

---

**Negotiating Group on Trade Facilitation**

**CLARIFICATION AND IMPROVEMENT OF GATT ARTICLES V, VIII AND X  
PROPOSALS MADE BY WTO MEMBERS**

Compilation by the Secretariat

*This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO*

**I. INTRODUCTION**

1. The following paper compiles Members' proposals on how to clarify and improve relevant aspects of GATT Articles V, VIII and X, as presented up to 2 May 2005.<sup>1</sup> It was prepared in response to a request for such documentation by the Chairman of the Negotiating Group at the Group's meeting of 2-3 May. In outlining the main suggestions, reference is also made to the inputs on S&D treatment and technical assistance/capacity building contained therein.<sup>2</sup>

**II. STRUCTURE AND METHODOLOGY**

2. Against the background of some proposals not listing the suggested measures under a particular GATT Article<sup>3</sup> and others considering their contents to relate to several of the three provisions<sup>4</sup>, a thematic approach was applied, grouping the input by topic rather than Article, which is also hoped to reduce duplication. While efforts were made to minimize repeated listings, some overlap could only have been avoided at the expense of comprehensiveness and clarity and was therefore accepted as inevitable.

3. Efforts were also made to strike the right balance between the often conflicting goals of comprehensiveness and brevity, with the paper focussing on the proposals' main elements, which were reflected in a factual manner.

---

<sup>1</sup> Documents TN/TN/W/6 – TN/TF/W/15, TN/TF/W/17 – TN/TF/W/26, TN/TF/W/28, TN/TF/W/30 – TN/TF/W/32, and TN/TF/W/34 – TN/TF/W/39.

<sup>2</sup> Additional input on the scope of the negotiations, Trade Facilitation needs and priorities, cost implications, S&D treatment, and inter-agency cooperation that is not related to a particular proposal on how to clarify and improve GATT Articles V, VIII and X can be found in document TN/TF/W/33 by the African Group. A contribution to the work on identifying Trade Facilitation needs and priorities is further offered in TN/TF/W/29 submitted by China and Pakistan.

<sup>3</sup> See, for instance, TN/TF/W/9 and TN/TF/W/20.

<sup>4</sup> See, for instance, TN/TF/W/35.

4. The thematic grouping builds on indications of the measures' core in the proposals themselves. References under "Main Measure(s) Proposed" are meant to outline the basic content of the proposal (the "what"), whereas the subsequent "Suggested Approach/Means" heading tries to offer additional information on the envisaged mode of implementation (the "how"). While the listing under a given heading may not always yield the same degree of accuracy, with alternative references being possible on more than one occasion, the document tries to maintain a common structure for reasons of clarity and coherence.

5. Measures within a subheading were generally listed in their order of submission. To allow for the most authentic reflection possible, the compilation keeps the proposals' original formulations whenever feasible. Direct quotations from the original texts are marked in italic font.<sup>5</sup>

### III. INDEX OF PROPOSALS COMPILED

A.	PUBLICATION AND AVAILABILITY OF INFORMATION .....	8
1.	<b>Publication of Trade Regulations .....</b>	<b>8</b>
2.	<b>Publication of Penalty Provisions .....</b>	<b>11</b>
3.	<b>Internet Publication .....</b>	<b>11</b>
(a)	Internet Publication of Trade Regulations .....	11
(b)	Internet Publication of Specified Information .....	12
4.	<b>Notification of Trade Regulations .....</b>	<b>12</b>
5.	<b>Establishment of Enquiry Points/Single National Focal Points/Information Centers .....</b>	<b>13</b>
B.	TIME PERIOD BETWEEN PUBLICATION AND IMPLEMENTATION.....	14
1.	<b>Interval between Publication and Entry into Force .....</b>	<b>14</b>
C.	CONSULTATION AND COMMENTING ON NEW AND AMENDED RULES.....	15
1.	<b>Prior Consultation and Commenting on New and Amended Rules.....</b>	<b>15</b>
2.	<b>Information on Policy Objectives Sought .....</b>	<b>17</b>
D.	ADVANCE RULINGS .....	17
1.	<b>Provision of Advance Rulings .....</b>	<b>17</b>
E.	APPEAL PROCEDURES .....	19
1.	<b>Right of Appeal .....</b>	<b>19</b>
2.	<b>Release of Goods in Event of Appeal.....</b>	<b>20</b>
F.	OTHER MEASURES TO ENHANCE IMPARTIALITY AND NON-DISCRIMINATION.....	20
1.	<b>Uniform Administration of Trade Regulations.....</b>	<b>20</b>
2.	<b>Maintenance of Integrity Among Officials .....</b>	<b>21</b>
G.	FEES AND CHARGES CONNECTED WITH IMPORTATION AND EXPORTATION .....	21
1.	<b>General Disciplines on Fees/Charges Imposed on or in Connection with Importation and Exportation.....</b>	<b>21</b>
(a)	Specific Parameters for Fees/Charges.....	21

---

<sup>5</sup> Minor alterations were applied on occasion to better integrate a section into the overall text.

(b)	Publication/Notification of Fees/Charges .....	22
(c)	Prohibition of Collection of Unpublished Fees and Charges.....	22
(d)	Periodic Review of Fees/Charges .....	23
(e)	Automated Payment.....	23
<b>2.</b>	<b>Reduction/Minimization of the Number and Diversity of Fees and Charges.....</b>	<b>23</b>
H.	FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION.....	24
<b>1.</b>	<b>Disciplines on Formalities and Documentation Requirements Connected with Importation and Exportation.....</b>	<b>24</b>
(a)	Periodic Review of Formalities and Requirements.....	24
(b)	Reduction/Limitation of Formalities and Documentation Requirements .....	25
(c)	Use of International Standards.....	26
(d)	Acceptance of Commercially Available Information and of Copies .....	27
(e)	Automation .....	28
(f)	Single Window/One-Time Submission .....	29
I.	CONSULARIZATION .....	30
<b>1.</b>	<b>Prohibition of Consular Transaction Requirement.....</b>	<b>30</b>
J.	BORDER AGENCY COORDINATION .....	30
<b>1.</b>	<b>Coordination of Activities and Requirements of all Border Agencies .....</b>	<b>30</b>
K.	RELEASE AND CLEARANCE OF GOODS .....	31
<b>1.</b>	<b>Expedited Release and Clearance of Goods .....</b>	<b>31</b>
(a)	Pre-Arrival Clearance .....	31
(b)	Expedited Procedures for Express Shipments .....	31
(c)	Risk Management .....	32
(d)	Post-Clearance Audit .....	33
(e)	Separating Release from Clearance Procedures.....	33
<b>2.</b>	<b>Establishment and Publication of Average Release and Clearance Times.....</b>	<b>34</b>
L.	TARIFF CLASSIFICATION .....	35
<b>1.</b>	<b>Objective Criteria for Tariff Classification .....</b>	<b>35</b>
M.	MATTERS RELATING TO GOODS TRANSIT .....	35
<b>1.</b>	<b>Strengthened Non-Discrimination.....</b>	<b>35</b>
<b>2.</b>	<b>Disciplines on Fees and Charges.....</b>	<b>36</b>
(a)	Publication of Fees and Charges and Prohibition of Unpublished ones .....	36
(b)	Periodic Review of Fees and Charges.....	37
(c)	More Effective Disciplines on Charges for Transit .....	37
(d)	Periodic Exchange Between Neighbouring Authorities .....	38
<b>3.</b>	<b>Disciplines on Transit Formalities and Documentation Requirements .....</b>	<b>38</b>
(a)	Periodic Review .....	38

(b)	Reduction/Simplification .....	39
(c)	Use of International Standards .....	39
(d)	Promotion of Regional Transit Arrangements .....	40
(e)	Simplified and Preferential Clearance for Certain Goods.....	40
(f)	Limitation of Inspections and Controls.....	41
(g)	Sealing .....	41
(h)	Cooperation and Coordination on Documentation Requirements .....	42
(i)	Monitoring .....	42
(j)	Bonded Transport Regime/Guarantees .....	42
<b>4.</b>	<b>Improved Cooperation and Coordination .....</b>	<b>43</b>
(a)	Amongst Authorities .....	43
(b)	Between Authorities and the Private Sector .....	43
<b>5.</b>	<b>Operationalization and Clarification of Terms.....</b>	<b>43</b>

**IV. SUMMARY OF TABLE OF MAIN MEASURES PROPOSED**

A. PUBLICATION AND AVAILABILITY OF INFORMATION	<b>1. Publication of Trade Regulations</b> (W/6, W/7, W/8, W/26, W/30, W/32; See also references in W/13, W/14, W/17 and W/23)	
	<b>2. Publication of Penalty Provisions</b> (W/17)	
	<b>3. Internet Publication</b> (W/13)	(a) Internet "publication" of the elements set out in Article X of GATT 1994 (W/13)
		(b) Internet "publication" of specified information setting forth the procedural sequence and other requirements for importing goods into a Member's territory (W/13)
	<b>4. Notification of Trade Regulations</b> (W/7, W/8; See also references in W/24)	
<b>5. Establishment of Enquiry Points /SNFP/ Information Centers</b> (W/6; W/7, W/8, W/10, W/26, W/30)		
B. TIME PERIODS BETWEEN PUBLICATION AND IMPLEMENTATION	<b>1. Interval between Publication and Entry into Force</b> (W/6, W/7, W/8, W/26, W/30) See also reference in W/23	
C. CONSULTATION AND COMMENTING ON NEW AND AMENDED RULES	<b>1. Prior Consultation and Commenting on New and Amended Rules</b> (W/6, W/7, W/8, W/24, W/26, W/32)	
	<b>2. Information on Policy Objectives Sought</b> (W/6, W/8, W/30)	
D. ADVANCE RULINGS	<b>1. Provision of Advance Rulings</b> (W/8, W/9, W/10, W/12, W/38)	
E. APPEAL PROCEDURES	<b>1. Right of Appeal</b> (W/6, W/8)	
	<b>2. Release of Goods in Event of Appeal</b> (W/6); See also references in W/19, W/21 and W/30	

F. OTHER MEASURES TO ENHANCE IMPARTIALITY AND NON-DISCRIMINATION	1. <b>Uniform Administration of Trade Regulations</b> (W/8)	
	2. <b>Maintenance of Integrity Among Officials</b> (W/8)	
G. FEES AND CHARGES CONNECTED WITH IMPORTATION AND EXPORTATION	1. <b>General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation</b> (W/8, W/14, W/17, W/23, W/25, W/30, W/31)	(a) Specific parameters for fees/Charges (W/14, W/23, W/25, W/30)
		(b) Publication/Notification of Fees/Charges (W/14, W/17)
		(c) Prohibition of Collection of Unpublished Fees + Charges (W/8, W/17)
		(d) Periodic Review of Fees/Charges (W/17, W/25, W/31)
		(e) Automated Payment (W/30)
2. <b>Reduction/Minimization of the number and Diversity of Fees/Charges</b> (W/23, W/24, W/31)		
H. FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION	1. <b>Disciplines on Formalities and Documentation Requirements Connected with Importation and Exportation</b> (W/17, W/18, W/24, W/30, W/31, W/36). See also reference in W/20.	(a) Periodic Review of Formalities and Requirements (W/17 and W/31)
		(b) Reduction/Limitation of Formalities and Documentation Requirements (W/17, W/24, W/31, W/36)
		(c) Use of International Standards (W/17, W/18, W/30, W/36)
		(d) Acceptance of Commercially Available Information and of Copies (W/17, W/18, W/36)
		(e) Automation (W/30)
		(f) Single Window/One-time submission (W/17, W/18; See also references in W/20 and W/30)
I. CONSULARIZATION	1. <b>Prohibition of Consular Transaction Requirement</b> (W/22, W/23, W/25, W/36)	
J. BORDER AGENCY COOPERATION	1. <b>Coordination of activities and requirements of all border agencies</b> (W/20, W/30)	
K. RELEASE AND CLEARANCE OF GOODS	1. <b>Expedited Release and Clearance of Goods</b> (W/10, W/15, W/17, W/18, W/19, W/21, W/30). See also reference in W/6.	(a) Pre-arrival Clearance (W/10, W/17, W/18, W/30)
		(b) Expedited Procedures for Express Shipments (W/10, W/15, W/30)
		(c) Risk Management (W/10, W/17, W/18, W/30)
		(d) Post-clearance Audit (W/10, W/18, W/30)
		(e) Separating Release from Clearance Procedures (W/19, W/21, W/30) See also reference in W/6
	2. <b>Establishment and Publication of Average Release and Clearance Times</b> (W/8, W/18; See also reference in W/6)	

