

Negotiating Group on Trade Facilitation

COMMENTS AND TEXTUAL SUGGESTIONS

This document contains written comments and textual suggestions¹ on proposals falling under GATT Articles V, VIII and X as well as special and differential treatment that were submitted by Members after the meeting of the Negotiating Group on Trade Facilitation held November 9-13, 2009. These comments and suggestions have been incorporated in the trade facilitation Draft Consolidated Negotiating Text found in document TN/TF/W/165.

Note that the number sequence of the articles, headings and subheadings is derived from TN/TF/W/165 in order to facilitate cross-referencing of these proposals with the Draft Consolidated Negotiating Text.

The submissions are from the following Members:

- Benin
- Cambodia
- Chile
- Ecuador
- Egypt
- European Union
- Guatemala
- Hong Kong
- India
- Israel
- Korea
- Mexico
- Morocco
- Namibia
- Nigeria
- Norway
- Philippines
- Singapore
- Sudan²
- Switzerland
- Tanzania on behalf of the LDC Group
- United States
- Viet Nam
- Zambia

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

² Comments from WTO Observer Countries are not included in the Draft Consolidated Text.

SUBMISSION FROM BENIN

ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION

6. Elimination of Pre-shipment Inspection

6.1 Without prejudice to paragraphs 2 and 3, Members shall not require the use of pre-shipment inspections or their equivalent.

Counterproposal: Without prejudice to paragraphs 2 and 3, Members shall strive to not require the mandatory use of pre-shipment inspections or their equivalent.

6.2 Developing-country Members shall eliminate any requirements to use pre-shipment inspections or their equivalent not later than [X] years from the entry into force of this commitment.

Counterproposal: Developing-country Members shall, to the extent possible, strive to progressively eliminate any mandatory requirements to use pre-shipment inspections of merchandise or their equivalent not later than [X] years from the entry into force of this agreement.

6.3 Least-developed country Members shall eliminate any requirements to use pre-shipment inspections or their equivalent not later than [Y] years from the entry into force of this commitment.

Counterproposal: Least-developed country Members shall, to the extent possible, strive to progressively eliminate any mandatory requirements to use pre-shipment inspections of merchandise or their equivalent not later than [X] years from the entry into force of this agreement.

6.4 From the entry into force of this commitment, Members shall not introduce or apply any new requirements to use pre-shipment inspections or their equivalent.

Counterproposal: From the entry into force of this agreement, Members shall not introduce or apply any new requirements to make mandatory the use of pre-shipment inspections of merchandise or their equivalent.

SUBMISSION FROM CAMBODIA

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

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*]:

- (a) [the possibility of periodic [declarations and] payment of duties];

Counterproposal: "This facility is called "Deferred payment" when some traders are allowed to clear goods and pay duty and taxes at the defined later stage."

- (d) [more] rapid release time.

Counterproposal: "Proposal to add after release time the words "including, where appropriate, the clearance at trader's premise". Other option is to combine (b) and (d) to read as: more rapid release time byway of reduced physical examination, and where appropriate, clearance at trader's premise".

7. Expedited Shipments

7.1 Each Member shall 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:

Counterproposal: Propose to delete "and selection" as selection is the act or exercise of customs control.

- (b) submit the information necessary for release in advance of the arrival of an expedited shipment;

Counterproposal: Propose to replace "release" with "processing".

- (e) [allow [under normal circumstances] for the release of expedited shipments before and without prejudice to the final determination of the applicable customs duties, taxes and fees owed, if, where so required, the importer provides sufficient guarantee 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;] and

Counterproposal: Proposal after *determination* to add: "and payment".

Counterproposal: Propose to add after *importer* the word "or exporter".

Counterproposal: Propose to add after importation the word "exportation".

7.3 Nothing in these provisions shall prevent a Member from obtaining additional information conducting screenings, or examining goods, where necessary to maintain appropriate border control, including through the use of systems that distinguish between low-risk and high-risk goods. [Further], [for goods subject to licensing or similar regulatory requirements, nothing in this proposal

shall prevent a Member [from assessing customs duties or taxes or,] from requiring as a condition for release, [both] the submission of information additional to that in paragraph 7.2 (b) [and the fulfilment of non-automatic licensing requirements]. [Further, a Member is not obliged to release the goods where its import requirements have not been complied with.]]

Counterproposal: Propose wording: "Nothing in these provisions shall prevent a Member from obtaining additional information, applying other measures necessary to maintain appropriate border control, including the use of risk management systems".

Counterproposal: Propose to replace the word "*proposal*" with "provisions".

ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION

4. Acceptance of Commercially Available Information and of Copies

Counterproposal: Proposal to add new 4.8 that reads: "Nothing in these provisions shall prevent a Member from requiring original documents or data in the course of exercising post entry audit."

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 [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.]

Counterproposal: Propose to insert after "exporter" "re-export the goods to the 3rd party if the later agrees to accept the goods in question".

Counterproposal: Propose new 10.2 that reads: "In the case of return of prohibited and restricted goods, the exporting Member shall accept the returned goods".

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

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

- (b) [If requested, provide documents [[filed][submitted]] [[in support of][with]] a [[goods][import/export]] declaration, such as commercial invoice, packing list, certificate of origin and bill of lading, in the form in which these are filed, whether paper or electronic;]

Counterproposal: Delete the words: "if requested".

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]].

Counterproposal: Propose to replace the word "*another*" with "the same".

(p) Nothing in this proposal shall be construed to prevent a Member from entering into a bilateral arrangement respecting sharing of customs information. [In the case of an inconsistency between a provision of such an agreement and this proposal, that agreement shall prevail to the extent of the inconsistency].

Counterproposal: After "into" propose to insert the word "or maintaining".

Counterproposal: Propose to add after the word bilateral the word "regional or international".

SUBMISSION FROM CHILE

ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION

[7. Use of Customs [[Brokers][Broking Company or Agency]]

[7.1 Without prejudice to paragraph 7.2, Members shall [endeavour to] not require the mandatory use of customs brokers.]

[7.4 Developing country Members shall eliminate any requirements [[to use][for mandatory use of]] customs brokers not later than [X] years from the entry into force of this commitment. Least-developed country Members shall eliminate any requirements [[to use][for mandatory use of]] customs brokers not later than [Y] years from the entry into force of this commitment.]

[7.5 Members, if and when licensing customs brokers, shall apply licensing rules that are transparent, [non-discriminatory] and reasonable, [having regard to the nature of the tasks which they are licensed to carry out].]

[7.6 This commitment shall not undermine a Member's rights and obligations under the GATS.]]

SUBMISSION FROM ECUADOR

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

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

2.1 Each Member shall adopt or maintain procedures authorizing an importer to remove goods from customs' control prior to the final determination and payment of customs duties, taxes and fees when these are not determined at or prior to arrival.

Counterproposal: Each Member shall adopt or maintain procedures authorizing an importer to remove goods from customs' control when there is dispute between the customs and the importer in determining the payment of duties, taxes and charges."

4. Post-clearance Audit (PCA)

4.2 Members shall conduct PCA through methods of regular audit and targeted audit to identify the risk and assess the compliance of traders.

Counterproposal: Delete.

4.4 Members shall adopt the relevant international standards and instruments as a basis for PCA, where such standards and instruments exist.

