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**Negotiating Group on Trade Facilitation**

**DRAFT CONSOLIDATED NEGOTIATING TEXT**

*Revision*

**SECTION I**

**ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION**

**1. Publication**

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.

**2. Information Available Through Internet**

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

- (a) A description<sup>1</sup> of its importation, exportation and transit procedures, including appeal procedures, that informs governments, 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) 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 relevant trade-related legislation and other items referred to in paragraph 1.1.

### **3. Enquiry Points**

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 are encouraged not to require the payment of a fee for answering enquiries and providing required forms and documents. If any, Members shall limit the amount of its fees and charges 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.

### **4. Notification**

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.

## **ARTICLE 2: PRIOR PUBLICATION AND CONSULTATION**

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

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>2</sup>

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

<sup>1</sup> Each Member has the discretion to state on its website the legal limitations of this description.

<sup>2</sup> This is without prejudice to specific timeframes established under other WTO Agreements and practices of WTO Committees.

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

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.

## 3. Consultations

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

## ARTICLE 3: ADVANCE RULINGS

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>3</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.

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<sup>3</sup> [A Member is not required to provide the applicant with recourse to Article 4.1.1. of this Agreement following such a review.]

## 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;

[(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.]

## ARTICLE 4: APPEAL OR REVIEW PROCEDURES

### 1. Right to Appeal or Review

1.1 Each Member shall provide that any person to whom customs [or another relevant border agency] issues an administrative decision<sup>4</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 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<sup>5</sup>.

<sup>4</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 mechanism to receive complaints or judicial recourse in order to direct the customs authority to promptly issue an administrative decision in place of the right to appeal or review under subparagraph (a).]

<sup>5</sup> Nothing in this paragraph shall prevent Members to recognize administrative silence on appeal or review as a decision in favour of the petitioner in accordance with its laws and regulations.

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].]

## **2. Appeal Mechanism [in a Customs Union] [that is a WTO Member]**

[2.1 There shall be a mechanism [for redress of][to address] adverse findings of inspection authorities [at the import points of a customs union] [that is a WTO Member]. [In order to ensure quick and uniform appellate decisions, appeals against findings [of inspection authorities] at the level of a Member state of a customs union [that is a WTO Member] shall be heard and decided at the customs union level.] [Such appellate decisions shall be binding on the inspection authorities of all Member states of a customs union.] [that is a WTO Member]]

2.2 [The decisions of administrative and judicial tribunals under paragraph 1.1 shall govern the practice of customs and other relevant agencies throughout the territory of [the] [each] Member. [including any Member that is a customs union]]

Alt 2<sup>6</sup> (for both 2.1 and 2.2) [The highest appeal level available to a trader shall have the authority to issue decisions across the territory of the whole Member with a view to achieving uniformity in administrative/customs procedures to the extent possible.]

[Customs unions should progressively adopt the provisions contained in paragraph 2.1]

## **ARTICLE 5: OTHER MEASURES TO ENHANCE IMPARTIALITY, NON-DISCRIMINATION AND TRANSPARENCY**

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

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.]

### **2. Detention**

[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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<sup>6</sup> The purpose of keeping the Alternate is to provide ideas.

### **[3. Test Procedures**

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.]

## **ARTICLE 6: DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION<sup>7</sup>**

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

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]<sup>8</sup> 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.

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

[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.]

### **3. Penalty Disciplines**

3.1 For the purpose of Article 6.3, the term "penalties" shall mean those imposed by a Member's customs administration for a breach of the Member's customs law, regulation, or procedural requirement [or other administrative authority, where applicable].

3.2 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.

3.3. 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.

<sup>7</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.

<sup>8</sup> This bracket can be removed once the issue is addressed in a cross-cutting manner.

3.4 Each Member shall ensure that it maintains measures 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 in a manner that creates an incentive for the assessment or collection of a penalty that is inconsistent with paragraph 6.3.3.]

