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Negotiating Group on Trade Facilitation

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The following communication, dated 10 July 2012, is being circulated at the request of the Delegation of the United States.

EXPEDITED SHIPMENTS (ARTICLE 7.7)

Proposed U.S. revisions for consideration by the NGTF

A table format of the text is provided below, to allow comparison between Rev.12 and the proposed revisions, and to also provide explanations for each revision. A consolidated revised text immediately follows the table, for readability.

TN/TF/W/165/Rev.12	Proposed Revisions	Explanatory Comments
7. Expedited Shipments		
<p>7.1 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.¹ If a Member employs criteria limiting who may apply, the Member may, in published criteria, require that the applicant shall, as conditions for the application of the procedures described in paragraph 7.2 to its expedited shipments:</p>	<p>7.1 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. 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 procedures <u>treatment</u> described in paragraphs 7.2 (a) – [(f)] to its expedited shipments:</p>	<p>The word "procedures" has been replaced with "treatment" to better reflect that subparagraphs 7.2 (a) – (f) describe the "treatment" that will be provided to goods in expedited shipments.</p>
<p>(a) Provide adequate infrastructure [and reimbursement of customs-related expenses² to allow customs to process its expedited shipments], in cases where the applicant fulfils the Member's requirements for such processing to be performed at a dedicated facility;</p>		
<p>(b) Submit in advance of the arrival of an expedited shipment the information necessary for release;</p>		

¹ 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.

² Consider reimbursement of customs-related expenses at non-dedicated facilities.

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(c) Be assessed fees limited in amount to the approximate cost of services rendered in providing the customs procedures in paragraph 7.2;	(c) Be assessed fees limited in amount to the approximate cost of services rendered in providing the customs procedures <u>treatment described</u> in paragraph 7.2 (a) –(f) ;	The phrase "customs procedures" has been replaced with "treatment" to better reflect that subparagraphs 7.2 (a) – (f) describe the "treatment" that will be provided to goods in expedited shipments.
(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.]	[(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.] (g) Alt comply with other conditions directly related to the effective enforcement of the Member's laws, regulations and procedural requirements, that specifically relate to providing the	Subparagraph 7.1(g) is intended to cover other application requirements not listed in subparagraphs 7.1 (a) – (f) that are necessary because of the differences between expedited release procedures and non-expedited release procedures. This general provision ensures that the subparagraphs of 7.1 comprehensively cover all requirements that are necessary but also defines the scope of appropriate requirements where a Member treats expedited shippers differently. The text also seeks to ensure that application requirements stated in this text for expedited shipments do not duplicate general requirements for engaging in import and export

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	<p>treatment described in paragraphs 7.2 (a) – [(f)].</p>	<p>that apply to all goods/shipments. Expedited shipments are a subset of import/export, and would already be subject to those requirements.</p> <p>Some Members have indicated their view that the original draft of 7.1(g) does not adequately address additional application requirements, beyond those stated in 7.1 (a) - (f) that may be necessary to provide expedited treatment. In an effort to further clarify, an alternative subparagraph (g) is proposed to better clarify that additional application requirements shall be relevant to providing the treatment described in paragraphs 7.2 (a) - [(f)], and permit paragraphs (h) - (k) to be dropped.</p>
<p>[h. register with relevant authorities within the customs territory subject to the domestic legislation;</p>	<p>h. — register with relevant authorities within the customs territory subject to the domestic legislation;</p>	<p>We propose deletion of subparagraphs 7.1 (h) - (k), as these are covered by subparagraph 7.1 (g) or (g) Alt. (See note on 7.1(g) above).</p>
<p>i. fulfil the obligations of visual examination of goods in receipt thereof for the purpose of trade security;</p>	<p>i. — fulfil the obligations of visual examination of goods in receipt thereof for the purpose of trade security;</p>	
<p>j. actively report suspicious information to the customs to ensure the compliance with relevant laws and regulations; and</p>	<p>j. — actively report suspicious information to the customs to ensure the compliance with relevant laws and regulations; and</p>	
<p>k. assume liability to customs for the goods in the same manner as if it is the sole carrier.]</p>	<p>k. — assume liability to customs for the goods in the same manner as if it is the sole carrier.]</p>	

