

# WORLD TRADE ORGANIZATION

TN/TF/W/160  
22 October 2009

(09-5237)

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## Negotiating Group on Trade Facilitation

### COMMENTS AND TEXTUAL SUGGESTIONS

This document contains written comments and textual suggestions<sup>1</sup> submitted by Members after the end of the last meeting of the Negotiating Group. Those falling under GATT Articles V and X have been incorporated in the Draft Consolidated Text in JOB(09)/147.

The submissions are from the following Members:

- Brazil
- Chile
- Cuba
- European Communities
- Malaysia

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<sup>1</sup> Comments that have been reflected in the Draft Consolidated Text are shaded in this document.

## SUBMISSION FROM BRAZIL

### ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION

#### 3. Establishment of enquiry points

3.1 "Each Member shall ensure that at least one or more enquiry points exist(s)."

Counterproposal: "Each Member shall establish one or more enquiry points which should be issue specific whenever possible."

### ARTICLE 3: ADVANCE RULINGS

#### 1. Provision of Advance Rulings

1.1 "A Member shall, in a time bound manner, issue an advance ruling to an applicant submitting a written request which contains all necessary information."

Counterproposal: "A Member shall, in a time bound manner, issue an advance ruling to applicants with legal representation in the Member concerned submitting a written request which contains all necessary information."

### ARTICLE 4: APPEAL PROCEDURES

#### 4. Appeal Mechanism in a Customs Union

General comment: Brazil considers that provisions on appeal should apply to all Members, without making specific reference to customs unions.

2.1 "There shall be a mechanism for redress of adverse findings of inspection authorities, in particular for inspection decision relating to food items, at the import points of a customs union."

Counterproposal: "There shall be a mechanism for redress of adverse findings of inspection authorities at import points."

2.1 "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 shall be heard and decided at the customs union level.

2.1 Such appellate decisions shall be binding on the inspection authorities of all member states of a customs union."

Counterproposal: Delete both sentences.

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

**3. Test Procedures**

- 3.1 (d) "For a customs union, the results of a confirmatory test carried out in one member state of a customs union shall be valid for and accepted in all other member states of the customs union."

Counterproposal: Delete sentence

**ARTICLE 6: FREEDOM OF TRANSIT**

**2. Basic Freedom of Transit**

- 2.1 "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."

Counterproposal: "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, providing for exceptions set out in bilateral or plurilateral agreements."

## SUBMISSION FROM CHILE

### ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION

#### 1. Publication

1.1 [In meeting its obligation under paragraph 1 of Article X of GATT 1994, [[a][each]] Member shall [promptly] publish [[the following information][its trade related [legislation][rules, regulations] and procedures via officially designated sources]] in a non-discriminatory and convenient manner, in order to enable [[interested parties][governments and traders]] to become acquainted with them, [including procedures carried out by third parties on behalf of the government] [inter alia]: [Its]

1.1 (c) General rules for the [[classification or the valuation][customs valuation, classification, [origin]]] of products for customs purposes [as well as examples of such valuations and classifications];

#### 2. Internet Publication/Establishment of Official Website

2.1 (a) [A full and precise] description of] its importation, exportation and transit procedures [that informs traders of the practical steps needed to import and export, and for transit .][including appeal procedures];

### ARTICLE 2: PRIOR PUBLICATION AND CONSULTATION

#### 2. Prior Consultation and Commenting on New and Amended Rules

2.2 Members [shall] [where possible] ensure that new or amended trade-related [legislation] [rules, regulations] and procedures be published on the national website [at least X days] before its entry into force so that the interested parties shall be able to submit their comments on the [legislation] [rules and regulations] and take necessary measures for the adaptation. [This provision shall not apply except in cases of urgency.] [Exceptions to this provision are the legislation requiring urgency [[and cases where publication in advance [may distort market conditions] [will unduly impede the pursuit of legitimate policy objectives.]]]

### ARTICLE 3: ADVANCE RULINGS

#### 1. Provision of Advance Rulings

1.1 [A Member shall issue [[in a time bound manner][in a maximum period of 180 days]] an advance ruling to [[an applicant][applicants with legal representation in the Member concerned]] submitting a written request which contains all necessary information. A Member that declines to issue an advance ruling shall promptly notify the applicant in writing [setting out the relevant facts and] the basis for its [[response][decision]].

[Each Member shall maintain or set up an Authority for [Advance Rulings for the purpose of] issuing, [in a time bound manner,] an advance ruling to an applicant upon submission of a written application which contains all necessary information. The Advance Ruling Authority that declines to issue an advance ruling shall promptly inform the applicant in writing, setting out the relevant facts and the basis for its decision.]

