

Negotiating Group on Trade Facilitation

**WTO NEGOTIATIONS ON TRADE FACILITATION
COMPILATION OF MEMBERS' PROPOSALS**

Revision

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 eighth revision of the compilation document adds the following submissions:
- TN/TF/W/107 from the European Communities, Korea and Switzerland
 - TN/TF/W/108 from the European Communities and Chinese Taipei
 - TN/TF/W/109 from the European Communities, Chinese Taipei and Switzerland
 - TN/TF/W/110 from the European Communities, Mongolia, Chinese Taipei and Switzerland
 - TN/TF/W/111 from New Zealand
 - TN/TF/W/112 from Hong Kong, China, Korea and Switzerland
 - TN/TF/W/113 from Armenia, the European Communities, the Kyrgyz Republic, Mongolia, the Former Yugoslav Republic of Macedonia and the Republic of Moldova
 - TN/TF/W/114 from Japan, Mongolia, and Switzerland
 - TN/TF/W/115 from Hong Kong, China, Japan, Korea, Mongolia and Switzerland
 - TN/TF/W/116 from Japan and Mongolia
 - TN/TF/W/117 from Japan, Korea, Mongolia and Switzerland
 - TN/TF/W/118 from Chinese Taipei
 - TN/TF/W/119 from Mongolia, Paraguay, Rwanda and Switzerland
 - TN/TF/W/120 from Turkey
 - TN/TF/W/121, TN/TF/W/122 and TN/TF/W/123 from India
 - TN/TF/W/124/Rev.1 from Hong Kong, China and Switzerland
 - TN/TF/W/125 from Australia, Canada and the United States
 - TN/TF/W/126 from New Zealand
 - TN/TF/W/127 from Cuba

- TN/TF/W/128 from Canada

2. Modifications were further made on the structural side, listing third generation proposals in a separate section.

II. INDEX OF PROPOSALS COMPILED

Proposals on how to clarify and improve GATT Articles V, VIII and X

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III. SUMMARY TABLE OF MAIN MEASURES PROPOSED

Related to GATT Articles V, VIII and X

Main Areas Covered	Groups of Measures Falling Under Those Areas	Sub-Categories of Measures Falling Under Those Groups (Where Applicable)	Main GATT Article(s) Concerned	First Generation Proposals	Second Generation Proposals	Third Generation Proposals
A. PUBLICATION AND AVAILABILITY OF INFORMATION	1. Publication and Notification of Trade Regulations and of Penalty Provisions (W/6, W/7, W/8, W/17, W/26, W/30, W/32, W/45, W/96; See also references in W/13, W/14, W/17, W/23, W/24, W/75, W/96, W/114)		Article X with some proposals also relating to Article VIII	W/6, W/7, W/8, W/17, W/26, W/30, W/32, W/45	W/96	W/114
	2. Internet Publication (W/13, W/70, W/89; See also references in W/45 and W/75)	(a) Internet "publication" of the elements set out in Article X of GATT 1994 (W/13, W/70, W/89)	Article X	W/13, W/70	W/89	
		(b) Internet "publication" of specified information setting forth the procedural sequence and other requirements for importing goods into a Member's territory (W/13)	Article X	W/13		
	3. Notification of Trade Regulations (W/7, W/8; See also W/24 and W/96)		Article X with some proposals also relating to Article VIII	W/7, W/8		
	3. Establishment of Enquiry Points /SNFP/ Information Centers (W/6; W/7, W/8, W/10, W/26, W/30, W/45, W/70, W/96, W/114; See also reference in W/75)		Article X	W/6, W/7, W/8, W/10, W/26, W/30, W/45, W/70	W/96	W/114
	4. Other Measures to Enhance the Availability of Information (W/40, W/70)		Article X	W/40, W70		
B. TIME PERIODS BETWEEN PUBLICATION AND IMPLEMENTATION	1. Interval between Publication and Entry into Force (W/6, W/7, W/8, W/26, W/30, W/102, W/115; See also references in W/23 and W/75)		Article X with some proposals also relating to Article VIII	W/6, W/7, W/8, W/26, W/30	W/102	W/115

C. CONSULTATION AND COMMENTING ON NEW AND AMENDED RULES	1. Prior Consultation and Commenting on New and Amended Rules (W/6, W/7, W/8, W/24, W/26, W/32, W/70, W/102, W/115; See also reference in W/75)		Article X	W/6, W/7, W/8, W/24, W/26, W/32, W/70	W/102	W/115
	2. Information on Policy Objectives Sought (W/6, W/8, W/30, W/102)		Article X	W/6, W/7, W/30	W/102	W/115
D. ADVANCE RULINGS	1. Provision of Advance Rulings (W/8, W/9, W/10, W/12, W/38, W/45, W/70, W/80, W/125; See also W/66)		Article X	W/8, W/9, W/10, W/12, W/38, W/45, W/70	W/80, W/120	W/125
E. APPEAL PROCEDURES	1. Right of Appeal (W/6, W/8, W/97, W/116)		Article X	W/6, W/8	W/97	W/116
	2. Release of Goods in Event of Appeal (W/6; See also references in W/19, W/21 and W/30)		Article X with some proposals also relating to Article VIII	W/6		
	3. Appeal Mechanism in a Customs Union (W/78, W/122)		Article X	W/78		W/122
F. OTHER MEASURES TO ENHANCE IMPARTIALITY, NON-DISCRIMINATION AND TRANSPARENCY	1. Uniform Administration of Trade Regulations (W/8)		Article X	W/8		
	2. Maintenance and Reinforcement of Integrity and Ethical Conduct Among Officials (W/8, W/60)	(a) Establishment of a Code of Conduct (W/8, W/60)	Article X	W/8, W/60		
		(b) Computerized System to Reduce/Eliminate Discretion (W/60)		W/60		
		(c) System of Penalties (W/60)		W/60		
		(d) Technical Assistance to Create/Build up Capacities to Prevent and Control Customs Offences (W/60)		W/60		
		(e) Appointment of Staff for Education and Training (W/8)		W/8		
		(f) Coordination and Control Mechanisms (W/60)		W/60		
	3. Import Alerts/Rapid Alerts (W/78, W/122)		Article X	W/78		W/122
4. Detention (W/78, W/122)		Article X	W/78		W/122	
5. Test Procedures (W/78, W/122)		Article X	W/78		W/122	

G. FEES AND CHARGES CONNECTED WITH IMPORTATION AND EXPORTATION	1. General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation (W/8, W/14, W/17, W/23, W/25, W/30, W/31, W/70, W/94, W/96, W/107; See also reference in W/75)	(a) Specific Parameters for Fees/Charges (W/14, W/23, W/25, W/30, W/70, W/94, W/107; See also W/75)	Article VIII	W/14, W/23, W/25, W/30, W/70	W/94	W/107
		(b) Publication/Notification of Fees/Charges (W/14, W/17, W/70, W/94, W/96, W/107; See also W/75)	Article VIII	W/14, W/17, W/70	W/94, W/96	W/107
		(c) Prohibition of Collection of Unpublished Fees and Charges (W/8, W/17, W/70; See also W/75)	Article VIII with some proposals also relating to Article X	W/8, W/17, W/70		
		(d) Periodic Review of Fees/Charges (W/17, W/25, W/31, W/70, W/94, W/107; See also W/75)	Article VIII	W/17, W/25, W/31, W/70	W/94	W/107
		(e) Automated Payment (W/30)	Article VIII	W/30		
	2. Reduction/Minimization of the Number and Diversity of Fees/Charges (W/23, W/24, W/31)		Article VIII	W/23, W/24, W/31		
H. FORMALITIES CONNECTED WT. IMPORTATION AND EXPORTATION	1. Disciplines on Formalities/ Procedures and Data /Documentation Requirements Connected with Importation and Exportation (W/17, W/18, W/24, W/30, W/31, W/36, W/45, W/46, W/62, W/67, W/70, W/77, W/85, W/88, W/90, W/92, W/100, W/108, W/110, W/112, W/121, W/124/Rev.1; See also references in W/20, W/61, W/69, W/75 and 105).	(a) Non-discrimination (W/46)	Article VIII	W/46		
		(b) Periodic Review of Formalities and Requirements (W/17, W/31, W/46, W/124/Rev.1; See also W/75)	Article VIII	W/17, W/31, W/46		W/124/Rev.1
		(c) Reduction/Limitation of Formalities and Documentation Requirements (W/17, W/24, W/31, W/36, W/46, W/85, W/124/Rev.1; See also W/75)	Article VIII	W/17, W/24, W/31, W/36, W/46, W/85		W/124/Rev.1
		(d) Use of International Standards (W/17, W/18, W/30, W/36, W/46, W/62, W/67, W/70, W/85)	Article VIII	W/17, W/18, W/30, W/36, W/45, W/46, W/62, W/67, W/70	W/85	
		(e) Uniform Customs Code (W/46)	Article VIII	W/46		
		(f) Acceptance of Commercially Available Information and of Copies (W/17, W/18, W/36, W/45, W/46, W/92, W/112)	Article VIII	W/17, W/18, W/36, W/45, W/46	W/92	W/112
		(g) Automation (W/30, W/45)	Article VIII	W/30, W/45		
		(h) Single Window/One-time Submission (W/17, W/18, W/30, W/45, W/46, W/70, W/100; See also references in W/20, W/58, W/69 and W/105)	Article VIII	W/17, W/18, W/30, W/45, W/46, W/70	W/100	
		(i) Elimination of Pre-Shipment Inspection (W/46, W/90, W/108)	Article VIII	W/46	W/90	W/108
		(j) Phasing out Mandatory Use of Customs Brokers (W/46, W/88, W/110)	Article VIII	W/46	W/88	W/110
		(k) Same Border Procedures Within a Customs	Article VIII	W/77		W/121

		Union (W/77, W/121)				
		(l) Testing Methods Based on Specific Product Features (W/77)	Article VIII	W/77		
		(m) Uniform Forms and Documentation Requirements Relating to Import Clearance within a Customs Union (W/77, W/121)	Article VIII	W/77		W/121
		(n) Option to Return rejected Goods to the Exporter (W/77)	Article VIII	W/77		W/121
I. CONSULARIZATION	1. Prohibition of Consular Transaction Requirement (W/22, W/23, W/25, W/36, W/86, W/104)		Article VIII	W/22, W/23, W/25, W/36	W/86	W/104
J. BORDER AGENCY COOPERATION	1. Coordination of Activities and Requirements of all Border Agencies (W/20, W/30, W/46, W/83, W/128; See also reference in W/48)		Article VIII	W/20, W/30, W/46	W/83	W/128
K. RELEASE AND CLEARANCE OF GOODS	1. Expedited/Simplified Release and Clearance of Goods (W/10, W/15, W/17, W/18, W/19, W/21, W/30, W/44, W/45, W/46, W/49, W/53, W/70, W/84, W/87, W/91, W/98, W/99, W/109, W/117, W/121; See also references in W/6, W/61, W/65, W/69 W/75, W/77)	(a) Pre-arrival Clearance (W/10, W/17, W/18, W/30, W/46, W/70, W/98, W/117); See also W/45, W/53 and W/69.	Article VIII	W/10, W/17, W/18, W/30, W/46, W/53, W/70	W/98	W/117
		(b) Expedited Procedures for Express Shipments (W/10, W/15, W/30, W/44, W/45, W/91; See also W/40 and W/65)	Article VIII	W/10, W/15, W/44, W/30, W/45	W/91	
		(c) Risk Management/Analysis, Authorized Traders (W/10, W/17, W/18, W/30, W/45, W/46, W/49, W/77, W/87, W/99, W/109, W/121; See also W/42, W/61, W/75)	Article VIII	W/10, W/17, W/18, W/30, W/46, W/49, W/77	W/87, W/99	W/109, W/121
		(d) Post-clearance Audit (W/10, W/18, W/30, W/49; See also W/55 and W/69)	Article VIII	W/10, W/18, W/30, W/49		
		(e) Separating Release from Clearance Procedures (W/19, W/21, W/30, W/84; See also reference in W/6)	Article VIII with some proposals also relating to Article X	W/19, W/21, W/30	W/84	
		(f) Other Measures to Simplify Customs Release and Clearance (W/46, W/84)	Article VIII	W/46	W/84	
	2. Establishment and Publication of Average Release and Clearance Times (W/8, W/18, W/45, W/46, W/101; See also reference in W/6)		Article VIII with some proposals also relating to Article X	W/8, W/18, W/45, W/46	W/101	

L. TARIFF CLASSIFICATION	1. Objective Criteria for Tariff Classification (W/24, W/46, W/111, W/126)		Article VIII with some proposals also relating to Article X	W/24, W/46	W/111	W/126
M. MATTERS RELATED TO GOODS TRANSIT	1. Non-Discrimination and Policy Objectives (W/28, W/35, W/64, W/79, W/113, W/127)	(a) Strengthened Non-discrimination (W/28, W/35, W/64, W/79, W/113, W/127)	Article V	W/28, W/35	W/79	W/64, W/113, W/127
		(b) Legitimate Policy Objectives (W/28, W/35, W/64, W/79, W/113)	Article V	W/35	W/79	W/113
	2. Disciplines on Fees and Charges (W/28, W/35, W/39, W/70, W/79, W/113; See also references in W/75)	(a) Publication of Fees and Charges and Prohibition of Unpublished ones (W/28, W/35, W/79, W/113)	Article V	W/28, W/35	W/79	W/113
		(b) Periodic Review of Fees and Charges (W/28, W/79, W/113)	Article V	W/28	W/79	W/113
		(c) More effective Disciplines on Charges for Transit – Reduction/Simplification (W/35, W/39, W/70, W/79, W/113)	Article V	W/35, W/39	W/79	W/113
		(d) Periodic Exchange between Neighbouring Authorities (W/28)	Article V	W/28		
	3. Disciplines on Transit Formalities and Documentation Requirements (W/28, W/30, W/34, W/35, W/39, W/47, W/79, W/85, W/113, W/119; See also references in W/75)	(a) Publication (W/79, W/113)	Article V		W/79	W/113
		(b) Periodic Review (W/28, W/34, W/79, W/113)	Article V	W/28, W/34	W/79	W/113
		(c) Reduction/Simplification (W/28, W/30, W/35, W/39, W/79, W/113)	Article V	W/28, W/30, W/35, W/39	W/79	W/113, W/119
		(d) Harmonization/Standardization (W/28, W/30, W/39, W/79, W/85, W/113, W/119; See also W/35)	Article V	W/28, W/30	W/79	W/113, W/119
		(e) Promotion of Regional Transit Arrangements (W/35, W/39, W/47, W/79, W/113, W/119)	Article V	W/35, W/39, W/47	W/79	W/113, W/119
		(f) Simplified and Preferential Clearance for Certain Goods (W/28, W/34, W/39, W/47, W/79, W/113, W/119)	Article V	W/28, W/34, W/39, W/47	W/79	W/113, W/119
		(g) Limitation of Inspections and Controls (W/39, W/119; See also W/75)	Article V	W/39		W/119
		(h) Sealing (W/39; See also W/75)	Article V	W/39		
		(i) Cooperation and Coordination on Document Requirements (W/28)	Article V	W/28		
		(j) Monitoring (W/39, W/119)	Article V	W/39		W/119
4. Improved Coordination and Cooperation (W/28, W/35, W/39, W/70, W/79; W/113; See also references in W/75)	(a) Amongst Authorities (W/28, W/35, W/39, W/70, W/79, W/113)	Article V	W/28, W/35, W/39, W/70	W/79	W/113	
	(b) Between Authorities and the Private Sector (W/28, W/79, W/113)	Article V	W/28	W/79	W/113	

	5. Operationalization and Clarification of Terms (W/35, W/47, W/70, W/79, W/113)		Article V	W/35, W/47 W/70	W/79	W/113
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Related to cooperation between customs and other authorities on TF and Customs Compliance

Main Areas Covered	Groups of Measures Falling Under Those Areas	Sub-Categories of Measures Falling Under Those Groups (Where Applicable)	First Generation Proposals	Second Generation Proposals	Third Generation Proposals
EXCHANGE AND HANDLING OF INFORMATION	1. Multilateral Mechanism for the Exchange and Handling of Information (W/57, W/68, 103, W/123)		W/57, W/68	W/103	W/123

IV. PROPOSALS COMPILED

Related to Articles V, VIII and X of the GATT

IV.1 FIRST AND SECOND GENERATION PROPOSALS

A. PUBLICATION AND AVAILABILITY OF INFORMATION

1. Publication of Trade Regulations

Main GATT Article(s) Concerned

- Articles VIII and X

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.

- *"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)
- *"... 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)
- Trade regulations listed in paragraph 1 of Article X. When determining the scope of trade regulations to publish, *"not only Article X itself but also proposals in documents TN/TF/W/8 and TN/TF/W/6 may be useful."* (Turkey, TN/TF/W/45)
- *"...all laws, regulations, judicial decisions and administrative rulings of general application pertaining to or affecting trade in goods in such a manner provided for in Article X:1, so as to enable governments and traders to become acquainted with them. The information to be articulated and published includes:*
 - *Procedures of border agencies (including port, airport and other entry-point procedures and relevant forms and documents).*
 - *Rate of duties imposed on or in connection with importation or exportation (including applied tariff rates).*
 - *Decisions and examples of customs classification.*
 - *Import and export restrictions.*
 - *Fees and charges imposed on or in connection with importation or exportation.*
 - *Penalty provisions against breaches of import and export formalities.*
 - *Appeal procedures.*
 - *Agreements with any other country or countries relating to the above issues."* (Chinese Taipei, Costa Rica, EC, Japan, Mongolia, New Zealand, Singapore and Switzerland, TN/TF/W/96)
- *Availability of publication methods: Making available to other Members and traders, information on enquiry points and medium (e.g., website address) through which information is published.* (Chinese Taipei, Costa Rica, EC, Japan, Mongolia, New Zealand, Singapore and Switzerland, TN/TF/W/96)
- 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 references in Egypt's national experience paper TN/TF/W/75. See further input in TN/TF/W/96 as reflected in section A:1.

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,¹ through widely accessible means²;" 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)
- "These regulations should be published in an easily accessible medium from which it should be practical to reach the contact person who would be capable of providing additional and detailed information. Thus, the best address would be official websites of national trade enquiry points." (Turkey, TN/TF/W/45)

¹ "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."

² "Widely accessible refers to, for example, official gazette or an internet website".

- *"Publication methods: Ensure that information be easily accessible in a non-discriminatory manner via an officially designated medium, including official gazette, official journal and where feasible and possible, official website."* (Chinese Taipei, Costa Rica, EC, Japan, Mongolia, New Zealand, Singapore and Switzerland, TN/TF/W/96)

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)
- *"Treatment of confidential information: Publication of information 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."* (Chinese Taipei, Costa Rica, EC, Japan, Mongolia, New Zealand, Singapore and Switzerland, TN/TF/W/96)

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

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. Internet Publication

- (a) Internet Publication of the Elements set out in Article X of GATT

Main GATT Article(s) Concerned

- Article X

Main Measure(s) Proposed

- "*Internet 'publication' of the elements set out in Article X of GATT 1994*" (United States, TN/TF/W/13)
- "*... publication of regulations, procedures, documents, formats and rulings issued by Customs on classification, value, and origin on an official web page and the establishment of a national coordination point to enable agencies dealing with international trade to communicate more efficiently. This would make it possible inter alia to respond more efficiently to enquiries concerning trade-related matters.*" (Chile, TN/TF/W/70)

- Summarised elements of a commitment on internet publication: (i) "*Internet as Publication Method: Internet publication as an available method for Members to meet current publication obligations under Article X of GATT 1994*". (ii) "*Internet Publication of Import Procedures: Members provide an Internet page setting out requirements for importation and exportation of goods, with electronic access to procedural requirements and materials, such as documents necessary to complete an import or export transaction.*" (Chile, Peru and the United States, TN/TF/W/89)
- See also reference in Egypt's national experience paper TN/TF/W/75.

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.*"³ (United States, TN/TF/W/13)
- "*Special and differential treatment, as established in the negotiating mandate, is a key aspect that should be appropriately addressed under each element of the proposal.*" (Chile, TN/TF/W/70)
- Elements identified for further addressing: "*Special and Differential Treatment and Technical Assistance elements, including: (i) Assess situation; identify individual specific needs and priorities concerning the development and maintenance of website/Internet page, links to information; (ii) Explore opportunities to implement through delegation of function (i.e., regional and international organizations); (iii) Explore availability and effective utilization of private sector assistance resources; (iv) Deferred or temporary implementation of commitment.*" (Chile, Peru and the United States, TN/TF/W/89)

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*"⁴ (United States, TN/TF/W/13)
- See also relevant input by Chile, Peru and the United States as reflected in section A:3 above.

(b) Internet Publication of Specified Information

Main GATT Article(s) Concerned

- Article X

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)

³ Applies also to section A:3:b.
⁴ Applies also to section A:3:b.

Special and Differential Treatment

See reference to relevant input by the United States as reflected in section A:3(a).

Technical Assistance and Support for Capacity Building

See reference to relevant input by the United States as reflected in section A:3(a).