Counterproposal: Include "To the extent possible" after "Members shall adopt"

6. Authorized Traders

6.4 Additional facilitation measures may [also] include:

Counterproposal: Delete

7. Expedited Shipments

Comment: In the Spanish version, replace "envíos urgentes" with "envíos rápidos" in the entire proposal.

7.2 Subject to paragraphs 1 and 3, the expedited release procedures shall:

- (c) provide for expedited shipments to be released under normal circumstances within 3 hours after arrival, provided the information necessary for release has been submitted;

Counterproposal: Replace "within 3 hours" by "reasonable period".

- (d) apply without regard to weight or value;

Counterproposal: Delete.

- (e) [allow for the release of expedited shipments before and without prejudice to the final determination of the applicable customs duties, taxes, and fees owed, if, where so required, the importer provides sufficient guarantee 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 shipment;]

Counterproposal: Delete.

ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION

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.

Counterproposal: Incorporate the following sentence at the end of the paragraph: "Copies will be accepted only for processing pre-arrival clearance and not for the final release of goods."

SUBMISSION FROM EGYPT

ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION

7. [Use of Customs [[Brokers]][Broking Company or Agency]]

Counterproposal: Add "Members should be given flexibility to determine the criteria which apply when licensing customs brokers."

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, an option shall first be given to the exporter to return the rejected goods to the exporter; only upon failure by the exporter to exercise this option within a reasonable period of time, can a different course of action, including destruction of goods, be considered by the appropriate authority of the importing Member.

Counterproposal: In case of rejection of a consignment on account of failure to meet certain standards, an option shall first be given to re-export the rejected goods; only upon failure to exercise this option within a reasonable period of time, a different course of action, including destruction of goods can be considered by the appropriate authority of the importing Member.

SUBMISSION FROM THE EUROPEAN UNION

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

3. Risk Assessment/Analysis

- 3.1 Replace "harmonized" with "common".
- 3.2 Add "facilitation of trade" after "for the purposes of ", then delete the rest of sentence.
- 3.8 Put the definitions in brackets.
- 3.10 Add "on the basis of risk management" after "inspections on", and delete "high risk goods ...low risk goods".

7. Expedited Shipments

- 7.1 (b) Move words "the information necessary for release" to the end of the sentence.

SUBMISSION FROM GUATEMALA

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

Support for elimination of "consolidating them and"

Support for insertion at the end of the sentence: "as appropriate".

(g) Each Member shall periodically review its fees and charges [to ensure that they are in line with WTO commitments and] [with a view] to [consolidating them and] reducing their number and diversity, [[where practicable][as appropriate]].]

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

1. Pre-arrival Processing

TN/TF/W/159

Paragraph 4: Eliminate the words "immediately" and "or as rapidly"

1.4 With respect to vessels subject to procedures for the declaration (by manifest or similar document) of the vessel and its cargo, such procedures [[will][shall]] be applied [immediately] prior to the vessels' arrival, [or as rapidly] as not to unduly delay the vessel and the unloading of its cargo.

Add the following paragraph:

1.5 Members shall provide for advance electronic lodging of documents in electronic format and for pre-arrival processing of such documents prior to arrival.

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

TN/TF/W/136/Rev.2

Paragraph 2.2 add at the end of the paragraph the following language:

Each Member may have an overall guarantee which would ensure compliance with the various transactions.

4. Post-clearance Audit (PCA)

TN/TF/W/134 and Add. 1

4.1 Eliminate "account books" insert instead " based on accounting records ".

2. Establishment and Publication of Average Release [and Clearance] Times

TN/TF/W/139/Rev. 1 and Rev.1/Add.1

Third bullet eliminate the word "significant" and insert after goods counterproposal 7: "with respect to the average time published by the Member concerned".

[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.]

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

1. Cooperation Mechanism for Customs Compliance

Text to be inserted in proposal **TN/TF/W/123/Rev.3 Customs Cooperation**

Insert in paragraph 5, the following sub-paragraph:

- [e) Disclose prohibited or restricted information in line with national legislation.]**

SUBMISSION FROM HONG KONG

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

6. Authorized Traders

6.1 [In addition to the facilitation measures provided to all [operators] set out in this Agreement,] Members shall [may] [as far as possible endeavour to] apply [further] simplified import and export formalities for [economic operators] [within its customs territory], including SME's, which meet [[specific criteria related to compliance with customs [and other border agencies] requirements ("authorized traders")][criteria specified by [[the customs][domestic legislation]]]] [except where its imported goods are released instantly on arrival]:

ARTICLE 12: [TRANSITIONAL PROVISIONS FOR DEVELOPING COUNTRY MEMBERS AND LEAST DEVELOPED COUNTRY MEMBERS]

7 [[Use of the Early Warning Mechanism][Extension for the Implementation Period of Provisions under Categories B and C]]

7.1 (4th Paragraph)

The request for an additional period of time shall be submitted to the Trade Facilitation Committee [X] months before the implementation date listed for such provisions or sub-parts of provisions and shall include the specific period of time to extend the transitional period of implementation. The first extension shall be granted automatically, when not exceeding [X] months. If the period of the extension sought in the first request exceeds "X" months, it should be dealt with in the same manner as with subsequent requests.

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

2. Cooperation Mechanism for Customs Compliance

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.

SUBMISSION FROM INDIA

ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION

1. Publication

1.1 In the third line, the words "officially designated sources", may be changed to read "officially designated/accepted sources".

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 (a) The words "service provided" may be changed to read "services rendered".

1.1 (b) The words "service rendered" may be changed to read "services rendered".

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

1. Pre-arrival Processing

1.1 Alternative text: words "custom duties" may be changed to read "customs duties".

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

2.2 The sentence "The Guarantee shall not represent an indirect protection to domestic products or taxation of imports for fiscal purposes" may be put in square brackets.

4. Post-clearance Audit (PCA)

4.1 The word "enterprises" may be put in square brackets;

6. Authorized Traders

6.3 (c) The words "single document" may be put in square brackets.

6.3 (e) The word "following" may be replaced by the words "followed by".

ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION

2. Reduction/Limitation of Formalities and Documentation Requirements

2.3 This paragraph may be put in square brackets;

3. Use of International Standards

3.5 (a) Use of International Standards: The words "and may, in order to avoid unnecessary duplication, decide to use the information generated by the procedures, particularly for notification, which are in operation in the relevant international organizations" may be put in square brackets.

3.5 (b) Use of International Standards: The sentence may be redrafted to read: "The TF Committee should, in conjunction with the relevant international organizations, establish a list of international standards, guidelines or recommendations relating to importation, exportation or transit procedures".

5. Single Window/One-time Submission

5.5 Use of international standards as basis of single window schemes: This paragraph may be put in square brackets.

ARTICLE 11: FREEDOM OF TRANSIT

3. Regulations, Restrictions and Non-Discrimination

3.3 Strengthened Non-discrimination

Clause (b) dealing with national treatment may be put in square brackets.

4. Disciplines on Fees and Charges

4.1 Publication of Fees and Charges.

In clause (a), the words "officially designated sources", may be changed to read "officially designated/accepted sources".

SUBMISSION FROM ISRAEL

ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION

2. Internet Publication/Establishment of Official Website

2.1. [Recognizing that electronic means of publication are usually the most cost effective and easily accessible], each Member [to the extent possible] shall make available ~~in one of the three official WTO languages~~ and keep current on one or more [official] publicly accessible [internet] websites [the information indicated below with the corresponding electronic links where appropriate]:

Israel opposes the requirement for the publications to be in one of the three official languages. There is no practical possibility for Members who do not speak one of the official languages of the WTO to publish all required information in another language.