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7.2 Subject to subparagraphs 7.1 and 7.3 ³ , the expedited release procedures shall:	7.2 Subject to paragraphs 7.1 and 7.3 ³ , the expedited—release procedures <u>allowing for expedited release</u> shall:	Re-phrased to match text in 7.1 "allowing for expedited release".
(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 ⁴ ;		
(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 <i>de minimis</i> value in the expedited shipments;]		
(c) Provide for expedited shipments to be released under normal circumstances within [[3][6][24] hours][a reasonable period of time] [consistent with national rules and procedures] after arrival, provided the information required for release has been submitted;		

³ This addition is intended to make clear that the treatment in paragraph 7.2 need not be provided if the conditions in paragraph 7.1 have not been met or, as provided in paragraph 7.3, if authorities consider it necessary to obtain additional information or conduct screening or examine goods. Also, paragraph 7.3 has been modified to confirm that expedited treatment need not be provided to restricted goods.

⁴ This language may be dropped from the proposed article should it be adequately addressed in the context of the proposal on release and clearance.

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<p>[(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];]</p>	<p>[(d) Apply Be available to goods {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];]</p>	<p>In response to Members' questions, "Be available" is suggested as an alternative to "Apply", and "to goods" is added as clarification. The clean text, still fully bracketed, would read "Be available to goods without regard to weight or value". The changes are suggested to clarify that the goal of the text is to give goods access to the expedited channel without regard to weight or value.</p> <p>Recommend deleting "without prejudice to the right of the Member to differentiate documentation requirements...". Subparagraph 7.2 (d) seeks to ensure that all items, regardless of their weight or value, should have <u>access</u> to procedures allowing expedited release. The goal is that all items have access to the expedited channels, meaning that they can be brought in on expedited carriers. However, if for some items (such as high-value items) Members require additional documentation, this is provided for under paragraph 7.2(c). Subparagraph 7.2(c) reflects that the "information required for release" has to be submitted for an expedited shipment to qualify for release within a certain time period. This means that specific documents or data for high value or other goods can still be required to qualify for the expedited release timeframe. Exceptions are also provided for certain goods under 7.3.</p>
<p>[(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</p>		

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instrument, covering the ultimate payment of the customs duties, taxes and fees in connection with the importation of the expedited shipments, ^{5]} and		
[(f) Provide for a <i>de minimis</i> shipment value[, to the extent possible,] for which customs duties and taxes will not be collected [aside from certain prescribed goods] ⁶ .]	[(f) Provide for a <i>de minimis</i> shipment value [, to the extent possible,] for which customs duties and taxes will not be collected [aside from certain prescribed goods] ⁶ .]	<p>A <i>de minimis</i> shipment value allows a Member to avoid incurring expenses and burdens to its customs service that are disproportionate to the amount of revenue that would be otherwise collected. The specific amount is left entirely to the discretion of the Member, given that each Member's situation will be different regarding the burdens/costs on customs and the amount of duties forgone.</p> <p>The phrase "aside from certain prescribed goods" is deleted, because it is covered by paragraph 7.3. Paragraph 7.3 provides the ability for "assessing customs duties or taxes" as a condition for release for those goods subject to excise taxes, or import licensing or similar requirements.</p>
[7.3 Nothing in these provisions shall affect the right of a Member to examine, detain, seize, confiscate or refuse entry to goods, or to carry out post-clearance audits, in a manner not otherwise inconsistent with the Member's WTO rights and obligations, including in connection with the use of risk management	[7.3 Nothing in these provisions <u>this Article</u> shall affect the right of a Member to examine, detain, seize, confiscate or refuse entry to goods, or to carry out post-clearance audits, <u>including in connection with the use of risk management systems</u> , in a manner not otherwise inconsistent with the Member's WTO rights and obligations, including in	<p>Outer brackets removed around paragraph 7.3 to ensure appropriate exceptions are provided for Members to avail themselves of when allowing expedited treatment, while inner brackets are added around the reference to excise taxes, as these appear to need further drafting refinements.</p> <p>Added "this Article" in place of "these provisions" for clarity.</p>

⁵ This language may be dropped or modified in light of the language used in Article 7.2, release and clearance.

⁶ 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.

