WORLD TRADE ORGANIZATION

WT/MIN(13)/DEC

11 December 2013

(13-6816)

Ministerial Conference
Ninth Session
Bali, 3-6 December 2013

BALI MINISTERIAL DECLARATION

ADOPTED ON 7 DECEMBER 2013

1.1. We, the Ministers, have met in Bali, Indonesia, from 3 to 6 December 2013 at our Ninth Session. As we conclude our Session, we would like to express our deep appreciation to the Government and people of Indonesia for the excellent organization and the warm hospitality we have received in Bali.

1.2. We reaffirm the principles and objectives set out in the Marrakesh Agreement Establishing the World Trade Organization. We also recall the Declarations and Decisions we adopted at Doha and at the Ministerial Conferences we have held since then and reaffirm our full commitment to give effect to them.

1.3. To this effect, we take note of the reports from the General Council and its subsidiary bodies. We welcome the progress that these reports, and the Decisions stemming from them, show in the work of the WTO, thereby strengthening its effectiveness and the multilateral trading system as a whole.

1.4. We particularly welcome the advances made in the Doha Development Agenda (DDA), as represented by the Decisions and Declarations we have adopted at our present session. These Decisions and Declarations signify that we have taken a major step forward in the negotiations and attest to our strong resolve to complete the DDA.

PART I – REGULAR WORK UNDER THE GENERAL COUNCIL

1.5. We welcome the progress in the regular work under the General Council, including under the mandates that we gave at our Eighth Session, and the following decisions we have adopted at our Ninth Session:

- TRIPS Non-violation and Situation Complaints – Ministerial Decision - WT/MIN(13)/31 - WT/L/906
- Work Programme on Electronic Commerce – Ministerial Decision - WT/MIN(13)/32 - WT/L/907
- Work Programme on Small Economies - Ministerial Decision - WT/MIN(13)/33 - WT/L/908
- Aid for Trade - Ministerial Decision - WT/MIN(13)/34 - WT/L/909
- Trade and Transfer of Technology - Ministerial Decision - WT/MIN(13)/35 - WT/L/910

1.6. We further welcome the following decisions taken in Geneva in response to the relevant mandates from our Eighth Session:

- Decision adopted by the TRIPS Council concerning the extension of the transition period under Article 66.1 for Least-Developed Country Members in document IP/C/64;
- Decision adopted by the General Council in July 2012 on the Accession of LDCs in document WT/L/508/Add.1.

1.7. We welcome those new Members who have completed their accession processes since our last Session. In particular, we note with satisfaction that, at our present Session, we have adopted the Decision on the Accession of the Republic of Yemen (WT/MIN(13)/24- WT/L/905). We recognize the contribution of accession to strengthening the multilateral trading system and remain committed to efforts to facilitate accessions.

PART II – DOHA DEVELOPMENT AGENDA

1.8. We welcome the progress in the DDA, which is embodied in the following Decisions and Declarations we have adopted at our Ninth Session:

Trade Facilitation

- Agreement on Trade Facilitation – Ministerial Decision – WT/MIN(13)/36 - WT/L/911

  In this regard, we reaffirm that the non-discrimination principle of Article V of GATT 1994 remains valid.

Agriculture

- General Services – Ministerial Decision – WT/MIN(13)/37 - WT/L/912
- Public Stockholding for Food Security Purposes – Ministerial Decision – WT/MIN(13)/38 - WT/L/913
- Understanding on Tariff Rate Quota Administration Provisions of Agricultural Products, as Defined in Article 2 of the Agreement on Agriculture – Ministerial Decision – WT/MIN(13)/39 - WT/L/914
- Export Competition – Ministerial Declaration – WT/MIN(13)/40 - WT/L/915

Cotton

- Cotton – Ministerial Decision – WT/MIN(13)/41 - WT/L/916

Development and LDC issues

- Preferential Rules of Origin for Least-Developed Countries – Ministerial Decision – WT/MIN(13)/42 - WT/L/917
- Operationalization of the Waiver Concerning Preferential Treatment to Services and Service Suppliers of Least-Developed Countries – Ministerial Decision – WT/MIN(13)/43 - WT/L/918
- Duty-Free and Quota-Free (DFQF) Market Access for Least-Developed Countries – Ministerial Decision – WT/MIN(13)/44 - WT/L/919
- Monitoring Mechanism on Special and Differential Treatment –Ministerial Decision – WT/MIN(13)/45 - WT/L/920

PART III - POST-BALI WORK

1.9. We reaffirm our commitment to the WTO as the pre-eminent global forum for trade, including negotiating and implementing trade rules, settling disputes and supporting development through the integration of developing countries into the global trading system. In this regard, we reaffirm our commitment to the Doha Development Agenda, as well as to the regular work of the WTO.

1.10. We take note of the progress that has been made towards carrying out the Doha Work Programme, including the decisions we have taken on the Bali Package during this Ministerial Conference. These decisions are an important stepping stone towards the completion of the Doha Round. We reaffirm our commitment to the development objectives set out in the Doha Declaration, as well as to all our subsequent decisions and declarations and the Marrakesh Agreement Establishing the WTO.

1.11. To further demonstrate this commitment, we instruct the Trade Negotiations Committee to prepare within the next 12 months a clearly defined work program on the remaining Doha Development Agenda issues. This will build on the decisions taken at this Ministerial Conference, particularly on agriculture, development and LDC issues, as well as all other issues under the Doha mandate that are central to concluding the Round. Issues in the Bali Package where legally binding outcomes could not be achieved will be prioritised. Work on issues in the package that have not been fully addressed at this Conference will resume in the relevant Committees or Negotiating Groups of the WTO.

1.12. The work program will be developed in a way that is consistent with the guidance we provided at the Eighth Ministerial Conference, including the need to look at ways that may allow Members to overcome the most critical and fundamental stumbling blocks.

1.13. As we prepare the work program, we will remain available for further contacts amongst ourselves and with the Director-General on these matters as we move forward in 2014.

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Ministerial Conference
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AGREEMENT ON TRADE FACILITATION

MINISTERIAL DECISION OF 7 DECEMBER 2013

The Ministerial Conference,

Having regard to paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement");

Decides as follows:

1. We hereby conclude the negotiation of an Agreement on Trade Facilitation (the "Agreement"), which is annexed hereto, subject to legal review for rectifications of a purely formal character that do not affect the substance of the Agreement.

2. We hereby establish a Preparatory Committee on Trade Facilitation (the "Preparatory Committee") under the General Council, open to all Members, to perform such functions as may be necessary to ensure the expeditious entry into force of the Agreement and to prepare for the efficient operation of the Agreement upon its entry into force. In particular, the Preparatory Committee shall conduct the legal review of the Agreement referred to in paragraph 1 above, receive notifications of Category A commitments, and draw up a Protocol of Amendment (the "Protocol") to insert the Agreement into Annex 1A of the WTO Agreement.

3. The General Council shall meet no later than 31 July 2014 to annex to the Agreement notifications of Category A commitments, to adopt the Protocol drawn up by the Preparatory Committee, and to open the Protocol for acceptance until 31 July 2015. The Protocol shall enter into force in accordance with Article X:3 of the WTO Agreement.

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ANNEX

AGREEMENT ON TRADE FACILITATION

Preamble

Members,

Having regard to the Doha Round of Multilateral Trade Negotiations;

Recalling and reaffirming the mandate and principles contained in paragraph 27 of the Doha Ministerial Declaration and Annex D of the Decision of the Doha Work Programme adopted by the General Council on 1 August 2004, as well as paragraph 33 and Annex E of the Hong Kong Ministerial Declaration;

Desiring to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit;

Recognizing the particular needs of developing and especially least-developed country Members and desiring to enhance assistance and support for capacity building in this area;

Recognizing the need for effective cooperation among Members on trade facilitation and customs compliance issues:

Hereby *agree* as follows:

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 and taxes of any kind imposed on or in connection with importation or exportation;

c. Fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;

d. Rules for the classification or valuation of products for customs purposes;

e. Laws, regulations and administrative rulings of general application relating to rules 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. Procedures relating to the administration of tariff quotas.

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 make available, and update to the extent possible and as appropriate, the following through the internet:

a. A description1 of its importation, exportation and transit procedures, including appeal procedures, that informs governments, traders and other interested parties of the practical steps needed to import and export, and for transit;

b. The forms and documents required for importation into, exportation from, or transit through the territory of that Member;

c. 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 relevant trade-related legislation and other 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.

3.2. Members of a customs union or involved in regional integration may establish or maintain common enquiry points at the regional level to satisfy the requirement of paragraph 3.1 for common procedures.

3.3. Members are encouraged not to require the payment of a fee for answering enquiries and providing required forms and documents. If any, Members shall limit the amount of its fees and charges to the approximate cost of services rendered.

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: OPPORTUNITY TO COMMENT, INFORMATION BEFORE ENTRY INTO FORCE AND CONSULTATION

1 Opportunity to Comment and Information before Entry into Force

1.1. Each Member shall, to the extent practicable and in a manner consistent with its domestic law and legal system, provide opportunities and an appropriate time period to traders and other interested parties to comment on the proposed introduction or amendment of laws and regulations of general application related to the movement, release and clearance of goods, including goods in transit.

[1] Each Member has the discretion to state on its website the legal limitations of this description.

1.2. Each Member shall, to the extent practicable, and in a manner consistent with its domestic law and legal system, ensure that new or amended laws and regulations of general application related to the movement, release and clearance of goods, including goods in transit are published, or information on them made otherwise publicly available, as early as possible before their entry into force, in order to enable traders and other interested parties to become acquainted with them.

1.3. Changes to duty rates or tariff rates, as well as measures that have a relieving effect or whose effectiveness would be undermined by prior publication, measures applied in urgent circumstances, or minor changes to domestic law and legal system are excluded from paragraphs 1.1 and 1.2 above.

2 Consultations

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. Each Member shall issue an advance ruling in a reasonable, time bound manner to an applicant that has submitted a written request containing all necessary information. If 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.

2. A Member may decline to issue an advance ruling to an applicant where the question raised in the application:

a. is already pending in the applicant's case before any governmental agency, appellate tribunal or court; or

b. has already been decided by any appellate tribunal or court.

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.

4. Where the Member revokes, modifies or invalidates the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where a Member revokes, modifies or invalidates advance rulings with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false or misleading information.

5. An advance ruling issued by a Member shall be binding on that Member in respect of the applicant that sought it. The Member may provide that the advance ruling be binding on the applicant.

6. Each 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.

7. Each Member shall provide, upon written request of an applicant, a review of the advance ruling or the decision to revoke, modify or invalidate the advance ruling.[2]

8. Each 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.

[2] Under this paragraph: a) a review may, before or after the ruling has been acted upon, be provided by the official, office or authority that issued the ruling, a higher or independent administrative authority, or a judicial authority; and b) a Member is not required to provide the applicant with recourse to Article 4.1.1 of this Agreement.

9. Definitions and scope:

a. An advance ruling is a written decision 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 with regard to:

i. the good's tariff classification, and

ii. the origin of the good;[3]

b. In addition to the advance rulings defined in subparagraph 3.9 a., Members are encouraged to provide advance rulings on:

i. the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts;

ii. the applicability of the Member's requirements for relief or exemption from customs duties;

iii. the application of the Member's requirements for quotas, including tariff quotas; and

iv. any additional matters for which a Member considers it appropriate to issue an advance ruling.

c. An applicant is an exporter, importer or any person with a justifiable cause or a representative thereof.

d. A Member may require that an applicant have legal representation or registration in its territory. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium sized enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.

ARTICLE 4: APPEAL OR REVIEW PROCEDURES

1 Right to Appeal or Review

1.1. Each Member shall provide that any person to whom customs issues an administrative decision[4] has the right, within its territory to:

a. administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision;

and/or

b. judicial appeal or review of the decision.