3.5 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 applicable, law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed.

3.6 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.

[3.7 Each Member shall/is encouraged to provide in its laws, regulations or procedures, or otherwise give effect to, a fixed, finite period within which it may initiate proceedings that may lead to a penalty relating to a breach of a customs law, regulation, or procedural requirement.] Notwithstanding the above, a customs administration may impose, outside of the fixed, finite period, a penalty where this is in lieu of proceedings in other judicial or other tribunals not covered by Article 6.3.

[3.8 The provisions of this paragraph shall apply to the penalties on traffic in transit referred to in sub-paragraph 3.1.]

## **ARTICLE 7: RELEASE AND CLEARANCE OF GOODS**

### **1. Pre-arrival Processing**

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 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.]

### **2. Electronic Payment**

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].

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

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.

#### **4. Risk Management**

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. [Each Member may also select, on a random basis, consignments for customs control as part of its risk management.]

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.

#### **5. Post-clearance Audit**

5.1 With a view to expediting the release of goods, each Member shall [, where possible,] adopt or maintain post-clearance audits to ensure compliance with customs and other related laws and regulations.

[5.2 Each Member shall conduct post-clearance audits in a transparent manner. Each Member shall select a person for audit based on facts about that person or as part of its system for customs control. Members shall, without delay, notify the persons 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.



## 6. Establishment and Publication of Average Release Times

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>9</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.

## 7. Trade Facilitation Measures for Authorized Operators

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 operator 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) 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.]

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<sup>9</sup> Each Member may determine the scope and methodology of such average release time measurement in accordance with its needs and capacity.

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.

[7.6. In order to promote trade facilitation benefits, Members shall share information within the Committee about authorized operator schemes in force.]<sup>10</sup>

## **8. Expedited Shipments**

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>11</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 payment of customs expenses related to processing of 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) fulfill 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.]

<sup>10</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.

<sup>11</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.

8.2 Subject to paragraphs 8.1 and 8.3<sup>12</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>13</sup>;
- (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 as rapidly as possible 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>14</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>15</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. Further, nothing in paragraphs 8.1 and 8.2 shall prevent a Member from requiring, as a condition for release, the submission of additional information and the fulfillment of non-automatic licensing requirements.

## 9. Perishable Goods<sup>16</sup>

1. With a view to preventing 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;

<sup>12</sup> This addition is intended to make clear that the treatment in paragraph 8.2 need not be provided if the conditions in paragraph 7.1 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>13</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.

<sup>14</sup> This language may be dropped or modified in light of the language used in Article 8.2, release and clearance.

<sup>15</sup> By virtue of the fact that the goods described in the last sentence of paragraph 7.3 need not be provided expedited treatment, the *de minimis* provision would not interfere with collection of 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.

<sup>16</sup> For the purposes of this provision, perishable goods are goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.

- b. [provide for the release of perishable goods, in circumstances where it would be appropriate to do so, 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 either arrange, or allow an importer to arrange, for the proper storage of perishable goods pending their release. The Member may require that any storage facilities arranged by the importer have been approved by its relevant authorities. The movement of the goods to those storage facilities may be subject to the approval, where required, of the relevant authorities. 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. In cases of significant delay in the release of perishable goods, and upon written request, the importing Member shall, to the extent practicable, provide a communication on the reasons for the delay.

## **ARTICLE 8: CONSULARIZATION**

### **[1. Prohibition of Consular Transaction Requirement]**

1.1 A Member shall not require a consular transaction<sup>17</sup>, including any related fee or charge, in connection with the importation of any good.】

## **ARTICLE 9: BORDER AGENCY COOPERATION**

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.

## **ARTICLE 9 B/S: [DECLARATION OF TRANSHIPPED OR IN TRANSIT GOODS] [DOMESTIC TRANSIT]**

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.

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<sup>17</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."

[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.]