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<p>systems. Further, for goods subject to licensing or similar regulatory requirements, nothing in these provisions shall prevent a Member from collecting customs duties or taxes or from requiring, as a condition for release, both the submission of additional information and the fulfilment of non-automatic licensing requirements.]</p>	<p>connection with the use of risk management systems. Further, for goods subject to <u>[excise taxes, or] import licensing</u> or similar regulatory requirements, nothing in these provisions <u>this Article</u> shall prevent a Member from collecting customs duties or taxes, or from requiring, as a condition for release, both the submission of additional information and the fulfilment of non-automatic licensing requirements.}]</p>	<p>Moved placement of "including in connection with the use of risk management systems," to streamline the sentence.</p> <p>Added "excise taxes, or" given that many countries continue to charge duties and taxes below the <i>de minimis</i> value on goods that are subject to excise taxes, which is normally a limited list of goods (<i>e.g.</i>, alcohol and tobacco). Brackets have been placed around this phrase given that some countries use different terminology to describe the tax placed on such goods, and further discussion is needed.</p> <p>Added "import" to clarify that it is "import licensing" requirements that are being discussed.</p> <p>Deleted "regulatory" to avoid suggesting that the requirements need to be in "regulations." Exception should cover goods that are regulated with special requirements such as excise taxes or licensing, even if the requirement is in a law. [NB: The earlier "regulatory requirements" was referred to the nature of the requirement, and was not intended to refer just to "regulations," so this is not a substantive change. Rather, it is intended to remove a potential ambiguity.]</p> <p>Added a comma after "duties or taxes" and deleted "both" for general clean-up.</p>

Proposed revised text, same as above, provided for readability.

7.1 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.¹ 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 ~~procedures~~ **treatment** described in paragraphs 7.2 ~~(a) – [(f)]~~ to its expedited shipments:

- (a) Provide adequate infrastructure [and reimbursement of customs-related expenses² to allow customs to process its expedited shipments], in cases where the applicant fulfils 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 ~~customs procedures~~ **treatment described** in paragraph 7.2 ~~(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.]

(g) Alt

comply with other conditions directly related to the effective enforcement of the Member's laws, regulations and procedural requirements, that specifically relate to providing the treatment described in paragraphs 7.2 ~~(a) – [(f)]~~.

- ~~h. register with relevant authorities within the customs territory subject to the domestic legislation;~~
- ~~i. fulfil the obligations of visual examination of goods in receipt thereof for the purpose of trade security;~~
- ~~j. actively report suspicious information to the customs to ensure the compliance with relevant laws and regulations; and~~
- ~~k. assume liability to customs for the goods in the same manner as if it is the sole carrier.]~~

¹ 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.

² Consider reimbursement of customs-related expenses at non-dedicated facilities.

7.2 Subject to paragraphs 7.1 and 7.3³, the ~~expedited release~~ procedures allowing for expedited release 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 shipment⁴;
- (b) Minimize the documentation required for the release of expedited shipments, [as appropriate], [including, to the extent possible, providing for release based on a single submission of information on all goods of *de minimis* value in the expedited shipments;]
- (c) Provide for expedited shipments to be released under normal circumstances within [[3][6][24] hours][a reasonable period of time] [consistent with national rules and procedures] after arrival, provided the information required for release has been submitted;
- [(d) Apply Be available to goods {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,⁵] 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]~~⁶.]

{7.3 Nothing in ~~these provisions~~ this Article shall affect the right of a Member to examine, detain, seize, confiscate or refuse entry to goods, or to carry out post-clearance audits, including in connection with the use of risk management systems, in a manner not otherwise inconsistent with the Member's WTO rights and obligations, ~~including in connection with the use of risk management systems~~. Further, for goods subject to [excise taxes, or] import licensing or similar regulatory requirements, nothing in ~~these provisions~~ this Article shall prevent a Member from collecting customs duties or taxes, or from requiring, as a condition for release, ~~both~~ the submission of additional information and the fulfilment of non-automatic licensing requirements.}

³ This addition is intended to make clear that the treatment in paragraph 7.2 need not be provided if the conditions in paragraph 7.1 have not been met or, as provided in paragraph 7.3, if authorities consider it necessary to obtain additional information or conduct screening or examine goods. Also, paragraph 7.3 has been modified to confirm that expedited treatment need not be provided to restricted goods.

⁴ This language may be dropped from the proposed article should it be adequately addressed in the context of the proposal on release and clearance.

⁵ This language may be dropped or modified in light of the language used in Article 7.2, release and clearance.

⁶ 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.