3. Establishment of Enquiry Points

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

Israel accepts this version: Fees and charges, if any, for answering inquiries or for providing forms and documents referred to in paragraph 1.1(a) shall be limited in amount to the approximate cost of the service rendered.

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]] [or when justified by legitimate public policy objectives], Members [shall ensure] [where possible and when deemed necessary [within the competence of their respective government] that a reasonable interval[at least [a minimum [interval] of X days]]] is provided between the publication of new or amended [trade related] laws, and regulations [and administrative rulings of general application], [or their drafts or summaries], and their entry into force [in such a manner as to allow traders [and other interested parties] to become acquainted with [[and well prepared for the compliance with]] [and comply 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 [limited] exceptions [which are made public]]~~ or when justified by legitimate public policy objectives, Members [shall afford], [within the competence of their respective government,] [where possible provide] appropriate opportunities [and a reasonable period] to [[governments and traders and] other interested parties] within their territories to comment on proposed introduction or amendment of trade-related laws and regulations [and administrative rulings] of general application. ~~[Members shall provide information of their policy objectives pursued and allow a reasonable period for interested parties to submit comments.]~~

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.]~~

Israel objects to the inclusion of this sentence. It is unnecessary to set up a special authority for advance ruling.

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] [to the next higher office] of the agency which issued the decision; and[/or]
- (b) Judicial appeal of the decision.

1.3 Transparency: Members shall ~~[may]~~ ensure that [their] appeal procedures [are non-discriminatory] [and] 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 1.1(g)]. 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][indicative periods of time]] [as specified in national legislation] for their review and correction of [their] decisions under the appeal procedures [as specified in national legislation]. [In a case of undue delay under procedures mentioned under subparagraph 1.1(a), the appellant shall have the right 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.

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.

ARTICLE 11: FREEDOM OF TRANSIT

2. Basic freedom of transit

2.1 [There shall be freedom of transit through the territory of each Member [via [[designated routes] [the routes most convenient for international transit]] [for traffic in transit to or from the territory of other WTO Members.] 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 [of vessels or of other] means of transport.][providing for exceptions set out in bilateral or plurilateral agreements.]

Israel can accept to this paragraph subject to security concerns and provided that the Member's right for legitimate security considerations remain.

3.3 Strengthened Non-discrimination:

(b) 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 [or domestic movements of goods] [import-, export-, or][domestic traffic], under like conditions, within the territory of that Member.¹ [This principle refers to like products being transported on the same route under like conditions.]

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.

Israel insists that this sentence be a part of this paragraph.

6. Bonded Transport Regime and Guarantees

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

(a) 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~~] **shall normally be limited to the amount of the customs duties or other charges for which the goods may be liable;**

[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.]

8. Improved Coordination and Cooperation

8.1 Amongst Authorities: Members shall **endeavour to** ensure cooperation and coordination [[between][among]] 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.]]

SUBMISSION FROM KOREA

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

Add the following:

1.18 [If a requesting Member does not treat information received from another Member in accordance with the requirements of this proposal, the requested Member may refuse any further requests for assistance pursuant to this proposal.]

SUBMISSION FROM MEXICO

ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION

3. Use of International Standards

3.1 Members [are encouraged to consider as a reference framework] shall [prefer to use international standards as a framework] [[where practicable][to the extent practicable]] base their importation, exportation [[and][or]] transit [formalities and] procedures on [relevant] international standards or [[parts thereof][guidelines or recommendations where they exist]], except as otherwise provided for in this Agreement.

SUBMISSION FROM MOROCCO

TN/TF/W/136/ Rev.2

Each Member shall adopt or maintain procedures authorizing an importer to remove goods from customs' control prior to the determination and payment of the relevant duties and taxes subject, **apart from (in addition to)** the guarantee covering the amounts due, to a commitment to produce subsequently all of the required documentation.

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

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

2.1 Each Member shall adopt or maintain procedures authorizing an importer to remove goods from customs' control prior to the determination and payment of the relevant duties and taxes subject, **in addition to** the guarantee covering the amounts due, to a commitment to produce subsequently all of the required documentation.

7. Expedited shipments

TN/TF/W/144/Rev.3

7.1 First sentence: "define persons:"

7.2 (d) "apply with respect to the nature of the goods".

ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION

[7. Use of Customs [[Brokers]][Broking Company or Agency]]

TN/TF/W/110

-Point 2: The developing countries and LDCs may notify this commitment under Schedule B.

4. Acceptance of Commercially Available Information and of Copies

TN/TF/W/112

4.1 "And to ensure that all legislative and regulatory requirements in force have been met" instead of "and to ensure that all requirements relating to the application of relevant laws have been complied with"..

TN/TF/W/104

"Keep the proposal and continue with the following text: "Members shall undertake to strengthen cooperation with a view to ensuring the authenticity of any trade document."

ARTICLE 8: CONSULARIZATION

1. Prohibition of Consular Transaction Requirement

1.1 Keep the proposal and continue with the following text: "Members shall undertake to strengthen cooperation to ensure the authenticity of any trade document."

ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION

TN/TF/W/138/Rev.3:

5. Single Window/One-time Submission

5.1 "To all persons involved in international trade procedures". Delete the words "which require them" that follow.

Delete point 4.

ARTICLE 12: TRANSITIONAL PROVISIONS FOR DEVELOPING COUNTRY MEMBERS AND LEAST DEVELOPED COUNTRY MEMBERS

9. [Provision of Technical Assistance, [financial assistance] and Capacity Building]

9.6 "A Technical Assistance Unit shall be established to provide a framework for discussions on S&DT. This unit will also be responsible for establishing procedures for the provision of technical assistance and capacity building, for receiving applications for S&DT, and for examining them and matching S&DT applicants with donor countries".

SUBMISSION FROM NAMIBIA

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

- (e) An adequate time shall be accorded between the publication of information on new or amended fees and charges and their entry into force except when justified by other legitimate public policy objectives.
- (f) New or amended fees and charges shall not be imposed until information on such fees and charges is published and made readily available.

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

1. Pre-arrival Processing

1.4 Proposed to delete (will).

1.5 Proposed to delete (will).

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

2.1 In legislation circumstances each Member shall adopt or maintain procedures authorizing an importer or its agent where appropriate to ask for the release of goods from Customs control prior to the final determination and payment of duties, taxes and fees when these have to be paid but are not determined at or prior to arrival where it is decided that neither examination, physical inspection nor any other submission is required.

2.2 Delete [require].

3. Risk Assessment Analysis

3.2 Delete [or random control]

Delete the word [higher] and [lower]

4. Post Clearance Audit

4.2 Delete [may] and [verify]

4.3 The outcome of PCA shall be timely communicated to the relevant Customs Officers involve in clearance procedure to take further action or risk analysis. The most compliance traders or low risk commodities shall be granted simplest and fastest clearance treatment by Customs.

5. Establishment and Publication of Average Release and Clearance Times

5.1 Delete [may]

5.3 In the case of a significant delay in the Customs clearance of goods with respect to the average time published by the Member concerned Members shall 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.

6. Authorized Traders

6.1 In addition to the facilitation measures provided to all operators said out in this agreement Members shall apply simplified import, export and transit formalities for economic operators within its Customs territory; including SME's which meet specific criteria related to compliance with Customs and other border agency requirements.

