

COMMUNICATION FROM CUBA, GEORGIA, MOLDOVA, PARAGUAY AND TURKEY

Revision

The following communication, dated 26 June 2009, is being circulated at the request of the Delegations of Cuba, Moldova, Paraguay and Turkey.

PROPOSAL ON A FREE AND TRANSPARENT TRANSIT REGIME

I. EXPLANATION OF THE PROPOSAL

1. The co-sponsors submit this revision taking into account the discussions on Freedom of Transit and on the proposal TN/TF/W/146/Rev.1 in the Negotiation Group. In this sense, the revision aims at ensuring freedom and transparency in transit.
2. The co-sponsors welcome the proposal TN/TF/W/133/Rev.2 as a general and comprehensive text regarding the issues on transit. In this sense, the sponsors would like to underline that the current proposal is not a substitute to TN/TF/W/133/Rev.2 but complementary to it.
3. However, restrictions in transit cannot be limited to difficulties in borders or fees and charges for which the proposal TN/TF/W/133/Rev.2 has explicit disciplines. There are a number of other measures that exist and restrict the transit traffic.¹
4. Initially, the proposal states that such restrictions can only be applied within the legitimate policy objectives laid down in Article XX and XXI.
5. While such restrictions may be considered within the jurisprudence of GATT Articles XX and XXI, this does not mean that they can be applied in an arbitrary or unlimited manner.
6. Within this perspective, the first objective of the proposed text is to effectively clarify the disciplines on the restrictions to transit traffic through Articles 1 and 2.
7. The second objective is to ensure transparency in transit regimes. Through Article 3, we propose a notification mechanism for the restrictions of the systematic nature the details of which are to be determined later on.

¹ According to International Road Transport Union such restrictions include inter alia mandatory use of certain routes, mandatory use of convoys, quotas or licenses attached to transit passages, measures taken for road congestion or road security purposes.

8. The third objective is to ensure national treatment for transit. The co-sponsors are of the view that, in line with the spirit of the national treatment obligation in Article III of the GATT, the appropriate comparison should be between transit traffic and domestic traffic for a national treatment provision in transit. However, it would be necessary to indicate that this comparison is possible only between traffic under like conditions.

II. TEXTUAL PROPOSAL

9. Traffic in transit shall not be subject to any restrictions unless a Member takes a measure to fulfil one of the objectives laid down in GATT Articles XX and XXI. Members shall ensure that any such measure shall not be more restrictive than necessary.

10. The restriction shall not be maintained if the circumstances or objectives giving rise to its adoption no longer exist or if the changed circumstances or objectives can be addressed in a less restrictive manner.

11. Each Member shall notify the Trade Facilitation Committee on the objective and duration of the restrictions it applies on an [annual] basis. If the restriction is not notified, any Member may bring the restriction in question to the notice of the Trade Facilitation Committee.

12. 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 domestic traffic, under like conditions, within the territory of that Member.²

² This provision shall apply to any local (public or private) agencies acting on behalf of the government.