

**Negotiating Group on Trade Facilitation**

**COMMENTS AND TEXTUAL SUGGESTIONS**

This document contains written comments and textual suggestions<sup>1</sup> that were submitted by Members for inclusion in the trade facilitation Draft Consolidated Negotiating Text which is found in document TN/TF/W/165.

The submissions are from the following Members:

- China - These comments and suggestions will be included in the next revision of the Draft Consolidated Negotiating Text which will be TN/TF/W/165/Rev.1.
- Singapore - These comments and suggestions have been incorporated in TN/TF/W/165.

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<sup>1</sup> New comments are in bold and shaded in this document.

## SUBMISSION FROM CHINA

### ARTICLE 6: FEES AND CHARGES CONNECTED WITH IMPORTATION AND EXPORTATION

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

1.1 The provisions of this article shall apply to all fees and charges [including shipping royalties] (**Comment: give a definition in the footnote**) [(other than import/export duties and other than taxes **[and charges]** within the purview of GATT Article 3)] imposed by customs and other governmental agencies, [including those bodies that act on behalf of governmental agencies]. Such fees and charges shall be imposed only for services rendered in connection with importation or exportation of goods or for any formality required for undertaking such importation or exportation.

- (d) Information on fees and charges shall be published. This information shall include the [reason for the fee or charge for the service to be rendered,] the responsible authority, the fees and charges that will be applied, and when and how payment is to be made. [The information shall be made readily available to all interested parties (**Comment: give a definition in the footnotes**) and] each Member shall inform, through the WTO Secretariat, all other Members where the information on its fees and charges is available. [The information shall be published via an officially designated medium, and where feasible and possible, official website.]

### ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

#### 1. Pre-arrival Processing

[1.1

(second option) Members shall maintain or introduce procedures allowing traders to submit import documentation and other required information to customs and other relevant border agencies prior to the arrival of the goods, where appropriate. In cases where all the regulatory requirements have been complied with and inspection or examination of the goods is not considered necessary, the goods shall be released immediately upon payment of customs duties and taxes or, where deemed appropriate by the authorities concerned, upon submission of a sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument, covering the ultimate payment of custom duties and taxes for which the goods may be liable.] (**Comment: Move the words to a new paragraph between 2.1 and 2.2**)

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

2.1 [In legislated circumstances] each Member [[shall][may]] adopt or maintain procedures [[authorizing][allowing]] an importer [or its agent] [where appropriate] to [[remove] [[[ask] **[apply]**]] for the release of]] goods from customs' [[control][custody][charge]] prior to the final determination and payment of customs duties, taxes and fees [and charges] [[when these [have to be but] [are not] determined [due to difficulties of determination] [at or] prior to arrival][where it is decided that neither examination, physical inspection, nor any other submission is required]].

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

5.1 Members [[shall][may]] [where practicable] [measure and] publish their [own] average time for the release of [[goods in a consistent manner on a periodic basis [for major customs offices]][import and export goods on a periodic basis as measure of transparency]], [using tools such as the WCO Time Release Study] [except where its imported goods are released instantly on arrival] [discounting the time necessary to process the declaration before presenting it for [[customs][goods]] clearance].

5.3 [In case of a [significant delay] in [[the release of goods, ][customs clearance]] [with respect to the average time published by the Member concerned] Members [[shall][may]] provide the traders who have made written requests with the reasons for the delay except when such notification would impede the pursuance of legitimate policy objectives **[or any force majeure would occur]**]

## 6. Authorized Traders

6.3 [As determined by domestic legislation,] the [additional] facilitation measures for such authorised traders [[may][but][shall]] [where practicable] include [at least four of the following comments], *inter alia*:

## 7. Expedited Shipments

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

(e) assume liability [for payment of all customs, duties, taxes and fees] **[charges]** to the customs authority for the [[articles][released goods]].

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

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

(b) [minimize the documentation required for the release of expedited shipments, including, to the extent possible, providing for release based on a single submission of information on all goods in the expedited shipments;]

## ARTICLE 9: BORDER AGENCY COOPERATION

### 1. Coordination of Activities and Requirements of all Border Agencies

1.2

(b) Wherever possible and practical, such cooperation and coordination may include:

(iii) [Establishment of one stop border post control (**Comment: give a de finition in the footnote**)];

**[ARTICLE 9 BIS: DECLARATION OF TRANSHIPPED GOODS]**

1.3 [1] When goods [[being transhipped][under customs transit]] are ultimately destined for the territory of [[that] [a]] Member, the person concerned shall be permitted to declare the goods for the relevant customs procedure at the [[[port or place][customs office]] of destination][place of entry]] where [[these obligations][customs formalities]] can be fulfilled.

1.4 [2] Reservations: Without prejudice to paragraph 1.3, nothing in the provisions of that paragraph shall affect the right of Members to board, search and/or rummage vessels where necessary, or maintain appropriate border control.

**ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION****1. [Periodic] Review of Formalities and Requirements****4. Acceptance of Commercially Available Information and of Copies**

4.2 [For goods subject to control of legislation conformity and documentation requirement, customs and other border agencies shall endeavour to accept copies of [documents, in particular (a)] commercial documents (invoices, [bills of lading,] [etc.]); and (b) where a government agency already holds the original and multiple authorities are involved. In the case of (b), Members shall accept authenticated copies by the agency holding the original in lieu of the original document.]