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

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

[3] It is understood that an advance ruling on the origin of a good may be an assessment of origin for the purposes of the Agreement on Rules of Origin where the ruling meets the requirements of this Agreement and the Agreement on the Rules of Origin. Likewise, an assessment of origin under the Agreement on Rules of Origin may be an advance ruling on the origin of a good for the purposes of this Agreement where the ruling meets the requirements of both agreements. Members are not required to establish separate arrangements under this provision in addition to those established pursuant to the Rules of Origin Agreement in relation to the assessment of origin provided that the requirements of this Article are fulfilled.

[4] An administrative decision in this Article means a decision with a legal effect that affects rights and obligations of a specific person in an individual case. It shall be understood that an administrative decision in this Article covers an administrative action within the meaning of Article X of the GATT 1994 or failure to take an administrative action or decision as provided for in a Member's domestic law and legal system. For addressing such failure, Members may maintain an alternative administrative mechanism or judicial recourse to direct the customs authority to promptly issue an administrative decision in place of the right to appeal or review under subparagraph 1.1 a.

1.4. Each Member shall ensure that, in a case where the decision on appeal or review under subparagraph 1.1 a. is not given either i. within set periods as specified in its laws or regulations or ii. without undue delay, the petitioner has the right to either further appeal to or further review by the administrative authority or the judicial authority or any other recourse to the judicial authority.[5]

1.5. Each Member shall ensure that the person referred to in paragraph 1.1 is provided with the reasons for the administrative decision so as to enable such a person to have recourse to appeal or review procedures where necessary.

1.6. Each Member is encouraged to make the provisions of this Article applicable to an administrative decision issued by a relevant border agency other than customs.

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

1 Notifications for enhanced controls or inspections

Where a Member adopts or maintains a system of issuing notifications or guidance to its concerned authorities for enhancing the level of controls or inspections at the border in respect of foods, beverages or feedstuffs covered under the notification or guidance for protecting human, animal, or plant life or health within its territory, the following disciplines shall apply to the manner of their issuance, termination or suspension:

a. each Member may, as appropriate, issue the notification or guidance based on risk.

b. each Member may issue the notification or guidance so that it applies uniformly only to those points of entry where the sanitary and phytosanitary conditions on which the notification or guidance are based apply.

c. each Member shall promptly terminate or suspend the notification or guidance when circumstances giving rise to it no longer exist, or if changed circumstances can be addressed in a less trade restrictive manner.

d. when a Member decides to terminate or suspend the notification or guidance, it shall, as appropriate, promptly publish the announcement of its termination or suspension in a non-discriminatory and easily accessible manner, or inform the exporting Member or the importer.

2 Detention

A Member shall inform the carrier or importer promptly in case of detention of goods declared for importation, for inspection by Customs or any other competent authority.

3 Test Procedures

3.1. A Member may, upon request, grant an opportunity for a second test in case the first test result of a sample taken upon arrival of goods declared for importation shows an adverse finding.

3.2. A Member shall either publish, in a non-discriminatory and easily accessible manner, the name and address of any laboratory where the test can be carried out or provide this information to the importer when it is granted the opportunity under paragraph 3.1.

3.3. A Member shall consider the result of the second test in the release and clearance of goods, and, if appropriate, may accept the results of such test.

[5] Nothing in this paragraph shall prevent Members from recognizing administrative silence on appeal or review as a decision in favour of the petitioner in accordance with its laws and regulations.

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

1 General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation

1.1. The provisions of paragraph 6.1 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 Members on or in connection with importation or exportation of goods.

1.2. 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, the reason for such fees and charges, the responsible authority and when and how payment is to be made.

1.3. 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. Such fees and charges shall not be applied until information on them has been published.

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

2 Specific disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation

2.1. Fees and charges for customs processing:

i. shall be limited in amount to the approximate cost of the services rendered on or in connection with the specific import or export operation in question; and

ii. are not required to be linked to a specific import or export operation provided they are levied for services that are closely connected to the customs processing of goods.

3 Penalty Disciplines

3.1. For the purpose of Article 6.3, the term "penalties" shall mean those imposed by a Member's customs administration for a breach of the Member's customs law, regulation, or procedural requirement.

3.2. Each Member shall ensure that penalties for a breach of a customs law, regulation, or procedural requirement are imposed only on the person(s) responsible for the breach under its laws.

3.3. The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.

3.4. Each Member shall ensure that it maintains measures to avoid:

i. conflicts of interest in the assessment and collection of penalties and duties; and

ii. creating an incentive for the assessment or collection of a penalty that is inconsistent with paragraph 3.3.

3.5. 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 person(s) upon whom the penalty is imposed specifying the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed.

3.6. When a person voluntarily discloses to a Member's customs administration the circumstances of a breach of a customs law, regulation, or procedural requirement prior to the discovery of the breach by the customs administration, the Member is encouraged to, where appropriate, consider this fact as a potential mitigating factor when establishing a penalty for that person.

3.7. The provisions of this paragraph shall apply to the penalties on traffic in transit referred to in paragraph 3.1.

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

1 Pre-arrival Processing

1.1. Each Member shall adopt or maintain procedures allowing for the submission of import documentation and other required information, including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.

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

2 Electronic Payment

Each Member shall, to the extent practicable, adopt or maintain procedures allowing the option of electronic payment for duties, taxes, fees and charges collected by customs incurred upon importation and exportation.

3 Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges

3.1. Each Member shall adopt or maintain procedures allowing the release of goods prior to the final determination of customs duties, taxes, fees and charges, if such a determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met.

3.2. As a condition for such release, a Member may require:

a. payment of customs duties, taxes, fees and charges determined prior to or upon arrival of goods and a guarantee for any amount not yet determined in the form of a surety, a deposit or another appropriate instrument provided for in its laws and regulations; or

b. a guarantee in the form of a surety, a deposit or other appropriate instrument provided for in its laws and regulations.

3.3. Such guarantee shall not be greater than the amount the Member requires to ensure payment of customs duties, taxes, fees and charges ultimately due for the goods covered by the guarantee.

3.4. In cases where an offence requiring imposition of monetary penalties or fines has been detected, a guarantee may be required for the penalties and fines that may be imposed.

3.5. The guarantee as set out in paragraphs 3.2 and 3.4 shall be discharged when it is no longer required.

3.6. 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 Member's WTO rights and obligations.

4 Risk Management

4.1. Each Member shall, to the extent possible, adopt or maintain a risk management system for customs control.

4.2. Each Member shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions to international trade.

4.3. Each Member shall concentrate customs control and, to the extent possible other relevant border controls, on high risk consignments and expedite the release of low risk consignments.

Each Member may also select, on a random basis, consignments for such controls as part of its risk management.

4.4. Each Member shall base risk management on assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, *inter alia*, HS code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport.

5 Post-clearance Audit

5.1. With a view to expediting the release of goods, each Member shall adopt or maintain post-clearance audit to ensure compliance with customs and other related laws and regulations.

5.2. Each Member shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Member shall conduct post-clearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved the Member shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations and the reasons for the results.

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

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

6 Establishment and Publication of Average Release Times

6.1. Members 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.[6]

6.2. 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.

7 Trade Facilitation Measures for Authorized Operators

7.1. Each Member shall provide additional trade facilitation measures related to import, export or transit formalities and procedures, pursuant to paragraph 7.3, to operators who meet specified criteria, hereinafter called authorized operators. Alternatively, a Member may offer such facilitation measures through customs procedures generally available to all operators and not be required to establish a separate scheme.

7.2. The specified criteria shall be related to compliance, or the risk of non-compliance, with requirements specified in a Member's laws, regulations or procedures. The specified 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;

c. financial solvency, including, where appropriate, provision of a sufficient security/guarantee; and

d. supply chain security.

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

The specified criteria to qualify as an 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; and

b. to the extent possible, restrict the participation of small and medium-sized enterprises.

7.3. The trade facilitation measures provided pursuant to paragraph 7.1 shall include at least 3 of the following measures:[7]

a. low documentary and data requirements as appropriate;

b. low rate of physical inspections and examinations as appropriate;

c. rapid release time as appropriate;

d. deferred payment of duties, taxes, fees and charges;

e. use of comprehensive guarantees or reduced guarantees;

f. a single customs declaration for all imports or exports in a given period; and

g. clearance of goods at the premises of the authorized operator or another place authorized by customs.

7.4. Members are encouraged to develop authorized operator schemes on the basis of international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfillment of the legitimate objectives pursued.

7.5. 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.

7.6. Members shall exchange relevant information within the Committee about authorized operator schemes in force.

8 Expedited Shipments

8.1. Each Member shall 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.[8] If a Member employs criteria[9] limiting who may apply, the Member may, in published criteria, require that the applicant shall, as conditions for qualifying for the application of the treatment described in paragraphs 8.2 a. – d. to its expedited shipments:

a. provide adequate infrastructure and payment of customs expenses related to processing of expedited shipments, in cases where the applicant fulfills 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 treatment described in paragraph 8.2 a. – d.;

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. provide expedited shipment from pick-up to delivery;

f. assume liability for payment of all customs duties, taxes, and fees and charges to the customs authority for the goods;

g. have a good record of compliance with customs and other related laws and regulations;

[7] A measure listed in sub-paragraphs a .-g. will be deemed to be provided to authorized operators if it is generally available to all operators.

[8] In cases where a Member has an existing procedure that provides the treatment in paragraph 8.2, this provision would not require that Member to introduce separate expedited release procedures.

[9] Such application criteria, if any, shall be in addition to the Member's requirements for operating with respect to all goods or shipments entered through air cargo facilities.

h. comply with other conditions directly related to the effective enforcement of the Member's laws, regulations and procedural requirements, that specifically relate to providing the treatment described in paragraph 8.2.

8.2. Subject to paragraphs 8.1 and 8.3, Members shall:

a. minimize the documentation required for the release of expedited shipments in accordance with Article 10.1, and to the extent possible, provide for release based on a single submission of information on certain shipments;

b. provide for expedited shipments to be released under normal circumstances as rapidly as possible after arrival, provided the information required for release has been submitted;

c. endeavour to apply the treatment in sub-paragraphs 8.2 a. and b. to shipments of any weight or value recognizing that a Member is permitted to require additional entry procedures, including declarations and supporting documentation and payment of duties and taxes, and to limit such treatment based on the type of good, provided the treatment is not limited to low value goods, such as documents; and

d. provide, to the extent possible, for a *de minimis* shipment value or dutiable amount for which customs duties and taxes will not be collected, aside from certain prescribed goods. Internal taxes, such as value added taxes and excise taxes, applied to imports consistently with Article III of the GATT 1994 are not subject to this provision.

8.3. Nothing in paragraphs 8.1 and 8.2 shall affect the right of a Member to examine, detain, seize, confiscate or refuse entry to goods, or to carry out post-clearance audits, including in connection with the use of risk management systems. Further, nothing in paragraphs 8.1 and 8.2 shall prevent a Member from requiring, as a condition for release, the submission of additional information and the fulfillment of non-automatic licensing requirements.

9 Perishable Goods[10]

9.1. With a view to preventing avoidable loss or deterioration of perishable goods, and provided all regulatory requirements have been met, each Member shall:

a. provide for the release of perishable goods under normal circumstances within the shortest possible time; and

b. provide for the release of perishable goods, in exceptional circumstances where it would be appropriate to do so, outside the business hours of customs and other relevant authorities.

9.2. Each Member shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

9.3. Each Member shall either arrange, or allow an importer to arrange, for the proper storage of perishable goods pending their release. The Member may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorizations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. The Member shall, where practicable and consistent with domestic legislation, upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

9.4. In cases of significant delay in the release of perishable goods, and upon written request, the importing Member shall, to the extent practicable, provide a communication on the reasons for the delay.

[10] For the purposes of this provision, perishable goods are goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.

ARTICLE 8: 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. Members shall, to the extent possible and practicable, cooperate on mutually agreed terms with other Members with whom they share a common border with a view to coordinating 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.

