Does an importer have the right to re-export goods that have been rejected for import due to failure to comply with prescribed Sanitary and Phytosanitary regulations or technical regulations?

*Importers should have a right to return rejected goods to the exporter, or any other person. There may be prescribed limitations or conditions on the exercise of that right, such as provision of a guarantee to ensure exportation; submission of proof of arrival of the goods to return destination; compliance with re-export formalities, etc.*

*Other international agreements and/or standards may require authorities to notify the country of export in such cases, and provide reasons for the rejection to the importer and relevant exporting country authorities.*

2. Does your legislation allow the return of exported goods that were refused entry by the country of destination?

**B. Procedures**

3. Are policies/procedures established for re-export of rejected goods (*e.g.*, importer required to be notified of the refusal and his/her right to export; a reasonable period of time allowed to complete the re-export, *etc.*)?
4. Are policies/procedures established for Customs supervision of re-export of prohibited/restricted goods?

*A customs procedure for export or re-export is common in many countries. Members may wish to review these existing procedures and make any adjustment that might be necessary to accommodate the proposed measure (for example, to ensure rejected goods remain under customs control until exportation).*

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>61</sup>:</i>		1.	

<sup>61</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_ Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_\_\_ 1 Year:\_\_\_\_\_ 3 Years:\_\_\_\_\_ 5 Years:\_\_\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## 9. Temporary Admission of Goods/Inward and Outward Processing

### Legal Text

#### **(a) Temporary Admission of Goods**

Each Member shall allow, as provided for in its laws and regulations, goods to be brought into a customs territory conditionally relieved, totally or partially, from payment of import duties and taxes if such goods are brought into a customs territory for a specific purpose, are intended for re-exportation within a specific period and have not undergone any change except normal depreciation and wastage due to the use made of them.

#### **(b) Inward and Outward Processing**

(i) Each Member shall allow, as provided for in its laws and regulations, inward and outward processing of goods.

(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, or eligible for duty drawback, on the basis that such goods are intended for manufacturing, processing or repair and subsequent exportation.

(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.].

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### **Notes**

#### ***What activity does this proposal regulate?***

Customs procedures to allow the importation of goods without payment of import duties and taxes, or eligible for duty drawback, subject to conditions on the use to which the goods have been, or will be, put.

#### ***What authorities are directly concerned?***

- Customs
- Revenue Authority

#### ***What is the new requirement?***

- Members shall adopt customs procedures for the **temporary admission, inward processing and outward processing** of goods.

A **temporary admission** procedure allows goods to be imported for a limited period of time (six months, one year, *etc.*) for defined purposes (*e.g.*, goods to be displayed at trade exhibitions; shipping containers imported to be filled; tools needed for a domestic manufacturing operation; traveller's personal effects; foreign-registered automobiles used by visitors to the country, *etc.*) without payment of import duties and taxes.

Manufacturers use the **inward processing procedure** for goods that have been returned to them for repair or for parts, materials, or other production inputs they use in their processing operations. Under the procedure, the goods may be imported without payment of duty or taxes provided the manufacturer exports the repaired or finished product within a specified period. Or duty may be refunded under a duty drawback scheme once the goods are exported.

**Outward processing** allows persons to send domestic or previously-imported/duty-paid goods abroad for purposes of repair (for example, goods returned to the manufacturer under warranty) or for other processing, and re-import the repaired or processed goods within a fixed period of time without payment of import duty or taxes, with the exception of duty or tax assessed on the value-added by the foreign processing operation.

**What actions might be required to implement this proposal?****A. Policy/Legal Framework**

1. Does the legislation provide for full or partial relief of import duties and taxes on goods temporarily imported for specified purposes, as defined in paragraph (a) of the proposal?
2. Does legislation provide for full or partial relief of duties, taxes, and trade policy measures on goods imported temporarily for inward processing, as defined in paragraph (b)(ii) of the proposal?
3. Does legislation provide for full or partial relief of duties and taxes on goods returned after processing abroad, as defined in paragraph (b)(iii) of the proposal?

*The cases and conditions for use of the procedures should be defined. These typically include the persons eligible to use the procedures; the manner and time period in which the procedures must be discharged; the permitted uses or types of goods placed under the procedures; and the cases in which partial rather than full exemption of duty applies; and record-keeping obligations.*

*Some or all of these procedures may require a prior authorization or permit to be issued by Customs or other authority. In such cases, legislation should specify the conditions under which the authorization shall be granted (which may include the competent authority's consideration of adverse impact on competing producers) suspended or revoked; the persons eligible to apply; and the application process (form and content of the application and the competent authority).*

4. Is a customs guarantee system established in legislation and applicable to the temporary admission, and inward/outward processing procedures?

*A customs guarantee system is normally required. Because payment of duty (and possibly other charges) is suspended on the goods under the procedures, a guarantee ensures that the goods will be re-exported within the required period and not used contrary to conditions.*

**B. Procedures**

5. Are policies/procedures established for customs processing and supervision of goods under these procedures (e.g., calculating rates of yield and duty amounts; monitoring compliance with conditions; ensuring re-export of goods within the required period, etc.)?
6. Are policies/procedures established for managing customs guarantees (e.g., calculating guarantee amounts; discharge or cancellation; making and collecting claims where defaults are found, etc.)?
7. Are procedures established for Customs review and decision on applications for authorizations or permits to use temporary admission, inward processing, and/or outward processing procedures (if so required)?
8. Are procedures established for supervision and control of inward processing operations, including audit of manufacturing facilities?

*Standard procedures or guidelines are useful, in particular, for customs implementation and supervision of the inward/outward processing regimes which can be technical and complex. Such procedures/guidelines would usually cover:*

- *Customs processes for review/approval of applications for authorisation to use the procedures, which may include review of manufacturing facility and record keeping systems;*
- *methods for calculating "rates of yield" (the quantity or percentage of goods produced from a given quantity of inputs);*
- *methods for calculating customs value and duty on processed or repaired goods returned under the outward processing procedure (or declared for free circulation following inward processing, if allowed);*

- requirements for the identification of goods; and
- declaration and clearance procedures.

