

Negotiating Group on Trade Facilitation

SUMMARY MINUTES OF THE MEETING

Held in the Centre William Rappard
on 7 and 9 February 2005

Chairman: Mr. Muhamad Noor Yacob (Malaysia)

1. The Chairman said that the purpose of the meeting was to provide delegations with an opportunity to make contributions on the agenda of the Negotiating Group, as set out in the Work Plan adopted in November 2004. Secondly, Members would be invited to admit relevant international organizations, including the IMF, OECD, UNCTAD, WCO and the World Bank, to attend the next meeting of the Group on an ad hoc basis.

2. Under "Other Business", the representative of Egypt wished to offer suggestions on the format of the minutes of the meetings of the Negotiating Group.

3. The agenda was adopted.

A. CONTRIBUTIONS ON THE AGREED AGENDA OF THE NEGOTIATING GROUP

4. The Chairman said that he would first take up the written contributions in their order of submission, and then seek Members' feedback on those papers. After that, there would be opportunity to make additional – verbal – contributions. In making inputs, delegations would be free to address any aspects of the agenda in a cross-cutting manner without being bound by a particular sequence. The Secretariat would then be invited to present its contributions, focussing on technical assistance and capacity building. Inputs had also been prepared by other IGOs, especially with respect to the Group's work on identifying Trade Facilitation needs and priorities.

5. The representative of the European Communities introduced the EC's submission on how to clarify and improve Article X of the GATT (TN/TF/W/6), explaining that it also addressed the important areas of costs, benefits and resources. The proposals were based on the feedback received from the business community in developed and developing countries on where they see the need for improvements, notably with respect to transparency and predictability of border crossing procedures. They reflected what traders saw as a priority and represented measures to reduce time and costs of doing business, while at the same time maintaining, and even improving, the ability of customs and other administrations to carry out the full range of their functions. The proposals were also based on previous discussions in the Council for Trade in Goods and modelled on existing GATT rules and practice, with the resulting benefit of Members already being familiar with them.

6. First, the EC proposed to increase the level of transparency currently found in Article X to ensure that there was a commitment to provide transparency, particularly for customs and other related import and export procedures. That should be ensured not only as regards the primary legislation but also with respect to lower level regulations, decrees, and the more regular procedures

and decisions made by customs and other authorities concerned with border crossing trade. One way of doing that was a notification procedure through the creation of enquiry points and the like, as already known from the TBT, SPS and Customs Valuation Agreements.

7. The second proposal was to establish some degree of consultation and prior information of business about regulations and changes to them. The EC proposed that Members put in place a fairly systematic practice of consulting with the business community on their import and export rules and procedures and any important changes to them. That was particularly important for small- and medium-sized enterprises (SMEs). Small companies lacked resources to chase up information and could not devote manpower and resources to find out about the regulations, opening hours and changes to practices in border management. They also lacked the economic weight and leverage to make their views known unless there was a systematic and workable consultation process managed by governments. The EC's consultations with the trading community had shown that the existence of a regular channel of discussion/consultation was a real priority for those enterprises. It helped create the often missing good cooperative relationship between the administration and the trading community. Part of the proposal would be the idea of providing a certain minimum time between the consultation on regulations and their approval, and between the approval of rules/procedures and their entry into force, to allow traders the time to adjust to any changes in the rules which affected them.

8. The third and final element in the EC's proposal related to appeal procedures and to due process. Article X of the GATT already contained the basic rudiments of appeal rights against customs decisions. However, it merely required Members to introduce an appeal system "as soon as practicable". That commitment had been agreed upon in 1948, and the EC was of the view that it was practicable 57 years later to introduce such procedures. Most countries already had some form of appeal mechanism at customs. The Communities would like to see that long-standing notion in Article X actually implemented by all Members since it was very important for all traders to have the right to appeal against decisions which affected their trade on a day-to-day basis. The EC therefore proposed to confirm and slightly expand Article X to ensure that there was the right of recourse to an independent authority to appeal against initial decisions by authorities. A frequent problem in that context was that, even when the right to appeal was provided for, the appeal process encountered very long delays. Goods were often left at docks for long periods while appeals were considered. To ensure that trade continued to flow, the Communities had provided some ideas for guarantees or bonds to be lodged pending the resolution of an appeal process. It was also important for companies to have the possibility of using a lawyer or an agent to carry out the appeal, especially for SMEs, as they could not devote time to pursuing an appeal by themselves.

9. The submission also made initial observations about the benefits and potential costs of implementing the proposals. The Communities' initial assessment, corroborated by the analysis by the World Bank and the OECD, was that most of the proposals were relatively cost free. Soundings with partners and WTO Members on cost implications had shown that, in virtually all cases, many of the suggested practices were already taking place. They were generally provided for within the normal running budgets of customs and would therefore not represent important costs. As for the benefits, feedback received from traders showed that more transparency, greater predictability, fewer sudden changes to regulations, and the right of consultation would be of real benefit to them, whether they were from developed or developing countries, and irrespective of whether they were multinationals or SMEs. If there were costs in implementing or improving existing transparency mechanisms, the EC was certainly prepared to provide technical assistance in those areas as part of its trade-related development assistance. While the provision of aid depended on the receipt of requests for such assistance, the EC's interest and willingness to provide support were clearly there.

10. The representative of Korea introduced Korea's communication (TN/TF/W/7), noting that it further developed ideas on how to improve and clarify GATT Article X that had been proposed in a previous contribution (G/C/W/377). The new proposal included four specific suggestions, dealing

with (i) publication of information, (ii) notification and prior commenting periods regarding core measures, (iii) interval between publication and implementation and (iv) Single National Focal Points.

11. With respect to the publication of information, Korea proposed that Members publish the laws, regulations, judicial decisions and administrative rulings as defined in Article X.1 of the GATT, as well as binding advance rulings of general application and any agreements with other Members relating to such relevant regulations/laws. Korea also proposed that Members notified the media used for such publication to the WTO Secretariat, which would then disseminate the information to Members, as currently done in the Agreement on Government Procurement.

12. Regarding notification and prior commenting periods on core measures, Korea suggested that Members notified the Secretariat of proposed such measures and their amendment at an early appropriate stage, as was done with the measures under the TBT and SPS Agreements. Scope and definition of "core measures" and "appropriate stage" could be subject of further discussion.

13. Korea also proposed that Members allowed for a reasonable period of time between publication and implementation of new or amended measures, to give all interested parties an opportunity to adjust their practices accordingly.

14. A fourth proposal aimed at establishing a Single National Focal Point as a centre to communicate with other competent domestic authorities in order to provide more efficient responses to inquiries on a non-discriminatory basis. The implementation of the measure was relatively easy as each government simply needed to designate an office to receive and answer inquiries by liaising with the appropriate government agencies.

15. Korea fully took into account the implementation concerns of some developing countries, especially LDCs, and was prepared to consider flexible conditions for them in implementing the proposals.

16. The representative of Japan introduced the communication by Japan, Mongolia and Chinese Taipei (TN/TF/W/8), explaining that it aimed at further clarifying and improving GATT Article X by allowing traders to obtain accurate and timely information on trade procedures and reduce cost and time required for the cross-border movement of goods. Such improvement would lead to increased business opportunities, especially for SMEs, which had so far missed the opportunity to engage in international trade. For governments, facilitated trade would allow for a more efficient allocation of human and financial resources while at the same time contributing to economic development.

17. The submission first categorized various elements of Article X into three principles, i.e., transparency, predictability and impartiality, and gave examples of the problems faced by the private sector in the area. It then suggested a non-exhaustive list of possible measures to address them. The paper also contained proposals on special and differential (S&D) treatment, technical assistance and support for capacity building as well as on cost implications of proposed measures. Japan intended to continue providing necessary technical assistance and capacity building in the relevant areas.

18. Transparency was of the utmost importance. If trade regulations were not published, traders encountered difficulties to comply with the required procedures. While Article X obliged Members to publish trade regulations in a prompt manner, it did not provide detailed coverage of the information to be published or the means to publicize them. The submission therefore proposed that all trade-related laws regulations be made public. A clarification with respect to the required methods of publication might be another beneficial measure. The use of government gazettes or official websites could be an option in that context. Notification of major trade regulations to the WTO in one of the official WTO languages was another measure to address the problem. In doing so, the WTO Secretariat, in cooperation with other international organizations, might have a role to play, especially for those least-developed members that had difficulties in publicizing their trade regulations on their

websites. The establishment of inquiry points was also an important element to provide traders with improved accessibility to information on required trade procedures.

19. Predictability was crucial as well. If laws and regulations were suddenly revised, or if the revisions were not published before their implementation, traders would not have enough time to comply with the altered regulations appropriately. That made doing business more difficult, especially for SMEs. It also made it more difficult for governments to secure compliance. In trying to address problems related to predictability, publication of trade-related laws and regulations before implementation would be an important element to consider. It might include the providing of opportunities for interested parties to comment on prospective laws and regulations. Other elements might include an advance ruling system and the clear identification of the required trade procedures in the relevant laws and regulations.

20. Impartiality was another indispensable element. Non-impartial administration of trade regulations incurred additional costs for traders. Lack of appropriate appeal systems caused a loss of confidence in a country's trading system. For the government, it led to inefficient allocation of limited government resources and inefficient duty collection. Elements of a solution to such problems were a uniform administration of trade regulations throughout Members' territories. That could be achieved by establishing a central function within the government for interpreting trade regulations and compiling and distributing casebooks for officials at the border. Adequate training of officials was another important measure to enhance the impartial administration of trade regulations. Integrity was an additional element of maintaining impartiality throughout the territory. It could be improved by developing codes of conduct for officials concerned.

21. The representative of Canada presented a proposal on advance rulings on behalf of Canada and Australia (TN/TF/W/9), stressing that such rulings had proven to be a valuable instrument for many economies to expedite the movement, release and clearance of goods. Traders benefited from the resulting transparency, as well as from the improved predictability for their transactions. The increased certainty in transaction costs provided by advance rulings also encouraged greater investment and capital flows. Customs and other competent authorities further benefited from the efficiencies, cost savings and overall rationalization of resources that advance rulings could bring. Such rulings especially helped to ensure consistency in treatment of similar goods. Overall, the efficiencies to be gained from advance rulings constituted an important policy tool for all countries to help sustain domestic reform efforts.

22. The Canadian-Australian proposal was inspired by a review of existing advance ruling regimes in both developed and developing countries. It was anchored on the underlying principles of them being (i) issued on tariff classification, including applicable rate of duty; (ii) issued within a defined period of time; (iii) binding on customs authorities for a specified period of time; and (iv) to the extent possible, made publicly available. Appropriate provisions addressing S&D treatment could be incorporated to reflect the specific circumstances of individual Members. Technical assistance and capacity building were basic and integral parts of any measure on advance rulings.

23. The representative of Australia said that multilateral commitments on advance rulings promoted transparency and consistency in the administration of customs regulations, in accordance with Article X of the GATT. The availability of advance rulings on tariff classification facilitated trade by providing certainty for importers, exporters and producers as to how their goods would be treated by the country of import. They established confidence between customs administrations and traders, thereby encouraging compliance and minimizing delays, complaints and appeals.

24. To a large extent, adopting commitments on advance rulings in the WTO context would merely formalize a widespread practice. Customs authorities in both developed and developing countries generally had the facility to provide advice on the customs treatment of goods prior to their importation, whether those procedures were codified in legislation or not.

25. Subject to confidentiality requirements, the publication of advance rulings would enhance transparency, thereby promoting consistency on non-discrimination in the administration of customs regulations. While legitimate business confidentiality considerations might preclude the publication of individual rulings, it was open to customs administrations to publish relevant information of general application in a way that maintained the confidentiality of individual applicants.

26. Multilateral commitments on advance rulings would be consistent with the aims of Article X to promote transparency and consistency in the administration of customs regulations. Such commitments were not new to the WTO. Members were already required to provide advance rulings on origin questions under the Rules of Origin Agreement. It was appropriate for that commitment to be reaffirmed as part of the outcome of the Trade Facilitation negotiations. An additional commitment to provide advance rulings on classification would represent a logical extension of existing disciplines that was modest and achievable and would deliver real benefits for business.

