

WORLD TRADE ORGANIZATION

TN/TF/W/165/Rev.9
17 June 2011

(11-3013)

Negotiating Group on Trade Facilitation

DRAFT CONSOLIDATED NEGOTIATING TEXT

Revision

SECTION I.....	3
ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION	3
1. Publication.....	3
2. Information Available Through Internet	3
3. Enquiry Points.....	4
4. Notification	5
ARTICLE 2: PRIOR PUBLICATION AND CONSULTATION	5
1. Interval between Publication and Entry into Force	5
2. Opportunity to Comment on New and Amended Rules.....	5
3. Consultations	5
ARTICLE 3: ADVANCE RULINGS.....	5
1. Provision of Advance Rulings	5
ARTICLE 4: APPEAL [REVIEW] PROCEDURES	7
1. Right of Appeal	7
2. Appeal Mechanism [in a Customs Union] [that is a WTO Member].....	8
ARTICLE 5: OTHER MEASURES TO ENHANCE IMPARTIALITY, NON-DISCRIMINATION AND TRANSPARENCY	8
[1. Import Alerts/Rapid Alerts.....	8
2. Detention.....	9
[3. Test Procedures.....	9
ARTICLE 6: DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION.....	10
1. Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation	10
2. Penalty Disciplines	10
ARTICLE 7: RELEASE AND CLEARANCE OF GOODS.....	11
1. Pre-arrival Processing	11
2. Separation of Release from Final Determination and Payment of Customs Duties, Taxes, Fees and Charges	12
3. Risk Management	13
4. Post-clearance Audit.....	13
5. Establishment and Publication of Average Release Times	14
6. [Authorized Operators].....	14

7.	Expedited Shipments	15
	ARTICLE 8: CONSULARIZATION	17
[1.	Prohibition of Consular Transaction Requirement	17
	ARTICLE 9: BORDER AGENCY COOPERATION.....	17
	[ARTICLE 9 BIS: DECLARATION OF TRANSHIPPED OR IN TRANSIT GOODS]	
	[DOMESTIC TRANSIT]	18
	ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND	
	EXPORTATION.....	18
1.	Review of Formalities and Documentation Requirements.....	18
2.	Reduction/Limitation of Formalities and Documentation Requirements	18
3.	Use of International Standards.....	19
4.	Single Window.....	20
5.	[Elimination of] [Mandatory] Pre-shipment [and Post-shipment Inspections].....	20
[6.	Use of Customs Brokers	21
[7.	Common Border Procedures [and Requirements]	21
[8.	Uniform Forms and Documentation Requirements Relating to Clearance]	21
9.	Option to Return Rejected Goods to the Exporter	21
10.	Temporary Admission of Goods/Inward and Outward Processing	22
	ARTICLE 11: FREEDOM OF TRANSIT	22
	ARTICLE 12: [CUSTOMS COOPERATION MECHANISM FOR TRADE	
	FACILITATION AND COMPLIANCE][CUSTOMS COOPERATION].....	25
	ARTICLE 13: INSTITUTIONAL ARRANGEMENTS.....	28
	ARTICLE 14: NATIONAL COMMITTEE ON TRADE FACILITATION	29
	ARTICLE 15: PREAMBLE/CROSS-CUTTING MATTERS	29
	SECTION II	30
	SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS FOR DEVELOPING	
	COUNTRY MEMBERS AND LEAST DEVELOPED COUNTRY MEMBERS	30
1.	[General provisions and basic principles].....	30
[2.	Definitions of Categories of Commitments	30
3.	[Notification of Provisions under Category A].....	31
[4.	[Notification and Implementation of Provisions under [Schedule B/C][Categories	
	B and C]].....	31
[4bis:	Notification of Implementation Plans for Category C].....	33
5.	[Notification of Provisions under Category C].....	34
[5bis	Notification of Implementation Plans for Provisions Notified under Category C].....	34
6.	[Use of the Early Warning Mechanism][Extension for the Implementation	
	Period of Provisions under Categories B and C]	35
[6bis.	Shifting from Category B to C, or from C to B.....	35
7.	Grace Period for the Application of the Understanding on Rules and Procedures	
	Governing the Settlement of Disputes.....	36
[8.	[Information on] Implementation of Provisions listed under Categories B and C	37
9.	Provision of Technical Assistance [, financial assistance] and Capacity Building	37
10.	Information on Assistance to be submitted to the Committee	38

SECTION I

ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION

1. Publication

1.1 Each Member shall promptly publish the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders and other interested parties to become acquainted with them:

- (a) Importation, exportation and transit procedures (including port, airport, and other entry-point procedures) and required forms and documents;
- (b) Applied rates of duties [of customs] and taxes of [other] any kind imposed on or in connection with importation or exportation;
- (c) Fees and charges imposed by customs and other [border][governmental] agencies on or in connection with importation, exportation or transit;
- (d) Rules for the classification or valuation of products for customs purposes [as well as, if readily available, examples or illustrations of such classifications and valuations];
- (e) Laws, regulations and administrative rulings of general application relating to rules of origin [for non-preferential trade],[as well as, if readily available, examples or illustrations of such determinations of origin];
- (f) Import, export or transit restrictions or prohibitions;
- (g) Penalty provisions against breaches of import, export or transit formalities;
- (h) Appeal procedures;
- (i) Agreements or parts thereof with any country or countries relating to importation, exportation or transit;
- (j) Administrative procedures relating to the imposition of tariff quotas [including quota size, in and out of quota rates, opening dates, allocation methods, licensing procedures and requirements, levels of utilization, and additional terms and conditions, including any requirements imposed by state-importing authorities or other government bodies].

1.2 Nothing in these provisions shall be construed as requiring the publication or provision of information other than in the language of the Member except as stated in paragraph 2.2.

2. Information Available Through Internet

2.1 Each Member shall [to the extent possible] make available and update as appropriate the following through the internet:

- a.) A description of its importation, exportation and transit procedures [, including appeal procedures][, that informs [governments and traders and other interested parties] of the practical steps needed to import and export, and for transit.]
- b) The forms and documents [and other duties and charges] required for importation into, exportation from, or transit through the territory of that Member.
- [(c) Relevant trade-related legislation]
- [(d) Contact information on enquiry points]

2.2 Whenever practicable, the description referred to in subparagraph 2.1(a) shall also be made available in one of the official languages of the WTO.

2.3 Members are encouraged to make available further trade-related information through the internet, including items referred to in paragraph 1.1.

3. Enquiry Points

3.1 Each Member [shall] [within its available resources] establish or maintain one or more enquiry points to answer reasonable enquiries of governments, traders and other interested parties on matters covered by paragraph 1.1 as well as to provide the required forms and documents referred to in subparagraph 1.1(a).

Alt¹: [3.1 Each Member [shall] [within its available resources] establish or maintain enquiry points for matters covered by paragraph 1.1 as well as to provide the required forms and documents referred to in subparagraph 1.1(a)]

[3.2 [Developing] countries which are members of a customs union or involved in regional integration [Shall] [may instead] have the option of establishing and operation one or more enquiry points at the regional level.² The establishment and operation of a notified regional enquiry point would satisfy the requirements for the establishment and operation of a national enquiry point under paragraph 3.1.]

Alt³: [3.2. Members of a customs union or involved in a regional integration may establish enquiry points at the regional level to satisfy the requirement of 3.1.]

3.3 Alt.1 [Members will not require the payment of a fee for answering enquiries.] [and/or providing forms and documents] Fees and charges, if any, for answering enquiries and providing required forms and documents, shall be limited in amount to the approximate cost of services rendered. Any such fees and charges shall be the same for nationals of the Member concerned and for any other Member, except for the cost of delivery.

Alt.2 [Members will not require the payment of a fee for answering enquiries.] [and/or providing forms and documents] Fees and charges, if any, for answering enquiries and providing required forms and documents shall be limited in amount to the approximate cost of services rendered. Each Member shall ensure that where copies of forms and documents are requested by other Members or by traders and other interested parties in other Members, they are supplied at the same price, if any, which shall, apart from the cost of delivery, be the same for the nationals of the Member concerned or of any other Member.

Alt.3⁴ [Members shall not require the payment of a fee for answering enquiries.] [and/or, to the extent possible, for providing forms and documents]. Fees and charges, if any, for answering enquiries and providing required forms and documents, shall be limited in amount to the approximate cost of services rendered.]

¹ Proposed by Switzerland.

² It is understood that individual Members benefiting from these recommendations will continue to be legally responsible and accountable for their individual notifications and other obligations under these Agreements.

³ Proposed by Switzerland.

⁴ Proposed by Singapore.

3.4 The enquiry points shall answer enquiries and provide the forms and documents within a reasonable time period set by each Member, which may vary depending on the nature or complexity of the request.

4. Notification

4.1 Each Member shall notify the Committee of:

- (a) The official place(s) where the items in subparagraphs 1.1(a) to (j) have been published, and
- (b) The URLs of website(s) referred to in paragraph 2.1, as well as the contact information of the enquiry points referred to in paragraph 3.1.

ARTICLE 2: PRIOR PUBLICATION AND CONSULTATION

1. Interval between Publication and Entry into Force

1.1 Each Member [shall], [to the extent practicable], ensure that a reasonable interval is provided between the publication [or, where appropriate, pre-publication] of new or amended trade-related laws or regulations and their entry into force.⁵

1.2 [Changes to duty rates or tariff rates are excluded from this provision.]

2. Opportunity to Comment on New and Amended Rules

2.1 Each Member shall [, to the extent practicable,] [, as appropriate,] provide opportunities and a reasonable time period to traders and other interested parties [within its territory] to comment on the proposed introduction or amendment of [trade-related] [and] [customs] laws and regulations.

3. Consultations

3.1 Each Member shall, as appropriate, provide for regular consultations between border agencies and traders or other stakeholders within its territory.