6.2. Delete [may].

6.3. Delete [may] and [but].

(b) Reduced physical inspections in all but exceptional circumstances.

6.4. Delete [f] already covered under [b].

6.7 Delete [may] and [grant of].

6.8 Delete [draw upon relevant international standards and instruments].

6.9 Delete [in as much as possible] (so as to ensure consistent appliance).

7. Expedited Shipments

7.1 Delete [and selection].

(c) Delete [articles]

7.2 (c) Provide for expedited shipments to be released in a time bound manner consistent with their national procedures after arrival provided the required information for release has been submitted

ARTICLE 9: BORDER AGENCY COOPERATION

1. Coordination of activities and requirements of all Border Agencies

1.2. (a) Delete [coordinate] [cargo clearance procedures] (clearance is part of Customs procedures)

ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION

3. Use of International Standards

3.1 Members shall base their importation, exportation and transit procedures on relevant framework of international standards except as otherwise provided for in this Agreement.

3.2. Members may use regional standards whenever they are compatible with international standards for the purpose of facilitating international trade.

3.5 (a)[(b)] Replace the word "use" with "application".

4. Acceptance of Commercially Available Information and of Copies

4.1 Customs and other border agencies shall require only those documents/data necessary for the release and clearance of goods and to ensure that all regulatory and legislative requirements relating to the application of relevant laws have been complied with.

TN/TF/W/123/Rev. 2

Namibia do not agree with counterproposal 2 and 10 based on the fact that within the SACU Union we do exchange documents of customs clearance. Particularly were the element of refunds is involved. There is a tendency of declaring the correct value in the exporting country and undervaluation in the importing country. In the event that there is any doubt or query, clearance documents as well as proof of payment is then requested from the Member countries.

SUBMISSION FROM NIGERIA

1. The title CUSTOMS COOPERATION is simple and all embracing. Cooperation could cover many areas of strategic importance to Customs administrations. So, whether we add Customs matters, or for Trade Compliance or Trade Facilitation and Compliance as suggested by some Members, effective customs cooperation amongst Members should address all the issues related to those suggested by Members during the discussions. The title should therefore be retained as CUSTOMS COOPERATION.

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

2. Counterproposal 20 (JOB(09)/71/Rev.2) providing for "60" days instead of "90" days in the original text in paragraph 4.d) page 56 is good because it enhances trade facilitation.

1. Cooperation Mechanism for Customs Compliance

(d) Provide the information [to the extent possible,] [within a period of [[60][90][150]] days from the date of receipt of the request.]

3. Counterproposal (JOB(09)/71/Rev.2) 28 page 58 will encourage customs cooperation based on mutual protection of national interests where the requesting Member can freely obtain information and the requested Member can feel secured that the information it has given will not be used carelessly by the requesting Member, while ensuring judicial protection. Members may be unwilling to cooperate in the exchange of information when they feel unsecured that confidential information could slip into an unauthorized third party. A control mechanism to protect the national interest of the requested Member will be reassuring and enhance the desired cooperation.

1.6 (Second alternative)

[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.]

4. Counterproposal 40 (JOB(09)/71/Rev.2), page 60, which provides as follows: "Include possibility for a request to be made after the two years when a country's legislation allows for it" is preferred to the original text which provides that "request for information shall not be made later than two years after the importation or exportation of goods". Nigeria's legislation allows for request for documents seven years after the original transaction.

1.9 The request for information [or documents] shall not be made later than [[one year][two years][four years][the time required by the national legislation of the Member requested]] after the importation or exportation of the goods.

4. Counterproposal 44 (JOB(09)/71/Rev.2), page 60, suggests that the original text paragraph 10, be deleted. It is a good counterproposal because the original text is restrictive and offensive to Trade Facilitation. A Member should not be restricted to a specific number of request within a time limit.

[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.]

SUBMISSION FROM NORWAY

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

1. Cooperation Mechanism for Customs Compliance

1.4 (d) Add "[150]" to the two options of 90 and 60 days.

1.6 A new alternative text to the two alternatives already set up in the document, namely:

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 and shall be granted at least the same level of protection provided under the laws and regulations of 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 with the intention to disclose it to any third party, the requesting Member must ask the requested Member for specific authorization. The requested Member shall consider whether the confidentiality of the information required will be taken care of before providing such formation. The requested Member shall deny providing such information if its laws and regulations will be offended by providing the information.

SUBMISSION FROM THE PHILIPPINES

ARTICLE 14: INSTITUTIONAL ARRANGEMENTS

1.7 The Committee shall review the operation and implementation of this Agreement [X] years [from the entry into force of this agreement]. [During this period of review of the operation and implementation of [X] years, Members shall not resort to the provisions of the Dispute Settlement Understanding and only raise before the Committee all questions and queries relating to issues relating to compliance with the obligations under the agreement, including issues relating to technical assistance and capacity building, and all efforts should be undertaken to ensure the use of good offices under the Committee's auspices during this period.]

ARTICLE 12: [TRANSITIONAL PROVISIONS FOR DEVELOPING COUNTRY MEMBERS AND LEAST DEVELOPED COUNTRY MEMBERS]

6. [[Grace Period for the Application of the Understanding on Rules and Procedures Governing the Settlement of Disputes][Peace Clause][Due Restraint]]

Please bracket the following for possible deletion:

[6.5 A Member shall not invoke or apply any Dispute Settlement procedures, including panel proceedings, against a developing country Member or LDC for any provisions under Categories B and C during the respective implementing period.]

SUBMISSION FROM SINGAPORE

ARTICLE 9: BORDER AGENCY COOPERATION

1. Coordination of Activities and Requirements of all Border Agencies

2. A Member shall ensure that its authorities and agencies involved in border and other import and export controls cooperate and coordinate their procedures in order to facilitate trade.

[2. (a) A Members are encouraged to ~~shall, to the extent possible,~~ cooperate and coordinate with their bordering Members to facilitate cross border trade and ~~coordinate customs procedures at border crossings in order to facilitate trade.~~

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

- Alignment of procedures and formalities including working days and hours;
- ~~Development and sharing of common facilities ;~~
- Provision of expedited processes for goods in transit ~~such as a single channel;~~
- Development of procedures for exchange of non-confidential information].

SUBMISSION FROM SUDAN¹

On Authorized Traders and Expedited Shipment

From the discussions of the Negotiating Group on JOB (09)/71/Rev.2 in the last meetings of NGTF 9-13 November 2009 as related to the provisions and sub-provisions of Authorized Traders and Expedited shipment, Sudan Delegation noticed the following:

1. Authorized Trader though its consistent with Kyoto Convention it is limited in scope and does not cover most operators in the supply chain.
2. Expedited Shipment is not well defined and not widely used in Customs. The commonly used concept by Customs around the world is immediate release according to WCO immediate release guidelines.
3. Expedited Shipment can be treated within the framework of Authorized Economic Operators (AEO) in accordance with WCO Framework of Standards (FOS) and WCO guidelines on AEO as the more relevant international standards for supply chain.
4. No doubt in the draft text we are more concerned with international standards contained in conventions and agreements, administered by international organizations, where exist.
5. Provisions and sub provisions of Authorized Traders and Expedited Shipment should be merged as follows:

Textual Proposal:

Authorized Economic Traders:²

1. In addition to the facilitation measures provided to all operators set out in this Agreement, Members shall apply further simplified import and export formalities for authorized economic operators within its customs territory, including SME's, which meet specific criteria related to compliance with customs and other border agencies requirements.
2. These specific criteria may for obtaining authorised economic trader status will include the following:
 - (a) An appropriate record of compliance with customs and other allied laws requirements;
 - (b) A system of managing records to allow for necessary [internal] controls;
 - (c) Financial solvency [(including, where appropriate, provision of a sufficient security/guarantee)]
 - [(d) An appropriate system of security and safety standards] [including industry specific standards;] [and]
 - [(e) AEO shall be authorized in accordance with domestic legislation.