## **ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION AND TRANSIT**

### **1. Formalities and Documentation Requirements**

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 and taking into account the legitimate policy objectives and other 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, based on the results of the review, ensure, as appropriate, that such formalities and documentation requirements:

- a) are adopted and/or applied with a view to a rapid release and clearance of goods;
- b) are adopted and/or applied in a manner that aims at reducing the time and cost of compliance for traders and operators;
- c) are the least trade restrictive measure chosen, where two or more alternative measures are reasonably available for fulfilling the policy objective or objectives in question; and
- d) are not maintained, including parts thereof, if no longer required.

1.2 The Committee shall develop procedures for sharing relevant information and best practices as appropriate.<sup>18</sup>

### **2. Acceptance of Copies**

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>19</sup>

### **3. Use of International Standards<sup>20</sup>**

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.

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<sup>18</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.

<sup>19</sup> Some Members have requested to revisit Art. 10.2.3, following further discussions on Art. 12 on customs cooperation.

<sup>20</sup> Marker for negotiators: Members agree that the question of relationship between the TF Agreement and other agreements may be addressed in a cross-cutting manner at a later stage of negotiations. Members do not intend for this provision to prejudice provisions of other WTO Agreements in respect of international standards.

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>21</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.

#### **4. Single Window**

4.1 Members shall, [where practicable] [endeavour to], establish or maintain a single window, enabling traders to submit documentation and/or data requirements 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 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.

#### **5. Pre-shipment [and Post-shipment Inspections]**

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 5.1 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).]

#### **[6. Use of Customs Brokers]**

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.]

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<sup>21</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.

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.]]

## **7. Common Border Procedures and Uniform Documentation Requirements**

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].

## **8. Rejected Goods**

8.1 Where goods presented for import are rejected by the competent authority of a Member on account of their failure to meet prescribed sanitary or phytosanitary regulations or technical regulations, the Member shall, subject to and consistent with its laws and regulations, allow the importer to re-consign or to return the rejected goods to the exporter or another person designated by the exporter.

When such an option is given and the importer fails to exercise it within a reasonable period of time, the competent authority may take 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.]

## **9. Temporary Admission of Goods/Inward and Outward Processing**

### ***(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. Goods allowed for outward processing may be re-imported with total or partial exemption from import duties and taxes in accordance with the Member's laws and regulations in force.

(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 reimported.

#### ARTICLE 11: FREEDOM OF TRANSIT<sup>22</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>23</sup>

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.]

<sup>22</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>23</sup> This provision can be deleted to the extent that the issue will be addressed in a cross-cutting manner.



[Each Member shall periodically review its charges on traffic in transit with a view to reducing them, where practicable.]]

*3bis*

[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.]

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.

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.

[13. Where a Member requires a guarantee in the form of a surety, deposit or other appropriate instrument for traffic in transit, such guarantee shall be limited to ensuring that customs-related obligations arising from such traffic in transit are fulfilled.]

Once the Member has determined that its transit requirements have been satisfied, the guarantee shall be discharged without delay.

[Members shall, where practicable, allow comprehensive guarantees which include multiple transactions for same operators or renewal of guarantees without discharge for subsequent consignments.]

[Each Member shall make available to the public the relevant information it uses to set the guarantee, including single transaction and multiple transaction guarantee.]

14. [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.]

15. 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.

16. 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.

## **ARTICLE 12: CUSTOMS COOPERATION**

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;

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- (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>24</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.]]
  - [(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.]

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<sup>24</sup> May need fine tune.

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].

### **ARTICLE 13: INSTITUTIONAL ARRANGEMENTS**

1.1 A Committee on Trade Facilitation is hereby established.

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

1.3 The Committee shall meet as needed and envisaged by the relevant provisions of the Agreement, but no less than once a year, for the purpose of affording Members the opportunity to consult on any matters related to the operation of this Agreement or the furtherance of its objectives.