ARTICLE 3: ADVANCE RULINGS

1. Provision of Advance Rulings

1.1 Each Member shall issue an advance ruling in a reasonable, time bound manner [not exceeding a maximum period of 150 days] to an applicant [with legal representation in the Member concerned] that has submitted a written request containing all necessary information. If [a Member/the competent authority of a Member] declines to issue an advance ruling it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

[Provided that no application shall be rejected under this paragraph unless an opportunity has been given to the applicant of being heard.]

1.2 [A Member/The competent authority] may decline to issue an advance ruling to an applicant where the question raised in the application:

⁵ This is without prejudice to specific timeframes established under other WTO Agreements and practices of WTO Committees.

- (a) is already pending in the applicant's case before any governmental agency, appellate tribunal or court;
- (b) has already been decided by any appellate tribunal or court.

1.3 The advance ruling shall be valid for a reasonable period of time after its issuance unless the law, facts or circumstances supporting the original advance ruling have changed. In cases where the advance ruling was based on [false,] incorrect or misleading information, the [Member/competent authority] may revoke, modify, invalidate [or nullify] the ruling [with retroactive effect].

1.3bis Where the [Member /competent authority] revokes, modifies, invalidates [or nullifies] the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision.

1.3ter [On a request received from the applicant, the [Member/competent authority] shall, before issuing the advance ruling, provide an opportunity to the applicant of [being heard], either in person or through a duly authorized representative.]

[An advance ruling issued by [a Member/the competent authority] shall be binding only on:

- (a) the applicant who had sought it; and
- (b) the customs authorities in respect of the applicant.]

1.4 A Member shall publish, at a minimum:

- (a) The requirements for the application for an advance ruling, including the information to be provided and the format;
- (b) The time period by which it will issue an advance ruling; and
- (c) The length of time for which the advance ruling is valid.

1.5 A Member [shall][may] provide, upon written request of an applicant, an administrative review of the advance ruling or the decision to revoke, modify, invalidate [or nullify] the advance ruling.⁶

1.6 A Member shall endeavour to make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.

1.7 Definitions:

- (a) [An advance ruling is a written decision [or statement] provided by a Member to an applicant prior to the importation of a good covered by the application that sets forth the treatment that the Member, shall provide to the good at the time of importation [or exportation] with regard to [the following, where they are implemented by Members:]]
 - (i) 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]];

⁶ [A Member is not required to provide a [judicial] [right of] appeal of an advanced ruling or a decision to revoke or modify an advance ruling.]

- [(ii) The appropriate method and the application of the method to be used for determining the customs value under a particular set of facts;]
 - [(iii) The application of the Member's requirements for duty drawback, deferral, [or other relief from customs duties];]
 - [(iv) The application of the Member's requirements for quotas, including tariff quotas;]
 - [(v) The origin of the good;]
 - [(vi) The fees and charges that will be applied [[or] [and], where appropriate, information on the way such fees and charges are calculated.]]
 - [(vii) Additional matters for which a Member considers it appropriate to issue an advance ruling;]
- (b) An applicant is an importer, exporter [or producer], or a representative thereof [who meets the criteria specified in the national legislation] [of the importing Member].

ARTICLE 4: APPEAL [REVIEW]⁷ PROCEDURES

1. Right of Appeal

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

- (a) administrative appeal [before an authority higher than and] [before an authority of different level] [independent of] the official or office that issued the decision;
and[/or]
- (b) judicial appeal⁸ of the decision

1.2 The legislation of each Member may require administrative appeal to be initiated prior to judicial appeal.

1.3 Members shall ensure that their appeal procedures are carried out in a non-discriminatory manner.

[1.4 Members [shall [endeavour to]][may] ensure that customs [and other relevant border agencies] adopt and maintain [set][indicative] periods of time [as specified in national legislation] for review and, where necessary, correction of their decisions under the appeal procedures.]

[In a case [of undue delay under procedures mentioned under subparagraph 1.1(a)] [where the decision is not given within set periods as specified in national legislation], the appellant shall have the right to bring the case to [the next higher administrative level or judicial appeal] [an authority of different administrative level or judicial appeal] [subject to the national legislation of a Member]]

⁷ Addition requested by Singapore. Singapore is still considering the merits of the term "appeal" versus "review" to be used in this article.

⁸ For avoidance of doubt the word "appeal" includes judicial review. (Addition requested by Malaysia).

1.5 [Members shall ensure that, [upon request], the persons directly affected by an administrative decision [issued by customs and other border agencies] are provided with the reasoning of the decision, including applied laws and regulations, and any applicable appeal procedures available.]

[Alt.2 Upon request, Members shall provide to the person[s] directly affected by [a] decision or order of the customs [or another relevant border agencies] the reasons for such decision or order within a period specified in national legislation.]

[1.6 The decisions of administrative and judicial tribunals under paragraph 1.1 shall govern the practice of customs and other relevant agencies throughout [their jurisdiction] [the territory of the Member].[on single case basis and not for Jurisprudence proceedings.]]

2. Appeal Mechanism [in a Customs Union] [that is a WTO Member]

[2.1 There shall be a mechanism [for redress of][to address] adverse findings of inspection authorities [at the import points of a customs union] [that is a WTO Member]. [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 [that is a WTO Member] shall be heard and decided at the customs union level.] [Such appellate decisions shall be binding on the inspection authorities of all member states of a customs union.] [that is a WTO Member]]

2.2 [The decisions of administrative and judicial tribunals under paragraph 1.1 shall govern the practice of customs and other relevant agencies throughout the territory of [the] [each] Member. [including any Member that is a customs union]]

Alt 2⁹ (for both 2.1 and 2.2) [The highest appeal level available to a trader shall have the authority to issue decisions across the territory of the whole member with a view to achieving uniformity in administrative/customs procedures to the extent possible.]

[Customs unions should progressively adopt the provisions contained in paragraph 2.1]

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

[1. Import Alerts/Rapid Alerts

Alt 1 [1.1 A Member [may] [will] introduce [or maintain] [in its domestic regulatory regime] a system of import alert/rapid alert to [address risk related to] [animal health, plant health and food safety] [monitor and ensure the quality of] imported [goods, especially] food products.]

Alt. 2 1.1 Where a Member introduces or maintains a system of import alert/rapid alert [in cases of risk] [related to animal health, plant health and food safety] [related to food safety] the following disciplines shall apply:

[1.2] [1.1.a] A Member shall apply an import alert/rapid alert system [for agricultural imports] only on the basis of established positive evidence of, [or reasonable doubt of] violation of the prescribed objective standards by imports from the country/exporter concerned [This system will be applied only if it is based on international reference standards.].

[1.3] [1.1.b] Alt. 1 Once a Member issues an alert notification, the Member shall ensure that special inspections are based on uniform objective standards. The Member shall also ensure that such inspections are conducted in a uniform manner [at all import points throughout the territory of the Member.]

⁹ The purpose of keeping the Alternate is to provide ideas.

Alt. 2 [Where the competent authority of the importing country ascertains, through the rapid alert system and on the basis of scientific evidence, that a consignment does not meet the objective standards prescribed by the importing country, it shall notify the competent authority of the exporting country].

[1.4] [1.1.c] A Member shall promptly terminate [an] [the] alert [notification] and its consequent actions if circumstances giving rise to the alert notification no longer exist, or if changed circumstances can be addressed in a less trade restrictive manner. [Circumstances giving rise to an alert notification would be deemed to no longer exist if [six] successive consignments imported from the country/exporter [Member] concerned have fulfilled the prescribed objective standards, after issuance of the [alert notification].]

[1.5] [1.1.d] A Member shall publish the announcement of termination of an [alert notification] in a non-discriminatory and easily accessible manner [within 15 days from the date of decision to terminate the [alert notification].]

Definitions

Import alert/rapid alert system is a border control mechanism to monitor and ensure the quality of imported [agricultural] goods [in cases of risk related to food safety]. The system is operated through issuance of an alert notification by a Member to concerned authorities for special inspection of goods covered under the alert notification.

2. Detention

2.1 Alt.1 A Member [shall][may] [notify] [inform] the importer or his authorized agent promptly in case of detention of imported goods for inspection by Customs or other competent authority.

[Alt. 2 In case of detention of imported goods for inspection by the competent authority of the importing country, it shall directly and immediately inform the competent authority of the exporting country by any means of communication, and shall promptly provide the importer or his authorized agent with information regarding the detention.]

[3. Test Procedures

3.1 A Member shall grant an opportunity for a confirmatory test in case the test result of a sample shows an adverse finding.

3.2 A Member shall prescribe a procedure for conducting a confirmatory test [as well as any other elements for its application].

3.3 A Member shall publish names and addresses of accredited laboratories in a non-discriminatory and easily accessible manner, where confirmatory tests can be carried out.

[If it does not have duly accredited laboratories, the importer or exporter concerned may have recourse to any accredited regional or international laboratory.]

3.4 Findings of a confirmatory test shall be valid and accepted uniformly throughout the territory of the Member.]

[In the event of any discrepancy between the results of the tests conducted by the competent authority of the importing country and the accredited independent laboratory, the competent authorities of both parties shall establish contact as quickly as possible in order to institute the necessary administrative measures to resolve the situation.]

ARTICLE 6: DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION¹⁰

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 (other than import and export duties and other than taxes within the purview of Article III of GATT 1994) imposed by [customs and other governmental agencies] [Members] [or bodies that act on behalf of governmental agencies on matters of customs intervention]¹¹ on or in connection with importation or exportation of goods. Such fees and charges shall be imposed only for services rendered [or requested] in connection with importation or exportation of goods or for any formality required for undertaking such importation or exportation.

[1.2 Fees and charges shall be limited in amount to the approximate cost of the services rendered.] [The cost of services rendered shall be understood to refer broadly to all costs related to the provision of services including reasonable infrastructure-related, capital cost recovery, and continuing personnel training, equipment and software upgrades and maintenance related costs and expenses.]

[1.3 No fees or charges [shall][should] be levied on an *ad valorem* basis[, unless the amount is limited to the approximate cost of the services rendered]].

1.4 Information on fees and charges shall be published in accordance with Article 1 of this Agreement. This information shall include the fees and charges that will be applied, reason for such fees and charges, the responsible authority and when and how payment is to be made.