¹ Comments from WTO Observer Countries are not included in the Draft Consolidated Text.

² Definition: Authorized Economic Operators include, *inter alia*, manufacturers, importers, exporters, brokers, carriers, consolidators, intermediates, airport, terminal operators, ,integrated operators, warehouses, distributors.

3. As determined by domestic legislation, the additional facilitation measures for such authorised economic traders may include the following:

- (a) The possibility of periodic declarations and payment of duties.
- (b) Reduced physical inspections and examinations in all but exceptional circumstances;
- (c) Reduced minimal documentary and data requirements as determined by domestic legislation, and [[including] the right to] [when appropriate]] submit for processing a single document covering all goods contained in a consignment; and
- (d) [more] rapid release time.]
- (e) Simplified declaration [necessary to identify the goods following the final goods declaration];
- (f) reduced documentary and data requirements;

4. [Additional facilitation measures may [also] include:]

- [(a) local clearance;
- (b) remote filing.]
- [(c) a single goods declaration for all imports and exports in a given period
- (d) deferred payment of duties, taxes, fees and charges
- (e) reduced guarantees
- (f) remote filing
- (g) clearance of goods at the premises of the AEO or another place authorised by the customs.
- (f) acceptance of Through Bill of Lading system (TBL).

5. [The specific criteria to qualify as an authorized economic trader shall not be designed or applied so as to afford or create arbitrary or [unjustifiable discrimination] [or a disguised restriction on international trade].]

6. [Members shall afford to other Members the possibility to negotiate mutual recognition of authorised economic traders program on the basis of international standards.]

7. [Members [[shall][may]] use [objective] risk management techniques in the assessment of any application for [grant of] authorized economic trader status.]

8. [Members shall [[develop authorized economic traders programme on the basis of international standards and instruments] [as well as existing industry specific standards, certification and verification instruments] as a basis for authorized economic trader, where such standards and instruments exist.

10. [[Whenever] norms for [the certification of] authorized economic trader [status] [are established [and implemented] at the customs union level] they shall [in as much as possible] be applied uniformly by all [of its] Member states [of a customs union].]

10. Members should enhance the facilitation measures provided to AEO by promoting the mutual recognition of their Authorized economic Programmes.

11. Each Member shall adopt or maintain procedures allowing for immediate release of goods to [[AEO] that apply for such service], while maintaining customs. A Member may require that an applicant, as a condition for the application for immediate release, shall:-

- (a) [provide adequate infrastructure to allow for the processing of its release goods.
- (b) submit the information necessary for release in advance of the arrival of an immediate release goods.
- (c) [assess fees limited in amount to the approximate cost of services rendered in providing the customs procedures in (4/g).
- (d) [maintain a high degree of control over immediate release good through the use of internal security, logistics, and tracking technology from pick-up to delivery; and]
- (e) Assume liability for payment of all customs, duties, taxes and fees to the customs authority for the immediate released goods.

SUBMISSION FROM SWITZERLAND

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

6. Authorized Traders

6.3 (c) Put square brackets around all the second part of the paragraph (from "and [[including] the right to ..." until "...in a consignment")

ARTICLE 12: TRANSITIONAL PROVISIONS FOR DEVELOPING COUNTRY MEMBERS AND LEAST DEVELOPED COUNTRY MEMBERS

6. [[Grace Period for the Application of the Understanding on Rules and Procedures Governing the Settlement of Disputes]][Peace Clause]][Due Restraint]]

Insert new alternative title: "Due restraint"

Insert a new paragraph:

"No Member shall have the right to initiate a procedure pursuant to Articles XXIII of GATT 1994 and the Understanding on Rules and Procedures Governing the Settlement of Disputes against [another Member] [a Developing Country Member or an LDC Member] for provisions or sub-part of provisions which it has not itself implemented."

Insert a new paragraph:

6.8 Nothing in article 16.6 shall affect the right of Members to take action under Articles XXIII of GATT 1994 and the Understanding on Rules and Procedures Governing the Settlement of Disputes against another Member for provisions contained in other WTO-Agreements, including for GATT Articles V, VIII and X.

10. [[Actions by Donors]][Information to be Submitted by Members to the Trade Facilitation Committee]]

Alternative to the present text:

10.1 All Members shall notify to the Trade Facilitation Committee the contact details of the government agency responsible for TA&CB related to trade facilitation. Donors shall provide information on the mechanisms to request such assistance.

Insert a new paragraph:

10.7 The Trade Facilitation Committee may, on the basis of an initiative from one of the Members, invite the relevant international organizations (including the IMF, OECD, UNCTAD, WCO, UN Regional Commissions and the World Bank or their subsidiary bodies) to provide information and to examine specific matters with respect to the effective and efficient provision of technical assistance and capacity building, including with regard to requests made under the early warning mechanism.

SUBMISSION FROM TANZANIA ON BEHALF OF THE LDC GROUP

ARTICLE 12: TRANSITIONAL PROVISIONS FOR DEVELOPING COUNTRY MEMBERS AND LEAST DEVELOPED COUNTRY MEMBERS

Chapeau of S&DT chapter

Comments by LDCs: The LDCs Group supports all the guiding principles contained in the ACP Group Document. TN/TF/W/161 that include:

"The provisions of this chapter shall be interpreted in light of the following guiding principles:

2. Any implementation of provisions (or sub-part of provisions) notified or re-notified under Category C by developing and least-developed countries is conditional on the provision of adequate and effective technical assistance and capacity building measures by developed countries as well as the acquisition of implementation capacity by developing and least-developed country Members.

(Secretariat note: incorporated in Draft Consolidated Negotiating Text under: Heading 5. [[Notification of Provisions (or Sub-part of Provisions) under Category C][Notification of Implementation Plans for Provisions (or Sub-parts of Provisions) Notified under Category C][Establishing Implementation Periods]])

6. Notwithstanding the peace clause, Members shall exercise due restraint in raising matters under the Understanding on Rules and Procedures Governing the Settlement of Disputes involving least-developed country Members.

Comment by LDCs: This last paragraph, which calls for due restraint with respect to measures taken by LDCs, is already in Article 24 of the DSU and may not be needed here.

(Secretariat note: incorporated in Draft Consolidated Negotiating Text under: Heading 6 [[Grace Period for the Application of the Understanding on Rules and Procedures Governing the Settlement of Disputes][Peace Clause][Due Restraint]] in subparagraph 6.6).

2. Definitions of Concepts

Comment by LDCs: LDCs' Group supports all definitions under the ACP Group, Doc. TN/TF/W/161.

NOTIFICATION OF PROVISIONS (OR SUB-PART OF PROVISIONS) TO THE TRADE FACILITATION COMMITTEE

3. [[[Implementation][Notification]] of Provisions (or Sub-part of Provisions) Listed under Category A][Establishing Implementation Periods]]

Least-Developed Country Members

3.2 Least-Developed Country Members may notify to the Trade Facilitation Committee the provisions (or sub-part of provisions) under Category A at the entry into force of the Agreement or, at the latest, by [X] time after the entry into force of the Agreement.