3. Notification of Trade Regulations

Main GATT Article(s) Concerned

- Articles VIII and X

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:c.

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.

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)

4. Establishment of Enquiry Points/Single National Focal Points/Information Centers

Main GATT Article(s) Concerned

- Article X

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 interested 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 laws⁵, 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)
- Establish *"national trade enquiry points (...)"*. A *"parallel work may be effected at the WTO through a trade portal. The system suggested (...) is similar to the system provided at the "International Portal on Food Safety, Animal & Plant Health" (www.ipfsah.org) (...)"*. (Turkey, TN/TF/W/45)
- *"... establishment of a national coordination point to enable agencies dealing with international trade to communicate more efficiently. This would make it possible inter alia to respond more efficiently to enquiries concerning trade-related matters"*. (Chile, TN/TF/W/70)
- *"Establish enquiry points which are responsible for providing or for facilitating access to trade-related information or documents to governments and traders on a non-discriminatory basis."*

⁵ "... 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."

- *Notification of enquiry points: Notify the contact information of the enquiry points to the WTO in order to make such information available to the other Members and interested parties.*" (Chinese Taipei, Costa Rica, EC, Japan, Mongolia, New Zealand, Singapore and Switzerland, TN/TF/W/96)
- See also reference in Egypt's national experience paper TN/TF/W/75.

Suggested Approach/Mean

- *"... 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)
- 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)
- *"Developed countries may publish all regulations/legislation in one of the WTO official languages. However, (...) [r]equesting the same from developing and least-developed countries would be demanding too much and would be unfair. Requesting the summaries of all relevant regulations in one of the WTO languages may be one approach. These kinds of summaries are useful if [one knows] what [one is] looking for (...). In other cases, "covering different provisions on different areas, a simple summary might not be helpful and (...) may be more difficult than translating the regulation completely. (...) A useful approach may be the preparation of a format, which will include: the country name, the name of legislation, responsible authority, a short summary if so wished, and keywords. (...) "... the establishment of a list of keywords to be adopted by all WTO Members (...) would [be useful] (...). A comprehensive keywords-list may include some general words such as "customs", "duty", "restriction", "inspection" "processing", "export", "import", or sector specific words such as "textiles", "machinery" etc., and any trader looking for information on a country's inspection policy may reach the relevant documents by accessing this country's national enquiry point's website and searching for regulations by these keywords. Once the traders reach the relevant regulation they can seek the assistance of different references, namely national or international business organizations, their own national authorities or official trade representatives, for the translation. In addition, when developed countries translate regulations for their own need, they may provide these unofficial translations for general use."* (Turkey, TN/TF/W/45)

Addressee(s)/Beneficiaries

- *"...for use of governments and traders"* (European Communities, TN/TF/W6)
- WTO Members and interested parties (Korea, TN/TF/W/7)
- *"individuals, enterprises and WTO Members"* (China, TN/TF/W26)

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, as well as to input by Chile in section A:3:a.

Technical Assistance and Capacity Building

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

5. Other Measures to Enhance the Availability of Information

Main GATT Article(s) Concerned

- Article X

Main Measure(s) Proposed

- *" (...) creation on the official WTO web page of a 'trade facilitation' link listing all of the Member countries, and providing further links to relevant national websites in the different areas. Members also need to have a 'list or inventory' that could contain the facilitation measure applied and the bodies involved in its implementation. This could be supplemented by an e-mail account (...) with the address of the Member concerned. At the national level, each Member would identify an address or trade office that could answer any queries within a reasonable period of time to be determined."* (Argentina, TN/TF/W/40)
- *"The creation of an official WTO web page on trade facilitation, with links to Members' official pages, containing relevant information on the subject would be an appropriate step".* (Chile, TN/TF/W/70)
- *"... establishment of a register which should clearly specify the circumstances under which each Member's legislation establishes a partial or complete ban on disclosure or publication of a trade-related regulation, including executive summaries that enable interested parties to understand the core elements of a specific trade regulation."* (Chile, TN/TF/W/70)

Suggested Approach/Means

- *"Each Member should provide the Secretariat with a list of websites containing detailed (and updated) information under Article X of the GATT 1994."* (Argentina, TN/TF/W/40)

Special and Differential Treatment

- See references to input on S&D by Chile in section A:3:a.

Technical Assistance and Capacity Building

- *"Members that do not have a computerized database can request the technical assistance and capacity-building support needed to fulfil this requirement within a time-limit to be determined. (...) In the case of developing countries and LDCs whose language is not one of the three official*

WTO languages, the possibility of requesting the necessary technical assistance (from the developed countries, from the WTO, and/or from other bodies offering their services) should be envisaged so that the regulations can be translated into at least one of the official languages of the WTO. A timetable should be established to that end. The WTO Secretariat, or the entity offering technical assistance, could also act as a focal point in the consultations among Members with respect to information provided for under Article X of the GATT 1994 from Members that have requested assistance and are therefore involved in a capacity-building and technical assistance programme. This type of assistance would serve the dual purpose of helping developing country and LDC Members both internally, by providing them with technical assistance in computerizing and translating the regulations and decisions referred to in Article X through the multilateral system of which the country is a member, and externally, by facilitating trade flows with those countries." (Argentina, TN/TF/W/40)

B. TIME PERIOD BETWEEN PUBLICATION AND IMPLEMENTATION

1. Interval between Publication and Entry into Force

Main GATT Article(s) Concerned

- Articles VIII and X

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.
- "*... 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)
- "*Time period between publication and implementation: Accord an adequate time period between the publication of new or amended laws and regulations (including their summary or draft) and their entry into force, so as to allow time for traders to become acquainted with and well prepared for compliance, while taking into account the restraints accruing to differing legislative and administrative situations among Members*". (Costa Rica, EC, Japan, Korea, Mongolia, New Zealand, Singapore and Switzerland, TN/TF/W/102)
- See also reference in Egypt's national experience paper TN/TF/W/75.

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.

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 GATT Article(s) Concerned

- Article X

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/W/32)

- "... establishment of contact points and consultation mechanisms laying down procedures and timeframes for response, including the use of web pages. The advantage of implementing such measures is to provide interested parties with a forum to share their comments and views on decisions of general application issued by Customs." (Chile, TN/TF/W/70)
- "Consultation and commenting on new and amended rules: Provide opportunities with reasonable time table for interested parties to comment on proposed introduction or amendment of trade-related laws, regulations and administrative rulings." (Costa Rica, EC, Japan, Korea, Mongolia, New Zealand, Singapore and Switzerland, TN/TF/W/102)
- "Holding regular consultations between border agencies and traders." (Costa Rica, EC, Japan, Korea, Mongolia, New Zealand, Singapore and Switzerland, TN/TF/W/102)
- See also reference in Egypt's national experience paper TN/TF/W/75.

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)
- "*Legitimate policy objectives: Above measures not to impede the pursuance of legitimate policy objectives by Members as set out in GATT Articles XX and XXI.*" (Costa Rica, EC, Japan, Korea, Mongolia, New Zealand, Singapore and Switzerland, TN/TF/W/102)

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)
- See also references to S&D by Chile in TN/TF/W/70.

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 GATT Article(s) Concerned

- Article X

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)
- "*Information on policy objectives: When consulting on proposed rules and procedures, provide information on policy objectives sought.*" (Costa Rica, EC, Japan, Korea, Mongolia, New Zealand, Singapore and Switzerland, TN/TF/W/102)

Built-in Exception(s)/Flexibility

- *"Legitimate policy objectives: Above measures not to impede the pursuance of legitimate policy objectives by Members as set out in GATT Articles XX and XXI."* (Costa Rica, EC, Japan, Korea, Mongolia, New Zealand, Singapore and Switzerland, TN/TF/W/102)

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 GATT Article(s) Concerned

- Article X

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)
- Advance rulings covering *"the main elements of import requirements, such as tariff classification and applicable duties and taxes"* and *"tariff preferences"*. The provisions on advance rulings in the Agreement on Rules of Origin *"might serve as a model to be applied more generally."* (Turkey, TN/TF/W/45)
- *"Establish and make public mechanisms and procedures so that both domestic and foreign trade operators can seek rulings from customs administrations on matters such as the classification, value and origin of imported goods. This would improve the predictability and transparency of trade."* (Chile, TN/TF/W/70)

- Common elements of existing proposals to provide advance rulings: *"An advance ruling is issued in writing, in a time-bound manner after receipt of the ruling request, provided all elements necessary have been submitted.*

An advance ruling is issued to a person with justifiable cause (i.e., an exporter, importer or producer) that has made written request accompanied by relevant factual and supporting material.

An advance ruling applicant may withdraw or amend its request prior to being issued a ruling.

An advance ruling is valid for at least a specified time, provided the relevant facts and conditions remain the same, or until such time a ruling is modified or revoked by the issuing authority.

An advance ruling recipient is provided written notification of a modification or revocation, and reasons for it, and has access to a review or appeal process.

Appropriate treatment is provided for confidential information."

Elements identified for further addressing

(i) *"Scope of Advance Rulings: subject matter for advance rulings (e.g., tariff classification, valuation, duty drawbacks, other matters); (ii) Transparency of Advance Rulings: (e.g, public availability, access by other administrations); (iii) Special and Differential Treatment (see S&D section); (iv) Technical Assistance."* (See TA&CB section). (Australia, Canada and the United States, TN/TF/W/80)

- *"Main elements of advance ruling by customs administrations*

An 'advance ruling on tariff' means a binding official decision, which provides the applicant with a tariff classification accorded to a particular good within a period.

An 'advance ruling on origin' means a binding official decision, which provides an assessment to the applicant of the origin accorded to a particular good within a period.

An exporter, importer, or any person with a justifiable cause can apply, in written format, in advance of import or export, the customs administration for issuing an advance ruling relating to implementation of customs rules on tariff and origin in a particular trade case.

An application for such an advance ruling must include relevant information such as a detailed description of the goods in question, tariff classification claimed, methods of analysis useful for classification, components, production process, the applicant's request for non-disclosure of confidential information, and sample(s) of the goods. If the information provided by the applicant is not sufficient to make clear judgement, customs authorities may require supplementary information to complete the application.

Provided that all the necessary information is submitted, an advance ruling shall be issued as soon as possible but no later than [X] days after receipt of the application.

Both advance rulings issued and rejections of the applications, subject to appeal, shall set out the grounds on which they are based and be communicated to the applicant in writing.

Advance rulings issues shall be immediately enforceable by the customs administration.

Advance ruling on tariff and origin shall be binding on customs administration to the holder of that advance ruling. Advance ruling on tariff and origin shall be valid for a period of [Y] years from the date of issue. Customs administration may require the applicant to submit the advance ruling during customs clearance.

The holder of an advance ruling must prove, when required,:

- for advance ruling on tariff: that the goods to be declared in the customs operations correspond to those described in the ruling in every respect;*
- for advance ruling on origin: that the goods to be declared in the customs operations and the actual conditions which confer origin correspond to those described in the ruling in every aspect.*

An advance ruling in favour of its holder shall cease to be valid if:

- it is issued on the basis of incorrect or incomplete information;*
- one or more of the conditions laid down in the advance ruling were not, or are no longer, fulfilled;*
- the holder fails to fulfil an obligation imposed by the ruling; and*
- it is not compatible with any change in the legal provisions or general administrative acts.*

The holder of the ruling shall be notified of its invalidity.

An advance ruling within the meaning of the previous paragraph is reviewable promptly by judicial, arbitral or administrative tribunals or procedures. An advance ruling shall be valid unless a decision contrary to it is made in a review.

The holder of an advance ruling already reviewed on tariff or origin may still use it for [Z] months from the date of notification provided that, before the date of invalidity, binding contracts for the purchases or sale of the goods in question relying upon the advance ruling have been concluded." (Turkey, TN/TF/W/120)

- See also Australia's input on advance rulings contained in document TN/TF/W/66.

Suggested Approach/Meanings

- *"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".*
- *"... 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)*
- *Advance rulings "should be case-specific and binding only to the extent that the declared data are correct and that the relevant national legislation on which the ruling has been provided remains unchanged." (Turkey, TN/TF/W/45)*

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)
- *"... potential: (i) Deferred implementation of commitments; (ii) temporary partial application of commitments; (iii) Specific exemptions for part of commitments; (iv) Implementation through recognition of rulings by delegated authority (i.e. regional and international organizations)."* (Australia, Canada and the United States, TN/TF/W/80)
- See also reference to input on S&D by Chile in TN/TF/W/70.

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)
- *"Assess situation; identify individual specific needs and priorities (e.g., developing administrative process, regulations and laws; training customs officers, etc.)"* (Australia, Canada and the United States, TN/TF/W/80)

E. APPEAL PROCEDURES

1. **Right of Appeal**

Main GATT Article(s) Concerned

- Article X

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)

- *"Provision of opportunities to raise complaints: Provision of opportunities, if desired by traders, to raise informally and easily complaints concerning administrative decisions (e.g. to enquiry points) before moving to a formal appeal procedure, and to receive justification for decisions."* (Chinese Taipei, Costa Rica, Japan, Mongolia and New Zealand, TN/TF/W/97)
- *"Right of appeal: For imports, exports and goods in transit, articulate in the relevant laws and regulations and publish non-discriminatory procedures for lodging appeal against customs and other agency rulings and decisions, which may allow for initial lodgement within the same agency or other body prior to lodgement to an independent judicial or administrative body."*(Chinese Taipei, Costa Rica, Japan, Mongolia and New Zealand, TN/TF/W/97)
- *"Standard time of appeals: Set a standard time for review and correction of administrative actions at the administrative level."* (Chinese Taipei, Costa Rica, Japan, Mongolia and New Zealand, TN/TF/W/97)
- *"Representation: Companies should have the right to be represented at all stages of appeal procedures by an agent or legal representative."* (Chinese Taipei, Costa Rica, Japan, Mongolia and New Zealand, TN/TF/W/97)

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 GATT Article(s) Concerned

- Articles VIII and X

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.

3. Appeal Mechanism in a Customs Union

Main GATT Article(s) Concerned

- Article X

Main Measure(s) Proposed

- *"Mechanisms for redressal of adverse findings of inspection authorities at the import point should be so designed that quick and uniform decisions are provided without inordinate increase in cost/ time. Necessary arrangements that allow appeals to be heard and decided at the final decision- making levels in the shortest possible time-frame should be ensured."* (India, TN/TF/W/78)

F. OTHER MEASURES TO ENHANCE IMPARTIALITY, NON-DISCRIMINATION AND TRANSPARENCY

1. Uniform Administration of Trade Regulations

Main GATT Article(s) Concerned

- Article X

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 and Reinforcement of Integrity and Ethical Conduct Among Officials

- (a) Establishment of a Code of Conduct

Main GATT Article(s) Concerned

- Article X

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)

- *"Establishment of a code of conduct in the customs services, spelling out the rights and obligations of the public servants"* (Dominican Republic, TN/TF/W/60)

Special and Differential Treatment

- *" ... developing countries should be granted sufficient time and other flexibilities for the implementation of any rules that result from these negotiations."* (Dominican Republic, TN/TF/W/60)

Technical Assistance and Capacity Building

- *"Members, in particular the developing countries, must identify their difficulties, requirements, and priorities by conducting a self-assessment if they are to effectively implement the programme of measures needed to strengthen the integrity and best practices of their customs administrations. In view of the need for technical assistance and capacity-building support, we must work in a practical manner to help Members to implement the measures put forward in this proposal."* (Dominican Republic, TN/TF/W/60)

(b) Computerized System to Reduce/Eliminate Discretion

Main GATT Article(s) Concerned

- Article X

Main Measure(s) Proposed

- *"Introduction of computerized systems to reduce (or eliminate) the discretion exercised by officials and employees with respect to basic customs decisions"* (Dominican Republic, TN/TF/W/60)

Special and Differential Treatment

- See reference to input on S&D by the Dominican Republic in section F:2:a.

Technical Assistance and Capacity Building

- See reference to input on TA&CB by the Dominican Republic in section F:2:a.

(c) System of Penalties

Main GATT Article(s) Concerned

- Article X

Main Measure(s) Proposed

- *"Establishment of a system of penalties, to be directly incorporated in the country's customs legislation. Offences by customs officials should be considered as criminal acts"* (Dominican Republic, TN/TF/W/60)

Special and Differential Treatment

- See reference to input on S&D by the Dominican Republic in section F:2:a.

Technical Assistance and Capacity Building

- See reference to input on TA&CB by the Dominican Republic in section F:2:a.

(d) Technical Assistance to Create/Build up Capacities to Prevent and Control Customs Offences

Main GATT Article(s) Concerned

- Article X

Main Measure(s) Proposed

- *"Technical assistance to create and build up the country's national capacity to prevent and control customs offences"* (Dominican Republic, TN/TF/W/60)

Special and Differential Treatment

- See reference to input on S&D by the Dominican Republic in section F:2:a.

Technical Assistance and Capacity Building

- See reference to input on TA&CB by the Dominican Republic in section F:2:a.

(e) Appointment of Staff for Education and Training

Main GATT Article(s) Concerned

- Article X

Main Measure(s) Proposed

- *"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)

(f) Coordination and Control Mechanisms

Main GATT Article(s) Concerned

- Article X

Main Measure(s) Proposed

- *"Establishment of coordination and control mechanisms between customs administrations and the organizations involved in devising ethics policies in customs services."* (Dominican Republic, TN/TF/W/60)

Special and Differential Treatment

- See reference to input on S&D by the Dominican Republic in section F:2:a.

Technical Assistance and Capacity Building

- See reference to input on TA&CB by the Dominican Republic in section F:2:a.

3. Import Alerts/Rapid Alerts

Main GATT Article(s) Concerned

- Article X

Main Measure(s) Proposed

- *"In order to ensure that application of a system of import/rapid alert does not by itself create a barrier to trade, it should be imposed all across a customs union only if uniform standards are applied by all of its member states.*

A system of import/rapid alert should not be applied with a view to, or with the effect of, creating unnecessary obstacles to international trade. For this purpose, application of import/rapid alert systems shall not be more trade restrictive than necessary to pursue a legitimate objective, taking account of the risks that non-fulfilment would create.

A notification against a country/exporter under a system of import/rapid alert restricting or prohibiting imports shall not be issued unless it has been established on the basis of positive evidence that imports from the country/exporter concerned have not fulfilled the prescribed objective standards.

A notification issued under a system of import/rapid alert restricting or prohibiting imports shall not be maintained if circumstances giving rise to it no longer exist, or if changed circumstances can be addressed in a less trade restrictive manner. Circumstances giving rise to import/rapid alert would be deemed to no longer exist if [x] successive consignments imported from the country/exporter concerned, after the import/rapid alert has been issued, fulfil the prescribed objective standards.

The speed and standard of publicity of denotification of such alert shall be of the same level as its issuance. Termination of an import/rapid alert shall be made through a public notice to be issued no later than two weeks after a decision has been taken to terminate the import/rapid alert." (India, TN/TF/W/78)

4. Detention

Main GATT Article(s) Concerned

- Article X

Main Measure(s) Proposed

- *"When goods are detained for inspection by customs or any other authority, there should be a mechanism to inform the importer regarding such detention." (India, TN/TF/W/78)*

Suggested Approach/Means

- *"This can be done through different methods like issuance of a detention memo to the importer or his authorized agent or by having an on-line system of indicating the status of clearance of a consignment."* (India, TN/TF/W/78)

5. Test Procedures

Main GATT Article(s) Concerned

- Article X

Main Measure(s) Proposed

- *".... each Member should allow importers or exporters a right of a second confirmatory test of a sample where the first test result has given an adverse finding. A clear procedure be laid down for such confirmatory test including a validated test method and a list of accredited laboratories be published where confirmatory tests can be carried out. For a customs union, the results of a confirmatory test carried out in one member state of a customs union should be valid and acceptable in all other member states of the customs union".* (India, TN/TF/W/78)

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 GATT Article(s) Concerned

- Article VIII

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)
- *"Services should be directly related to the goods being imported or exported, and fees and charges should be related to the approximate cost of the services rendered. Members should agree to prohibit that such services be calculated on an ad valorem basis. The establishment of a register of all services connected with import and export operations would increase the transparency and predictability of trade. The register would cover the objectives, criteria and administrative costs of such services and be subject to periodic review."* (Chile, TN/TF/W/70)
- *"Fees and charges⁶ are only imposed for services provided in direct connection with the specific importation or exportation in question."*

Fees and charges do not exceed the approximate cost of the service provided.

Fees and charges are not calculated on an ad valorem basis.

Fees and charges are not imposed with respect to consular services.

New or amended fees and charges are not imposed until information on them is published and made readily available." (European Communities, Hong Kong China, Korea and Switzerland, TN/TF/W/94)

- See also reference in Egypt's national experience paper TN/TF/W/75.

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)
- *"In some cases, developing and least-developed countries may require an appropriate transition mechanism to allow for the design and implementation of a new structure for fees and charges"* (European Communities, Hong Kong China, Korea and Switzerland, TN/TF/W/94)
- See reference to input on S&D by Chile in section A:3:a.