**D. Human Resources and Training**

9. Are a sufficient number of competent customs officers available for processing and supervision of inward processing/temporary admission/outward processing permits and operations?
10. Are customs officers trained in supervision and audit of manufacturing operations?

*Customs officials may require training in rules and control of the procedures including, for example, methods of auditing manufacturing operations.*

**E. Communication and Information Technology**

11. Are changes required to customs automated processing systems to accommodate the procedures?

*Where an automated system is used for processing goods declarations, Members may wish to consider whether changes are needed to accommodate these new procedures to allow, for example, prompt discharge of guarantees on re-export of goods imported under the temporary admission or inward processing procedures.*

ARTICLE 10.9    TEMPORARY ADMISSION OF GOODS/INWARD AND OUTWARD PROCESSING

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>62</sup>:</i>		1.	

<sup>62</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).



## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_ Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_ 1 Year:\_\_\_ 3 Years:\_\_\_ 5 Years:\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## Article 11 Freedom of Transit

### 1. Scope (Paragraphs 1-2)

#### Legal Text<sup>63</sup>

1. [Goods subject to the provisions on Freedom of Transit of GATT 1994 and of this Agreement include those moved [via fixed infrastructure] [, *inter alia* pipelines and electricity grids].]

[1*bis* For greater certainty, nothing in Article V of the GATT 1994 or this Agreement shall be construed to require a Member:

- (a) to build infrastructure of any kind in its territory, or to permit the building of infrastructure by others, in order to facilitate the transit of goods;
- (b) [to provide access to any infrastructure for transit unless such infrastructure is open to general use by third parties. For the purpose of this Agreement, the term "general use by third parties" does not include access to infrastructure granted on a contractual basis.]]

2. [Each Member undertakes that if it establishes or maintains a State enterprise or if an enterprise has, 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, comply with the provisions on traffic in transit of this Agreement [and otherwise act solely in accordance with commercial considerations.]]<sup>64</sup>

#### **Notes**

#### ***What activity does this proposal regulate?***

- Transit of energy products or other goods by means of pipelines or other fixed infrastructure
- Transit regulations, transportation charges, fees and formalities applied by state enterprises or by private enterprises that have monopoly or special privileges

#### ***What authorities are directly concerned?***

- All border agencies
- Owners/operators of fixed infrastructure such as transit pipelines and electrical transmission grids
- State enterprises providing transit-related services
- Government agencies that regulate such fixed infrastructure and such state enterprises

#### ***What are the new requirements?***

- GATT/WTO transit obligations shall apply to
  - goods moved via a fixed infrastructure, such as energy products carried by pipelines or electrical power lines, and
  - state enterprises (e.g., state-owned railroad) or private enterprises that have monopoly position or special privileges (e.g., transit pipeline owners/operators)

<sup>63</sup> Members agree that aircraft in transit shall not be subject to the provisions of this Article, consistent with the scope of GATT Article V. Members will review whether the specific exemption language proposed by Canada: "In accordance with Article V:7 of the GATT 1994, the provisions of this Article shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage)" should be included in Article 11 when the Relationship to other WTO Agreements is discussed.

<sup>64</sup> This provision can be deleted to the extent that the issue will be addressed in a cross-cutting manner.

- Members shall not be required to build or permit others to build infrastructure of any kind (e.g., railroads, roads, pipelines) to facilitate transit, and shall not be required to provide access to such infrastructure unless it is open to general use by third parties.

***What actions might be required to implement this proposal?***

This definition of scope will affect in particular

- (i) those Members with fixed infrastructure for transit of energy products within their territory (e.g., transit pipelines or high-voltage transmission grids) and
- (ii) those Members who have state enterprises (e.g., state-owned railways) or private enterprises with exclusive or special privileges (e.g., pipeline operators or toll road concessionaires) that regulate or apply formalities or fees to transit traffic

Accordingly, when reviewing the transit measures that are described in the following pages, such Members should also take into account their legislation and the procedures relating to transit via such fixed infrastructure and/or the regulations, formalities and fees applied by such enterprises.

ARTICLE 11.1 SCOPE- PROPOSED DEFINITION OF TRANSIT

National Priority: High: \_\_ Medium: \_\_ Low: \_\_ None: \_\_

Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:
Stakeholders not participating in assessment of this measure(s) that should be consulted:
Issues to note (any comments or recommendations for negotiators, etc.):
Comments on proposed definition:
Note that this proposal would require a State enterprise or any enterprise given privileges to meet requirements of all transit proposals.

## 2. Transit Charges, Regulations, and Formalities (Paragraph 3)

### **Legal Text**

3. [[Any charges, regulations or formalities in connection with traffic in transit imposed by a Member in accordance with Article V of GATT 1994:

- (a) shall not be more restrictive on traffic in transit than necessary [to fulfil a legitimate objective].
- (b) shall not be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a less restrictive manner.
- (c) shall not be applied in a manner that would constitute a disguised restriction on transit traffic.]

[Except as otherwise provided in Article V of GATT 1994, no Member shall impose charges for reasons of any kind, including for allowing transit through its territory.] [Any charge imposed by a Member consistently with Article V of GATT 1994, shall:

- (a) Only be imposed for the administrative procedures entailed or transit services provided in connection with the transit movement in question;
- (b) Not exceed the approximate administrative expenses entailed or cost of the transit service rendered; and
- (c) Not be calculated on *ad valorem* basis.]

[Each Member shall periodically review its charges on traffic in transit with a view to reducing them, where practicable.]]