ARTICLE 9: MOVEMENT OF GOODS UNDER CUSTOMS CONTROL INTENDED FOR IMPORT

Each Member shall, to the extent practicable, and provided all regulatory requirements are met, allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where the goods would be released or cleared.

ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION AND TRANSIT

1 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 and taking into account the legitimate policy objectives and other factors such as changed circumstances, relevant new information and business practices, availability of techniques and technology, international best practices and inputs from interested parties, each Member shall review such formalities and documentation requirements, and, based on the results of the review, ensure, as appropriate, that such formalities and documentation requirements:

a. are adopted and/or applied with a view to a rapid release and clearance of goods, particularly perishable goods;

b. are adopted and/or applied in a manner that aims at reducing the time and cost of compliance for traders and operators;

c. are the least trade restrictive measure chosen, where two or more alternative measures are reasonably available for fulfilling the policy objective or objectives in question; and

d. are not maintained, including parts thereof, if no longer required.

1.2. The Committee shall develop procedures for sharing relevant information and best practices as appropriate.

2 Acceptance of Copies

2.1. Each Member shall, where appropriate, endeavour to accept paper or electronic copies of supporting documents required for import, export or transit formalities.

2.2. Where a government agency of a Member already holds the original of such a document, any other agency of that Member shall accept a paper or electronic copy, where applicable, from the agency holding the original in lieu of the original document.

2.3. A Member shall not require an original or copy of export declarations submitted to the customs authorities of the exporting Member as a requirement for importation.[11]

3 Use of International Standards

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

3.2. 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 organizations.

3.3. 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.

4 Single Window

4.1. Members shall endeavour to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation or transit of goods through a single entry point 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 through the single window, the same documentation and/or data requirements shall 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 to 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.

5 Pre-shipment Inspection

5.1. Members shall not require the use of pre-shipment inspections in relation to tariff classification and customs valuation.

5.2. Without prejudice to the rights of Members to use other types of pre-shipment inspection not covered by paragraph 5.1, Members are encouraged not to introduce or apply new requirements regarding their use.[12]

6 Use of Customs Brokers

6.1. Without prejudice to the important policy concerns of some Members that currently maintain a special role for customs brokers, from the entry into force of this agreement Members shall not introduce the mandatory use of customs brokers.

6.2. Each Member shall notify and publish its measures on the use of customs brokers. Any subsequent modifications thereof shall be notified to the Committee and published promptly.

6.3. With regard to the licensing of customs brokers, Members shall apply rules that are transparent and objective.

[11] Nothing in this paragraph precludes a Member from requiring documents such as certificates, permits or licenses as a requirement for the importation of controlled or regulated goods.

[12] This sub-paragraph refers to pre-shipment inspections covered by the Pre-shipment Inspection Agreement, and does not preclude pre-shipment inspections for SPS purposes.

7 Common Border Procedures and Uniform Documentation Requirements

7.1. Each Member shall, subject to paragraph 7.2, apply common customs procedures and uniform documentation requirements for release and clearance of goods throughout its territory.

7.2. Nothing in this Article shall prevent a Member from:

a. differentiating its procedures and documentation requirements based on the nature and type of goods, or their means of transport;

b. differentiating its procedures and documentation requirements for goods based on risk management;

c. differentiating its procedures and documentation requirements to provide total or partial exemption from import duties or taxes;

d. applying electronic filing or processing; or

e. differentiating its procedures and documentation requirements in a manner consistent with the Agreement on Sanitary and Phytosanitary Measures.

8 Rejected Goods

8.1. Where goods presented for import are rejected by the competent authority of a Member on account of their failure to meet prescribed sanitary or phytosanitary regulations or technical regulations, the Member shall, subject to and consistent with its laws and regulations, allow the importer to re-consign or to return the rejected goods to the exporter or another person designated by the exporter.

When such an option is given and the importer fails to exercise it within a reasonable period of time, the competent authority may take a different course of action to deal with such non-compliant goods.

9 Temporary Admission of Goods / Inward and Outward Processing

a. Temporary Admission of Goods

Each Member shall allow, as provided for in its laws and regulations, goods 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 specific 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, as provided for in its laws and regulations, inward and outward processing of goods. Goods allowed for outward processing may be re-imported with total or partial exemption from import duties and taxes in accordance with the Member's laws and regulations in force.

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, or eligible for duty drawback, on the basis that such goods are intended for manufacturing, processing or repair and subsequent exportation.

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 reimported.

ARTICLE 11: FREEDOM OF TRANSIT

1. Any regulations or formalities in connection with traffic in transit imposed by a Member shall not:

a. be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a reasonably available less trade restrictive manner,

b. be applied in a manner that would constitute a disguised restriction on traffic in transit.

2. Traffic in transit shall not be conditioned upon collection of any fees or charges imposed in respect of transit, except the charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.

3. Members shall not seek, take or maintain any voluntary restraints or any other similar measures on traffic in transit. This is without prejudice to existing and future national regulations, bilateral or multilateral arrangements related to regulating transport consistent with WTO rules.

4. 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.

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

6. Formalities, documentation requirements and customs controls, in connection with traffic in transit, shall not be more burdensome than necessary to:

a. identify the goods; and

b. ensure fulfillment of transit requirements.

7. 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 any customs charges nor unnecessary delays or restrictions until they conclude their transit at the point of destination within the Member's territory.

8. Members shall not apply technical regulations and conformity assessment procedures within the meaning of the Agreement on Technical Barriers to Trade on goods in transit.

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

10. 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.

11.1. Where a Member requires a guarantee in the form of a surety, deposit or other appropriate monetary or non-monetary[13] instrument for traffic in transit, such guarantee shall be limited to ensuring that requirements arising from such traffic in transit are fulfilled.

11.2 Once the Member has determined that its transit requirements have been satisfied, the guarantee shall be discharged without delay.

11.3 Each Member shall, in a manner consistent with its laws and regulations, allow comprehensive guarantees which include multiple transactions for same operators or renewal of guarantees without discharge for subsequent consignments.

[13] Nothing in this provision shall preclude a Member from maintaining existing procedures whereby the mean of transport can be used as a guarantee for traffic in transit.

11.4 Each Member shall make available to the public the relevant information it uses to set the guarantee, including single transaction and, where applicable, multiple transaction guarantee.

11.5 Each Member may require the use of customs convoys or customs escorts for traffic in transit only in circumstances presenting high risks or when compliance with customs laws and regulations cannot be ensured through the use of guarantees. General rules applicable to customs convoys or customs escorts shall be published in accordance with Article 1.

12. 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.

13. 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

1 Measures Promoting Compliance and Cooperation

1.1. Members agree on the importance of ensuring that traders are aware of their compliance obligations, encouraging voluntary compliance to allow importers to self-correct without penalty in appropriate circumstances, and applying compliance measures to initiate stronger measures for non-compliant traders.[14]

1.2. Members are encouraged to share information on best practices in managing customs compliance, including through the Committee on Trade Facilitation. Members are encouraged to cooperate in technical guidance or assistance in building capacity for the purposes of administering compliance measures, and enhancing their effectiveness.

2 Exchange of Information

2.1. Upon request, and subject to the provisions of this Article, Members shall exchange the information set out in paragraph 6 b. and/or c. for the purpose of verifying an import or export declaration in identified cases where there are reasonable grounds to doubt the truth or accuracy of the declaration.

2.2. Each Member shall notify to the Committee the details of its contact point for the exchange of this information.

3 Verification

A Member shall make a request for information only after it has conducted appropriate verification procedures of an import or export declaration and after it has inspected the available relevant documentation.

4 Request

4.1. The requesting Member shall provide the requested Member with a written request, through paper or electronic means in a mutually agreed WTO or other language, including:

a. the matter at issue including, where appropriate and available, the serial number of the export declaration corresponding to the import declaration in question;

[14] Such activity has the overall objective of lowering the frequency of non-compliance, and consequently reducing the need for exchange of information in pursuit of enforcement.

b. the purpose for which the requesting Member is seeking the information or documents, along with the names and contact details of the persons about which the request relates, if known;

c. where required by the requested Member, provide confirmation[15] of the verification where appropriate.

d. the specific information or documents requested;

e. the identity of the originating office making the request;

f. reference to provisions of the requesting Member's domestic law and legal system that govern the collection, protection, use, disclosure, retention and disposal of confidential information and personal data;

4.2. If the requesting Member is not in a position to comply with any of the sub-paragraphs of 4.1, it shall specify this in the request.

5 Protection and confidentiality

5.1. The requesting Member shall, subject to paragraph 5.2:

a. hold all information or documents provided by the requested Member strictly in confidence and grant at least the same level of such protection and confidentiality as that provided under the domestic law and legal system of the requested Member as described by it under paragraphs 6.1 b. and 6.1 c.;

b. provide the information or documents only to the customs authorities dealing with the matter at issue and use the information or documents solely for the purpose stated in the request unless the requested Member agrees otherwise in writing;

c. not disclose the information or documents without the specific written permission of the requested Member;

d. not use any unverified information or documents from the requested Member as the deciding factor towards alleviating the doubt in any given circumstance;

e. respect any case-specific conditions set out by the requested Member regarding retention and disposal of confidential information or documents and personal data; and

f. upon request, inform the requested Member of any decisions and actions taken on the matter as a result of the information or documents provided.

5.2. A requesting Member may be unable under its domestic law and legal system to comply with any of the sub-paragraphs of 5.1. If so, the requesting Member shall specify this in the request.

5.3. The Requested Member shall treat any request, and verification information, received under paragraph 4 with at least the same level of protection and confidentiality accorded by the requested member to its own similar information.

6 Provision of information

6.1. Subject to the provisions of this article, the requested Member shall promptly:

a. respond in writing, through paper or electronic means;

b. provide the specific information as set out in the import or export declaration, or the declaration, to the extent it is available, along with a description of the level of protection and confidentiality required of the requesting Member;

c. if requested, provide the specific information as set out in the following documents, or the documents, submitted in support of the import or export declaration, to the extent it is available: commercial invoice, packing list, certificate of origin and bill of lading, in the

[15] This may include pertinent information on the verification conducted under paragraph 12.3. Such information shall be subject to the level of protection and confidentiality specified by the Member conducting the verification.

form in which these were filed, whether paper or electronic, along with a description of the level of protection and confidentiality required of the requesting Member;

d. confirm that the documents provided are true copies;

e. provide the information or otherwise respond to the request, to the extent possible, within 90 days from the date of the request.

6.2. The requested Member may require, under its domestic law and legal system, an assurance prior to the provision of information that the specific information will not be used as evidence in criminal investigations, judicial proceedings, or in non-customs proceedings without the specific written permission of the requested Member. If the requesting Member is not in a position to comply with this requirement it should specify this to the requested Member.

7 Postponement or refusal of a request

7.1. A requested Member may postpone or refuse part or all of a request to provide information, and shall so inform the requesting Member of the reasons for doing so, where:

a. it would be contrary to the public interest as reflected in the domestic law and legal system of the requested Member.

b. its domestic law and legal system prevents the release of the information. In such case it shall provide the requesting Member with a copy of the relevant, specific reference.

c. the provision of the information would impede law enforcement or otherwise interfere with an on-going administrative or judicial investigation, prosecution or proceeding.

d. the consent of the importer or exporter is required by domestic law and legal system that govern the collection, protection, use, disclosure, retention and disposal of confidential information or personal data and that consent is not given.

e. the request for information is received after the expiration of the legal requirement of the requested Member for the retention of documents.

7.2. In the circumstances of paragraph 4.2, 5.2 or 6.2 execution of such a request shall be at the discretion of the requested Member.

8 Reciprocity

If the requesting Member is of the opinion that it would be unable to comply with a similar request in case such a request was made by the requested Member, or if it has not yet implemented this Article, it shall state that fact in its request. Execution of such a request shall be at the discretion of the requested Member.

9 Administrative burden

9.1. The requesting Member shall take into account the associated resource and cost implications for the requested Member's administration in responding to requests for information. The requesting Member shall consider the proportionality between its fiscal interest in pursuing its request and the efforts to be made by the requested Member in providing the information.