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*

⁶ The scope of all specific proposals set out in TN/TF/W/94 is determined as follows: *"The provisions apply 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."*

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)

- *"Developed countries and international organizations with relevant experience can respond to requests for technical assistance."* (European Communities, Hong Kong China, Korea and Switzerland, TN/TF/W/94)
- See also reference to input on TA&CB by Peru in section A:1.

(b) Publication/Notification of Fees/Charges

Main GATT Article(s) Concerned

- Article VIII

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)
- *"Publication of fees connected with importation and exportation increases the transparency and predictability of trade. Members should publish on the Internet and notify to the WTO all import- and export-related fees..."* (Chile, TN/TF/W/70)
- *"Information on fees and charges is published. The information includes the reason for the fee or charge (i.e. service provided), the responsible authority, the fees and charges that will be applied, and when and how payment is made. The information is made readily available to all interested parties and Members are informed of where this information is available."*

An adequate time period is accorded between the publication of information on new or amended fees and charges and their entry into force except when justified by legitimate public policy objectives." (European Communities, Hong Kong China, Korea and Switzerland, TN/TF/W/94)

- See also reference in Egypt's national experience paper TN/TF/W/75.
- See also input in TN/TF/W/96 as reflected in section A1.

Special and Differential Treatment

- See reference to input on S&D by the US in section G:1:a, by Chile in A:3:a and by the EC, Hong Kong, China, Korea and Switzerland in G:1:b.
- *"... 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 GATT Article(s) Concerned

- Articles VIII and X

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)
- Members should "*prohibit the use of [all import- and export-related fees] that have not been duly published and notified*" (Chile, TN/TF/W/70)
- See also reference in Egypt's national experience paper TN/TF/W/75.

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 GATT Article(s) Concerned

- Article VIII

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/W/17). See also section H:1:b, 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:b, second bullet.
- "*Each Member periodically reviews its fees and charges to ensure that they are in line with WTO commitments and with a view to consolidating them and reducing their number and diversity*." (European Communities, Hong Kong China, Korea and Switzerland, TN/TF/W/94)
- See also the proposal by Chile listed in section G:1:a.
- See also reference in Egypt's national experience paper TN/TF/W/75.

Suggested Approach/Means

- *"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 as well as by the European Communities, Hong Kong, China, Korea and Switzerland as reflected in section G:1:b.
- See also reference to input on S&D by Hong Kong, China in section H:1:b, second bullet.

(e) Automated Payment

Main GATT Article(s) Concerned

- Article VIII

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 GATT Article(s) Concerned

- Article VIII

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/W31) 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/Procedures and Data/Documentation Requirements Connected with Importation and Exportation

- (a) Non-discrimination

Main GATT Article(s) Concerned

- Article VIII

Main Measure(s) Proposed

- *"Non-discrimination in the design, application and effect of export and import procedures and formalities imposed on the goods of all Members.* (European Communities, TN/TF/W/46). Applies also to section K (release and clearance of goods).
- *"A commitment to non-discrimination in terms of requirements and procedures applicable to like products irrespective of their modes of transportation."* (European Communities, TN/TF/W/46)

Built-in Exception(s)/Flexibility

- *"The principle of non-discrimination should not of course interfere with Members' rights to treat consignments differently according to objective risk assessment criteria."* (European Communities, TN/TF/W/46)

Special and Differential Treatment

- Commitments implying resources, notably those regarding *"simplified procedures that are easiest to apply via automated systems, as well as those proposals that presuppose broader customs reform should not apply until such time as the Member in question is in a position to implement them, a principle recognized in the negotiating modalities. It is therefore proposed that least-developed countries be exempted from such provisions until such time as they are able to implement them, and that in the meantime technical assistance should be directed to helping them build up the necessary domestic capacities. Developed-country Members and intergovernmental organizations should commit to the provision of such technical assistance in the manner set out below. Some of the commitments suggested in this paper will take time to implement. For example, reviewing legislation or aligning documents and data requirements to international norms can in some cases be a lengthy process. Introducing simplified procedures for goods release presupposes some re-formulation of customs processes and training of officials.*

Introducing an authorized trader system also needs time as Members have to determine what system best suits their trade patterns and then prepare the necessary rules. In many cases these reforms, and therefore potentially assistance, need to go ahead in tandem. Transitional periods should be available to enable developing countries to implement specific commitments in a progressive or staged manner. These could be based on each Member's individual needs and situation, or generalized, but should be linked to any reform or modernization programme under way in a Member as well as to technical assistance programming. More general commitments on transparency, non-discrimination, the avoidance of unnecessary barriers, and any other commitments that do not imply many resources, should however be implemented immediately." (European Communities, TN/TF/W/46)

Technical Assistance and Capacity Building

- Improved provision and coordination of assistance based on the following arrangements: *"Members should signal readiness to increase the level and quality of technical assistance for trade facilitation. Where competing requests for assistance are made, priority should be given to those countries whose needs are objectively the greatest and which have demonstrated clear commitment to carrying out simplification measures. Where a Member, as part of its development aid, is providing trade-related technical assistance to another Member it should, if requested by that other Member, as far as possible include in such assistance trade facilitation support. (...) The WTO and other organizations (the World Bank, WCO, UNCTAD, and others) should, well in advance of the implementation of the results of the negotiations, establish and operate jointly a platform for international cooperation and coordination of technical assistance in the field of trade facilitation, bringing together donor Members and recipient Members, regional groupings, as well as other intergovernmental organizations with a role to play (e.g., OECD, UN regional economic commissions etc.). (...) A role could be provided too for national and international trade federations in such transparency and coordination efforts (...) The platform should not duplicate the activities of existing coordination mechanisms, such as the WTO/OECD DAC database on technical assistance, but coordinate with them and use such instruments to help it fulfil its functions. The platform must also not detract from but support coordination and cooperation on the ground in recipient countries (...). This platform should be set up once the scope of the future trade facilitation provisions is clearer. The first and most important task of the platform could be to take stock of individual Members' trade facilitation needs in relation to the provisions emerging, making full use of existing diagnostic tools and assessments, and then help to identify, with donors, what kind of technical assistance, if any, would be needed to support implementation, and within what kind of timeframes. It would also be important early on to develop a common understanding on the appropriate sequencing of assistance for implementation, given that some trade facilitation measures – e.g., review and simplification of regulations – needs to take place before other measures. On this basis individual developing-country members would then be in a better position to determine what kind of transitional periods may be necessary in order to implement the results of the negotiations". (European Communities, TN/TF/W/46)*

(b) Periodic Review of Formalities/Procedures and Requirements

Main GATT Article(s) Concerned

- Article VIII

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)
- *"Periodic Review. A provision whereby Members should no longer maintain a procedure or requirement if the circumstances giving rise to its introduction no longer exist or if the changed circumstances or objectives can be addressed in a less trade restrictive manner."* (European Communities, TN/TF/W/46). Applies also to section K (release and clearance of goods).
- See also reference in Egypt's national experience paper TN/TF/W/75.

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

- *"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)
- See also references to input on S&D by Japan, Mongolia, Peru and Chinese Taipei in section G:1:b, and by the European Communities in section H:1:a.

Technical Assistance and Capacity Building

- See reference to input on TA&CB by the European Communities listed in section H:1:a.
- (c) Reduction/Limitation of Formalities/Procedures and Data/Documentation Requirements

Main GATT Article(s) Concerned

- Article VIII

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.
- *"Avoidance of unnecessary barriers to trade in the design, application and effect of import and export procedures, and in particular to ensure that such procedures do not unduly slow down the movement or release of goods. This would be done by ensuring that import and export procedures shall not be more trade restrictive than necessary to fulfil legitimate objectives."* (European Communities, TN/TF/W/46). Applies also to section K (release and clearance of goods).
- *"Commitment by Members to simplify and reduce documentation and data requirements to the absolute minimum (...)"* (European Communities, TN/TF/W/46)
- See also the proposal by Chile, Korea, Norway and Switzerland, TN/TF/W/85.
- See also reference in Egypt's national experience paper TN/TF/W/75.

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)
- Simplification and reduction of data and documentation requirements "*consistent with the need to enforce legitimate policies...*" (European Communities, TN/TF/W/46)

Special and Differential Treatment

- "*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)
- See also references to input on S&D by Japan, Mongolia, Peru and Chinese Taipei in section G:1:b, and by the European Communities in section H:1:a.

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)
- See also reference to input on TA&CB by the European Communities in section H:1:a.

(d) Use of International Standards

Main GATT Article(s) Concerned

- Article VIII

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)*
- *" (...) development and adoption of common international trade requirements and procedures. (...) In order to reach a set of common forms and electronic documents, the harmonization of import documents and the data required for release of goods using existing international standards under the WTO Customs Valuation Agreement, the HS Convention, the UN Layout Key Guidelines and the WCO Kyoto Convention etc., is essential. The United Nations Layout Key (...) and UNeDocs (...) would be most convenient since substantial progress has been achieved on them. While standardizing customs procedures, defining the work process is essential for eliminating the unnecessary and repetitive procedures. (...)" (Turkey, TN/TF/W/45)*
- *"Use of relevant International Standards and Instruments. Members should agree to use international standards and instruments as the basis for their import and export procedures and requirements (...)" (European Communities, TN/TF/W/46). Applies also to section K (release and clearance of goods).*
- *"... use international standards as a basis for documentation and data requirements (both for format and content of documents and data)." (European Communities, TN/TF/W/46)*
- *"Progressive implementation of simplified and standardized import and export procedures, based on international standards and instruments, including the WCO Kyoto Convention." (European Communities, TN/TF/W/46)*
- *"(...) Encourage the use of international standards, guidelines, or recommendations by all Members." (TN/TF/W/62)*
- *"(...) alternative options for approaching th[e] issue [of use of standardized documents] [are]: (i) Reference to relevant international organizations that have developed standardized documents, for example, WCO and UN including UNCTAD. (ii) An obligation to use documents that are aligned with the UN Layout Key.⁷ (iii) Reference to a bank of standard documents run by a relevant international organization which Members must draw from. (iv) A list of standard documents that must be used." (New Zealand, Norway and Switzerland, TN/TF/W/67)*
- *"... standardize and reduce the amount of documentation and information required for import and export operations." (Chile, TN/TF/W/70)*
- *Common elements of earlier proposals on the matter: "Use of international standards and instruments⁸ as the basis for: national/regional import, export and transit procedures; the alignment of national/regional trade document formats such as the UN Layout Key or UNeDocs;*

⁷ The UN Layout Key is by far the most widespread basis for standard documents. Since 1985 the UN Layout Key has become an ISO standard (6422).

⁸ Reference have been made to international Conventions and Agreements (e.g., Revised Kyoto Convention, HS Convention, UN Layout Key, UN/CEFACT Recommendations).

the alignment of national/regional data elements in trade documents; electronic exchange of trade data by using inter alia UN/EDIFACT." (Chile, Korea, Norway and Switzerland, TN/TF/W/85)

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)
- *" (...) it will be helpful if Members define their customs work process with a flow chart in the official website of their customs authorities (...)"*. The flow charts could then be used *"to design software that will require a step-by-step approach to finalize the customs procedures."* (Turkey, TN/TF/W/45)
- *"... The data set developed within the WCO data model, UN EDIFACT (UN Electronic Data Interchange for Administration, Commerce and Transport) and the UN Layout Key could be identified as basic reference points/standards [for using international standards as a basis for documentation and data requirements] (...), and WTO Members may wish to identify others."* (European Communities, TN/TF/W/46)
- *" (...) consider establishing a long-term mechanism, in the form of either a committee, a working group, a task force, annual periodic meeting or any other appropriate structure , or even recourse to an existing mechanism..."* whose functions *"might include, but would not be limited to"* the encouragement for all Members to use international standards, guidelines, or recommendations. (Chinese Taipei, TN/TF/W/62)
- Three *"approaches"* with respect to the methodology on *"how to implement a requirement to use international standards⁹ and possible exceptions that Members deem necessary"*, with the *"level of specificity in respect of concrete standards depend[ing] on the choice of approach. A general obligation to use international standards where they exist, with some limited exceptions. These exceptions could either be decided in the Agreement itself or at a national level, but in the latter case some guidance has to be given concerning the use of exceptions¹⁰. A reference to the relevant international organisations that have developed international standards such as International Maritime Organisation, International Civil Aviation or Standards developed based*

⁹As to the question of where to introduce a requirement to use international standards, including exceptions, the general point of departure is that they should be used whenever relevant and feasible for import, export and transit procedures. Where international standards are not appropriate, the use of regional standards could be explored. This is not further addressed in this submission.

¹⁰An example can be found in the TBT agreement, see in particular Articles 2.2 and 2.4.

on the UN Layout Key.11 A reference to provisions in other international Agreements¹². In this case a mechanism should deal with obsolete, and new standards. (Why: because it is not the WTO which will develop any standard, but the specialised international organisations. The WTO will just look at them)." (Chile, Korea, Norway and Switzerland, TN/TF/W/85)

Built-in Exception(s)/Flexibility

- Use of international standards "... *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)
- "*.... except where such international standards would be an ineffective or inappropriate means to fulfil the legitimate objectives sought.*" (European Communities, TN/TF/W/46)
- "*(...) the use of standardized documents should, of course, not stop Members from enforcing legitimate policy objectives. In fact, the range of existing standardized documents that are available already provide for significant flexibility for Members to achieve these legitimate objectives.*" (New Zealand, Norway and Switzerland, TN/TF/W/67)
- "*The issue of exceptions in order to enforce legitimate policy objectives should be addressed once the implementation requirements become clearer.*" (Chile, Korea, Norway and Switzerland, TN/TF/W/85)

Special and Differential Treatment

- "*To devise differential implementation schedule taking into account Members' capacities and stage of development. Temporary partial application of commitments is also an option.*" (Chile, Korea, Norway and Switzerland, TN/TF/W/85)
- See references to input on S&D by Japan, Mongolia, Chinese Taipei and Peru in section G:1:b, by the European Communities in section H:1:a, and by Chile in A:3:a..

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)
- "*We recognize that for [certain] developing countries technical assistance could be needed*" (New Zealand, Norway and Switzerland, TN/TF/W/67)
- "*Each country should assess whether and which international standards they currently use, and, if a particular standard is not used, identify needs and priorities in this regard. Technical assistance shall be targeted to the implementation of the particular obligation. Special needs of LDCs should be addressed.*" (Chile, Korea, Norway and Switzerland, TN/TF/W/85)

¹¹ An example can be found in the SPS Agreement, Annex A, paragraph 3.

¹² Many examples can be found in the TRIPS Agreement.

- See also references to input on TA&CB by New Zealand, Norway and Switzerland in section H:1:c, and by the European Communities in section H:1:a.

(e) Uniform Customs Code

Main GATT Article(s) Concerned

- Article VIII

Main Measure(s) Proposed

- *"Introduction by each WTO Member, or customs union (between two or more Members), of a uniform customs code or aligned customs legislation, as well as a single import and export declaration, administrative message or data set."* (European Communities, TN/TF/W/46)

Special and Differential Treatment

- See references to input on S&D by the European Communities in section H:1:a.

Technical Assistance and Capacity Building

- See references to input on TA&CB by the European Communities in section H:1:a.

(f) Acceptance of Commercially Available Information and of Copies

Main GATT Article(s) Concerned

- Article VIII

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)

- "... acceptance of copies of certain documents used in import and export formalities..." (Turkey, TN/TF/W/45)
- "... identify cases in which copies and not originals of documents are accepted. Simplification could also be served by permitting the acceptance routinely of relevant-commercially available information." (European Communities, TN/TF/W/46)
- "Proposed elements on which substantive discussion has taken place in the NGTF:

Customs and other border agencies shall require only those documents necessary to permit control of the operation and to ensure that all requirements relating to the application of relevant law have been complied with.

While recognising the necessity of requesting original documents of items subject to legislative control, Members are encouraged to accept copies of documents as part of documentation requirements, in particular a) commercial documents (invoices, bills of lading, etc.); and b) where a government agency already holds the original and multiple authorities are involved.

Customs and other border agencies are encouraged, where appropriate, to use relevant information already available in the context of commercial transactions (e.g. quantity and description of the goods) as a means of foregoing certain documentation requirements.

In cases where Goods declarations and other supporting documents are lodged electronically and authenticated by electronic signatures or electronic procedures, no other original of these documents shall be requested.

Proposed elements on which substantive discussion has not yet taken place in the NGTF:

Customs and other border agencies are encouraged, where appropriate, to allow supporting documents not to be presented provided they are held available by the declarant, requisite information is provided about the documents and the documents are available for a specific period.

The Customs shall not require a translation of the particulars of supporting documents, except when necessary to permit processing of the Goods declaration." (Hong Kong China, Korea and Switzerland, TN/TF/W/92)

Suggested Approach/Mean

- "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

- *"Progressive implementation where needed."* (Hong Kong China, Korea and Switzerland, TN/TF/W/92)
- See references to input on S&D by Japan, Mongolia, Chinese Taipei and Peru in section G:1:b, and by the European Communities in section H:1:a.

Technical Assistance and Capacity Building

- *"Experience sharing among Members on the use of copies and commercially available information."* (Hong Kong China, Korea and Switzerland, TN/TF/W/92)
- See references to input on TA&CB by the European Communities in section H:1:a.

(g) Automation

Main GATT Article(s) Concerned

- Article VIII

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)
- *"Automated and Electronic Data Interchange (EDI) based electronic systems should be introduced to replace paper-based procedures across customs and ultimately all other agencies involved in import and export administration."* (Turkey, TN/TF/W/45)

Technical Assistance and Capacity Building

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

(h) Single Window/One-Time Submission

Main GATT Article(s) Concerned

- Article VIII

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)
- "... efforts toward the one-stop service clearance/release facilities through inter-agency coordination, plus remote filing and local clearance facilitates, are crucial." (...) "... should consider whether rules could be developed to ensure that the activities and requirements of all agencies present at borders are coordinated in a manner designed to facilitate trade." (...) "An agreement on trade facilitation may cover provisions on a Single Window approach whereby Members gradually undertake necessary measures." (Turkey, TN/TF/W/45)
- "Progressive implementation of the principle of a single, one-time presentation to one agency, normally the customs, of all documentation and data requirements for export or import, subject to any exceptions to be identified." (European Communities, TN/TF/W/46)
- "The use by Members of an electronic 'single window' for submitting, once only and to a single authority, all documentation and data relating to import/export procedures is highly important for the smooth running of trade, since it increases inter-agency coordination, allows more efficient use of public and private resources, and enhances the performance of government agencies." (Chile, TN/TF/W/70)
- "All documentation and data requirements for exportation and importation are submitted, one time only, to a single entry point and distributed to all the relevant authorities.

Coordination is endeavoured among the relevant authorities in introducing a single window/one-time submission environment.

A single window does not necessarily imply the implementation and use of high-tech information and communication technology (ICT), although facilitation can be enhanced if relevant ICT technologies are identified and adopted.¹³" (Chile, EC, Japan, Korea, Mongolia and Singapore, TN/TF/W/100)

- See also references to input by Canada in TN/TF/W/20 (as reflected in section J:1), by Singapore (TN/TF/W/58), by Thailand (TN/TF/W/61), by Egypt (TN/TF/W/69) and by ASEAN (TN/TF/W/105).

Suggested Approach/Means

- "Goods could then be released from the border and customs control as quickly as possible on the basis of presentation and acceptance of appropriate documents and data. Also, making maximum use of a data set, across various border agencies of a country, would be useful. This approach also lends itself readily to electronic technology by setting up a computer system interface with other agencies." (Turkey, TN/TF/W/45)

¹³ Recommendations and Guidelines on Establishing a Single Window, Recommendation No. 33, UN/CEFACT, July 2005.

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)
- Goods released from border and customs control "as quickly as possible"... . Single Window approach whereby Members "gradually" undertake necessary measures. (Turkey, TN/TF/W/45)
- "Progressive" implementation of the principle of a single, one-time presentation of documentation and data to one agency "subject to any exceptions to be identified." "This should be a best endeavour provision and the commitment would be to making progressive efforts, rather than to any fixed deadline." "Flexibility will be needed – especially for some developing countries..." (European Communities, TN/TF/W/46)

Special and Differential Treatment

- "...developing countries may require a longer period of time to institute these measures." (Korea, TN/TF/W/18)
- See references to input on S&D by Japan, Mongolia, Chinese Taipei and Peru in section G:1:b, by the European Communities in section H:1:a, and by Chile in A:3:a.

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 references to input on TA&CB by Peru in section A:1, and by the EC in section H:1:a.

(i) Elimination of Pre-Shipment Inspection

Main GATT Article(s) Concerned

- Article VIII

Main Measure(s) Proposed

- "Elimination of Pre-Shipment Inspection Arrangements." (European Communities, TN/TF/W/46)
- "Developed-country Members shall eliminate any requirements for the mandatory use of pre-shipment inspections from the entry into force of this commitment."

Developing-country Members shall eliminate any requirements for the mandatory use of pre-shipment inspections not later than [X] years from the entry into force of this commitment.