L. TARIFF CLASSIFICATION	<b>1. Objective Criteria for Tariff Classification</b> (W/24)	
M. MATTERS RELATED TO GOODS TRANSIT	<b>1. Strengthened Non-Discrimination</b> (W/28, W/35)	
	<b>2. Disciplines on Fees and Charges</b> (W/28, W/35, W/39)	(a) Publication of Fees and Charges and Prohibition of Unpublished ones (W/28, W/35)
		(b) Periodic Review of Fees and Charges (W/28)
		(c) More effective Disciplines on Charges for Transit (W/35, W/39)
		(d) Periodic Exchange between Neighbouring Authorities (W/28)
	<b>3. Disciplines on Transit Formalities and Documentation Requirements</b> (W/28, W/30, W/34, W/35, W/39)	(a) Periodic Review (W/28, W/34)
		(b) Reduction/Simplification (W/28, W/30, W/35, W/39)
		(c) Harmonization/Standardization (W/28, W/30, W/39; See also reference in W/35)
		(d) Promotion of Regional Transit Arrangements (W/35, W/39)
		(e) Simplified and Preferential Clearance for Certain Goods (W/28, W/34, W/39)
		(f) Limitation of Inspections and Controls (W/39)
		(g) Sealing (W/39)
		(h) Cooperation and Coordination on document Requirements (W/28)
		(i) Monitoring (W/39)
(j) Bonded Transport Regime/Guarantees (W/28, W/35, W/39)		
<b>4. Improved Coordination and Cooperation</b> (W/28, W/35, W/39)	(a) Amongst Authorities (W/28, W/35, W/39)	
	(b) Between Authorities and the Private Sector (W/28)	
<b>5. Operationalization and Clarification of Terms</b> (W/35)		

## V. PROPOSALS COMPILED

### A. PUBLICATION AND AVAILABILITY OF INFORMATION

#### 1. Publication of Trade Regulations

##### Main Measure(s) Proposed

- Publish:

- (i) "All relevant laws, regulations, administrative guidelines, decisions and rulings of or having general application;" (ii) "Information on customs and other border-related agency processes (including port, airport and other entry-point procedures and relevant forms and documents);" (iii) "Conditions for different forms of customs treatment;" (iv) "Appeal procedures (including standard times and conditions for appeal);" (v) "All fees and charges applicable to import, export and transit procedures and requirements;" (vi) "Agreements with any other country or countries relating to the above issues;" (vii) "Customs' and other government agencies' management plans relating to implementation of WTO commitments. This could include standard processing times or relevant reform and modernisation programmes;" (viii) "All significant amendments to the above" (European Communities, TN/TF/W/6). The EC also proposes a requirement to make this information "easily available". See also a related EC-Australia proposal in TN/TF/W/23 as reflected in section G:2.
- " ... the laws, regulations, judicial decisions, administrative rulings as defined in Article X.1 of the GATT, and advance rulings of general application and a binding nature, as well as any agreements with other Member or Members relating to the relevant regulations or laws;" including the requirement "to make any exceptions, derogations or changes" to those items "readily available" (Korea, TN/TF/W/7)
- (i) "All trade-related laws and regulations (including trade-related treaties and agreements);" (ii) "Procedures and administrative rules of border agencies (including documentation formats);" (iii) "Applied tariffs rates;" (iv) "Decisions and examples of customs classification", (v) "Fees and charges imposed on or in connection with importation or exportation"; (vi) "Details of preshipment inspection activities"; (vii) "Details of export inspection for safety standards, etc.;" (viii) "Standard processing period for major trade procedures"; with relevant governments and traders also being able to obtain information from the competent authorities on the "legitimate purpose or objective" for "imposing trade-related restrictions" as well as the "reasons for any delay in cases where trade-related procedures take longer than the standard processing period" (Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8 and Corr.1). See also the proposals' input on publishing decisions against appeals contained in section E:1.
- "... all laws, regulations and other measures of general application pertaining to or affecting trade in goods, and other information concerning relevant procedures, fees, and charges to border-crossing trade". (China, TN/TF/W/26)
- "... all relevant legislation [and other information] on customs procedures relating to the various customs regimes ...", including "the legal basis for administrative decisions" (Peru, TN/TF/W/30)
- "All measures referred to in paragraph 1 of Article X of GATT 1994 (...)" (Hong Kong, China, TN/TF/W/32)



- See also references to US proposals TN/TF/W/13 in section A:3 and TN/TF/W/14 in section G:1. b., first bullet.
- See also relevant input in TN/TF/W/17 as reflected in section G:1:b.

#### Suggested Approach/Mean

- "... make easily available, on a non-discriminatory basis.... " (...) "*there should be an officially designated medium, and where feasible and possible, access to the information on-line. Information should be presented in a simple and accessible manner*" (European Communities, TN/TF/W/6). See also the EC proposal on enquiry points in section A:5.
- "... information should be widely available and in a non-discriminatory fashion, at no cost or cost,<sup>6</sup> through widely accessible means<sup>7</sup>;" with Members also being "*required to make any exceptions, derogations, or changes (...) readily available, non-discriminately at no cost or cost. Notice of changes must be given in advance to allow other Members and interested parties to take notice.*" Members should further "*notify the WTO Secretariat of the media through which the aforementioned measures and their amendment are published*", with the Secretariat then "*disseminat[ing] this notice to other Members as well as interested parties*" (Korea, TN/TF/W/7)
- (i) "*Notices in government gazettes*"; (ii) "*Publication on the official website of any competent government or governmental agency*"; (iii) "*Publication of a summary (complete translation if possible) of trade regulations in at least one of the official WTO languages on the website ...*" (Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8 and Corr.1)
- "... *via the media officially designated and easily accessible, including gazettes, journals and Internet; (...) Internet shall be the first option utilized by Members with requisite technical and personnel resources.*" (China, TN/TF/W/26)
- "*Establishment of mechanisms ensuring the publication and availability of information on customs procedures to all Members in readily and promptly accessibly official media (including, where possible, in electronic form*" (Peru, TN/TF/W/30)
- "(a) ... *in a clear and consistent manner, through a readily accessible and widely available medium, at no cost or at a charge commensurate with the cost of services rendered, and in as much advance as possible*" "(b)(i) *In addition to (a) above, any information to be published under proposal (a) should be made available by the publishing Member for access by any interested parties through electronic means at no cost or at a charge commensurate with the cost of services rendered. (ii) Each Member should notify the other Members through the Secretariat the means to access the information published electronically.*" The proposal "*does not preclude the use of multiple media.*" It "*does not require the disclosure of confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.*" (Hong Kong, China, TN/TF/W/32)

---

<sup>6</sup> "*If any fees are charged for providing information (including revised information or any relevant exception to the information), such cost should be minimal and commensurate with the cost of service rendered.*"

<sup>7</sup> "*Widely accessible refers to, for example, official gazette or an internet website*".

Addressee(s)/Beneficiaries

- "... *any interested parties*" (European Communities, TN/TF/W/6, and Hong Kong, China, TN/TF/W/32)
- "... *other Members as well as interested parties*" (Korea, TN/TF/W/7)
- "... *all Members*" (Peru TN/TF/W/30)

Built-in Exceptions/Flexibility

- On-line access to the information "*where feasible and possible*". (European Communities, TN/TF/W/6)
- Complete translation of summary of trade regulations to be published only "*if possible*" (Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8)
- Publication and availability of information in electronic form only "*where possible*" (Peru, TN/TF/W/30)

Special and Differential Treatment

- "*In addition to providing assistance, the EC believes it would be quite reasonable to provide time for developing countries to implement such proposal as a means to make special and differential treatment precise, effective and operational. The EC recognizes that LDCs, according to paragraph 3 of the 1 August 2004 mandate, shall only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capacities. The EC hopes nonetheless that LDCs, particularly if provided with assistance, will recognise the benefits and savings of the proposals made above and commit themselves to such transparency and good practice – in fact we believe the majority do so already.*" (European Communities, TN/TF/W/6)
- "*.. more favourable treatment should be given to developing countries. In particular, upon request, more flexibility in implementing the suggestions in this document could be provided to developing countries, for instance: longer time period (...) for: (i) fulfilling the requirement of notification and prior commenting period on core measures and their amendment; (ii) notification of core measures and their amendment, if any, to the Secretariat; (iii) establishing the SNFP; and (iv) delivery of the information requested via the SNFP.*" (Korea, TN/TF/W/7)
- For the publication of a summary of trade regulations in at least one of the official WTO languages on the web "*a transition period would be permitted for Members whose mother tongue is not one of WTO official languages*" (Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8 and Corr.1)
- "*... a longer implementation period should be provided for developing Members*" (China, TN/TF/W/26)
- "*In addition to technical assistance, a longer implementation period can be considered*" for proposal (b) (also applicable to the other proposal listed in section C:1) (Hong Kong China, TN/TF/W/32)

### Technical Assistance and Capacity Building

- *"In some cases, technical and other trade-related assistance may be needed for developing countries, especially LDCs, if they lack the resources to implement the proposals. In particular, technical assistance may be needed for individual LDCs to publish rules and procedures, establish enquiry points, or provide for advance rulings and administrative appeals. The EC would be prepared to consider favourably requests for technical assistance in these areas made by developing-country partners, in the framework of the EC's development assistance."* (European Communities, TN/TF/W/6)
- *"Technical assistance and capacity building tailored to the specific needs of each individual developing Member would be very helpful ..."* (China, TN/TF/W/26)
- *"Technical and financial assistance and cooperation must seek to develop the technical and infrastructural capabilities of each Member as well as to build such capabilities in areas where they are lacking"* (Peru, TN/TF/W/30)
- *"Technical assistance should be provided to Members in need to implement"* proposal (b) (also applicable to the other proposal listed in section C:1) (Hong Kong, China, TN/TF/W/32).

### **2. Publication of Penalty Provisions**

#### Main Measure(s) Proposed

- *"Clearly stating and publicizing penalty provisions against breaches of import and export formalities in relevant laws and regulations. Prohibiting the imposition of unpublished penalties. Explaining why the authority rejects the submitted documents at the application desk."* (Japan, Mongolia, Chinese Taipei and Peru, TN/TF/W/17)

#### Special and Differential Treatment

- See references to input on S&D by Japan, Mongolia, Chinese Taipei and Peru in section G:1:b.

### **3. Internet Publication**

#### (a) Internet Publication of Trade Regulations

#### Main Measure(s) Proposed

- *"Internet 'publication' of the elements set out in Article X of GATT 1994"* (United States, TN/TF/W/13)

#### Special and Differential Treatment

- *"The unique situation of each individual Member regarding implementation of the proposed commitment could be addressed early in the negotiations through the use of diagnostic tools providing an assessment of specific needs, which can lead to appropriate and workable transition periods combined with assistance targeted at individual situations."*<sup>8</sup> (United States, TN/TF/W/13)

---

<sup>8</sup> Applies also to section A:3:b.