1.5 An adequate time period shall be accorded between the publication of new or amended fees and charges and their entry into force except in urgent circumstances [or when justified by legitimate public policy objectives]. Such fees and charges shall not be applied until information on these has been published.

1.6 Each Member shall periodically review its fees and charges with a view to reducing their number and diversity, where practicable.

2. Penalty Disciplines

2.1 [Each Member shall ensure that penalties for a breach of a customs law, regulation, or procedural requirement are imposed only on the person [legally] responsible for the breach.]

2.1**bis** The penalty imposed shall depend on the facts and circumstances of the case, [including the record of the person in its dealings with customs], and shall be commensurate with the degree and severity of the breach.

[2.2 Each Member shall provide that any penalty for minor breaches of customs laws, regulations and procedural requirements shall be no greater than necessary to serve merely as a warning to avoid future breaches.]

¹⁰ Members reserve the right to make proposals to treat fees and charges in connection with transit in this article depending on their final treatment in Article 11 on transit.

¹¹ This bracket can be removed once the issue is addressed in a cross-cutting manner.

[2.3 Each Member shall ensure that it maintains procedures to avoid conflicts of interest in the assessment and collection of penalties and duties.] [No portion of the remuneration of a government official shall be calculated as a fixed portion or percentage of any penalties or duties assessed or collected.] [other than the rewards approved under the national legislation.]

2.4 Each Member shall ensure that when a penalty is imposed for a breach of customs laws, regulations, or procedural requirements, an explanation in writing is provided to the [legally responsible person] upon whom the penalty is imposed specifying the nature of the breach [and the basis for determining the penalty amount].

[2.5 Each Member shall provide [Alt.1: for the waiver or reduction] [Alt. 2: its customs administration with the authority to waive or reduce] penalties [where possible] which would have otherwise been imposed on a legally responsible person, when that [allow a] person who voluntarily discloses the circumstances of a breach of customs laws, regulations, or procedural requirements prior to the discovery by the customs administration of the breach [to raise such disclosure for mitigation purposes]. Where the disclosing person can correct the breach, a Member may require that the person correct it within a reasonable period of time, including paying any duties, taxes, and fees owed.]

[2.7 Each Member [shall] [is encouraged to] specify a fixed, finite period within which it may initiate penalty proceedings in connection with a breach of a customs law, regulation, and procedural requirements.]

[2.8 "Person legally responsible for the breach" or "legally responsible person" is the natural or juridical person(s) that has the obligation to comply with a customs law, regulation or procedural requirement.]

[2.9 "Minor breaches" shall mean omissions or mistakes in complying with a customs law, regulation or procedural requirement, including a mistake in copying, inputting or transmitting information, where the omission or mistake was obviously made without fraudulent intent or gross negligence and has no significant effect on the application of the law, and where the loss of duty is non-existent, or minimal.]

[2.10 For the purpose of Article 6.2, the term "penalties" shall mean civil penalties or those imposed administratively.]

[2.11 A conflict of interest involves a conflict between the public duty and private interests of a public official, in which the public official's private-capacity interests could improperly influence the performance of its official duties and responsibilities.]

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

1. Pre-arrival Processing

7.1.1 Each Member shall adopt or maintain procedures [for traders] [allowing importers] [with good compliance records] to submit import documentation and other required information [to customs and other relevant border agencies] for [processing] [examination] prior to the arrival of goods with a view to expediting the [clearance and] release of goods upon arrival.

7.1.2 Members shall, as appropriate, provide for advance lodging of documents in electronic format for pre-arrival processing of such documents.

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

7.1.4 For pre-arrival processing purposes, Members may require (additional) documentation and data [(such as tracking notes) only] to the extent that such documents and data (including tracking notes) are [necessary][useful, *inter alia*] for risk management purposes, [and to facilitate] [and for] the expedited release of goods upon arrival.]

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

2.1 [Each Member [shall] [is encouraged to] adopt or maintain procedures [providing][allowing] an importer [or its agent] [the opportunity] to obtain the release of goods prior to final determination and payment of customs duties, taxes, fees and charges, upon provision of sufficient guarantee [as determined by the Member itself] [where these are not determined at or prior to arrival] [where there is delay in the final determination of customs duties, taxes, fees and charges].]

2.2

Alt. 1: Where [all regulatory requirements have been met and where], upon arrival of the goods, there is a delay in the final determination of customs duties, taxes, fees and charges, each Member shall allow an importer or its agent to obtain the release of goods [as soon as possible after their arrival and] prior to such determination, upon provision of sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument which shall not exceed a [reasonable][maximum] estimate by Customs of the customs duties, taxes, fees and charges for which the goods may be liable. [This guarantee shall not represent an indirect protection to domestic products or a taxation of imports for fiscal purposes.]. [In cases where an offence has been detected, a guarantee may be required for the fine and penalty that may be imposed.]

Alt.2 [In cases where, upon arrival of goods, there is a delay in the final determination of customs duties, taxes, fees and charges on imported goods and where all other import requirements have been met, Members shall allow the importer of goods to withdraw them from Customs [without undue delay,][promptly upon arrival] if[, where so required,] the importer provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument [as determined by the Member,] covering the ultimate payment of Customs duties, taxes, fees and charges for which the goods may be liable.

In cases where an offence has been detected [and when the goods concerned are not considered as essential productions of an inquiry into the offence], a guarantee may be required for the [value,] fine and penalty which may be imposed.]

2.3

Alt.1 The guarantee shall be discharged without delay when it is no longer required for its intended purpose.

[Alt.2 Once the Member has determined that its requirements for customs duties, taxes, fees and charges have been satisfied [and all regulatory requirements have been met], the guarantee for the goods shall be discharged without undue delay, unless the guarantee covers multiple transactions.]

2.4 Nothing in these provisions shall affect the right of a Member to examine, detain, seize or confiscate or deal with the goods in any manner not otherwise inconsistent with the Members WTO rights and obligations. [This article is not intended to cover cases which involve violations of Members' laws or fraud: in such situations, the release of the goods should be governed by Members' laws.]

3. Risk Management

3.1 Members shall apply [, to the extent possible,] risk management to customs control in connection with importation, exportation and transit.

[Bis: A Member shall apply [, to the extent possible,] a common risk management system across its entire territory.]

3.2 Members shall concentrate customs control [and other relevant border controls] on high risk consignments and expedite the release of low risk consignments.

[3.3 [Members shall base risk management] [In applying risk management, Members shall use] [on] appropriate selectivity criteria, such as, *inter alia*, HS code, nature of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, type of means of transport and purpose of the stay of the goods in the Customs territory.]

3.4 Members shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination [under the same conditions], or disguised restrictions to international trade.

[3.5 To the extent possible, double controls shall be avoided in the release of goods between members of a customs union when this is undertaken in entry or exit of the countries.]

[3.6 Definitions:

- (a) Risk means the potential for non-compliance with customs and/or other relevant laws, regulations or procedural requirements connected with the importation, exportation or transit of goods.
- (b) Risk Management means the systematic application of management procedures and practices providing customs [and other relevant border agencies] with the necessary information in order to address movements or consignments which present a risk.
- (c) Customs Control means measures applied by the customs to ensure compliance with the laws and regulations [or procedural requirements] which the Customs is responsible for enforcing.]

4. Post-clearance Audit

Definition

Post-clearance audit is an audit conducted by customs subsequent to the release of goods to ensure compliance with customs and other related laws and regulations.

7.4.1 Each Member shall [, where possible,] adopt post-clearance audit, with a view to expediting the release of goods.

[7.4.2 Each Member shall conduct post-clearance audits in a transparent manner. Members shall notify the persons [concerned] [audited] of the results of each audit, their respective rights and obligations, and the evidence considered, and reasons for the results.]

7.4.3 Members acknowledge that the information obtained in post-clearance audit may be used in further administrative or judicial proceedings.

7.4.4 Members shall, wherever practicable, use the result of post-clearance audit in applying risk management.

5. Establishment and Publication of Average Release Times¹²

5.1 Members [shall] [are encouraged to] measure and publish their average release time of goods periodically and in a consistent manner [, using tools such as, *inter alia*, the WCO Time Release Study].¹³

[5.2 Members are encouraged to share with the Committee their experiences in measuring average release times, including methodologies used, bottlenecks identified, and any resulting effects on efficiency.]

[5.3 In case of undue delays in the release of goods with respect to the average time published, and upon written request by traders, Members are encouraged to inform, in writing, the reasons for the delay.]

6. [Authorized Operators]

6.1 Each Member [shall][may] provide additional [facilitations] [trade facilitation measures] related to import, export and transit formalities and procedures under paragraph 6.3 to operators, hereinafter called [authorized operators], who meet specified criteria. [The specific criteria shall be related to compliance, or the risk of non-compliance, with requirements specified in a Member's laws, regulations or procedures [, which may arise as a result of providing a facilitation measure under paragraph 6.3].] The criteria, which shall be published, may include:

- (a) An appropriate record of compliance with customs and other related laws and regulations,
- (b) A system of managing records to allow for necessary internal controls, and
- (c) Financial solvency, including, where appropriate, provision of a sufficient security/guarantee.

6.2 The specific criteria to qualify as an [authorized operator] shall not:

- (a) be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail;
- [(b) include a requirement that the owner of the operator be a national of the Member;]or,
- [(c) include a requirement based on [the size of the operator or] [the value or volume of the operator's imports or exports].]

¹² This section does not apply to a member where imported goods are generally released instantly on arrival.

¹³ Each Member may determine the scope and methodology of such average release time measurement in accordance with its needs and capacity.

6.3 Trade facilitation measures for [authorized operators] [shall][may] include [at least X] measures, *inter alia*:

- (a) Reduced documentary and data requirements as appropriate;
- [(b) A single goods declaration for all imports or exports in a given period;]
- (c) Fewer physical inspections and examinations;
- (d) Rapid release time.
- [(e) Deferred payment of duties, taxes, fees and charges;
- (f) [Use of corporate guarantees] [Reduced guarantees];
- (g) Clearance of goods at the premises of the [authorized operator] or another place authorized by the customs.]