Least-developed countries shall eliminate any requirements for the mandatory use of pre-shipment inspections not later than [Y] years from the entry into force of this commitment.

During the above transition periods, no new pre-shipment inspection arrangements shall be introduced or applied.

During the above transition periods, Members shall ensure that pre-shipment inspection companies, acting on their behalf or employed by them, comply, where relevant, with the commitments in the field of Trade Facilitation." (European Communities and Chinese Taipei, TN/TF/W/90)

Suggested Approach/Mean

- *"Members set a deadline for the elimination of PSI where it substitutes for functioning customs services, and use the time available to ensure that the domestic customs administrations become more fully functional and PSI progressively phased out. The EC also suggests that during the transition period Members commit not to introduce new PSI arrangements." (European Communities, TN/TF/W/46)*

Special and Differential Treatment

"...there would be a need for transition periods to enable some Members still using PSI to undertake the requisite reforms. Extensions to any transition period would be needed when Members continue to lack the requisite functioning customs service..." (European Communities and Chinese Taipei, TN/TF/W/90)

- See also reference to input on S&D by the European Communities listed in section H:1:a.

Technical Assistance and Capacity Building

- *"Technical assistance aimed at strengthening the functioning of customs authorities will in some cases help to enable pre-shipment inspections to be eliminated." (European Communities and Chinese Taipei, TN/TF/W/90)*
- See reference to input on TA&CB by the European Communities listed in section H:1:a.

(j) Phasing Out Mandatory Use of Customs Brokers

Main GATT Article(s) Concerned

- Article VIII

Main Measure(s) Proposed

- *"Non-discriminatory rules should apply in respect of licensing of customs brokers, together with an undertaking to phase out over time any requirements for the mandatory use of customs brokers ." (European Communities, TN/TF/W/46)*
- *"Developed-country Members shall eliminate any requirements for the mandatory use of customs brokers from the entry into force of this commitment.*

Developing-country and least-developed country Members shall eliminate any requirements for the mandatory use of customs brokers not later than [X] years from the entry into force of this commitment.

No new requirements for the mandatory use of customs brokers shall be introduced or applied during the transition periods.

Members shall apply transparent, non-discriminatory and proportionate rules if and when licensing customs brokers." (European Communities, Chinese Taipei and Switzerland, TN/TF/W/88)

Special and Differential Treatment

- *"There may be a need for transition periods, notably to allow for the amendment of relevant rules." (European Communities, Chinese Taipei and Switzerland, TN/TF/W/88)*
- See reference to input on S&D by the European Communities listed in section H:1:a.

Technical Assistance and Capacity Building

- See reference to input on TA&CB by the European Communities listed in section H:1:a.

(k) Same Border Procedures within a Customs Union

Main GATT Article(s) Concerned

- Article VIII

Main Measure(s) Proposed

- *"... members of a customs union should adopt the same border procedures which should include adoption of same standards including specifications, terminologies and definitions, inspection, sampling and test methods, for border clearance of agriculture and food products." (India, TN/TF/W/77)*

Technical Assistance and Capacity Building

- *"There may [...] be need to organize Workshops at the international level to apprise the border clearance officials of the requirements in force." (India, TN/TF/W/77)*

(l) Testing Methods based on Specific Product Features

Main GATT Article(s) Concerned

- Article VIII

Main Measure(s) Proposed

- *"... testing methods should be based on specific product features and its physical state at the point of consumption, such as 'fresh', 'dehydrated' or 'otherwise processed'" (India, TN/TF/W/77)*

Technical Assistance and Capacity Building

- See input on Technical Assistance and Capacity Building referenced in section H:1:(k).
- (m) Uniform Forms and Documentation Requirements relating to Import Clearance within a Customs Union

Main GATT Article(s) Concerned

- Article VIII

Main Measure(s) Proposed

- "... all forms and documentation requirements relating to import clearance should be uniform for all members of a customs union." (India, TN/TF/W/77)

Technical Assistance and Capacity Building

- See input on Technical Assistance and Capacity Building referenced in section H:1:(k).
- (n) Option to Return Rejected Goods to the Exporter

Main GATT Article(s) Concerned

- Article VIII

Main Measure(s) Proposed

- "... in case of rejection of a consignment on account of failure to meet certain standards, an option would be first given to return the rejected goods to the exporter and only upon a failure to exercise this option within a reasonable period of time, any other course of action, including destruction of goods could be considered." (India, TN/TF/W/77)

Technical Assistance and Capacity Building

- See input on Technical Assistance and Capacity Building referenced in section H:1:(k).

I. CONSULARIZATION

1. Prohibition of Consular Transaction Requirement

Main GATT Article(s) Concerned

- Article VIII

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)*
- Elements of a commitment on consularization (representing a summary of common elements of previous proposals on the subject): *"Prohibition of Requiring Consular Transactions"¹⁴: Provide that there will be no consular transactions, including consularization-related fees and charges, required in connection with the importation and exportation of goods".* (Uganda, United States and Switzerland, TN/TF/W/86)

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:c.

J. BORDER AGENCY COORDINATION

1. Coordination of Activities and Requirements of all Border Agencies

Main GATT Article(s) Concerned

- Article VIII

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)*

¹⁴ The proposals defines "Consular Transaction" as *"requirements that goods intended for export to a Member must first be submitted to the supervision or certification by the consul (or its representative or agent) of the importing Member in the territory of the exporting Member (or in a territory other than the exporting Member), for the purpose of obtaining consular invoices or consular visas for commercial invoices, manifests, shippers' export declarations, or consul "verification" of other elements of customs documentation required in connection with importation such as valuation or origin."*

- *"Establishment of border control cooperation and coordination mechanisms between the various authorities at Members' entry and exit points". (Peru, TN/TF/W/30)*
- *"Convergence of official controls in a "one-stop shop". Where documentary or physical verification of consignments by more than one agency is necessary this should be carried out at a single place and one time only, to the extent possible, and at hours that meet the needs of traders." (European Communities, TN/TF/W/46)*
- Common elements of existing proposals on border agency cooperation: *"Cooperation and coordination between authorities and agencies involved in border (and other import and export) controls to facilitate trade.*

Promotion of compatible import and export data and documentation requirements of authorities and agencies involved in border controls.

In each Member, convergence of controls at a 'one-stop shop' with a view to establishing, to as great an extent as possible, a single location for one-time documentary or physical verification of consignments (where required) by all concerned authorities and agencies.

In terms of cross-border coordination, cooperation may include, among others, the alignment of working hours and the development of common customs facilities." (Canada, the EC and New Zealand, TN/TF/W/83)

- See also Norway's input on border agency cooperation contained in document TN/TF/W/48.

Built-in Exception(s)/Flexibility

- One stop-shop *"to the extent possible"*. (European Communities, TN/TF/W/46)

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)
- *"Progressive implementation/transitional periods"* (Canada, the EC and New Zealand, TN/TF/W/83)
- See reference to input on S&D by the European Communities listed in section H:1:a.

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)
- *"Technical assistance based on needs assessment e.g., experience sharing among Members on border agency coordination including with respect to its design and implementation as well as other ways to improve coordination and reduce duplication among border agencies."* (Canada, the EC and New Zealand, TN/TF/W/83)

- See also reference to input on TA&CB by Peru in section A:1, and by the European Communities in section H:1:a.

K. RELEASE AND CLEARANCE OF GOODS

1. Expedited/Simplified Release and Clearance of Goods

(a) Pre-Arrival Clearance

Main GATT Article(s) Concerned

- Article VIII

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). For further elaboration on this proposal see TN/TF/W/53 (Japan).
- Introduce and utilize pre-arrival processing (Korea, TN/TF/W/18)
- "*Establishment of disciplines on (...) pre-clearance (...) of goods.*" (Peru, TN/TF/W/30)
- "*A commitment by each member to introduce simplified customs release and clearance procedures including the possibility of: pre-arrival processing of documentation....*" (European Communities, TN/TF/W/46)
- "*Advance processing of customs declarations increases the fluidity of trade by making goods ready for release on arrival in the country of destination and avoiding unnecessary delays or lengthy storage in customs warehouses. The understanding is that there will be a pre-clearance procedure based on risk assessment and other factors which will determine whether incoming goods are subject to thorough, limited or no border control.*" (Chile, TN/TF/W/70)
- "*Introduce procedures for accepting and examining documents prior to the arrival of goods.*

*Draw on relevant international standards and practices as a basis for pre-arrival processing except when inappropriate or ineffective for the legitimate objectives pursued.*¹⁵" (Chinese Taipei, European Communities, Japan, Korea, Mongolia, New Zealand, Pakistan and Switzerland, TN/TF/W/98)
- See also reference to pre-arrival systems in Turkey' submission TN/TF/W/45, page 4; and to pre-arrival release in document TN/TF/W/69 by Egypt.

Built-in Exception(s)/Flexibility

¹⁵ International standard and practice include, Standard 3.25 of the Revised Kyoto Convention, WCO Guidelines for the immediate release of consignments by Customs.

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

Special and Differential Treatment

- See reference to input on S&D by the European Communities in section H:1:a, and by Chile in A:3:a.

Technical Assistance and Capacity Building

- See references to input on TA&CB by Korea in section H:1:d., by Peru in section A:1, and by the European Communities in section H:1:a.

(b) Expedited Procedures for Express Shipments

Main GATT Article(s) Concerned

- Article VIII

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, further elaborated and explained in TN/TF/W/44, recommending (a) "De minimis threshold values: Consignments may be divided into four categories for the purpose of granting immediate release: (i) correspondence and documents without commercial value; (ii) low value consignments for which no duties and taxes are collected; (iii) low value dutiable consignments, and (iv) high value consignments; (b) Simplified declaration of low-value shipments: A simplified goods declaration containing the necessary information required by Customs should be allowed, especially for low value consignments. (c) Risk management: Customs are encouraged to examine suspicious consignments based on risk management techniques. (d) Periodic declaration: Customs may set up special procedures for authorized persons, such as periodic goods declaration, in order to further facilitate the release/clearance of high value consignments. (e) Financial guarantees: Customs may institute expeditious release/clearance procedures without payment of customs duties, provided operators conform to relevant Customs requirements and provide financial guarantees. (f) Flexible customs hours of operation: Customs may allow the release/clearance of consignments to take place outside Customs offices' normal business hours if the level of business so justifies.")*
- *"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)*
- *"... an agreement on trade facilitation should promote the widespread implementation of the procedures of the WCO on Express Consignments" as the "international standard procedures for clearance of express goods." (Turkey, TN/TF/W/45)*
- Elements of a commitment on express shipments:
"Expedited Procedures: Provide for separate and expedited customs procedures for express shipments, without limitation as to maximum weight or customs value of shipment.

Operator-Customs Arrangement: Provide a process for each express consignment operator to create a mutually acceptable arrangement with Customs, which provides adequate infrastructure, financial security, and advance information, in return for expedited Customs procedures and release.

Pre-arrival processing: Provide for submission and processing of information necessary for the release of an express shipment before its physical arrival.

Single Manifest: Provide for the submission of a single manifest covering all goods transported in an express shipment, preferably through electronic means.

"de minimis" treatment: Provide that for shipments valued at US\$200 or less, no duties or taxes will be assessed, and no formal entry documents will be required.

Express Clearance: Procedures allow clearance of express shipments within one hour after the submission of the necessary customs documents, provided the shipment has arrived." (United States, TN/TF/W/91)

- See also Guatemala's input on express shipments contained in TN/TF/W/65.

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)
- Elements "also to be addressed": "Special and Differential Treatment and Technical Assistance elements, including: Assessments; identify individual specific needs and priorities of Members; Assistance elements: Develop necessary administrative process, regulations and laws; train customs officers, establish partnerships with private sector; Explore availability and effective utilization of private sector assistance resources; Deferred or temporary partial implementation of commitments." (United States, TN/TF/W/91)

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 and by the United States in section K:1:(b) above.

(c) Risk Management/Analysis, Authorized Traders

Main GATT Article(s) Concerned

- Article VIII

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)
- *"... use of risk management techniques in customs clearance..."* (Turkey, TN/TF/W45)
- *"Use of risk analysis methods based, as appropriate, on relevant international standards and practices. (...) In addition, it would be useful if Members were to make a commitment to introduce systems of authorized traders (...)"* (European Communities, TN/TF/W/46)
- Use risk management and risk analysis as defined in the WCO Revised Kyoto Convention Guidelines. *"Establishment of a risk management platform by adopting advanced information technology."* Classify enterprises *"into different risk levels upon their compliance records with customs"* and treat them *"differently in terms of providing customs facilitation."* (China and Korea, TN/TF/W/49)
- *".... adopt the principle that norms for authorized trader systems shall be applied uniformly across a customs union and recognition of a trader as an authorized trader in one member of a customs union should automatically extend to the other members of the customs union."* (India, TN/TF/W/77)
- *"... a customs union should apply, to the extent possible, a harmonized risk management system across the entire customs union so that goods are cleared under similar circumstances in all member states of a customs union."* (India, TN/TF/W/77)
- *"Members shall design and apply simplified import and export formalities for traders which meet specific criteria ('authorized traders'), providing in particular for more rapid release and clearance of consignments, a lower incidence of physical inspections, and facilitations with regard to duty payments, and documentation and data."*

The specific criteria may include traders having (1) an appropriate record of compliance with import and export requirements; (2) a system of managing records to allow for necessary controls; (3) financial solvency (including, where appropriate, provision of a sufficient security/guarantee); and (4) an appropriate system of security and safety standards (e.g., preventing unauthorized access to loading areas).

The specific criteria shall not be designed or applied so as to afford or create arbitrary or unjustifiable discrimination or disguised restrictions on international trade.

Members shall use objective risk management techniques in the assessment of any application for authorized trade status.

Traders, including small- and medium-sized enterprises, in the territories of all Members, including developing and least-developed countries, shall have the right to apply for authorized trader status.

The specific criteria to qualify as an authorized trader, along with all necessary information on how to apply for authorized trader status, shall be published and made readily available to all interested parties.

Members shall draw upon relevant international standards and instruments as a basis for authorized trader schemes, where such standards and instruments exist, except when they would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued". (European Communities, Chinese Taipei and Switzerland, TN/TF/W/87).

- *"Members conduct documentary and physical examination based on risk management in order to concentrate on examination of high-risk goods and facilitate the movement of low-risk goods.*

Members draw on relevant international standards and practices¹⁶ as a basis for risk management procedures except when inappropriate or ineffective for legitimate objectives pursued.

Risk management procedures are not used as, or have the effect of creating, disguised discrimination and obstacles to trade." (Chinese Taipei, Japan, Korea, Mongolia, New Zealand and Switzerland, TN/TF/W/99)

- See further Chile's proposal in section K:1:a.
- See also input on risk management contained in TN/TF/W/42 (Japan).

Suggested Approach/Mean

- *"Risk analysis procedures should not be used as, or have the effect of creating, disguised obstacles to trade. They should be objective and applied for legitimate purposes." (...) Systems of authorized traders should use "transparent, objective and non-discriminatory criteria. Such systems should not exclude the participation of small- and medium-sized enterprises." (European Communities, TN/TF/W46)*
- *"Primary customs data including classification, valuation, origin of the goods, incorporated with selected data from other border agencies or trade authorities, can be gathered into the platform system. The information can be shared not only by Customs officers involved in risk management but also by those in relevant border agencies and trade authorities." (...) "Based upon the collection of clearance data and other relevant information, Customs officers at the risk management unit should analyze the available data and arrange for the appropriate customs operation accordingly. With the purpose of expediting Customs clearance, different treatments should be granted to commodities and traders classified at different risk levels." (China and Korea, TN/TF/W/49)*

Built-in Exception(s)/Flexibility

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

¹⁶ International standard and practice include, Standard 6.3, 6.4 and 6.5 of the Revised Kyoto Convention and WCO Risk Management Guide.

- " ... *risk management techniques should strike a balance between trade facilitation and border control requirements.*" (Turkey, TN/TF/W/45)
- Risk analysis methods based on relevant international standards and practices "*as appropriate*" (European Communities, TN/TF/W/46)
- The categorization of enterprises into different risk levels "*may be adjusted according to their future compliance of customs laws and regulations.*" (China and Korea, TN/TF/W/49)
- Application of a harmonized risk management system with a customs union "*to the extent possible*". (TN/TF/W/77)

Special and Differential Treatment

- "*Considering the difficulties that developing Members may confront in implementing risk management, longer period and other necessary flexibilities should be granted to these developing Members in the implementation of the relevant rules that may result from the negotiations.*" (China and Korea, TN/TF/W/49)

"..... transition periods and other necessary flexibilities should be granted where Members lack the capacity to implement the relevant disciplines...." (European Communities, Chinese Taipei and Switzerland, TN/TF/W/87).

- See also references to input S&D by the European Communities listed in section H:1:a.

Technical Assistance and Support for 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)
- "*Members, especially developing and least-developed Members, should identify their difficulties, requirements and priorities in implementing risk management through self-assessment. Developed Members and relevant international organizations should work out practical ways to assist these Members in this process and help develop their risk management projects. Members should share their useful experience accumulated in implementing risk management techniques. Developed Members should make special contribution in this regard.*" (China and Korea, TN/TF/W/49)

"Technical assistance and capacity building may be necessary to take reforms forward and address the cost concerns of developing and least-developed countries. (...) Members, especially developing and least-developed Members, should continue to identify their needs and priorities in relation to authorized trader schemes. Developed Members and relevant international organizations should continue to work on practical ways to assist these Members in this process and help design and implement, where required and requested, risk management projects and authorized trader mechanisms." (European Communities, Chinese Taipei and Switzerland, TN/TF/W/87).

- See also references to input on TA&CB by Peru in section A:1, by the European Communities in section H:1(a) and by India in section H:1:(k).

(d) Post-Clearance Audit

Main GATT Article(s) Concerned

- Article VIII

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). For more information on post-clearance audit in Korea, see TN/TF/W/55.
- *"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)
- *"Customs should carry out necessary post-clearance audit on the account books, vouchers, commercial documents, customs declaration forms and other trade-related information of enterprises upon the risk analysis results. The outcome of post-clearance audit should be fed back timely to relevant Customs officers involved in clearance procedures to take further action in order to ensure effective customs control."* (China and Korea, TN/TF/W/49)
- See also reference to post-arrival customs procedures by Egypt in TN/TF/W/69.

Built-in Exception(s)/Flexibility

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

Special and Differential Treatment

- See reference to input on S&D by China and Korea in section K:1:c.

Technical Assistance and Support for Capacity Building

- See also references to input on TA&CB by Peru in section A:1, and by China and Korea in section K:1:c.

(e) Separating Release from Clearance Procedures

Main GATT Article(s) Concerned

- Articles VIII and X

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)
- *"Release of goods from Customs prior to payment of duties or resolution of Customs matters is allowed in cases where a sufficient guarantee/security (e.g., cash, certified cheque, etc.) or other such instrument is provided by the trader. The guarantee/security presented can be for a single transaction or several transactions"¹⁷.*

Rules governing guarantee systems are published and transparent.

Terms of reimbursement of guarantees are not used as a means to raise revenue beyond duties payable". (Canada, the European Communities, Peru and Switzerland, TN/TF/W/84)

- See also reference to the EC's input on release upon posting of a guarantee in section E:2.

Suggested Approach/Mean

- *"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)

¹⁷ Upon final determination of Customs matters (e.g., Customs value, origin and tariff classification), Customs authorities seek payment from the trader. If the trader cannot or does not fulfill its Customs obligations, Customs authorities would obtain payment from the security instrument.

- *"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)
- *"Deferred implementation/transitional periods where needed (e.g., to allow for the establishment of a functioning guarantee system)."* (Canada, the European Communities, Peru and Switzerland, TN/TF/W/84)

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)
- *"Technical assistance based on needs assessment (e.g., ways to improve revenue collection, enforcement of Customs laws, establishment of guarantee systems)".* (Canada, the European Communities, Peru and Switzerland, TN/TF/W/84)
- See also reference to input on TA&CB by Peru in section A:1.

(f) Other Measures to Simplify Customs Release and Clearance

Main GATT Article(s) Concerned

- Article VIII

Main Measure(s) Proposed

- *"... rapid release procedures based, for example, on the submission of a simplified document and mechanism for post-release reconciliation of documentation and duties payable; the possibility of customs clearance or relevant export control at an importer's or exporter's premises; and the possibility of periodical audit and duty payment rather than duty payment on the basis of individual transactions."* (European Communities, TN/TF/W/46)
- *"Traders to be able to make use of a mechanism for release of goods with post-release reconciliation of documentation and duties payable (e.g., release of goods on the basis of a provisional or incomplete goods declaration in cases where, for reasons deemed valid by customs, the information is not fully available to make the goods declaration). The design and application of the mechanism is based on risk management principles.*
Traders to be able to make periodical declarations and duty payment (as opposed to a separate duty payment for each transaction).
- *Traders to be able to have clearance procedures completed at their premises subject to conditions based on risk management and resource constraints."* (Canada, the European Communities, Peru and Switzerland, TN/TF/W/84)

Special and Differential Treatment

- *"Deferred implementation/transitional periods where needed. Temporary partial application of commitments."* (Canada, the European Communities, Peru and Switzerland, TN/TF/W/84)

- See reference to input on S&D by the European Communities listed in section H:1:a.

