

**COMMUNICATION FROM THE FORMER YUGOSLAV REPUBLIC OF MACEDONIA,
MONGOLIA, SWITZERLAND AND SWAZILAND**

Revision

The following communication, dated 25 June 2009, is being circulated at the request of the Delegations of the Former Yugoslav Republic of Macedonia, Mongolia, Switzerland, and Swaziland.

TRANSIT – THIRD REVISION OF TEXTUAL PROPOSAL TN/TF/W/133

The following textual proposal revises the textual proposals made in TN/TF/W/133/Rev.2 by taking into account the discussion and other submissions on this issue in the Negotiating Group.

The main purpose of the present revision is to incorporate into the text the corrections of TN/TF/W/133/Rev.2/Corr.1. The revision also takes into account some of the more technical comments received during past discussions. Co-Sponsors finally have attempted to correct the wording in a few places to insure that the text is valid for all types of traffic in transit, irrespective of the mode of transport, where applicable.

Co-Sponsors acknowledge that a number of substantive comments have been registered which have not yet been incorporated in the present revision, pending further work and a better understanding of the issues. Some of these issues have been highlighted by square brackets in the present text.

(a) Scope

1. *Definition of traffic in transit:* Goods – including those moved via fixed infrastructure, inter alia pipelines and electricity grids –, and means of transport (including baggage and the personal belongings of the person operating the means of transport) , shall be deemed to be in transit across the territory of a Member when the passage across such territory is only a portion of a complete journey beginning and terminating beyond the frontier of the Member whose territory the traffic passes. Traffic of this nature is termed "traffic in transit" irrespective of (i) trans-shipment, warehousing, short-term storage, breaking bulk, or change in the mode of transport, and (ii) whether the goods or means of transport, after passing across a territory of a Member, return to the territory of a Member in which they originate or through which they have previously transited. Means of transport shall be deemed to be traffic in transit also if they carry exclusively goods in transit, even if the means of transport are not in themselves in transit according to the above definition.

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

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

(b) Freedom of transit

4. There shall be freedom of transit through the territory of each Member via the routes most convenient for international transit [for traffic in transit to or from the territory of other contracting parties]. No distinction shall be made in the treatment of traffic in transit which is based on flag of the vessel, the place of origin, departure, entry, exit or destination, or any circumstances relating to the ownership of goods or means of transport.

5. *Regulation on Traffic in Transit:* All regulation imposed by a Member on traffic in transit to or from the territories of other Members shall be reasonable, having regard to the conditions of the traffic.

6. With respect to all [laws, regulations, formalities], fees and charges, including transportation charges, imposed on or in connection with transit, each Member shall accord to traffic in transit to or from the territory of any Member, treatment no less favourable than that accorded to its own export or import traffic. This principle refers to like products being transported on the same route under like conditions.

7. *Most-favoured-nation treatment:* Without prejudice to paragraph (g)20, with respect to all laws, regulations, formalities, fees and charges – including transportation charges –, on or in connection with transit, each Member shall accord to traffic in transit to or from the territory of any other Member treatment no less favorable than the treatment accorded to traffic in transit to or from any third country. This principle refers to like products being transported on the same route under like conditions.

8. *Treatment preceding and following transit:* Each Member shall accord to products and means of transport which have been or will be in transit through the territory of any other Member treatment no less favorable than that which would be accorded to such products and means of transport if they were traveling from their place of origin to their destination without going through the territory of such other Member. Any Member shall, however, be free to maintain its requirements of direct consignment existing on the date of the GATT 1994 in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of the goods at preferential rates of duty or has relation to the Member's prescribed method of valuation for duty purposes.

(c) Duties, fees and charges

9. Members shall exempt traffic in transit from customs duties and from all transit duties and other fees and charges imposed in respect of transit, except

- (i) reasonable charges for transportation (such as tolls, road charges and similar), having regard to the conditions of the traffic, or

- (ii) reasonable transit charges commensurate with the administrative expenses entailed by transit or with the cost of the service rendered. Any transit charge shall:
 - only be imposed for transit services provided directly linked to the specific transit movement in question;
 - not exceed the approximate cost of the transit service rendered; and
 - not be calculated on an *ad valorem* basis.

10. *Publication:* Members shall publish promptly information on charges. This information shall include the reason for the charge, the responsible authority, the charges that will be applied, and when and how payment is to be made. The information shall be published via an officially designated medium, and to the extent practicable, an official website.¹

11. *Prior publication:* Except in urgent circumstances and other limited exceptions, which are made public, Members shall accord an adequate time period between the publication of information on new or amended charges and their entry into force.²

12. *Periodic review:* Each Member shall periodically review its charges to ensure that they are in line with WTO commitments and with a view to reducing their number and diversity, where appropriate.³

(d) Transit formalities and documentation requirements

13. Any Member may require that traffic in transit through its territory be entered at the proper customs office without prejudice to the other commitments on transit, but such traffic in transit through their territory shall not be subject to any unnecessary delays, restrictions, inspections or controls, and shall be granted expedited and simplified treatment at border crossing points, including sea, fluvial and air ports or inland terminals as applicable. Such expedited and simplified treatment implies, *inter alia* and where applicable:

- (i) *Special border crossing facilities for transit:* To the extent practicable, physically separate transit infrastructure (such as lanes, berths and similar) shall be made available for traffic in transit at border crossings.
- (ii) *Formalities adjusted to the specificities of the goods in transit:* In designing and applying transit formalities and documentation requirements, Members shall take account of the characteristics of traffic in transit.
- (iii) *Limited physical inspections of goods:* Where goods are placed under a transit procedure, Members shall use risk management techniques adapted to the specific risks of traffic in transit to enable any inspections to be targeted on the basis of the degree of risk attached to individual consignments.