6.4 [Members shall develop [authorized operators] schemes on the basis of international standards, where such standards exist, except when they would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued.]

6.5 In order to enhance the facilitation measures provided to operators Members shall afford to other Members the possibility to negotiate mutual recognition of [authorized operator] schemes [on the basis of international standards.]

6.6 Nothing in this section precludes a Member from offering any of the above facilitation measures to all operators.

7. Expedited Shipments

7.1 Each Member [shall][may] adopt or maintain procedures allowing for expedited release of at least those goods entered through air cargo facilities to persons that apply for such treatment, while maintaining customs control.¹⁴ If a Member employs criteria limiting who may apply, the Member may, [in published criteria,] require that the applicant shall, as conditions for the application of the procedures described in paragraph 7.2 to its expedited shipments:

- (a) Provide adequate infrastructure[, including devices for matching between the screening results of goods and their declaration information,] [and reimbursement of customs-related expenses¹⁵ to allow customs to process its expedited shipments], in cases where the applicant fulfils the Member's requirements for such processing to be performed at a dedicated facility;
- (b) Submit in advance of the arrival of an expedited shipment the information necessary for release;
- (c) Be assessed fees limited in amount to the approximate cost of services rendered in providing the customs procedures in paragraph 7.2;
- (d) Maintain a high degree of control over expedited shipments through the use of internal security, logistics, and tracking technology from pick-up to delivery;
- (e) Assume liability for payment of all customs duties, taxes, and fees and charges to the customs authority for the goods;
- (f) Have a good record of compliance with customs and other related laws and regulations;

¹⁴ In cases where a Member has an existing procedure that provides the treatment in paragraph 2, this provision would not require that Member to introduce separate expedited release procedures.

¹⁵ Consider reimbursement of customs-related expenses at non-dedicated facilities.

- [(g) comply with other conditions directly related to the effective enforcement of the Member's laws, regulations and procedural requirements, if necessary for reasons attributable to differences between the Member's expedited release procedures and its non-expedited release procedures.]
- [h. registration with relevant administrations within the customs territory subject to the domestic legislation;
- i. fulfil the obligations of visual examination of goods in receipt thereof for the purpose of trade security;
- j. actively report suspicious information to the customs to ensure the compliance with relevant laws and regulations; and
- k. assume liability to customs for the goods in the same manner as if it is the sole carrier.]

7.2 Subject to subparagraphs 7.1 and 7.3¹⁶, the expedited release procedures shall:

- (a) Allow, prior to the arrival of an expedited shipment, for the submission and processing, including through electronic means, of information necessary for the release of the shipment¹⁷;
- (b) Minimize the documentation required for the release of expedited shipments, [as appropriate], [including, to the extent possible, providing for release based on a single submission of information on all goods of *de minimis* value in the expedited shipments;]
- (c) Provide for expedited shipments to be released under normal circumstances [within [[3][6][24][48] hours][a reasonable period of time] [consistent with national rules and procedures] after arrival] [and in consistence with national rules and regulations, within 24 hours after arrival,] provided the information required for release has been submitted;
- [(d) Apply [without regard to weight or value][with respect to the nature of the goods], [without prejudice to the right of the Member to differentiate documentation requirements based on value or consider value as part of its risk management decisions] [unless provided under national legislation];]
- [(e) Allow [under conditions deemed fit by the customs] for the release of expedited shipments before and without prejudice to the final determination and payment of the applicable customs duties, taxes, fees and charges owed, if, where so required, sufficient guarantee is provided in the form of a surety, a deposit, or some other appropriate instrument, covering the ultimate payment of the customs duties, taxes and fees in connection with the importation of the expedited shipments¹⁸;] and

¹⁶ This addition is intended to make clear that the treatment in paragraph 7.2 need not be provided if the conditions in paragraph 7.1 have not been met or, as provided in paragraph 7.3, if authorities consider it necessary to obtain additional information or conduct screening or examine goods. Also, paragraph 7.3 has been modified to confirm that expedited treatment need not be provided to restricted goods.

¹⁷ This language may be dropped from the proposed article should it be adequately addressed in the context of the proposal on release and clearance.

¹⁸ This language may be dropped or modified in light of the language used in Article 7.2, release and clearance.

- [(f) Provide for a *de minimis* shipment value[, to the extent possible,] for which customs duties and taxes will not be collected [aside from certain prescribed goods]¹⁹.]

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

ARTICLE 8: CONSULARIZATION

[1. Prohibition of Consular Transaction Requirement

1.1 A Member shall not require a consular transaction²⁰, including any related fee or charge, in connection with the importation of any good. [To ensure the authenticity of all commercial documentation, the Member should strengthen customs cooperation.]]

ARTICLE 9: BORDER AGENCY COOPERATION

1. A Member shall ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade.

[2. A Member shall endeavour [may] to ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation and transit of goods harmonize their procedures.]

3. Members shall [, to the extent possible and practical,] cooperate with other Members with whom they share a common border and coordinate procedures at border crossings to facilitate cross-border trade. Such cooperation and coordination may include:

- (i) Alignment of working days and hours;
- [(ii) Alignment of procedures and formalities;
- (iii) Development and sharing of common facilities;
- (iv) Joint controls;
- (v) Establishment of one stop border post control
- (vi) [Establishment of expedited processes for goods in transit and physically separate infrastructure, such as transit lanes or berths²¹]

¹⁹ By virtue of the fact that the goods described in the last sentence of paragraph 7.3 need not be provided expedited treatment, the *de minimis* provision would not interfere with collection of taxes of such goods (e.g., liquor). Furthermore, this provision would not require Members to introduce separate *de minimis* shipment value for goods subject to expedited release procedures.

²⁰ Defined as "the procedure of obtaining from a consul of the importing Member in the territory of the exporting Member, or in the territory of a third party, a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shippers' export declaration, or any other customs documentation in connection with the importation of the good."

²¹ Subject to how transit is covered in the Agreement, one might have to revisit transit in this article and decide whether to change the language or delete it if covered elsewhere.

- (vii) Exchange of information [in accordance with national legislation] [for conducting joint controls and recognition of inspection results]]

**[ARTICLE 9 BIS: DECLARATION OF TRANSHIPPED OR IN TRANSIT GOODS]
[DOMESTIC TRANSIT]**

Alt. 1 [When goods being imported have a final destination in the territory of that Member other than the port of entry,][Members shall permit [the declarant to declare the goods for the relevant import customs procedure at the customs office most convenient for that purpose,] [that transit or transhipped goods are declared for the relevant import customs procedure at the customs office of destination or the customs office] [where these customs formalities can be fulfilled in the territory of destination.]

Alt. 2 [Where any goods imported at a customs station of any Member are mentioned in the import manifest/report as [for transshipment to][destined for] any other customs station of the Member, the Customs [may][shall] allow the goods to be [moved under a domestic transit procedure] [transhipped] to that customs station, without payment of duty, subject to such conditions as may be prescribed in this behalf.]

[Consignments which are being transhipped²² shall be subject to less onerous customs procedures than those applied to traffic in transit.]

ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION

1. Review of Formalities and Documentation Requirements

[1.1 With a view to minimizing the incidence and complexity of import, export, and transit formalities and of decreasing and simplifying import, export and transit documentation requirements:]

- (a) Each Member [shall] [, as appropriate,] review its formalities and documentation requirements relating to import, export and transit [at reasonable and regular intervals] taking into account changed circumstances, relevant new information and business practices, availability of techniques and technology, international best practices and inputs from interested parties.
- (b) The Committee shall develop procedures for sharing relevant information and best practices as appropriate.

2. Reduction/Limitation of Formalities and Documentation Requirements

[2.1 Members shall ensure that formalities and documentation requirements are applied in a manner as not to constitute an unnecessary obstacle to trade. Members shall consider whether alternative formalities and requirements that can achieve the legitimate objectives are reasonably available, and adopt those formalities and requirements which are significantly less trade restrictive.]

[2.2 Members shall, as appropriate, minimize the incidence and complexity of formalities and requirements relating to import, export or transit, and decrease and simplify documentation requirements.]

²² Defined as "transferred under customs control from the incoming means of transport to the outgoing means of transport within the area of one Customs office."

[2.3 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 or objectives can be addressed in a less trade restrictive manner.]

[2.4 Members [shall] [are encouraged to] use the following international standards and their future updates:

- (a) UN layout key,
- (b) UN Trade Data Elements Directory and
- (c) the WCO Data Model]

1. [When import, export or transit formalities of Members require presentation of supporting data or documents, Members shall endeavor to accept copies of such documents.]

2. [Where a government agency of a Member already holds the original of a required document, any other agency of that Member shall accept a copy authenticated by the agency holding the original in lieu of the original document.]

3. [Nothing in these provisions shall prevent a Member from requiring original documents or data in the course of exercising post entry audit.]

4. [A Member shall not require an original or copy of export declarations issued by the authorities of the exporting Member as a requirement for importation.]²³

3. Use of International Standards

3.1 Members [are encouraged to] [shall] use relevant international standards or parts thereof [as a reference][as a basis] for their importation, exportation or transit formalities and procedures, except as otherwise provided for in this Agreement.

[3.2 Members are not required to use international standards when:

- (a) the Member is not a signatory to such standards;
- (b) these standards are not appropriate to their development, financial or trade needs;
- (c) these standards would pose fundamental technological or infrastructural problems; or
- (d) these standards would be an ineffective or inappropriate means for the fulfilment of the legitimate objective pursued.]

3.3 Members are encouraged to take part, within the limits of their resources, in the preparation and periodic review of relevant international standards by appropriate international [intergovernmental] organizations.

3.4 The Committee shall develop procedures for the sharing by Members of relevant information, and best practices, on the implementation of international standards, as appropriate. The Committee may also invite relevant international organizations to discuss their work on international standards. As appropriate, the Committee may identify specific standards that are of particular value to Members.