Technical Assistance and Capacity Building

- "Technical assistance based on needs assessment (e.g., training of personnel and financial systems)." (Canada, the European Communities, Peru and Switzerland, TN/TF/W/84)
- See reference to input on TA&CB by the European Communities listed in section H:1:a.

2. Establishment and Publication of Average Release and Clearance Times

Main GATT Article(s) Concerned

- Articles VIII and X

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)
- "Establishment of a time limit for customs release..." (Turkey, TN/TF/W/45)
- "... each Member would establish and agree progressively to reduce its domestic standard processing times for goods release and clearance, based on a common standard such as the WCO Time Release Study. (...) Publication of standard processing times would ensure that such times are in the first place established, and then efforts made to reduce them." (European Communities, TN/TF/W/46)
- "Each Member calculates and publishes its own average time for release of goods on a periodic basis, based on a common standard such as the WCO Time Release Study.

Members continuously endeavour to reduce the average release time.

For legitimate objectives, Members retain the right to delay the release of goods." (Chinese Taipei, European Communities, Japan, Korea, Mongolia, TN/TF/W/101)

- 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)
- "... the WCO Time Release Study can be utilized." (Turkey, TN/TF/W/45)

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)
- *"... the variable durations of conformity assessment tests and special conditions at the border, which pose outstanding security risks, should be taken into consideration in declaring release time standards."* (Turkey, TN/TF/W/45)

Special and Differential Treatment

- See reference to input on S&D by the European Communities listed in section H:1:a

Technical Assistance and Capacity Building

- See reference to input on TA&CB by the European Communities listed in section H:1:a.

L. TARIFF CLASSIFICATION

1. Objective Criteria for Tariff Classification

Main GATT Article(s) Concerned

- Articles VIII and X

Main Measure(s) Proposed

- Require objective criteria for the tariff classification of goods. (New Zealand, TN/TF/W/24)
- *"Requirement to apply objective criteria for tariff classification of goods."* (European Communities, TN/TF/W/46)
- *"Key elements of existing proposals for a commitment to provide objective tariff classification decisions (...)*

Requirement to apply criteria for the tariff classification of goods so that such classifications are not arbitrary or unjustifiable and do not constitute a disguised restriction on international trade.

The uniform application by WTO Members of the World Customs Organization's Harmonised Commodity Description and Coding System ("HS Convention") for all trade is a means of achieving the requirement above. Tariff classifications pursuant to the HS Convention would be presumed to comply with that requirement." (New Zealand, TN/TF/W/111)

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)
- *"This could be achieved through the use for all trade by all Members of the WCO HS Convention (...)." (European Communities, TN/TF/W/46)*

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)

Special and Differential Treatment

- "*For developing-country Members, especially least-developed countries, there may be a need for transition periods to allow for the amendment of relevant rules and to allow for capacity constraints to be addressed, for example through training customs officials on how to apply the HS Convention. Technical assistance and capacity building may be needed.*

Developed countries and international organizations (including the WCO, the World Bank, UNCTAD) can respond to requests for technical assistance." (New Zealand, TN/TF/W/111)

- See reference to input on S&D by the European Communities listed in section H:1:a

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)

- See also reference to input on TA&CB by the European Communities listed in section H:1:a

M. MATTERS RELATING TO GOODS TRANSIT

1. Non-Discrimination and Policy Objectives

(a) Strengthened Non-discrimination

Main GATT Article(s) Concerned

- Article V

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, Moldova, 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)
- "*The objective of the proposal is to strengthen the principle of non-discrimination stated in Article V, in order to prevent the application of trade laws that limit the free transit of goods and means of transport among Members due to non-commercial reasons. Nowadays, this sensibly affects the trade of many WTO Members. (...) In light of the above, Cuba considers that, even*

when paragraph 2 of Article V of the GATT is clear regarding the obligation of non-discrimination in the freedom of transit, this provision should be strengthened by adding a new paragraph with the following text: "The Contracting Parties shall not apply discriminatory measures to goods in transit, as well as vessels or other means of transport of other contracting parties for non-commercial reasons. This does not exclude the right to recourse to the exceptions already established in the WTO agreements." (Cuba, TN/TF/W/64)

- "National treatment: With respect to all laws, regulations, requirements, procedures and fees and charges, including transportation charges, affecting the internal passage of traffic in transit across the territory of a Member, without prejudice to the legitimate customs control and supervision of goods in transit, Members shall accord to traffic in transit to or from the territory of any Member, treatment no less favourable than that accorded to domestic goods, exports and imports, and their movement." (Armenia, Canada, European Communities, Japan, Kyrgyz Republic, Mongolia, New Zealand and the Republic of Moldova, TN/TF/W/79)

Suggested Approach/Meanings

- "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)

Built-in Exception(s)/Flexibility

- "(...) Members must preserve their right to implement appropriately and justifiably the exceptions included in Articles XXX and XXI of the GATT, but they cannot appeal to them without justified reason." (Cuba, TN/TF/W/64)

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, Moldova, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)¹⁸
- "..... 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)¹⁹
- "Members must establish precise, effective and operational special and differential treatment which relates the extent and timing of entering into commitments to implementation capacities. For potentially resource demanding commitments, such as those concerning bonded transport regimes and authorized trader schemes, special and differential treatment, for example in the form of transition periods, or even specific exemptions until capacity exists, would probably be required for some developing countries, notably the LDCs, and other countries in need, notably small low-income economies in transition. This may be in conjunction with technical assistance and capacity building as a means to obtain requisite implementation capacity." (Armenia,

¹⁸ 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.

¹⁹ 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.

Canada, European Communities, Japan, Kyrgyz Republic, Mongolia, New Zealand Paraguay and the Republic of Moldova, TN/TF/W/79)

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, Moldova, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)²⁰
- "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)²¹

(b) Legitimate Policy Objectives

Main GATT Article(s) Concerned

- Article V

Main Measure(s) Proposed

- " legitimate public policy goals, related for example to national security, health, safety and the environment, must obviously not be compromised in any way. In this respect, the exceptions provided for in GATT Article XX and XXI are fully applicable and relevant and should therefore be kept in view." (European Communities and Paraguay, TN/TF/W/35)
- "Members recognize that the legitimate public policy objectives set out in GATT Articles XX and XXI, including in relation to national security, health, safety and the environment, shall not be compromised in any way. To that end, Members recognize that the general and security exceptions provided for in GATT Articles XX and XXI shall be fully applicable. Members recognize that arbitrary or unjustifiable discrimination or disguised restrictions on international trade must not be applied to traffic in transit." (Armenia, Canada, European Communities, Japan, Kyrgyz Republic, Mongolia, New Zealand and the Republic of Moldova, TN/TF/W/79)

For suggestions on Special and Differential Treatment and Technical Assistance and Capacity Building, see also references in section M:I:(a).

2. Disciplines on Fees and Charges

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

Main GATT Article(s) Concerned

- Article V

²⁰ 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.

²¹ 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.

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, Moldova, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)
- "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)
- "Members shall publish information on all fees and charges imposed on or in connection with transit, or as a condition for transit, including transportation charges, ('transit fees and charges') along with their justification and basis. (...) Members shall accord an adequate time period between the publication of information on new or amended transit fees and charges and their entry into force except when justified by legitimate public policy objectives. In no event will new or amended transit fees and charges, which are more burdensome than those previously applied, enter into force until information on them is published and made readily available." (Armenia, Canada, European Communities, Japan, Kyrgyz Republic, Mongolia, New Zealand and the Republic of Moldova, TN/TF/W/79)

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, Moldova, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)
- "Members shall make this information readily available to all interested parties and inform other Members of where this information is available" (Armenia, Canada, European Communities, Japan, Kyrgyz Republic, Mongolia, New Zealand and the Republic of Moldova, TN/TF/W/79)

For suggestions on Special and Differential Treatment and Technical Assistance and Capacity Building, see references in section M:I:(a).

(b) Periodic Review of Fees and Charges

Main GATT Article(s) Concerned

- Article V

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, Moldova, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)
- "Each Member shall periodically review its transit fees and charges to ensure that they are in line with WTO commitments and with a view to consolidating them and reducing their number and diversity." (Armenia, Canada, European Communities, Japan, Kyrgyz Republic, Mongolia, New Zealand and the Republic of Moldova, TN/TF/W/79)

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, Moldova, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)

For suggestions on Special and Differential Treatment and Technical Assistance and Capacity Building, see references in section M:I:(a).

(c) More Effective Disciplines on Charges for Transit – Reduction/Elimination

Main GATT Article(s) Concerned

- Article V

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)
- *"Transit should not be subject to fees or charges that are not strictly related to transport costs or services rendered. Any fee or charge that is not related to the above could constitute a disguised barrier to trade. Trade will become more predictable and transparent if Members agree to implement a public register of all administrative costs and transport charges involved in transit and fees for services rendered. Service fees should not be established on a ad valorem basis."* (Chile, TN/TF/W/70)
- *"Members shall exempt traffic in transit from customs duties, transit duties and other fees and charges, except transit fees and charges that are commensurate with the cost of services rendered. Any transit fees and charges shall: Be reasonable, having regard to the conditions of transit; Not be charged with respect to consular services; Only be charged for transit services related to the specific transit movement in question; Not exceed the approximate cost of the transit service provided; Not be calculated on an ad valorem basis."* (Armenia, Canada, European Communities, Japan, Kyrgyz Republic, Mongolia, New Zealand and the Republic of Moldova, TN/TF/W/79)

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."²² (Paraguay, Rwanda and Switzerland, TN/TF/W/39)*
- See also reference on S&D by Chile in section A:3:a and by Armenia, Canada, the EC, Japan, the Kyrgyz Republic, Mongolia, New Zealand, Paraguay and the Republic of Moldova (TN/TF/W/79) in section M:1:a.

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."²³ (Paraguay, Rwanda and Switzerland, TN/TF/W/39.)*

For additional suggestions on Special and Differential Treatment and Technical Assistance and Capacity Building, see also references in section M:I:(a).

(d) Periodic Exchange Between Neighbouring Authorities

Main GATT Article(s) Concerned

- Article V

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, Moldova, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)*

3. Disciplines on Transit Formalities and Documentation Requirements

(a) Publication

Main GATT Article(s) Concerned

- Article V

Main Measure(s) Proposed

- *"All laws, regulations, requirements and procedures on or in connection with transit, or as a condition for transit ('transit formalities and documentation requirements'), along with their justification and basis, shall be made public. Members shall make this information readily available to all interested parties and inform other Members of where this information is*

²² 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.

²³ 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.

available. Members shall accord an adequate time period between the publication of new or amended transit formalities and documentation requirements and their entry into force except where justified by legitimate public policy objectives. Members shall periodically publish the average time for release of traffic in transit at main points of entry and exit using tools such as the WCO Time Release Study." (Armenia, Canada, European Communities, Japan, Kyrgyz Republic, Mongolia, New Zealand and the Republic of Moldova, TN/TF/W/79)

For suggestions on Special and Differential Treatment and Technical Assistance and Capacity Building, see references in section M:I:(a).

(b) Periodic Review

Main GATT Article(s) Concerned

- Article V

Main Measure(s) Proposed

- *"Periodically self-review transit formalities [and] transit documentation requirements based on comments from the private sector and other parties." (Bolivia, Moldova, 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)*
- *"Members shall periodically review their transit formalities and documentation requirements to ensure that they are in line with WTO commitments and with a view to consolidating and reducing their impact on trade. Such reviews shall allow for the participation of all interested parties and, as appropriate, may be held at a bilateral, regional or international level." (Armenia, Canada, European Communities, Japan, Kyrgyz Republic, Mongolia, New Zealand and the Republic of Moldova, TN/TF/W/79)*

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

- 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).*

For additional suggestions on Technical Assistance and Capacity Building as well as on Special and Differential Treatment, see references in section M:I:(a).

(c) Reduction/Simplification

Main GATT Article(s) Concerned

- Article V

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, Moldova, 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)
- *"Members shall ensure that traffic in transit through their territory is not subject to any unnecessary delays, restrictions, inspections or controls. Transit formalities and documentation requirements shall be reasonable having regard to the conditions of transit, applied uniformly and be not more trade restrictive than necessary to achieve the legitimate public policy objective pursued. For traffic in transit, Members shall provide for: The processing of transit documents and data prior to the arrival of the transiting consignment; The use by traders of commercially available information, documents and data wherever possible, including as part of transit declarations; The progressive establishment of a single window for traffic in transit; Separate physical lines, as far as possible, at the border for traffic in transit."* (Armenia, Canada, European Communities, Japan, Kyrgyz Republic, Mongolia, New Zealand and the Republic of Moldova, TN/TF/W/79)

For suggestions on Special and Differential Treatment and on Technical Assistance and Capacity Building, see references in section M:I:(a).

(d) Use of International Standards

Main GATT Article(s) Concerned

- Article V

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, Moldova, 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 ..."*
- *"Members shall draw upon international standards and instruments²⁴ as a basis for transit formalities and documentation requirements, where such standards and instruments exist, except when they would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued."* (Armenia, Canada, European Communities, Japan, Kyrgyz Republic, Mongolia, New Zealand and the Republic of Moldova, TN/TF/W/79)
- See also the related proposal TN/TF/W/85 by Chile, Korea, Norway and Switzerland as reflected in section H:1(d).
- See also the related EC proposal in TN/TF/W/35 as reflected in section M:3:c.

Built-in Exceptions/Flexibility

- Use of international standards *"to the extent possible"* (Bolivia, Moldova, 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).

For suggestions on Special and Differential Treatment and on Technical Assistance and Capacity Building, see references in section M:I:(a).

²⁴ International standards and instruments on transit include the Specific Annex E of the International Convention on the Simplification and Harmonisation of Customs Procedures (the Revised Kyoto Convention), the UN TIR Convention, the ATA Convention, the Istanbul Convention, the International Convention on the harmonization of frontier controls of goods, the UN Layout Key for documentation and the WCO Data Model.

(e) Promotion of Regional Transit Arrangements

Main GATT Article(s) Concerned

- Article V

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)
- "*Apart from encouraging Members to cooperate on a regional basis, the Negotiating Group could also consider the possibility of drawing up a non-exhaustive list of elements that Members should endeavour to incorporate when negotiating regional transit agreements. For example, Members could discuss having, to the extent possible, harmonized road traffic regulations with regard to road signs, road transport permits, technical requirements of vehicles, inspection certificates and insurance, etc., (...). In this connection, (...) in TN/TF/W/39, Paraguay et. al. have enumerated a number of common features in certain transit agreements which may be relevant (...)*". (Singapore, TN/TF/W/47)
- "*Members shall promote bilateral and regional transit agreements or arrangements with a view to reducing trade barriers. Members agree to cooperate and coordinate in designing and applying bilateral and regional transit agreements or arrangements. Members shall take full account of international standards and instruments when designing and applying bilateral and regional transit agreements or arrangements. Members shall not enforce unilateral rules affecting traffic in transit which are not in accordance with the bilateral or regional transit agreements or arrangements in which they participate. Members participating in regional transit agreements or arrangements shall give positive consideration to reasoned requests to participate by other Members who fill the requisite participation criteria.*" (Armenia, Canada, European Communities, Japan, Kyrgyz Republic, Mongolia, New Zealand and the Republic of Moldova, TN/TF/W/79)

Built-in Exceptions/Flexibility

- Harmonized road traffic regulations "*to the extent possible*" (Singapore, TN/TF/W/47)

Special and Differential Treatment

- "*... recognize that least-developed countries and some developing countries may have difficulties implementing some of the proposals relating to Article V. SDT should therefore be an integral part of any commitment in this area. In this connection, we note that the papers submitted on Article V contain specific proposals on SDT. Further to these proposals, Members may also wish to discuss: (i) longer implementation time-frames for developing and least-developed countries; (ii) allowing developing and least-developed countries to implement, on a best-endeavour basis,*

the more onerous obligations resulting from the Article V negotiations, including in the context of phased-in approaches." (Singapore, TN/TF/W/47)

For additional suggestions on Special and Differential Treatment as well as on Technical Assistance and Capacity Building, see references in section M:I:(a).

(f) Simplified and Preferential Clearance for Certain Goods

Main GATT Article(s) Concerned

- Article V

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, Moldova, 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)
- *"Members should employ risk management techniques that enable their authorities to concentrate inspection and monitoring activities on high-risk goods in transit, and facilitate the movement of low-risk goods in transit."* (Singapore, TN/TF/W/47)
- *"Members shall use risk management techniques to enable any inspections to be targeted on the basis of the degree of risk attached to individual consignments. This shall include the establishment of authorized trader schemes which grant simplified treatment to traders with a good track record of compliance with transit formalities and documentation requirements. In designing and applying transit formalities and documentation requirements, Members shall take account of the inherent characteristics of goods".* (Armenia, Canada, European Communities, Japan, Kyrgyz Republic, Mongolia, New Zealand and the Republic of Moldova, TN/TF/W/79)

Suggested Approach/Mean

- *"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, Moldova, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)

Special and Differential Treatment

- See reference to input in S&D by Singapore listed in section M:3:d and by Armenia, Canada, European Communities, Japan, Kyrgyz Republic, Mongolia, New Zealand and the Republic of Moldova in section M:1(a).

Technical Assistance and Capacity Building

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

For additional suggestions on Special and Differential Treatment as well as on Technical Assistance and Capacity Building, see references in section M:I:(a).

(g) Limitation of Inspections and Controls

Main GATT Article(s) Concerned

- Article V

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)*
- See also references in Egypt's national experience paper TN/TF/W/75.

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)

(h) Sealing

Main GATT Article(s) Concerned

- Article V

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)
- See also references in Egypt's national experience paper TN/TF/W/75.

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)

(i) Cooperation and Coordination on Documentation Requirements

Main GATT Article(s) Concerned

- Article V

Main Measure(s) Proposed

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

(j) Monitoring

Main GATT Article(s) Concerned

- Article V

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.

(k) Bonded Transport Regime/Guarantees

Main GATT Article(s) Concerned

- Article V

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, Moldova, 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)*
- *"Members shall operate bonded transport regimes that allow the transit of goods through the territory of Members without payment of customs duties or other charges subject to the provision of an appropriate guarantee. Members shall ensure that guarantees required from transit operators are: Reasonable having regard to the conditions of transit and the nature and value of the consignment in question, and limited to the amount of customs debt or other charges which may be incurred in respect of the goods; Designed and applied on a regional or international basis to as great an extent as possible; Released promptly after the completion of the transit operation; Released in full after the completion of the transit operation. No fees and charges shall be imposed in relation to the use of bonded transport regimes and guarantees except for those directly related to the approximate cost of any service provided." (Armenia, Canada, European Communities, Japan, Kyrgyz Republic, Mongolia, New Zealand and the Republic of Moldova, TN/TF/W/79)*
- See also references in Egypt's national experience paper TN/TF/W/75.

For suggestions on Special and Differential Treatment as well as on Technical Assistance and Capacity Building, see references in section M:1:(a).

4. Improved Cooperation and Coordination

(a) Amongst Authorities

Main GATT Article(s) Concerned

- Article V

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, Moldova, 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)*
- *"Coordination, cooperation and assistance among Members' authorities – especially Customs – involved with transit are highly relevant for the efficient resolving of transit-related problems. Members should work to conclude international cooperation and assistance agreements as a mechanism for achieving more efficient trade and increasing the ability to control illicit activities." (Chile, TN/TF/W/70)*
- *"Members shall ensure cooperation and coordination between all concerned authorities and agencies in their territory to facilitate traffic in transit. Members shall ensure co-operation with other Members on issues of traffic in transit, including with regard to standardizing regulations, formalities, documentation and other requirements and procedures in connection with transit, including working hours at and operations of border crossings. To this end, Members neighbouring each other shall, as far as possible, meet periodically to discuss and come to an understanding on the fees, formalities, legal requirements and practical operation of transit regimes relating to goods moving in transit between them." (Armenia, Canada, European Communities, Japan, Kyrgyz Republic, Mongolia, New Zealand and the Republic of Moldova, TN/TF/W/79)*
- See also references in Egypt's national experience paper TN/TF/W/75.

Built-in Exception(s)/Flexibility

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

Special and Differential Treatment

- See reference to S&D by Chile in section A:3:a.

For additional suggestions on Special and Differential Treatment as well as on Technical Assistance and Capacity Building, see references in section M:I:(a).

(b) Between Authorities and the Private Sector

Main GATT Article(s) Concerned

- Article V

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, Moldova, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28)
- *"Members shall provide opportunities for interested parties to comment on the transit regime, including with regard to the introduction of new or amended fees and charges, regulations, formalities, documentation and other requirements and procedures in connection with transit, with a view to minimizing unnecessary delays and restrictions on traffic in transit."* (Armenia, Canada, European Communities, Japan, Kyrgyz Republic, Mongolia, New Zealand and the Republic of Moldova, TN/TF/W/79)

For suggestions on Special and Differential Treatment as well as on Technical Assistance and Capacity Building, see references in section M:I:(a).