9.2. If a requested Member receives an unmanageable number of requests for information, or a request for information of unmanageable scope from one or more requesting Member(s), and is unable to meet such requests within a reasonable time it may request one or more of the requesting Member(s) to prioritize with a view to agreeing on a practical limit within its resource constraints. In the absence of a mutually-agreed approach, the execution of such requests shall be at the discretion of the requested Member based on the results of its own prioritization.

10 Limitations

Requested Members shall not be required to:

a. modify the format of their import or export declarations or procedures;

b. call for documents other than those submitted with the import or export declaration as specified in paragraph 6 c.;

c. initiate enquiries to obtain the information;

d. modify the period of retention of such information;

e. introduce paper documentation where electronic format has already been introduced;

f. translate the information;

g. verify the accuracy of the information;

h. provide information that would prejudice the legitimate commercial interests of particular enterprises, public or private.

11 Unauthorized use or disclosure

11.1. 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 necessary measures to remedy the breach;

b. take necessary measures to prevent any future breach; and

c. notify the requested Member of the measures taken under sub-paragraphs a. and b. above.

11.2. The requested Member may suspend its obligations to the requesting Member under this Article until the measures set out in paragraph 11.1 have been taken.

12 Bilateral and regional agreements

12.1. Nothing in this Article shall prevent a Member from entering into or maintaining a bilateral, plurilateral, or regional agreement for sharing or exchange of customs information and data, including on a secure and rapid basis such as on an automatic basis or in advance of the arrival of the consignment.

12.2. Nothing in this Article shall be construed to alter or affect Members' rights or obligations under such bilateral, plurilateral or regional agreements or to govern the exchange of customs information and data under such other agreements.

ARTICLE 13: INSTITUTIONAL ARRANGEMENTS

1 COMMITTEE ON TRADE FACILITATION

1.1. A Committee on Trade Facilitation is hereby established.

1.2. The Committee shall be open for participation by all Members and shall elect its own Chairperson. The Committee shall meet as needed and envisaged by the relevant provisions of this 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. The Committee shall carry out such responsibilities as assigned to it under this Agreement or by the Members. The Committee shall establish its own rules of procedure.

1.3. The Committee may establish such subsidiary bodies as may be required. All such bodies shall report to the Committee.

1.4. The Committee shall develop procedures for sharing by Members of relevant information and best practices as appropriate.

1.5. The Committee shall maintain close contact with other international organizations in the field of trade facilitation, such as the World Customs Organization, with the objective of securing the

best available advice for the implementation and administration of this Agreement and in order to ensure that unnecessary duplication of effort is avoided. To this end, the Committee may invite representatives of such organizations or their subsidiary bodies to:

a. attend meetings of the Committee; and

b. discuss specific matters related to the implementation of this Agreement.

1.6. The Committee shall review the operation and implementation of this Agreement 4 years from its entry into force, and periodically thereafter.

1.7. Members are encouraged to raise before the Committee questions relating to issues on the implementation and application of this Agreement.

1.8. The Committee shall encourage and facilitate ad hoc discussions among Members on specific issues under this Agreement, with a view to reaching a mutually satisfactory solution promptly.

2 NATIONAL COMMITTEE ON TRADE FACILITATION

Each Member shall establish and/or maintain a national committee on trade facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of provisions of this Agreement.

SECTION II

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

1 General Principles

1.1. The provisions contained in Articles 1 to 12 of this Agreement shall be implemented by developing and least developed country Members in accordance with this Section, which is based on the modalities agreed in Annex D of the July 2004 Framework Agreement (WT/L/579) and paragraph 33 and Annex E of the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC).

1.2. Assistance and support for capacity building[16] should be provided to help developing and least-developed country Members implement the provisions of this agreement, in accordance with their nature and scope. The extent and the timing of implementing the provisions of this Agreement shall be related to the implementation capacities of developing and least developed country Members. Where a developing or least developed country Member continues to lack the necessary capacity, implementation of the provision(s) concerned will not be required until implementation capacity has been acquired.

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. These principles shall be applied through the provisions set out in Section II.

2 CATEGORIES OF PROVISIONS

2.1. There are three categories of provisions:

a. Category A contains provisions that a developing country Member or a least developed country Member designates for implementation upon entry into force of this Agreement, or in the case of a least developed country Member within one year after entry into force, as provided in paragraph 3.

b. Category B contains provisions that a developing country Member or a least developed country Member designates for implementation on a date after a transitional period of time following the entry into force of this Agreement, as provided in paragraph 4.

c. Category C contains provisions that a developing country Member or a least developed country Member designates for implementation on a date after a transitional period of time following the entry into force of this Agreement and requiring the acquisition of implementation capacity through the provision of assistance and support for capacity building, as provided for in paragraph 4.

2.2. Each developing country and least developed country Member shall self-designate, on an individual basis, the provisions it is including under each of the Categories A, B and C.

3 Notification and Implementation of Category A

3.1. Upon entry into force of this Agreement, each developing country Member shall implement its Category A commitments. Those commitments designated under Category A will thereby be made an integral part of this Agreement.

3.2. A least developed country Member may notify the Committee of the provisions it has designated in Category A for up to one year after entry into force of this Agreement. Each least developed country Member's commitments designated under Category A will thereby be made an integral part of this Agreement.

[16] For the purposes of this Agreement, "assistance and support for capacity building" may take the form of technical, financial, or any other mutually agreed form of assistance provided.

4 Notification of Definitive Dates for Implementation of Category B and Category C

4.1. With respect to the provisions that a developing country Member has not designated in Category A, the Member may delay implementation in accordance with the process set out in this paragraph.

Developing Country Member Category B

a. Upon entry into force of this Agreement, each developing country Member shall notify to the Committee the provisions that it has designated in Category B and corresponding indicative dates for implementation.[17]

b. No later than one year after entry into force of this Agreement, each developing country Member shall notify to the Committee its definitive dates for implementation of the provisions it has designated in Category B. If a developing country Member, before this deadline, believes it requires additional time to notify its definitive dates, the Member may request that the Committee extend the period sufficient to notify its dates.

Developing Country Member Category C

c. Upon entry into force of this Agreement, each developing country Member shall notify to the Committee the provisions that it has designated in Category C and corresponding indicative dates for implementation. For transparency purposes, notifications submitted shall include information on the assistance and support for capacity building that the Member requires in order to implement[18].

d. Within one year after entry into force of this Agreement, developing country Members and relevant donor Members, taking into account any existing arrangements already in place, notifications pursuant to paragraph 10.1 and information submitted pursuant to sub-paragraph c. above, shall provide information to the Committee on the arrangements maintained or entered into that are necessary to provide assistance and support for capacity building to enable implementation of Category C.[19] The participating developing country Member shall promptly inform the Committee of such arrangements. The Committee shall also invite non-Member donors to provide information on existing or concluded arrangements.

e. Within 18 months from the date of the provision of the information stipulated in sub-paragraph 4.1 d., donor Members and respective developing country Members shall inform the Committee on progress in the provision of assistance and support. Each developing country Member shall, at the same time, notify its list of definitive dates for implementation.

4.2. With respect to those provisions that a least developed country Member has not designated under Category A, least developed country Members may delay implementation in accordance with the process set forth in this paragraph.

Least Developed Country Member Category B

a. No later than one year after entry into force of this Agreement, a least developed country Member shall notify the Committee its Category B provisions and may notify corresponding indicative dates for implementation of these provisions, taking into account maximum flexibilities for least developed country Members.

b. No later than two years after the notification date stipulated under sub-paragraph a. above, each least developed country Member shall notify the Committee to confirm designations of provisions and notify its dates for implementation. If a least developed country Member, before this deadline, believes it requires additional time to notify its

[17] Notifications submitted 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.

[18] Members may also include information on national trade facilitation implementation plans or projects; the domestic agency/entity responsible for implementation; and the donors with which the Member may have an arrangement in place to provide assistance.

[19] Such arrangements will be on mutually agreed terms, either bilaterally or through appropriate international organizations, consistent with paragraph 9.3.

definitive dates, the Member may request that the Committee extend the period sufficiently to notify its dates.

Least Developed Country Member Category C

c. For transparency purposes and to facilitate arrangements with donors, one year after entry into force of this Agreement each least developed country Member shall notify the Committee of the provisions it has designated in Category C, taking into account maximum flexibilities for least developed country Members.

d. One year after the date stipulated in sub-paragraph c. above, least developed country Members shall notify information on assistance and support for capacity building that the Member requires in order to implement.[20]

e. Within two years after the notification under sub-paragraph d. above, least developed country Members and relevant donor Members, taking into account information submitted pursuant to sub-paragraph d. above, shall provide information to the Committee on the arrangements maintained or entered into that are necessary to provide assistance and support for capacity building to enable implementation of Category C.[21] The participating least developed country Member shall promptly inform the Committee of such arrangements. The least developed country Member shall, at the same time, notify indicative dates for implementation of corresponding Category C commitments covered by the assistance arrangements. The Committee shall also invite non-Member donors to provide information on existing and concluded arrangements.

f. Within 18 months from the date of the provision of the information stipulated in sub-paragraph 4.2 e., relevant donor Members and respective least developed country Members shall inform the Committee on progress in the provision of assistance and support. Each least-developed country Member shall, at the same time, notify its list of definitive dates for implementation.

4.3. Developing country Members and least developed country Members experiencing difficulties in submitting definitive dates for implementation within the deadlines set out in paragraphs 4.1 and 4.2 because of the lack of donor support or lack of progress in the provision of assistance and support should notify the Committee 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 shall, as appropriate, take action to address the difficulties including, where necessary, by extending the deadlines for the Member concerned to notify its definitive dates.

4.4. Three months before the deadline stipulated in paragraph 4.1 b. or 4.1 e., or in the case of a least developed country Member paragraph 4.2 b. or 4.2 f., the Secretariat shall remind a Member if that Member has not notified a definitive date for implementation of provisions that it has designated in Category B or C. If the Member does not invoke paragraph 4.3 or paragraph 4.1 b., or in the case of a least developed country Member paragraph 4.2 b., to extend the deadline and still does not notify a definitive date for implementation, the Member shall implement the provisions within one year after the deadline stipulated in paragraph 4.1 b. or 4.1 e., or in the case of a least developed country Member paragraph 4.2 b. or 4.2 f., or extended by paragraph 4.3.

4.5. No later than 60 days after the dates for notification of definitive dates for implementation of Category B and Category C in accordance with paragraphs 4.1, 4.2 or 4.3, the Committee shall take note of the annexes containing each Member's definitive dates for implementation of Category B and Category C provisions, including any dates set under paragraph 4.4, thereby making these annexes an integral part of this Agreement.

[20] Members may also include information on national trade facilitation implementation plans and projects and information on the domestic agency/entity responsible for implementation, and the donors with which the Member may have an arrangement in place to provide assistance.

[21] Such arrangements will be on mutually agreed terms, either bilaterally or through appropriate international organizations, consistent with subparagraph 9.3.

5 Early Warning Mechanism: Extension of Implementation Dates for Provisions in Categories B and C

5.1.

a. A developing country Member or least developed country Member that considers itself to be experiencing difficulty in implementing a provision that it has designated in Category B or Category C by the definitive date established under paragraph 4.1 b. or 4.1 e., or in the case of a least-developed country Member paragraph 4.2 b. or 4.2 f., and should notify the Committee. Developing countries shall notify the Committee no later than 120 days before the expiration of the implementation date. Least developed countries shall notify the Committee no later than 90 days before such date.

b. The notification to the Committee shall indicate the new date by which the developing country Member 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 not earlier anticipated or additional assistance to help build capacity.

5.2. Where a developing country Member's request for additional time for implementation does not exceed 18 months or a least developed country Member's request for additional time does not exceed 3 years, the requesting Member is entitled to such additional time without any further action by the Committee.