27. The proposal was technology-neutral: it did not prescribe any particular form of delivery for an advance ruling system. Members would be free to implement advance rulings in a way best suited to their own national customs infrastructure, according to their means. Nevertheless, Australia recognized that developing countries and LDCs might require technical assistance to provide such rulings and stood ready to share its experience and expertise in that area.

28. The representative of Chinese Taipei proposed measures aimed at improving Article VIII (TN/TF/W/10) that had shown to reduce clearance times facilitated trade. With the exception of IT/automation, they could all be applied without requiring huge investments in infrastructure. The suggested measures included the use of pre-arrival clearance, risk management and post-clearance audit as well as expedited clearance for express consignments. To enhance Article X's transparency requirements, Chinese Taipei further suggested advance rulings on tariff classification and one-stop services in the form of information centres or inquiry points.

29. The suggestions were derived from some successful measures implemented in Chinese Taipei in the course of the modernization of its customs operations to further expedite legitimate trade flows. Chinese Taipei was committed to do its best in providing other developing Members with the necessary technical assistance.

30. The representative of the United States introduced the US proposals to clarify and improve GATT Articles X and VIII, explaining that they suggested commitments to establish binding advance ruling regimes and provide for internet publication of the elements listed in Article X as well as of import procedures. A third proposal covered the area of fees, aiming at improving transparency by commitments on internet publication and by clarifying the parameters of operation under Article VIII. The fourth proposal aimed at establishing a regime for expedited treatment of express shipments.

31. Each of the proposals had the common theme of bringing certainty and transparency to traders. Their implementation not only improved a trading regime, but also brought cost savings and improved efficiency. They all attempted to refer to other elements of the modalities, particularly concerns regarding costs. Some informal research had shown that many of the proposed commitments were already being implemented by a number of Members. Internet publication of import procedures and laws, for instance, was already a reality in more than 90 developing countries, about 45 of which had very comprehensive sites. Others were at various stages of implementing such a measure. The same could be said with regard to express shipment regimes. Suggestions were also made on how to proceed with each of the proposals, which the United States envisaged refining further. It was also very important to develop the best method for assessing the situation of developing countries and their needs before then returning to the proposals. That would certainly be a challenge, but it was an integral part of the work and ensured that Members engaged in a true problem-solving mode in the negotiations.

32. Another common theme of the proposals was their significance for small- and medium-sized enterprises. Each measure was extremely important to small enterprises around the world in terms of becoming familiar with potential market opportunities and doing business across borders.

33. The representative of the Philippines, speaking on behalf of the Core Group, said that the goal of enhancing transparency, predictability and impartiality, and the overall benefits of increasing trade flows and assisting SMEs in taking advantage of the global trading system were known and laudable. The task and challenge of the Negotiating Group was to develop a concrete list of specific components and criteria for promoting Trade Facilitation that enabled such general objectives to be realized, while keeping in mind that the negotiations were being carried out in the context of the Doha Development Round, and were limited in scope to reviewing and clarifying Articles V, VIII and X.

34. It would be useful to examine for each Member which Trade Facilitation measure had or had not been undertaken and to assess related costs. A "laundry list" of Trade Facilitation measures could perhaps be prepared on a country-by-country basis, indicating the presence or absence of such particular Trade Facilitation components. The proposed measures were already practiced by many Members. Sharing that data with the rest of the membership would greatly assist in determining which Members would or would not have to undertake particular actions.

35. S&D treatment, financial and technical assistance and capacity building were integral components of any review and clarification of GATT Articles V, VIII and X. The proposals made so far did neither contain any definitive or concrete S&D offers nor financial and technical assistance components. It was important that such components were integrated into each and every proposal.

36. The question of what legal commitments, if any, a new agreement would entail had to be addressed. This should include a discussion on whether the components of a Trade Facilitation agreement would lead to dispute resolution and rules-based commitments of compelled reforms, or to a more general incentives-based reform commitment process that recognized the large resources and extensive time frame required to enable developing countries to achieve the desired trade and development results, for which financial and technical assistance programs would be necessary components. The Core Group looked forward to arriving at a fair and balanced Trade Facilitation agreement in parallel with achieving substantial results in the other negotiating areas.

37. Speaking on behalf of the LDCs, the representative of Zambia said that the LDCs wished to reiterate the need for implementing the July Package in terms of its approach to ensure the availability of adequate financial, administrative, and technical resources in the negotiations, including the timing of implementing obligations in favour of developing countries and LDCs.

38. Everybody agreed on the importance and urgency of providing financial and technical support to LDCs to enable them to develop and improve their capacities in areas such as modernization of customs procedures and facilities. That had to be part of the support by the WTO and the international community for LDCs in the area of Trade Facilitation. It was therefore essential that the July Package was honoured by ensuring the provision of increased financial and technical assistance as well as support for economic infrastructure development of LDCs. The LDCs also wished to recall the innovative approach taken in drafting the negotiating modalities, stating that no implementation requirements would be imposed on developing countries that went beyond their means and capacities.

39. The work of the Negotiating Group should keep pace and be linked to other substantive negotiating areas of the DDA. Commitments by the LDCs in the Trade Facilitation negotiations were therefore dependent on what they received in return in the negotiations on S&D, Agriculture, NAMA, Services, etc. S&D obligations further had to be linked to the substantive issues of the modalities, namely Articles V, VIII and X of GATT.

40. The LDCs attached great importance to the agreed Work Plan and its agenda items, which provided a useful starting point for the discussions on Trade Facilitation. They would like to see the Group effectively and meaningfully address developmental items of the agenda in accordance with the negotiating modalities, including S&D treatment, the identification of Trade Facilitation needs and priorities and the addressing of cost implications of proposed measures, technical assistance and support for capacity building and work with relevant international organizations.

41. The Negotiating Group should not, however, lose sight of the intrinsic linkage between different items of the agenda. A discussion of developmental aspects could only make sense if considered in relation to the substantive aspects of the negotiations. The Group should ensure that consideration of substantive issues in respect of clarification and implementation of relevant aspects of GATT Articles V, VIII and X was done in a holistic manner, so that relevant developmental aspects could be considered in parallel as a cluster. The consideration of any proposed clarification and improvement ought to include the examination of developmental implications and remedial measures of the proposed measures, in terms of S&D treatment, cost implications, Trade Facilitation needs and priorities, technical assistance and support for capacity building and working with relevant international organizations, as agreed in the modalities. That would ensure that the agreed modalities were fully and meaningfully implemented throughout negotiation process.

42. The proposals that had been tabled would be studied, especially with respect to how they would impact on LDC economies. The LDCs appreciated that those suggestions recognized the need for assistance to implement whatever might be accepted as a result of the negotiations by the Membership, but wanted to see a clear and categorical commitment by the developed partners to meet all additional costs, in addition to the offer of technical assistance.

43. The representative of Rwanda fully endorsed the statements by Zambia and the Philippines. Rwanda would like to share some ideas on possible avenues within which to improve and clarify the three relevant GATT Articles. Rwanda was interested in discussing Trade Facilitation issues that would assist in mitigating difficulties faced by land-locked countries in international trade, some of which were experienced in non-landlocked countries as well.

44. Rwanda had reviewed a number of existing proposals such as the one on advance rulings, which was a good suggestion to reduce the delays faced by many traders during customs clearance. Such delays entailed far-reaching costs that were a burden to business. For Rwanda, some of the imports were industrial inputs, with delays in that area affecting the manufacturing process. Moreover, business often had to be conducted on bank arrangements, thereby facing interest rate implications in the case of delays. Further and careful reflection had to be given to those issues in order to address some concerns that might arise in the context of that proposal, such as fraud. Flexibility should be reserved for customs authorities to modify or even replace an earlier ruling if necessary.

45. Rwanda intended to do more work on limiting formalities and documentation to the extent possible. Traders faced complicated and duplicative paperwork, whose multiplicity sometimes had cost implications. There were also problems relating to too many authorities being involved in the process, causing delays in the processing of documents. Rwanda would like to explore the possibility of a "one-stop customs centre" where all paper work was done in one location. Furthermore, there should be a defined maximum period of time for the goods to remain in customs. That would allow for more predictability and transparency, and be more convenient.

46. There was need to provide technical assistance at an early stage to countries that had to assess their negotiating needs and priorities. Rwanda noted the speed with which negotiations were moving, yet many countries had not even been able to assess what their needs and priorities were. S&D treatment, particularly for least-developed countries, should be a component of every proposal. Rwanda further urged Members to seriously focus on S&D treatment provisions for land-locked

countries to minimize barriers to trade and competitiveness caused by additional costs and delays in transit countries.

47. The representative of Romania commented on the EC proposal, saying that publication and administration of trade regulations on customs laws and border procedures were important both for traders and authorities. Traders' interest in having a transparent legal framework governing all procedures and rules applicable at the border stemmed from their preoccupation to simplify clearance procedures and reduce costs. A transparent and predictable system was also important for national authorities to better support exporters and to fight bureaucracy and corruption. To that end, enquiry points or trade desks might be a solution. Romania therefore supported the proposals by the EC.

48. To allow developing countries to achieve the objective of transparency, predictability and simplification and to speed up customs procedures, Members had to consider technical assistance for those countries. Romania had embarked on an ambitious programme of modernizing and improving customs activities about ten years ago. The process would not have been possible without technical assistance from other bodies. But the results were encouraging: the system had been simplified, was transparent and accessible to the business environment; the time for customs clearance had diminished substantially and there was better allocation of financial and human resources. The EC paper could be a basis to further discuss clarifications and improvements of Article X.

49. The representative of Norway said that the tabled proposals were promising contributions for further work on Trade Facilitation. Making information on rules and procedures easily available to traders was a cornerstone in Trade Facilitation.

50. The EC contribution contained many proposals Norway could generally support. To a great extent, they corresponded with many of the measures Norway had introduced at the national level. The implementation of those measures would take time and required S&D treatment in order to make them effective and operational. It was also clear that technical assistance would be needed to implement some of those measures.

51. The document from Korea included many interesting proposals. Norway fully agreed with the suggestions contained in its paragraph 5 on the publication of information. With respect to the proposal of providing a prior commenting period on changes in "core measures that have a significant effect on trade of other Members", with the WTO Secretariat being given the task of forwarding that information to "interested parties", Members should thereafter be given time to make comments on the proposed measures. For Norway, it was an important principle in law that any changes in legislation should go on "hearing" to interested parties at the national level. Norway had, however, not had the same experience in sending proposals on an *international* hearing. Nevertheless, should anyone at the international level provide comments on the proposed measures, they would be considered. For practical reasons, it was necessary to limit the proposal to "core measures".

52. Norway also agreed with the proposal to establish a "Single National Focal Point" as it would substantially facilitate efforts to comply with the existing rules and procedures. The introduction of such centres did however take time, and required a certain implementation period for countries that did not already have such facilities in place. One relatively simple measure that could be introduced as a first step was a "virtual focal point", allowing for expertise from different places to be connected to a focal telephone point, which could then be contacted via phone.

53. The communication from Japan, Mongolia and Chinese Taipei presented a number of interesting concepts. Its focus on enhancing transparency, predictability and consistency was something that had often come up as a result of Norway's consultations with the private sector, especially SMEs, on the improvements they were seeking with respect to the three GATT Articles. Norway largely agreed with the proposed measures. Further information would, however, be appreciated as to what the suggested advance ruling system would imply.

54. The proposals by Chinese Taipei on "pre-arrival clearance, risk management and 'one stop service'" were particularly noteworthy. As for fees and formalities connected with import and export, Norway was strongly committed to avoiding unnecessary procedural barriers to trade in the design and application of import and export procedures, to ensure that such procedures did not unduly slow down the movement or release of goods. Thus, future rules should ensure that import and export procedures were not more trade restrictive than necessary to fulfil legitimate objectives. Norway was also committed to working towards a reduction in the number of fees and charges.

55. The Norwegian consultation process with the private sector had revealed the benefits of a standardized format for documents related to the shipment of goods, and their reduction. There was also need for a reduction in consular formalities and fees, as well as for introducing a "Single Window" where all official controls were in the hands of one single agency at the border.