#### Technical Assistance and Support for Capacity Building

- *"It would be useful if (...) Members and, as appropriate, International Organizations would provide information on experiences and available resources specifically related to this particular proposal"*<sup>9</sup> (United States, TN/TF/W/13)

#### (b) Internet Publication of Specified Information

##### Main Measure(s) Proposed

- "Internet 'publication' of specified information setting forth the procedural sequence and other requirements for importing goods into a Member's territory" (United States, TN/TF/W/13)

#### **4. Notification of Trade Regulations**

##### Main Measure(s) Proposed

- When introducing or amending "*core measures*" that may have a significant effect on the trade of other Members, notify interested parties and the WTO Secretariat of the proposed introduction or amendment at the earliest possible stage (with the Secretariat then disseminating the information to interested parties) before finalizing the proposed measures (Korea, TN/TF/W/7)
- "... notification to the WTO of each Member's trade regulations in one of the WTO official languages" with a "Publication of notification on the WTO website" (Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8)
- See also the input by New Zealand in TN/TF/W/24 as reflected in section H:1:b.

##### Suggested Approach/Mean

- "at the earliest possible stage" (Korea, TN/TF/W/7)
- "in one of the WTO official languages"; "Establishment of a committee in the WTO to process the notification" (Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8)

##### Addresses(s)/Beneficiaries

- "*Interested parties*" and the WTO Secretariat (Korea, TN/TF/W/7)
- The WTO Secretariat (with the information then being generally available through the WTO website); (Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8)

##### Special and Differential Treatment

- See reference to Korea's input on S&D in section A:1.

---

<sup>9</sup> Applies also to section A:3:b.

## Technical Assistance and Capacity Building

- *"The WTO Secretariat or other international organizations (UNCTAD, ITC etc.) could provide translation services, especially for LDs that have difficulties in publicizing their trade regulations on their websites"* (Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8)

## **5. Establishment of Enquiry Points/Single National Focal Points/Information Centers**

### Main Measure(s) Proposed

- *"Establish enquiry points or trade desks, providing information on all (...) measures and information [proposed by the EC for publication in section A:2:1 of document TN/TF/W/6] ... ."*  
*"Such provisions could be based on provisions on enquiry points in certain WTO Agreements such as TBT and SPS"* (European Communities, TN/TF/W/6)
- Establishment of a Single National Focal Point as a centre for communication with other domestic competent authorities to more efficiently respond to inquiries. *"The SNFP should, within a reasonable period of time, supply not only the information requested but also any other pertinent information, which the SNFP considers the interesting parties should be aware. In addition, the contact information relating to the SNFP should be notified to the WTO Secretariat. The Secretariat should make such information available to the other Members and interested parties."* (Korea, TN/TF/W/7)
- *"Establishment of inquiry points responsible for providing relevant information or documents related to trade procedures to the traders (including co-ordination among existing inquiry points of each border authority)"* (Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8)
- Set up information centers or inquiry points with competent officers to provide responses to inquiries (Chinese Taipei, TN/TF/W/10)
- *"Each Member shall, in accordance with their real situations, establish or designate one or more trade policy enquiry points where, upon request of any individual, enterprise or WTO Member, all information relating to the above-mentioned laws<sup>10</sup>, regulations and measures may be obtained.* (China, TN/TF/W/26)
- *"Establishment of enquiry points facilitating access to trade-related information, for example, the creation of a National Enquiry Point operating a free-of-charge 24-hour service or an informative website providing a broad range of customs information with links to other relevant sites"* (Peru, TN/TF/W/30)

### Suggested Approach/Means

- *"... on a non-discriminatory basis"* (European Communities, TN/TF/W/6, and Korea, TN/TF/W/7)
- *"... information centers or inquiry points be set up first with competent officers on duty so as to provide instant responses to inquiries"* (Chinese Taipei, TN/TF/W/10)

---

<sup>10</sup> "... laws, regulations and other measures of general application pertaining to or affecting trade in goods, and other information concerning relevant procedures, fees, and charges related to border crossing trade."

- Establishment of enquiry points "*in accordance with [each Member's] real situations.*" (...) "*Replies to requests for information shall generally be provided within 30 days after receipt of a request. (...) Replies to WTO Members shall be complete and shall represent the authoritative view of the Member government. Accurate and reliable information shall be provided to individuals, enterprises and WTO Members.*" (China, TN/TF/W/26)
- "... *free-of charge 24-hour service or an informative website...*" (Peru, TN/TF/W/30)

#### Addressee(s)/Beneficiaries

- "...*for use of governments and traders*" (European Communities, TN/TF/W/6)
- WTO Members and interested parties (Korea, TN/TF/W/7)
- "*individuals, enterprises and WTO Members*" (China , TN/TF/W/26)

#### Built-in Exceptions/Flexibility

- "*In exceptional cases, replies may be provided within 45 days after receipt of a request.*" (China, TN/TF/W/26)

#### Special and Differential Treatment

- See references to input on S&D by the EC; Korea; and China in section A:1.

#### Technical Assistance and Capacity Building

- See references to input on TA&CB by the EC; China; and Peru in section A:1.

### **B. TIME PERIOD BETWEEN PUBLICATION AND IMPLEMENTATION**

#### **1. Interval between Publication and Entry into Force**

#### Main Measure(s) Proposed

- Allow for "*an adequate time period between the publication of rules and their implementation*" (European Communities, TN/TF/W/6). See also a related EC-Australia proposal in TN/TF/W/23 as reflected in section G:2, first bullet, page 24.
- "... *allow a reasonable amount of time between publication of new or amended measures and their entry into force; if desirable, Members may even go further to specify the time period*" (Korea, TN/TF/W/7)
- "*Publication of laws and regulations (or final draft regulations) before their implementation*" (Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8)
- "*There should be a reasonable interval (e.g., at least 30 days) between the publication of regulations and their implementation or enforcement ....*" (China , TN/TF/W/26)
- "*Establishment of minimum time periods before the entry into force of new regulations*" (Peru, TN/TF/W/30)

### Built-in Exception(s)/Flexibility

- No interval required where "*advanced notice is precluded or not practical...*". (...) "*in case of extraordinary circumstances, for instance, imminent threats to national security and health, such time interval may be reduced or omitted*" (Korea, TN/TF/W/7)
- No interval required "*for those laws, regulations and measures involving national security, specific measures setting foreign exchange rates or monetary policy and other measures the publication of which would impede law enforcement*" (China, TN/TF/W/26)

### Special and Differential Treatment

- See references to input on S&D by the EC, Korea and China in section A:1 page 10.

### Technical Assistance and Capacity Building

- See references to input on TA&CB by the EC; China; and Peru in section A:1

## C. CONSULTATION AND COMMENTING ON NEW AND AMENDED RULES

### 1. **Prior Consultation and Commenting on New and Amended Rules**

#### Main Measure(s) Proposed

- "*A provision requiring consultation between interested parties, notably governments and the private sector, on proposed new rules and procedures applied to import and export administration and goods in transit*" (European Communities, TN/TF/W/6)
- Provide interested parties with an opportunity to submit comments in writing on proposed new "*core measures*" or amendments to the same, followed by Members "*giving due consideration to these comments*" before finalizing the proposed measures (Korea, TN/TF/W/7)
- Provide "*opportunities for interested parties including the private sector to comment on prospective trade-related laws and regulations*" (Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8)
- Give "*Members and traders (...) the right to comment on proposed customs rules, procedures, and policy with commercial effects and either amend the proposed rule or procedure, or as the case may be, provide an explanation to traders and other WTO members as to why their comments have not been taken into account.*" (New Zealand, TN/TF/W/24)
- "*Members should, without discrimination, allow reasonable time for other Members to make comments in writing, and take these written comments into consideration after such laws, regulations and measures are publicized while before implemented or enforced*" (China, TN/TF/W/26)
- "*(i) Each Member should establish effective mechanisms for exchanges with traders, whose views should be duly taken into account, concerning the administration of measures referred to in paragraph 1 of Article X of GATT 1994. (ii) When formulating, implementing and reviewing any measures referred to in paragraph 1 of Article X of GATT 1994, opportunities should be provided for consultation with traders if substantial trade interests or major changes to the existing measures are involved.*" (Hong Kong, China, TN/TF/W32).

### Suggested Approach/Means

- *"Such a consultation requirement could include the establishment of a regular consultative mechanism on rules and procedures with representative private sector bodies including importers, exporters, carriers, chambers of commerce, etc."* (European Communities, TN/TF/W/6)
- *"There should be adequate time periods for comment on proposed rules and procedures. A minimum period could be agreed subject to an exception where urgent problems arise or threaten to arise. The consultation should also take place at a stage where comments can be discussed and taken into account."* (European Communities, TN/TF/W/6)
- *"....at the earliest possible stage...";* (Korea, TN/TF/W/7)
- *"....in writing...."* (Korea, TN/TF/W/7, and China, TN/TF/W/26)
- *"Explicitly stating the required trade procedures in the relevant laws and regulations."* (Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8)
- *".. without discrimination..."* (China, TN/TF/W/26)
- *"There can be a single mechanism or multiple ones, taking different forms for different Members, depending on the circumstances of individual Members. For example, it can be a customer liaison group, an advisory body, or a consultative council, with the participation of the business sector, consumer organizations, academics or professional bodies, and any other interested parties, as a Member deems appropriate. (... ) It is noted that the definitions of "substantial trade interests" and "major changes" may cause concern. However, it is not possible to provide a hard and fast rule and to set precise definitions due to varying circumstances. Each Member may draw up broad and reasonable guidelines to suit its own domestic situation and examine each case accordingly".* (Hong Kong, China, TN/TF/W/32)

### Addresses(s)/Beneficiaries

- Interested parties, notably governments and the private sector (including importers, exporters, carriers, chambers of commerce etc.) (European Communities, TN/TF/W/6)
- *"interested parties"* (Korea, TN/TF/W/7)
- *"... interested parties, including the private sector"* (Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8)

### Built-in Exception(s)/Flexibility

- No need for a minimum time period for comment *"where urgent problems arise or threaten to arise"* (European Communities, TN/TF/W/6)
- *"... the proposal does not require the disclosure of confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest of particular enterprises, public or private."* (Hong Kong, China, TN/TF/W/32)



### Special and Differential Treatment

- See references to input on S&D by the EC; China; Hong Kong, China; and Korea in section A:1.
- *"If the proposed requirement would be inherently more burdensome for developing countries than for other Members, special and differential treatment to mitigate or manage such burdens would need to be considered."* (New Zealand, TN/TF/W/24)

### Technical Assistance and Capacity Building

- See references to input on TA&CB by the EC; China; Hong Kong China; and Peru in section A:1.

## **2. Information on Policy Objectives Sought**

### Main Measure(s) Proposed

- *"Notice of proposed rules and procedures on which comments are invited should be accompanied by a statement of the policy objectives sought, etc."* (European Communities, TN/TF/W/6)
- *"Publication of the legislative purpose of the prospective trade-related laws and regulations"* (Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8)
- Publication of the legal basis for administrative decisions (Peru, TN/TF/W/30)

### Special and Differential Treatment

- See references to input on S&D by the EC; and Peru in section A:1.

### Technical Assistance and Capacity Building

- See references to input on TA&CB by the EC; and Peru in section A:1.