5.3. Where a developing country or least developed country Member considers that it requires a first extension longer than that provided for in paragraph 5.2 or a second or any subsequent extension, it shall submit to the Committee a request for an extension containing the information described in 5.1 b. no later than 120 days in respect of a developing country and 90 days in respect of a least developed country before the expiration of the original definitive implementation date or that date as subsequently extended.

5.4. The Committee shall give sympathetic consideration to granting requests for extension taking into account the specific circumstances of the Member submitting the request. These circumstances may include difficulties and delays in obtaining assistance.

6 Implementation of Category B and Category C

6.1. In accordance with paragraph 1.2, if a developing country Member or a least developed country Member, having fulfilled the procedures set forth in sub-paragraph 4.1 or 4.2 and in paragraph 5, and where an extension requested has not been granted or where the developing country Member or least developed country Member otherwise experiences unforeseen circumstances that prevents an extension being granted under paragraph 5, self-assesses that its capacity to implement a provision under Category C continues to be lacking, that Member shall notify the Committee of its inability to implement the relevant provision.

6.2. The Trade Facilitation Committee shall immediately establish an Expert Group, and in any case no later than 60 days after the Committee receives the notification from the relevant developing country Member or least developed country Member. The Expert Group will examine the issue and make a recommendation to the Committee within 120 days of its composition.

6.3. The Expert Group shall be composed of five independent persons, highly qualified in the fields of trade facilitation and assistance and support for capacity building. The composition of the Expert Group shall ensure balance between nationals from developing and developed country Members. Where a least developed country Member is involved, the Expert Group shall include at least one national from a least developed country. If the Committee cannot agree on the composition of the Expert Group within 20 days of its establishment, the Director-General, in consultation with the chair of the Committee, shall determine the composition of the Expert Group in accordance with the terms of this paragraph.

6.4. The Expert Group shall consider the Member's self-assessment of lack of capacity and shall make a recommendation to the Trade Facilitation Committee. When considering the Expert Group's recommendation concerning a least developed country Member, the Committee shall, as appropriate, take action that will facilitate the acquisition of sustainable implementation capacity.

6.5. The Member shall not be subject to proceedings under the Dispute Settlement Understanding on this issue from the time the developing country Member notifies the Committee of its inability to implement the relevant provision until the first meeting of the Committee after it receives the recommendation of the Expert Group. At that meeting, the Committee shall consider the recommendation of the Expert Group. For the least developed country Member, the proceedings under the Dispute Settlement Understanding shall not apply on the respective provision from the date of notification to the Committee of its inability to implement the provision until the Committee makes a decision on the issue, or within 24 months after the first Committee meeting set out above, whichever is the earlier.

6.6. Where a least developed country Member loses its ability to implement a Category C commitment, it may inform the Committee and follow the procedures set out in paragraph 6.

7 Shifting between Categories B and C

7.1. Developing Country Members and least developed country Members who have notified provisions under Categories B and C may shift provisions between such categories through the submission of a notification to the Committee. Where a Member proposes to shift a provision from Category B to C, the Member shall provide information on the assistance and support required to build capacity.

7.2. In the event that additional time is required to implement a provision as a result of it having been shifted from Category B to Category C, the Member may:

a. use the provisions of paragraph 5, including the opportunity for an automatic extension; or

b. request an examination by the Committee of the Member's request for extra time to implement the provision and, if necessary, for assistance and support for capacity building, including the possibility of a review and recommendation by the Expert Group under paragraph 6; or

c. in the case of a least developed country Member, any new implementation date of more than four years after the original date notified under Category B shall require approval by the Committee. In addition, a least developed country continues to have recourse to paragraph 5. It is understood that assistance and support for capacity building is required for a least developed country Member so shifting.

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

8.1. 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 apply to the settlement of disputes against a developing country Member concerning any provision that the Member has designated in Category A.

8.2. For a period of 6 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 apply to the settlement of disputes against a least developed country Member concerning any provision that the Member has designated in Category A.

8.3. For a period of 8 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 apply to the settlement of disputes against that least developed country Member concerning those provisions.

8.4. 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.

8.5. Each Member shall, upon request, during the grace period allowed under this paragraph, provide adequate opportunity to other Members for discussion with respect to any issue relating to the implementation of this Agreement.

9 Provision of Assistance for Capacity Building

9.1. Donor Members agree to facilitate the provision of assistance and support for 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 is to assist developing country and least developed country Members to implement the provisions of Section I of this Agreement.

9.2. Given the special needs of least developed country Members, targeted assistance and support should be provided to the least developed country Members so as to help them build sustainable capacity to implement their commitments. Through the relevant development cooperation mechanisms and in coherence with the principles of technical assistance and capacity building as referred to in paragraph 9.3, development partners shall endeavour to provide assistance and support in this area in a way that does not compromise existing development priorities.

9.3. Members shall endeavour to apply the following principles for providing assistance and support for 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;

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 roundtables and consultative groups to coordinate and monitor implementation activities; and

f. encourage developing countries Members to provide capacity building to other developing and least developed country and consider supporting such activities, where possible.

9.4. The Committee shall hold at least one dedicated session per year to:

a. discuss any problems regarding implementation of provisions or sub-parts of provisions;

b. review progress in the provision of technical assistance and capacity building to support the implementation of the Agreement, including any developing or least developed country Members not receiving adequate technical assistance and capacity building;

c. share experiences and information on ongoing assistance and implementation programs, including challenges and successes;

d. review donor notifications as set forth in paragraph 10; and

e. review the operation of paragraph 9.2.

10 Information on Assistance to be Submitted to the Committee

10.1. To provide transparency to developing and least developed Members on the provision of assistance and support for implementation of Section I, each donor Member assisting developing country and least developed country Members with the implementation of this Agreement shall submit to the Committee, at entry into force of the Agreement and annually thereafter, the following information on its assistance and support for capacity building that was disbursed in the preceding twelve months and, where available, that is committed in the next twelve months[22]:

a. a description of the assistance and support for capacity building;

b. the status and amount committed/disbursed;

c. procedures for disbursement of the assistance and support;

d. the beneficiary country, or, where necessary, the region; and

e. the implementing agency in the Member providing assistance and support.

The information shall be provided in the format specified in Annex 1. In the case of OECD members, the information submitted can be based on relevant information from the OECD Creditor Reporting System. Developing country Members declaring themselves in a position to provide assistance and support are encouraged to provide the information above.

10.2. Donor Members assisting developing country and least developed country Members shall submit to the Committee:

a. contact points of their agencies responsible for providing assistance and support for capacity building related to the implementation of the provisions of Section I of this Agreement including, where practicable, information on such contact points within the country or region where the assistance and support is to be provided; and

b. information on the process and mechanisms for requesting assistance and support.

Developing country Members declaring themselves in a position to provide assistance and support are encouraged to provide the information above.

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

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.

[22] The information provided will reflect the demand driven nature of the provision of technical assistance.

FINAL PROVISIONS

1. For the purpose of this Agreement, the term "Member" is deemed to include the competent authority of that Member.

2. All provisions of this Agreement are binding on all Members.

3. Members shall implement this Agreement from the date of its entry into force. Developing country Members and least developed country Members that choose to use the provisions of Section II shall implement this Agreement in accordance with Section II.

4. A Member which accepts this Agreement after its entry into force shall implement its Category B and C commitments counting the relevant periods from the date this Agreement enters into force.

5. Members of a customs union or a regional economic arrangement may adopt regional approaches to assist in the implementation of their obligations under the Agreement on Trade Facilitation including through the establishment and use of regional bodies.

6. Notwithstanding the General interpretative note to Annex 1A, nothing in this Agreement shall be construed as diminishing the obligations of Members under the GATT 1994. In addition, nothing in this Agreement shall be construed as diminishing the rights and obligations of Members under the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures.

7. All exceptions and exemptions[23] under the General Agreement on Tariffs and Trade 1994 shall apply to the provisions of this Agreement. Waivers applicable to the GATT 1994 or any part thereof, granted according to Article IX:3 and Article IX:4 of the Marrakesh Agreement establishing the WTO and any amendments thereto as of the date of entry into force of this Agreement, shall apply to the provisions of this Agreement.

8. The provisions of Articles XXII and XXIII of the General Agreement on Tariffs and Trade 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided for in this Agreement.

9. Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

10. The Category A commitments of developing and least developed country Members annexed to this Agreement in accordance with paragraphs 3.1 and 3.2 of Section II shall constitute an integral part of this Agreement.

11. The Category B and C commitments of developing and least developed country Members taken note of by the Committee and annexed to this Agreement pursuant to paragraph 4.5 of Section II shall constitute an integral part of this Agreement.

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[23] This includes Articles V:7 and X:1 of the GATT 1994 and the Ad note to Article VIII of the GATT 1994.

ANNEX 1: FORMAT FOR NOTIFICATION UNDER ARTICLE 10.1

Donor Member:
Period covered by the notification:

Description of the technical and financial assistance and capacity building resources	Status and amount committed/disbursed	Beneficiary country/ Region (where necessary)	The implementing agency in the Member providing assistance	Procedures for disbursement of the assistance

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WORLD TRADE ORGANIZATION

WT/MIN(13)/37
WT/L/912

11 December 2013

(13-6826)

Ministerial Conference
Ninth Session
Bali, 3-6 December 2013

GENERAL SERVICES

MINISTERIAL DECISION OF 7 DECEMBER 2013

The Ministerial Conference,

Having regard to paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization;

Decides as follows:

Members recognize the contribution that General Services programmes can make to rural development, food security and poverty alleviation, particularly in developing countries. This includes a range of General Services programmes relating to land reform and rural livelihood security that a number of developing countries have highlighted as particularly important in advancing these objectives. Accordingly, Members note that, subject to Annex 2 of the Agreement on Agriculture, the types of programmes listed below could be considered as falling within the scope of the non-exhaustive list of general services programmes in Annex 2, paragraph 2 of the AoA.

General Services programmes related to land reform and rural livelihood security, such as:

i. land rehabilitation;

ii. soil conservation and resource management;

iii. drought management and flood control;

iv. rural employment programmes;

v. issuance of property titles; and

vi. farmer settlement programmes

in order to promote rural development and poverty alleviation.

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WORLD TRADE ORGANIZATION

WT/MIN(13)/38
WT/L/913

11 December 2013

(13-6827) Page: 1/4

Ministerial Conference
Ninth Session
Bali, 3-6 December 2013

PUBLIC STOCKHOLDING FOR FOOD SECURITY PURPOSES

MINISTERIAL DECISION OF 7 DECEMBER 2013

The Ministerial Conference,

Having regard to paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization;

Decides as follows:

1. Members agree to put in place an interim mechanism as set out below, and to negotiate on an agreement for a permanent solution[1], for the issue of public stockholding for food security purposes for adoption by the 11th Ministerial Conference.

2. In the interim, until a permanent solution is found, and provided that the conditions set out below are met, Members shall refrain from challenging through the WTO Dispute Settlement Mechanism, compliance of a developing Member with its obligations under Articles 6.3 and 7.2 (b) of the Agreement on Agriculture (AoA) in relation to support provided for traditional staple food crops[2] in pursuance of public stockholding programmes for food security purposes existing as of the date of this Decision, that are consistent with the criteria of paragraph 3, footnote 5, and footnote 5&6 of Annex 2 to the AoA when the developing Member complies with the terms of this Decision.[3]

NOTIFICATION AND TRANSPARENCY

3. A developing Member benefiting from this Decision must:

a. have notified the Committee on Agriculture that it is exceeding or is at risk of exceeding either or both of its Aggregate Measurement of Support (AMS) limits (the Member's Bound Total AMS or the *de minimis* level) as result of its programmes mentioned above;

b. have fulfilled and continue to fulfil its domestic support notification requirements under the AoA in accordance with document G/AG/2 of 30 June 1995, as specified in the Annex;

c. have provided, and continue to provide on an annual basis, additional information by completing the template contained in the Annex, for each public stockholding programme that it maintains for food security purposes; and

d. provide any additional relevant statistical information described in the Statistical Appendix to the Annex as soon as possible after it becomes available, as well as any information updating or correcting any information earlier submitted.