Comments by LDCs:

- *The notification of provisions or sub-part of provisions by a least-developed country Member by [X] time after the entry into force of the Agreement means that such provisions or sub-part of provisions will be implemented only upon the date of notification and not upon the entry into force of the Agreement. Although this does not, strictly speaking, correspond to the definition of Category A, this option does not put into question the concept of Category A. This is because this option should be understood as a derogation in favour of least-developed countries that is intended to provide an incentive for these countries to notify provisions or sub-part of provisions under this particular Category.*
- *It is also recommended that for LDCs who are not sure of the notification of the provision can notify later.*

4. [[Notification of Provisions (or Sub-part of Provisions) under Category B][Notification of Implementation Plans for Provisions (or Sub-part of provisions) Notified under Category B][Establishing Implementation Periods]]

Least-Developed Country Members

4.1 (alternative 2) Least-Developed Country may notify to the Trade Facilitation Committee the provisions (or sub-part of provisions) notified under Category B at the entry into force of the Agreement or, at the latest, by [X] time after the entry into force of the Agreement, taking into account maximum flexibilities for LDCs, and, particularly, the possibility to shift commitments from one category to another."

5. [[Notification of Provisions (or Sub-part of Provisions) under Category C][Notification of Implementation Plans for Provisions (or Sub-parts of Provisions) Notified under Category C][Establishing Implementation Periods]]

Least-Developed Country Members

5.2 (alternative 4) Least-Developed Countries shall notify to the Trade Facilitation Committee the provisions (or sub-part of provisions) notified under Category C at the entry into force of the Agreement or, at the latest, by [X] time after the entry into force of the Agreement, in respect of only those measures for which they have received adequate and effective technical assistance AND/OR in respect of which they have acquired the capacity to implement.

4. [[Notification of Provisions (or Sub-part of Provisions) under Category B][Notification of Implementation Plans for Provisions (or Sub-part of provisions) Notified under Category B][Establishing Implementation Periods]]

B. NOTIFICATION OF IMPLEMENTATION PLANS FOR PROVISIONS (OR SUB-PART OF PROVISIONS) NOTIFIED UNDER CATEGORY B

Least-Developed Country Members

4.1 (Alternative paragraphs 1 and 2) Least-Developed Countries shall notify to the Trade Facilitation Committee the implementation plans, for provisions (or sub-part of provisions) notified under Category B, taking into account maximum flexibilities for LDCs, and, particularly, the possibility to shift commitments from one category to another.

5. [[Notification of Provisions (or Sub-part of Provisions) under Category C][Notification of Implementation Plans for Provisions (or Sub-parts of Provisions) Notified under Category C][Establishing Implementation Periods]]

Least-Developed Country Members

5.2 (alternative 5) Least-Developed Countries shall notify to the Trade Facilitation Committee the implementation plans, for provisions (or sub-part of provisions) notified under Category C, in respect of only those measures for which they have received adequate and effective technical assistance AND/OR in respect of which they have acquired the capacity to implement.

6. [[Grace Period for the Application of the Understanding on Rules and Procedures Governing the Settlement of Disputes][Peace Clause][Due Restraint]]

PROVISIONS (OR SUB-PART OF PROVISIONS) NOTIFIED UNDER ALL CATEGORIES

6.2 Least-developed country Members, shall be exempt from any actions based on Articles XXII and XXIII of GATT 1994 and the Understanding on Rules and Procedures Governing the Settlement of Disputes for a period of [Y] years after a provision (or sub-provision) has been notified under category A "

7. [[Use of the Early Warning Mechanism][Extension for the Implementation Period of Provisions under Categories B and C]]

PROVISIONS (OR SUB-PART OF PROVISIONS) NOTIFIED UNDER CATEGORY B AND C

Comments by LDCs:

Early Warning Mechanism would apply to LDCs when the concept of "shifting of commitments" is accepted for category B. For category C it would apply after LDCs have acquired the capacity to implement any measure under Category C. This is in line with LDCs position of not supporting any arbitrary timeframes.

8. [[Implementation][Registering Implementation][Full Implementation of Provisions or sub-part of provisions under Categories B and C]]

Comments by LDCs: LDCs Group supports the observation made by ACP Group in Doc. WT/TF/W/161

SUBMISSION FROM THE UNITED STATES

ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION

1. Periodic Review of Formalities and Requirements

1. Members affirm the importance of minimizing the incidence and complexity of import, export, and transit formalities and of decreasing and simplifying import, export and transit documentation requirements. In furtherance of these objectives;

(a) Each Member is encouraged to periodically review its formalities and requirements, taking into account changed circumstances, relevant new information and business practices, availability and adoption of techniques and technology, international best practices and input from interested parties, and

(b) The Trade Facilitation Committee shall (i) develop procedures for sharing relevant information and best practices as appropriate and (ii) consider what reasonable additional measures the Member should take.

ARTICLE 12: TRANSITIONAL PROVISIONS FOR DEVELOPING COUNTRY MEMBERS AND LEAST DEVELOPED COUNTRY MEMBERS

See US submission issued separately in TN/TF/W/166.

SUBMISSION FROM VIET NAM

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~~] [~~(other than import/export duties and other than taxes 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.

(a) Fees and charges shall [[be limited in amount to the approximate][~~reasonably approximate the~~] cost of the service provided.

(b) [No fees and charges should be [[levied][~~calculated~~]] on an *ad valorem* basis, unless they are less than the [approximate] cost of the service rendered].

(e) An adequate time period shall be accorded between the publication of [~~information on~~] new or amended fees and charges and their entry into force except [in urgent circumstances or] when justified by [other] legitimate public policy objectives.

(f) [New or amended fees and charges shall not be imposed until [~~the new norms concerning them are published~~][information on them is published]] and made readily available.]

(g) Each Member shall periodically review its fees and charges [to ensure that they are in line with WTO commitments and] with a view to [consolidating them and] reducing their number and diversity, [~~where practicable~~][as appropriate]].

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

1. Pre-arrival Processing

1.1 Pre-arrival Processing: Members shall maintain or introduce pre-arrival processing, [[which is defined as][or]] administrative procedures of customs and other relevant border agencies to [[accept][receive]] and examine import [[documentation or][data]] and other required information upon the submission by traders prior to the arrival of [[means of transport carrying the goods][goods and means of transport]], in order to further expedite the [[clearance][release]] of goods [and/or the immediate release of goods upon arrival] where appropriate [and feasible, without prejudice to the right of Members to require further examination, physical inspection or the submission of any other requirement]. [In cases where it is decided that neither further examination, physical inspection nor any other submission is required, goods shall be [[released][cleared]] immediately upon arrival, provided that duties and taxes [and other relevant fees and charges] are paid or provided that a guarantee sufficient to ensure such payment is posted.]

[1.1 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.]

1.2 International Standards [and Practices]

1.4. With respect to vessels subject to procedures for the declaration (by manifest or similar document) of the vessel and its cargo, such procedures ~~[[will][shall]]~~ be applied [immediately] prior to the vessels' arrival, ~~[or as rapidly]~~ as not to unduly delay the vessel and the unloading of its cargo.