## **D. ADVANCE RULINGS**

### **1. Provision of Advance Rulings**

#### Main Measures Proposed

- Establishment and development of an advance rulings system (Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8)
- Development of disciplines on the provision of advance rulings on tariff classification (including any applicable rate of duty or tax applicable upon importation (Canada and Australia, TN/TF/W/9)
- Advance rulings on tariff classification (Chinese Taipei, TN/TF/W/10)
- *"Make available, upon request of a trader in advance of trade, binding rules in certain specific areas (e.g., tariff classification, customs valuation, duty deferral)"* (United States, TN/TF/W/12)
- Advance rulings on *"... matters such as tariff classification, applicable duties and valuations"* upon written request within a certain time period that *"would be binding on customs authorities"*

*for a period of time, provided that the facts and circumstance on which the rulings is based remain unchanged."* (Singapore, TN/TF/W/38)

#### Suggested Approach/Means

- *"Advance rulings would be issued at the written request of domestic importers, or foreign exporters or producers. Advance rulings should be issued within a defined period of time after a request is made (subject to submission of sufficient information by interested parties)" (...)* *"Advance rulings should also be binding on customs authorities (or any other competent authority) for a period of time specified in the ruling, provided that the facts or circumstances on which the ruling is based remain unchanged."* (Canada and Australia, TN/TF/W/9).
- *"To the extent possible, and subject to confidentiality requirements, advance rulings should be made publicly available"* (Canada and Australia, TN/TF/W/9)
- *"Prior to importation, importers or parties entrusted may apply to port customs for advance classification of the goods being imported."* (Chinese Taipei, TN/TF/W/10).
- *"... upon request of a trader"* (United States, TN/TF/W/12)
- *"The advance ruling should be issued within a certain time period upon receipt of all the necessary information and documents from the applicant." The ruling "... would have to be in the form of a written statement issued by Customs. The advance ruling would be effective on the date of issuance or such date as may be specified in the ruling, which is not later than the date of importation of goods. The advance ruling would be applied to importations without regard to the identity of the importer, exporter or producer, provided that the facts and circumstances are identical in all material aspects. The advance ruling would remain in effect for a specific period of time from the date of the issuance if: (i) there is no change in the material facts or circumstances on which it is based; (ii) all of its terms and conditions are complied with; and (iii) it has not been revoked. There [should be] provisions for Customs to provide the applicant, on request, with the reasons for the ruling."* (Singapore, TN/TF/W/38)
- *"Customs is required to give notice in writing of any modification or revocation of an advance ruling and of the effective date of the modification or revocation to the person to whom the advance ruling was given. Customs may postpone the effective date of such modification or revocation for a period of time, where the person to whom the ruling was issued has relied in good faith on that ruling. A modification or revocation of an advance ruling would apply to goods that are the subject of the advance ruling and are imported on or after the effective date of the modification or revocation. It would not apply to importations of a good that have occurred prior to the date"* (Singapore, TN/TF/W/38)

#### Addresses(s)/Beneficiaries

- *"... importers and exporters or their agents..."* (Singapore, TN/TF/W/38)

#### Built-in Exception(s)/Flexibility

- *"There will be identified situations where the customs administration can decline to issue the ruling, such as when the good is already the subject of a review or appeal."* (Canada and Australia, TN/TF/W/9). See also the second sentence in the first bullet of section "Suggested Approach/Means", page 18.

- "... it is recognized that the customs administration would have the option to modify or revoke an advance ruling immediately, should circumstances change, or when inaccurate or false information has been provided." (Canada and Australia, TN/TF/W/9)
- "An advance ruling may not be applied if it is determined that imported goods differ materially from the goods which were the subject of the ruling or if the person requesting the ruling has failed to act in accordance with the terms and conditions of the ruling. The advance ruling may be modified or revoked if: (i) the advance ruling is based on an error of fact or law; (ii) there is a change in law; or (iii) there is a change in the material facts or circumstances on which the ruling was based." (...) "Customs may decline or postpone the issuance of an advance rulings where the applicant fails to provide the [requested] (...) information within the time stipulated (Singapore, TN/TF/W/38)

### Special and Differential Treatment

- "Appropriate special and differential treatment provisions (e.g., deferred implementation, different time requirements, etc.) could be incorporated within commitments, to reflect the specific circumstances of individual Members." (Australia and Canada, TN/TF/W/9)
- "... examine the question of whether appropriate transition mechanisms would be necessary to address particular needs." (...) "... consider what other means to implement the proposal, such as resource sharing between Members, 'mutual recognition' of rulings between Members, or other mechanisms to utilize expertise outside the capacity of some Members." (United States, TN/TF/W/12)
- "Special and Differential Treatment should therefore be an integral part of any commitment in this area. In this regard, Members may wish to discuss the following: (i) The procedural elements and subjects that should be included in Members' advance rulings programmes. For example, developing countries and least developed countries may initially need to commit only to advance rulings for tariff classifications; (ii) Longer implementation time frames for developing and least developed countries, and other phased-in approaches. (iii) Allowing developing and least developed countries to implement more onerous obligations on a best endeavour basis." (Singapore, TN/TF/W/38)

### Technical Assistance and Capacity Building

- "Further technical assistance in this area will enable customs authorities in recipient countries to improve their ability to carry out their duty to enforce legislation...." (Canada and Australia, TN/TF/W/9)
- "The United States has experience in providing technical assistance in the establishment of advance binding ruling regimes, assisting in drafting of legislation and regulations, and providing training to subject-matter experts." (United States, TN/TF/W/12)

## E. APPEAL PROCEDURES

### 1. Right of Appeal

#### Main Measure(s) Proposed

- "For imports, exports and goods in transit, there should be an obligation to provide a non discriminatory, legal right of appeal against customs and other agency rulings and decisions,

*initially within the same agency or other body, and subsequently to a separate judicial or administrative body. A standard time should be set for resolution of minor appeals at administrative level (...) Companies should have the right to be represented at all stages of appeal procedures by an agent or legal representative..*" (...) (European Communities, TN/TF/W/6)

- *"Development of legal and administrative appeal systems for lodging objections" "against unfair administration of trade-related procedures"; "Publication of major judicial and administrative decisions against lodged appeals" "Establishment of a complaints desk."* (Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8)

#### Suggested Approach/Mean

- *"non discriminatory"; "Procedures for appeal should be easily accessible, including to SME's, and costs should be reasonable and commensurate with costs in providing for appeals."* (European Communities, TN/TF/W/6)

#### Special and Differential Treatment

- See reference to input on S&D by the EC in section A:1.

#### Technical Assistance and Capacity Building

- See reference to input on TA&CB by the EC in section A:1.

### **2. Release of Goods in Event of Appeal**

#### Main Measure(s) Proposed

- *"Where a disputed decision is the subject of an appeal, goods should normally be released and the possibility be available in given circumstances for duty payment to be left in abeyance. This should be subject, where required by national legislation, to the provision of a guarantee, such as a surety or deposit."* (European Communities, TN/TF/W/6)
- See also proposals listed in section K:1:e.

#### Special and Differential Treatment

- See reference to input on S&D by the EC in section A:1.

#### Technical Assistance and Capacity Building

- See reference to input on TA&CB by the EC in section A:1.

## **F. OTHER MEASURES TO ENHANCE IMPARTIALITY AND NON-DISCRIMINATION**

### **1. Uniform Administration of Trade Regulations**

Main Measure(s) Proposed

- *"Establishment of a central function within the government which has the primary responsibility to interpret trade regulations such as those relating to customs classification or customs valuation, etc."* (Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8)
- *"Compilation and distribution of casebooks of cases and examples of customs classification and customs valuation"* (Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8)
- *"Provision of staff training based on casebooks on customs classification and customs valuation"* (Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8)

**2. Maintenance of Integrity Among Officials**

Main Measure(s) Proposed

- *"Development of codes of conduct for staff of border agencies"* (Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8)
- *"Appointment of officials in charge of providing officials' education and provisions of adequate training to relevant officials"* (Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8)

G. FEES AND CHARGES CONNECTED WITH IMPORTATION AND EXPORTATION

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

(a) Specific Parameters for Fees/Charges

Main Measure(s) Proposed

- *"Establish specific parameters for fees charged by Members under Article VIII of GATT 1994."* (United States, TN/TF/W/14)
- *Establish disciplines for GATT Article VIII-related fees and charges applying to "all fees and charges imposed by customs authorities or by any other government body (including tasks undertaken on their behalf) on or in connection with importation or exportation, or as a condition for importation or exportation, to the extent not already covered by other WTO Articles and Agreements."* (European Communities and Australia, TN/TF/W/23)
- *Ensure that (i) "the service provided is related to the goods in question (ii) fees and charges refer to the approximate cost of the service provided (iii) fees and charges (...) [are] not (...) calculated on an ad valorem basis; (iv) administrative or operational costs not constituting a service associated with the treatment of imports or exports (...) [are] not (...) imposed on such imports or exports (v) [there is] non-discrimination in the design and application of fees and charges.* (European Communities and Australia, TN/TF/W/23)
- *Calculate the approximate cost of services rendered by breaking down costs into (i) direct costs (in the sense of costs directly related to the specific services rendered, including labour, materials, equipment and utilities) and (ii) indirect costs (consisting of costs incurred that are not directly related, but are nonetheless attributable to the specific services rendered (e.g., costs of supporting labour, equipment, and office rent).* (Chinese Taipei, TN/TF/W/25)

- *"Establishment of objective criteria for the application of fees and charges by Members to import and export operations."* (Peru, TN/TF/W/30)

#### Suggested Approach/Means

- *"A table for analyzing relevant costs would be helpful."* (Chinese Taipei, TN/TF/W/25)

#### Special and Differential Treatment

- *"Examine the question of whether appropriate transition mechanism would be necessary to address particular needs."* (United States, TN/TF/W/14)

#### Technical Assistance and Capacity Building

- *"To the extent that least-developed countries and possibly other Members would seek advice on the design and implementation of new fee structures, the EC would be prepared to consider favourably such requests for assistance. Furthermore, international organizations and Members have relevant experience that could be used."* (European Communities and Australia, TN/TF/W/23)
- See also reference to input on TA&CB by Peru in section A:1.

#### (b) Publication/Notification of Fees/Charges

#### Main Measure(s) Proposed

- *"Publish [Article VIII-related] fees on the Internet and notify the WTO within a specified number of days in advance of implementation."* (United States, TN/TF/W/14)
- *"Publication of fees and charges imposed on or in connection with importation or exportation..."* (Japan, Mongolia, Peru and Chinese Taipei, TN/TF/W/17)

#### Special and Differential Treatment

- See reference to input on S&D by the US in section G:1:a.
- *"... granting a transition period in accordance with developing Members' implementation capacity or support/assistance based on coordination among relevant international organizations (IMF, OECD, UNCTAD, WCO and World Bank) may be taken into consideration. In addition, providing opportunities to consult the implementation capacities of developing Members together with experts from relevant international organizations may be useful measures for Members to consider."* (Japan, Mongolia, Peru and Chinese Taipei, TN/TF/W/17)

#### (c) Prohibition of Collection of Unpublished Fees and Charges

#### Main Measure(s) Proposed

- *"... ban the collection of the unpublicized fees and charges..."* (Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8)
- *"... prohibiting the collection of unpublished fees and charges"* (Japan, Mongolia, Peru and Chinese Taipei, TN/TF/W/17)

### Special and Differential Treatment

- See reference to input on S&D by Japan, Mongolia, Chinese Taipei, Pakistan and Peru in section G:1:b.

#### (d) Periodic Review of Fees/Charges

### Main Measure(s) Proposed

- *"Periodic review of the appropriateness of the amount and the number of fees and charges imposed on or in connection with importation and exportation"* (Japan, Mongolia, Peru and Chinese Taipei, TN/TF/W17). See also section H:1:a, first bullet.
- *"Periodical reviews of the levels of fees and charges imposed on or in connection with import and export should also be conducted, for example, at least once every three years"*. (Chinese Taipei, TN/TF/W/25)
- *"Each Member should review its fees, charges, formalities and requirements at reasonable and regular intervals."* (Hong Kong, China, TN/TF/W/31) See also section H:1:a, second bullet.

### Suggested Approach/Mean

- *"In such a review, the concerned Member should take into account relevant new information, new business practices, and adoption of modern techniques and new technology." (...)* *"It is not possible to define a rigid standard period of time for the intervals, having regard to different circumstances of different Members and measures." (...)* *"...the proposed review mechanism does not affect Members' rights and obligations under the existing paragraph 2 of Article VIII."* (Hong Kong, China, TN/TF/W/31)

### Special and Differential Treatment

- See reference to input on S&D by Japan, Mongolia, Chinese Taipei, Pakistan and Peru in section G:1:b.
- See also reference to input on S&D by Hong Kong, China in section H:1:a, second bullet.

