

*This **TEXTUAL PROPOSAL** is the European Union's initial proposal for legal text on "Customs and Trade Facilitation" in TTIP. It was tabled for discussion with the US in the negotiating rounds of 10-14 March 2014 and 19-23 May 2014 and made public on 7 January 2015. The actual text in the final agreement will be a result of negotiations between the EU and US.*

TEXTUAL PROPOSAL

CUSTOMS AND TRADE FACILITATION

Elements of a textual proposal on Customs Operations

0. Objectives

(To be addressed later)

1. Data and documentation

1. Each Party shall ensure that import, export and transit formalities, data and documentation requirements:

- a) are adopted and/or applied with a view to a rapid release of goods, particularly perishable goods, provided the conditions for the release are fulfilled;
- b) are adopted and/or applied in a manner that aims to reduce 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.

2. Each Party shall apply common customs procedures and uniform customs documents for release of goods throughout its customs territory.

2. Use of information technology

1. Each Party shall use information technologies that expedite procedures for the release of goods in order to facilitate trade between the Parties.

2. Each Party shall:

- a) make available by electronic means a customs declaration that is required for the import, transit or export of goods;
- b) allow a customs declaration to be submitted in electronic format;

*This **TEXTUAL PROPOSAL** is the European Union's initial proposal for legal text on "Customs and Trade Facilitation" in TTIP. It was tabled for discussion with the US in the negotiating rounds of 10-14 March 2014 and 19-23 May 2014 and made public on 7 January 2015. The actual text in the final agreement will be a result of negotiations between the EU and US.*

c) establish a means of providing for the electronic exchange of customs information with its trading community;

d) promote the electronic exchange of data between their respective traders and customs administrations, as well as other related agencies.

e) use electronic risk management systems for assessment and targeting that enable its customs authorities to focus their inspections on high-risk goods and that facilitate the release and movement of low-risk goods.

3. Uniformity of documents

(Addressed by language on data and documentation).

4. Release of goods

Each Party shall ensure that its customs authorities, border agencies or other competent authorities:

a) provide for the prompt release of goods within a period no greater than that required to ensure compliance with its customs and other trade-related laws and formalities;

b) enable the release of goods on their arrival subject to electronic submission of information on the goods by traders allowing processing of that information by the competent authorities prior to the arrival of the goods and provided the conditions for the release are fulfilled;

c) allow for the release of goods prior to the final determination and payment of customs duties, taxes, and fees. Before releasing the goods, a Party may require that an importer provides sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument. Such guarantee shall not be greater than the amount required to ensure payment of customs duties, taxes, fees due for the goods covered by the guarantee. The guarantee shall be discharged when it is no longer required.

5. Customs brokers

Customs provisions and procedures shall not require the mandatory use of customs brokers. The Parties shall apply transparent, non-discriminatory and proportionate rules if and when licensing customs brokers.

*This **TEXTUAL PROPOSAL** is the European Union's initial proposal for legal text on "Customs and Trade Facilitation" in TTIP. It was tabled for discussion with the US in the negotiating rounds of 10-14 March 2014 and 19-23 May 2014 and made public on 7 January 2015. The actual text in the final agreement will be a result of negotiations between the EU and US.*

6. Expedited shipments

(Addressed by language on release of goods).

7. Facilitation/simplification and *de minimis*

Each Party shall allow low-value consignments to benefit from simplifications as determined by that Party.

8. Transit and transshipment

1. The Parties shall ensure the facilitation and effective control of transshipment operations and transit movements through their respective customs territories.
2. The Parties shall ensure cooperation and coordination between all concerned authorities and agencies in their respective customs territories to facilitate traffic in transit.
3. Each Party shall allow goods intended for import to be moved under customs control from a customs office of entry to another customs office in its customs territory where the goods would be released.

9. Fees and charges

1. Each Party shall ensure, in accordance with Article VIII of the GATT 1994 that all fees and charges of whatever character other than customs duties imposed on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered, which shall not be calculated on an *ad valorem* basis, and shall not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.
2. Each Party may impose charges or recover costs only where specific services are rendered, in particular the following:
 - (a) attendance, where requested, by customs staff outside official office hours or at premises other than customs premises;
 - (b) analyses or expert reports on goods and postal fees for the return of goods to an applicant, particularly in respect of decisions relating to binding information or the provision of information concerning the application of the customs legislation;
 - (c) the examination or sampling of goods for verification purposes, or the destruction of goods, where costs other than the cost of using customs staff are involved;

*This **TEXTUAL PROPOSAL** is the European Union's initial proposal for legal text on "Customs and Trade Facilitation" in TTIP. It was tabled for discussion with the US in the negotiating rounds of 10-14 March 2014 and 19-23 May 2014 and made public on 7 January 2015. The actual text in the final agreement will be a result of negotiations between the EU and US.*

(d) exceptional control measures, where these are necessary due to the nature of the goods or to a potential risk.