*3bis* [Each Member shall notify the Committee on the objective and duration of all charges, regulations or formalities in connection with traffic in transit on a regular basis.]

[Members may draw the Committee's attention to examine any measure that under their judgement should have been notified by another Member.]

[*3ter*

Members shall not seek, take or maintain any voluntary restraints or any other similar measures on traffic in transit.]

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### ***Notes***

#### ***What activity does this proposal regulate?***

The charges, regulations and formalities that a Member applies to traffic in transit

#### ***What authorities are directly concerned?***

- Customs
- Other Border Agencies

**What are the new requirements?**

- Charges, regulations or formalities on transit shall not be more restrictive than necessary, and shall be eliminated or reduced if no longer required or a less trade-restrictive solution becomes available
- [No charges shall be imposed on transit other than those permitted by GATT Article V (*i.e.*, reasonable transportation charges and those commensurate with administrative expenses entailed by transit or with the cost of services provided)]

or

[Charges that may be imposed on transit only for transit administrative procedures entailed or transit services provided, and shall be limited in amount to the expense of such procedures or cost of such services]

- Members must periodically review any charges imposed on transit traffic for possible reductions, and must regularly notify the WTO Committee of the reasons and duration of any such charges, regulations or formalities
- Members shall not seek, impose or maintain voluntary restraints or similar measures on traffic in transit

**What actions might be required to implement this proposal?****A. Policy/Legal Framework**

1. Does your legislation provide for charges to be imposed on transit traffic?
2. Have such charges been evaluated for consistency with GATT Article V requirements? That is, are such charges:
  - reasonable
  - non-discriminatory
  - limited to charges for transportation or those commensurate with administrative expenses entailed by transit or with cost of services rendered?
3. Have such charges been evaluated to determine whether they are limited in amount to the approximate cost of the transit services rendered or administrative expenses incurred?

*The proposed measure would generally require Members ensure that transit fees and charges comply with GATT rules in the same manner as described under Article 6.1 (Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation).*

4. Are any such charges calculated on an *ad valorem* basis?
5. Is Customs (or other relevant authority) required to assess the trade impact of any new transit charges, regulations or formalities?

*The proposal would require a Member to assess the impact of measures it applies to transit traffic (charges, regulations, formalities) and ensure that the objectives are legitimate (e.g., consistent with GATT Articles XX and XXI) and that the least trade-restrictive options are applied.*

*This exercise is similar to that previously described in connection with Article 10.2 (Reduction/Limitation of Formalities and Documentation Requirements), and the same considerations with respect to legislation, procedures and human resources described there would equally apply here.*

6. Does the government seek or maintain voluntary restraints on transit traffic?

*Voluntary restraints are a kind of government imposed limitation on the volume of transit traffic that can pass through a country during a specific period of time. Such restraints, although called "voluntary" because of their self-imposed nature, are requested mandatorily by the transit country and have to be accepted by the country whose traffic*

*passes through that transit country to avoid the risk of stricter or less transparent restrictions.*<sup>65</sup>

**B. Procedures**

7. If charges are assessed on transit traffic, are procedures established to ensure that Customs (or other relevant authority) periodically reviews them?
8. Are procedures established to ensure that before adopting any new transit charges, regulations or formalities, Customs (or other relevant authority) assesses the trade impact?
9. Are procedures established to ensure that Customs (or other relevant authority) monitors and reviews transit charges, regulations and formalities to determine if they are remain necessary or less-trade restrictive measures are available?

**C. Institutional Framework**

10. Is responsibility for assessing the trade impact and conducting a periodic review of transit charges, regulations and formalities delegated?

**D. Human Resources and Training**

11. Is sufficient and competent staff appointed to assess trade impact, and undertake periodic review, of transit charges, regulations and formalities?
12. Are the responsible persons trained in methods for analysis of impact of trade charges, regulations and formalities?

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<sup>65</sup> TN/TF/W/176 (Nov. 7, 2011)

ARTICLE 11.3 TRANSIT CHARGES, REGULATIONS AND FORMALITIES (PARAGRAPH 3)

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>66</sup>:</i>		1.	

<sup>66</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).



## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_ Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_\_\_ 1 Year:\_\_\_\_\_ 3 Years:\_\_\_\_\_ 5 Years:\_\_\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

### 3. Strengthened Non-Discrimination (Paragraphs 4-6)

#### Legal Text

4. [Members shall not apply discriminatory measures to goods in transit, or to vessels or other means of transport of other Members, for reasons of any kind. This does not exclude the right to resort to the exceptions already laid down in WTO Agreements, for valid reasons and provided that the measure concerned does not constitute a disguised restriction on international trade.]
5. [With respect to all regulations and formalities imposed on or in connection with traffic in transit, including charges for transportation, traffic regulations, safety regulations and environmental regulations, Members shall accord to traffic in transit treatment no less favourable than that accorded to [export or import traffic/domestic traffic/traffic which is not in transit]. This principle refers to like products being transported on the same route under like conditions.]
6. Each Member shall accord to products which will be in transit through the territory of any other Member treatment no less favourable than that which would be accorded to such products if they were being transported from their place of origin to their destination without going through the territory of such other Member.

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#### **Notes**

##### ***What activity does this proposal regulate?***

Goods in transit and the vessels and transport means of other Members

##### ***What authorities are directly concerned?***

- Customs
- Transport Ministry
- Other Border Agencies

##### ***What are the new requirements?***

- Non-discrimination: A Members shall not discriminate against goods in transit or transport means of other Members except as permitted by other WTO agreements and for justified reasons
- National Treatment: A Member's regulations and formalities affecting traffic shall not treat transit movements less favourably than domestic traffic or export or import movements
- Treatment Preceding Transit: A Member shall not treat goods that will pass in transit through another Member's territory to the final destination less favourably than if the goods were shipped to the destination without passing through that other Member's territory

##### ***What actions might be required to implement this proposal?***

###### **A. Policy/Legal Framework**

1. Are any measures prescribed in your legislation that would treat goods in transit and/or transit vehicles less favourably than domestic traffic or import or export traffic involving like products transported on the same route under like conditions?