1.5. Members ~~[[will][shall]]~~ provide for advance electronic lodging of documents in electronic format and for pre-arrival processing of such documents [appropriate to the procedure applicable] ~~[prior to the arrival].~~

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 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]].~~

2.2. A Member may ~~[[request][require]]~~ sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument for this purpose. The guarantee shall ~~normally~~ be limited to an amount calculated to ensure compliance with a Member's requirements for customs duties, taxes and fees, and [other charges. The Guarantee] shall not represent an indirect protection to domestic products or a taxation of imports for fiscal purposes. ~~[[Once the Member has determined that these requirements have been satisfied, the guarantee for the goods shall be discharged without delay.][The guarantee shall be discharged without delay when it is no longer required.]]~~ [Each Member may have an overall guarantee enabling them to comply with the various transactions.]

2.3. A Member may detain and examine goods in a manner not otherwise inconsistent with the Member's WTO rights and obligations. [A Member is not obliged to release the goods where its import requirements have not been complied with.]

3. Risk Assessment/Analysis

3.1. [A ~~[[customs union][Member]]~~] shall generally apply a harmonized risk management system across the entire customs union.]

3.2. [Members shall ~~[[conduct][apply]]~~ [documentary and physical] examination [or post clearance audit] based on risk management ~~[or random control]~~ [for the purpose of concentrating on the examination of ~~[[higher][high]]~~ risk goods and facilitating the movement of ~~[[lower][low]]~~ risk goods].]

3.4. [The selectivity criteria] ~~[which]~~ may include [*inter alia*] specific commodity code, country of origin, country whence consigned, licensing indicator, value of goods, compliance level of traders, type of means of transport and the traders' purpose of the stay in the Customs territory.]

3.9. Members shall apply risk management techniques with the purpose to reduce, to the extent possible, physical inspections on goods while ensuring the efficiency of customs control and public security.

4. Post-clearance Audit (PCA)

4.1 Members ~~[[may][shall]]~~ ~~[[carry out necessary]]~~ adopt or maintain the necessary legislative provisions for PCA on ~~[[the accounts, books, vouchers, commercial documents, customs declaration forms and other trade-related information]]~~ ~~[[the import and export transaction accounts and commercial records]]~~ ~~[[the basis of the account registers]]~~ maintained by enterprises involved directly or indirectly in the transaction of international trade upon the risk ~~[[analysis]]~~ ~~[[management]]~~ results.

4.2 Members ~~[[shall]]~~ ~~[[may]]~~ conduct PCA through methods of regular audit and targeted audit to ~~[[identify]]~~ ~~[[verify]]~~ the risk and assess the compliance of traders.

4.3 ~~[[The outcome of PCA shall be]]~~ ~~[[timely fed back to relevant Customs officers involved in clearance procedures to take further action]]~~ provided, where appropriate, timely to other relevant officers and taken into account for further risk analysis. ~~[[The most compliant traders or low risk commodities shall be granted simplest and fastest clearance treatment by Customs.]]~~

1. 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 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.]

6. Authorized Traders

6.1 [In addition to the facilitation measures provided to all [operators] set out in this Agreement,] Members shall apply [further] simplified import and export formalities for [economic operators] [within its customs territory], including SME's, which meet ~~[[specific criteria related to compliance with customs [and other border agencies] requirements ("authorized traders")]]~~ ~~[[criteria specified by]]~~ ~~[[the customs]]~~ ~~[[domestic legislation]]~~];

6.2 These specific criteria ~~[[may]]~~ ~~[[for obtaining authorised traders status will]]~~ include the following:

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 elements]]~~, [inter alia]:

(b) ~~[[reduced]]~~ ~~[[a low incidence of]]~~ physical inspections in all but exceptional circumstances;

(c) ~~[[reduced]]~~ ~~[[minimal]]~~ documentary and data requirements as determined by domestic legislation, and ~~[[including]]~~ the right to [when appropriate] submit for processing a single document covering all goods contained in a consignment; and

6.7 [Members ~~[[shall]]~~ ~~[[may]]~~ use [objective] risk management techniques in the assessment of any application for [grant of] authorized trader status.]

6.8 [Members shall ~~[[develop authorized traders schemes on the basis of international standards and instruments]]~~ ~~[[draw upon relevant international standards and instruments]]~~ [as well as existing

industry specific standards, certification and verification instruments] as a basis for authorized trader schemes, where such standards and instruments exist, [except when they would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued.]]

6.9 [[Whenever] norms for ~~the certification of~~ authorized trader [status] [are established [and implemented] at the customs union level] they shall [in as much as possible] be applied uniformly by all [of its] Member states [of a customs union].]

7. Expedited Shipments

7.1 Each Member shall 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:

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~~;

(c) [provide for expedited shipments to be released ~~[[in a time bound manner]]~~[under normal circumstances within]] ~~[[3 hours]]~~~~[[6 hours]]~~[a reasonable period of time based on national procedures]~~[[rapid release time]]~~~~[[a time frame(s) not exceeding 24 hours]]~~ [consistent with ~~their national procedures~~] [after arrival] provided the [required] information ~~necessary~~ for release has been submitted];

(d) ~~apply~~ ~~[[without regard to weight or value [in the light of the delivery of the goods]]~~~~[[with respect to the nature of the goods]]~~;

ARTICLE 9: BORDER AGENCY COOPERATION

1. Coordination of Activities and Requirements of all Border Agencies

1.1 A Member shall [[ensure]~~endeavour or promote~~] that its authorities and agencies involved in border and other import and export **and transit** [controls] ~~[or transit procedures]~~ [[harmonize]~~cooperate and coordinate [with one another]]~~ their procedures in order to facilitate trade.

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

(v) Development of procedures for exchange of ~~non-confidential~~ information [subject to Article 1 of the Trade Facilitation Agreement] [for conducting joint controls and recognition of inspection results];

1.3 When goods [[being transhipped]~~under customs transit~~] are ultimately destined for the territory of that 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.

ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION

2. Reduction/Limitation of Formalities and Documentation Requirements

2.2 Any such formalities or requirements shall not be maintained if the circumstances or objectives giving rise to their adoption no longer exist ~~{or if changed circumstances can be addressed in a less trade restrictive manner}~~.

3. Use of International Standards

3.1 Members [are encouraged to consider as a reference framework] ~~[[where practicable]]~~ [to the extent practicable] base their importation, exportation ~~[[and]]~~ [or] transit ~~[formalities and]~~ procedures on [relevant] international standards or ~~[[parts thereof]]~~ [guidelines or recommendations where they exist], except as otherwise provided for in this Agreement.

3.2 Members may use regional standards ~~[[whenever they are compatible with international standards]]~~ [if these are [considered to be] more efficient means] ~~[[whenever they are efficient]]~~ for facilitating international trade.

3.3 Members are not required to use international standards [guidelines or recommendations] which are not appropriate to their development, financial and trade ~~[[capacity]]~~ [needs] or which would pose fundamental technological or infrastructural problems for them ~~[[and therefore]]~~ ~~[[or where these would]]~~ be an ineffective or inappropriate means for the fulfilment of the legitimate objectives pursued. [Where a WTO Member is not a Member of the organization that sets the international standard in question.]

3.5 [To encourage the use of international standards by all Members,] the Trade Facilitation Committee shall:

(b)[(a)] [in conjunction with international organizations] ~~[[establish]]~~ ~~[[prepare]]~~ a list of international standards [for Members to discuss or consider] relating to importation, exportation and transit formalities and procedures administered by relevant international organizations.