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

**6. Elimination of Pre-shipment Inspection**

6. Without prejudice to paragraphs 6.2 [and 6.3], Members shall not require the use of [mandatory] pre-shipment [and post-shipment] inspections [[or their equivalent][or other similar bodies] **for customs classification and valuation purposes**]].

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

10.1 In case of rejection of a [food] [consignment] on account of failure to meet certain standards **rather than those of health and environmental protection** [of a customs union], an option [[shall][may]] first be given to the [[importer][exporter]] to [[return][re-export]] the rejected goods [to the exporter;] only upon failure [by the [[importer][exporter]]] to exercise this option within a reasonable period of time, a different course of action, including [the return of the goods to the exporter, or] destruction of goods [at the cost of the importer] can be considered by the appropriate authority of the importing Member.]

**ARTICLE 13: [CUSTOMS] {COOPERATION} [MECHANISM FOR [TRADE FACILITATION AND] [[CUSTOMS][TRADE]] COMPLIANCE]****1. Cooperation Mechanism for Customs Compliance**

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

- (d) [provide the information] **[respond to the request]** [to the extent possible,] [within a period of [90] / [60] days from the date of receipt of the request.]

1.13 Information [or documents] exchanged shall not be used for purposes other than that for which it was sought, unless the requested Member agrees otherwise. **(Comment: Put this provision closely after 1.6)**

## SUBMISSION FROM SINGAPORE

### ARTICLE 9: BORDER AGENCY COOPERATION

#### 1. Coordination of Activities and Requirements of all Border Agencies

- 1.2 (a) [A] Member[s] [shall, to the extent possible] [and practical] **[are encouraged to]**, cooperate **[and coordinate]** with **[their]** [[bordering][other]] Members and [[coordinate][harmonize]] [[customs procedures] [cargo clearance procedures]] [at border crossings in order] to facilitate **[cross border]** trade.
- (b) Wherever possible and practical, such cooperation and coordination may include:
- (ii) [Development and sharing of common facilities [for conducting joint controls]];
- (iv) Provision of expedited processes for goods in transit [such as a single channel];

### ARTICLE 13: [CUSTOMS] {COOPERATION} [MECHANISM FOR [TRADE FACILITATION AND] [[CUSTOMS][TRADE]] COMPLIANCE]

#### 2. Cooperation Mechanism for Customs Compliance

[1.1 Members [shall] [endeavour] [in a manner consistent with its domestic law and procedures] [whenever practicable] **[may]** upon request, exchange information [and/or documents] on **[Customs]** matters [such as HS classification, [description, quantity,] country of origin and [[valuation][value]] of [import, export and transit] goods [specified on the import declaration]]] in {[identified cases of] import or export, where there is reason to doubt the truth or accuracy of a declaration filed [by the importer or exporter].

1.4 The requested Member [shall] **[may]** [in a manner consistent with its domestic law and procedures]:

- (c) [confirm that the documents provided are true copies of the documents submitted by the importer/exporter [and accepted by the requested Member]; and]

1.5 Such exchange of information [or documents] shall not require Members to:

- (c) modify the period of retention of such information [or documents]; [or]
- (d) introduce paper documentation where electronic format has already been introduced[.] [;]
- [(g) provide any information for which disclosure is not permissible under their domestic laws and regulations; or**

**(h) 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.]**

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

[Any information [or documents] exchanged on matters mentioned in paragraph 1.1 which are by nature confidential or which are provided on a confidential basis shall be treated as [strictly] confidential by the authorities concerned who shall not disclose it to any third party without the specific permission of the government providing such information [or documents, except to the extent that it may be required to be disclosed in the context of judicial proceedings.]] [Exchanged information shall not be used as evidence in judicial proceedings unless specifically authorized by the requested Member. In case the government of a requesting Member is ordered to provide such information as evidence for a judicial proceeding by the court of intends to disclose it to any 3<sup>d</sup> party. the requesting Member must ask the requested Member for specific authorization through diplomatic channels.]

1.8 The request for information [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.

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

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

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## 2. Customs Cooperation

2.3 Members may seek assistance from other Members in accordance with the following requirements:

(f) The requesting Member shall provide the requested Member with a written summary of the request, including:

(ii) The specific information [ , including documents,] requested;

(g) The requested Member [[should] [shall]] [may] offer cooperation and assistance, consistent with its domestic law and procedures [within its available resources]:

- (ii) If the requested Member is satisfied that the required confidentiality of the information will be maintained; [and]
  - (iii) **If the requested Member has obtained the prior consent of the person furnishing the information, where there is such a requirement under its domestic laws and regulations;**
  - (iv) **If the disclosure of the information is not otherwise prohibited by the domestic laws and regulations of the requested Member; and]**
- (j) The requesting Member shall provide the information only to its customs administration. In the case that the requesting Member is required by its domestic law to share the information with a governmental agency other than its customs administration or in a judicial or quasi-judicial proceeding, the requesting Member [[shall inform the] [shall get approval from]] **[seek prior consent from]** the requested Member] .
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