56. The fact that Members' level of development varied was fully recognized in the negotiating modalities. S&D treatment for developing and least-developed countries was an integral part of the mandate. Norway favoured an approach whereby, on the basis of individual proposals put forward, S&D treatment would be considered based on the different development needs. The development of effective and operational S&D treatment therefore seemed necessary. While taking due account of paragraph 3 of Annex D, LDCs should be encouraged to implement new measures, as they would benefit from the advantages of an upgraded system.

57. There was undoubtedly need for substantive TRTA for developing countries and LDCs. Instruments developed by the WCO to facilitate individual Member's assessment of their needs were most welcome and would hopefully be made available soon. Additional technical assistance would, however, be required multilaterally as well as on a bilateral basis, as work progressed.

58. The representative of India sought further clarifications on some of the suggested improvements of GATT Article X.

59. The EC submission, which was helpful in taking previous CTG work and the NAMA NTB notifications into account and in being modelled on existing WTO Agreements, aimed at increasing the scope of transparency solicited by Article X by extending the coverage from "laws and regulations", "judicial decisions" and "administrative rulings of general application" to "administrative guidelines" and "decisions", while suppressing the transparency requirement for "judicial decisions". In that context, India would like clarification on the precise meaning of "administrative guidelines" as certain guidelines could be confidential in nature. India would also like to know whether there was any difference between "administrative decisions" and "administrative rulings". The Indian delegation further wondered whether the EC had not made a reference to "judicial decisions" due to an assumption of it continuing to be a part of the clarified and improved Article X.

60. The term "publish and make easily available" had been used in the chapeau of the proposal, whereas the existing Article X only referred to "publish(ed) promptly". In India's view, there was no need for such an addition as long as there was a commitment to publish the requisite information.

61. India also requested clarification of the term "relevant". In the existing Article X, there was an enumeration of the areas where laws and regulations had to meet the transparency requirement. India wondered whether the word "relevant" captured all those various areas or a larger and a more undefined category. A more concise scope of subjects to be covered under the transparency requirement of Article X could be considered.

62. With respect to the suggested information on customs and other "border-related agency processes" it was necessary to understand what "border-related agency processes" were being referred to. As for the suggestion for conditions for different forms of customs treatment, it would be helpful if the EC could clarify the concept with a concrete example. With regard to appeal procedures,

including standard times and conditions for appeal, the proposed commitment would need to be limited to the filing of appeals without extending to its disposal.

63. On the issue of notifying all fees and charges applicable to import, export and transit procedures and requirements, India would request the EC to share with Members the practice in the EC's system so as to further clarify the understanding on the proposal's implementation aspects.

64. India had concerns regarding the proposal for customs' and other government agencies' management plans relating to the implementation of WTO commitments to be notified. Such management plans might not necessarily be drawn up in a rigid and codified manner - they were dynamic by nature, and subject to change depending upon certain exigencies and even competing development goals. It was also premature to suggest certain elements of such a management plan like standard processing times or relevant reform and modernization programmes when there was no clarity regarding the kind of commitments that would emerge on Trade Facilitation.

65. Clarity was needed on the meaning of the term "officially designated medium". Did it mean something more than publication on the website and official gazette? It was also necessary to understand whether the expression "simple and accessible manner" had any specific meaning. If not, it was subjective and one could attempt to improve the language. The suggestion to establish enquiry points was desirable, but needed further deliberation as regards the structure, location and number of such enquiry points. Further, while the proposal of having an appropriate consultation mechanism was relevant and desirable, it should not be subject to rigid commitments requiring adequate time periods for commenting on the proposed rules and procedures by all interested parties and providing time gaps between finalization and their putting into force. That would lead to several practical problems including delays and competitive lobbying. It was therefore proposed that the consultation mechanism should be flexible to suit the needs and policy frameworks of various Members.

66. On the suggestion of rules and procedures being accompanied by a statement of policy objectives, India noted that the word "etc" had been used, leaving the scope of the proposed commitments undefined and unclear. In India's view, the expected commitment would only be for providing comments by way of a statement of the policy objectives sought without extending to areas such as an explanation on how the measure was least trade restrictive or how certain other procedures could not meet the same objective. That was something which had already been proposed by the EC.

67. India also had difficulty in accepting the proposal for setting up a standard time for the resolution of minor appeals at the administrative level. "Minor appeal" was a relative and subjective term which needed greater clarity. Some clarity was also required as to whether the provision for appeal would also apply to certain SPS-related decisions like rejection of a consignment or its destruction on account of high pesticide residue level or on account of some other SPS regulation. On the EC proposal for goods involved in an appeal to normally be released with the possibility in given circumstances for duty payment to be left in abeyance, subject to the provision of a guarantee, such as a surety deposit, where required by national legislation, India felt that the issue was one of appeal and not of the determination of customs value which was the subject of Article 13 of the Agreement on Customs Valuation (CVA). Even the CVA did not require the extension of such release in appeal cases. Thus, it would be difficult for India to accept such a proposal since the appeal would only arise after the decision had been taken following due process. Lastly, India had noted that section D of the EC's proposal referred to individual LDCs requiring technical assistance to provide advance rulings without however making a proposal for setting up an authority for such rulings.

68. With respect to Korea's proposal, India sought clarification on its reference to "core measures", looking for a concrete example of such a measure. As for the suggestion to establish a Single National Focal Point, observations had already been made in the context of the EC submission. Greater clarity was required on the proposal to ensure that it did not lead to a burdensome commitment. With respect to the issue of prior consultation and comments, India's position had

already been stated in response to the EC submission. Whilst Korea recognized that it might be difficult for developing countries and LDCs to implement its proposal due to them not having sufficient resources, Korea had limited the S&D and technical assistance aspects to longer implementation periods, which was not sufficient to overcome implementation concerns.

69. With respect to the proposal on prior consultation and comments contained in TN/TF/W/8, India's position had already been stated in commenting on the EC proposal. On the suggestion regarding the processing of notified trade regulations in a committee set up in the WTO, it was not clear to India what that would entail since the obligation presently related to transparency. Therefore, as long as Members complied with the requirement, there was no call for further processing the information. India proposed that Members notified the place where the relevant information was available, rather than all the regulations/procedures to the WTO, as that would be cumbersome both to Members as well as to the WTO Secretariat. As for maintaining integrity among officials, India agreed that that was a laudable objective, but something which did not fall in the ambit of the WTO.

70. The representative of Nicaragua supported the idea of Members submitting contributions in writing in the most detailed manner possible. The Japanese intervention was welcomed. Nicaragua intended to observe the developments of the negotiations and would later comment on the proposals and contributions which properly addressed the objective of the negotiations of facilitating trade for developing countries. The Japanese proposal coincided with regional efforts taken by Nicaragua to facilitate commercial customs procedures.

71. The representative of New Zealand said that the commonalities and overlaps between the papers suggested shared ideas for achieving the objectives of predictability, simplification, transparency and access to information. The proposals were largely practical and pragmatic in their approach. They reflected the realities of the current trading environment and the vast changes that had taken place since the GATT had been adopted. Repeated references had been made to issues such as internet publication, just-in-time inventories and express shipments. In all cases, the proposals reflected what was already best practice in customs and border administrations with many of its ideas already being widely applied throughout the world at developed- and developing-country borders.

72. The point on the benefit of the proposals to SMEs was of particular interest to New Zealand, as the bulk of its exporters and importers were such enterprises. New Zealand was very conscious that inefficient border procedures hampered exports and imports and had greater impact on SMEs than on larger traders which had greater resources to address and manage complex border procedures. Another useful aspect of many papers was the reference to existing and familiar principles and practices within the WTO. New Zealand very much supported the idea of establishing enquiry points which would allow greater transparency and simplicity. However, New Zealand also agreed with India that Members would need to work together to develop a more complete and unambiguous understanding of the scope and the responsibility of such enquiry points. Nevertheless, New Zealand saw real value in building on and replicating existing best practices within the WTO system to ensure consistency and coherency within the broader package of WTO obligations. Many of the papers also addressed potential cost implications and technical assistance, both of which would be an essential element to discuss as the proposals were developed. It was also a reminder of the need to ensure meaningful and practical coordination with relevant organizations and agencies.

73. New Zealand welcomed the inclusion of next steps in the US paper and acknowledged that there was plenty more work to be done on those papers in order to clarify and, where necessary, better specify how they might be developed and operationalized to the benefit of all. Members also had to work hard to ensure they responded to the questions raised.

74. The representative of Pakistan said that all tabled proposals made an important contribution to improving and clarifying Article X. They had a common objective of improving transparency, predictability and impartiality. Pakistan could generally support most of the suggested measures, and

would like to co-sponsor the submission by Japan, Mongolia and Chinese Taipei. All administrations believed in transparency and most had already some kind of rules in place to ensure that objective. However, some of those rules needed updating. Moreover, different administrations had some of the elements missing. A Single National Focal Point was, for instance, not a prevalent practice in many countries. Similarly, many administrations did not have any mechanism for advance rulings.

75. Having all those measures in any eventual agreement would enable countries with different systems to look at their existing systems against a template and make efforts to implement the missing elements to bring in more transparency. Depending on the countries' capacity to implement those proposals and the extent to which countries could bring in more transparency, there would be a corresponding impact on clearance of goods, reduction of malpractices, cutting red-tape, removal of corruption, etc. It was a "win-win" situation. However, some proposals would not be easy to implement, such as binding advance rulings, central enquiry points, uniform administration of trade regulations throughout various ports of entry, etc. Those measures might seem very simple but, in practice, they were not that easy, and it was a problem for both developing and developed countries. Those were some of the areas where much technical assistance and other resources, such as financial assistance, would be needed. In addition to what had been identified, there were some elements missing. For instance, Pakistan's experience had shown that simplification of tariffs could bring even more transparency and impartiality. Similarly, simplification and compilation of trade-related procedures in a way that made them easily accessible brought more transparency and predictability.

76. The representative of Brazil said that legislation at all levels should be published and be as easily available as possible. At the same time, Brazil shared India's concerns that some administrative procedures might be confidential. Procedures dealing with risk analysis in customs could, for instance, not be made available as that would allow for import operations to be conducted in a way that circumvented risk analysis procedures. A related point was the availability of the information on the internet, which was something most countries would be interested in for their own benefit. That was certainly an area where there was ample scope for technical assistance and financial assistance to those countries that did not yet publish their legislation on the internet.

77. With regard to the single-desk enquiry point, Brazil had some doubts about the usefulness of establishing some sort of core centre which would not have the authority to handle the information but would only serve as some kind of mailbox. Enquiry points had to be as closely connected as possible to the people with actual authority to authorize the importation of the goods. For instance, in most countries, imports of nuclear or radiological materials had to go through one very specialized agency and it would not make much sense to convey such enquiries through a Trade Ministry.

78. On the issue of notification, Brazil had a special concern regarding the issue of translating legislation into official WTO languages in addition to the concern expressed by India in that regard. It was one thing to notify legislation which had then to be discussed and analysed with regard to its compatibility with WTO Agreements, but it was something else to provide information on the hundreds of trade-related legislations. That was an area where one would perhaps be stepping into the role of other, international or national organizations. The issue was facilitation and not information. In that context, the Korean paper had presented a useful formulation aiming at the notification of where the information could be found, which would be a better way to proceed.

79. With regard to the interval between publication and implementation, Article 1 of the Agreement on Import Licensing Procedures contained a good formulation, requiring a 21-day period. Obviously, things had to be published before they were implemented. The length of the necessary interval depended in some cases on how the legislation was established. In some cases, the delay could not be very long for reasons of efficacy.

80. As for the issue of prior consultation on regulations, Brazil had doubts about the usefulness and appropriateness of establishing an obligation to that end, especially as regards partners in other

countries. That would go beyond the issues of transparency and predictability and would strike the substance of the regulation. The parallelism with the TBT and SPS Agreements was not appropriate as they established a presumption regarding technical regulations and phytosanitary regulations that, if a measure was in accordance with international rules, it was legitimate. But on Trade Facilitation, there was no international standard in most cases. It was also not an obligation for all parties.