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

### 3. Test Procedures

- [3.1 (a) In case of the first test of a sample having shown an adverse finding, each Member conducting such a test ~~[[shall][may]]~~ grant the concerned importer or the exporter or their authorized agent the right to a second confirmatory test.
- (b) A clear procedure shall be laid down for such a confirmatory test including a validated test method.
- (c) (A list of accredited laboratories shall be published where confirmatory tests can be carried out.
- [(d) For a customs union, the results of a confirmatory test carried out in one member state of a customs union shall be valid for and be accepted in all other member states of the customs union.]]

## ARTICLE 6: FREEDOM OF TRANSIT

### 4. Disciplines on Fees and Charges

#### 4.1 Publication of Fees and Charges:

- [(a) *Publication:* Members shall publish promptly information on [all] charges [imposed in respect of traffic in transit]. 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, [in one of the three official WTO languages,] via an officially designated medium, and to the extent practicable, an official website.]

### 5. Disciplines on Transit Formalities and Documentation Requirements

#### 5.1 Publication:

- [(a) *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[, in one of the three official WTO languages,] via an officially designated source, such as the official gazette, the official journal or an official web-site.]

## SUBMISSION FROM CUBA

### Comments and counterproposals with which Cuba agrees:

- **Comment G7, counterproposal 7:** "Revise transit aspect to reflect that transit is exempted from duties".
- **Comment G46, counterproposal 6:** Delete "or their drafts".
- **Comment G54, counterproposal 4:** Clarify that "interested parties" refers only to parties that are located within the territory of a Member (as opposed to that of other Members). Although we disagree with holding public consultations on new or amended rules, in the event that this requirement should be agreed, consultations at national level would be the most appropriate (this is for your information).
- **Comment n91, counterproposal 35:** Eliminate lit. (b), (c) and (d) and limit coverage to (a) (we only want advance rulings concerning the classification of goods).
- **Comment G205, counterproposal 7:** Add more flexibility, recognizing that some countries do not have guarantee systems.
- **Comment G206, counterproposal 8:** Incorporate flexible language allowing countries to apply their national practices, taking into account that not all countries apply guarantees and use other instruments.
- **Comment G207, counterproposal 9:** Ensure right of a Member government to collect duty in cash.
- **Comment G245, counterproposal 1:** Modify language. Do not make the use of financial guarantees a requirement.
- **Comments n360 and 361, counterproposals 2 and 3 respectively:** Call for progressive voluntary elimination of pre-shipment inspection rather than mandatory one with a deadline. (Cuba and other developing countries use pre-shipment inspection, so the phrase "to the extent possible" should be included.)
- **Comments n372 and 373, counterproposals 4 and 5 respectively:** Information should be exchanged to the extent possible, in accordance with Cuba's position expressed in TN/TF/W/123/Rev.2.

### Comments and counterproposals that we wish to include:

(Please note that the comments to TN/TF/W/133/Rev.3 were added to the draft consolidated text. Comments on GATT Article VIII proposals (TN/TF/W/138/Rev.2) will be added after the next NGTF meeting.)

- **TN/TF/W/138/Rev.2:** As regards the single window: Add the phrase "to the extent possible". Take into account the cost-related impact of such a proposal, meaning that it should be a best endeavour commitment, and provide for gradual implementation of this provision, for which technical, technological, financial and training-related assistance will be

needed. This likewise applies to document TN/TF/W/133/Rev.3, which also addresses the single window issue.

- **TN/TF/W/133/Rev.3:** Following on from paragraph 6, add the following new paragraph: "Members recognize that the general and security exceptions provided for in GATT Articles XX and XXI shall be fully applicable, but for valid reasons not constituting a disguised restriction on international trade".

**TN/TF/W/133/Rev.3:** Improved cooperation and coordination, lit. (a), between authorities and the private sector: Add "to the extent possible" in order to provide flexibility for the developing countries.

**SUBMISSION FROM THE EUROPEAN COMMUNITIES**

**ARTICLE 6: FREEDOM OF TRANSIT**

**7. Regional Transit Agreements or Arrangements**

Keep paragraph 7.1(c) in brackets so as to read:

[(c) Mutually recognize authorized trader schemes;]

## SUBMISSION FROM MALAYSIA

### ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION

#### 1. Publication

1.1 In meeting its obligation under paragraph 1 of Article X of GATT 1994, a Member [to the extent possible] ~~[shall promptly]~~ publish, in a non-discriminatory and convenient manner, in order to enable interested parties to become acquainted with them, inter alia:

- (c) General rules for customs valuation, classification of products for customs purposes ~~[as well as examples of such valuations and classifications];~~

#### 2. Internet Publication/Establishment of Official Website

2.1 Recognizing that electronic means of publication are usually the most cost effective and easily accessible format for publication, each Member [to the extent possible] shall make available and keep current on one or more publicly accessible official websites:

- ~~[(e) — Relevant trade related legislation, as well as electronic links to forms and documents as provided for in subparagraph 2.1 (b).]~~

#### 3. Establishment of Enquiry Points

[3.1 Each Member shall ensure that at least one or more enquiry points exist(s). Enquiry points shall answer all reasonable enquiries on the issues covered by paragraph 1 from interested parties as well as provide the required forms referred to in paragraph 1(a).