3. No Party shall apply consular transaction fees, merchandise processing fees [and ...] or any equivalent fees or charges, in connection with the importation or exportation of goods originating under this Agreement.

4. Each Party shall publish a list of the fees and charges it imposes in connection with importation or exportation.

10. Electronic payment

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

11. Goods re-entered after Repair

1. For the purpose of this Article, repair means any processing operation undertaken on goods to remedy operating defects or material damage and entailing the re-establishment of goods to their original function or to ensure their compliance with technical requirements for their use, without which the goods could no longer be used in the normal way for the purpose for which they were intended. Repair of goods includes restoring and maintenance. It shall not include an operation or process that either:

(a) destroys the essential characteristics of goods or creates new or commercially different goods,

(b) transforms the unfinished goods into finished goods, or

(c) is used to improve the technical performance of goods.

2. A Party shall not apply customs duty to goods, regardless of their origin, that re-enter its customs territory after those goods have been temporarily exported from its customs territory to the customs territory of the other Party for repair, regardless of whether the repair could be performed in the customs territory of the Party from which the goods were exported for repair.

3. Paragraph 2 does not apply to goods imported in bond, into free trade zones, or zones of similar status, that are exported for repair and are not re-imported in bond, into free trade zones, or zones of similar status.

4. A Party shall not apply customs duty to goods, regardless of their origin, imported temporarily from the customs territory of the other Party for repair.

*This **TEXTUAL PROPOSAL** is the European Union's initial proposal for legal text on "Customs and Trade Facilitation" in TTIP. It was tabled for discussion with the US in the negotiating rounds of 10-14 March 2014 and 19-23 May 2014 and made public on 7 January 2015. The actual text in the final agreement will be a result of negotiations between the EU and US.*

Elements of a textual proposal on customs controls, customs decisions, penalties and appeals, and other issues.

12. Pre-shipment inspection

1. A Party shall not require the use of pre-shipment inspections.

13. Risk management

1. Each Party shall adopt or maintain a risk management system for customs and other relevant border controls, based on assessment of risk through appropriate selectivity criteria.

2. Each Party shall concentrate its customs and other relevant border controls for inbound or outbound trade on high risk consignments and expedite the release of low risk consignments. Each Party may also select, on a random basis, consignments for such controls as part of its risk management.

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

(Note: a reference to electronic risk management systems is made in the drafting proposal on the use of information technology. A general reference to the periodic review by each Party of their respective rules and requirements, including risk management, will be proposed under an opening article setting out the objectives of the customs and trade facilitation chapter).

14 - Post-clearance audit

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

2. Each Party shall conduct post-clearance audits in a risk-based manner.

3. Each Party shall conduct post-clearance audits in a transparent manner. Where an audit is performed and conclusive results have been achieved the Party 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.

4. The Parties acknowledge that the information obtained in a post-clearance audit may be used in further administrative or judicial proceedings.

5. The Parties shall, wherever practicable, use the result of post-clearance audit in applying risk management.

*This **TEXTUAL PROPOSAL** is the European Union's initial proposal for legal text on "Customs and Trade Facilitation" in TTIP. It was tabled for discussion with the US in the negotiating rounds of 10-14 March 2014 and 19-23 May 2014 and made public on 7 January 2015. The actual text in the final agreement will be a result of negotiations between the EU and US.*

15 - Advance rulings

1. Each Party shall issue, prior to importation, a written advance ruling in a reasonable, time bound manner (not exceeding [X] days) to an applicant that has submitted a written request containing all necessary information.
2. The advance ruling shall be valid for at least a three-year period of time after its issuance unless the law, facts or circumstances supporting the original advance ruling have changed.
3. A Party may decline to issue an advance ruling where the question raised is the subject of administrative or judicial review, or where the application does not relate to any intended use of the advance ruling.

If a Party 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.