81. On appeal procedures and due procedures, Brazil agreed with most of what had been presented in the proposals. On the release of goods subject to appeal under guarantee, Brazil was of the view that there should be provisions for that, even though it was easy to think of situations where it was necessary to have additional guarantees besides the financial ones, or other situations in which the nature of the dispute did not allow for the release of the goods, such as cases involving intellectual property questions. Therefore, Brazil could agree on that in principle, but details would have to be worked out, which was not a trivial matter.

82. As for fees, it seemed obvious that all fees had to be published if there had to be charges at all. Simplification was a good idea although not necessarily an easy one. The unification of fees on the other hand was not such a good idea, especially in cases like Brazil where some fees were federal while others were sub-national in nature.

83. The representative of Kenya associated his delegation with the views expressed by the Philippines on behalf of the Core Group. Kenya was concerned that some of the proposals on GATT Article X exceeded the scope of that provision. Prior external consultation, for instance, would focus on the substantive content of the measure and therefore went beyond the coverage of Article X. Article X merely dealt with the publication and administration of trade regulations, leaving it up to Members to regulate their substantive content. Some of the proposals would further constrain the ability of certain Members to address their needs and concerns, especially development-related ones. That was especially the case for countries relying on custom revenue for their national budget. It was necessary to have a clear demarcation between the publication and administration of laws relating to foreign trade and their substantive content, which fell outside the scope of Article X. Another concern related to the fact that some proposals represented burdensome transparency obligations without taking into account the limited capacities faced by most developing countries. Prior to the July package, there was a strong commitment from the proponents with respect to providing financial and technical assistance to address some of those concerns. But at present, there was very little integration of S&D provisions into the proposals, which was a matter of great concern.

84. The representative of Djibouti thanked the EC for stressing the need to provide technical assistance to countries requiring that support, and for acknowledging the importance of assistance for small enterprises. Djibouti paid particular importance to the training of staff as an area requiring special attention. Necessary technical assistance had to be provided to enable developing and least-developed countries to meet Trade Facilitation requirements. Regional or national seminars could be helpful in that context and were therefore solicited by Djibouti. As a least-developed country, Djibouti needed donors to continue and enhance their support in order for Djibouti to meet the necessary requirements for the facilitation of trade.

85. The representative of Mauritius sought clarification on the EC's proposal on appeal procedures and due process. Such a proposal could have major cost implications beyond just modest start-up costs for countries not having such procedures already in place. It would be useful if the EC could clarify whether related S&D treatment would be limited to more time for implementation or whether - and what - other concrete measures were being contemplated to assist Members with implementing such proposal. The same implication arose, albeit of a different nature, in respect to the advance ruling proposals made by other delegations. Mauritius sought clarification on that as well.

86. The representative of Egypt fully supported the statement by the Philippines on behalf of the Core Group. Transparency was one of the core elements of the WTO system and all trade operators

in all countries would benefit from it. No one could challenge that. But it had to be taken into account that, for many countries, the inadequacy of the human, financial and infrastructure resources as well as policy difficulties were major problems. Transition periods were therefore not enough to tackle those shortcomings. It also had to be noted that WTO Members were at different levels of development. Adjustment costs for implementing the suggested measures had to be considered, especially for those countries implementing them for the first time. When assessing the implementation costs of some proposed measures such as the notification requirement, it would become clear that, although apparently easy, they were difficult for some Members to comply with.

87. With respect to the EC proposal to publish all administrative guidelines, a clarification was needed on the definition and scope of those administrative guidelines. On the suggested publication of management plans relating to the implementation of WTO commitments, Egypt shared the views expressed by India as the logic behind that suggestion was not clear. Egypt could understand that a country should notify when it was going to implement an obligation, but it was not relevant or adequate to prescribe the country how to do so.

88. Paragraph 7 of Korea's document referred to rules for notifying "core measures". Egypt would like to know the scope of such core measures, who would determine whether the measure was a core one and what would be the criteria for such an assessment. On paragraph 8, Egypt wanted to know the envisaged time period for submitting comments on the proposed measures, and if it would be the same for all countries, developed and developing alike. On the concept of prior consultation, Egypt supported the statement made by Brazil in that regard.

89. The representative of Sri Lanka said that excessive formalities and procedures connected to imports and exports had become more exposed as a general impediment to trade. Sri Lanka supported certain proposals aimed at transparency, simplification and predictability as they enhanced efficiency. Sri Lanka supported the paper by Japan, Mongolia and Chinese Taipei, which introduced several new ideas on how to improve the transparency and predictability aspects of Trade Facilitation. Transparency was enshrined as a principle in a number of WTO agreements and there was an urgent need to introduce it to the area of Trade Facilitation as well. It was a principle that all Members supported as everybody stood to benefit from it. The measures suggested in the paper were very simple, but the benefits to the exporting trading community and to the regulators were immense. The key word that attracted Sri Lanka's attention was "SMEs", as small-and medium-sized enterprises contributed 50 % to its GDP. The bulk of Sri Lanka's exporters were SMEs, making benefits to them very important to Sri Lanka. SMEs could benefit from enlarged/enhanced transparency and predictable and impartiality of trade regulations. Entrepreneurs spent a lot of time and money to collect and process information. Information was costly, especially for SMEs. Sri Lanka was interested in avoiding unnecessary documentation procedures as it allowed for savings in logistical costs and time. At the same time, Sri Lanka had a few questions. The term "judicial decision" was unclear and should be clarified as there were far-reaching implications. Also, the value added had to be known. When implementing those measures, the capacities of developing countries and LDCs should be fully taken into account. Technical and financial assistance were an integral part of the negotiations.

90. The representative of Jamaica said that the tabled proposals were valuable contributions which should help move work forward. Despite the assurances given regarding the likely minimal costs of those proposals, Jamaica remained very concerned about the technical assistance and the financial implications of the proposed measures. All proposals would need to address technical assistance and financial needs much more explicitly and in much greater detail. The proposals tabled so far, inasmuch as they related largely to customs administration procedures, were proposals that Jamaica could respond to in a fairly positive manner since Jamaica had been engaged in a customs modernization programme for the past several years. Measures consistent with the objectives pursued under its customs modernization project were, in principle, measures on which Jamaica would be able to look favourably.

91. Nevertheless, Jamaica had noted that the EC had set out very sweeping requirements regarding the provision of information, which were suggested not only to be published, as Article X currently required, but also to be made "easily available". While the Jamaican Customs Department currently maintained a website and provided timely information on the formalities and requisites for transacting business, it was unclear as to what more would be needed and what the costs were – both in human resources and financial terms – and to what extent that would go beyond what Jamaica currently did. The same applied for the suggested prior consultation on new and amended rules. Such consultations and related information dissemination currently took place in Jamaica. New regulations or changes in the Customs Act were gazetted. Since Article X dealt with transparency, it was unclear to Jamaica why there should be the need for external prior consultations on measures to be implemented. There was already a fairly rigorous process of consultations with domestic stakeholders. In the case of appeals procedures and due process, there were both internal and external review procedures in place that were internal to the Customs Department. The ultimate body for appeals in customs-related matters was the Revenue Court.

92. With respect to Korea's suggestion on notifying information and changes to the WTO, with the WTO then disseminating the information, the procedure might be less important than the scope of the information. The aim should be to enhance transparency rather than burdening the system. As regards the submission by Japan, Mongolia and Chinese Taipei, Jamaica agreed with India on the maintaining of integrity amongst officials being a desirable and worthwhile objective, but one that should not be part of the Trade Facilitation negotiations in the WTO.

93. Implementing the proposals by Canada, Australia and Chinese Taipei on advance rulings on tariff classification would cause a greater burden on the system than the ones on origin questions. Jamaica wanted to know how and to what extent had advance rulings been utilized in implementing the Agreement on Rules of Origin. On a more general level, Jamaica was of the view that many of the proposed measures already existed in some countries, placing the real implementation requirement on other Members. It would therefore be useful to have an inventory of what currently existed so that Members could have a clear sense of what had to be done to meet the proposed commitments.

94. The US proposals were quite useful. Jamaica had particularly noted the linkage between the proposals and potential technical assistance requirements and a clear indication of the importance of integrating that element into any proposals made.

95. The representative of Indonesia associated his delegation with the Philippines' statement on behalf of the Core Group, as well as with Zambia's statement on behalf of the LDCs. Indonesia's concern related to the fact that, as the largest archipelago in the world covering more than 17 000 islands, the implementation burden was particularly high. Indonesia therefore expected the negotiations to lead to the elaboration of effective provisions on S&D treatment, as well as on technical assistance and support for capacity building. The issue of technical assistance and capacity building would therefore be vital in all stages of the negotiations, as well as in the eventual implementation phase.

96. The representative of Lesotho supported the statement made by Zambia on behalf of the LDCs and agreed with the intervention by Rwanda. Clarifying and improving relevant elements of GATT Articles V, VIII and X would benefit both developing and developed countries alike. Through increased trade, it would assist in attracting FDI which would lead to overall economic growth. However, it had to be ensured that the proposals did not go beyond the scope of the relevant GATT provisions.

97. For some small economies, efficiency was very important. Lesotho could go along with the idea of a one stop service at some clearance stations to provide a full range of services to the business community and minimize delays. But it was evident that technical assistance was required to be able to catch up with the rest of the other customs authorities in facilitating trade.

98. The representative of Morocco, speaking on behalf of the African Group, said that African countries attached a lot of importance to Trade Facilitation and were currently working on the specifics of Annex D. The Annex stated that negotiations should aim at clarifying and improving relevant aspects of Articles V, VIII and X and at identifying the Trade Facilitation needs and priorities of Members, in particular developing and least-developed ones. It was therefore important to reaffirm the understanding that the scope of the negotiations was limited to the above-mentioned Articles.

99. S&D treatment was a key principle of Annex D. The different levels of development of WTO Members should be taken into account. The principle had to be early identified in the negotiations and should not be limited to longer implementation periods for possible new commitments. Paragraph 3 of Annex D had to be made operational and faithfully implemented by ensuring that LDCs would not have to undertake commitments they considered incompatible with their development, financial or trade needs, or with their administrative and institutional capabilities.

100. Paragraph 4 of Annex D required Members, specially developing and least-developed countries to identify their Trade Facilitation needs and priorities. Many African countries faced resource constraints, limiting their ability to undertake a comprehensive review of their existing Trade Facilitation infrastructure as a basis for identifying their individual Trade Facilitation needs and priorities. The provision of external sources and resources to support the identification process was therefore extremely essential. Furthermore, a study on the needs and priorities of African countries, including flexibilities and cost of adjustment, had to be conducted. The provision of technical assistance and capacity building was a *sine qua non* for African countries to implement the results of the negotiations and the Secretariat had to be thanked for their endeavours in co-operating with other international organizations to achieve that goal.

101. The representative of Chile said that advance rulings were important for improving transparency and deepening trade among countries. A look could be taken at the scope of such rulings to decide whether they should apply only to classification and origin or to other areas, too. The EC's proposals would also be beneficial to importers and exporters in developing and developed countries. Chile sought clarification on the reason for not referring to administrative arrangements in the proposal on publication and availability of information, even though that was mentioned in Article X. Chile would also like to know how the EC proposal on administrative appeals differed from the obligation currently contained in Article X, Paragraph 3, and whether such appeals were to take place within the body applying the measure.

102. The US proposals on fees and charges were important for importers and exporters as they had to know what was to be paid for their goods to enter a market. Those charges should be limited to the cost of services rendered and should not constitute an indirect protection for national goods. Chile wondered whether the United States had any specific parameters in mind for introducing disciplines in that area or whether they were merely flagging the issue for discussion.

103. The idea of a focal point was interesting as well. Chile sought clarification as to whether those points were merely meant to respond to issues or questions regarding customs matters and frontier procedures and what the experience had been with implementing such focal points.

104. The representative of Switzerland said that transparency in the domestic regulatory process was essential as one of the foundations of democracy and a basic requirement for efficient markets, helping to remove economic distortions that might undermine domestic policy objectives towards general welfare. Transparency was crucial for economic actors to take maximum advantage for the opportunities created by global trade, and its importance could therefore not be over-emphasized.

105. Information had to be readily and easily available in an impartial manner. Transparency provisions should at no time and by no means require any Member to disclose confidential information which would impede law enforcement, be contrary to the public interest or prejudice

legitimate commercial interests of particular enterprises. The incremental gain for traders through enhanced transparency should not be outweighed by administrative costs. It should further be shown by which steps Members at different stages of development could implement the measures.