²³ Moved from Article 12 (where it used to be listed as paragraph II) as agreed upon in JOB/TF/54.

4. Single Window

4.1 Members shall, [where practicable] [endeavour to], establish or maintain a single window, enabling traders to submit documentation and/or data requirement for importation, exportation or transit of goods to a single entry point. [The single window shall undertake onward distribution of the aforementioned documentation and/or data requirements to the participating authorities or agencies.] After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.

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

4.3 Members shall notify the Committee the details of operation of the single window.

4.4 Members shall, to the extent possible and practical, use information technology to support the single window.

[4.5 Members shall, where practicable, use relevant international standards as a basis for the single window schemes²⁴.]

4.6 [With regard to the scope of the participating authorities or agencies, and of the documentation and/or data requirements,] Members may implement the single window in a progressive manner.

5. [Elimination of] [Mandatory] Pre-shipment [and Post-shipment Inspections]

5.1 Members [where applicable] shall not require the [mandatory] use of pre-shipment inspections [as defined in Article 1 of the Agreement on Pre-shipment Inspection] [in relation to tariff classification and customs valuation][other than in instances specified by the national legislation].

[Likewise, Members shall not require the use of post-shipment or destination inspection in relation to tariff classification and customs valuation. This is without prejudice to checks and controls performed by customs or other government agencies in the framework of risk management.]

[5.2 From the entry into force of this agreement, Members shall [endeavour] not [to] introduce or apply any new requirements to use pre-shipment [or post-shipment inspections] [referred to in Article 6.1] [in relation to tariff classification and customs valuation].]²⁵

[5.3 Developing Country Members, including Least Developing Country Members, shall [to the extent possible] [progressively] implement the provisions of paragraph 6.1 subject to their requesting for and receiving from other Member(s), the necessary technical assistance and capacity building within the time period specifically agreed with such Member(s).]

²⁴ The bracketed wording can be deleted subject to the issue being addressed in a cross-cutting manner.

²⁵ Depending on definition of Category A provisions.

[6. Use of Customs Brokers

6.1 [Members [shall not] [are encouraged to not] [may] require the mandatory use of customs brokers.]

[Members, if and when licensing customs brokers, shall apply licensing rules that are transparent, [non-discriminatory] and reasonable.

Legal persons may operate with their own in-house customs broker, licensed by the competent authority.]

Alt. [6.1 Without prejudice to paragraph 7.2, Members shall not require the mandatory use of customs brokers.

6.2 Developing country Members shall eliminate any requirements 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 for mandatory use of customs brokers not later than [Y] years from the entry into force of this agreement.]

[7. Common Border Procedures [and Requirements]

7.1 Each Member shall apply common [customs] [and other] [border] procedures for [release] and clearance of goods [at different points of entry and exit of the same nature] throughout its territory. [[This shall include adoption of same standards] including [fees and charges,] specifications, terminologies and definitions, inspection, sampling and test methods.]]

[8. Uniform Forms and Documentation Requirements Relating to Clearance]

[8.1] [7.2] All documentation requirements relating to [customs] [border] [import, export and transit] procedures shall be [uniform and] [applied] [administered] uniformly [at different points of entry and exit of the same nature] throughout the territory of a Member.

9. Option to Return Rejected Goods to the Exporter

[9.1 In case of rejection of a consignment by the competent authority of a Member on account of failure to meet certain standards [other than goods violating intellectual property rights], [rather than those of health and environmental protection] an option [shall] [may] first be given to the importer to [re-export] [return] the rejected goods to the exporter [subject to the conditions stipulated in the national legislation of the member]; only upon failure by the importer to exercise this option within a reasonable period of time, a different course of action, including destruction of the goods can be considered by the competent authority.

[9.2 In the case of return of prohibited and restricted goods, the exporting Member shall accept the returned goods.]

10. Temporary Admission of Goods/Inward and Outward Processing

(a) *Temporary Admission of Goods*

[Members shall allow goods, as defined in its laws and regulations, to be brought into a customs territory conditionally relieved, totally or partially, from payment of import duties and taxes if such goods are brought into a customs territory for a specific purpose, are intended for re-exportation within a specified period and have not undergone any change except normal depreciation and wastage due to the use made of them.]

(b) *Inward and Outward Processing*

- (i) Each Member shall allow inward and outward processing of goods [in accordance with international standards [and practices]] [subject to terms and conditions as may be specified in the national legislation].
- (ii) For the purposes of this Article, the term "inward processing" means the Customs procedure under which certain goods can be brought into a Customs territory conditionally relieved [totally or partially] from payment of import duties and taxes [and trade policy measures], on the basis that such goods are [destined to be exported once having been subjected to manufacturing, processing or repair]²⁶ [intended for manufacturing, processing or repair and [subsequent exportation] [receiving a different customs regime]²⁷].
- (iii) For the purposes of this Article, the term "outward processing" means the Customs procedure [under which goods which are in free circulation in a Customs territory may be temporarily exported for manufacturing, processing or repair abroad and then re-imported with total or partial exemption from import duties and taxes] [according to which goods which are in free circulation in a customs territory].

ARTICLE 11: FREEDOM OF TRANSIT

1. [Goods subject to the provisions on Freedom of Transit of GATT 1994 and of this Agreement include those moved [via fixed infrastructure] [, *inter alia* pipelines and electricity grids].

1bis For greater certainty, nothing in Article V of the GATT 1994 or this Agreement shall be construed to require a Member:

- (a) to build infrastructure of any kind in its territory, or to permit the building of infrastructure by others, in order to facilitate the transit of goods;
- (b) [to provide access to any infrastructure for transit unless such infrastructure is open to general use by third parties. For the purpose of this Agreement, the term "general use by third parties" does not include access to infrastructure granted on a contractual basis.]]

2. [Each Member undertakes that if it establishes or maintains a State enterprise or if an enterprise has, formally or in effect, exclusive or special privileges, such enterprise shall, in its

²⁶ In the original Spanish the proposal is to add "destinadas a ser exportadas luego haber sido sometida a una..." after "ciertas mercancías" followed by "transformación, elaboración o reparación" (as currently in the text) but without the "y posterior exportación" at the end.

²⁷ "...recevoir ultérieurement en autre régime douanier" in the original French.

regulations, formalities [fees] and charges – including transportation charges –, on or in connection with traffic in transit, comply with the provisions on traffic in transit of this Agreement [and otherwise act solely in accordance with commercial considerations.]]²⁸

3. [[Any charges, regulations or formalities taken in accordance with GATT Article V imposed on or affecting traffic in transit] [All charges and regulations imposed on traffic in Transit];

- (a) shall not be more restrictive [on traffic in transit] than necessary [to fulfil a legitimate objective].
- (b) shall not be maintained if the circumstances or [policy] objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a less restrictive manner.
- (c) shall not be applied in a manner that would constitute a disguised restriction on transit traffic.]

3bis [Each Member shall notify the Committee on the objective and duration of all charges, regulations or formalities in connection with traffic in transit on a regular basis.]

[Members may draw the Committee's attention to examine any measure that under their judgement should have been notified by another Member.]

4. [Members shall not apply discriminatory measures to goods in transit, or to vessels or other means of transport of other Members, for reasons of any kind. This does not exclude the right to resort to the exceptions already laid down in WTO Agreements, for valid reasons and provided that the measure concerned does not constitute a disguised restriction on international trade.]

5. [With respect to all regulations and formalities imposed on or in connection with traffic in transit, including charges for transportation, traffic regulations, safety regulations and environmental regulations, Members shall accord to traffic in transit treatment no less favourable than that accorded to [export or import traffic/domestic traffic/traffic which is not in transit]. This principle refers to like products being transported on the same route under like conditions.]

6. Each Member shall accord to products which will be in transit through the territory of any other Member treatment no less favourable than that which would be accorded to such products if they were being transported from their place of origin to their destination without going through the territory of such other Member.

7. [Members shall exempt traffic in transit from customs duties and from all transit duties and other charges imposed in respect of transit, except:

- (a) Reasonable charges for transportation (such as tolls, road charges and similar), having regard to the conditions of the traffic, or
- (b) [Transit charges commensurate with the administrative expenses entailed by transit or with the cost of the service rendered.]
- (c) Any transit charge shall:
 - Only be imposed for the administrative procedures entailed or transit services provided in connection with the transit movement in question;
 - Not exceed the approximate administrative expenses entailed or cost of the transit service rendered; and

²⁸ This provision can be deleted to the extent that the issue will be addressed in a cross-cutting manner.

- Not be calculated on *ad valorem* basis.]

8. Members are encouraged to make available, where practicable, physically separate infrastructure (such as lanes, berths and similar) for traffic in transit.

9. [Formalities, documentation requirements [except where transit crimes have been detected] and customs controls, in connection with traffic in transit, shall not be more burdensome than necessary to:

- (a) identify the goods and
- (b) ensure that transit requirements have been met]

10. [Members shall not apply quality controls or controls of compliance with technical standards on goods in transit.]

11. Members shall allow and provide for advance filing and processing of transit documentation and data prior to the arrival of goods.

12. Once goods have been put under a transit procedure and have been authorized to proceed from the point of origination in a Member's territory, they will not be subject to further customs charges, formalities [or customs inspections] until they conclude their transit at the point of destination within the Member's territory.

13. Once traffic in transit has reached the customs office where it exits the territory of the Member, that office shall promptly terminate the transit operation if transit requirements have been met.

14. [Members may require a guarantee which shall not exceed the full amount of the duties or charges which may be incurred.][In exceptional circumstances such as penalties for non-compliance with laws and regulations once goods have left the point of origination, a guarantee may be furnished.]

15. [Once the Member has determined that its transit requirements have been satisfied, the guarantee shall be discharged without delay [, unless the guarantee covers multiple transactions.]]

16. [Where a Member requires a guarantee for goods in transit, this Member shall allow guarantees to be renewed for subsequent consignments once a previous one is proved to have reached its destination [or made exit]].