3.2 If a Member requires payment of a fee for enquiries, such fees shall not exceed the [approximate] cost of the service rendered.

3.3. The enquiry points shall reply to enquiries within a time period set by each individual Member.]

~~[3.5 Developing countries which are members of a customs union or involved in a regional integration process shall have the options of establishing one or more enquiry points at the regional level. The existence of a notified regional enquiry points would satisfy the requirements for the existence of a national enquiry points under this current provision.]~~

#### 4. Notification

4.1 Each Member shall notify [the Trade Facilitation Committee of] :

- (a) [Where the items in paragraph 1.1(a) to (h) have been published, and in case of publications in more than one place, ~~[the most conveniently accessible place and most likely publication that will enable interested parties to become acquainted with the materials; and~~
- (b) The URLs of website[s] referred to in paragraph 2, as well as the contact information of the enquiry points referred to in paragraph 5.]

## ARTICLE 2: PRIOR PUBLICATION AND CONSULTATION

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

1.1 Except in urgent circumstances and other limited exceptions ~~[which are made public]~~, Members shall ~~[where possible and when deemed necessary]~~, within the competence of their respective government, that a reasonable interval is provided between the publication of new or amended laws, regulations and administrative rulings of general application, ~~[or their drafts or summaries]~~, and their entry into force in such a manner as to allow [interested parties] [traders] to become acquainted with and well prepared for the compliance with them.

### 2. ~~[Prior] Consultation and Commenting on New and Amended Rules [(and Information on Policy Objectives Sought)]~~

2.1 Except in urgent circumstances and other exceptions, Members within the competence of their respective government, ~~[where possible provide]~~ appropriate opportunities to interested parties within their territories to comment on proposed introduction or amendment of trade-related laws, regulations and administrative rulings of general application.

2.2 Members ~~[where possible]~~, ensure that new or amended trade-related legislation and procedures be published on the [national] websites before its entry into force so that interested parties may be able to submit their comments on the legislation ~~[and take necessary measures for the adaptation.]~~ [This provision shall not apply in cases of urgency. ]

### 3. Regular Consultation

3.1 Members shall ~~[when deemed necessary]~~ hold regular consultations between border agencies and traders within their territories."

## ARTICLE 3: ADVANCE RULINGS

### 1. Provision of Advance Rulings

1.1 ~~[A Member shall, in a time bound manner [in a maximum of 180 days], ruling to an applicant submitting a written request which contains all necessary information. A Member's that declines to issue an advance ruling shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.~~

~~Each Member shall maintain or set up a Authority for the purpose of issuing in a time bound manner, an advance ruling to applicant upon submission of a written applications which contains all necessary information. The Advance Ruling Authority that declines to issue an advance ruling shall promptly inform the applicant in writing, setting out the relevant facts and the basis for its decision.~~

1.2 A Member shall apply an advance ruling for a reasonable period of time after its issuance, unless the facts or circumstances supporting the original ruling have changed. Where a Member revokes or modifies a ruling it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision.]

1.3 A Member shall publish, at a minimum:

- (a) The [indicative] time period by which it ~~[its Advance Ruling Authority]~~ will issue an advance ruling;

1.4 A Member ~~[shall]~~ [may] provide, upon the request of the applicant, for a review by the issuing authority of the advance ruling or the decision to revoke or modify the advance ruling. In cases where the information presented as the basis for the advance ruling was incorrect, the competent authority shall revoke or modify the ruling with retroactive.

1.5 A Member shall endeavour to make available information ~~[publicly]~~ on advance rulings which it considers to be of significant interest to other traders, taking into account the need to protect commercially confidential information.

1.6 Definitions:

[An "advance ruling" is a written decision made by a Member, that is provided to an applicant prior to the importation of the good concerned into its territory that sets forth the treatment the Member where possible or applicable shall provide the good in connection with an importation covered by the application, with regard to:

~~An advance ruling is written decision provided by the advance Ruling Authority to the applicant prior to the importation of the goods concerned into its territory that sets forth the treatment the Member shall provide the good at time of importation~~

- (a) The good's tariff classification [including] the applied duty rate for the product ~~[or, where appropriate, the way the applied duty rate for a product is calculated];~~
- ~~(b) The application of the Member's requirements for duty drawback, deferral, or other relief from customs duties;~~
- ~~(c) The application of the Member's requirements for quotas, including tariff quotas;~~
- ~~(d) The origin of the good;]~~
- (f) Additional matters on which a Member considers ~~[[itself capable][appropriate]]~~ to issue an advance ruling;
- (g) fees and charges that will be applied ~~[or, where appropriate, information on the way such fees and charges are calculated.]~~

[An "applicant" is an importer, exporter or a representative thereof, who meets the criteria specified in the national legislation of the importing Member.]