¹ Note to the reader: this paragraph may be dropped at a later stage if the issue is properly covered in another Article of the Agreement.

² Note to the reader: this paragraph may be dropped at a later stage if the issue is properly covered in another Article of the Agreement.

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Furthermore, Members shall not apply quality controls or controls of compliance with technical standards.

- (iv) *Reducing the administrative burden for traffic in transit:* Transit formalities and documentation requirements shall be reasonable having regard to the conditions of the traffic, applied uniformly and be not more trade restrictive than necessary to permit the control of the operation and to ensure that all requirements relating to the application of relevant law have been complied with. For traffic in transit, Members shall provide for:
- the processing of transit documents and data prior to the arrival of the transiting consignment;
 - the use, to the extent possible, of any commercial or transport document setting out clearly the necessary particulars as the descriptive part of transit declarations as a complement of the paper based transit declarations;
 - the establishment of a single window; and
 - the establishment of an authorised trader scheme with a view to grant simplified treatment to traders with a good track record of compliance with transit formalities and documentation requirements.

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

(e) Bonded transit regime and guarantees

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

- (i) reasonable having regard to the conditions of traffic and the characteristics and the nature and value of the consignment in question, and limited to the amount of customs debt or other charges which may be incurred in respect of the goods;
- (ii) designed and applied on a regional or international basis to as great an extent as possible; and
- (iii) released or discharged promptly and in full after the completion of the transit operation.

16. Where a Member requires a guarantee for goods in transit, this Member shall allow guarantees to be renewed for subsequent consignments once a previous one is proved to have reached its destination. No fees and charges shall be imposed in relation to the use of bonded transport regimes and guarantees except for those directly related to the approximate cost of any service rendered.

17. [In cases where a Member chooses to apply other appropriate measures to prevent the inland diversion of goods, no guarantee shall be required for the transit of goods.]

(f) Cooperation and coordination

18. *Amongst authorities:* Members shall ensure cooperation and coordination between all concerned authorities and agencies in their territory to facilitate traffic in transit. Members shall ensure cooperation with other Members on issues of traffic in transit, including with regard to standardizing transit formalities and documentation requirements, coordinating operations of border crossings and mutual recognition of authorized trader schemes. To this end, neighbouring Members shall, as far as necessary, meet periodically to discuss and come to an understanding on the fees and charges, formalities, legal requirements and practical operation of transit regimes relating to goods moving in transit between them.⁴

19. *Between authorities and the private sector:* Members shall provide opportunities for interested traders or their representatives to comment on the transit regime and its operation, including with regard to the introduction of new or amended transit fees and charges, and transit formalities and documentation requirements, with a view to minimizing unnecessary delays and restrictions on traffic in transit.

(g) Promotion of regional transit agreements or arrangements

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

- (i) agree on common, simplified documents, or electronic messages, that shall be aligned with international standards;
- (ii) allow the same set of documents or electronic messages to accompany the consignment from the country of departure to destination;
- (iii) mutually recognize authorized trader schemes;
- (iv) define common measures relating to the monitoring of transit, *inter alia* the appointment of national transit coordinators; performance indicators (e.g., target clearance times) or public private partnerships to manage and monitor the arrangement;
- (v) include matters which are relevant beyond customs in the context of transit, such as road and transport issues.

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

22. Members participating in bilateral or regional transit agreements or arrangements shall afford opportunity for other interested Members to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it.

⁴ Note to the reader: this paragraph may be dropped at a later stage if the issue is properly covered in another Article of the Agreement.

- (h) Periodic review / Monitoring with a view to enhancing efficiency, transparency and predictability of the transit agreement or arrangement

23. *Periodic review:* Each Member shall periodically review its transit formalities and documentation requirements to ensure that they are in line with WTO commitments and with a view to consolidating them and reducing their impact on trade. Such reviews shall allow for the participation of all interested parties and, as appropriate, may be held at a regional or international level.

- (i) Transparency

24. *Publication:* Each Member shall publish all transit formalities and documentation requirements, and regional transit agreements or arrangements[[, except if a non-Member-Party to such an agreement or arrangement opposes publication]]. The information shall be published via an officially designated source, such as the official gazette, the official journal or an official web-site.⁵

25. *Prior publication:* Except in urgent circumstances and other limited exceptions, which are made public, Members shall accord an adequate time period between the publication of new or amended transit formalities and documentation requirements and their entry into force.⁶

⁵ Note to the reader: this paragraph may be dropped at a later stage if the issue is properly covered in another Article of the Agreement.

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