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

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

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

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

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

### **ARTICLE 14: NATIONAL COMMITTEE ON TRADE FACILITATION**

1. 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.

**ARTICLE 15: PREAMBLE/CROSS-CUTTING MATTERS<sup>25</sup>**

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

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

1.3 Recognizing the importance of protecting commercially confidential information in safeguarding the commercial interests of traders<sup>26</sup>;

**Cross-Cutting Issues**

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

**[Exceptions**

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

**[Dispute Settlement**

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

Nothing in this Agreement shall affect the right of Members to take action under Articles XXIII of GATT 1994 and the Understanding on Rules and Procedures Governing the Settlement of Disputes against another Member for provisions contained in other WTO-Agreements, including for GATT Articles V, VIII and X.<sup>27</sup>

**Implementation of the Agreement**

Developed Country Members shall implement this Agreement upon its entry into force.

Developing Country Members and Least Developed Country Members shall implement this Agreement in accordance with Section II.

<sup>25</sup> Members agree that while reviewing whether the language proposed by Canada regarding Aircraft in Transit should be included in Article 11 when the Relationship to other WTO Agreements is discussed, Members will also review, without prejudging the outcome, whether correspondingly specific language to reflect provisions of GATT Articles V, VIII and X is needed in the relevant Articles of TF Agreement or whether this issue should be dealt with in a cross-cutting manner to avoid any possibility of any adverse inference as referred to in TN/TF/W/181.

<sup>26</sup> This language stems from a proposal on customs cooperation that was originally tabled by Canada.

<sup>27</sup> This paragraph has been moved from Section II – Article 7.7. It is unbracketed language.

## SECTION II

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

#### 1. [General provisions and basic principles]

1.1 The provisions<sup>28</sup> contained in [Section I][Articles X-Y] of this Agreement shall be implemented by developing and least developed country Members in accordance with this section [which fully takes into account the principle of special and differential treatment] [in accordance with the modalities agreed in Annex D of the July 2004 Framework Agreement and the Hong Kong Ministerial Declaration.]

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

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

1.4 [Developed country Members shall ensure to provide support and assistance to developing and least developed country Members in a comprehensive manner [and on a long term and sustainable basis, backed by secure funding], in order to allow implementation. Members agree that in cases where the required support and assistance is not forthcoming from developed country Members and other donors, and where a developing or least developed country Member continues to lack the necessary capacity, implementation will not be required.]

1.5 [While every effort shall be made to ensure the necessary support and assistance, it is understood that the commitments by developed country Members to provide such support are not open ended.]<sup>29</sup>

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

2.1 There will be three different categories of commitments as defined below.

- (a) Category A commitments are provisions that a developing country Member or a least developed country Member has designated for implementation upon entry into force of this Agreement, as provided in paragraph 3,<sup>30</sup> [including all provisions that a developing country and a least developed country Member already implements [autonomously]].
- (b) Category B commitments are provisions that a developing country Member or a least developed country Member has designated for implementation on a date after a transitional period of time following the entry into force of this Agreement, as provided in paragraph 4.
- (c) Category C commitments are provisions that a Developing Country Member or a Least Developed Country Member has designated for implementation on a date after a transitional period of time following the entry into force of this Agreement and [as requiring][upon the acquisition of implementation capacity through the provision of]

<sup>28</sup> The term "provision" means provision or a sub-part of a provision.

<sup>29</sup> Consideration being given as to (i) whether elements of paragraphs 1.2 to 1.5 can be reflected in a preamble to the Agreement and therefore shifted to Section 1 – Article 15 on Preamble/Cross-cutting matters until adequate preambular language is drafted; (ii) whether the paragraphs 1.2 to 1.5 could be deleted in the event that the elements as contained therein are duly reflected within the operative paragraphs of Section II.

<sup>30</sup> Members may wish to consider the mechanism for entry into force. For example, in accordance with the method used for the Uruguay Round agreements - a date certain to be decided by Members.

technical [and/or financial] assistance and support for capacity building, as provided for in Article [Z].]