106. The tabled proposals by Chinese Taipei on Article X contained several central elements. Focal points were a highly efficient measure not only for the ease to traders but also for enhancing cooperation between border agencies. They should, in the first instance, have a coordinating role. Switzerland also agreed with many elements listed in the EC proposals. A clarification was sought with respect to the regular consultative mechanism proposed in paragraph 4. Switzerland wanted to know how that would work.

107. Korea's submission was appreciated for its focus on the essential and pragmatic solutions adapted. It allowed for a flexible implementation of obligations, such as by not imposing certain means for publication, but merely requiring the means to be widely accessible and for Members to notify the way through which measures were published. Switzerland also appreciated Korea's pragmatic ideas on the Single National Focal Point. With regard to publication and information, Switzerland asked Korea to explain in more depth their concept of informing interested parties of new or modified regulations as inspired by the Agreement on Public Procurement.

108. Regarding the submission by Japan, Mongolia and Chinese Taipei, Switzerland liked the way the contribution exposed the problems and provided for solutions, as well as the link made to possible solutions that could be found in other WTO Agreements. The grouping of the proposed measures around transparency, predictability and impartiality made the submission very clear. It was important to be informed at any time on the motivations of a measure, and there were several ways to do that. Impartial and uniform administration of regulations was not easy as regulations were interpreted daily by all border authorities, but nevertheless important.

109. Canada's submission was also welcomed. The most important point was that all traders had the possibility in all countries to receive such advance rulings. Canada's proposal rightly tempered the obligation to publish decisions on advance rulings with the requirement to do so without compromising confidentiality needs.

110. Chinese Taipei's submission raised essential issues in the areas of pre-arrival clearance, risk management, post audit controls and one-stop services. The Swiss delegation would be interested in hearing from Chinese Taipei as to how they saw such a one-stop service centre functioning.

111. Switzerland also welcomed all the submissions by the United States, and looked forward to discussing them further, especially as regards development of parameters for the application of fees, the treatment of express shipments and other aspects.

112. The representative of Costa Rica welcomed the tabled proposals which tackled identified problems regarding Articles VIII and X in a way that allowed everybody to benefit, especially SMEs, which represented a large proportion of Costa Rica's trade. It was essential for Members to inform traders of all requirements they had to comply with, especially in the area of customs procedures. Simple, clear and well-documented procedures had to be developed to provide traders, particularly SMEs, with the greatest security possible when carrying out business transactions.

113. Costa Rica shared many of the factors pointed out by Japan, Korea and Chinese Taipei and the European Communities regarding transparency and predictability. Article X did not determine the content of the information and where the publication must be made. The information had to be rapidly disclosed. It was also important to notify administrative procedures and contact points to guarantee greater transparency and predictability.

114. Regarding the EC proposal on the publication and availability of information, Costa Rica wondered about the difference between decisions and administrative rulings, and whether decisions included judicial decisions as currently established in Article X. Costa Rica agreed with the idea of advance consultations, but had some doubts as to the scope of the measure mentioned in point six.

115. Costa Rica supported the proposals by Canada, Australia and the United States on advance rulings to increase legal security. They could, *inter alia*, cover areas such as tariff clarification, applicable taxes, and non-tariff requirements.

116. It was very important that developed countries and other donors supported developing countries and LDCs in developing procedures and administrative structures to formulate advance criteria and develop electronic procedures for receiving applications. While providing information, the protection of confidential commercial or business information had to be guaranteed. Access to non-confidential information should be unlimited and not subject to discriminatory treatment.

117. Costa Rica supported the proposal to promote the use of the internet for the dissemination of information required by traders. The information should be at the disposal on an official website in an updated manner. The administration of this site might include the designation of one or more contact points which would ensure rapid answers to any queries concerning import and export requirements. That would allow traders everywhere to have access in real time to commercial and customs legislation. Importance should be paid to keeping the information up to date. Technical assistance would be of the greatest use there. The designated contact points must ensure that queries are dealt with rapidly and information on the procedures to make such queries must be made available. Costa Rica also supported the proposals to improve appeal procedures and due process as key elements of any rule of law. Due process must be ensured through a rapid revision of administrative rulings and administrative bodies of judicial bodies independently of the authority making the initial ruling.

118. As for proposals regarding Article VIII, Costa Rica supported the development of rules to ensure efficiency, simplification and harmonization of import and export documents to reduce costs and fulfil official requirements and commercial requirements applied in international trade. For that, Members must, whenever possible, take into account existing international regulations.

119. Costa Rica supported the proposal by the United States on rapid customs clearance. One had to promote the use of modern clearance procedures for express shipments. The principles developed by the World Customs Organization might be useful in that regard. Simplification of import and export documents, their submission before a single body, and risk assessment were important as well.

120. The representative of Peru said that in Peru, Trade Facilitation could become a model of what could be achieved through cooperation and technical assistance from international bodies which allowed countries not just to increase their business opportunities but also their trade flows. The harmonization of policies was also important and something Peru wanted to promote in the WTO. Peru had decided to co-sponsor the proposals contained in document TN/TF/W/8. It pursued the most adequate approach for work in that area, based on the principles of transparency, predictability and impartiality. Enhancing predictability through the publication of laws and regulations before their implementation was important to facilitate trade flows. At the same time, the proposal did not require anyone to publish regulations regarding customs procedures as that might create bigger internal problems regarding coordination amongst the different bodies in charge of those matters. Greater human and financial resources were required as well. Within the proposed examples, Peru preferred the one on publishing laws and regulations before implementation because it allowed Members to publish laws which had already been adopted rather than laws that were still in draft form.

121. Regarding impartiality and uniform administration of trade regulations throughout Members' territories, it was a good idea to have training of customs staff based on case books on customs classification and customs valuation. The developed countries must play a key role in providing such

training. Experience gained within APEC on the implementation of the CVA could be relevant in that regard. Progress made on Trade Facilitation in Peru had been due to important technical and financial assistance. It was fundamental for developing countries to have such assistance, as well as S&D treatment to be able to implement Trade Facilitation measures to improve Article X.

122. The representative of Hong Kong, China said that the proposals on Article X contained constructive ideas on how to achieve greater transparency and predictability in trading practices and better administration of regulations. Hong Kong, China was in full agreement with those objectives. However, the scope of the proposed measures had to be defined more precisely. Further clarification from the proponents on the questions raised with regard to the suggested measures would be useful.

123. Hong Kong, China supported the proposal on advance rulings. Article II of the Agreement on Rules of Origin already incorporated a similar provision. Hong Kong, China's experience with such a system was very positive, with the related costs being minimal. The scope of an advance ruling system had to be defined more clearly. Hong Kong, China believed that the suggested establishment of national enquiry points and the provision of a one stop service, or trade desks, would be a very trade-friendly measure and useful to encourage better coordination among border agencies. The proposals by Chinese Taipei on pre-arrival clearance, risk assessment and post-clearance were also very interesting as they reflected modern-day trade practices. There should be further discussion among Members on whether such ideas could be turned into potential obligations.

124. The representative of Malaysia associated himself with the statement by the Philippines on behalf of the Core Group. With respect to the EC proposal on appeal procedures, it was important to take into account the level of capacity of countries to adhere to standard times. There was also need to clarify the criteria for "minor appeals". Clarification was also required on the term "core measures" used in Korea's proposal. Concrete examples would facilitate the understanding those proposals. Examples would also be helpful to better understand the proposal by Japan, Mongolia and Chinese Taipei on standard processing times for "major trade procedures". It was important to note that different countries had different interpretations of what constitutes major trade procedures. Malaysia also wanted the proponents to reflect further on their proposals to establish a committee in the WTO to process notifications. Such notifications could also be done by other means. The effectiveness and cost-benefit ratio of such a Committee should be re-assessed. The US proposal on advance rulings would benefit from a clarification on its precise scope.

125. The representative of China was concerned about the suggested scope of the proposal on advance rulings. While advance rulings on tariff classification and applicable duty rate seemed logical, it was neither reasonable nor practical to have customs value determined before the transaction actually occurred. The CVA called for the customs value determination to be made on the basis of a price actually paid, or payable.

126. On the proposal regarding the publication and availability of information, the difficulty of publishing numerous documents in official WTO languages required S&D treatment to allow developing countries and LDCs to publish such information. Regarding the proposals on notification and prior commenting periods, China sought clarification on the coverage of the term "core measures". China also wanted the EC to clarify their definition of "minor appeals" used in their submission. China had difficulties in accepting the proposal on duty payment to be left in abeyance due to the need to secure customs revenue and maintain in conformity with Article 13 of the CVA.

127. China further believed that financial and technical assistance, and support for capacity building by international organizations and developed countries was of paramount importance and had to be substantive and sufficient rather than merely of an educative nature to allow developing countries and LDCs to solve their problems. Assistance also had to enhance their negotiating capacities and to include infrastructure support to assist those countries in upgrading their ability to implement the results of the negotiations. China also hoped that, apart from S&D treatment for

developing countries and LDCs, their enforcement capacities due to huge differences in their economic development were also fully taken into account.

128. The representative of Mongolia said that Mongolia had co-sponsored document TN/TF/W/8 with a firm belief that the launch of negotiations on Trade Facilitation was of crucial importance to land-locked developing countries and small economies, including small island-developing countries. Countries with small trade volumes and high per unit transportation cost would hugely benefit from a proper agreement on Trade Facilitation due to the resulting cost reductions for their export goods.

129. The fact that the voices of those groups of developing countries were often not heard in the negotiations should not be interpreted as them not being interested in Trade Facilitation. They were in fact all well aware of its importance, but their limited capacities to cover all the negotiations running in parallel prevented them from being active. Nevertheless, their interests should not be ignored and S&D provisions should be fully taken into account. Initiatives to advance the understanding of the negotiations would be very important.

130. Trade facilitation was not a new issue. There were many directly related bilateral, plurilateral and international processes. The provision of financial and technical assistance should have its legitimate place in the negotiations. The developed countries had repeatedly expressed their readiness and commitment to provide such assistance so that the required resources would be available. In drafting the text of the Trade Facilitation Agreement, the existing experiences could be used.

131. The representative of Singapore associated her delegation with most of the proposals and the way in which they had been presented, as they had started to clearly define what Trade Facilitation consisted of, and what one would like to see in terms of binding commitments resulting from the negotiations. Singapore welcomed the fact that many proposals already drew upon existing WTO provisions, which facilitated the analysis of the suggestions, not only in terms of understanding what was advocated but also in assisting with the identification of concerns regarding costs implications, technical assistance and capacity building. Members could relate to their own experiences in implementing the same provisions in other Agreements and take it as a reference of how something would have to be implemented in the Trade Facilitation context and what S&D was required to reach the same objective.

132. The representative of Colombia said that the proposals and their pragmatic approach were most useful in moving the discussions forward. Colombia wondered whether the EC was ready to introduce an element of flexibility regarding their proposal on publication to allow each country to give priority to certain issues depending on its particular situation and the available resources. A step-by-step approach might be useful in that context. On the proposals regarding prior consultation, Colombia wanted to get more information on the scope of the envisaged statement of policy objectives. Colombia shared Brazil's concerns about the proposal by Japan, Mongolia and Chinese Taipei to publish regulations on the internet in more than one WTO language. There were significant cost implications, creating difficulties for certain developing countries due to their limited resources. Colombia was thankful for the ideas presented on technical assistance and capacity building. They were a good basis for a coordination mechanism amongst the intergovernmental bodies capable of providing financial assistance to help developing countries with the negotiations and with implementing the commitments emerging as a result.

133. The representative of Thailand said that Thailand was ready to establish enquiry points or trade desks as proposed by the EC, despite the fact that some sort of enquiry points already existed in many ministries. Thailand welcomed the assistance to better the existing system. On the last intent of paragraph 11, requesting the publication of a summary of trade regulations in more than one official WTO language on the website, Thailand was of the view that, for a country, whose native language was not one of the official WTO languages, translating the existing regulations into English was already a major task. Therefore, if the English version was not sufficient, help was required.