#### (e) Automated Payment

### Main Measure(s) Proposed

- *"Automated payment of duties and other fees and charges."* (Peru, TN/TF/W/30)

### Technical Assistance and Capacity Building

- See reference to input on TA&CB by Peru in section A:1.

## **2. Reduction/Minimization of the Number and Diversity of Fees and Charges**

### Main Measure(s) Proposed

- *"A requirement for Members to review, and if necessary, consolidate or reduce the number and diversity of their fees and charges. All remaining fees and charges must be notified or made publicly and easily available, together with the justification for them. There should be an adequate time period between the publication of new or amended fees or charges and their entry into force."* (European Communities and Australia, TN/TF/W/23).
- *"A requirement to establish a list of permissible fees and charges"* (European Communities and Australia, TN/TF/W/23).
- *"... Members could (...) look at practical ways to minimize fees and formalities"* based on the notification of the documentation and entry systems they currently implement or have in preparation. (New Zealand, TN/TF/W/24).
- *"Any fees, charges, formalities or requirements referred to in Article VIII of GATT 1994 should not be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the circumstances or objectives can be addressed in a less trade restrictive manner."* (Hong Kong China, TN/TF/W/31) See also section H:1:b, third bullet.

#### Built-in Exception(s)/Flexibility

- Consolidation and reduction of the number of diversity of fees and charges *"if necessary"*. (European Communities and Australia, TN/TF/W/23).

#### Technical Assistance and Capacity Building

- See reference to input on TA&CB by the EC and Australia in section G:1.

#### H. FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION

##### **1. Disciplines on Formalities and Documentation Requirements Connected with Importation and Exportation**

- (a) Periodic Review of Formalities and Requirements

#### Main Measure(s) Proposed

- *"Periodically review import and export formalities and import/export documentation requirements, based on comments from the private sectors and other parties."* (Japan, Mongolia, Peru and Chinese Taipei, TN/TF/W/17).
- *"Each Member should review its fees, charges, formalities and requirements at reasonable and regular intervals. In such a review, the concerned Member should take into account relevant new information, new business practices, and adoption of modern techniques and new technology."* (Hong Kong, China, TN/TF/W/31)

#### Suggested Approach/Means

- *"It is not possible to define a rigid standard period of time for the intervals, having regard to different circumstances of different Members and measures." (...) "...the proposed review mechanism does not affect Members' rights and obligations under the existing paragraph 2 of Article VIII."* (Hong Kong, China, TN/TF/W/31)

#### Special and Differential Treatment



- See reference to input by Japan, Mongolia, Peru and Chinese Taipei on S&D in section G:1:b.
- *"Some Members may not be able to review all of their formalities and requirements instantly (...) A reasonable period of time may be provided to enable Members to complete the first review."* (Hong Kong, China, TN/TF/W/31).

(b) Reduction/Limitation of Formalities and Documentation Requirements

Main Measure(s) Proposed

- *"Limit import and export formalities and import/export documentation requirements to the least trade restrictiveness level"* (Japan, Mongolia, Peru and Chinese Taipei, TN/TF/W/17).
- *"... agree to more precise, operationally effective provisions on minimizing excessive documentation"* (New Zealand, TN/TF/W/24)
- *"(i) Members should minimise the incidence and complexity of import and export formalities and decrease and simplify import and export documentation requirements to ensure that such formalities and requirements are no more administratively burdensome or trade restrictive than absolutely necessary to achieve their legitimate objectives and are applied in an efficient manner". "(ii) Any fees, charges, formalities or requirements referred to in Article VIII of GATT 1994 should not be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the circumstances or objectives can be addressed in a less trade restrictive manner."* (Hong Kong, China, TN/TF/W/31)
- *"... simplifying and reducing the documentation and data requirements to the necessary minimum, consistent with the need to enforce legitimate policy objectives". (...) "... the contents of the requirements for goods declarations should (...) be set out in national legislation"*. (New Zealand, Norway and Switzerland, TN/TF/W36). See also their related proposal in section I:1.

Suggested Approach/Means

- *"Conduct examination and inspection after receiving application without delay as well as take other relevant actions including returning necessary documents to traders without delay, with a view to further expedite the movement of goods."* (Japan, Mongolia, Peru and Chinese Taipei, TN/TF/W/17).
- *" ... notify the documentation and entry systems currently implemented or in preparation. Based on this information, Members could then look at practical ways to minimize fees and formalities." "... it might be appropriate to consider a menu of various steps to reduce excessive documentation requirements"*. (New Zealand, TN/TF/W/24).
- *"The first benchmark comprises a necessity test (in terms of administrative burden brought by, and trade restrictiveness of, the measures) and a balance against reasonableness (having regard to the need for measures to achieve certain legitimate objectives, e.g. implementation of international conventions, other than those falling within exceptions already provided for under GATT) with regard to the objectives of applying the formalities and requirements. The second benchmark is to ensure that measures are applied efficiently so as to reduce transaction costs and processing time for traders, if not for the authorities." Institution of a necessity test for those fees and formalities. "Clearly, if the circumstances or objectives giving rise to the adoption of a measure no longer exist, the measure should not be continued. Even if such circumstances or*

*objectives still exist, the measure should not be continued if the circumstances or objectives can be addressed in a less trade restrictive manner. In this latter case, the measure may simply be abolished, or a simplified or more trade facilitating measure may be more suitable.*" (Hong Kong, China, TN/TF/W/31)

#### Built-in Exception(s)/Flexibility

- Simplification and reduction of documentation and data requirements to the necessary minimum *"consistent with the need to enforce legitimate policy objectives"*, with *"Such objectives include[ing], inter alia, the assessment and collection of duties and taxes, the compilation of statistics, ensuring conformity with SPS and TBT requirements, and the application of Customs law."* (New Zealand, Norway and Switzerland, TN/TF/W/36).

#### Special and Differential Treatment

- See reference to input by Japan, Mongolia, Peru and Chinese Taipei on S&D in section G:1:b.
- *"The idea of a menu of options is specifically designed to provide flexibility for members given the variation in their capacity to implement. In addition, developing-country Members could be given additional time to implement such measures."* (New Zealand, TN/TF/W/24)

#### Technical Assistance and Capacity Building

- *"This proposal is designed to allow a better assessment of Members' current ability to implement new requirements for minimizing documentation. Depending on the detail of any menu of steps, in some cases technical assistance and capacity building may be necessary to help individual developing country Members to introduce such measures".* (New Zealand, TN/TF/W/24).
- *"Technical assistance may be required both from international and regional agencies (...) as well as on a bilateral level".* (New Zealand, Norway and Switzerland, TN/TF/W/36).

#### (c) Use of International Standards

#### Main Measure(s) Proposed

- *"Use of international standards to the extent possible, where other international organizations already have set up international standards, with a view to minimizing the incidence and complexity of import and export formalities" and to "decreasing and simplifying import and export documentation requirements."* (Japan, Mongolia, Peru and Chinese Taipei, TN/TF/W/17).
- Harmonizing and standardizing document formats, using 'aligned documents' with the same size paper and common items of information set out in the same relative position in each form, such as the UN Layout Key for Trade Documents (Korea, TN/TF/W/18)
- *"Recommendation to accede to the conventions administered by the World Customs Organization (WCO) which seek to harmonize and simplify customs procedures, in particular the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention), the Convention on Temporary Admission (Istanbul Convention) and the Brussels Convention on Nomenclature for the Classification of Goods in Customs Tariffs, inter alia, which include mechanisms for the progressive adoption of commitments, selectivity as regards the inclusion of regulations and the possibility of reservations".* (Peru, TN/TF/W/30)

- "... use of international standards as a basis for documentation and data requirements (...). The development or use of already existing standardized formats on documentation should be considered". "Whenever possible the number of documents required should be reduced to a level that is the "least restrictive" to trade" (New Zealand, Norway and Switzerland, TN/TF/W/36)

#### Suggested Approach/Means

- "It is important to take due account of the relevant work of other relevant international organizations" in that area (Japan, Mongolia, Peru and Chinese Taipei, TN/TF/W/17).
- To standardize the format and layout of documents, "*first there should be a standard list of data which are collected by governments; and standardized classifications and names for these data. The WCO Customs Data Model can serve such function*". (Korea, TN/TF/W/18).
- An example of existing standardized formats on documentation suggested for use is the UN Layout Key for Trade Documents, which is the basis for trade documents such as "*the European Union's Single Administrative Document, the Dangerous Goods Declaration (UNECE), GSP (General System of Preference) Certificates (UNCTAD), Certificate of Origin (revised Kyoto Convention), Goods Declaration for Export (revised Kyoto Convention), Standard Bill of Lading (International Chamber of Shipping), etc. Where the information already exists in such a standard document, there should be no need to require additional documentation containing the same information.*" (New Zealand, Norway, Switzerland, TN/TF/W/36)

#### Built-in Exception(s)/Flexibility

- "... to the extent possible..." (Japan, Mongolia, Chinese Taipei and Peru, TN/TF/W/17)
- Reduction of the required documents to the least-trade restrictive level "*whenever possible*" (New Zealand, Norway and Switzerland, TN/TF/W/36)

#### Special and Differential Treatment

- See reference to input on S&D by Japan, Mongolia, Chinese Taipei and Peru in section G:1:b.

#### Technical Assistance and Capacity Building

- "... may require Members to review their current documentation requirements and customs procedures. (...) In these cases, assistance by relevant international agencies, such as the WCO and the World Bank, especially those of the least-developed countries, may be warranted". (Korea TN/TF/W18)
- See also reference to input on TA&CB by New Zealand, Norway and Switzerland in section H:1:b.

(d) Acceptance of Commercially Available Information and of Copies

#### Main Measure(s) Proposed

- "Acceptance of required documents in copies to the extent possible (...) especially in cases where multiple authorities are involved or where documents are required to conduct other procedures." (Japan, Mongolia, Chinese Taipei and Peru, TN/TF/W/17)

- *"Except for some justifiable cases, customs authorities should be able to forego certain documentation requirements whenever the relevant information (e.g., name of the buyer, seller, country of origin, quantity and description of the goods, and their estimated value) is already available in the context of the commercial transaction. Especially, if customs authorities operate electronic information exchange systems, the acceptance of commercially available information may significantly reduce traders' documentation burden without making additional demands on customs resources. Commercially available information includes information, which is included in business-to-business transactions such as bills of lading or commercial invoices. Accepting copies of documents in lieu of originals for import and export can also greatly streamline the customs process. Customs can, if necessary, always request the original documents at a later time". (Korea, TN/TF/W/18)*
- *"If or when automatization is put in place, in cases where physical documentation are required under manual procedures, the Customs should normally accept copies and not only accept/request originals of documents, except in clearly defined circumstances. With automated transmission of documents it is always difficult, if not impossible, to identify an original document if it is printed out or a photocopy is made". (New Zealand, Norway and Switzerland, TN/TF/W/36)*

#### Suggested Approach/Means

- *"Electronic documents which are authenticated by electronic signatures or other electronic means will help to identify and verify documents presented electronically". (New Zealand, Norway and Switzerland, TN/TF/W/36)*

#### Built-in Exception(s)/Flexibility

- *"...to the extent possible..." (Japan, Mongolia, Chinese Taipei and Peru, TN/TF/W/17)*
- *"... except in some justifiable cases..." (Korea, TN/TF/W/18)*
- *"... except in clearly defined circumstances" (New Zealand, Norway and Switzerland, TN/TF/W/36)*

#### Special and Differential Treatment

- See references to input on S&D by Japan, Mongolia, Chinese Taipei and Peru in section G:1:b.