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[1] The permanent solution will be applicable to all developing Members.
[2] This term refers to primary agricultural products that are predominant staples in the traditional diet of a developing Member.
[3] This Decision does not preclude developing Members from introducing programmes of public stockholding for food security purposes in accordance with the relevant provisions of the Agreement on Agriculture.

ANTI-CIRCUMVENTION / SAFEGUARDS

4. Any developing Member seeking coverage of programmes under paragraph 2 shall ensure that stocks procured under such programmes do not distort trade or adversely affect the food security of other Members.

5. This Decision shall not be used in a manner that results in an increase of the support subject to the Member's Bound Total AMS or the *de minimis* limits provided under programmes other than those notified under paragraph 3.a.

CONSULTATIONS

6. A developing Member benefiting from this Decision shall upon request hold consultations with other Members on the operation of its public stockholding programmes notified under paragraph 3.a.

MONITORING

7. The Committee on Agriculture shall monitor the information submitted under this Decision.

WORK PROGRAMME

8. Members agree to establish a work programme to be undertaken in the Committee on Agriculture to pursue this issue with the aim of making recommendations for a permanent solution. This work programme shall take into account Members' existing and future submissions.

9. In the context of the broader post-Bali agenda, Members commit to the work programme mentioned in the previous paragraph with the aim of concluding it no later than the 11th Ministerial Conference.

10. The General Council shall report to the 10th Ministerial Conference for an evaluation of the operation of this Decision, particularly on the progress made on the work programme.

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ANNEX

Template

[Developing Member's name]

General information

1. Factual information confirming that DS:1 notifications and relevant supporting tables for the preceding 5 years are up-to-date (e.g. date and document details)
2. Details of the programme sufficient to identify food security objective and scale of the programme, including:
a. Name of the programme
b. Traditional staple food crop(s) covered
c. Agency in charge of implementation
d. Relevant laws and regulations
e. Date of commencement of the programme
f. Officially published objective criteria or guidelines
3. Practical description of how the programme operates, including:
a. Provisions relating to the purchase of stocks, including the way the administered acquisition price is determined
b. Provisions related to volume and accumulation of stocks, including any provisions related to pre-determined targets and quantitative limits
c. Provisions related to the release of stocks, including the determination of the release price and targeting (eligibility to receive procured stocks)
4. A description of any measures aimed at minimising production or trade distortive effects of the programme
5. Statistical information (as per the Statistical Appendix below)
6. Any other information considered relevant, including website references

Statistical Appendix (per crop) (data for the latest three years)

	Unit	[Year 1]	[Year 2]	[Year 3]
[Name of the crop]				
a. Opening balance of stocks				
b. Annual purchases under the programme (value)				
c. Annual purchases under the programme (quantity)				
d. Annual releases under the programme (value)				
e. Annual releases under the programme (quantity)				
f. Purchase prices				
g. Release prices				
h. End-year stocks				
i. Total production (quantity)				
j. Total production (value)				
k. Information on population benefiting from the release of this crop and quantities released:				
- Estimated number of beneficiaries at national level and, if possible, at sub-national level				
- Quantity released to the beneficiaries at the national level and, if possible, at the sub-national level				
- Other				
l. In the case of government aid to private storage, statistics on the support granted and any updated statistics				
m. Total imports (value)				
n. Total imports (quantity)				
o. Total exports (value)				
p. Total exports (quantity)				

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WORLD TRADE ORGANIZATION

WT/MIN(13)/39
WT/L/914

11 December 2013

(13-6828)

Ministerial Conference
Ninth Session
Bali, 3-6 December 2013

UNDERSTANDING ON TARIFF RATE QUOTA ADMINISTRATION PROVISIONS OF AGRICULTURAL PRODUCTS, AS DEFINED IN ARTICLE 2 OF THE AGREEMENT ON AGRICULTURE

MINISTERIAL DECISION OF 7 DECEMBER 2013

The Ministerial Conference,

Having regard to paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization;

Decides as follows:

Without prejudice to the overall conclusion of the Doha Round negotiations based on the single undertaking and to the continuation of the reform process enshrined in Article 20 of the Agreement on Agriculture and agreed in the Doha Development Agenda for negotiations in agriculture[1], Members hereby agree as follows:

1. Tariff quota administration of scheduled tariff quotas shall be deemed to be an instance of "import licensing" within the meaning of the Uruguay Round Agreement on Import Licensing Procedures and, accordingly, that Agreement shall apply in full, subject to the Agreement on Agriculture and to the following more specific and additional obligations.

2. As regards the matters referred to in paragraph 4(a) of Article 1 of that Agreement, as these agricultural tariff quotas are negotiated and scheduled commitments, publication of the relevant information shall be effected no later than 90 days prior to the opening date of the tariff quota concerned. Where applications are involved, this shall also be the minimum advance date for the opening of applications.

3. As regards paragraph 6 of Article 1 of that Agreement, applicants for scheduled tariff quotas shall apply to one administrative body only.

4. As regards the matters referred to in paragraph 5(f) of Article 3 of that Agreement, the period for processing applications shall be, unqualifiedly, no longer than 30 days for "as and when received" cases and no longer than 60 days for "simultaneous" consideration cases. The issuance of licences shall, therefore, take place no later than the effective opening date of the tariff quota concerned, except where, for the latter category, there has been an extension for applications allowed for under Article 1.6 of that Agreement.

5. As regards Article 3.5(i), licences for scheduled tariff quotas shall be issued in economic quantities.

6. Tariff quota "fill rates" shall be notified.

7. In order to ensure that their administrative procedures are consistent with Article 3.2 of that Agreement, "no more administratively burdensome than absolutely necessary to administer the measure", importing Members shall ensure that unfilled tariff quota access is not attributable to

[1] Paragraph 13 of the Doha Ministerial Declaration (Document WT/MIN(01)/DEC/1).

administrative procedures that are more constraining than an "absolute necessity" test would demand.

8. Where licences held by private operators exhibit a pattern of being less than fully utilized for reasons other than those that would be expected to be followed by a normal commercial operator in the circumstances, the Member allocating the licences shall give this due weight when examining the reasons for under utilization and considering the allocation of new licences as provided for under Article 3.5 (j).

9. Where it is manifest that a tariff quota is under filled but there would appear to be no reasonable commercial reason for this to be the case, an importing Member shall request those private operators holding unused entitlements whether they would be prepared to make them available to other potential users. Where the tariff quota is held by a private operator in a third country, e.g. as a result of country-specific allocation arrangements, the importing Member shall transmit the request to the holder of the allocation concerned.

10. As regards Article 3.5(a)(ii) of that Agreement, Members shall make available the contact details of those importers holding licences for access to scheduled agricultural tariff quotas, where, subject to the terms of Article 1.11, this is possible and/or with their consent.

11. The Committee on Agriculture shall review and monitor the implementation of Members' obligations established under this Understanding.

12. Members shall provide for an effective re-allocation mechanism in accordance with the procedures outlined in the Annex A.

13. A review of the operation of the Decision shall commence no later than four years following the adoption of the Decision, taking into account experience gained up to that time. The objective of this review will be to promote a continuing process of improvement in the utilization of tariff rate quotas. In the context of this review the General Council shall make recommendations to the 12th Ministerial Conference[2], including on whether, and if so how, paragraph 4 of Annex A should be re-affirmed or modified for future operation.

14. The General Council recommendations in relation to paragraph 4 shall provide for special and differential treatment. Unless the 12th Ministerial Conference decides to extend paragraph 4 of Annex A in its current or a modified form, it shall, subject to paragraph 15, no longer apply.

15. Notwithstanding paragraph 14, Members shall continue to apply the provisions of paragraph 4 of Annex A in the absence of a decision to extend that paragraph, except for those Members who wish to reserve their rights not to continue the application of paragraph 4 of Annex A and who are listed in Annex B.

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[2] In the event the 12th Ministerial Conference does not take place by 31 December 2019, the General Council will take decisions on the recommendations arising from the review no later than 31 December 2019 unless Members agree otherwise.

ANNEX A

1. During the first monitoring year, where an importing Member does not notify the fill rate, or where the fill rate is below 65 per cent, a Member may raise a specific concern regarding a tariff quota commitment in the Committee on Agriculture and place this concern on a tracking register maintained by the Secretariat. The importing Member shall discuss the administration of the tariff quota with all interested Members, with the aim of understanding the concerns raised, improving the membership's understanding of the market circumstances[1] and of the manner in which the tariff quota is administered and whether elements of the administration contribute to underfill. This shall take place on the basis of provision of objective and relevant data bearing on the matter, in particular as regards the market circumstances. The interested Members shall fully consider all documentation submitted by the importing Member.[2] The importing Member shall provide to the Committee on Agriculture a summary of any documentation submitted to interested Members. The Members involved shall advise the Committee on Agriculture whether the matter has been resolved. The interested Members shall, if the matter remains unresolved, provide to the Committee on Agriculture, a clear statement of the reasons, based on the discussions and documentation provided, why the matter requires further consideration. Such documentation and information may also be provided and considered in the same manner during the second and third stages of the underfill mechanism, as a means of addressing and resolving Members' concerns.

2. Once the underfill mechanism has been initiated, where the fill rate remains below 65 per cent for two consecutive years, or no notification has been submitted for that period, a Member may request, through the Committee on Agriculture, that the importing Member take specific action(s)[3] to modify the administration of the tariff quota concerned. The importing Member shall take either the specific action(s) requested or, drawing on the discussions previously held with the interested Members, such other action(s) which it considers will effectively improve the fill rate of the tariff quota. If the action(s) of the importing Member lead to a fill rate above 65 per cent or interested Members are otherwise satisfied that lesser fill rates are indeed attributable to market circumstances based on the data-based discussions that have taken place, this will be noted and the concern marked "resolved" on the Secretariat's tracking register and will be no longer subject to monitoring (unless at some future point the process is restarted but, if so, it will be a new three year cycle). If the fill rate remains below 65 per cent, a Member may continue to request additional modifications to the administration of the tariff quota.

3. During the third and subsequent monitoring years, where:

   a. the fill rate has remained below 65 per cent for three consecutive years or no notification has been submitted for that period; and

   b. the fill rate has not increased, for each of the preceding three years, by annual increments of

      i. at least 8 percentage points when the fill rate is more than 40 per cent;

      ii. at least 12 percentage points when the fill rate equals or is less than 40 per cent[4]; and

[1] The market circumstances considered may include, inter alia, elements of prices, production and other factors affecting demand and supply in the domestic and international markets, as well as other relevant factors affecting trade such as the existence of SPS measures taken by an importing Member in accordance with the Agreement on Sanitary and Phytosanitary Measures.

[2] Such documentation may include information on the administration of the tariff quota, as well as data supporting the Member's explanation of the market circumstances of the tariff quota in question and/or of the existence of any SPS measures for the product in question.

[3] The actions and remedies taken by the importing Member pursuant to the underfill mechanism shall not modify or impede the rights of a Member holding a country-specific allocation for that tariff quota with respect to their country-specific allocation.

[4] If the fill rate in any year increases beyond the level specified in 3(b)(ii) the annual increment shall be the one specified in 3(b)(i) in the following year.

c. the data-based discussions regarding market circumstances have not led to the conclusion among all interested parties these are in fact the reason for underfill; and

d. an interested Member makes a statement in the Committee on Agriculture, that it wishes to initiate the final stage of the underfill mechanism.