134. On the suggested compilation and distribution of casebooks of examples of customs classification and customs valuation, Thailand was of the view that most cases were considered to involve trade secrets of businesses, the exposure of which might be sensitive. Nevertheless, Thailand was interested in further clarifications on that matter. Numerous things proposed in the Japanese paper might constitute an administrative burden for developing countries. It might be better to adopt a step-by-step approach. Members should work together on what should be done first and what later. More time was required to study all the proposals in depth.

135. The representative of Guatemala said that, for small developing economies, advancements in Trade Facilitation were of great benefit, especially for SMEs, which represented a large share of Guatemalan enterprises. The proposals by Canada and the US on transparency and predictability clearly bore benefits for those enterprises. Guatemala supported the intervention by Hong Kong China on the importance of defining the scope of the tabled proposals, as well as the suggestions by Costa Rica, Chile, India and Colombia. Technical assistance, capacity building and S&D treatment were key elements for small economies to benefit from the rules to be agreed in the negotiations.

136. The representative of the Dominican Republic said that many of the suggested measures were already implemented in the Dominican Republic, especially with respect to expedited clearance, but more work was required. The current discussions were very helpful in that regard. The Dominican Republic would like to take an active part in the negotiations to benefit from that special opportunity. All fundamental issues involved in customs transactions such as advance rulings, legislation, regulations and decisions should be put on the internet to familiarise traders with the applicable rules and procedures. S&D treatment, financial and technical assistance and capacity building were of essential importance to help implement those measures.

137. The representative of Mexico said that the tabled proposals were all important contributions to the negotiations. Various delegations had identified a number of topics for further discussion. Mexico would be interested, *inter alia*, in analyzing possible commitments on advance rulings on tariff classification and prior consultations about new and modified rules.

138. The representative of Japan recalled that the measures suggested by Japan were merely meant to be elements of solutions for Article X-related problems in assisting Members' deliberations on possible commitments. They were not intended to constitute the commitments themselves.

139. As for the question on prior consultation on trade rules and regulations, Japan believed that such consultation was important to increase predictability. It was beneficial not only in allowing interested parties to know the contents of the amendments in advance, but also in enabling the government to receive useful input from academics, business and consumers.

140. Notification of trade-related regulations to the WTO was a way to further increase their accessibility. While trade regulations might be publicized in government gazettes or national websites, the accessibility of the information was often still limited as traders, particularly small ones, could not find those sources or did not understand the language in which they were published. Notification to the WTO would allow traders easier access to the required information. Submitting to the WTO a web link of each national website where traders could get the necessary information in an official WTO language was also a possible solution.

141. Maintaining the integrity of the staff at the border was important to secure the impartial administration of trade regulations required by paragraph 3 of Article X and should therefore be included as an element in the negotiations. Members should be encouraged to provide sufficient training to raise the level of integrity of officials working at the border.

142. As for the scope of publication, the existence of different legal systems required Members to work on a general definition of what rules and regulations had to be publicized and notified. With

respect to confidentiality concerns, Article X clearly stipulated that Members were not required to disclose confidential information which would impede law enforcement.

143. The representative of Korea said that Korea was willing to clarify open questions and come up with more concrete ideas. The concerns by developing countries' regarding S&D treatment, technical assistance and capacity building would be taken into consideration as well. As for the question regarding the scope of the "core measures", Korea was still in the process of defining it and open to ideas in that regard.

144. The representative of the European Communities noted that Members' readiness to engage in substance was a good sign.

145. With respect to India's question on the precise meaning of "administrative guidelines", the EC was of the view that the term could cover a number of issues such as explanatory or interpretative notes issued by customs or operating procedures published at individual border points. There was a lot of information which was not in itself a decision, ruling or law with less of a status in the legal framework but which was nonetheless important for traders to know about. What the EC tried to do in its proposal was to move the scope of notification and transparency at another level below that of the broader laws and regulations down to the kind of information of importance to freight forwarders, traders and other stakeholders clustered around a customs post. All of them had to know that information on a day-to-day basis.

146. As regards the question of whether any distinction should be made between decisions and rulings, it should be clarified that the two terms had been included in the EC's proposal for the sake of completeness. Depending on a country's jurisdiction, some Members talked about decisions, while others referred to rulings. The current discussion on advance rulings suggested that rulings and decisions were not always the same thing. Advance rulings should not to be equated with advance decisions, as there were differences.

147. As for India's question of whether judicial decisions should also be made publicly available, the EC was of the view that that should be the case. With respect to the meaning of "relevant import and export procedures", the EC thought that one should cast the net relatively wide, but was open to further discussion on what would be a realistic scope to aim for in the negotiations.

148. On the question of what kinds of customs treatment should be made publicly available and what was meant by "forms of customs treatment", the Communities considered procedures for temporary admission, warehousing, inward processing or differential duty rates to be relevant examples, depending on the end use of the imported product. It was quite legitimate that information on those matters was made available to interested parties.

149. With respect to the question of why customs administrations should make their management plans available, the EC was of the view that it was often in those documents that information of real interest to the trading community could be found. Things had to be as transparent as possible. The Communities also held the view that, when speaking about publishing or making available rules and laws in officially-designated media, websites or official gazettes would count.

150. Questions had also been raised as to what was meant by making information easily available. One thing the EC certainly wanted to see was for information to be available on a non-discriminatory basis. Article X's lack of a non-discrimination requirement as regards the availability of information was one of its major problems.

151. On the other side, the EC had not intended to suggest that an elaboration of Article X should include appeals against decisions made by veterinary authorities. But if India and others believed that

the scope of Article X should be improved to include appeals against the whole range of interventions at the border, including those by veterinary authorities, the EC was open to looking at that.

152. With respect to the meaning of "minor appeals", examples included appeals in cases of low value consignments, imports by individuals, appeals against minor points of law or appeals in cases where the duties payable may be fixed below a certain threshold, say €1,000 or US\$1,000, or the like.

153. On the proposal of governments providing some kind of justification for a proposed measure, regulation or procedure when consulting with traders or interested parties, the EC felt that that was a completely reasonable idea. It was very important that, when a government proposed a regulation, law, or procedure, which effected the way traders did business, the rule was not simply picked out of the blue. There should be some kind of rationale for it and in inviting comments it seemed natural that the justification for the measure should be given up-front. That would, at the very least, give an explanation to the trading community as to why the measure was being produced, which would lessen the risk of friction between the relevant authorities and the affected traders.

154. As for the Brazilian observations regarding consultation with business or with governments, there were two options which might or might not be alternatives. More important from the EC's point of view was that each Member had some form of consultation on a day-to-day basis with the local trading community affected by customs operations at the border every day. Almost any business federation around the world would say that transparency about applicable rules and fees was first on their wish list. Second came the right to actually talk about the rules and fees, and to have consultations with governments. If, in addition, it would be found useful to implement some of the concepts that had proven useful in the TBT and SPS Agreements in terms of notification of basic legislation to the WTO, or, at the very least, notification of the place where that information could be found, that would also be a plus. The EC agreed with Brazil on the necessity to have some flexibility and that it could not be expected that everybody had exactly the same system of consulting with business. In designing the idea and working on it further, it was necessary to find a balance between ensuring that each Member found a consultation mechanism that suited its way of operation while also being sufficiently clear to ensure changes on the ground.

155. The rationale for providing for the release of goods during an appeal procedure in certain cases subject to the payment of a bond or surety, was something the EC wished to explore further. The EC did not have very fixed ideas on that but considered the model in the Customs Valuation Agreement (CVA) to be a useful one that could be applied to other areas of customs treatment.

156. Jamaica was right in saying that the EC proposals would not require it to do much more domestically. The way in which Jamaica operated its information points and consulted business was exemplary, so that Jamaica already tended to meet virtually all the requirements of the EC proposals.

157. As for Chile's question about the aspects in which the EC proposal on appeals differed from the existing Article X, there were six differences to point out. First, it introduced it as an absolute requirement, which was not the case under Article X so far. Secondly, the EC proposed that, as a way to save money and time, an appeal could be made initially within the same agency at administrative level. Thirdly, the EC suggested that each country set its own domestic standard time for processing mundane appeals. There should be some kind of normal standard times - not harmonized across the WTO, but within each individual administration. Fourthly, the EC suggested that any costs should be commensurate with the costs for providing for an appeal mechanism. Fifthly, it was proposed that enterprises had the right to be represented at any stage of an appeal procedure by an agent or legal representative, which was particularly important for small companies. Finally, the proposal had been made for involved goods to be released under certain circumstances with duty payment left in abeyance subject to the lodging of a security or guarantee. None of those proposals were present in Article X, and all of them aimed at simplifying and improving the situation for traders on the ground.

158. On Colombia's question of whether one could envisage flexibility in the mentioned publication proposal, Colombia's suggestion of a step-by-step implementation seemed logical as it took into account that countries needed to build up capacities in those areas progressively.

159. As for technical assistance, it was self-evident that where proposed commitments represented a cost, there should be some effort towards assistance, where necessary. The EC was already doing that with many programmes for partners who had raised particular concerns such as Egypt, the Philippines and some of the ACP countries.

160. The representative of Chinese Taipei replied to the enquiries by Chile and Switzerland on the suggested one-stop services that the goal was to set up a one-stop service centre at every clearance station to provide a full range of services to the business community, in particular around-the-clock services for all express consignments, and for cargoes to be released to aircrafts or ships. As for other import and export shipments, customs might assign officers to process urgent imports or exports whenever advanced applications were made. But at the present juncture, Chinese Taipei would only recommend that information centres or enquiry points were set up with the competent officers to provide instant responses to enquiries.

161. The representative of the United States responded to Chile's question of whether the US had any specific ideas about the parameters of its proposal on fees that the United States had merely wished to flag the matter for future consideration. There was no intention to drag the matter into one particular direction. The feeling was that the current language of the Article could be made more clear. It seemed useful to see whether one could not develop more certainty for the future.

162. As for Malaysia's and China's questions on the scope of the proposed advance rulings, the US saw a minimum coverage of classification, valuation and duty drawback application. The US experience with valuation rulings was that it was a valuable asset both for the trading community and customs officials to have binding rulings on valuation in advance of trade. An important focus was on whether certain elements should be included, such as royalties, which made up the final valuation. Experience had shown that there can be cases of trade proceeding and customs officials then disagreeing with the fact that a particular royalty had not been included, with the unpleasant result of millions of dollars suddenly being at stake, which was bad for business, investors and customs. There was therefore merit in having a regime related to customs valuation. The precise coverage could be discussed further as the elements of the proposal were refined. As for notification, the US shared a certain caution in that regard. Costs and benefits had to be considered.

163. The United States was pleased to hear the EC recognize the importance of every Member having to have appeal procedures that could deliver rapid results, and looked forward to learning more about that. The US was also pleased with the general level of engagement in the current discussions. The United States would continue working on the proposals and return to them at a later stage.

164. It was important to undertake an assessment of the needs related to the proposed commitments, which should be taken up in a very concrete way. Members should find a good way of both refining the proposals and identifying the needs to implement them.

165. The representative of Canada said that, in submitting its proposal, Canada had hoped to assist with the identification of developing countries' needs and to better understand their specific situations.

166. As for the question regarding the possible application of advance rulings on valuation matters, Canada had been silent on that issue in recognition of the existing challenges associated with implementing disciplines on advance rulings in that area. Canada had therefore decided to focus on advance rulings on tariff classification and applicable duties. It was true that valuation rulings were often trader-specific and might involve confidential information. But Article X did not require

Members to disclose confidential information or information that would prevent effective law enforcement. Therefore, those concerns could be addressed in the context of the negotiations.

167. A second concern had been expressed with regard to the ability to implement potential disciplines on advance rulings. In that regard, Canada looked forward to a dialogue with other Members on the specifics of their situation. Canada would be ready to explore in more detail the appropriate S&D treatment. But for many countries, moving towards advance rulings on tariff classification would not involve major adjustments, while the benefits of legal certainty and support for domestic reform efforts would be significant.

168. The Chairman said that, while it seemed that Members had exhausted their discussion on that item, the next meeting would offer the opportunity to revert to those matters and discuss them in more detail. The Secretariat would now brief the Group on its contributions for the current meeting.