5. Operationalization and Clarification of Terms

Main GATT Article(s) Concerned

- Article V

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)
- Clarify Article V:3's requirement not to impose any *"unnecessary delays"* on transit traffic by *"stipulating [a] time period[s], after which any further retention at the customs house could be deemed to constitute unnecessary delay."* (Singapore, TN/TF/W/47)
- Clarify the scope of *"administrative expenses entailed by transit"* by discussing *"whether and under what situations these expenses should be imposed on transit traffic. In this connection, Members could consider drawing up guidelines for the imposition of 'administrative expenses'."*

For example, Members could clarify that 'administrative expenses' should only relate to costs expended for risk assessment and random inspections. This could be a nominal fee which should be applied on a non-discriminatory basis. Members could discuss what other elements to include in these guidelines." (Singapore, TN/TF/W/47)

- Clarify the scope of "cost of services rendered" in the sense that *"any charges imposed should only be in respect of the provision of the services necessary to ensure the effective transit of goods. The charges levied must refer to the approximate cost of the service rendered and may not be calculated on an ad valorem basis."* (Singapore, TN/TF/W/47).
- *"Transit should not be subject to any unnecessary delays or restrictions. The absence of prescribed routes and periods for transit constitutes a barrier to trade. The establishment by Members of precise routes and periods for transit between an entry and an exit point would therefore increase the predictability and transparency of trade, while improving the ability to control cross-border smuggling."* (Chile, TN/TF/W/70)
- *"Freedom of transit and routes most convenient for international transit: There shall be freedom of transit through the territory of each Member via the routes most convenient for international transit. Members shall ensure that traders have the right to choose the route most convenient for international transit subject to any reasonable restrictions they impose for legitimate public policy objectives. No distinction shall be made which is based on the choice of means of transport, the flag of vessels, the place of origin, departure, entry, exit or destination, or any circumstances relating to the ownership of goods or means of transport."*

Definition of traffic in transit: Goods (including those moved via fixed infrastructure, inter alia pipelines, baggage and the personal belongings of the person operating the means of transport), and means of transport, shall be deemed to be in transit across the territory of a Member when the passage across such territory, is only a portion of a complete journey beginning and terminating beyond the frontier of the Member whose territory the traffic passes. Traffic of this nature is termed "traffic in transit" irrespective of (1) trans-shipment, warehousing, breaking bulk, or change in the mode of transport and (2) whether the goods or means of transport, after passing across a territory of a Member, return to the territory of a Member which they have already left. This definition shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage)". (Armenia, Canada, European Communities, Japan, Kyrgyz Republic, Mongolia, New Zealand and the Republic of Moldova, TN/TF/W/79)

Special and Differential Treatment

- See reference to input on S&D by Singapore listed in section M:3:d, and by Chile in section A:3:a.

For additional suggestions on Special and Differential Treatment as well as on Technical Assistance and Capacity Building, see references in section M:I:(a).

Related to Customs Cooperation

INFORMATION EXCHANGE MECHANISM

1. Multilateral Mechanism for the Exchange and Handling of Information

Main Measure(s) Proposed

- *"Establish a multilateral mechanism for the exchange and handling of information between Members." (India and the United States, TN/TF/W/57)*
- *"Establish a mechanism to facilitate cooperation between customs authorities by: (i) Exchanging specific information upon request on matters such as customs valuation, HS classification, full and accurate description, quantity, origin of goods in identified cases where there is reason to doubt the truth or accuracy of the declaration filed by the importer or exporter. The request for information would be limited to the data elements contained in the import or export declaration. (ii) In appropriate cases, providing document(s) filed in support of goods declaration to the requesting country for investigative and/or judicial processes". (India, TN/TF/W/68)*
- *"Elements for commitment"*
 - *Exchanging specific information upon request.*
 - *Exchange of specific information shall relate to matters such as HS classification, quantity, full and accurate description, country of origin and valuation of goods.*
 - *Such exchange shall be in identified cases where there is reason to doubt the truth or accuracy of the declaration filed by the importer or exporter.*
 - *The request for information shall be limited to the data elements already contained in the import or export declaration.*
 - *In appropriate cases, exchange shall also be of document(s) filed in support of goods declaration such as commercial invoice, packing list, certificate of origin and Bill of Lading.*
 - *The exchange of information shall include confirming authenticity of supporting document(s). (India, TN/TF/W/103)*

Suggested Approach/Means

- *"Members should establish a mechanism that is practical and effective, involving a commitment pertaining to (1) a defined universe of information, (2) a practical basis for exchange that is efficient and not burdensome, and (3) a structure for information exchange that is forward-looking—both with regard to promoting continuous improvement in cooperation and commonality of information requirements. These objectives also point to an information exchange mechanism that is ultimately built upon implementation of World Customs Organization's Customs Data Model. (...) A critical element of moving this proposal forward would be to address the matter of confidentiality in handling of such information." (India and the United States, TN/TF/W/57)*

- Cooperation *"would be in a limited number of cases where the requesting administration, after carrying out necessary internal verification, has reasons to doubt the truth or accuracy of any element of the import or export declaration or supporting document (s). There will be an inbuilt mechanism to ensure that the requests are not made in a routine manner." (...) "For making such requests, a time limit could be considered to avoid any hardship for retrieving old documents. The nature of information to be requested would be specific details (e.g, description of goods, grade or specification, HS classification, value, quantity, country of origin, etc.) concerning the transaction. Supporting documents, wherever required, would include commercial invoice, packing list, certificate of origin, etc. These documents would be mostly certified or authenticated copies." (...) " (...) exchange of information could be through a nodal agency to be designated by each Customs administration and notified to the WTO"* Request for assistance could be made in writing or electronically in one of the three official languages of the WTO. Request for information should include brief details of the case, nature of doubt and reasons for doubt, results of internal verification, and details of information required. *"It would be desirable to lay down a reasonable time limit for furnishing information." "... information exchanged should be subject to a confidentiality clause, namely, that the information supplied should not be disclosed except to the extent required in judicial proceedings."* Information so obtained be allowed to be used in the judicial proceedings without bringing in the cover of confidentiality. (India, TN/TF/W/68)
- *"Methodology of exchange*
 - *The requesting Member before making a request shall carry out necessary internal verification to satisfy itself that there are reasons to doubt the truth or accuracy of any element in the declaration.*
 - *Exchange of information shall be through a centralized agency designated by each Member's Customs administration and notified to the WTO.*
 - *Documents exchanged may be original, certified or authenticated copy. Original documents shall be exchanged in cases where the courts of law require them.*
 - *While making the request, the designated centralized agency shall confirm that all necessary internal checks have been carried out within the country of import or export.*
 - *The request for information shall be in one of the three official languages of the WTO and can be in writing or by electronic means to be later confirmed in writing.*
 - *The request for information shall include brief details of the case, reasons for doubting the truth or accuracy of the declaration, results of internal verification carried out, and the details of information required from the requested Member.*
 - *Such requests shall be made not later than two years after the importation or exportation of the goods in question.*
 - *Requested Member shall provide the requested information, preferably within a period of 90 days.*
 - *Information so exchanged shall be subject to a confidentiality clause, namely, that the information supplied shall not be disclosed by the requesting Member to any third party except to the extent required in judicial proceedings.*

- *Information obtained under this mechanism shall be afforded the same degree of confidentiality by the requesting Member that it applies to similar information in its custody.*
- *Exchange of information shall not be denied merely on the ground of confidentiality as the elements of information identified for exchange are required to be declared to the requested and the requesting Member in the ordinary course of importation or exportation of goods." (India, TN/TF/W/103)*

Special and Differential Treatment

- *"Assess needs and priorities of developing countries related to implementation of the proposal and develop a path by which every Member can ultimately achieve full implementation of the mechanism." (India and the United States, TN/TF/W/57)*

Technical Assistance and Capacity Building

- *"Work with relevant international organizations and resource providers to address technical assistance and other issues as appropriate". (India and the United States, TN/TF/W/57)*
- *"Technical assistance needs in this area are not likely to be significant as such cooperation can be effected through the existing administrative set up of the customs administrations. However, this issue can be considered if such need is projected by any Member." (India, TN/TF/W/68)*

IV.2 THIRD GENERATION TEXT - PROPOSALS

A. PUBLICATION AND AVAILABILITY OF INFORMATION

1. Publication of Trade Regulations and of Penalty Provisions

Publication

1. *Members shall publish promptly all laws, regulations, judicial decisions and administrative rulings of general application relating to or affecting trade in goods in such a manner provided for in Article X of GATT 1994 as to enable governments²⁵ and traders to become acquainted with them. The information to be published shall include:*

- (a) Procedures of border agencies (including port, airport, and other entry-point procedures and relevant forms and documents);*
- (b) Rate of duties and taxes imposed on or in connection with importation or exportation (including applied tariff rates);*
- (c) Decisions and examples of customs classification;*
- (d) Import and export restrictions;*
- (e) Fees and charges imposed on or in connection with importation or exportation;*
- (f) Penalty provisions against breaches of import and export formalities;*
- (g) Appeal procedures; and*
- (h) Agreements with any country or countries relating to the above issues.*

Availability

2. *Members shall ensure that the information referred to in paragraph 1 is made available to governments and traders in a non-discriminatory and convenient manner via an officially designated source notified to [the WTO Secretariat or a newly established body], including official gazette, official journal and whenever practicable, official website.*

Outline of Major Trade-related Procedures

3. *Members shall, whenever practicable, provide documents regarding outline of major trade-related procedures [in English, French or Spanish] and make publication and notification of them in a manner provided for in paragraph 2.*

General Reservations

4. *Nothing in these provisions shall be construed as requiring:*
- (a) the publication or provision of information referred to in paragraph 1 other than in the language of the Member except as stated in paragraph 3; or*
 - (b) Members to disclose 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.*

Special and Differential Treatment

²⁵ The term "governments" is deemed to include the competent authorities of any Separate Customs Territory Member and the European Communities.

5. *[Developing-country Members shall not be required to apply the provisions of paragraph 3 for a period of [] years from the date of application. [The Members or a newly established body] shall, upon duly motivated request by a developing-country Member, accord extensions of this period.*

6. *Least-developed country Members shall not be required to apply the provisions of paragraph 3 until their acquisition of the necessary capacity to implement such provisions.]* (Japan, Mongolia and Switzerland, TN/TF/W/114)

2. Internet Publication

3. Notification of Trade Regulations

4. Establishment of Enquiry Points

Establishment of Enquiry Points

1. *Members shall ensure that one or more enquiry points exist which are responsible for the provision of relevant information and documents related to trade procedures including the documents referred to in paragraph 3 to traders in a non-discriminatory and convenient manner.*

2. *[Members should, whenever practicable, establish a primary/initial enquiry point which facilitates coordination among competent border agencies in order that traders have access to necessary information more efficiently.]*

Notification

3. *Members shall notify [the WTO Secretariat or a newly established body] of the contact information of the enquiry points in order to make such information available to governments and traders.*

Special and Differential Treatment

4. *Developing-country Members shall not be required to apply these provisions for a period of [] years from the date of application. [The Members or a newly established body] shall, upon duly motivated request by a developing-country Member, accord extensions of this period.*

5. *Least-developed country Members shall not be required to apply these provisions until their acquisition of the necessary capacity to implement such provisions.]* (Japan, Mongolia and Switzerland, TN/TF/W/114)

5. Other Measures to Enhance the Availability of Information

B. TIME PERIODS BETWEEN PUBLICATION AND IMPLEMENTATION

1. Interval between Publication and Entry into Force

“Prior Publication

Members shall ensure that a reasonable interval is provided between the publication of new or amended laws, regulations and administrative rulings of general application, or their drafts or summaries, and their entry into force in such a manner as to allow traders to become acquainted with and well prepared for the compliance with them.” (Hong Kong, China, Japan, Korea, Mongolia and Switzerland, TN/TF/W/115)

C. CONSULTATION AND COMMENTING ON NEW AND AMENDED RULES

1. **Prior Consultation and Commenting on New and Amended Rules (and Information on Policy Objectives Sought)**

Prior Consultation

Members shall afford appropriate opportunities to interested parties to comment on proposed introduction or amendment of trade-related laws, regulations and administrative rulings of general application. Members shall provide information of their legitimate policy objectives pursued and allow reasonable period for interested parties to submit comments.

(...)

Regular Consultation

Members shall hold regular consultations between border agencies and traders.

Reservations

Nothing in these provisions shall be construed to require Members to carry out any responsibility which is not within the competence of their respective government.

Special and Differential Treatment

[Developing-country Members shall not be required to apply these provisions for a period of [] years from the date of application. [Members or a newly established body] shall, upon duly motivated request by a developing-country Member, accord extensions of this period.

Least-developed country Members shall not be required to apply these provisions until their acquisition of the necessary capacity to implement such provisions.] (Hong Kong, China, Japan, Korea, Mongolia and Switzerland, TN/TF/W/115)

D. ADVANCE RULINGS

1. **Provision of Advance Rulings**

"A Member shall issue an advance ruling²⁶ in a time bound manner to an applicant submitting a written request which contains all necessary information.

An advance ruling applies in respect of the applicant²⁷ for a reasonable period of time after its issuance, unless:

- i) the facts or circumstances supporting the original ruling have changed, and*
- ii) the Member notifies the applicant in writing of any revocation or modification of the ruling.*

A Member shall publish, at a minimum, (i) the time period by which it will issue an advance ruling, (ii) the length of time for which the advance ruling is valid, and (iii) what information is necessary from the applicant to issue an advance ruling²⁸.

²⁶ Defined as "a determination of a Member, provided in writing to an applicant, of the tariff classification [other subject matter such as customs valuation, duty drawback] of a good for customs purposes, prior to the commencement of trade in the good concerned."

²⁷ Defined as "an importer, exporter or producer, or a representative of an importer, exporter or producer."

A Member shall provide, upon the request of the applicant, for a review by the issuing authority of the advance ruling or the decision to revoke or modify the advance ruling²⁹.

A Member shall endeavour to make available information on advance rulings which are considered to set a wider precedent applicable to other traders, taking into account the need to protect commercially confidential information." (Australia, Canada and the United States, TN/TF/W/125)

E. APPEAL PROCEDURES

1. Right of Appeal

Right of Appeal

1. *The legislation of each Member shall ensure that traders have the right of appeal, without penalty, against rulings and decisions by customs and other relevant border agencies concerning the specific importation, exportation, and transit of goods conducted by them. The appeal may be initially heard by the same agency or its supervisory authority prior to a review by separate and independent judicial, arbitral, or administrative tribunals.*

Transparency

2. *Members shall ensure that appeal procedures are carried out in a non-discriminatory manner, and that information concerning such procedures is made available to traders. Traders shall be allowed to be represented at all stages of appeal procedures by independent legal counsel.*

Standard Period

3. *Members shall ensure that customs and other relevant border agencies set out a standard period for their review and correction of decisions and rulings under the appeal procedures.*

Opportunities to Raise Complaints

4. *Members shall ensure that customs and other relevant border agencies afford opportunities for traders to raise complaints concerning rulings and decisions in an informal and convenient manner prior to the commencement of the appeal procedures. The relevant agencies shall, upon request, inform the traders of reasoning of the rulings and decisions including applied laws and regulations.*

Special and Differential Treatment

5. *[Developing-country Members shall not be required to apply the provisions of paragraphs 3 and 4 for a period of [] years from the date of application. [Members or a newly established body] shall, upon duly motivated request by a developing-country Member, accord extensions of this period.*

6. *Least-developed country Members shall not be required to apply the provisions of paragraphs 3 and 4 until their acquisition of the necessary capacity to implement such provisions.] (Japan and Mongolia, TN/TF/W/116)*

²⁸ *Note to the reader:* This language may be dropped from the proposed article should it be adequately covered by the article on publication and availability of information.

²⁹ *Note to the reader:* This provision may be dropped from the proposed article should it be adequately addressed in the context of the current proposals designed to clarify appeal and review procedures under Article X, which also include an initial right to review within the issuing authority.

2. Release of Goods in Event of Appeal

3. Appeal Mechanism in a Customs Union

"There shall be a mechanism for redress of adverse findings of inspection authorities, in particular for inspection decision relating to food items, at the import points of a customs union.

In order to ensure quick and uniform appellate decisions, appeals against findings of inspection authorities at the level of a member state of a customs union shall be heard and decided at the customs union level.

Such appellate decisions shall be binding on the inspection authorities of all member states of a customs union." (India, TN/TF/W/122)

F. OTHER MEASURES TO ENHANCE IMPARTIALITY, NON-DISCRIMINATION AND TRANSPARENCY

1. Uniform Administration of Trade Regulations

2. Maintenance and Reinforcement of Integrity and Ethical Conduct Among Officials

- (a) Establishment of a Code of Conduct
- (b) Computerized System to Reduce/Eliminate Discretion
- (c) System of Penalties
- (d) Technical Assistance to Create/Build up Capacities to Prevent and Control Customs Offences
- (e) Appointment of Staff for Education and Training
- (f) Coordination and Control Mechanisms

3. Import Alerts/Rapid Alerts

"Import alert/rapid alert is a border control mechanism adopted by some countries as well as customs unions to monitor and ensure the quality of imported food product. This is operated by issuing a notification to all member states of a customs union/or to all ports of a country as well as to the exporter in case of detection of contaminated imports or import of products not meeting the required standards. As a result of such alert, a predetermined number of subsequent export consignments of the same exporter are subject to hundred percent inspection at the border of that country/every port of a customs union.

The following disciplines shall apply to a system of import alert/rapid alert:

- *In order to ensure that the application of a system of import/rapid alert does not by itself create a barrier to trade, it shall be imposed across a customs union only if based on uniform standards and applied uniformly by all of its member states.*
- *A notification against a country/exporter under a system of import/rapid alert restricting or prohibiting imports shall be issued only after it has been established on the basis of positive evidence that imports from the country/exporter concerned have not fulfilled the prescribed objective standards.*

- *A notification issued under a system of import/rapid alert restricting or prohibiting imports shall not be maintained if circumstances giving rise to it no longer exist, or if changed circumstances can be addressed in a less trade restrictive manner. Circumstances giving rise to import/ rapid alert would be deemed to no longer exist if [six] successive consignments imported from the country/exporter concerned, after the issuance of import/ rapid alert fulfilled the prescribed objective standards.*
- *Announcement of termination of an import/rapid alert shall be made through a public notice to be issued no later than [15 days] after a decision has been taken to terminate the import/rapid alert.*
- *The speed and standard of publicity of de-notification of such alert shall equal the level applied at its issuance." (India, TN/TF/W/122)*

4. Detention

"In case imported goods are detained for inspection by customs or any other authority of a Member country, information regarding such detention shall be provided to the importer or his authorized agent promptly." (India, TN/TF/W/122)

5. Test Procedures

"In case of the first test of a sample having shown an adverse finding, each Member conducting such a test shall grant the concerned importer or the exporter or their authorized agent the right to a second confirmatory test.

A clear procedure shall be laid down for such a confirmatory test including a validated test method.

A list of accredited laboratories shall be published where confirmatory tests can be carried out.

For a customs union, the results of a confirmatory test carried out in one member state of a customs union shall be valid for and be accepted in all other member states of the customs union." (India, TN/TF/W/122)

G. FEES AND CHARGES CONNECTED WITH IMPORTATION AND EXPORTATION

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

"Scope

The provisions [of this article] apply to all fees and charges imposed by customs authorities or by any other government body of any Member, including tasks undertaken on their behalf, on or in connection with importation or exportation, or as a condition for importation or exportation.

Specific parameters

Fees and charges shall only be imposed for services provided in direct connection with the specific importation or exportation in question or for any formality required for undertaking such importation or exportation.

Fees and charges shall not exceed the approximate cost of the service provided.

Fees and charges shall not be calculated on an ad valorem basis.

Fees and charges shall not be imposed with respect to consular services and equivalent measures.

Information on fees and charges shall be published. This information shall include the reason for the fee or charge (the service provided), the responsible authority, the fees and charges that will be applied, and when and how payment is made. The information shall be made readily available to all interested parties and each Member shall inform, through the WTO Secretariat, all other Members where the information on its fees and charges is available. The information shall be published via an officially designated medium, and where feasible and possible, official website.

An adequate time period shall be accorded between the publication of information on new or amended fees and charges and their entry into force except when justified by legitimate public policy objectives.

New or amended fees and charges shall not be imposed until information on them is published and made readily available.

Each Member shall periodically review its fees and charges to ensure that they are in line with WTO commitments and with a view to consolidating them and reducing their number and diversity." (European Communities, Korea and Switzerland, TN/TF/W/107)

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

H. FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION

1. Disciplines on Formalities/Procedures and Data/Documentation Requirements Connected with Importation and Exportation

- (a) Non-discrimination
- (b) Periodic Review of Formalities and Requirements

"Each Member shall review its formalities and requirements at reasonable and regular intervals, taking into account relevant new information and business practices, availability and adoption of techniques and technology, international best practices and input from interested parties including the private sector"³⁰ (Hong Kong, China and Switzerland, TN/TF/W/124/Rev.1)

- (c) Reduction/Limitation of Formalities and Documentation Requirements

"Members shall 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 necessary"³¹ to

³⁰ This self-initiated review shall not affect Members' rights and obligations under paragraph 2 of Article VIII of GATT 1994.