(e) Automation

#### Main Measure(s) Proposed

- *"Automation of customs and other agency import/export procedures, with the possibility of electronic submission of customs and other declarations, and automated payment of duties and other fees and charges" (Peru, TN/TF/W/30)*

#### Technical Assistance and Capacity Building

- See reference to input on TA&CB by Peru in section A:1, page 11.

(f) Single Window/One-Time Submission

Main Measure(s) Proposed

- *"Introduction of procedures for allowing one-time submission of import or export documentation to one authority (...) (including coordinating the timing and place of physical inspections among the relevant authorities to the extent possible)". (Japan, Mongolia, Chinese Taipei and Peru, TN/TF/W/17)*
- *"Acceptance of single documentary submission of import or export documentation requirements in cases of repeated transactions of same products; Exemption of documentary submissions for each importation or exportation should be permitted". (Japan, Mongolia, Chinese Taipei and Peru, TN/TF/W/17)*
- *"... Members should establish a 'single window', which would act as a clearinghouse for all documents and data submission" so that traders would need "to submit data only once on the basis of streamlined document formats" with the 'single window' agency administrating all information on the document" (Korea, TN/TF/W/18)*
- *"Recommendation to establish a single-window mechanism at borders or ports with efficient computer back-up" (Peru, TN/TF/W/30)*
- See also reference to input by Canada in TN/TF/W/20 as reflected in section J:1.

Built-in Exception(s)/Flexibility

- *Coordination of physical inspections among relevant agencies " ...to the extent possible... " (Japan, Mongolia, Chinese Taipei and Peru, TN/TF/W/17)*
- *"Exemption of documentary submissions for each importation or exportation should be permitted". (Japan, Mongolia, Chinese Taipei and Peru, TN/TF/W/17)*

Special and Differential Treatment

- See references to input on S&D by Japan, Mongolia, Chinese Taipei and Peru in section G:1:b.
- *"...developing countries may require a longer period of time to institute these measures." (Korea, TN/TF/W/18).*

Technical Assistance and Capacity Building

- *"... the operation of a 'single window' (...) may require training of their officials. International organizations may hold training sessions for officials from the less experienced Members. These training sessions should include short seminars to familiarize officials with key concepts; and appropriate apprenticeships where officials from less experienced Members can work at the agencies of the more experienced Members and gain practical experience. As the deepening of human capital requires time, developing countries may require a longer period of time to institute these measures. Individual Members may have roles to play in the aforesaid training sessions as well." (Korea, TN/TF/W/18)*
- See also reference to input on TA&CB by Peru in section A:1.

I. CONSULARIZATION

1. **Prohibition of Consular Transaction Requirement**

Main Measure(s) Proposed

- *"Prohibition of requiring consular transactions, including consularization-related fees and charges, in connection with the importation of goods."* (Uganda and the United States, TN/TF/W/22).
- *"Practices such as the levying of "consular fees" or "consular invoices" and the like should be discontinued."* (European Communities and Australia, TN/TF/W/23)
- *" ... we often hear complaints from traders about high fees for consular invoices and certificates charged by importing Members."* (Chinese Taipei, TN/TF/W/25)
- *"Members could also agree to abolish documentation requirements such as demands for consular invoices (...)." (New Zealand, Norway and Switzerland, TN/TF/W/36)*

Special and Differential Treatment

- *"Examination could take place on whether appropriate transition mechanisms would be necessary for addressing particular individual need associated with an existing consularization requirement."* (Uganda and the United States, TF/TF/W/22)

Technical Assistance and Capacity Building

- An assessment should be made *"whether implementation of the proposal would require technical assistance"*. (Uganda and United States, TN/TF/W/22)
- See also reference to input on TA&CB by New Zealand, Norway and Switzerland in section H:1:b.

J. BORDER AGENCY COORDINATION

1. **Coordination of Activities and Requirements of all Border Agencies**

Main Measure(s) Proposed

- *"Measures could focus on the following objectives: (I) the compatibility or standardization of import/export data requirements of various agencies so as to allow importers and exporters to present all required data to only one border agency (...); (II) the coordination of procedures and formalities, including agreements (across borders if necessary) that (i) ensure cooperation between customs authorities and other interested agencies on coordinating border controls and (ii) establish technical and operational measures to regulate the functioning of integrated border controls (e.g., controls through a single, shared physical infrastructure in which the neighbouring countries' customs services operate side by side)." (Canada, TN/TF/W/20)*
- *"Establishment of border control cooperation and coordination mechanisms between the various authorities at Members' entry and exit points"*. (Peru, TN/TF/W/30)

### Special and Differential Treatment

- *"Special and differential treatment provisions reflecting the specific circumstances of individual Members could be incorporated within commitments, for example through provisions for progressive implementation."* (Canada, TN/TF/W/20)

### Technical Assistance and Capacity Building

- *"Technical assistance efforts in training and administration of Customs can include elements focusing on ways to improve coordination and reduce duplication among border agencies...."* (Canada, TN/TF/W/20)
- See also reference to input on TA&CB by Peru in section A:1.

## K. RELEASE AND CLEARANCE OF GOODS

### 1. Expedited Release and Clearance of Goods

#### (a) Pre-Arrival Clearance

#### Main Measure(s) Proposed

- *"Clearance in advance of arrival enable[ing] importers to file their entries prior to the arrival of merchandise at the port of entry. Importers may claim their goods immediately after importation, so long as they are not selected for document review or physical examination".* (Chinese Taipei, TN/TF/W/10)
- *"Introduction of procedures for accepting and examining documents prior to the arrival of goods..."* (Japan, Mongolia, Peru and Chinese Taipei, TN/TF/W/17)
- Introduce and utilize pre-arrival processing (Korea, TN/TF/W/18)
- *"Establishment of disciplines on (...) pre-clearance (...) of goods."* (Peru, TN/TF/W/30)

#### Built-in Exception(s)/Flexibility

- *"... adopt these measures as soon as they are feasible for each Member".* (Korea, TN/TF/W/18)

### Technical Assistance and Capacity Building

- See reference to input on TA&CB by Korea in section H:1:c.
  - See also reference to input on TA&CB by Peru in section A:1.
- #### (b) Expedited Procedures for Express Shipments

#### Main Measure(s) Proposed

- *"The handling of express consignments can be simplified by using as a reference the WCO Customs Guidelines for Express Consignments"* (Chinese Taipei, TN/TF/W/10).
- *"Provide specific expedited procedures for express shipments"* (United States, TN/TF/W/15).

- *"Establishment of specific procedures applicable to express shipments in order to facilitate trade in these goods without interfering with customs control"* (Peru, TN/TF/W/30)

#### Suggested Approach/Means

- *"... commitment to provide separate expedited procedures, including individual elements such as providing for import data being submitted in advance of arrival of goods, an absence of weight or value restrictions on what is considered "express", the availability under normal circumstances to secure rapid release, and the availability of "de minimis" procedures for low value shipments."* (United States, TN/TF/W/15)

#### Special and Differential Treatment

- *".. assess appropriate needs for transition periods and develop time lines setting out elements needed for full implementation. (...) establish appropriate transition mechanisms to address particular needs."* (United States, TN/TF/W/15)

#### Technical Assistance and Capacity Building

- *"... promising for private sector participation in technical assistance efforts."* (United States, TN/TF/W/15)
- See also reference to input on TA&CB by Peru in section A:1.

#### (c) Risk Management

#### Main Measure(s) Proposed

- Apply risk management techniques, minimizing customs interventions in the flow of legitimate goods (Chinese Taipei, TN/TF/W/10)
- *"Conduct examination and inspection based on risk management." "... introduce simplified import and export formalities for authorized traders which have high level of compliance with trade related laws and regulations."* (Japan, Mongolia, Peru and Chinese Taipei, TN/TF/W/17)
- Introduce and use risk assessment and management procedures (Korea, TN/TF/W/18)
- *"Establishment of disciplines on the application of risk assessment criteria ... "* (Peru, TN/TF/W/30)

#### Built-in Exception(s)/Flexibility

- *".... adopt these measures as soon as they are feasible for each Member"* (Korea, TN/TF/W/18)

#### Technical Assistance and Capacity Building

- *"..with the proper technical assistance and capacity building support, developing and east-developed countries will be able to enjoy the benefits from such measures."* (Korea, TN/TF/W/18)
- See also reference to input on TA&CB by Peru in section A:1.



(d) Post-Clearance Audit

Main measure(s) proposed

- *"Under the post-clearance audit system, Customs may first release most of the consignments, and then conduct a thorough review of the documents of selected consignments after release". (Chinese Taipei, TN/TF/W/10).*
- Introduce and use post-entry auditing (Korea, TN/TF/W/18)
- *"Establishment of disciplines on the application of (...) post-clearance control of goods. Members will be required to grant sufficient authority to customs administration support institutions to safeguard the audit function and effective post-clearance control of goods." (Peru, TN/TF/W/30)*

Built-in Exception(s)/Flexibility

- *".... adopt these measures as soon as they are feasible for each Member". (Korea, TN/TF/W/18)*

Technical Assistance and Capacity Building

- See also reference to input on TA&CB by Peru in section A:1.

(e) Separating Release from Clearance Procedures

Main Measure(s) Proposed

- *"... WTO Members consider commitments on the release of goods from Customs prior to payment of duties in cases where a trader provides sufficient guarantees in the form of collateral security or some other appropriate instrument with respect to the ultimate payment of duties and taxes, under circumstances such as the following: (i) where delays are encountered in completion of final clearance procedures (as in cases awaiting a decision on the correct tariff classification); (ii) where goods are imported to fulfil a specific purpose and subsequently duty-paid or exported after use (as in cases where there is authorization to import goods for "inward processing" without payment of duties and taxes, providing the finished goods are subsequently exported)." (Australia and Canada, TN/TF/W/19)*
- *"Maintain a system by which goods may be released from the custody of customs before final payment of duties or resolution of customs matters (such as classification or customs valuation), utilizing as necessary a guarantee as a surety, bond, or deposit". (United States, TN/TF/W/21)*
- *"Possibility of establishing an enhanced customs clearance system with provisions on the security (bonds, financial guarantees, etc.) or other forms of collateral required to ensure that the obligations of importers, warehouse operators or international goods carriers towards the customs authorities are properly discharged". (Peru, TN/TF/W/30)*
- See also reference to the EC's input on release upon posting of a guarantee in section E:2.

Suggested Approach/Means

- *"A trader who wishes to ask for the release of a given good prior to payment must post a security instrument with the Customs authorities. A security can be in the following forms: cash, a*

*certified cheque, a transferable bond issued by the Government or an approved financial institution, or a surety bond issued by an approved issuer. Upon final determination of the amount of duty or charges payable, the Customs authorities seek payment from the trader. If the trader cannot and will not fulfil its obligations, the Customs authorities can obtain payment from the security instrument. Bonds could be limited to a single transaction or cover several transactions, including importations across the customs territory (continuous bonds). Bonds may also be employed for an expanded range of uses to meet a variety of import circumstances. As an example, surety bonds may include such uses as immediate clearance/delivery in the case of express shipments". (Australia and Canada, TN/TF/W/19)*

### Special and Differential Treatment

- *"Special and differential treatment provisions reflecting the specific circumstances and capacity to deliver collateral security services in individual Members could be incorporated within commitments, for example through provisions for deferred implementation" (Australia and Canada, TN/TF/W/19).*
- *"Diagnostic tools should be utilized to assess the unique situation of each individual Member regarding implementation of the proposed commitment. Such an undertaking can identify needs and priorities, and lead to appropriate and workable transition periods combined with assistance targeted at individual situations". (United States, TN/TF/W/21)*

### Technical Assistance and Capacity Building

- *"Technical assistance efforts in training and administration of Customs can include elements focusing on ways to improve revenue collection and enforcement of Customs laws, including through systems allowing for collateral or monetary securities". (Australia and Canada, TN/TF/W/19)*
- See also reference to input on TA&CB by Peru in section A:1.