169. The representative of the Secretariat explained that the three papers on the relevant GATT Articles were updates of earlier Secretariat documents on the topic which had originally been drafted in response to a request by Members for such documentation in 2002. The current papers had been prepared in an effort to keep the Group abreast of latest developments regarding the regulatory framework under consideration in the negotiations that occurred since then.

170. All papers maintained the factual approach of the original documents, limiting the examination to a legal analysis of the three Articles and their interpretation by GATT and WTO panels. New inputs mostly related to the jurisprudence section, where additional rulings had been incorporated that had come up over the course of the last three years. Modifications had been made on the editing side in an attempt to streamline the structure and enhance readability.

171. With respect to technical assistance and capacity building, the Secretariat had prepared a paper in response to the questions raised by delegations in that regard, circulated as document TN/TF/W/5. The document addressed three main issues: (i) technical assistance activities of the WTO Secretariat; (ii) coordination with other relevant international organizations and (iii) assessing needs and priorities.

172. With respect to technical assistance, the Secretariat would be providing three-day regional workshops on Trade Facilitation in each of the 7 WTO regions as identified in the WTO Technical Assistance Plan. In addition, the Secretariat tried to accommodate ad hoc requests for national workshops. However, its resources were limited, particularly with respect to human resources. Therefore, if Members were interested in a national workshop on Trade Facilitation as one of their technical assistance priorities for 2005, they would have to submit a request, in writing, as soon as possible, so that the Secretariat could try to work it into its TA Plan.

173. The second part of the Secretariat paper concerned coordination with other intergovernmental organizations as required by paragraph 8 of Annex D. Paragraph 10 of the paper described the Global Facilitation Partnership for Transportation and Trade (GFP), which was an excellent framework for bringing together international organizations and government agencies involved in Trade Facilitation, including the private sector. The GFP was the perfect forum to fulfill the requirement of paragraph 8 of Annex D. The next meeting would be in September, hosted by UNCTAD. The Secretariat would keep delegates informed of any important issues that resulted from that meeting.

174. The third topic was related to the assessment of needs and priorities. At the last NG meeting, one delegate had suggested the development of a database of problems encountered by customs officials. One way of respond to that proposal was to update WTO document G/C/W/393. But clearly, the usefulness of the end result would depend on the quantity and quality of inputs that Members were prepared to provide. As to Members' self- assessment of their needs and priorities, the paper described some of the tools currently available that would be useful for that purpose. One of

them was a self-assessment check-list developed by the WCO, which the Secretariat intended to use in a shortened version in its technical assistance programs to help Members identify their needs under GATT Articles V, VIII, and X. As those needs would become clearer, the Secretariat would refer them to the GFP to try to determine how they could best be met.

175. The Chairman said that inputs had also been prepared by several international organizations on their work on the identification of Trade Facilitation needs and priorities.

176. The representative of the WCO said that the WCO had produced a Customs Assessment Checklist, drawing from the WCO's experience with customs capacity building practices. It had been produced from the WCO's broader customs reform and modernization diagnostic tools. The Checklist was an extract from WCO instruments and best practices pertinent to GATT Articles V, VIII and X.

177. The structure of the Checklist followed the principle of the Customs Diagnostic Framework, addressing legal aspects, systems and procedures, information technology, cooperation, strategic management and resources. It showed the snapshot of customs in relation to each GATT Article by assisting them to identify difficulties, bottlenecks and gaps between its legislation and practices and the WCO instruments pertinent to the GATT Articles. The findings might be a base for a country to identify its Trade Facilitation needs and priorities for the negotiations.

178. Three aspects had to be pointed out. First, the tool was designed for customs procedures only and it did not cover all formalities and procedures related to importation, exportation and transit as described in the GATT Articles, while some of the aspects, notably those related to transparency, could apply to other government agencies' trade procedures. Secondly, the issues enumerated in the Checklist were not meant to prejudice the scope of the WTO negotiations. After conducting the self-diagnosis, countries could identify possible implementation-related difficulties and bottlenecks and decide which measures they wanted under what conditions. Thirdly, the tool was a living document and would be modified as the negotiations progressed.

179. For conducting the self-assessment using the Checklist, the WCO trained and pooled experts for those requesting assistance from the WCO secretariat. Aware of the importance of enhancing collaborative efforts on Trade Facilitation-related capacity building, the WCO was ready to work with like-minded intergovernmental organizations, lending agencies and other development partners.

180. The Chairman said that the Checklist seemed to be a very useful instrument that could offer valuable help in Members' efforts to identify their Trade Facilitation needs and priorities. He suggested turning it into a WTO document, to make it available more widely and allow the Secretariat to offer a version in all official WTO languages.

181. It was so agreed.

182. The representative of the World Bank said that paragraphs 4 and 8 of Annex D were most relevant for the Bank's work on Trade Facilitation. A lot information already existed about the content of the negotiating agenda. Therefore, the area the Bank could most help with related to the process rather than its content. In the short-term, the Bank would offer a process to support the Geneva negotiations. It was also interested in sharing best practice and information about the practical issues of implementation, and in doing research and analysis on the cost of implementation. In the longer term, the Bank's interest was in supporting developing and least-developed countries to implement any obligations flowing from the Geneva process.

183. The Bank's work on assessing Trade Facilitation needs and priorities covered five areas. Diagnostic Trade Integration Studies were conducted with the Integrated Framework partners. 12 countries had already been covered, with 14 more in the planning stages. There was also the Trade and Transport Facilitation Audit, which had been conducted in ten countries, with more being in the

pipeline. The Bank further participated in Trade Facilitation seminars where interesting information about needs and priorities emerged. It also supported the GFP and developed customs-related projects where a lot of information was collected.

184. While all that was very useful, there were also limitations, due to the fact that the information was sometimes not closely enough aligned to the WTO process and as a result of the time and resource requirements of that work. There was also a long lead time from implementation to completion, and the approaches were not dynamic enough to allow for feedback in real time. Other constraints related to the complex and technical nature of the subject matter or the fact that many Geneva-based negotiators had no ready access to expert advice from their capitals. Many countries had not established appropriate coordination mechanisms in their capitals that were able to respond to the questions emerging in Geneva.

185. To overcome those problems, the World Bank had initiated Trade Facilitation Negotiations Support Projects to assist developing and least-developed countries with establishing appropriate coordination mechanisms in the form of committees or task forces in their capitals. Those bodies could provide specialist advice on customs and other border-management agencies and identify needs and priorities related to specific issues emerging the negotiations. The Bank would provide assistance to create a real time analysis capacity using those committees/task forces to respond to issues raised by Geneva-based negotiators. To do that, the Bank was providing a non prescriptive tool to give guidance on how to form those committees, what the mandate of such a group should be, what its composition and what the administrative framework supporting it. Guidance was also offered on how to assess cost-benefit implications of any proposals tabled, how to strengthen the communication network between Geneva and the capitals and how to create a more formal linkage that allowed questions being raised and answered in real time.

186. The process was hoped to assist Members in participating more effectively in the negotiations. The envisaged coordination and liaison mechanism would be vital not only in terms of assessing needs and priorities, but also as regards actual implementation. The issues had to be looked at on a country-by-country basis. At the same time, the information generated through the process, if collated on a regional and international level, would support the determination of needs and priorities in a general sense, allowing donor organizations to target their assistance most effectively.

187. The Bank was also developing a template for assisting countries to assess both implementation costs and benefits of potential commitments under consideration. It built on already existing assessment instruments, including the WCO tool, and the one developed by UNCTAD, which were both very useful. The Bank template would look at legal impediments to any issues suggested in the negotiations, administrative and/or procedural changes required to implement them and the existing commitments already included in many regional trading agreements. It would also look at coordination issues between administrations and ministries and financial and resource requirements. Other areas covered by the tool were training, technical assistance and capacity building needs related to any particular proposal, time requirements for effective implementation, possible sequencing issues and benefits for governments and trade. The tool would be available by the March meeting. A country would be selected to become a pilot for that process. The Bank would work together with the WCO to run a pilot workshop to demonstrate the effectiveness of the tool, using the WCO's self-assessment Checklist. The Bank also secured funding support from the UK DFID to run another five or six pilots around the world, conducted with the WCO. Following those, the Bank would look at regional opportunities to use the process. A process was under way to identify suitable pilot countries.

188. The representative of UNCTAD introduced UNCTAD's Guidelines to assess Trade Facilitation needs and priorities in least-developed countries, a preliminary draft of which would be ready by the end of February.

189. Countries often lacked the perception of what Trade Facilitation measures were particularly relevant under given local circumstances and what were the costs and benefits of their implementation. In most cases, a combination of regulatory reforms and operational improvements would help. In some other cases, the use of information systems might appear more appropriate. But in all cases, the required measures would not be easy to define and to implement if genuine obstacles to trade were not clearly identified.

190. The UNCTAD Guidelines were based on the belief that (i) national trade policy priorities should be set in order to define Trade Facilitation needs, and that (ii) obstacles to the achievement of those priorities should then be identified so that suitable remedial actions could be formulated.

191. As for content and structure, the tool was based on existing expertise and case studies. It was structured in three parts: (i) assessment of the local trade context, analysing the country's current trade patterns and the most common domestic and international trade and transport routes; (ii) Identification of major obstacles to trade, looking at key barriers and inefficiencies inhibiting national trade policy priorities, their direct and indirect effects, the parties responsible for the obstacles or inefficiencies and the cost of implementing possible remedial actions and reforms; and (iii) Programme formulation, covering the design of institutional arrangements for remedial actions, of coherent and comprehensive trade and transport facilitation programmes as well as the formulation of specific projects to be included in the trade and transport facilitation programmes as part of a national strategy.

192. The assessment of the local trade context would reveal the "priorities" of the national Trade Facilitation programme to improve trade with the country's current and foreseen major trading partners. The identification of the obstacles would identify the "needs" in terms of procedural, formal or institutional pitfalls to be addressed and overcome. The formulation of the programme would lead to the implementation of coherent solutions within the national context.

193. The Guidelines were geared towards the implementation of existing international standards and recommended practices. Furthermore, whenever appropriate, they suggested the use of other available tools or experiences, such as the Trade Facilitation Audit Methodology developed by the World Bank, the customs self assessment tools developed by the WCO, the process currently coordinated by the OECD, as well as other valuable initiatives carried out at the regional level.

194. Scope and application of the proposed self-assessment embraced a wider range of issues on a longer term basis than the WTO negotiating process might require. In terms of coverage, the Guidelines were intended to assess a large spectrum of operational, regulatory, managerial and technological obstacles to efficient international trade and transport. That went well beyond the more limited scope of the three GATT Articles, and of any proposal for their improvement.

195. In terms of time, the Guidelines aimed at building long-term capacity to design and implement national trade and transport facilitation programmes, based on self-assessed needs and priorities. Once built, the capacity would be appreciated when time came to implement commitments. However, that required time and was not likely to meet the short or medium term needs of the negotiating process. But even under such circumstances, the Guidelines could help to review and, as appropriate, clarify and improve relevant aspects of Articles V, VIII and X. They could be used to examine the merit of any tabled proposal in light of Members' actual implementation capacities in terms of cost, time, human, technical and financial resources. They could also contribute to assess the required technical assistance and capacity building. They might also help Members to formulate new, additional proposals based on their needs and priorities at the national or regional level.

196. The representative of Switzerland wondered to what extent the UNCTAD Guidelines were of help to identify relevant needs and cover the gaps between the proposed measures and related technical assistance needs, given that they were not likely to meet the short-term needs of the negotiations.

197. The representative of Djibouti said that UNCTAD had done a great deal of technical assistance for developing countries, particularly for Africa and the LDCs. Those countries had difficulties negotiating WTO rules and needed help, especially in the area of Trade Facilitation, which was a new field for them. Djibouti therefore wondered whether UNCTAD could offer some help within the framework of the negotiations, bearing in mind its experience and funding possibilities.

198. The representative of India said that many developing countries still had a lot of concerns about the likely financial implications of taking on commitments. The presented World Bank project was a good idea as it allowed countries to get inputs in real time on the implications of the proposals, likely cost implications and how to address them. UNCTAD's self-assessment process helped Members identify their obstacles to having an efficient trade policy and the costs of overcoming them. India would be greatly interested in knowing more about UNCTAD's ideas and tools in that regard.