3.6 For the purposes of this Agreement, the term "international standards" shall be understood to refer to ~~[[international]]~~ [standards] [conventions] [or Agreements] ~~[[guidelines or recommendations developed or promulgated by the relevant]]~~ [relating to facilitating international trade and administered by] intergovernmental international organizations ~~[[inter alia]: World Customs Organization (WCO) and United Nations Organisations Centre for Trade Facilitation and Electronic Business].~~

4. Acceptance of Commercially Available Information and of Copies

4.1 Customs and other border agencies shall require ~~[[only those]]~~ ~~[[the]]~~ [documents] [or data] [as are] necessary to ~~[[exercise border controls]]~~ ~~[[permit control of the operation]]~~ ~~[[release and clearance of goods]]~~ and to ensure that all [regulatory and legislative] requirements ~~[[relating to [the application of] relevant laws have been complied with]]~~ [in effect have been respected].

4.6 [As far as possible the] Customs and other border agencies ~~[[may]]~~ ~~[[shall endeavour to]]~~ ~~[[allow supporting documents not]]~~ ~~[[not insist upon supporting documents]]~~ to be presented provided they are [held available by the declarant], requisite information is provided by the [declarant] about the documents, and the documents are available ~~[[from]]~~ [with] the [declarant] for a specific period.

4.7 Customs and other border agencies shall ~~endeavour to~~ not require a translation of the particulars of supporting documents (e.g., invoices, bills of lading), [except when necessary] ~~[[to permit]]~~ [for] processing of the Goods declaration.]

5. Single Window/One-time Submission

5.1 Members ~~[[in so far as possible][where practicable]]~~ ~~[[shall][may]]~~ [endeavour to] ~~[maintain or]~~ establish a "single window" where documentation and/or data requirements for exportation, importation and transit [procedures] are submitted [by a trader resident in the Member state in question] ~~[[one-time-only]]~~ [to a single entry point]. ~~[[The single window shall undertake onward distribution of the aforementioned documentation and/or data requirements to all the relevant authorities [[or agencies which require them][and participating agencies]].]~~ [A single window will be responsible for distribution of documents and information for all the bodies involved in international trade]. [After the examination by the relevant authorities or agencies of the documentation and/or data, ~~[[the single window shall notify the results to the applicants][the results shall be notified to the applicants through the single window]]~~ in a timely manner.]

5.2 In cases where documentation and/or data requirements have already been received by the single window, the same documentation and/or data requirements shall not be requested by ~~[[other][participating]]~~ authorities or agencies except in urgent circumstances and other limited exceptions which are made public.

5.3 Members shall notify ~~[other Members through]~~ ~~[[the WTO Secretariat][the Trade Facilitation Committee]]~~ the details of operation of the single window, ~~[[including the participating authorities and agencies],~~ the functions of the single window, the contact point for the single window as well as the procedure of its usage.]

5.6 With regard to the scope of the participating authorities or agencies and of the documentation and/or data requirements, ~~[[all][developing and least-developed]]~~ Members ~~[[are allowed to][shall]]~~ ~~[endeavour to]~~ implement the single window in a progressive manner ~~[[taking into account each Member's implementation capacity][subject to their requesting for and receiving from other Member(s),~~ the requisite technical assistance and capacity building]].

6. Elimination of Pre-shipment Inspection

6.1. 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]]~~.

6.2. Developing ~~[and least developed]~~ country Members [which currently have pre and post-shipment inspection requirements] shall, ~~[subject to their requesting for and receiving from other Member(s), the necessary technical assistance and capacity building]~~ [to the extent possible progressively] eliminate any requirements to use pre [and post] shipment ~~[[inspections] requirements]]~~ [or their equivalent] ~~[[not later than [X] years from the entry into force of this commitment][within the time period specifically agreed with such Member(s)]]~~.

6.4. From the entry into force of this commitment, Members shall not introduce or apply any new requirements to ~~[[use][make mandatory the use of]]~~ pre-shipment inspections ~~[or their equivalent]~~.

6.5. [During the transition periods in paragraphs 6.2 and 6.3,] Members shall ensure that ~~[[pre-shipment inspection companies [or their equivalent], acting on their behalf or employed by them,][any entity acting on their behalf or employed by them to carry out compulsory inspection, verification or certification activity in relation with import, export or transit border procedures shall]]~~ act consistently with the relevant commitments of Members, including in the field of Trade Facilitation.

7. Use of Customs ~~[[Brokers][Broking Company or Agency]]~~

7.1 Without prejudice to paragraph 7.2, Members shall ~~[endeavour to]~~ not require the mandatory use of customs brokers.

7.2 ~~— [Subject to maintaining transparent and reasonable licensing requirement and procedures, a Member country may require the compulsory use of customs brokers.]~~

7.3 ~~— [Any person subject to licensing requirements in paragraph 7.2 shall be eligible for a license. In the case of legal persons, they may operate with their own in-house brokers, licensed by the respective authority.]~~

7.4 Developing country Members shall eliminate any requirements ~~[[to use][for mandatory use of]]~~ customs brokers not later than [X] years from the entry into force of this commitment. Least-developed country Members shall eliminate any requirements ~~[[to use][for mandatory use of]]~~ customs brokers not later than [Y] years from the entry into force of this commitment.

7.5 Members, if and when licensing customs brokers, shall apply licensing rules that are transparent, ~~[non-discriminatory]~~ and reasonable, [having regard to the nature of the tasks which they are licensed to carry out].

8. Same Border Procedures within a Customs Union

8.1 For border clearance [and release] of goods, [and in particular for clearance of agriculture and food products,] Member states of a customs union ~~[[shall adopt ~~common~~][the same]]~~ border procedures~~[[should progressively adopt harmonized border procedures]]~~ [including inspection of goods, release of goods, SPS and TBT measures, etc.]. [This shall include adoption of same standards including specifications, terminologies and definitions, inspection, sampling and test methods.]

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 [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]~~

We will comment whenever these two proposals are merged.

ARTICLE 15: NATIONAL COMMITTEE ON TRADE FACILITATION

1.1 In order to facilitate the process of domestic coordination of trade facilitation needs, priorities and implementation [of the Agreement on Trade Facilitation], Members shall [establish] [and] ~~[or]~~ [maintain] a national committee [on trade facilitation] [or a similar] mechanism on trade facilitation ~~[or designate an existing mechanism/body/Committee]~~ [with the objective of assisting in the implementation of the Agreement on Trade Facilitation].

ARTICLE 16: PREAMBLE/CROSS-CUTTING MATTER

1.1 [Small [and vulnerable] ~~[economies]]~~ developing [and least developed] countries which are Members of a customs union or a regional economic arrangement may adopt regional approaches to assist in the implementation of their obligations under the Trade Facilitation Agreement including through the establishment and use of regional bodies.]

SUBMISSION FROM ZAMBIA

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

7. Expedited Shipments

7.1

- (a) Submit the information necessary for [[release][processing]] in advance of the arrival of an expedited shipment;

7.2

- (b) Minimize the documentation required for the [[release][processing]] 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;
 - (c) [Provide for expedited shipments to be released [[in a time-bound manner][under normal circumstances within]] [[3 hours][6 hours][a reasonable period of time based on national procedures][rapid release time][a time frame(s) not exceeding 24 hours][an agreed time frame between the applicant and a Member]] [consistent with their national procedures] [after arrival] provided the [required] information [necessary] for release has been submitted].
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