2.2 Developing country and least developed country Members shall determine, on an individual basis, the provisions to be included under each of the Categories A, B and C.

### **3. Notification and Implementation of Category A Provisions**

3.1 Upon entry into force of this Agreement, each developing country Member shall implement its Category A commitments. [Each Member's commitments designated under Category A are hereby made an integral part of this Agreement.]

3.2 [Notwithstanding paragraph 2.1 of this Section], a least developed country Member shall notify the Committee the provisions under Category A at entry into force of this Agreement, [or at the latest, by one year after entry into force of this Agreement].

### **[4. Notification and Implementation of Provisions under [Schedule B/C] [Notification and Implementation of Category B and Category C Commitments]]**

4.1 With respect to those provisions that a Developing Country Member has not designated [in Schedule A] [as its Category A commitments], the Member may delay implementation of such provisions in accordance with the process set forth in this paragraph.

[Alt 1

- (a) No later than [90][180][365] days after entry into force of this Agreement, each developing country Member shall notify to the Committee the provisional dates for implementation of each of the provisions [under Categories B and C] [it did not designate in its Schedule A].
- (b) No later than [x][300] days after entry into force of the Agreement, each developing country Member shall notify to the Committee [in final Schedule B/C] the definitive date for implementation of each of the provisions [under Categories B and C] [it did not designate in its Schedule A].
- (c) [Notifications submitted in draft and final Schedule B/C may also include such further information as the notifying Member deems appropriate. Members are encouraged to provide information on the domestic agency/entity responsible for implementation and, for those provisions for which a Member considers that technical assistance and capacity building is required, the donor agency with which the Member has an agreement to provide assistance.]

Alt 2

#### **Developing Country Member Category B Commitments**

- (a) Upon entry into force of this Agreement, each developing country Member shall notify to the Committee its Category B commitments.<sup>31</sup>
- (b) No later than one year after entry into force of this Agreement, each developing country Member shall notify to the Committee its list of dates for implementation of its Category B commitments. If a developing Member inadvertently misses this deadline the Member may request that the Committee extend the period sufficient to notify its dates.

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<sup>31</sup> Notifications submitted may also include such further information as the notifying Member deems appropriate. Members are encouraged to provide information on the domestic agency/entity responsible for implementation.



## [Developing Country Member Category C Commitments

- (c) Upon entry into force of this Agreement, each developing country Member shall notify the Committee of its Category C commitments. For transparency purposes, notifications submitted shall include information on required technical, financial, and/or capacity building assistance<sup>32</sup> and may provide provisional dates for the implementation of their Category C commitments.
- (d) Within one year after entry into force of this Agreement, developing country Members and relevant donor Members shall, taking into account any existing arrangements already in place, donor Member notifications pursuant to sub-paragraph 9.1 and information submitted pursuant to sub-paragraph (c) above, enter into any additional arrangements necessary to provide technical, financial and/or capacity building assistance to enable implementation of Category C commitments.<sup>33</sup> The participating developing country Member shall promptly inform the Committee of such arrangements. The Committee shall also invite non-Member donors to provide information on existing or concluded arrangements.
- (e) Within 18 months from the notification date stipulated in sub-paragraph 4.1(d), donor Members and respective developing country Members shall inform the Committee on the progress in the provision of assistance. Each developing country Member shall at the same time notify its list of final dates for implementation of its Category C commitments.]]

[4.2 With respect to those provisions that a Least Developed Country Member has not designated under Category A, taking into account sub-paragraph 1.3 of this Section least developed country Members may delay implementation of such provisions in accordance with the process set forth in this paragraph.