17. [Members shall not require the use of customs convoys for traffic in transit, except for circumstances presenting high risks. The goods subject to customs convoy requirements shall be included in Members laws or regulations and shall be published.]

18. Members shall endeavour to cooperate and coordinate with one another with a view to enhance freedom of transit. Such cooperation and coordination may include, but is not limited to, an understanding on:

- i) charges;
- ii) formalities and legal requirements; and
- iii) the practical operation of transit regimes.

19. Each Member shall [endeavour to] appoint a national transit coordinator to which all enquiries and proposals by other Members relating to the good functioning of transit operations can be addressed.

ARTICLE 12: [CUSTOMS COOPERATION MECHANISM FOR TRADE FACILITATION AND COMPLIANCE][CUSTOMS COOPERATION]

1.

Alt 1.

[Members [shall] [endeavour] [in accordance with its domestic law] [may] [within the available resources] upon request, exchange information [and/or documents] [on Customs matters] in identified cases of import, export [or transit], where there is reason to doubt the truth or accuracy of a declaration submitted by the importer or exporter [or its agent].

Alt 2.

[Where a Member has reason to doubt the truth or accuracy of information provided by traders in support of the declared value of imported goods, and recognizing the importance of protecting commercially confidential information in safeguarding the commercial interests of traders, a Member may request assistance from the exporting Member on mutually agreed terms consistent with the requirements of this Article.

The requested Member [should][shall][may] offer cooperation and assistance, consistent with its domestic law and procedures [within its available resources]:

- i) if the requested Member is satisfied with the verification referred to in paragraph 2;
- ii) If the requested Member is satisfied that the required confidentiality of the information will be maintained;
- iii) If the requested Member has obtained the prior consent of the person furnishing the information, where there is such a requirement under its domestic laws and regulations; and
- iv) If the disclosure of the information is not otherwise prohibited by the domestic laws and regulations of the requested Member.]

2. The requesting Member shall ensure that all appropriate internal verification has been undertaken including, *inter alia*, verification of the importer/exporter and inspection of the relevant documents before it requests assistance from another Member. [The requesting Member shall share the result of the verification with the requested Member.]

3. The requesting Member shall provide the requested Member with a written request, including:

- (a) The matter at issue and reasons for the request;
- (b) The specific information [and/or documents] requested;
- (c) The purposes for which the Member requires the information [and/or the documents];
- (d) A confirmation that the Member had conducted the verification required by paragraph 2;
- (e) The identity [and the legal mandate] of the official making the request;
- (f) The names and addresses of the persons to whom the request relates, if known; and
- [(g) The applicable legal provisions in the domestic law, including provisions relating to confidentiality, of the requesting Member.]

4. The requested Member [shall] [where practicable] [may] [in accordance with its domestic law]²⁹:
- (a) Provide information only to the extent it is available in the import or export declaration(s) [within the available resources of its respective authorities] [and, if required, at least the details, viz. Exporter; Consignor; Carrier; Importer; Consignee; [Notify party]; Delivery destination; Country(ies) of routing, to the extent known; Agent, if applicable; Tariff code number; Description of Goods; [UNDG Number (Dangerous Goods Code), if applicable]; Type of packages identification; Quantity of goods/Number of packages; Total gross weight; [Equipment identification number, if containerized and available]; [Equipment size and type identification]; [Seal number, if applicable and available]; [Total invoice amount]; and [Unique consignment reference number.]]
 - [(b) If requested, provide documents submitted in support of a goods 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;]
 - [(c) Confirm that the documents provided are true copies of the documents submitted by the importer/exporter [and accepted by the requested Member]; and]
 - (d) [Provide the information] [and/or documents] [respond to the request] [to the extent possible,] [within a period of 90 days] [within reasonable time] from the date of receipt of the request.]
5. Such exchange of information [and/or documents] shall not require requested Members to:
- (a) Modify the format of their import or export declarations or their procedures;
 - (b) Call for documents other than those submitted with the goods declaration[s];
 - (c) Initiate inquiries to obtain the information;
 - (d) Modify the period of retention of such information [and/or documents];
 - (e) Introduce paper documentation where electronic format has already been introduced;
 - [(f) Provide any information for which disclosure is not permissible under their domestic laws and regulations; or]
 - (g) Provide any information furnished by any person pursuant to their domestic laws and regulations where such person has not given consent to the disclosure of the information, where there is such a requirement under its domestic laws and regulations.]
 - [h) Translate the information [and/ or documents].]
6. The request for information [and/or documents] shall be made available [in one of the three official languages of the WTO or] in a language mutually acceptable to the requesting and the requested Member.
7. The requesting Member shall use the information [and/or documents] solely for the purposes stated in the request, unless the requested Member agrees otherwise in writing. [The requesting Member shall be subject to any restrictions imposed by the Member providing the information.]
8. [Any information [and/or documents] exchanged which are by nature confidential or which are provided on a confidential basis shall be treated as [strictly] confidential by the [requesting Member. [Any information [and/or documents] exchanged shall be granted at least the same level of

²⁹ May need fine tune.

protection provided under the laws and regulations of the requested Member] The requesting Member shall provide the information only to its customs administration and] [authorities concerned who] shall not disclose it to any [other governmental agency or] third party without the specific permission of the requested Member [, except to the extent required in [administrative or] judicial proceedings].]

[Such information [and/or documents] shall not be used as evidence in a [criminal] [judicial] proceeding unless specifically authorized by the requested Member. [In case the government of a requesting Member is ordered to provide such information as evidence for a [criminal] [judicial] proceeding by the court or intends to disclose it to any third party, the requesting Member shall obtain specific written authorization from the requested Member in order to do so.]]

[The requested Member [may][shall] consider whether the confidentiality of the information required will be adequately protected before providing such authorization. The requested Member [may][shall] decline to authorize such use of the information if its laws and regulations will be breached by this use.]

9. Each Member shall notify the Committee a contact point for exchange of information [and/or documents].

10. [The request for information [and/or documents] [shall not be made] [shall be made at any time but no] later than [one year] [two years] [the time required by the national legislation of the requested Member [for the prescription of any offence and/or infringement subject to investigation]] after the importation or exportation of the goods.]

11.

Alt.1 [A Member shall not [make] [request] more than [X] [consignments for information] [requests for information [and/or documents] from another Member in a calendar year] [except for requests that are made in cases of highest relevance³⁰] [to both the requesting Member and the requested Member].

Alt 2. [A requested Member may postpone or refuse more than [X] requests for information [and/or documents] from the same Member in a calendar year. [Reasons for such a postponement or refusal shall, as soon as possible, be communicated to the requesting Member.]]

12. A requested Member shall respond in writing, whether paper or electronic means, to a request made pursuant to this Article.

13. The requesting Member should inform the requested Member about the result of the exchange of information if there was a request from the latter to so provide.

14. Notwithstanding what is contained in the preceding paragraphs, a requested Member may postpone or refuse providing information [and/or documents] if the provision of such information [and/or documents] would interfere with an on-going administrative or judicial investigation, prosecution or proceeding. [Reasons for such a postponement or refusal shall, as soon as possible, be communicated to the Member making the request.]

³⁰ "A excepción de que las solicitudes sean de casos de suma relevancia" in the original Spanish.

15. [In cases where the requested Member is of the opinion that exchange of information under these provisions is prohibited by its laws and regulations or would infringe upon its sovereignty, security, public policy, or other substantial interest, [or would violate a commercial, industrial or professional secret] the request may be refused or has to be withheld, or may be subject to the satisfaction of certain conditions or requirements.]

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

17. [In the event of any breach of the conditions of use or disclosure of information exchanged under this Article, the requesting Member that received the information shall promptly communicate the details of such unauthorized use or disclosure to the requested Member that provided the information, and;

- (a) take the necessary measures to remedy, to the extent possible, the breach,
- (b) take all necessary measures, to the extent possible, to prevent any future unauthorised use or disclosure of information exchanged under this Article, and;
- (c) [notify] the requested Member of the above [mentioned] measures.]

18. [If the requesting Member would be unable to comply with a similar request in case such a request was made by the requested Member, it shall state that fact in its request. Execution of such a request shall be at the discretion of the requested Member.]

19. [A Member has a right not to cooperate with a non-cooperative Member.]

20. Nothing in this proposal shall be construed to prevent a Member from entering into or maintaining a bilateral or regional arrangement regarding sharing of customs information. [In the case of an inconsistency between a provision of such an agreement and this Article, that agreement shall prevail to the extent of the inconsistency].

ARTICLE 13: INSTITUTIONAL ARRANGEMENTS

1.1 A Committee on Trade Facilitation is hereby established.

1.2 The Committee shall be open for participation by all Members. The Committee shall elect its own Chairman.

1.3 The Committee shall meet as needed and envisaged by the relevant provisions of the Agreement, but no less than once a year, for the purpose of affording Members the opportunity to consult on any matters related to the operation of this Agreement or the furtherance of its objectives.

1.4 The Committee shall carry out such responsibilities as assigned to it under this Agreement or by the Members.

1.5 The Committee may set up such subsidiary bodies as may be required. All such bodies shall report to the Committee.

1.6 The Committee shall maintain close contact with other international organizations in the field of trade facilitation with the objective of securing the best available advice for the administration of this agreement and in order to ensure that unnecessary duplication of effort is avoided.

Representatives of such organizations may be invited to meetings of the Committee and the Committee may, through appropriate channels, invite the relevant international organizations or their subsidiary bodies to examine specific matters related to the administration of this agreement.

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.]

[1.8 The Committee shall have its own rules of procedures.]

ARTICLE 14: 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 15: PREAMBLE/CROSS-CUTTING MATTERS

[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.]

[1.2 Recognizing that a Member may have to address cases where it has reason to doubt the truth or accuracy of information provided by traders in support of the declared value of imported goods;

1.3 Recognizing the importance of protecting commercially confidential information in safeguarding the commercial interests of traders³¹;

Cross-Cutting Issues

- (a) Relationship to other WTO Agreements
- (b) Institutional Provisions and Dispute Settlement
- (c) Final Provisions
- (d) Implementation Schedules

[Exceptions

The provisions of Articles XX and XXI of GATT 1994 apply to the provisions of this Agreement.]