*These would include such measures as safety requirements applicable to vehicles (e.g., size and weight restrictions or other technical requirements) and operators; requirements for transportation of hazardous goods; vehicle emission and noise standards; road user charges, etc.*

*This does not prejudice the rights of Member under other WTO agreements to impose measures on transit goods and vehicles that are not imposed on domestic/import/export traffic.*

2. Are any measures prescribed that would treat transit goods that will subsequently pass through a third country before reaching their final destination less favourably if the goods were to be shipped directly to that destination?

*The proposal would prohibit less favourable treatment of transit goods based on the subsequent routing. This proposal is complementary to paragraph 6 of GATT Article V, which explicitly prohibits less-favourable treatment of transit traffic based on previous routing of the goods.*

**D. Human Resources and Training**

3. Are staff with the appropriate legal expertise available to assess compliance of any new transit measures with these GATT/WTO rules?

ARTICLES 11.4- 11.6 STRENGTHENED NON-DISCRIMINATION (PARAGRAPHS 4-6)

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>67</sup>:</i>		1.	

<sup>67</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_\_\_ 1 Year:\_\_\_\_\_ 3 Years:\_\_\_\_\_ 5 Years:\_\_\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

#### 4. Transit Procedures and Controls (Paragraph 7-12)

##### **Legal Text**

7. Members are encouraged to make available, where practicable, physically separate infrastructure (such as lanes, berths and similar) for traffic in transit.
8. Formalities, documentation requirements and customs controls, in connection with traffic in transit, shall not be more burdensome than necessary to:
  - (a) identify the goods and
  - (b) ensure fulfillment of transit requirements.
9. Once goods have been put under a transit procedure and have been authorized to proceed from the point of origination in a Member's territory, they will not be subject to further customs charges, formalities [or customs inspections] until they conclude their transit at the point of destination within the Member's territory.
10. Members shall not apply technical regulations and conformity assessment procedures within the meaning of the Agreement on Technical Barriers to Trade on goods in transit.
11. Members shall allow and provide for advance filing and processing of transit documentation and data prior to the arrival of goods.
12. Once traffic in transit has reached the customs office where it exits the territory of the Member, that office shall promptly terminate the transit operation if transit requirements have been met.

##### **Notes**

##### ***What activity does this proposal regulate?***

Customs transit procedures and controls

##### ***What authorities are directly concerned?***

- Customs

##### ***What are the new requirements?***

- In processing and control of transit movements, a Member:
  - o shall allow pre-arrival declaration
  - o shall not apply formalities, documentation requirements or controls other than those necessary to identify the goods and ensure compliance with transit requirements
  - o shall not apply customs charges, formalities or inspections other than at the offices of departure and destination (and not en-route)
  - o shall promptly terminate the transit operation once goods reach the office of exit, if all requirements are met
- Members are encouraged to make separate lanes or similar infrastructure for transit in traffic

##### ***What actions might be required to implement this proposal?***

##### ***A. Policy/Legal Framework***

1. Does your legislation provide for a transit procedure?

*There should be a legislative basis for the customs transit procedure defining the roles, rights and obligations of the declarant, carrier and customs offices.*

2. Does such procedure require operators to present goods and documents and undergo formalities and controls at any points within the country other than the transit offices of departure and destination?

*The proposed measures would require Members to ensure that while en route to the destination, the transporter is not required to present the goods to, and will not be stopped at, intermediate customs checkpoints for reason of additional customs charges, formalities and/or inspections.*

3. Does legislation allow for submission of transit declarations prior to arrival of the goods?

*Legislation and customs procedures should allow for the submission and processing of transit declarations prior to arrival (see Article 7.1 ("Pre-arrival Processing")).*

#### **B. Procedures**

4. Are customs controls, data and document requirements and formalities limited to those necessary to identify the goods and ensure compliance with transit requirements?

*The purpose of the customs transit procedure is to ensure that the goods reaching the destination are the same as those released by Customs at the start of the transit movement.*

*The proposed measure would thus require Members to ensure that their transit procedures at both ends are limited those necessary to carry out that purpose.*

*Document or data requirements, formalities or controls on transit movements for other reasons (such as for purposes of compliance with conformity assessment or technical standards, or application of tariff or trade policy measures) would not be consistent with this proposed obligation.*

5. Are transit goods checked for compliance with technical or quality standards?
6. Are procedures established to ensure that transit operations are discharged promptly, and the transit guarantee cancelled, upon delivery of the goods to the office of destination?

*Procedures typically define the roles and responsibilities of the customs offices and operator in relation to discharge of the transit procedure, the documents or data required to discharge or write-off the transit at the office of departure; follow-up and enquiry procedures where a transit operation is delayed or missing.*

#### **E. Communication and Information Technology**

7. Is there an automated system or tools for control of transit operations and management of transit guarantees?

*Systems for electronic communication between office of departure and destination and/or monitoring en route (GPS tracking or radio-frequency identification (RFID) seals, for example) can support reduced formalities and controls on transits, pre-arrival declaration and processing, and prompt discharge of transit procedure.*

#### **F. Infrastructure and Equipment**

8. Can physically separate infrastructure (such as separate transit lanes and berths, independent Customs transit offices, etc.) be made available to transit traffic?

*Members are encouraged to develop separate roads, berths, gates or other infrastructure in order to reduce border congestion and thereby facilitate transit movements.*

## ARTICLES 11.7-11.12 TRANSIT PROCEDURES AND CONTROLS (PARAGRAPHS 7-12)

### I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>68</sup>:</i>		1.	

<sup>68</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).



## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_ Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_\_\_ 1 Year:\_\_\_\_\_ 3 Years:\_\_\_\_\_ 5 Years:\_\_\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## 5. Guarantees (Paragraph 13-16)

### **Legal Text**

13. Members may require a guarantee in the form of a surety, deposit or other appropriate instrument which shall be [reasonable and shall not be applied in a manner that would constitute a disguised restriction on traffic in transit].
14. Once the Member has determined that its transit requirements have been satisfied, the guarantee shall be discharged without delay.<sup>69</sup>
15. [Members shall, where practicable, allow comprehensive guarantees for same operators or renewal of guarantees for subsequent consignments once a previous one is proved to have concluded its transit at the point of exit or destination within the Member's territory.]
16. [Members may require the use of customs convoys or escorts for traffic in transit only in circumstances presenting high risks. Circumstances subject to customs convoys or escorts requirements shall be included in Members Customs regulations and shall be published.]

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### **Notes**

#### ***What activity does this proposal regulate?***

The use and discharge of guarantees that may be required by Customs in connection with transit operations

#### ***What authorities are directly concerned?***

- Customs

#### ***What are the new requirements?***

- Any guarantee that Customs requires for a transit movement:
  - *shall* be reasonable and shall not be applied in a manner that would constitute a disguised restriction on traffic in transit;
  - *shall* be discharged by Customs without delay once the transit is completed; and
  - *may* be comprehensive for same operators or *maybe* renewed by the trader thereafter.
- Customs may require a convoy to accompany goods only if the goods are high risk and so specified in the Member's laws and regulations and published.

#### ***What actions might be required to implement this proposal?***

##### ***A. Policy/Legal Framework***

1. Does legislation allow for the provision of a guarantee to ensure compliance with transit obligations?
2. Are the required amounts of the guarantees reasonable and are not applied in a manner that would constitute a disguised restriction on traffic in transit? ?
3. Does legislation require Customs to discharge guarantees without delay once transit obligations are determined to have been fulfilled?
4. Does legislation permit comprehensive guarantees for same operators or for guarantees to be renewed?

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<sup>69</sup> Members agreed to delete the guarantee for "Multiple transactions" figure, provided that this is addressed in paragraph 15.

5. If customs convoy is used, are the goods subject to convoy specified in legislation and published?

**B. Procedures**

6. Are procedures established for the management of transit guarantees?

*Procedures and guidelines for Customs management of transit guarantees should include such matters relevant to the proposal as:*

- specification of the roles and responsibilities of respective customs offices for management of the guarantee (discharge of guarantee, claims against the guarantee, follow-up missing movements, etc.)*
- how to calculate the amount of the guarantee (which should be consistent with the proposed measure)*
- the cases and conditions under which a guarantee may be reduced or waived*
- the conditions under which Customs may consider a transit operation to be completed, including any documentary evidence required for release of the guarantee*
- the conditions under which customs escort may be required (if any), and the means of carrying out the escort.*

**E. Communication and Information Technology**

7. Is administration of transit movements and guarantee management automated?
8. Does the system provide for automated discharge of the guarantee directly upon completion of the transit movement?

*Where an automated system is used to process and control transit movements, a guarantee management system or functionality may be integrated or incorporated. In such cases, Members may wish to ensure that the system would support the disciplines described in the proposals.*

I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>70</sup>:</i>		1.	

<sup>70</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_\_\_ 1 Year:\_\_\_\_\_ 3 Years:\_\_\_\_\_ 5 Years:\_\_\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## 6. Cooperation and Coordination (Paragraphs 17-18)

### **Legal Text**

17. Members shall endeavour to cooperate and coordinate with one another with a view to enhance freedom of transit. Such cooperation and coordination may include, but is not limited to an understanding on:

- (i) charges;
- (ii) formalities and legal requirements; and
- (iii) the practical operation of transit regimes.

18. Each Member shall endeavour to appoint a national transit coordinator to which all enquiries and proposals by other Members relating to the good functioning of transit operations can be addressed.

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### ***Notes***

#### ***What activity does this proposal regulate?***

Promotion of agreements and coordination on transit matters at a regional and bilateral level

#### ***What authorities are directly concerned?***

- Customs
- Other Border Agencies

#### ***What are the new requirements?***

- Members should endeavour to cooperate and coordinate to enhance freedom of transit
- Members should endeavour to appoint a national transit coordinator to whom other Members can make enquires and proposals

#### ***What actions might be required to implement this proposal?***

##### ***A. Policy/Legal Framework***

1. Does your government have a policy/strategy to encourage development of bilateral or regional transit arrangements and participation in bilateral or regional transit organizations?
2. Does legislation provide Customs the authority to negotiate and enter into arrangements with other customs administrations and borders agencies for purposes of coordinating transit operations?

*Such arrangements typically provide for harmonization of customs transit procedures, exchange of information, common IT transit systems, etc.*

##### ***C. Institutional Framework***

3. Is responsibility assigned for regional or bilateral cooperation on transit matters?
4. Has the national transit coordinator function been established with the responsibilities described in the proposed measure?

##### ***D. Human Resources and Training***

5. Are sufficient number of qualified staff and resources available to allow participation in bilateral and regional transit organizations?

## I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>71</sup>:</i>		1.	

<sup>71</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_ 1 Year:\_\_\_ 3 Years:\_\_\_ 5 Years:\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):



## Article 12 Customs Cooperation

### Legal Text

1.

1.1 Upon request, Members [shall] [endeavour][may][in accordance with its domestic law] [within the available resources], exchange information [and/or documents] [on Customs matters] in identified cases of import, export [or transit], [on mutually agreed terms consistent with the requirements of this Article] where there is reason to doubt the truth or accuracy of a declaration submitted by the importer or exporter [or its agent].