4. The importing Member shall then promptly provide unencumbered access via one of the following tariff quota administration methods[5]: a first-come, first-served only basis (at the border); or an automatic, unconditional license on demand system within the tariff quota. In taking a decision on which of these two options to implement, the importing Member will consult with interested exporting Members. The method selected shall be maintained by the importing Member for a minimum of two years, after which time – provided that timely notifications for the two years have been submitted – it will be noted on the Secretariat's tracking register and the concern marked "closed". Developing country Members may choose an alternative tariff quota administration method or maintain the current method in place. This choice of an alternative tariff quota administration method shall be notified to the Committee on Agriculture under the provisions of this mechanism. The method selected shall be maintained by the importing Member for a minimum of two years, after which time, if the fill rate has increased by two-thirds of the annual increments described in paragraph 3(b), it will be noted on the Secretariat's tracking register and the concern marked "closed".

5. The availability of this mechanism and resort to it by any Member is without prejudice to Members' rights and obligations under the covered Agreements in respect of any matter dealt with under the mechanism and, in the event of any conflict, the provisions of the covered agreements shall prevail.

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[5] The actions and remedies taken by the importing Member shall not modify or impede the rights of a Member holding a country-specific allocation for that tariff quota with respect to their country-specific allocation.

ANNEX B

Barbados
Dominican Republic
El Salvador
Guatemala
United States of America

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WORLD TRADE ORGANIZATION

WT/MIN(13)/40
WT/L/915

11 December 2013

(13-6829)

Ministerial Conference
Ninth Session
Bali, 3-6 December 2013

EXPORT COMPETITION

MINISTERIAL DECLARATION OF 7 DECEMBER 2013

1. We recognize that all forms of export subsidies and all export measures with equivalent effect are a highly trade distorting and protectionist form of support, and that, accordingly, export competition remains a key priority of the agriculture negotiations in the context of the continuation of the ongoing reform process set out in Article 20 of the Agreement on Agriculture, in accordance with the Doha work programme on agriculture and the 2005 Hong Kong Ministerial Declaration.

2. In this context, we therefore reaffirm our commitment, as an outcome of the negotiations, to the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect, as set out in the 2005 Hong Kong Ministerial Declaration. We regret that it has not been possible to achieve this objective in 2013 as envisaged in that Declaration.

3. We consider that the revised draft modalities for agriculture (doc. TN/AG/W/4/Rev.4 dated 6 December 2008) remain an important basis for an ambitious final agreement in the export competition pillar, including with regard to special and differential treatment for LDCs and NFIDCs.

4. We recognize the decrease in recent years in the use of export subsidies subject to reduction commitments under the Agreement on Agriculture, as indicated by information contained in Members' notifications to the WTO, and the positive developments that have also taken place in other areas of the export competition pillar.

5. We recognize that the reforms undertaken by some Members have contributed to this positive trend. We emphasize however that this generally positive trend is not a substitute for the attainment of the final objective on export competition in the Doha negotiations.

6. We emphasize the importance of consolidating progress in this area within the Doha negotiations so as to achieve as soon as possible the final objective set out in the 2005 Hong Kong Ministerial Declaration and we underscore the importance of further engagement among Members to this end.

7. We therefore reaffirm the importance of Members maintaining and advancing their domestic reform processes in the field of export competition. We strongly encourage those Members who have engaged in reforms to continue in that direction and Members yet to undertake reforms to do so, given the positive impact that such reforms can have and the significant negative consequences that failure to reform would generate.

8. With the objective on export competition set out in the 2005 Hong Kong Ministerial Declaration in mind and with a view to maintaining the positive trend noted previously, we shall exercise utmost restraint with regard to any recourse to all forms of export subsidies and all export measures with equivalent effect. To this end, we undertake to ensure to the maximum extent possible that:

- The progress towards the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect will be maintained;

- The level of export subsidies will remain significantly below the Members' export subsidy commitments ;

- A similar level of discipline will be maintained on the use of all export measures with equivalent effect.

9. We agree that fulfilling the objective set out in the 2005 Hong Kong Ministerial Declaration on export competition remains a priority issue for the post Bali work programme. We agree to continue to work actively for further concrete progress in this area as early as feasible.

10. Accordingly, we commit to enhance transparency and to improve monitoring in relation to all forms of export subsidies and all export measures with equivalent effect, in order to support the reform process.

11. We therefore agree to hold dedicated discussions on an annual basis in the Committee on Agriculture to examine developments in the field of export competition. This examination process shall provide an opportunity for Members to raise any matter relevant to the export competition pillar, in furtherance of the final objective set out in the 2005 Hong Kong Ministerial Declaration.

12. This examination process shall be undertaken on the basis of timely notifications under the relevant provisions of the Agreement on Agriculture and related decisions, complemented by information compiled by the WTO Secretariat, consistent with the practice followed in 2013[1], on the basis of Members' responses to a questionnaire, as illustrated in the Annex.

13. We agree to review the situation regarding export competition at the 10th Ministerial Conference. We also agree that the terms of this declaration do not affect the rights and obligations of Members under the covered agreements nor shall they be used to interpret those rights and obligations.

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[1] TN/AG/S/27 and TN/AG/S/27/Rev.1.

ANNEX

Elements for Enhanced Transparency on Export Competition

This Annex is intended to illustrate the types of information that would be requested by the Secretariat in the questionnaire mentioned in paragraph 12. It is understood that this questionnaire, which does not change Members' notification obligations, may be revised in the light of experience and of Members' further views.

Export Subsidies

1. Provide information on operational changes in measures

Export Credit, Export Credit Guarantees or Insurance Programs (Export financing)

1. Description of the program (classification within the following categories: direct financing support, risk cover, government to government credit agreements or any other form of governmental export credit support) and relevant legislation
2. Description of Export Financing Entity
3. Total value of export of agricultural products covered by export credits, export credit guarantees or insurance programs and use per program
4. Annual average premium rates/fees per program
5. Maximum repayment terms per program
6. Annual average repayment periods per program
7. Export destination or group of destinations per program
8. Program use by product or product group

Food Aid

1. Product description
2. Quantity and/or value of food aid provided
3. Description of whether food aid is provided on in-kind, untied cash-based basis and whether monetisation was permitted
4. Description of whether in fully grant form or concessional terms
5. Description of relevant needs assessment (and by whom) and whether food aid is responding to a declaration of emergency or an emergency appeal (and by whom)
6. Description of whether re-export of food aid is an option under the terms of the provision of food aid

Agriculture Exporting State Trading Enterprises

1. Enumeration of State Trading Enterprises
   - Identification of state trading enterprises
   - Description of products affected *(Including tariff item number(s) encompassed in product description)*
2. Reason and purpose
   - Reason or purpose for establishing and/or maintaining state trading enterprise
   - Summary of legal basis for granting the relevant exclusive or special rights or privileges, including legal provisions and summary of statutory or constitutional powers
3. Description of the functioning of the State Trading Enterprise
   - Summary statement providing overview of operations of the state trading enterprise
   - Specification of exclusive or special rights or privileges enjoyed by the state trading enterprise

Additional information subject to normal commercial confidentiality considerations

1. Exports (value/volume)
2. Export prices
3. Export destination

Information on policies no longer in operation due to significant policy reforms

WORLD TRADE ORGANIZATION

WT/MIN(13)/41
WT/L/916

11 December 2013

(13-6830)

Ministerial Conference
Ninth Session
Bali, 3-6 December 2013

COTTON

MINISTERIAL DECISION OF 7 DECEMBER 2013

The Ministerial Conference,

Having regard to paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization;

Decides as follows:

1. We stress the vital importance of cotton to a number of developing country economies and particularly the least-developed amongst them.

2. We reaffirm the Decision adopted by the General Council on 1 August 2004, the 2005 Hong Kong Ministerial Declaration, and our commitment, expressed at the 2011 Geneva WTO Ministerial Conference, to on-going dialogue and engagement to progress the mandate in paragraph 11 of the 2005 Hong Kong Ministerial Declaration to address cotton "ambitiously, expeditiously and specifically", within the agriculture negotiations.

3. We regret that we are yet to deliver on the trade-related components of the 2005 Hong Kong Ministerial Declaration, but agree on the importance of pursuing progress in this area.

4. In that regard, we consider that the Decision adopted by the General Council on 1 August 2004 and the 2005 Hong Kong Ministerial Declaration, remain a useful basis for our future work. We acknowledge the work on cotton that has been done in the Committee on Agriculture in Special Session in connection with the revised draft agriculture modalities contained in document TN/AG/W/4/Rev.4 dated 6 December 2008, which provides a reference point for further work.

5. In this context, we therefore undertake to enhance transparency and monitoring in relation to the trade-related aspects of cotton. To this end, we agree to hold a dedicated discussion on a bi-annual basis in the context of the Committee on Agriculture in Special Session to examine relevant trade-related developments across the three pillars of Market Access, Domestic Support and Export Competition in relation to cotton.

6. The dedicated discussions shall be undertaken on the basis of factual information and data compiled by the WTO Secretariat from Members' notifications, complemented, as appropriate, by relevant information provided by Members to the WTO Secretariat.

7. The dedicated discussions shall in particular consider all forms of export subsidies for cotton and all export measures with equivalent effect, domestic support for cotton and tariff measures and non-tariff measures applied to cotton exports from LDCs in markets of interest to them.

8. We reaffirm the importance of the development assistance aspects of cotton and in particular highlight the work of the Director-General's Consultative Framework Mechanism on Cotton in reviewing and tracking of cotton-specific assistance as well as infrastructure support programmes or other assistance related to the cotton sector. We commit to continued engagement in the Director-General's Consultative Framework Mechanism on Cotton to strengthen the cotton sector in the LDCs.

9. We welcome the positive trend in growth and improved performance in the cotton sector, particularly in Africa.

10. In this context, we underline the importance of effective assistance provided to LDCs by Members and multilateral agencies. We invite the LDCs to continue identifying their needs linked to cotton or related sectors, including on a regional basis, through their respective dialogues with development partners and national development strategies. We urge the development partners to accord special focus to such needs within the existing aid-for-trade mechanisms/channels such as the EIF and the technical assistance and capacity building work of relevant international institutions.

11. We invite the Director General to continue to provide periodic reports on the development assistance aspects of cotton, and to report on the progress that has been made in implementing the trade-related components of the 2005 Hong Kong Ministerial Declaration, at each WTO Ministerial Conference.

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WORLD TRADE ORGANIZATION

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WT/L/917

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PREFERENTIAL RULES OF ORIGIN FOR LEAST-DEVELOPED COUNTRIES

MINISTERIAL DECISION OF 7 DECEMBER 2013

The Ministerial Conference,

Having regard to paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization;

Recalling the "Decision on Measures in Favour of Least-Developed Countries" (Annex F of the Hong Kong Ministerial Declaration) which states that: "Developed country Members shall, and developing country Members declaring themselves in a position to do so should: ensure that preferential rules of origin applicable to imports from LDCs are transparent and simple, and contribute to facilitating market access";

Considering that duty-free and quota-free market access for LDCs can be effectively utilized if accompanied by simple and transparent rules of origin;

Recognizing that simple and transparent rules of origin may take into account the capacities and levels of development of LDCs;

Recognizing that the purpose of rules of origin for preference programmes benefiting LDCs is to ensure that only preference-receiving LDCs and not others benefit from the market access opportunities that have been afforded to them under such arrangements;

Recognizing that lower costs of compliance with rules of origin requirements will encourage LDC exporters to avail of market access opportunities provided to them;

Recognizing that the objectives of transparent and simple rules of origin that contribute to facilitating market access of LDC products can be achieved in a variety of ways, and that no one method is preferred to another;

Decides as follows:

1.1. With a view to facilitating market access for LDCs provided under non-reciprocal preferential trade arrangements for LDCs, Members should endeavour to develop or build on their individual rules of origin arrangements applicable to imports from LDCs in accordance with the following guidelines. These guidelines do not stipulate a single set of rules of origin criteria. Rather, they provide elements upon which Members may wish to draw for preferential rules of origin applicable to imports from LDCs under such arrangements.