³¹ This language stems from a proposal on customs cooperation that was originally tabled by Canada.

[Dispute Settlement

The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided for in this Agreement.]

SECTION II

SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS FOR DEVELOPING COUNTRY MEMBERS AND LEAST DEVELOPED COUNTRY MEMBERS

1. [General provisions and basic principles]

1.1 The provisions³² contained in [Section I][Articles X-Y] of this Agreement shall be implemented by developing and least developed country Members in accordance with this section [which fully takes into account the principle of special and differential treatment] [in accordance with the modalities agreed in Annex D of the July 2004 Framework Agreement and the Hong Kong Ministerial Declaration.]

1.2 [Members recognize that the principle of special and differential treatment for developing and least developed country Members should extend beyond the granting of traditional transition periods for implementing commitments. In particular, the extent and the timing of entering into commitments shall be related to the implementation capacities of developing and least developed country Members, who would not be obliged to undertake investments in infrastructure projects beyond their means.

1.3 Least developed country Members will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.]

1.4 [Developed country Members shall ensure to provide support and assistance to developing and least developed country Members in a comprehensive manner [and on a long term and sustainable basis, backed by secure funding], in order to allow implementation. Members agree that in cases where the required support and assistance is not forthcoming from developed country Members and other donors, and where a developing or least developed country Member continues to lack the necessary capacity, implementation will not be required.]

1.5 [While every effort shall be made to ensure the necessary support and assistance, it is understood that the commitments by developed country Members to provide such support are not open ended.]

1.6 Developing Country and Least Developed Country Members shall determine, on an individual basis, the provisions to be included under Categories A, B and C.^{33 34}

[2. Definitions of Categories of Commitments

2.1 Category A commitments are provisions that a Developing Country Member or a Least Developed Country Member has designated for implementation upon entry into force of this Agreement, as provided in Article [X], [including all provisions that a developing country and a least developed country Member already implements [autonomously]].

³² The term “provision” means provision or a sub-part of a provision.

³³ Categories A, B and C are described in Article 2.

³⁴ It is yet to be determined where this paragraph will feature in the text.

2.2 Category B commitments are provisions that a Developing Country Member or a Least Developed Country Member has designated for implementation on a date after a transitional period of time following the entry into force of this Agreement, as provided in Article [Y].

2.3 Category C commitments are provisions that a Developing Country Member or a Least Developed Country Member has designated for implementation on a date after a transitional period of time following the entry into force of this Agreement and [as requiring][upon the acquisition of implementation capacity through the provision of] technical [and/or financial] assistance and support for capacity building, as provided for in Article [Z].]

3. [Notification of Provisions under Category A]

3.1 Alt.1 [Developing country Members shall notify the Secretariat the provisions under Category A at the time of the signature of the Agreement or, at the latest, by the time of entry into force of this Agreement.]

Alt. 2 [Upon entry into force of this Agreement, each developing country Member [and each least developed country Member] shall implement the provisions it has designated in Schedule A. Each Member's Schedule A is hereby made an integral part of this Agreement.]

[3.2 Notwithstanding paragraph 2.1 a least developed country Member shall notify the Committee the provisions under Category A at entry into force of this Agreement or, at the latest, by [X] time after the entry into force of this Agreement.]

[4. [Notification and Implementation of Provisions under [Schedule B/C][Categories B and C]]

[4.1 With respect to those provisions that a Developing Country Member has not designated [in Schedule A][under Category A], the Member may delay implementation of such provisions in accordance with the process set forth in this paragraph.

(a)

Alt 1

No later than [90][180][365] days after entry into force of this Agreement, each developing country Member shall notify to the Committee the provisional dates for implementation of each of the provisions [under Categories B and C] [it did not designate in its Schedule A].

Alt 2

No later than [90][180][365] days after entry into force of this Agreement, each developing country Member shall notify to the Committee the provisional dates for implementation of each of the provisions under Category B.

No later than [90][180][365] days after entry into force of this Agreement, each developing country Member shall notify to the Committee the provisions under Category C, including a listing of the provisions in terms of priorities for technical [and financial] assistance and capacity building.

(b)

Alt 1

No later than [x][300] days after entry into force of the Agreement, each developing country Member shall notify to the Committee [in final Schedule B/C] the definitive date for implementation of each of the provisions under Category B.

No later than [x +y][300] days after entry into force of the Agreement, each developing country Member shall notify to the Committee [in final Schedule B/C] the definitive date for implementation of each of the provisions under Category C.

Alt 2

No later than [x][300] days after entry into force of the Agreement, each developing country Member shall notify to the Committee [in final Schedule B/C] the definitive date for implementation of each of the provisions [under Categories B and C] [it did not designate in its Schedule A].

Alt 3

No later than [x][300] days after entry into force of the Agreement, each developing country Member shall notify to the Committee [in final Schedule B/C] the definitive date for implementation of each of the provisions under Category B.

Each developing country Member shall notify to the Committee the definitive date of implementation of each of the provisions under Category C after an agreement has been reached with a donor to assist on the implementation of the provision concerned.]

[4.2 With respect to those provisions that a Least Developed Country Member has not designated under Category A, the Member may delay implementation of such provisions in accordance with the process set forth in this paragraph.

No later than 365 days after the entry into force of this agreement, a Least Developed Country Member shall notify the Committee the provisions under Categories B and C, taking into account maximum flexibilities for Least Developed Members, and, particularly, the possibility to shift commitments from one category to another.

No later than [365 + x] days after the entry into force of this agreement a Least Developed Country Member shall notify the Committee the date of implementation of each of the provisions under Category B.

Each least developed country Member shall notify to the Committee the date of implementation of each of the provisions under Category C after an agreement has been reached with a donor to assist on the implementation of the provision concerned.]

[4.3 Members experiencing difficulties in submitting provisional and definitive dates for implementation within the deadlines set forth in paragraphs 4.1 and 4.2 because of the lack of a donor should notify the Committee of those difficulties as early as possible prior to the expiration of those deadlines. Members agree to cooperate to assist in addressing such difficulties, taking into account the particular circumstances and special problems facing the Member concerned. The Committee [may][shall] take appropriate action to address the difficulties, including, where necessary, extending the deadlines for the Member concerned.]

[4.4 If a Member does not notify a time period for a provision in final Schedule B/C, the Member shall implement that provision within [x][365] days after entry into force of this Agreement.]

[4.5 Any implementation of provisions notified under Category C by developing and least developed country Members is conditional on the provision of adequate and effective technical [and financial] assistance and capacity building measures by developed-country Members and/or other donors [with a view to] [as well as] the acquisition of implementation capacity by developing and least developed country Members.]

[4.6 [365][x] days after entry into force of this Agreement, and then 60 days after an extended deadline established [above], the Committee shall meet to ratify each Member's final Schedule B/C. Upon ratification, each Member's Schedule B/C will become an integral part of this Agreement.]]

[4bis: Notification of Implementation Plans for Category C]

[4.1 Upon the final notification of provisions under Category C or no later than [90][120][180] days thereafter, each developing country Member shall notify to the Committee the implementation plan for provisions under Category C [after an agreement with a donor has been reached to assist in the implementation of the provisions concerned.]]

[4.2 Least developed country Members shall notify the Committee the implementation plan for provisions notified under Category C after they have received adequate and effective technical assistance [and financial support][and/or in respect of which they have acquired the capacity to implement.]]

[4.3

Alt 1.

[The implementation plan shall include:

- (a) the technical [and financial] assistance and support for capacity building required for the implementation [the acquisition of implementation capacity] in respect of each provision];
- (b) [the provisional date for implementation of each of the provisions] ;
- (c) The national authority responsible for implementation;
- (d) Donor, if any.]

Alt 2.

[Notifications submitted in draft and final Schedule B/C may also include such further information as the notifying Member deems appropriate. Members are encouraged to provide information on the domestic agency/entity responsible for implementation and, for those provisions for which a Member considers that technical assistance and capacity building is required, the donor agency with which the Member has an agreement to provide assistance.

[4.4 For the provisions that at the time of the submission of the implementation plan as referred to in the paragraph above did not include the donor, Members shall update the implementation plan with information regarding the donor committed to assist in the implementation of a provision and the definitive period for implementation.]

5. [Notification of Provisions under Category C]

5.1

Alt 1.

[Developing country Members shall notify the Committee the provisions under Category C no later than [90][180][365] days after the entry into force of this Agreement including a listing of the provisions under Category C in terms of priorities for technical [and financial] assistance and capacity building.]

Alt.2:

{Already addressed in 4.1. Alt.2 version of 4.1 reproduced here for ease of reference. }

[No later than [90][365] days after entry into force of this Agreement, each developing country Member [or least developed country Member] shall notify to the Committee in Schedule B/C the provisional dates for implementation of all provisions that the Member did not designate in its Schedule A].

[No later than [x][300] days after entry into force of the Agreement, each developing country Member [or least developed country Member] shall notify to the Committee in final Schedule B/C the definitive period for implementation of all provisions that the Member did not designate in its Schedule A].

{See also 4.2}

5.2 [Least Developed Country Members shall notify the Committee the provisions under Category C no later than 365 days after the entry into force of this Agreement.]

5.3 [Any implementation of provisions notified under Category C by developing and least developed country Members is conditional on the provision of adequate and effective technical [and financial] assistance and capacity building measures by developed-country Members and other donors [with a view to] [as well as] the acquisition of implementation capacity by developing and least developed country Members.]

[5bis Notification of Implementation Plans for Provisions Notified under Category C]

[5.1 [No later than [90][120][180] days after the notification of Category C provisions referred to in paragraph 5.2, Developing Country Members shall notify to the Committee the implementation plan for provisions under Category C [after an agreement with a donor has been reached to assist in the implementation of the provision concerned.]