## Least Developed Country Member Category B Commitments

- (a) No later than one year after entry into force of this Agreement, a least developed country Member shall notify the Committee its Category B provisions, taking into account maximum flexibilities for least developed country Members.
- (b) No later than two years after the notification date stipulated under sub-paragraph (a) above, each least developed country Member shall notify the Committee to confirm designations of provisions and notify its dates for implementation of its Category B commitments. If a least developed country Member inadvertently misses this deadline, the Member may request that the Committee extend the period sufficient to notify its definitive dates.

## [Least Developed Country Member Category C Commitments

- (c) For transparency purposes and to facilitate arrangements with donors, one year after entry into force of this Agreement, each least developed country Member shall notify the Committee of its Category C commitments, taking into account maximum flexibilities for least developed country Members.
- (d) One year after the date stipulated in sub-paragraph (c) above, least developed countries shall notify information on required technical, financial, and/or capacity building assistance.<sup>34</sup>

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<sup>32</sup> Members may also include information on national trade facilitation implementation plans or projects; the domestic agency/entity responsible for implementation; and the donors with which the Member may have an arrangement in place to provide assistance.

<sup>33</sup> Such arrangements will be on mutually agreed terms, either bilaterally or through appropriate international organizations, consistent with subparagraph 8.2.

<sup>34</sup> Members may also include information on national trade facilitation implementation plans and projects and information on the domestic agency/entity responsible for implementation, and the donors with which the Member may have an arrangement in place to provide assistance.

- (e) Within two years after the notification under sub-paragraph (d) above, least developed country Members and relevant donor Members shall, taking into account any existing arrangements already in place, donor Member notifications pursuant to sub-paragraph 9.1, and information submitted pursuant to sub-paragraph (d) above, enter into any additional arrangements necessary to provide technical, financial and/or capacity building assistance to enable implementation of Category C commitments.<sup>35</sup> The participating developing country Member shall promptly inform the Committee of such arrangements. The Committee shall also invite non-Member donors to provide information on existing and concluded arrangements.
- (f) No later than 18 months after the date stipulated in sub-paragraph (e), donor Members and the respective least developed country Members shall notify the Committee on progress in the provision of assistance. Each least developed country shall at the same time notify the Committee its list of definitive dates for implementation of its Category C commitments.]]

[4.3 [Developing country and least developed country] Members experiencing difficulties in submitting provisional and definitive [final] dates for implementation within the deadlines set forth in paragraphs 4.1 and 4.2 because of the lack of a donor [or problems with the assistance arrangement], should notify the Committee of those difficulties as early as possible prior to the expiration of those deadlines. Members agree to cooperate to assist in addressing such difficulties, taking into account the particular circumstances and special problems facing the Member concerned. The Committee [may][shall] take appropriate action to address the difficulties, including, where necessary, extending the [relevant notification] deadlines for the Member concerned.]

[4.4 If a Member does not notify a time period for a provision in final Schedule B/C, the Member shall implement that provision within [x][365] days after entry into force of this Agreement.]

[4.5 Any implementation of provisions notified under Category C by developing and least developed country Members is conditional on the provision of adequate and effective technical [and financial] assistance and capacity building measures by developed-country Members and/or other donors [with a view to] [as well as] the acquisition of implementation capacity by developing and least developed country Members. In cases where technical assistance and capacity building is not provided or lacks the requisite effectiveness, developing country and least developed country Members are not bound to implement the provisions notified under Category C.]

[4.6 [365][x] days after entry into force of this Agreement, and then 60 days after an extended deadline established [above], the Committee shall meet to ratify each Member's final Schedule B/C. Upon ratification, each Member's Schedule B/C will become an integral part of this Agreement.]

## **5. Early Warning Mechanism: Extension of Implementation Dates of Provisions under Categories B and C**

### **5.1**

- (a) A developing country Member or least developed country Member that considers itself to be experiencing difficulty in implementing a provision by the date set forth in [its Schedule B/C] [Category B and C] may, no later than [X] days before such date, notify the Committee [and request an extension].
- (b) The notification to the Committee shall indicate the new date by which the developing country or least developed country Member expects to be able to implement the provision concerned. The notification shall also indicate the reasons for the expected delay in implementation. Such reasons may include the need for assistance where not earlier anticipated.