³¹ Determining whether formalities and requirements are more trade restrictive than necessary to fulfil their legitimate objectives involves a process of considering and weighing a number of factors. These factors include:

- (i) the importance of the legitimate objectives to the Member concerned;
- (ii) the extent to which the formalities and requirements contribute to the achievement of the legitimate objectives;
- (iii) the restrictive effect the formalities and requirements have on trade;
- (iv) the reasonable availability of alternative formalities and requirements that may achieve the legitimate objectives. In determining whether alternative formalities and requirements are reasonably available,

achieve their legitimate objectives and are applied in an efficient manner so as not to constitute unnecessary obstacle to trade.

Any such formalities or requirements shall not be maintained if the circumstances or objectives giving rise to their adoption no longer exist." (Hong Kong, China and Switzerland, TN/TF/W/124/Rev.1)

- (d) Use of International Standards
- (e) Uniform Customs Code
- (f) Acceptance of Commercially Available Information and of Copies

"Customs and other border agencies shall require only those documents necessary to permit control of the operation and to ensure that all requirements relating to the application of relevant laws have been complied with.

For goods subject to control of legislation conformity and documentation requirement, customs and other border agencies shall endeavour to accept copies of documents, in particular (a) commercial documents (invoices, bills of lading, etc.); and (b) where a government agency already holds the original and multiple authorities are involved. In the case of (b), Members shall accept authenticated copies by the agency holding the original in lieu of the original document.

Customs and other border agencies shall endeavour to use relevant information already available in the context of commercial transactions (e.g., quantity and commercial description of the goods) and submitted to customs and other border agencies as a means of foregoing the relevant information in supporting documents.

In cases where Goods declarations and other supporting documents are lodged electronically and authenticated by electronic signatures or electronic procedures and received by customs and other border agencies, no other original of these documents shall be requested by customs and other border agencies.

Customs and other border agencies shall endeavour to allow supporting documents not to be presented provided they are held available by the declarant, requisite information is provided by the declarant about the documents, and the documents are available from the declarant for a specific period.

Customs and other border agencies shall not require a translation of the particulars of supporting documents (e.g., invoices, bills of lading), except when necessary to permit processing of the Goods declaration." (Hong Kong, China, Korea and Switzerland, TN/TF/W/112)

- (g) Automation

the economic, technical and administrative feasibility of such alternative formalities and requirements would have to be taken into consideration by the Member concerned; and

- (v) the costs including administrative, implementation and compliance costs associated with the formalities and requirements and the benefits derived from them.

After considering the above factors, the formalities and requirements in question would deem to be more trade restrictive than necessary if it is determined that

- (a) alternative formalities and requirements are reasonably available and significantly less trade restrictive and they can achieve the legitimate objectives to the same or greater extent; or
- (b) the trade restrictiveness of the formalities and requirements being examined is disproportionate to the legitimate objectives; or
- (c) the costs of the formalities and requirements under examination are significantly excessive to their benefits.

(h) Single Window/One-time Submission

(i) Elimination of Pre-shipment Inspection

- "1. *Without prejudice to paragraphs 2 and 3, Members shall not require the use of pre-shipment inspections or their equivalent.*
2. *Developing-country Members shall eliminate any requirements to use pre-shipment inspections or their equivalent not later than [X] years from the entry into force of this commitment.*
3. *Least-developed country Members shall eliminate any requirements to use pre-shipment inspections or their equivalent not later than [Y] years from the entry into force of this commitment.*
4. *From the entry into force of this commitment, Members shall not introduce or apply any new requirements to use pre-shipment inspections or their equivalent.*
5. *During the transition periods in paragraphs 2 and 3, Members shall ensure that pre-shipment inspection companies or their equivalent, acting on their behalf or employed by them, act consistently with the relevant commitments of Members, including in the field of Trade Facilitation." (European Communities and Chinese Taipei, TN/TF/W/108)*

(j) Phasing out Mandatory Use of Customs Brokers

- "1. *Without prejudice to paragraph 2, Members shall not require the use of customs brokers.*
2. *Developing country and least-developed country Members shall eliminate any requirements to use customs brokers not later than [X] years from the entry into force of this commitment.*
3. *From the entry into force of this commitment, Members shall not introduce or apply any new requirements to use customs brokers.*
4. *Members shall apply transparent, non-discriminatory and proportionate rules if and when licensing customs brokers." (European Communities, Mongolia, Chinese Taipei and Switzerland, TN/TF/W/110)*

(k) Same Border Procedures Within a Customs Union

"For border clearance of goods, and in particular for clearance of agriculture and food products, member states of a customs union shall adopt the same border procedures. This shall include adoption of same standards including specifications, terminologies and definitions, inspection, sampling and test methods." (India, TN/TF/W/121)

(l) Testing Methods Based on Specific Product Features

(m) Uniform Forms and Documentation Requirements Relating to Import Clearance within a Customs Union

"All documentation requirements relating to import clearance shall be uniform for all member states of a customs union." (India, TN/TF/W/121)

(n) Option to Return Rejected Goods to the Exporter

"In case of rejection of a food consignment on account of failure to meet certain standards, an option shall first be given to the exporter to return the rejected goods to the exporter; only upon failure by the exporter to exercise this option within a reasonable period of time, a different course of action, including destruction of goods can be considered by the appropriate authority of the importing Member." (India, TN/TF/W/121)

I. CONSULARIZATION

1. Prohibition of Consular Transaction Requirement

"A Member shall not require a consular transaction³², including any related fee or charge, in connection with the importation of any good". (Uganda and the United States, TN/TF/W/104)

J. BORDER AGENCY COOPERATION

1. Coordination of Activities and Requirements of all Border Agencies

"A Member shall endeavour to encourage its authorities and agencies involved in border controls to cooperate and coordinate in order to facilitate trade by, among other things, converging import and export data and documentation requirements, and establishing a single location for one-time documentary and physical verification of consignments.

A Member shall endeavour to cooperate with bordering Members to coordinate customs procedures at specific border crossings by, among other things, aligning working hours and developing common customs facilities." (Canada, TN/TF/W/128)

K. RELEASE AND CLEARANCE OF GOODS

1. Expedited/Simplified Release and Clearance of Goods

(a) Pre-arrival Clearance

"Pre-arrival Processing

Members shall maintain or introduce pre-arrival processing, which is defined as administrative procedures of customs and other relevant border agencies to accept and examine import documentation and other required information upon the submission by traders prior to the arrival of goods, in order to further expedite the clearance of goods where appropriate. In cases where it is decided that no further examination is required, goods should be cleared immediately upon arrival.

³² Defined as *"the procedure of obtaining from a consul of the importing Member in the territory of the exporting Member, or in the territory of a third party, a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shippers' export declaration, or any other customs documentation in connection with the importation of the good."*

International Standards and Practices

Members shall draw on relevant international standards and practices³³ as a basis for pre-arrival processing.

Reservations

Nothing in these provisions shall affect the right of Members to conduct examinations where necessary or to maintain appropriate border control with the use of risk management.

Special and Differential Treatment

[Developing-country Members shall not be required to apply these provisions for a period of [] years from the date of application. [Members or a newly established body] shall, upon duly motivated request by a developing-country Member, accord extensions of this period.

Least-developed country Members shall not be required to apply these provisions until their acquisition of the necessary capacity to implement such provisions.]" (Japan, Korea, Mongolia and Switzerland, TN/TF/W/117)

(b) Expedited Procedures for Express Shipments

(c) Risk Assessment/Analysis, Authorized Traders

"Members shall apply simplified import and export formalities for economic operators which meet specific criteria ("authorized traders"), providing in particular for more rapid release and clearance of goods, a lower incidence of physical inspections, and facilitations with regard to declarations, duty payments, documentation, documentation inspections and data.

The specific criteria may include the following: (1) an appropriate record of compliance with import and export requirements; (2) a system of managing records to allow for necessary controls; (3) financial solvency (including, where appropriate, provision of a sufficient security/guarantee); and (4) an appropriate system of security and safety standards.

The specific criteria shall not be designed or applied so as to afford or create arbitrary or unjustifiable discrimination or a disguised restriction on international trade. All economic operators, including small- and medium-sized enterprises, in the territories of all Members, including developing and least-developed countries, have the right to apply for authorized trader status.

Members shall use objective risk management techniques in the assessment of any application for authorized trader status.

³³ International standards and practices include, Standard 3.25 of the Revised Kyoto Convention, WCO Guidelines for the immediate release of consignments by Customs.

The specific criteria to qualify as an authorized trader, along with all necessary information on how to apply for authorized trader status, shall be published and made readily available to all interested parties.

Members shall draw upon relevant international standards and instruments as a basis for authorized trader schemes³⁴, where such standards and instruments exist, except when they would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued." (European Communities, Chinese Taipei and Switzerland, TN/TF/W/109)

"Norms for authorized trader status shall be applied uniformly by all member states of a customs union." (India, TN/TF/W/121)

"A customs union shall generally apply a harmonized risk management system across the entire customs union." (India, TN/TF/W/121)

- (d) Post-clearance Audit
- (e) Separating Release from Clearance Procedures
- (f) Other Measures to Simplify Customs Release
- (g) Establishment and Publication of Average Release and Clearance Times

L. TARIFF CLASSIFICATION

1. Objective Criteria for Tariff Classification

"(a) Members shall apply criteria for the tariff classification of goods so that their classification decisions are not arbitrary or unjustifiable and do not constitute a disguised restriction on international trade.

(b) Decisions on tariff classification which are based on the Harmonised Commodity Description and Coding System of the World Customs Organization shall be presumed to comply with the requirements of paragraph (a)." (New Zealand, TN/TF/W/126)

M. MATTERS RELATED TO GOODS TRANSIT

1. Non-Discrimination and Policy Objectives

- (a) Strengthened Non-discrimination

"Members shall not apply discriminatory measures to goods in transit, or to vessels or other means of transport of other Members, for non-commercial reasons. This does not exclude the right to resort to the exceptions already laid down in WTO Agreements, for valid reasons and provided that the measure concerned does not constitute a disguised restriction on international trade." (Cuba, TN/TF/W/127)

³⁴ A relevant international standard for this purpose is Standard 3.32, Chapter 3 of the Revised Kyoto Convention.

"National treatment: With respect to all laws, regulations, requirements and procedures affecting the internal passage of traffic in transit across the territory of a Member, and all fees and charges imposed on or in connection with transit, including transportation charges ("transit fees and charges"), and without prejudice to the legitimate customs control and supervision of goods in transit, each Member shall accord to traffic in transit to or from the territory of any Member, treatment no less favourable than that accorded to domestic goods, exports and imports, and their movement.

Most-favoured-nation treatment: With respect to all laws, regulations, requirements, procedures and fees and charges, including transportation charges, on or in connection with transit, each Member shall accord to traffic in transit to or from the territory of any other Member treatment no less favourable than the treatment accorded to traffic in transit to or from any third country.

Treatment following transit: Each Member shall accord to products which have been in transit through the territory of any other Member treatment no less favourable than that which would have been accorded to such products had they been transported from their place of departure to their destination without going through the territory of such other Member. Any Member shall, however, be free to maintain its requirements of direct consignment existing on the date of the GATT 1994 in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of the goods at preferential rates of duty or has relation to the Member's prescribed method of valuation for duty purposes." (Armenia, European Communities, Kyrgyz Republic, Mongolia, the Former Yugoslav Republic of Macedonia and the Republic of Moldova, TN/TF/W/113)

(b) Legitimate Policy Objectives

"Members recognize that the legitimate public policy objectives set out in GATT Articles XX and XXI, including in relation to national security, health, safety and the environment, shall not be compromised in any way. To that end, Members recognize that the general and security exceptions provided for in GATT Articles XX and XXI shall be fully applicable.

Any Member may require that traffic in transit through its territory be entered at the proper customs house without prejudice to the other commitments on transit". (Armenia, European Communities, Kyrgyz Republic, Mongolia, the Former Yugoslav Republic of Macedonia and the Republic of Moldova, TN/TF/W/113)

2. Disciplines on Fees and Charges

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

"Publication: Members shall publish information on all transit fees and charges. This information shall include the reason for the transit fee or charge (the service provided), the responsible authority, the transit fees and charges that will be applied, and when and how payment is made. Members shall make this information readily available to all interested parties and inform other Members where this information is available. The information shall be published via an officially designated medium, and where feasible and possible, official website.

Prior publication: Members shall accord an adequate time period between the publication of information on new or amended transit fees and charges and their entry into force except when justified by legitimate public policy objectives." (Armenia, European Communities, Kyrgyz Republic, Mongolia, the Former Yugoslav Republic of Macedonia and the Republic of Moldova, TN/TF/W/113).

(b) Periodic Review of Fees and Charges

"Periodic review: Each Member shall periodically review its transit fees and charges to ensure that they are in line with WTO commitments and with a view to consolidating them and reducing their number and diversity." (Armenia, European Communities, Kyrgyz Republic, Mongolia, the Former Yugoslav Republic of Macedonia and the Republic of Moldova, TN/TF/W/113)

(c) More effective Disciplines on Charges for Transit – Reduction/Simplification

Members shall exempt traffic in transit from customs duties, transit duties and other fees and charges, except transit fees and charges that are commensurate with the cost of the service rendered. Any transit fee and charge shall:

- Be reasonable, having regard to the conditions of transit;
- Not be charged with respect to consular services or the equivalent;
- Only be imposed for transit services provided in direct connection with the specific transit movement in question or for any formality required for undertaking such importation or exportation;
- Not exceed the approximate cost of the transit service provided;
- Not be calculated on an *ad valorem* basis. (Armenia, European Communities, Kyrgyz Republic, Mongolia, the Former Yugoslav Republic of Macedonia and the Republic of Moldova, TN/TF/W/113)

(d) Periodic Exchange between Neighbouring Authorities

3. Disciplines on Transit Formalities and Documentation Requirements

(a) Publication

"Members shall publish information on all transit fees and charges. This information shall include the reason for the transit fee or charge (the service provided), the responsible authority, the transit fees and charges that will be applied, and when and how payment is made. Members shall make this information readily available to all interested parties and inform other Members where this information is available. The information shall be published via an officially designated medium, and where feasible and possible, official website."

Members shall accord an adequate time period between the publication of information on new or amended transit fees and charges and their entry into force except when justified by legitimate public policy objectives.

Each Member shall periodically publish the average time for release of traffic in transit at main points of entry and exit using tools such as the WCO Time Release Study." (Armenia, European Communities, Kyrgyz Republic, Mongolia, the Former Yugoslav Republic of Macedonia and the Republic of Moldova, TN/TF/W/113)

(b) Periodic Review

"Each Member shall periodically review its transit formalities and documentation requirements to ensure that they are in line with WTO commitments and with a view to consolidating them and reducing their impact on trade. Such reviews shall allow for the participation of all interested parties and, as appropriate, may be held at a regional or international level." (Armenia, European Communities, Kyrgyz Republic, Mongolia, the Former Yugoslav Republic of Macedonia and the Republic of Moldova, TN/TF/W/113)

(c) Reduction/Simplification

"Members shall ensure that traffic in transit through their territory is not subject to any unnecessary delays, restrictions, inspections or controls. Transit formalities and documentation requirements shall be reasonable having regard to the conditions of transit, applied uniformly and be not more trade restrictive than necessary to achieve the legitimate public policy objective pursued. For traffic in transit, Members shall provide for:

- *The processing of transit documents and data prior to the arrival of the transiting consignment;*
- *The use by traders of commercially available information, documents and data wherever possible, including as part of transit declarations;*
- *The progressive establishment of a single window for traffic in transit;*
- *As far as possible, separate physical lines at the border for traffic in transit."* (Armenia, European Communities, Kyrgyz Republic, Mongolia, the Former Yugoslav Republic of Macedonia and the Republic of Moldova, TN/TF/W/113)

"Traffic in transit shall not be subject to any unnecessary delays or restrictions and shall be granted expedited and simplified treatment at border crossing points, including sea, fluvial and air ports or inland terminals as applicable. As far as possible, physically separate transit lanes shall be made available for traffic in transit." (Mongolia, Paraguay, Rwanda and Switzerland, TN/TF/W/119)

(d) Harmonization/Standardization

"Use of international standards: Members shall draw upon international standards and instruments³⁵ as a basis for transit formalities and documentation requirements, where such standards and instruments exist, except when they would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued." (Armenia, European Communities, Kyrgyz Republic, Mongolia, the Former Yugoslav Republic of Macedonia and the Republic of Moldova, TN/TF/W/113)

"For goods entering a Member under customs transit procedure, Members should accept commercially available information, including as part of transit declarations. Contracting parties to regional transit agreements or arrangements should agree on common, simplified documents that are aligned with international standards. In both cases, Members involved in transit shall allow the same set of documents to accompany the consignment from the country of departure to destination."

³⁵ International standards and instruments on transit include the Specific Annex E of the International Convention on the Simplification and Harmonisation of Customs Procedures (the Revised Kyoto Convention), the UN TIR Convention, the ATA Convention, the Istanbul Convention, the International Convention on the harmonization of frontier controls of goods, the UN Layout Key for documentation and the WCO Data Model.

Members should give careful consideration to the possibility of acceding to international instruments relating to Customs transit³⁶. Alternatively, they shall consider, when drawing up bilateral or regional agreements with a view to setting up international Customs transit procedure, the Standards and Recommended Practices of the Specific Annex E of the Revised Kyoto Convention." (Mongolia, Paraguay, Rwanda and Switzerland, TN/TF/W/119)

(e) Promotion of Regional Transit Arrangements

"Members shall promote bilateral and regional transit agreements or arrangements which are consistent with all other commitments on Trade Facilitation and with a view to reducing trade barriers. Members agree to cooperate and coordinate in designing and applying bilateral and regional transit agreements or arrangements. Members shall take full account of international standards and instruments when designing and applying those agreements or arrangements. Members shall not enforce unilateral rules affecting traffic in transit which are not in accordance with the bilateral or regional transit agreements or arrangements in which they participate. Members participating in regional transit agreements or arrangements shall give positive consideration to reasoned requests to participate by other Members who meet the requisite participation criteria." (Armenia, European Communities, Kyrgyz Republic, Mongolia, the Former Yugoslav Republic of Macedonia and the Republic of Moldova, TN/TF/W/113)

"Members shall promote bilateral and regional transit agreements or arrangements which are consistent with all other commitments on Trade Facilitation and with a view to reducing trade barriers. Members agree to cooperate and coordinate in designing and applying bilateral and regional transit agreements or arrangements. Members shall take full account of international standards and instruments when designing and applying those agreements or arrangements. It is recommended that such agreements or arrangements go beyond customs matters which are relevant in the context of transit, such as road and transport issues. Members shall not enforce unilateral rules affecting traffic in transit which are not in accordance with the bilateral or regional transit agreements or arrangements in which they participate. Members participating in regional transit agreements or arrangements shall give positive consideration to reasoned requests to participate by other Members who meet the requisite participation criteria." (Mongolia, Paraguay, Rwanda and Switzerland, TN/TF/W/119)

(f) Simplified and Preferential Clearance for Certain Goods

"Members shall use risk management techniques to enable any inspections to be targeted on the basis of the degree of risk attached to individual consignments. This shall include the establishment of authorized trader schemes which grant simplified treatment to traders with a good track record of compliance with transit formalities and documentation requirements. In designing and applying transit formalities and documentation requirements, Members shall take account of the inherent characteristics of the goods concerned. " (Armenia, European Communities, Kyrgyz Republic, Mongolia, the Former Yugoslav Republic of Macedonia and the Republic of Moldova, TN/TF/W/113)

"Members shall adapt the treatment of goods in transit to the expected degree and nature of the hazard, whether fiscal, sanitary or security related, that can be derived from the characteristics of goods in transit. Categories such as "normal goods", "dangerous goods", "perishable goods" and "sensitive goods" may be established at national level together with related procedures and shall be made publicly available." (Mongolia, Paraguay, Rwanda and Switzerland, TN/TF/W/119).

³⁶ E.g., the UN TIR Convention or equivalent.