1.2 [Paragraph 1.1 is subject to the requested Member's satisfaction:

- i) with the verification referred to in paragraph 2; and
- ii) that the required confidentiality of the information will be maintained, recognizing the importance of protecting commercially confidential information in safeguarding the commercial interests of traders.]

2. The requesting Member shall ensure that all appropriate internal verification has been undertaken including, inter alia, verification of the importer/exporter and inspection of the relevant documents before it requests assistance from another Member. [The requesting Member shall share the result of the verification with the requested Member.]

3. The requesting Member shall provide the requested Member with a written request, including:

- (a) The matter at issue and reasons for the request;
- (b) The specific information [and/or documents] requested;
- (c) The purposes for which the Member requires the information [and/or the documents];
- (d) A confirmation that the Member had conducted the verification required by paragraph 2;
- (e) The identity [and the legal mandate] of the official making the request;
- (f) The names and addresses of the persons to whom the request relates, if known; and
- [(g) The applicable legal provisions in the domestic law, including provisions relating to confidentiality, of the requesting Member.]

4. The requested Member [shall] [where practicable] [may] [in accordance with its domestic law]<sup>72</sup>

- (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] [and, if required, at least the details, viz. 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.]]

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<sup>72</sup> May need fine tune.

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- [(b) If requested, provide documents submitted in support of a goods 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 90 days] [within reasonable time] from the date of receipt of the request.]
5. Such exchange of information [and/or documents] shall not require requested Members to:
- (a) Modify the format of their import or export declarations or their procedures;
- (b) Call for documents other than those submitted with the goods declaration[s];
- (c) Initiate inquiries to obtain the information;
- (d) Modify the period of retention of such information [and/or documents];
- (e) Introduce paper documentation where electronic format has already been introduced;
- [(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.]
- [(h) Translate the information [and/ or documents].]
6. 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.
7. 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.]
8. [Any information [and/or documents] exchanged which are by nature confidential or which are provided on a confidential basis shall be treated as strictly confidential by the [requesting Member. [Any information [and/or documents] exchanged shall be granted at least the same level of protection provided under the laws and regulations of the requested Member] The requesting Member shall provide the information only to its customs administration and] [authorities concerned who] shall not disclose it to any [other governmental agency or] third party without the specific permission of the requested Member [, except to the extent required in [administrative or] judicial proceedings].]
- [Such information [and/or documents] shall not be used as evidence in a [criminal] [judicial] proceeding 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 [criminal] [judicial] proceeding by the court or intends to disclose it to any third party, the requesting Member shall obtain specific written authorization from the requested Member in order to do so.]]
- [The requested Member [may][shall] consider whether the confidentiality of the information required will be adequately protected before providing such authorization. The requested Member [may][shall] decline to authorize such use of the information if its laws and regulations will be breached by this use.]

9. [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 prejudice any legitimate commercial, [industrial] or professional interest, the request may be refused or may be subject to the satisfaction of certain conditions or requirements.]

10. Each Member shall notify the Committee a contact point for exchange of information [and/or documents].

11. [The request for information [and/or documents] shall not be made later than [two years] [the time required by the national legislation of the requested Member [for the prescription of any offence and/or infringement subject to investigation]] after the importation or exportation of the goods.]

12. [[A Member shall not make] [A requested Member may postpone or refuse] more than [X] requests for information [and/or documents] from the same Member in a calendar year.]

13. A requested Member shall respond in writing, whether through paper or electronic means, to a request made pursuant to this Article. [If a requested Member postpones or refuses a request for one of the reasons set out in this Article, it shall communicate that reason in its response.]

14. 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.

15. 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 on-going administrative or judicial investigation, prosecution or proceeding.

16. [If a requesting Member violates any provision of this Article or does not treat information received from another Member in accordance with the requirements of this Agreement, the requested Member may refuse any further requests for assistance from the requesting Member.]

17. [In the event of any breach of the conditions of use or disclosure of information exchanged under this Article, the requesting Member that received the information shall promptly communicate the details of such unauthorized use or disclosure to the requested Member that provided the information, and;

- (a) take the necessary measures to remedy, to the extent possible, the breach,
- (b) take all necessary measures, to the extent possible, to prevent any future unauthorised use or disclosure of information exchanged under this Article, and;
- (c) notify the requested Member of the measures referred to in sub-paragraphs (a) and (b).]

18. [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.]

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

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### **Notes**

#### ***What activity does this proposal regulate?***

Customs-to-Customs exchange of information for purposes of verifying goods declarations

**What authorities are directly concerned?**

- Customs

**What are the new requirements?**

One Member shall provide another, upon request and subject to conditions, information and/or documents concerning specific import or export declarations.

**What actions might be required to implement this proposal?****A. Policy/Legal Framework**

1. Does your legislation allow or require Customs to provide information of the type described in the proposal to a foreign customs administration?
2. Does your legislation require protection of commercially confidential information held by government authorities?
3. Does your legislation allow Customs to deny third parties, including other government agencies in your country, access to confidential information obtained from another Member?

*Note that there are conflicting requirements in the proposed text regarding treatment of confidential information. For example, there are differences with respect to whether information can be disclosed to government agencies other than customs and whether permission of the requested Member is required before the information can be used in administrative or judicial proceedings.*

4. Does your legislation allow Customs to refuse to disclose such information for use in criminal or judicial proceedings in your country unless authorized by the other Member?

*See previous note.*

**B. Procedures**

5. Are internal procedures/processes established to ensure that requests for information from other countries are consistent with the proposal?

*Such internal procedures should ensure that an internal verification has been conducted before the request is sent; that the request is limited to cases of "reasonable doubt"; that the number of requests to a particular Member is reasonable; that the request conforms to the required form and content.*

6. Do procedures ensure that information received from other Members is used by Customs only for the purposes specified (e.g., verification of the declarations)?
7. Are procedures/methods established to ensure security of confidential information received from other Members against disclosure or unauthorized use?