<sup>35</sup> Such arrangements will be on mutually agreed terms, either bilaterally or through appropriate international organizations, consistent with subparagraph 8.2.

[5.2 Where the additional time required for implementation does not exceed [365 days][ the time initially notified for the relevant provision], the developing country or least developed country Member is entitled to such additional time without any further action by the Committee. If the additional time required for implementation exceeds [365 days] [the time initially notified for the relevant provision] the developing country or least developed country Member shall request the Committee to grant an extension.]

5.3 Where a developing country or least developed country Member considers that it requires a second or any subsequent extension, it shall submit to the Committee a request for an extension containing the information described in 5.1 (b) no later than [x] days before the expiration of the implementation date, as previously extended.

5.4 The Committee shall give sympathetic consideration to requests for extension [and may decide to grant an extension] taking into account the specific circumstances of the Member submitting the request. These circumstances may include difficulties and delays in obtaining assistance.

## **[6. Shifting between Categories B and C**

6.1 Developing Country Members and Least Developed Country Members who have notified or re-notified provisions under Categories B and C may shift provisions between such categories through the submission of a notification to the Committee. [Any extension of the period of time for implementation for a provision re-notified by a Member shall be addressed through Article 5 (Early Warning Mechanism).]

6.2 Where a Member proposes to shift a provision from Category B to C, the Member shall provide information on the technical assistance, capacity building and financial needs required.]

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

7.1 For a period of 2 years after entry into force of this Agreement, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against a Developing Country Member concerning any provision under Category A of that Member.

7.2 For a period of 6 years after entry into force of this Agreement, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against a Least Developed Country Member concerning any provision under Category A of that Member.

[7.3 For a period of [2] years after implementation of a provision under Category B and C by the developing country Member, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against that Developing Country Member concerning those provisions.]

[7.4 For a period of [2] [6] years after implementation of a provision under Category B and C by a Least Developed Country Member, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against that Least Developed Country Member concerning those provisions.]

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

[7.6 The Committee shall encourage and facilitate ad hoc consultations or negotiations among Members on specific issues relating to trade facilitation, with a view to reaching a mutually satisfactory solution promptly.]<sup>36</sup>

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<sup>36</sup> This paragraph could be moved to another location in the Agreement.

7.7 [Notwithstanding the grace period for the Application of the Understanding on Rules and Procedures Governing the Settlement of Disputes] Before making a request for consultations pursuant to Articles XXII or XXIII, and at all stages of dispute settlement procedures with regard to a measure of a least developed country Member, a Member shall give particular consideration to the special situation of least developed country Members. In this regard, Members shall exercise due restraint in raising matters under the Understanding on Rules and Procedures Governing the Settlement of Disputes involving least developed country Members.

## **8. Provision of Technical Assistance [, financial assistance] and Capacity Building**

[8.1 The provision of technical assistance [, financial assistance] and capacity building by developed country Members and relevant international organizations and other agencies of cooperation, including the IMF, OECD, UNCTAD, WCO and the World Bank, is a precondition for the acquisition of implementation capacity by developing country and least developed country Members in respect of provisions requiring assistance.]

8.2 [Developed country Members and developing country Members in a position to do so] [Members] agree to facilitate the provision of technical assistance [, financial assistance] and capacity building to developing country and least developed country Members, on mutually agreed terms and either bilaterally or through the appropriate international organizations. The objective of such assistance is to assist developing country and least developed country Members to comply with the Agreement's commitments.

8.3 In line with the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action, Members shall endeavour to apply the following principles for providing technical assistance and capacity building with regard to the implementation of this Agreement:

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

8.4 [The Committee shall provide for a specific agenda item to discuss technical assistance and capacity building including *inter alia*:] [A technical Assistance Unit linked to the Committee shall, *inter alia*, provide a framework for: ].