## **2. Establishment and Publication of Average Release and Clearance Times**

### Main Measure(s) Proposed

- Publication of *"standard processing period for major trade procedures"* (Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8)
- *"Members establish and make publicly available the average time taken for clearing and releasing of goods"* (Korea, TN/TF/W/18)
- See also the reference to EC proposal TN/TF/W/6 in section A.1., first bullet, element (vii).

### Suggested Approach/Means

- *"Through the WCO Time Release Study: Guide to Measure the Time Required for the Release of Goods, the WCO has guidelines in place to help (...) measure the time required for releasing and clearing of goods. (...) WTO Members may agree to make such measurements public. (...) Members may agree to a provision that, in cases where the release takes longer than the average time, traders would have the right to ask the customs authority the reason why the processing time for their goods is longer." (Korea, TN/TF/W/18)*

Built-in Exception(s)/Flexibility

- *"If there are irregularities in shipment or exceptional circumstances occur, Members would still retain the right to delay clearing of goods".* (Korea, TN/TF/W/18)

L. TARIFF CLASSIFICATION

**1. Objective Criteria for Tariff Classification**

Main Measure(s) Proposed

- Require objective criteria for the tariff classification of goods. (New Zealand, TN/TF/W/24)

Suggested Approach/Means

- *"... requiring the use of objective tests, and (...) requiring Members to adopt the World Customs Organization's Convention on the Harmonized Commodity Description and Coding System ('the HS Convention') "... establish criteria that classification decisions and any necessary tests should satisfy, such as objectivity, scientific basis, wide acceptance and impartiality."* (New Zealand, TN/TF/W/24.)

Built-in Exception(s)/Flexibility

- Application of an objective test only *"where it is otherwise not possible to accurately determine the classification of a product."* (New Zealand, TN/TF/W/24)

Technical Assistance and Capacity Building

- *"For those Members implementing [the HS Convention] for the first time, especially LDCs, some technical assistance may be needed."* (New Zealand, TN/TF/W/24)

M. MATTERS RELATING TO GOODS TRANSIT

**1. Strengthened Non-Discrimination**

Main Measure(s) Proposed

- *"Ensuring non-discrimination between modes of transport used for transit of goods, the origin or destination of goods in transit, carriers of goods in transit, the route chosen and the particulars of the goods themselves. This is without prejudice to the commitments in force involving landlocked Members. Transit Members are encouraged to provide landlocked developing Members with national treatment."* (Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)
- *"Ensure non-discrimination between means of transport, between carriers and between types of consignment in relation to transit procedures, including with regard to fixed installations which themselves are capable of moving goods, such as pipelines."* (European Communities and Paraguay, TN/TF/W/35)

### Suggested Approach/Mean

- *"Any restrictions, controls or requirements must pursue a legitimate public policy objective, be proportionate and be applied uniformly". (European Communities and Paraguay, TN/TF/W/35)*

### Special and Differential Treatment

- *"... granting a transition period in accordance with developing Members' implementation capacity or support/assistance based on the coordination among relevant international organizations (IMF, OECD, UNCTAD, WCO and World Bank) may be taken into consideration. In addition, enabling developing Members to consult the implementation capacities together with experts from relevant international organizations may be useful measures for Members to consider". (Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)<sup>11</sup>*
- *"..... take fully into account the principle of special and differential treatment in the results of the negotiations and to make such treatment precise, effective and operational." (European Communities and Paraguay, TN/TF/W/35)<sup>12</sup>*

### Technical Assistance and Capacity Building

- *"...the following suggestions could be taken into account, based on the collaborative efforts among relevant international organizations, including the IMF, OECD, UNCTAD, WCO and the World Bank: (i) Improving measures to ensure impartial implementation of provisions and procedures in force; (ii) Improving border operations and cooperating to fight against illicit trade;(iii) Exchanging experiences on techniques to improve the control of bulk cargoes; (iv) Conducting studies on transit related conditions with the aim of finding a way to minimize transit costs; and (iv) Transferring technology and information to reduce the costs. (Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)<sup>13</sup>*
- *"The provision of technical assistance and support for capacity building is likely to be necessary for some developing countries to implement some of the above proposed commitments" (European Communities and Paraguay, TN/TF/W/35)<sup>14</sup>*

## **2. Disciplines on Fees and Charges**

- (a) Publication of Fees and Charges and Prohibition of Unpublished ones

### Main Measure(s) Proposed

- *"... publication and broad diffusion of fees and charges imposed in respect of transit and prohibiting the collection of fees and charges with no legal basis". (Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)*

---

<sup>11</sup> This reference to S&D treatment is meant to apply to all transit-related measures proposed by those countries and is only listed here to avoid unnecessary repetition.

<sup>12</sup> This reference to S&D treatment is meant to apply to all transit-related measures proposed by those countries and is only listed here to avoid unnecessary repetition.

<sup>13</sup> This reference to TA&CB treatment is meant to apply to all transit-related measures proposed by those countries and will only be listed here to avoid unnecessary repetition.

<sup>14</sup> This reference to TA&CB treatment is meant to apply to all transit-related measures proposed by those countries and is only listed here to avoid unnecessary repetition.

- "A number of proposals already submitted (...), including with regard to the publication of information and requirements for predictability (...) are relevant and should apply to transit." (European Communities and Paraguay, TN/TF/W/35)

#### Suggested Approach/Means

- "Officials in charge must exhibit the legal instrument by which these fees and charges are imposed, when requested by a user." (Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)

#### (b) Periodic Review of Fees and Charges

#### Main Measure(s) Proposed

- "Periodic self-review of the appropriateness of the amount and the number of fees and charges imposed in connection with transit." (Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)

#### Suggested Approach/Means

- "For this purpose, a permanent review mechanism, such as a commission formed by representatives of the sectors involved, could be encouraged". (Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)

#### (c) More Effective Disciplines on Charges for Transit

#### Main Measure(s) Proposed

- "Agree on more effective GATT Article V disciplines on charges for transit. Proposals already submitted to the Negotiating Group in relation to GATT Article VIII rules on fees and charges could be a basis for elaborating parallel provisions on charges for transit. Members could consider how to ensure that all charges for transit are effectively covered." (European Communities and Paraguay, TN/TF/W/35)
- "... the objective remains the elimination of transit fees and charges, where it cannot be associated to services rendered. (...)" Ensure, "through appropriate measures that rules regarding transit and connected activities are executed in accordance with the mandate. This is particularly accurate in relation with the levy of unpublished new or modified fees and charges pertaining to transit." (Paraguay, Rwanda and Switzerland, TN/TF/W/39, listed in the "Common Features" section of their proposal)

#### Suggested Approach/Means

- "Coordination platforms also play an important role in ensuring through appropriate measures that rules regarding transit and connected activities are executed in accordance with the mandate". (Paraguay, Rwanda and Switzerland, TN/TF/W/39, "Common Features" section)

#### Special and Differential Treatment

- *"The extent and the timing of entering into commitments shall be related to the implementation capacities of developing and least-developed Members."<sup>15</sup> (Paraguay, Rwanda and Switzerland, TN/TF/W/39)*

#### Technical Assistance and Capacity Building

- *"The implementation of these proposals will, in many cases require that technical and financial assistance be extended to developing countries, most especially the least developed of them..." (...)" ... Switzerland will make every effort to ensure support and assistance directly related to the nature and the scope of the commitments on order to allow implementation. (...) The modalities and funding for such technical assistance needs to be further explored."<sup>16</sup> (Paraguay, Rwanda and Switzerland, TN/TF/W/39.)*

#### (d) Periodic Exchange Between Neighbouring Authorities

##### Main Measure(s) Proposed

- *"Periodic meeting of neighbouring authorities with the aim to discuss new fees and charges imposed in connection with transit as well as their modification, prior to their entering into force." (Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)*

### **3. Disciplines on Transit Formalities and Documentation Requirements**

#### (a) Periodic Review

##### Main Measure(s) Proposed

- *"Periodically self-review transit formalities [and] transit documentation requirements based on comments from the private sector and other parties." (Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)*
- *Members "be obliged to review their transit procedures to ensure that border requirements for goods in transit are minimized as much as possible" (Korea, TN/TF/W/34)*

##### Suggested Approach/Means

- *"... Members may consider reducing documentary and data requirements for goods in transit. In particular, Members may use a commercial or transport document (e.g., commercial invoice, packing list, etc.) as the descriptive part of the goods declaration. The commercial or transport document may even be accepted as the goods declaration for the consignment concerned. Such usage of commercial or transport document is recommended in the Revised Kyoto Convention". (Korea, TN/TF/W/34)*

##### Build-In Exception(s)/Flexibility

- *Minimize border requirements for transiting goods "as much as possible" (Korea, TN/TF/W/34)*

#### Technical Assistance and Capacity Building

---

<sup>15</sup> This reference to S&D treatment is meant to apply to all transit-related measures proposed by those countries and is only listed here to avoid unnecessary repetition.

<sup>16</sup> This reference to TA&CB treatment is meant to apply to all transit-related measures proposed by those countries and is only listed here to avoid unnecessary repetition.

- To allow for the required review of documentary requirements and fees for transiting goods, *"assistance from appropriate international organizations, notably the WCO, could be helpful and appropriate, and such organizations may also present best practices that developing countries can easily adopt and introduce."* (Korea, TN/TF/W/34).

(b) Reduction/Simplification

Main Measure(s) Proposed

- *"Maintain reasonable transit formalities, [and] transit documentation requirements with a view to minimizing unnecessary delays or restrictions on traffic in transit."* (Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)
- *"Simplification of customs formalities and increased use of electronic and interconnection media for the inspection of goods upon entry to, at subsequent stops within, and on exit from a customs territory ...."* (Peru, TN/TF/W/30)
- *"Simplify and standardize documentation, data requirements and procedures applied to goods and means of transport in transit. A number of proposals already submitted to the Negotiating Group, notably in relation to GATT Article VIII, are relevant. These include pre-arrival processing of transit documents, the use of commercially available information and data, risk management, authorized trader schemes, the establishment of "single windows", and time release measures."* (European Communities and Paraguay, TN/TF/W/35)
- *"Simplified procedures for authorized traders. (...) Development and implementation of automated and internationally standardized procedures for the receipt and submission of information on goods, means of transport and persons prior to their arrival at the border post to enable in-advance selection and risk assessment by the competent authorities". "Special procedures for transit that consist of separate physical lines for border crossing and simplified border formalities"* (Paraguay, Rwanda and Switzerland, TN/TF/W/39, "Common features" section)

(c) Use of International Standards

Main Measure(s) Proposed

- *"Use of international standards applied in most WTO Members to the extent possible, where other relevant international organizations already have set up international standards, with a view to minimizing unnecessary delays or restrictions on traffic in transit."* (Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)
- *"Promotion of the use of international instruments relating to customs transit, including the possibility of acceding to such instruments, where applicable".* (Peru, TN/TF/W/30)
- *"....give careful consideration to the possibility of acceding to international instruments relating to Customs transit if they are in a position to implement them. If this is not possible, when drawing up bilateral or regional agreements with a view to setting up international Customs transit procedure, they should consider the Standards and Recommended Practices of Annex E of the Revised Kyoto Convention of 1999."* (Paraguay, Rwanda and Switzerland, TN/TF/W/39). See also their input under the "Common Features" section of their proposal: *"The contracting parties agree on common customs documentation and procedures of the kind of introducing simplified documents that are aligned to international standards (...)"*. The section also makes reference to

*"Harmonisation of vehicle and loading requirements, as well as the recognition by the contracting parties of international or other agreed vehicle insurances ..."*

- See also the related EC proposal in TN/TF/W/35 as reflected in section M:3:b.

#### Built-in Exceptions/Flexibility

- Use of international standards *"to the extent possible"* (Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)
- Promotion of the use of international instruments relating to transit *"where applicable"* (Peru, TN/TF/W/30).