199. The representative of the European Communities observed that there was now a major collaborative effort underway between the key organizations in the area of Trade Facilitation, notably the World Bank, UNCTAD and the WCO. It was very important that those organizations worked together. That collaborative work had to continue and run in parallel with the negotiating process. It would be vital when the stage of implementing any outcomes from that process would be reached.

200. The presentations by the World Bank, UNCTAD and the WCO had shown that their technical assistance programmes and their diagnostic tools were much more comprehensive in their scope and coverage than the coverage of the WTO negotiations. It was important to keep that in mind. At a later stage in the negotiation process, when there was more clarity on the proposals, one had to try to identify the specific technical assistance needs and priorities in respect to the specific suggestions. If linked to the proposals on Articles V, VIII and X, the scope of technical assistance would be easy to define and more narrow in scope and ambition than the more comprehensive approaches unrolled by the World Bank and UNCTAD. The EC hoped to assist in that work at a later stage and to develop a clearer correlation between specific proposals on Trade Facilitation in the WTO and the specific technical assistance needs that particular countries might have to implement them.

201. When it came to implementing that assistance, it would be carried out within the broader framework of the larger scale programmes the World Bank, UNCTAD, the WCO as well as the EC provided. It would be useful to think how to relate specific proposals emerging from the work in the coming months with countries' precise technical assistance requirements and to invite the World Bank, UNCTAD and the WCO in the framework of their country programmes to look at the proposals and see how they could be addressed in that context.

202. The representative of Egypt wondered about the coordination between UNCTAD, WCO and World Bank in that area, given that both UNCTAD and the WCO had said that their self-assessment tools extended beyond the scope of the WTO negotiations. Egypt wondered whether it was possible for the three agencies to coordinate and come up with a single, simple self-assessment tool which focused exclusively on the WTO negotiating mandate and its scope, which would be of great help.

203. The representative of UNCTAD said that the idea for the Guidelines had emerged from Members' discussion on Trade Facilitation in the WTO when observing the difficulties of some Members to identify their needs and priorities. UNCTAD had considered working on some tool to assist Members in that regard. UNCTAD's experience had shown that the three GATT Articles alone were not that meaningful to change trade patterns among countries. Also, at the time of the tool's development, it had not yet been clear what the negotiations would cover. Therefore, a wider approach had been adopted. That did not mean that UNCTAD was not trying to work on something closely aligned to Members' current work on Trade Facilitation.

204. UNCTAD was trying to reduce the scope of its tool to fit the requirements of the negotiations, to provide Members with the necessary political elements of responding to proposals made.

UNCTAD would also look at the implications of possible commitments and the requirements for developing countries to be able to fulfil the commitments emerging from the negotiations. Collaboration between organizations was vital for the effective delivery of technical assistance both during the negotiations and at the implementation stage. At the same time, one had to bear in mind that different organizations applied different approaches and focussed on different elements of the package which everybody tried to merge into one joint package through, for instance, the GFP, to ensure a maximum of coherence.

205. The representative of the World Bank said that both the UNCTAD and the WCO tool were content focused. The Bank had also content-oriented tools such as the Integrated Framework, the Diagnostic Trade Integration Studies, or the Trade and Transport Facilitation Audits, designed to identify needs and develop solutions on a broad range of trade policy and Trade Facilitation issues.

206. The tool the Bank was currently proposing was quite different. It was not content-focused, but a process, based on the assumption that the best people to determine the needs, priorities and costs already existed in all countries. There were people on the ground who could answer those questions, determine the costs and compare what was being proposed within the Trade Facilitation negotiations with what was happening on the ground at home. The process proposed by the World Bank was designed to do just that. It was very narrow and would only occur as and when proposals were put on the table, and would be restricted to that. It was not a general Trade Facilitation needs and priorities identifications tool, but merely one for making such an identification specifically related to the agenda items discussed in Geneva. Unlike other tools, it would not look at deep and comprehensive reform and analysis but aim at empowering people in capitals to look at the issues specific to the WTO negotiating agenda and offer answers on costs, needs and priorities.

207. The representative of the WCO said that the WCO was responsible for improving the content of the tools to identify Trade Facilitation needs and priorities in the field of customs. The WCO's Checklist had been developed before knowing what proposals would be made in the WTO negotiations. It therefore used WCO instruments and best practices to fill the gaps, without that being intended to prejudge the scope of the negotiations in any way. As a living document, it would constantly updated to incorporate the developments in the negotiations as they emerged.

208. The representative of the Secretariat said that technical assistance and capacity building were a very important part of the negotiating mandate. There was the potential to confuse and to complicate the matter which was going in exactly the wrong direction from what was actually needed in terms of technical assistance and capacity building at the moment. It was necessary to offer delegations a relatively simple process, involving Members setting up teams in their capitals from the agencies involved in border procedures, customs and other agencies. Those teams could undertake the kind of needs assessment discussed in the Negotiating Group for which various tools were available. They would also back up the negotiators in Geneva.

209. The Secretariat would assist delegations with the help of the other intergovernmental organizations to set up those teams in capitals. It would be helpful to discuss that with the African-, LDC- and ACP Group, and other interested developing countries on a more informal basis and in smaller groups. The importance was to offer a relatively simple process that could be implemented quickly and responded to countries' need for help in the negotiations at the present stage. Implementation could come later. At the moment, the focus should be on the proposals made and on capacity building in capitals, so that there was good coordination at the national level and communication between capitals and the Geneva process. The Secretariat would focus its technical assistance on that area as a start.

210. The representative of Djibouti agreed with the approach suggested by the Secretariat which would make it easier for Members to negotiate. There was great need of that expertise. Djibouti also agreed with the intervention by the EC. The question of how the international organizations could

assist developing countries and LDCs was very important, and there should be regular contacts amongst the various providers of such help. Coherence was key. Unfortunately, it was often lacking, leading to duplication of work. Donors often did not know what other donors were doing.

211. The representative of Bolivia said that Bolivia's experience in institutional strengthening and customs reform with the support of the World Bank and other organizations had been a positive one, leading to an improvement in the trading conditions and in implementing tax recommendations. The Secretariat papers were very useful for starting work on the three GATT Articles, especially document TN/TF/W/2, which would help clarify the scope of Article V. The historical context helped Members understand certain restrictive aspects, such as paragraph 2, calling for free transit "through the routes *most convenient* for international transit". That was something that could be improved in the negotiations. There were also other clarifications and questions set out in that document that should be taken up in the forthcoming meetings to help countries with no direct access to the sea.

212. The representative of Sri Lanka stressed the need for the help presented by the participating international organizations. So many proposals were tabled which were difficult to respond to. The World Bank had come up with a very good idea in that regard that would really help to respond in real time and a more focused manner. Sri Lanka looked forward to seeing the project take off.

213. The representative of Uganda said that the main problem in the area of capacity building and technical assistance was the coordination between Geneva and the capitals. Most of the issues discussed were very specific. One had to be on the ground to know them. Sustained coherence would help the negotiating process. Uganda looked forward to seeing such mechanism put in place.

214. The representative of the OECD recalled that, at the last meeting of the Negotiating Group, the OECD had reported on its ongoing work to assess the cost of introducing and implementing Trade Facilitation measures. That work was continuing, with studies of three Asian countries, the Philippines, Thailand and Vietnam hoped to be continued soon, in cooperation with research institutes and universities in that region. A new additional approach had been adopted to involve local researchers in the concerned countries so as to build additional expertise on those areas that could be used later in other subjects of interest in the field of Trade Facilitation. The OECD also continued its direct and strong cooperation with the WCO on that issue, adding several more countries to the list of countries examined, including several African countries.

215. Contacts had further been established with UNESCAP which had undertaken research on the cost of Trade Facilitation measures and on identifying needs and priorities of countries in the region, including those of the business community. UNESCAP was trying to establish a research network on trade-related issues called "artnet", bringing together research institutions in the region to gradually build up currently lacking expertise and to get involved in helping their governments further reflect on Trade Facilitation. At the moment, there were four research institutions in China, India, Bangladesh and Indonesia involved in the process, which were hoped to build up relevant expertise in the area of Trade Facilitation by the end of summer 2005.

216. The representative of UNCTAD said that there was a new UNCTAD project directly related to the WTO negotiations: the Trade Facilitation Trust Fund. The immediate objective of that Fund was to provide assistance to developing countries and LDCs to (i) increase awareness on issues related to the clarification and improvement of Articles V, VIII and X; (ii) build their capacity to effectively participate in the negotiations and (iii) build and improve implementation capabilities in developing countries. Particular attention would be paid to landlocked developing countries and their transit problems. Direct beneficiaries included trade officials and negotiators in capitals and Geneva delegates. Private sector representatives involved in the provision of trade and transport-related services would benefit as well. In addition, numerous other officials in developing countries would benefit directly through technical assistance and indirectly through the dissemination of policy research and analysis.

217. Activities proposed under the present work programme would involve two main areas: (i) analysis of Trade Facilitation issues, covering advisory services, research on key negotiating proposals and the preparation of training materials; and (ii) human resources and institutional capacity-building, comprising the organization of regional workshops/seminars and Geneva-based one day seminars/brainstorming sessions. The volume of the activities foreseen under that Trust Fund would be adjusted in light of resource availability.

218. The Trust Fund activities were a contribution to the collaborative effort between relevant international organizations called for in paragraph 8 of Annex D. Cooperation and coordination would be sought through the mechanism of the GFP. The Trust Fund was open in nature and conceived as a multidonor trust fund. All donor countries were invited to contribute to it. UNCTAD further hoped that its Commission on Enterprise, Business facilitation and Development would establish a proposed consultative group on Trade Facilitation as an integral part of the Trust Fund activities to deepen the dialogue on Trade Facilitation.

219. The representative of the WCO introduced an information note on WCO instruments and Articles V, VIII and X, explaining that it endeavoured to briefly illustrate how the requirements of the three Articles were dealt with in the WCO instruments in the context of customs. Most of the information was extracted from the previous WCO contributions to WTO work in Trade Facilitation made in 2002. The fact that the information note was limited to customs matters should not be seen as an effort to prejudge the scope of the WTO negotiations, which was for WTO negotiators to decide.

220. The Negotiating Group took note of the statements made.

B. *AD HOC* ATTENDANCE OF RELEVANT INTERNATIONAL ORGANIZATIONS, INCLUDING THE IMF, OECD, UNCTAD, WCO AND THE WORLD BANK, AT THE NEXT MEETING OF THE NEGOTIATING GROUP

221. The Chairman suggested inviting relevant international organizations, including the IMF, OECD, UNCTAD, WCO and the World Bank to attend the next meeting of the Negotiating Group on an *ad hoc* basis, as provided for in the Work Plan.

222. It was so agreed.

C. OTHER BUSINESS

223. The representative of Egypt suggested a different format of the minutes of the Negotiating Group meetings. The minutes prepared so far were quite lengthy, quoting more or less delegations' integral interventions. In other negotiating bodies, summaries were used instead. Egypt therefore proposed the adoption of a similar summary approach for the Trade Facilitation meetings and offered some suggestions in that regard. Each delegation would still have its name put down. The intervention itself would be summarized. It would be left for each delegation to request the Secretariat to have its intervention recorded in its entirety. But if no such requests were made, the Secretariat should have flexibility to summarize the text. One could not deal with 50 pages each time.

224. The Chairman supported the proposal by Egypt.

225. The representative of Cuba supported the Egyptian proposal as it facilitated both Members' work and the work of the Secretariat. At the same time, Cuba wished to make the reservation that, while statements should be summed when exceeding a certain number of sentences or when being repetitive, important points should not get lost. It was important that Members' positions were expressed properly, and Cuba wanted to see that reflected in the minutes.

226. The Chairman said that it had always been the intention to ensure that important views of delegations were reflected and suggested adopting the Egyptian proposal, while also taking Cuba's points into account.

227. It was so agreed.

228. The Chairman informed that the dates for the next meeting originally indicated on the list communicated to Members last November were no longer available due to a conflicting TNC meeting, and suggested to hold the next Negotiating Group meeting from 22-24 March instead.

229. It was so agreed.

230. The Negotiating Group took note of the statements made.

231. The meeting was closed.