- [(a) receiving requests from developing and least developed country Members;]
- (b) Discussion on any problems regarding implementation of provisions or sub-parts of provisions;
- (c) Review of progress in the provision of technical assistance and capacity building including any developing or least developed country Members not receiving adequate technical assistance and capacity building;
- (d) Sharing experiences and information on ongoing assistance and implementation programs, including challenges and successes.

## 9. Information on Assistance to be submitted to the Committee

9.1 To provide transparency to developing and least developed Members on the provision of specific assistance and support for implementation of Section I, each [developed country Member] [Member assisting developing country and least developed country Members with the implementation of this Agreement] shall submit to the Committee, at entry into force of the Agreement and annually thereafter, the following information on technical assistance and capacity building that was provided in the preceding twelve months [and that will be made available in the forthcoming twelve months<sup>37</sup>].

- (a) description of the technical and financial assistance and capacity building resources;
- (b) the status and amount committed/disbursed;
- (c) procedures for disbursement of the assistance;
- (d) the beneficiary country, or, where necessary, the region; and
- (e) the implementing agency in the Member providing assistance.

The information shall be provided in the format specified in Annex X. In the case of OECD Members, the information submitted can be based on relevant information from the OECD Creditor Reporting System [Developing country Members in a position to provide assistance should also submit the information above.]<sup>38</sup>

9.2 [Developed country] Members assisting developing country and least developed country Members shall submit to the Committee:

- (a) Contact points of their agencies responsible for providing technical and financial assistance and support for capacity building related to the implementation of this Agreement, including where practicable, information on such contact points within the country or region where the assistance is to be provided;
- (b) Information on the process and mechanisms for requesting assistance.

[Developing country Members in a position to provide assistance shall submit the information above.]

<sup>37</sup> [The information provided will reflect the demand driven nature of some developed country approach to the provision of technical assistance.]

<sup>38</sup> [To provide transparency to developing and least-developed Members, developed Members will complete a trade facilitation technical and financial assistance and support for capacity register before signature of the Agreement. This register is contained in [document xxx]. This register would support operationalizing the principal mandate contained in Annex D of the 2004 July Framework Agreement and Annex E of the Hong Kong Declaration. The information provided shall contain a description of the technical and financial assistance and capacity building available and/or provided, the amounts disbursed and available, the beneficiary country, region (in special circumstances where required), the implementing agency in the donor Member, and procedures for disbursement of the assistance. (placeholder)]

9.3 Developing country and least developed country Members intending to avail themselves of trade facilitation-related assistance shall submit to the Committee information on contact point(s) of the office(s) responsible for coordinating and prioritizing such assistance.

9.4 Members may provide the information in paragraphs 9.2 and 9.3 through internet references and shall update the submitted information as necessary. The Secretariat shall make all such information publicly available.

9.5 The Committee shall invite relevant international and regional organizations (such as the IMF, OECD, UNCTAD, WCO, UN Regional Commissions, the World Bank or their subsidiary bodies, and regional development banks) and other agencies of cooperation to provide information referred to in paragraphs 9.1, 9.2 and 9.4.

Annex [1]: Format for Schedule B/C

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

Annex X: Format for notification under Article 9.1

[

Alternative 1

**Donor Member:**

**Period covered by the notification:**

Description of the technical and financial assistance and capacity building resources	Status and amount committed/disbursed	Beneficiary country/ Region (where necessary)	The implementing agency in the Member providing assistance	Procedures for disbursement of the assistance

Alternative 2

**Donor Member:**

**Period covered by the notification:**

Description of technical assistance	Description of financial assistance	Description of capacity building resources	Status and amount committed	Status and amount disbursed	Beneficiary country/ Region (where necessary)	The implementing agency in the Member providing assistance	Procedures for disbursement of the assistance

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