5.2 The implementation shall include, *inter alia*:

- [(a) the technical [and financial] assistance and support for capacity building required for the implementation [the acquisition of implementation capacity] in respect of each provision;]
- [(b) [the [provisional] period of implementation for each provision] [in cases where the assistance by a donor has not yet been agreed for some provisions the implementation plan shall include, as a minimum, the provisional period for implementation;]
- [(c) The national authority responsible for implementation;
- [(d) Donor, if any.

5.3 [For the provisions that at the time of the submission of the implementation plan as referred to in the paragraph above did not include the donor, Members shall update the implementation plan with information regarding the donor committed to assist in the implementation of a provision and the definitive period for implementation.]

5.4 Least developed country Members shall notify the Committee the implementation plan for provisions notified under Category C after they have received adequate and effective technical assistance [and financial support][and/or in respect of which they have acquired the capacity to implement.]

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

6.1 a) A developing country Member or least developed country Member that considers itself to be experiencing difficulty in implementing a provision by the date set forth in [its Schedule B/C] [Category B and C] may, no later than [X] days before the date [notified under B and C] [scheduled], [request an extension and] notify the Committee that it considers that it will be unable to implement the provision by the applicable date.

b) The notification to the Committee shall indicate the new date by which the developing country or least developed country Member expects to be able to implement the provision concerned. The notification shall also indicate the reasons for the expected delay in implementation. Such reasons may include the need for assistance where not earlier anticipated.

[6.2 Alt.1 Where the additional time required for implementation does not exceed [365] days, the developing country or least developed country Member is entitled to such additional time without any further action by the Committee. If the additional time required for implementation exceeds [365] days, the developing country or least developed country Member shall request the Committee to grant an extension.]

Alt.2

[The additional time should not exceed the time initially notified for the relevant provision set forth [under paragraph X] [in the List.]]

6.3 Where a developing country or least developed country Member considers that it requires an extension [of the implementation period][of the time required to implement a provision notified under Category B and [or] Category C] for a second, [or any subsequent time,] the developing country or least developed country Member shall submit a request for an extension and a corresponding notification containing the information described in 6.1 [prior to][no later than [x] days before] the expiration of the implementation period, as previously extended pursuant to [paragraph 2][paragraph 4].

6.4 The Committee shall give sympathetic consideration to requests for extension [and may decide to grant an extension] taking into account the specific circumstances of the Member submitting the request. These circumstances may include difficulties and delays in obtaining assistance.

[6bis. Shifting from Category B to C, or from C to B]

[6.1 Developing Country Members and least developed country Members who have notified provisions under Category B and C may shift commitments from one Category to another.

6.2 A developing country member or least developed country member may invoke the application of the [Early Warning Mechanism] [provisions of Article 6] to shift a provision from Category B to C or vice versa through the submission of a notification to the Committee.]

[Alt. to both 6.1 and 6.2: Under exceptional circumstances, Developing Country Members and Least Developed Country Members who have notified or re-notified to the Committee the provisions under Category B and C may shift commitments from one category to another through the submission of a notification to the Committee.]

6.3 [Where a Member proposes to move a provision from Category B to Category C [and requires additional time], a request shall be made to the Committee. The request shall contain information on the technical assistance capacity building and financial needs required as well as the implementation plan.

[Where a Member proposes to move a provision from one Category to another and does not require additional time, the Member shall submit a notification to the Committee.]]

7. Grace Period for the Application of the Understanding on Rules and Procedures Governing the Settlement of Disputes

7.1 For a period of [2] years after entry into force of this Agreement, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not [be applied] [apply to the settlement of disputes] against a Developing Country [or least developed country] Member concerning any provision under Category A of that Member.

[7.2 For a period of [2] years after implementation of a provision under Category B and C by the developing country [or least developed country] Member, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not [be applied] [apply to the settlement of disputes] against that Developing Country [or least developed country] Member concerning those provisions.]

[7.3 Each Member shall nevertheless provide adequate opportunity for consultation with respect to any issue relating to the implementation of this Agreement.]³⁵

[7.4 The Committee shall encourage and facilitate ad hoc consultations or negotiations among Members on specific issues relating to trade facilitation, with a view to reaching a mutually satisfactory solution promptly.]³⁶

[7.5 Nothing in this Agreement 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.]³⁷

[7.6 For a period of [Y] years after entry into force of this Agreement, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not [be applied] [apply to the settlement of disputes] against a Least Developed Country Member concerning any provision under Category A of that Member.]

³⁵ This paragraph could be moved to another location in the Agreement.

³⁶ This paragraph could be moved to another location in the Agreement.

³⁷ This paragraph could be moved to another location in the Agreement.

[7.7 For a period of [Y] years after implementation of a provision under Category B and C by a Least Developed Country Member, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not [be applied] [apply to the settlement of disputes] against that Least Developed Country Member concerning those provisions.]

[7.8 [Notwithstanding the grace period for the Application of the Understanding on Rules and Procedures Governing the Settlement of Disputes] Before making a request for consultations pursuant to Articles XXII or XXIII, and at all stages of dispute settlement procedures with regard to a measure of a least developed country Member, a Member shall give particular consideration to the special situation of least developed country Members. In this regard, 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.]

[8. [Information on] Implementation of Provisions listed under Categories B and C

Alt.1

[A Member's commitment under category B and C shall be binding from the expiry of the time period notified for implementation, including any extended time period under the early warning mechanism.]

Alt.2

[Upon the end of the implementation period of a provision under Categories B and C, a developing country Member or a least developed country Member shall notify the Committee that the provisions have been implemented.]]

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

[9.1 The provision of technical assistance [, financial assistance] and capacity building by developed country Members and relevant international organizations and other agencies of cooperation, including the IMF, OECD, UNCTAD, WCO and the World Bank, is a precondition for the acquisition of implementation capacity by developing country and least developed country Members in respect of provisions requiring assistance.]

[9.2 In cases where technical assistance and capacity building is not provided or lacks the requisite effectiveness, developing country and least developed country Members are not bound to implement the provisions notified under Category C.]³⁸

9.3 [Developed country Members and developing country Members in a position to do so] [Members] agree to facilitate the provision of technical assistance [, financial assistance] and capacity building to developing country and least developed country Members, on mutually agreed terms and either bilaterally or through the appropriate international organizations. The objective of such assistance is to assist developing country and least developed country Members to comply with the Agreement's commitments.

9.4 In line with the Paris Declaration on Aid Effectiveness and the Accra Agenda for Action, Members shall endeavour to apply the following principles for providing technical assistance and capacity building with regard to the implementation of this Agreement:

- (a) Take account of the overall developmental framework of recipient countries and regions and, where relevant and appropriate, ongoing reform and technical assistance programs;

³⁸ Paragraphs 9.2 and 5.3 might address the same issue.

- (b) Include, where relevant and appropriate, activities to address regional and sub-regional challenges and promote regional and sub-regional integration;
- (c) Ensure that ongoing trade facilitation reform activities of the private sector are factored into assistance activities;
- (d) Promote coordination between and among Members and other relevant institutions, including regional economic communities, to ensure maximum effectiveness of and results from this assistance. To this end:
 - (i) Coordination, primarily in the country or region where the assistance is to be provided, between partner Members and donors, and among bilateral and multilateral donors, should aim to avoid overlap and duplication in assistance programs, and inconsistencies in reform activities through close coordination of technical assistance and capacity building interventions;
 - (ii) For least developed country Members, the Enhanced Integrated Framework should be a part of this coordination process; and
 - (iii) Members should also promote internal coordination between their trade and development officials, both in capitals and Geneva, in the implementation of the Agreement and technical assistance.
- (e) Encourage use of existing in-country and regional coordination structures such as round tables and consultative groups to coordinate and monitor implementation activities; and
- (f) Encourage developing countries to provide capacity building to other developing and least developed countries and consider supporting such activities, where possible.

9.5 [The Committee shall provide for a specific agenda item to discuss technical assistance and capacity building including *inter alia*:] [A Technical Assistance Unit linked to the Committee shall, *inter alia*, provide a framework for:]

- [(a) receiving requests from developing and least developed country Members;]
- (b) Discussion on any problems regarding implementation of provisions or subsidies-parts of provisions;
- (c) Review of progress in the provision of technical assistance and capacity building including any developing or least developed country members not receiving adequate technical assistance and capacity building;
- (d) Sharing experiences and information on ongoing assistance and implementation programs, including challenges and successes.

10. Information on Assistance to be submitted to the Committee

10.1 [Developed-country Members] [A Member] [assisting developing country and least developed country Members with implementation of this Agreement] shall submit to the Committee an annual report on the technical and financial assistance and capacity building measures provided to these developing country and least developed country Members. The report shall include a brief description of the assistance, status and amount committed/disbursed.³⁹

³⁹ In the case of OECD Members the report can be based on relevant information from the OECD Creditor Reporting System.

[Developing country Members [in a position to do so] should submit to the Committee information on the technical and financial assistance and capacity building measures provided to other developing country and least developed country Members to help support implementation of this Agreement.]

10.2 [Developed country] Members assisting developing country and least developed country Members shall submit to the Committee:

- (a) Contact points of their agencies responsible for providing technical and financial assistance and support for capacity building related to the implementation of this Agreement, including where practicable, information on such contact points within the country or region where the assistance is to be provided;
- (b) Information on the process and mechanisms for requesting assistance.

[Developing country Members in a position to provide assistance shall submit the information above.]

10.3 Developing country and least developed country Members intending to avail themselves of trade facilitation-related assistance shall submit to the Committee information on contact point(s) of the office(s) responsible for coordinating and prioritizing such assistance.

10.4 Members may provide the information in paragraphs 10. 2 and 10.3 through internet references and shall update the submitted information as necessary. The Secretariat shall make all such information publicly available.

10.5 The Committee shall invite relevant international and regional organizations (such as the IMF, OECD, UNCTAD, WCO, UN Regional Commissions, the World Bank or their subsidiary bodies, and regional development banks) and other agencies of cooperation to provide information referred to in paragraphs 10.1, 10.2 and 10.4.

Annex [1]: Format for Schedule B/C

Provision/Sub-part of Provision	Time Period	Assistance Required and Other Information