4. Each Party shall publish, at least:
 - 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.
5. Where a Party revokes or modifies or invalidates an advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where the Party revokes or modifies or invalidates an advance ruling with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false or misleading information.
6. An advance ruling shall be binding on the Party in respect of the applicant that sought it. The Party may provide that the advance ruling be binding on the applicant.
7. Each Party shall provide, upon written request of an applicant, a review of the advance ruling or of the decision to revoke, modify or invalidate it.
8. Each Party shall make publicly available information on advance rulings, taking into account the need to protect commercially confidential information.
9. Definition and scope

An advance ruling is a written decision provided to an applicant prior to the importation of a good covered by the application that sets forth the treatment that the Party shall provide to the good at the time of importation with regard to:

*This **TEXTUAL PROPOSAL** is the European Union's initial proposal for legal text on "Customs and Trade Facilitation" in TTIP. It was tabled for discussion with the US in the negotiating rounds of 10-14 March 2014 and 19-23 May 2014 and made public on 7 January 2015. The actual text in the final agreement will be a result of negotiations between the EU and US.*

- a. the good's tariff classification, and
- b. the origin of the good.

Parties are encouraged to provide advance rulings on:

- a. the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts;
- b. the applicability of the Party's requirements for relief or exemption from customs duties, where appropriate;
- c. the application of the Party's requirements for quotas, including tariff quotas, where appropriate.

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

16 – Penalties

1. Each Party shall ensure that its respective customs laws and regulations provide that any penalties imposed for breaches of customs regulations or procedural requirements be proportionate and non-discriminatory.
2. 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. Penalties imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach. Each Party shall avoid incentives for the assessment or collection of a penalty, or conflicts of interest in the assessment and collection of penalties.
4. In case of voluntary prior disclosure to a customs administration of the circumstances of a breach of a customs law, regulation, or procedural requirement, each Party is encouraged to consider this as a potential mitigating factor when establishing a penalty.
5. When a penalty is imposed for a breach of a 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.

*This **TEXTUAL PROPOSAL** is the European Union's initial proposal for legal text on "Customs and Trade Facilitation" in TTIP. It was tabled for discussion with the US in the negotiating rounds of 10-14 March 2014 and 19-23 May 2014 and made public on 7 January 2015. The actual text in the final agreement will be a result of negotiations between the EU and US.*

17 – Appeals

1. Each Party shall provide effective, prompt, non-discriminatory and easily accessible procedures to guarantee the right of appeal against the administrative actions, rulings and decisions of customs or other competent authorities affecting import or export of goods or goods in transit.
2. Appeal procedures may include administrative review by the supervising authority and judicial review of decisions taken at the administrative level according to the legislation of the Parties.
3. Any person who has applied to the customs authorities for a decision and has not obtained a decision on that application within the relevant time-limits shall also be entitled to exercise the right of appeal.
4. Each Party shall provide a person to whom it issues an administrative decision with the reasons for the administrative decision, so as to enable such a person to have recourse to appeal procedures where necessary.

18 - International standards

The Parties agree that their respective customs provisions and procedures shall be based upon international instruments and standards applicable in the area of customs and trade, including the substantive elements of the International Convention on the Simplification and Harmonisation of Customs Procedures, the International Convention on the Harmonized Commodity Description and Coding System, the SAFE Framework of the WCO, the WCO Data Model and related WCO recommendations, and the WTO Agreement on Sanitary and Phytosanitary Measures.

(To be complemented in light of developments on Tier II activities).

19 - Internet publication

1. Each Party shall make available the following through the internet:
 - a. a description of its importation, exportation and transit procedures that informs 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 customs territory of that Party;

*This **TEXTUAL PROPOSAL** is the European Union's initial proposal for legal text on "Customs and Trade Facilitation" in TTIP. It was tabled for discussion with the US in the negotiating rounds of 10-14 March 2014 and 19-23 May 2014 and made public on 7 January 2015. The actual text in the final agreement will be a result of negotiations between the EU and US.*

- c. the laws, regulations and procedures for importation into, exportation from and transit through the customs territory of that Party;
- d. further trade related information, including relevant trade-related legislation;
- e. contact information on enquiry points pursuant to Article [].

20 - Enquiry points

1. Each Party shall establish or maintain one or more enquiry points to answer reasonable enquiries by interested persons on matters concerning importation, exportation and transit procedures, as well as to provide related required forms and documents.
2. A Party shall not require the payment of a fee for answering enquiries or providing required forms and documents.
3. The enquiry points shall answer enquiries and provide the forms and documents within a reasonable time period set by each Party, which may vary depending on the nature or complexity of the request.

(Mutual administrative assistance/customs cooperation will be addressed later).