*Such as physical and electronic access restrictions to information received from other Members in order to prevent unauthorized disclosure or use.*

8. Are procedures established for processing requests for information received from other Members that are consistent with the proposal (e.g., time periods for response; grounds for refusing of a request)?

*These would include guidelines to ensure proper application of any domestic legal or policy restrictions or conditions on exchange of information.*

9. Are goods declarations and associated supporting documents retained by Customs (in paper or electronic form) for the periods described in the measure, and easily accessible if a request is received from another Member?

**C. Institutional Framework**

10. Is responsibility for making and responding to requests for information designated to a person/office (a contact point)?
11. Is the role and authority of the contact point within the customs administration clearly defined?

*The proposed measure will require that each Member establish a single contact point for exchange of information.*

*The primary function of the designated person or office (normally, within the customs administration) is to ensure compliance with conditions before a request is submitted to another Member (e.g., that an internal verification was conducted) and to evaluate and respond to requests the Member receives.*

*This office should have access to goods declarations and supporting documents (i.e., such declarations/documents are retained by Customs, in paper or electronically, and retrievable on demand) and the cooperation of the customs office(s) that are responsible for processing and verifying declarations.*

*Many Members have existing bilateral or regional customs mutual assistance agreements for exchange of information. Therefore, the necessary and institutional arrangements and administrative procedures may already exist. In terms of additional workload, note that the proposal limits the number of requests that one Member must respond to from another Member.*

**D. Human Resources and Training**

12. Is a sufficient number of competent staff available to respond to requests for information/documents from other Members within the time-frames described in the measure?

**E. Communication and Information Technology**

13. Are goods declarations and supporting documents submitted to a customs processing system?
14. Are such declarations and data retained on the system (or archived) for the periods described in the measure, and easily accessible if a request is received?

## ARTICLE 12 CUSTOMS COOPERATION

### I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>73</sup>:</i>		1.	

<sup>73</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

1. Do you comply with this measure?

Fully:\_\_\_ Substantially: \_\_\_Partially:\_\_\_ No:\_\_\_ Not Applicable:\_\_\_

2. You expect to implement this measure by:

Category A (by date of entry into force):\_\_\_\_\_ Category B (with extra time):\_\_\_\_\_ Category C (with extra time and technical assistance): \_\_\_\_\_

3. If Category B or C approximately how much time will you need to implement?

6 Months:\_\_\_ 1 Year:\_\_\_ 3 Years:\_\_\_ 5 Years:\_\_\_ Other (Specify):\_\_\_\_\_

4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:

5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:

6. Stakeholders not participating in assessment of this measure that should be consulted:

7. National Priority Level (How important is it that this measure should be implemented in your country?):

High:\_\_\_ Medium: \_\_\_ Low:\_\_\_ None:\_\_\_ Explain:

8. Issues to note (any comments or recommendations for negotiators, etc.):

## Article 14 National Committee on Trade Facilitation

### Legal Text

1. Each Member shall establish and/or maintain a national committee on trade facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of provisions of this Agreement.

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### Notes

#### **What authorities/organizations are directly concerned?**

- Executive Authority
- All border agencies
- Private sector stakeholders

#### **What activity does this proposal regulate?**

Oversight and coordination of the implementation of WTO trade facilitation measures

#### **What is the new requirement?**

Each Member shall have a national trade facilitation body to oversee implementation of the WTO trade facilitation agreement

#### **What actions might be required to implement this proposal?**

##### **A. Policy/Legal Framework**

1. Is a national trade facilitation committee or similar oversight body established with the necessary resources?

*The measures proposed in the WTO trade facilitation negotiations affect all the government agencies and private sector organizations involved in the import, export, and transit of goods.*

*The purpose of the task force is to effectively and efficiently implement the WTO Trade Facilitation Agreement, coordinate with technical assistance donors and (perhaps) carry out notification or other requirements.*

*The task force must have the necessary political recognition and financial resources to support its activities.*

2. Are the participants, functions and legal authorities of such body defined?

*This should include roles and responsibilities of the body, as well as responsibility of other government authorities for cooperation and coordination.*

*Functions of the committee would typically include setting national implementation strategy, overseeing development of action plans, and supervising progress.*

##### **B. Procedures**

3. Has the committee established terms of reference and procedures for the conduct of its activities?

*Such procedures would typically include:*

- *a work plan, meeting schedule, etc.*
- *strategy for stakeholder communications*
- *standard procedures for conducting meetings and consultations*
- *communications with Geneva delegate*



***D. Human Resources and Training***

4. Are sufficient and qualified staff available to support the committee?

*Staff should have dedicated time for committee work. The coordinator(s) should have expertise or skills in consultation, meeting management, inter-agency coordination, etc.*

## ARTICLE 14 NATIONAL COMMITTEE ON TRADE FACILITATION

### I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<i>A. Policy/Legal Framework:</i>		1.	
<i>B. Procedures:</i>		1.	
<i>C. Institutional Framework:</i>		1.	
<i>D. Human Resources/Training:</i>		1.	
<i>E. Communication/Information Technology:</i>		1.	
<i>F. Equipment &amp; Infrastructure:</i>		1.	
<i>G. Other Issues to Note<sup>74</sup>:</i>		1.	

<sup>74</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).