A. ELEMENTS FOR PREFERENTIAL RULES OF ORIGIN

1.2. Preferential rules of origin should be as transparent, simple and objective as possible. It is recognized that other than wholly obtained products, origin may be conferred by substantial or sufficient transformation, which can be defined in a number of ways, including through: (a) *ad valorem* percentage criterion; (b) change of tariff classification; and (c) specific manufacturing or

processing operation. It is also recognized that these methods in certain cases may be used in combination.[1]

1.3. In the case of rules based on the *ad valorem* percentage criterion, given the limited productive capacity in the LDCs, it is desirable to keep the level of value addition threshold as low as possible, while ensuring that it is the LDCs that receive the benefit of the preferential trade arrangements. It is noted that the LDCs seek consideration of allowing foreign inputs to a maximum of 75% of value in order for a good to qualify for benefits under LDC preferential trade arrangements.[2]

1.4. The methods for the calculation of value should be as simple as possible. It is recognized that different methodologies are used to calculate the *ad valorem* percentage of value addition. This percentage may be determined on the basis of the principles of simplicity and transparency. For example, in case of methods used for calculation of foreign inputs, Members may exclude costs related to freight and insurance as well as international transportation costs.[3] In case of methods used for calculation of local/domestic content, Members may include national or regional inland transportation costs.

1.5. In the case of rules based on the change of tariff classification criterion, a substantial or sufficient transformation should generally allow the use of non-originating inputs as long as an article of a different heading or sub-heading was created from those inputs in an LDC, notwithstanding that product specific rules with different requirements may also be more appropriate.

1.6. In the case of rules that allow a specific manufacturing or processing operation for the purpose of conferring origin, such rules should, as far as possible, take into account the productive capacity in LDCs. For example, in a number of cases the use of process-based rules for chemical products has made such rules more transparent and easy to comply with. In addition, for articles of apparel and clothing it may be simpler to demonstrate a substantial transformation using such rules instead of the equivalent change of tariff classification.

1.7. Cumulation should be considered as a feature of non-reciprocal preferential trade arrangements. The core objective of cumulation is to allow LDCs to combine originating materials without losing the originating status of the materials and to jointly share materials or production. Certain non-reciprocal preferential trade arrangements provide illustrations of a range of cumulation possibilities, which Members may take into account in designing their preferential rules of origin. For example, such arrangements may allow bilateral cumulation (i.e. cumulation with the respective preference-granting country) as well as cumulation with other LDCs. Other possibilities include cumulation among GSP beneficiaries of a given preference-granting country and/or among developing country Members forming part of a regional group as defined by the preference-granting country.

B. DOCUMENTARY REQUIREMENTS

1.8. The documentary requirements regarding compliance with the rules of origin should be simple and transparent. For instance, requirement to provide proof of non-manipulation or any other prescribed form for a certification of origin for products shipped from LDCs across other Members may be avoided. With regard to certification of rules of origin, whenever possible, self-certification may be recognized. Mutual customs cooperation and monitoring could complement compliance and risk-management measures.

[1] For example, an across-the-board rule does not preclude having some product specific rules of origin for specific sectors whenever they are more appropriate or when they could offer better market access opportunities for LDCs.

[2] The precise percentage may vary depending on the calculation methodology used in different schemes.

[3] This is without prejudice to the meaning of customs value as defined by the 1994 Agreement on implementation of Article VII of the General Agreement on Tariffs and Trade (WTO Agreement on Customs Valuation).

C. TRANSPARENCY

1.9. Preferential rules of origin for LDCs shall be notified as per the established procedures.[4] The objectives of notification are to enhance transparency, make the rules better understood, and promote an exchange of experiences as well as mainstreaming of best practices.

1.10. The Committee on Rules of Origin shall annually review the developments in preferential rules of origin applicable to imports from LDCs, in accordance with these guidelines, and report to the General Council. The Secretariat shall annually provide the Sub-Committee on LDCs with a report on the outcome of such review.

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[4] These notifications are made pursuant to the Transparency Mechanism for Preferential Trade Arrangements (PTAs). It is also noted that the Agreement on Rules of Origin stipulates that Members provide their preferential rules of origin to the Secretariat.

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Ministerial Conference
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OPERATIONALIZATION OF THE WAIVER CONCERNING PREFERENTIAL TREATMENT TO SERVICES AND SERVICE SUPPLIERS OF LEAST-DEVELOPED COUNTRIES

MINISTERIAL DECISION OF 7 DECEMBER 2013

The Ministerial Conference,

Having regard to paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization;

Recognizing that services trade can play an important role in achieving the development objectives of LDCs;

Recalling that the WTO Agreement acknowledges the need for "positive efforts designed to ensure that developing countries, especially the least developed among them, secure a share in the growth in international trade commensurate with the needs of their economic development";

Reaffirming that the waiver Decision ("Preferential Treatment to Services and Service Suppliers of Least-Developed Countries", Decision of 17 December 2011, WT/L/847) taken by Members constitutes an important positive effort to help increase the participation of LDCs in world services trade;

Recognizing also the need to strengthen the domestic service capacity in LDCs with a view to making use of existing opportunities as well as any preferences afforded to them;

Noting that no WTO Member has yet made use of the waiver since its adoption in 2011;

Decides as follows:

1.1. The Council for Trade in Services is instructed to initiate a process aimed at promoting the expeditious and effective operationalization of the LDC services waiver. The Council for Trade in Services shall periodically review the operationalization of the waiver. The Council for Trade in Services may make recommendations on steps that could be taken towards enhancing the operationalization of the waiver.

1.2. With a view to accelerating the process of securing meaningful preferences for LDCs' services and service suppliers, the Council for Trade in Services shall convene a High-level meeting six months after the submission of an LDC collective request identifying the sectors and modes of supply of particular export interest to them. At that meeting, developed and developing Members, in a position to do so, shall indicate sectors and modes of supply where they intend to provide preferential treatment to LDC services and service suppliers.

1.3. Members, in their individual capacities, are encouraged at any time to extend preferences to LDCs' services and service suppliers, consistent with the waiver Decision, which have commercial value and promote economic benefits to LDCs. These preferences may accord, *inter alia,* improved market access, including through the elimination of economic needs tests and other quantitative limitations. In doing so a Member may accord preferences similar to those arising from preferential

trade agreements to which it is a party noting that preferential treatment, with respect to the application of measures other than those described in Article XVI of GATS, may be granted subject to approval by the Council for Trade in Services under paragraph 1 of the waiver Decision.

1.4. Members underline the need for enhanced technical assistance and capacity building to help LDCs benefit from the operationalization of the waiver. Special focus should be directed towards the delivery of targeted and coordinated technical assistance aimed at strengthening the domestic and export services capacity of LDCs, making optimal use of existing aid-for-trade channels such as the EIF and the technical assistance and capacity building work of relevant international institutions. In this context, the LDCs are invited to include their services related needs in their respective national development strategies and in their dialogues with development partners. Members urge development partners to respond adequately to such needs.

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Ministerial Conference
Ninth Session
Bali, 3-6 December 2013

DUTY-FREE AND QUOTA-FREE (DFQF) MARKET ACCESS FOR LEAST-DEVELOPED COUNTRIES

MINISTERIAL DECISION OF 7 DECEMBER 2013

The Ministerial Conference,

Having regard to paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization;

Recalling Decision 36 of Annex F of the Hong Kong Ministerial Declaration of 2005 on Measures in Favour of LDCs; and with a view to further integrating least-developed countries (LDCs) into the multilateral trading system and promoting economic growth and sustainable development in LDCs;

Recognizing that since the adoption of the Hong Kong Decision, Members have made significant progress towards the goal of providing DFQF market access on a lasting basis for all products originating from all LDCs, and that nearly all developed Members provide either full or nearly full DFQF market access to LDC products, and that a number of developing-country Members also grant a significant degree of DFQF market access to LDC products;

Decides as follows:

Developed-country Members that do not yet provide duty-free and quota-free market access for at least 97% of products originating from LDCs, defined at the tariff line level, shall seek to improve their existing duty-free and quota-free coverage for such products, so as to provide increasingly greater market access to LDCs, prior to the next Ministerial Conference;

Developing-country Members, declaring themselves in a position to do so, shall seek to provide duty-free and quota-free market access for products originating from LDCs, or shall seek to improve their existing duty-free and quota-free coverage for such products, so as to provide increasingly greater market access to LDCs, prior to the next Ministerial Conference;

Members shall notify duty-free and quota-free schemes for LDCs and any other relevant changes pursuant to the Transparency Mechanism for Preferential Trade Arrangements;

The Committee on Trade and Development shall continue to annually review the steps taken to provide duty-free and quota-free market access to the LDCs, and report to the General Council for appropriate action;

To aid in its review, the Secretariat shall, in close coordination with Members, prepare a report on Members' duty-free and quota -free market access for LDCs at the tariff line level based on their notifications;

The General Council is instructed to report, including any recommendations, on the implementation of this Decision to the next Ministerial Conference.

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WORLD TRADE ORGANIZATION

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11 December 2013

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Ministerial Conference
Ninth Session
Bali, 3-6 December 2013

MONITORING MECHANISM ON SPECIAL AND DIFFERENTIAL TREATMENT

MINISTERIAL DECISION OF 7 DECEMBER 2013

The Ministerial Conference,

Having regard to paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization;

Recalling the General Council decision of July 2002 to establish the Monitoring Mechanism;

Decides as follows:

1. The scope, functions, terms of reference and operation of the Monitoring Mechanism (hereinafter referred to as "Mechanism") shall be as follows:

SCOPE

2. The coverage of the Mechanism shall extend to all special and differential provisions contained in multilateral WTO Agreements, Ministerial and General Council Decisions.

FUNCTIONS/TERMS OF REFERENCE

3. The Mechanism shall act as a focal point within the WTO to analyse and review the implementation of S&D provisions. The Mechanism will complement, not replace, other relevant review mechanisms and/or processes in other bodies of the WTO.[1]

4. The Mechanism shall review all aspects of implementation[2] of S&D provisions with a view to facilitating integration of developing and least-developed Members into the multilateral trading system. Where the review of implementation of an S&D provision under this Mechanism identifies a problem, the Mechanism may consider whether it results from implementation, or from the provision itself.

5. In carrying out its functions, the Mechanism will not alter, or in any manner affect, Members' rights and obligations under WTO Agreements, Ministerial or General Council Decisions, or interpret their legal nature. However, the Mechanism is not precluded from making recommendations to the relevant WTO bodies for initiating negotiations on the S&D provisions that have been reviewed under the Mechanism.

6. The Mechanism can, as appropriate, make recommendations to the relevant WTO body that propose:

- the consideration of actions to improve the implementation of a special and differential provision;

[1] Members will have the discretion to avail themselves of the Mechanism as well as other relevant review mechanisms or processes in other bodies of the WTO.
[2] During the review, the Mechanism may consider how the provision is being applied and the overall effectiveness of its implementation.

- or the initiation of negotiations aiming at improving the special and differential provision(s) that have been reviewed under the Mechanism.

7. Such recommendations will inform the work of the relevant body, but not define or limit its final determination.

8. The relevant body should consider a recommendation from the Mechanism at the earliest opportunity. The status of recommendations emerging from the Mechanism shall be included in the annual report of the Committee on Trade and Development to the General Council.

OPERATIONS

9. The Mechanism shall operate in Dedicated Sessions of the Committee on Trade and Development. The Mechanism shall meet twice a year. Additional meetings may be convened, as appropriate. When in session, the Mechanism shall follow the same rules and procedures applied by the Committee on Trade and Development.

10. Monitoring of special and differential provisions in the Mechanism shall be undertaken on the basis of written inputs or submissions made by Members, as well as on the basis of reports received from other WTO Bodies to which submissions by Members could also be made.

11. Where the substantive matter falls within the purview of another WTO body, the Mechanism shall bring it to the attention of that WTO body so that the latter is in a position to provide input.

REAPPRAISAL OF THE MECHANISM

12. The Mechanism shall be reviewed three years after its first formal meeting, and thereafter when necessary, taking into account its functioning and evolving circumstances.

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