## ARTICLE 4: APPEAL PROCEDURES

### 1. Right of Appeal

1.1 Each Member ~~[shall]~~ [may] provide that any person to whom customs or another relevant border agency issues a decision has the right, within its territory, without penalty, to:

- (a) ~~[Administrative appeal independent of the employee or office of the agency which issued the decision; or]~~

1.3 Transparency: Members ~~[shall]~~ [may] ensure that appeal procedures are carried out in a non-discriminatory manner, and that information concerning such procedures is made available to traders in such a manner as defined in Article [X]. Traders ~~[shall]~~ [may] be allowed to be represented at all

stages of appeal procedures by independent legal counsel [subject to the national legislation of a Member].

1.4 Set Period: Members ~~shall~~ [may] ensure that customs and other relevant border agencies adopt and maintain set periods for their review and correction of decisions under the appeal procedures. The appellant shall have the right, for procedures mentioned in paragraph 1(a), in a case of undue delay, to bring the case to the next higher instance subject to the national legislation of a Member.

1.5 Opportunities To Receive Information And Grievances: Members ~~shall~~ [may] ensure that customs and other relevant border agencies afford opportunities for traders, upon request, to receive information concerning the administrative decision such as the reasoning of the decision including applied laws and regulations.

1.6 Members ~~shall~~ [may] ensure that customs and other relevant border agencies receive grievances from traders concerning the administrative decision they are addressed to".

## **ARTICLE 6: FREEDOM OF TRANSIT**

### **1. Scope**

1.1 *Definition of traffic in transit:* Goods – include means of transport (including ~~those moved via fixed infrastructure, inter alia pipelines and electricity grids~~) 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, 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 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.

1.4 Consignments which are being transhipped shall ~~not~~ be subject to transit procedures.

### **2. Basic freedom of transit**

2.1 There shall be freedom of transit through the territory of each Member via ~~the routes most convenient~~ [designated routes] 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~~.

### **3. Regulations, Restrictions and Non-Discrimination**

3.1 Regulation on Traffic in Transit: [All regulation] imposed by ~~contracting parties~~ [contracting parties] on traffic in transit to or from the territories of other ~~contracting parties~~ [contracting parties] shall be reasonable, having regard to the conditions of the traffic.

#### 4. Disciplines on Fees and Charges

##### 4.1 Publication of Fees and Charges:

- (a) *Publication:* Members shall [to the extent possible] publish information on charges. This information shall include the reason for the charge, the responsible authority, the charges that will be applied, and how payment is to be made. The information [to the extent possible] shall be published via an officially designated medium, and to the extent practicable, on one or more official websites.
- (b) *Prior publication:* Except in urgent circumstances and other limited exceptions [~~which are made public~~], Members shall [where possible and when deemed necessary], [provide] [~~shall accord~~] an adequate time period between the publication of information on new or amended charges and their entry into force.

##### 4.2 Periodic Review of Fees and Charges:

- (a) *Periodic review:* Each Member [where possible] shall [periodically] review its charges with a view to reducing their number and diversity [to ensure that they are in line with WTO commitments and where appropriate] [whenever deemed necessary].

#### 5. Disciplines on Transit Formalities and Documentation Requirements

##### 5.1 Publication:

- (a) *Publication:* Each Member [where possible] 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.
- (b) *Prior publication:* Except in urgent circumstances and other limited exceptions, [~~which are made public~~] [where possible and when deemed necessary], Members shall [~~accord~~] [provide] an adequate time period between the publication of new or amended transit formalities and documentation requirements and their entry into force.

##### 5.2 [Periodic] Review:

- (a) Each Member [where possible] 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 [whenever deemed necessary]. Such reviews shall allow for the participation of all interested parties and, as appropriate, may be held at a regional or international level.

##### 5.3 Reduction/Limitation/Simplification/Adjustment:

- (a) 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[, except in cases of failure to comply with applicable laws and regulations,] and [where possible] 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:

- (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 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.]~~

## 6. Bonded Transport Regime and Guarantees

6.1 Where a Member operates a guarantee system to avoid inland diversion of goods in transit, any person required to provide security ~~[may] [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:

6.3 ~~[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.]~~

## 7. Regional Transit Agreements or Arrangements

7.1 Members ~~[may] [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, contracting parties to regional transit agreements or arrangements shall strive to:

## 8. Improved Coordination and Cooperation

8.1 Amongst Authorities: Members shall ~~[endeavour to]~~ 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.]~~

8.2 Between Authorities and the Private Sector: Members shall ~~[where possible]~~, provide opportunities for interested traders or their representatives ~~[within their territories]~~ 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.