#### (d) Promotion of Regional Transit Arrangements

##### Main Measure(s) Proposed

- *"Consideration could be given to providing guidance on the main elements of regional transit and their proper implementation and improving regional co-operation on transit. WTO Members could also envisage provisions to take account of international standards and instruments, including when drawing up bilateral or regional instruments"* (European Communities and Paraguay, TN/TF/W/35)
- *" ... the promotion of regional transit arrangements should be part of the clarification and improvement of GATT Article V."* (Paraguay, Rwanda and Switzerland, TN/TF/W/39, "Common Features" section)

#### (e) Simplified and Preferential Clearance for Certain Goods

##### Main Measure(s) Proposed

- *"Introduction of a simplified and preferential treatment for perishable goods to be transited in a territory of a Member, in order for these goods to be able to leave customs and control areas as soon as possible"*. (Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)
- *"... accord to goods in transit that do not require transshipment less burdensome treatment than goods in transit that do require transshipment."* (Korea, TN/TF/W/34)
- *"Treatment of goods in transit is adapted to the risk involved and the special characteristics of goods, making a difference between "normal" goods, "dangerous goods", "perishable goods" and "sensitive goods" that show particular risks to fraud (e.g. tobacco and alcohol)."* (Paraguay, Rwanda and Switzerland, TN/TF/W/39, "Common Features" section)

##### Suggested Approach/Means

- *"If goods in transit do not involve transshipment, a simple goods declaration and a simple set of service fees are sufficient for transit procedures, for there is only a minimal risk that the goods may be released into the transit country, and the services that the transit country authorities provide would be small. (...) for transit goods that undergo transshipment, there may be a need for additional inspection and security measures to prevent the smuggling of goods into the transit country or other illegal activities. In this regard, it would seem reasonable for the transit countries to require a minimal amount of additional paperwork and service fees for transshipment"*



*goods in transit. (...) goods in transit without transshipment should be given more streamlined treatment than goods in transit with transshipment. (...) non-transshipment goods in transit be obliged by only the bare minimum requirements with respect to paperwork and fees. For instance, a Member may choose not to require any documents for goods in transit by sea that does not undergo transshipment, while requiring only a limited set of documents for goods in transit by sea that undergo transshipment such as inbound manifest, declaration form for unloading, and outbound manifest. (...) Reduc[e] the burdens and simplif[y] procedures, such as inspection, data collecting, etc., for transit goods, especially for goods in transit that do not undergo transshipment...". (Korea, TN/TF/W/34)*

#### Built-in Exceptions/Flexibility

- Introduction of simplified and preferential treatment for perishable goods "as soon as possible" (Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)

#### Technical Assistance and Capacity Building

- See also reference to input on TA&CB by Korea in section M:3:a.

#### (f) Limitation of Inspections and Controls

#### Main Measure(s) Proposed

- " ... based on mutual trust between governments and federal governments amongst them, but also between the government of departure and its private sector, the parties are limiting their physical inspection where these are warranted by the actual circumstances or risks. Border authorities avoid to carry out inspections and controls more than once over the same shipment, unless it is absolutely necessary. Also, usually no quality control and no veterinary, medicosanitary or phytosanitary inspection are imposed for goods in transit (except in cases where a risk of contamination exists)". (Paraguay, Rwanda and Switzerland, TN/TF/W/39, "Common Features" section)

#### Built-in Exception(s)/Flexibility

- No quality control and no veterinary, medicosanitary or phytosanitary inspection for goods in transit "except in cases where a risk of contamination exists". (Paraguay, Rwanda and Switzerland, TN/TF/W/39, "Common Features" section)

#### (g) Sealing

#### Main Measure(s) Proposed

- "Identification of goods under the transit procedure (...) to stop any fraudulent importation of goods. As a general rule, identification of these goods is ensured by sealing. In addition to this classic function of seals, electronic seals have been developed to provide for the detection and tracking of trucks." (Paraguay, Rwanda and Switzerland, TN/TF/W/39, "Common Features" section)

#### Suggested Approach/Means

- *"Members may wish to consider Annex E, Standard 3 of the Revised Kyoto Convention that enumerates minimum requirements to be met by Customs seals and fastening."* (Paraguay, Rwanda and Switzerland, TN/TF/W/39, "Common Features" section)

(h) Cooperation and Coordination on Documentation Requirements

Main Measure(s) Proposed

- *"Coordination of documentation requirements among all the authorities involved in traffic in transit, within each Member".* (Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)

(i) Monitoring

Main Measure(s) Proposed

- *Monitoring of transit arrangements to ensure actual implementation. "It is also important that the contracting parties do not enforce unilateral rules and regulations affecting goods in transit where common regulations should prevail. It is recommended that all parties incorporate measures relating to transit into their arrangements."* (Paraguay, Rwanda and Switzerland, TN/TF/W/39, listed in the "Common Features" section of their proposal)

Suggested Approach/Means

- *"... appointment of national transit coordinators", introduction of "performance indicators (e.g., target clearance times)", setting up of "public private partnerships to manage and monitor the arrangement." The non-enforcement of unilateral rules and regulations affecting goods in transit would "need to be addressed in regular meetings between transit coordinators, or contracting parties. Coordination platforms also play an important role in ensuring through appropriate measures that rules regarding transit and connected activities are executed in accordance with the mandate"* (Paraguay, Rwanda and Switzerland, TN/TF/W/39, "Common Features" section) See also their related input listed in section M:2:c, second bullet.

(j) Bonded Transport Regime/Guarantees

Main Measure(s) Proposed

- *"Introduction of a bonded transport regime that would allow goods to be transited in a territory of a Member without payment of customs duties, transit duties or other charges, accompanied with a provision of appropriate security".* (Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)
- *"Introduce more effective disciplines on the level, nature and management of guarantees required from transit operators, including rules to ensure that they are not used as an instrument to raise revenue".* (European Communities and Paraguay, TN/TF/W/35)
- *" ... arrangements foresee the use of an internationally or regionally valid guarantee system in order to avoid provisional taxation while securing revenue in case of inland diversion of goods. Usually, an individual guarantee is provided for each transport movement, covering the full amount of customs duties and other charges, like VAT or excise duties. The amount is based upon the highest rate applicable to the goods in the country of departure. For certain goods, involving greater risks, special rates apply or particular types of collaterals are required. Adopting an*

*efficient guarantee system (...) through the use of a single guarantee in all the transit countries, and where the guarantee is renewable for subsequent consignments once a previous one is proved to have reached its destination.*" (Paraguay, Rwanda and Switzerland, TN/TF/W/39, "Common Features" section)

#### Suggested Approach/Means

#### **4. Improved Cooperation and Coordination**

##### (a) Amongst Authorities

#### Main Measure(s) Proposed

- *"Establishment of a cross border cooperation scheme that would enable landlocked Members and their neighbouring Members to consult and cooperate on the issue of traffic in transit (including, to the extent possible, the establishment of a common border check point to minimize the possibility of duplicated formalities pertaining to traffic in transit"* (Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)
- *"Improve co-operation and co-ordination between all concerned agencies in each WTO Member and across borders. In many cases solutions to transit problems can only be found through regional collaboration since it is at the regional level that a large part of the problems related to unnecessary hindrances to transit are experienced."* (European Communities and Paraguay, TN/TF/W/35)
- *".... cooperation and coordination between authorities (...). This cooperation and coordination can take different forms reaching from the simple harmonisation of border crossing procedures and working hours to shared infrastructure (one-stop border posts) and delegated competencies (both exit and entry formalities are handled by the same authority). Under these (...) arrangements, the contracting parties set up communication systems to exchange information and fight crime in the border area".* (Paraguay, Rwanda and Switzerland, TN/TF/W/39, Common Features" section)

#### Built-in Exception(s)/Flexibility

- Establishment of a common border check point *"to the extent possible"* (Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)

##### (b) Between Authorities and the Private Sector

#### Main Measure(s) Proposed

- *"Providing opportunities for the private sector to comment on the transit regime, with a view to minimizing unnecessary delays or restrictions on traffic in transit."* (Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)

#### **5. Operationalization and Clarification of Terms**

#### Main Measure(s) Proposed

- *"Operationalize the existing commitment in Article V to grant freedom of transit through the territory of each Member via the "routes most convenient for international transit", for example*

*by leaving the choice of route and means of transport to the operator.*" (European Communities and Paraguay, TN/TF/W/35)

- *"Clarify and improve terminology to reduce perceived uncertainty and avoid loopholes, for example with regard to the definition of "goods (including baggage)" in GATT Article V, paragraph 1".* (European Communities and Paraguay, TN/TF/W/35)

**VI. ANNEX – ARTICLE V, VIII AND X-RELATED PROPOSALS BY SPONSORS**

<b>Symbol (TN/TF/...)</b>	<b>Sponsor(s)</b>	<b>Title</b>
W/6 and Corr.1	European Communities	Clarifications and Improvements to GATT Article X (“Publication and Administration of Trade Regulations”)
W/7 and Corr.1	Korea	Clarification of Article X of the GATT: Publication and Availability of Information and Prior Commenting Period on Core Measures
W/8 and Add.1, and Corr.1	Japan, Mongolia, Pakistan, Peru, and Chinese Taipei	Trade Facilitation: Proposals to Clarify and Improve GATT Article X
W/9 and Add.1	Canada and Australia	Possible Commitments on Advance Rulings
W/10	Chinese Taipei	Trade Facilitation: Some Possible Measures to Improve GATT Articles VIII and X
W/11	United States	Introduction to Proposals by the United States of America
W/12	United States	Advance Binding Rulings
W/13	United States	Proposal on Transparency and Publication
W/14	United States	Fees
W/15	United States	Express Shipments
W/17 and Add.1	Japan, Mongolia, Peru and Chinese Taipei	Trade Facilitation: Proposals to Clarify and Improve GATT Article VIII
W/18	Korea	Clarification and Improvement of Article VIII of the GATT: Reducing Administrative Burdens
W/19	Australia and Canada	Possible Commitment on Enhanced Clearance Procedures – Provision for Collateral or Monetary Security – A Proposal by Australia and Canada
W/20	Canada	Possible Commitments on Border Agency Coordination – A Proposal by Canada
W/21	United States	Release of Goods
W/22	Uganda and United States	Consularization – Proposal by Uganda and the United States
W/23	European Communities and Australia	Clarification and Improvements to GATT Article VIII: Provisions on Fees and Charges
W/24	New Zealand	Proposals to Clarify and Improve Articles VIII and X
W/25	Chinese Taipei	Trade Facilitation: Possible Measures to Improve GATT Article VIII on Fees
W/26	China	Proposal on Clarification and Improvement of GATT Article X

<b>Symbol (TN/TF/...)</b>	<b>Sponsor(s)</b>	<b>Title</b>
W/28 and Add.1	Bolivia, Japan, Kyrgyz Republic, Mongolia and Paraguay	Trade Facilitation: Improvement of Certain Elements Contained in GATT Article V
W/30	Peru	Proposals relating to GATT Articles, V, VIII and X, and Co-operation and Technical and Financial Assistance
W/31	Hong Kong, China	Proposal for Improving GATT Article VIII
W/32	Hong Kong, China	Proposal for Improving GATT Article X
W/34	Korea	Improvement of GATT Article V: Minimization of Burden on Cargo in Transit and Differentiation of Cargo undergoing Transshipment
W/35 and Add.1	European Communities and Paraguay	Freedom of Transit
W/36	New Zealand, Norway and Switzerland	Clarifications and improvements in GATT Article VIII - (Fees and formalities connected with importation and exportation) - Proposal on Simplification, Reduction and Standardization of Trade Documents
W/37	European Communities	Technical Assistance and Support for Capacity Building
W/38	Singapore	Procedural Elements for Advance Rulings
W/39	Paraguay, Rwanda, and Switzerland	Improvement of Elements related to Transit

\_\_\_\_\_