## II. Questionnaire

<p>1. Do you comply with this measure?</p> <p>Fully:___ Substantially: ___Partially:___ No:___ Not Applicable:___</p>
<p>2. You expect to implement this measure by:</p> <p>Category A (by date of entry into force):_____ Category B (with extra time):_____ Category C (with extra time and technical assistance): _____</p>
<p>3. If Category B or C approximately how much time will you need to implement?</p> <p>6 Months:___ 1 Year:___ 3 Years:___ 5 Years:___ Other (Specify):_____</p>
<p>4. Identify technical assistance projects/agencies/international organizations that have, or are, helping you implement this measure:</p>
<p>5. Lead agency or organization and other stakeholders that would be responsible for implementation of this measure:</p>
<p>6. Stakeholders not participating in assessment of this measure that should be consulted:</p>
<p>7. National Priority Level (How important is it that this measure should be implemented in your country?):</p> <p>High:___ Medium: ___ Low:___ None:___ Explain:</p>
<p>8. Issues to note (any comments or recommendations for negotiators, etc.):</p>

### III. APPENDIX

#### 1. Sample Situational and Gap Analysis

##### ARTICLE 3.1 PROVISION OF ADVANCE RULINGS

##### I. Situational/Gap Analysis

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<p><b>A. Policy/Legal Framework:</b>  <b>Customs Department Proclamation No. 1439 (2009)</b> authorizes Customs to issue rulings on tariff classification questions. But, these rulings are advisory only and not binding.</p> <p>Rulings are valid for one year. Customs must issue tariff rulings within 3 months of a proper request. The information that must be supplied by the applicant, and the persons who can apply, are defined in the Proclamation.</p> <p>Customs may revoke a ruling for any reason. In addition, a ruling shall be considered invalid if issued on the basis of incorrect information provided by the applicant or if there is a change in the tariff. Customs is required to notify the applicant if the ruling is revoked or invalidated.</p> <p>There are no formal provisions for pre-decision hearings on ruling requests.</p> <p><b>Article 80</b> of the Customs Law (<b>Law No (20) for the Year 1998</b>) provides for a right of administrative and judicial appeal against Customs decisions, including rulings.</p>	<p>Importers' main demand is for tariff classification rulings; therefore, legislation on rulings on other matters has not been developed.</p> <p>Customs does not want rulings to be legally binding because it wants the flexibility to change its mind or in case of errors.</p>	<p>1. Amendment of the Customs Law to authorize Customs to issue binding rulings on request on tariff classification, valuation, duty drawback, and quota requirements (30days/Customs lawyer(s)).</p> <p>2. Amendment of the Customs Proclamation 1439 to provide for pre-decision hearings on ruling requests and to clarify the grounds for revocation and invalidation of issued rulings (30 days/Customs lawyer(s)).</p> <p>3. Amendment of Customs Proclamation 1439 (or a new proclamation) to define requirements for applications for rulings on origin, customs valuation, drawback. (30 days/Customs lawyer(s)).</p>	<p>1. None</p> <p>2. None</p> <p>3. None</p>

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<p><b>Article 175</b> of the Customs Law requires Customs officers to keep confidential information they receive in the course of their duties.</p> <p><b>Article 25</b> of the Customs Law authorizes Customs to issue written binding rulings on origin of goods on request of the applicant. The Customs Department has not received any applications for origin rulings under this provision.</p> <p>There is no legal authority for rulings on other matters mentioned in the proposed measure (valuation, duty drawback, <i>etc.</i>)</p>			
<p><b>B. Procedures:</b> Customs has not established formal working procedures. Informal procedures have sufficed because the Customs staff that administers the current program is small (less than 5).</p>	<p>Lack of time and personnel to develop formal procedures for processing ruling applications.</p> <p>Customs does not now monitor use of rulings in clearance because they are advisory only (not legally binding).</p>	<p>1. Issue standard procedures for processing applications for binding rulings (including procedures for publication and distribution to offices). (60 days/Customs specialist(s))</p> <p>2. Develop procedures for monitoring the proper use of rulings in goods clearance operations. (30 days/Customs specialist(s))</p>	<p>1. None</p> <p>2. Technical advice/ international practices use of rulings.</p>
<p><b>C. Institutional Framework:</b> The Tariff and Agreements Directorate in the central Customs Department is responsible for issuance of tariff rulings. No office has yet been designated responsibility for rulings on other matters.</p>	<p>No legal basis yet for rulings on matters other than tariff classification and origin; therefore, no office has yet been designated.</p>	<p>1. Customs Department proclamation designating roles/responsibility for the processing and administration of rulings on value, drawback, <i>etc.</i> (30 days/Customs specialist(s))</p>	<p>1. None</p>

Describe Your Current Situation	Barriers (Give Reasons for non-compliance)	Actions/Resources Required & Cost (Number the Actions)	TACB Resources Needed (Specify Action Number)
<b>D. Human Resources/Training:</b> There are 4 customs specialists in the Tariff and Agreements Directorate responsible for tariff rulings. This staff is informally trained, on the job, by their peers. Other customs staff have not received training of any kind on rulings procedures.	Lack of time and qualified personnel to provide training on rulings procedures  Limited number of officers available to process rulings; officers have other responsibilities.	1. Train customs officers responsible for processing ruling requests on ruling law and procedures. (30 days/Customs specialist(s)) 2. Train clearance/audit officers on use of rulings in customs clearance operations. (15 days/ Customs specialist(s)) 3. Incorporate rulings training in Customs training program. (15 days/ Customs specialist(s)) 4. Evaluate staffing needs/reassign staff as required.	1. Training on best practices in ruling procedures 2. Same 3. Same 4. None
<b>E. Communication/Information Technology:</b> The Directorate maintains an electronic recordkeeping system/rulings database in which all applications and rulings are entered. This is searchable and accessible by all customs officers.			
<b>F. Equipment &amp; Infrastructure:</b>			
<b>G. Other Issues to Note<sup>75</sup>:</b> The private sector is not aware of the rulings program and requirements.	Lack of time and qualified personnel to inform the public	1. Conduct public awareness training on ruling requirements (15 days/ Customs specialist(s)) 2. Publish description of ruling program on Department website	1. None 2. None

<sup>75</sup> For example, resistance to change; lack of political will or stakeholder awareness or buy-in; other issues (positive or negative).