(g) Limitation of Inspections and Controls

*"Members shall limit physical inspections of goods in transit to the case where circumstances may require them. Consignments secured by customs seals shall not as a general rule be subjected to customs examination. No quality control and no veterinary, medicosanitary or phytosanitary inspection shall be imposed on goods in transit, except in cases where risks have been identified. This shall not prevent customs from carrying out spot checks on the goods, based on risk management. Only when customs consider such measure indispensable in relation with the characteristics of the goods as referred in Article [2] shall they (i) require goods to follow a prescribed itinerary; or (ii) require goods to be conveyed under customs escort surveillance. Normally customs shall not impose such treatment to sealed consignments conforming with the national regulatory requirements."*³⁷
(Mongolia, Paraguay, Rwanda and Switzerland, TN/TF/W/119)

(h) Sealing

(i) Cooperation and Coordination on Document Requirements

(j) Monitoring

"Recognizing the importance of efficient implementation of such transit agreements or arrangements, the parties of such regional agreements or arrangements are encouraged to incorporate measures relating to the monitoring of transit into their agreements or arrangements. Such measures can foresee inter alia the appointment of national transit coordinators; performance indicators (e.g., target clearance times) or public private partnerships to manage and monitor the arrangement."
(Mongolia, Paraguay, Rwanda and Switzerland, TN/TF/W/119)

(k) Bonded Transport Regime/Guarantees

"Members shall operate bonded transport regimes that allow the transit of goods through the territory of Members without payment of customs duties or other charges subject to the provision of an appropriate guarantee. Members shall ensure that guarantees required from transit operators are:

- *Reasonable having regard to the conditions of transit and the nature and value of the consignment in question, and limited to the amount of customs debt or other charges which may be incurred in respect of the goods;*
- *Designed and applied on a regional or international basis to as great an extent as possible;*
- *Released promptly and in full after the completion of the transit operation.*

No fees and charges shall be imposed in relation to the use of bonded transport regimes and guarantees except for those directly related to the approximate cost of any service provided."
(Armenia, European Communities, Kyrgyz Republic, Mongolia, the Former Yugoslav Republic of Macedonia and the Republic of Moldova, TN/TF/W/113)

"In order to avoid provisional taxation while securing revenue in case of inland diversion of goods, Members shall operate bonded transport regimes that allow the transit of goods through the territory of Members without payment of customs duties, taxes or other charges subject to the provision of an appropriate guarantee. Members shall ensure that guarantees required from transit operators are (i) reasonable having regard to the conditions of transit and the characteristics and the value of the

³⁷ Members shall consider using Annex E, Standard 3 of the Revised Kyoto Convention as the basis for the national requirements on seals and fastening.

consignment, and limited to the amount of customs debt or other charges which may be incurred in respect of the goods; (ii) designed and applied on a regional or international basis to as great an extent as possible; and (iii) released promptly and in full after the completion of the transit operation. Guarantees shall be renewable for subsequent consignments once a previous one is proved to have reached its destination." (Mongolia, Paraguay, Rwanda and Switzerland, TN/TF/W/119)

4. Improved Coordination and Cooperation

(a) Amongst Authorities

"Members shall ensure cooperation and coordination between all concerned authorities and agencies in their territory to facilitate traffic in transit. Members shall ensure cooperation with other Members on issues of traffic in transit, including with regard to standardizing transit formalities and documentation requirements and coordinating operations of border crossings. To this end, neighbouring Members shall, as far as necessary, meet periodically to discuss and come to an understanding on the fees and charges, formalities, legal requirements and practical operation of transit regimes relating to goods moving in transit between them." (Armenia, European Communities, Kyrgyz Republic, Mongolia, the Former Yugoslav Republic of Macedonia and the Republic of Moldova, TN/TF/W/113)

(b) Between Authorities and the Private Sector

"Members shall provide opportunities for interested traders to comment on the transit regime and its operation, including with regard to the introduction of new or amended transit fees and charges, and transit formalities and documentation requirements, with a view to minimizing unnecessary delays and restrictions on traffic in transit." (Armenia, European Communities, Kyrgyz Republic, Mongolia, the Former Yugoslav Republic of Macedonia and the Republic of Moldova, TN/TF/W/113)

5. Operationalization and Clarification of Terms

"Scope

Definition of traffic in transit: Goods (including those moved via fixed infrastructure, inter alia pipelines, baggage and the personal belongings of the person operating the means of transport), and means of transport, shall be deemed to be in transit across the territory of a Member when the passage across such territory is only a portion of a complete journey beginning and terminating beyond the frontier of the Member whose territory the traffic passes. Traffic of this nature is termed "traffic in transit" irrespective of (i) trans-shipment, short-term storage, breaking bulk, or change in the mode of transport, and (ii) whether the goods or means of transport, after passing across a territory of a Member, return to the territory of a Member in which they originate or through which they have previously transited.

Exception: The provisions of this [Article] shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage).

Freedom of transit

Freedom of transit and routes most convenient for international transit: There shall be freedom of transit through the territory of each Member via the routes most convenient for international transit. Traders have the freedom to choose the route subject to any reasonable restrictions imposed by Members consistent with paragraph 4. No distinction shall be made which is based on the choice of means of transport, the flag of vessels, the place of origin, departure, entry, exit or destination, or any circumstances relating to the ownership of goods or means of transport.

Transit formalities and documentation requirements

Transit formalities and documentation requirements are all laws, regulations, requirements and procedures on or in connection with transit.." (Armenia, European Communities, Kyrgyz Republic, Mongolia, the Former Yugoslav Republic of Macedonia and the Republic of Moldova, TN/TF/W/113)

COOPERATION BETWEEN CUSTOMS AND OTHER AUTHORITIES ON TRADE FACILITATION AND CUSTOMS COMPLIANCE

“Co-operation Mechanism for Customs Compliance

Members shall, upon request, exchange information and documents on matters such as HS classification, full and accurate description, quantity, country of origin and valuation of goods in identified cases of import or export, where there is reason to doubt the truth or accuracy of a declaration filed by the importer or exporter.

Specific Parameters

1. *The information shall be provided only to the extent it is available in the import or export declaration(s).*
2. *Documents filed in support of a goods declaration, such as commercial invoice, packing list, certificate of origin and bill of lading, in the form in which these are filed, whether paper or electronic, shall also be provided, if so requested.*
3. *The information and the documents exchanged shall be authenticated by the requested Member as having been submitted by the importer or exporter and accepted by it.*
4. *No such request for information or documents shall be made unless verification has been carried out by the requesting Member to satisfy itself that there are reasons to doubt the truth or accuracy of the declaration filed.*
5. *Such exchange of information shall not require the Members to –*
 - (a) *modify the format of their import or export declarations,*
 - (b) *call for documents other than those filed with the goods declarations,*
 - (c) *modify the period of retention of such information or documents, or*
 - (d) *introduce paper documentation where electronic format has already been introduced.*
6. *Any information or documents provided shall not be disclosed to any third party except to the extent required in judicial proceedings.*

Procedure

1. *Each Member shall designate and notify to the WTO a centralized agency within its customs administration for exchange of information and documents.*
2. *A Member making a request for information or documents shall provide a brief summary of the case in which information is sought, reasons for doubting the truth or accuracy of the declaration made before it, results of verification and specify information and/or documents required.*
3. *The request for information shall be made in one of the three official languages of the WTO.*
4. *Only certified copies of the requested documents shall be provided.*
5. *The request for information shall not be made later than two years after the importation or exportation of the goods.*

6. *The requested Member shall provide the information to the extent possible within a period of 90 days from the date of receipt of the request.” (India, TN/TF/W/123)*

V. CROSS-CUTTING SUBMISSIONS

NEEDS AND PRIORITIES IDENTIFICATION

Communication by China and Pakistan (TN/TF/W/29)

- *With reference to the work already done by other international organizations, Members use a general tool to assess their needs and priorities as well as their current levels of trade facilitation. When conducting the assessment, outstanding diversities of levels of regional economic development within individual Members should be taken into full consideration. The result of the assessment should be taken as a basis for establishment of relevant trade facilitation rules, the arrangement of special and differential treatment and the provision of technical assistance and capacity building support.*

- Proposed Next Steps of Work
 - (a) *Based on the Secretariat's document on Technical Assistance and Capacity Building on Trade Facilitation (TN/TF/W/5), the Secretariat should frequently provide updated information to Members, if any, on the work done by other international organizations in assessing trade facilitation needs and priorities.*

 - (b) *Members should study relative tools available and decide on the usage of a general tool. There could be a series of tools already developed by different international organizations with each covering a different area.*

 - (c) *Based upon the general tool agreed, Members may conduct a self assessment and then submit a summary report on the assessment to the Secretariat.*

 - (d) *Based on the summary reports, the Secretariat prepares a document reflecting major areas of interests of Members or a list of needs and priorities of Members within the general scope of GATT Articles V, VIII and X. Future rules on trade facilitation will be developed mainly on the basis of those major areas.*

 - (e) *During the assessment period, a working group made up of international organizations concerned may be set up to ensure the objectivity of the assessment and to give necessary assistance and support to developing and least-developed countries. Those Members who have already had the experience in such assessment are invited to share their experience with other Members.*

 - (f) *For those Members who have huge regional economic level diversities within their territories, their assessment could be based either on the different or on an average level of development within their territories. The unique development situations of these countries shall be taken into full consideration in the implementation of future trade facilitation rules.*

See also relevant input by the African Group (TN/TF/W/33 and TN/TF/W/56), by a Group of Latin American countries (TN/TF/W/41) and by Pakistan and Switzerland (TN/TF/W/63) as reflected in the sections on Technical Assistance and Capacity Building and Multiple Areas.

TECHNICAL ASSISTANCE AND CAPACITY BUILDING

Communication from the African Group (TN/TF/W/56)

Technical Assistance and Capacity Building In the Course of the Negotiations

1. Identification of Needs and Priorities

Provided for in paragraph 4 of Annex D, the process of identifying Members' trade facilitation needs and priorities *"has been partially addressed by the WCO Self Assessment Checklist for GATT Articles V, VIII and X, and other tools such as the WCO Time Release Study. However, the African Group would like to propose for a revision of the WCO Self Assessment Checklist that would be simpler and in conformity with the scope of the negotiations and that would cover not only Customs issues, but also all formalities and procedures related to importation, exportation and transit in line with GATT Articles V, VIII and X. This will assist Members in identifying their needs and priorities falling within the scope of the negotiations."*

2. Compilation of Needs and Priorities of Individual Members

"(...) The African Group would like to propose that the WTO Secretariat undertakes to compile needs and priority put forward by different Members. The compilation of needs and priorities of individual Members which, should be continually updated as appropriate, would serve as a useful reference by those Members, organizations and other donors willing to provide targeted assistance during and after the negotiations. In this regard, those Members having difficulties in identifying their needs and priorities should be assisted."

3. Support for Clarification and Educative Process Including Training

"The African Group welcomes the support so far extended by the WTO, individual Member countries, and other organizations for clarification and educative process, including training of customs officials, with respect to GATT Articles V, VIII and X. This type of support should be enhanced both at the national and regional level in order to facilitate the participation of developing and least-developed countries in the negotiations. Individual Members and organizations expected to support these activities should come forward and give their indications in order to trigger requests by those member countries in need. Furthermore, clarification and educative process should contribute to the negotiations through factual reporting of the outcome of seminars/workshops by the relevant organization during the meetings of the Negotiating Group on Trade Facilitation."

Technical Assistance and Capacity Building Beyond the Negotiations Phase

1. Implementation of the Outcome

"Annex D of the July 2004 Framework provides a strong commitment by Members, in particular developed countries, to provide technical assistance and capacity building not only during negotiations but also in implementing the obligations resulting from the negotiations. It is also clear from the modalities on Trade Facilitation that developing or least-developed countries shall not be required to implement commitments if they lack implementation capacities and have not received the required technical assistance. Furthermore, international organizations providing assistance within the area of trade facilitation are called upon to collaborate."

2. Coordination Mechanism for Implementing Needs and Priorities as well as Commitments

"The support required to implement trade facilitation commitments goes beyond the traditional technical assistance provided by the WTO Secretariat. For instance some trade facilitation measures require support for infrastructural development.

Coordination among relevant international agencies and donors in the provision of technical assistance and capacity building is therefore important during and after the negotiations. This has also been mentioned in the Note by the WTO Secretariat on Technical Assistance and Capacity Building on Trade Facilitation (TN/TF/W/5).

While the modalities for negotiations on trade facilitation alludes to coherence and a collaborative approach among international organizations providing technical assistance in this area, their specific role with regard to implementation of the needs and priorities of developing and least-developed countries need to be clarified in order to ensure complementarity.

The African Group therefore urges Members to consider the idea of establishing a coordination/collaborative mechanism³⁸ or building upon any existing mechanism involving various partners engaged in trade facilitation in order to enhance synergies and ensure efficient use of available resources. Such mechanism should ensure that the needs and priorities with respect to trade facilitation identified by developing and least-developed countries are addressed effectively; that available resources will be efficiently used; and that there will be long-term sustainability of technical assistance programmes."

Communication from Mauritius on behalf of the ACP Group (TN/TF/W/73)

Technical Assistance and Capacity Building

"... An important task in fulfilling the letter and the spirit of the negotiating mandate will clearly be the identification of the needs and priorities of developing countries for technical assistance and capacity building on Trade Facilitation, evaluating proposals in terms of the technical assistance they will require for implementation – and while some Members might view it otherwise, we believe that such assistance can and should include financial assistance, where necessary – and finally developing target projects or programmes of assistance to support the implementation of any negotiated outcome. [...] the TA&CB mandate should be made operational by providing support (both financial and technical) to developing countries to assist them during and after the trade facilitation negotiations.

[...] suggestions on how to operationalize TA&CB in the course of the trade facilitation negotiations:

A. Establishing an inter-agency coordinating mechanism for Trade Facilitation TA&CB

For details, see TN/TF/W/73, section III:A, pages 3-4.

B. Key areas for funding of Trade Facilitation TA&CB

- (i) Support for the identification of trade facilitation negotiating needs and priorities of developing and least-developed countries (Paragraph 4, Annex D);*

³⁸ *The WTO Secretariat note TN/TF/W/5 points out how some collaborative mechanisms have worked in the area of trade facilitation.*

- (ii) *Support and assistance during the trade facilitation negotiations (Paragraph 5, Annex D); and*
- (iii) *Support and assistance to help developing and least-developed countries implement the commitments resulting from the negotiations, in accordance with their nature and scope (Paragraph 6, Annex D).*

For details on those three areas, see TN/TF/W/73, section III:B, pages 4-5.

In order to efficiently source and allocate TA&CB support for developing countries in the three areas listed above, a special Trade Facilitation Technical Assistance and Capacity-Building Fund needs to be established. This fund shall be managed by the inter-agency coordinating mechanism described previously, and contributions thereto shall be sourced from bilateral and multilateral donors. Developing countries requiring trade facilitation TA&CB support in the course of or after the trade facilitation negotiations may submit their TA&CB proposals and requests to the inter-agency coordinating mechanism, which will then expeditiously process and allocate such TA&CB support funded through this special fund.

[...]

Evaluating the Implementation of the Technical Assistance Mandate in Annex D

The provision of TA&CB support and assistance is a key component of the Trade Facilitation negotiations mandate under Annex D. Hence, the implementation of this mandate needs to be periodically reviewed by the WTO Membership to ensure that the development objectives of the negotiations are being met.

For details, see TN/TF/W/73, section IV, page 6.

See also relevant input by the African Group (TN/TF/W/33), by a group of Latin American countries (TN/TF/W/41), by Chinese Taipei (TN/TF/W/62) by Pakistan and Switzerland (TN/TF/W/63) and by the Kyrgyz Republic and the Republic of Moldova (TN/TF/W/74) as reflected in the Multiple Areas section.

Communication from the African Group (TN/TF/W/95)

"The key elements for TA&CB should include:

- *Establishment of a clear and precise diagnosis of the situation in hand in each concerned country and addressing factors that might otherwise compromise the success of domestic implementation.*
- *Designing well targeted technical assistance and capacity building programs; ensuring that their different components are mutually supportive.*
- *Setting of benchmarks verifying that all necessary steps are taken for achieving the expected benefits.*
- *Support and assistance during the trade facilitation negotiations. One way to do this is through inviting capital-based experts to assist Geneva-based negotiators as well as training officials in the trade facilitation area.*
- *Support and assistance to help developing and least-developing countries implement the commitments resulting from the negotiations, with particular attention to needs of SME's.*

- *Strengthening programmes to promote investment with a view to building domestic trade facilitation capacity.*
- *Technical assistance to overcome sub-regional divides and to facilitate integration.*
- *Better targeting aspects of cooperation between border agencies of concerned countries.*
- *Avoiding inconsistencies through a better coordination of TA&CB interventions related to trade facilitation stricto sensu with related issues in the area of customs valuation, rules of origin, import licensing or sanitary controls.*
- *Make provision for post-implementation support.*
- *Incorporate adequate provision for short- and long-term in-country advisors.*
- *Adequate long-term re-sourcing and access to sustainable funding which include mechanisms for the provision of additional support and long-term funding provisions with particular attention to the use of communication and information technology-based interventions.*
- *Monitoring mechanism on whether TA&CB is adequate and whether Members are fulfilling their obligations, and developed-country Members shall notify the WTO that they have implemented the technical assistance measures contained in provisions.*
- *Developed-country Members shall set "benchmarks" which they shall meet on financial and technical cooperation designed to strengthen the capacity of developing countries.*
- *Coordination and coherence between relevant organizations in the area of trade facilitation.*
- *Developed countries, in cooperation with the World Bank, IMF, WCO, UNECE, UNECA, ITC and other international organizations, need to assist with technical and financial assistance needed to build trade facilitation infrastructure."*

SPECIAL AND DIFFERENTIAL TREATMENT

Communication from the African Group (TN/TF/W/33)

Special and Differential Treatment in Trade Facilitation

Paragraph 2 of Annex D lays down the parameters for the application of the principle of Special and Differential treatment for developing and least-developed countries in the trade facilitation decisions. For the African Group, special and differential treatment goes beyond longer transitional periods. In the context of any new commitments on trade facilitation, Special and Differential treatment should also be reflected in legally binding provisions that:

- *Are precise, effective and operational;*
- *Provide policy space and flexibility for developing and least-developed countries while determining (based on their own assessment of their implementation capacity) when, how, and the extent to which such new commitments on trade facilitation are to be implemented by them; and*

- *Condition the implementation by developing and least-developed countries of such new commitments to the provision by developed countries of effective, adequate, long-term, and sustainable technical and financial assistance and support for capacity-building with respect to national structural or sector-specific trade facilitation-related projects or programmes identified by developing or least-developed countries as being necessary, in their view, to allow them to fully implement such new commitments*

Communication from a Group of Latin American countries (TN/TF/W/81)

Provisions on special and differential treatment

(i) *Developing and least developed Members will enjoy special and differential treatment in accordance with the following provisions and other relevant provisions set forth in other articles of this Agreement.*

(ii) *The obligations set forth in this Agreement shall be binding from the entry into force of the Agreement, except for those notified by the said Members to the WTO Secretariat prior to the entry into force of this Agreement. They shall comprise:*

- (a) *Obligations compliance with which will be subject to acquisition of the necessary capacity; and*
- (b) *obligations to be met upon expiry of a period specified in the notification which shall not exceed six years from the date of the said notification. These obligations shall become binding upon expiry of the notified period.*
- (iii) *Obligations notified pursuant to (ii)(a) above shall not be subject to the Dispute Settlement Understanding until such time as the Member has notified acquisition of the capacity to meet them. Obligations notified under (ii)(b) above shall be subject to the Dispute Settlement Understanding as from the date set in the notification.*
- (iv) *The WTO Secretariat shall provide a Trade Facilitation Register for entry of notifications sent by Members. The Register shall be published on the Members' web site of the WTO Internet portal.*
- (v) *Any Member that lacks the capacity to meet an obligation set in this Agreement and that has so informed the WTO Secretariat pursuant to (ii)(a) above, shall also notify to the WTO Secretariat within three years at most from the date of entry into force of this Agreement, the plans it has drawn up to acquire such capacity. Any Member that so requests will be assisted by the international organizations or other relevant organizations in formulating and implementing capacity-building plans.*
- (vi) *If, three years after the entry into force of this Agreement, any Member has not managed to draw up a plan enabling it to acquire the capacity to meet one or more obligations of this Agreement, that Member shall so inform the Body responsible for supervising implementation of the Agreement. The said Body shall assist any Member that so requests in taking the necessary steps to formulate and implement its capacity-building plans.*
- (vii) *Verification of capacity acquisition by a Member shall be carried out by means of a mechanism which will be part of the capacity-building plan in question. The*

mechanism shall be made up of the recipient Member, the donor and the agency responsible for implementation of the plan.

- (viii) *Once its capacity acquisition has been verified, the Member shall so inform the WTO Secretariat within six months at most from the date of the verification.*
- (ix) *Obligations notified under (ii)(a) above shall be binding for the Member as from the date on which the Member notifies acquisition of the capacity to comply with them. Obligations notified under (ii)(b) above shall be binding for the Member as from the date of expiry of the period specified in the notification.*

Transitional provisions

- (a) *In the period between the signing and the entry into force of this Agreement, developing and least developed Members shall carry out capacity self-assessments for the purpose of ascertaining their capacity to meet the agreed obligations.*
- (b) *Upon completion of the capacity self-assessments, these Members shall proceed with notification pursuant to (ii)(a) and (b) above.*
- (c) *Members that lack the capacity to carry out a capacity self-assessment shall so inform the Body responsible for supervising implementation of this Agreement. The said Body shall take the necessary steps to enable such Members to obtain the support needed to carry out the capacity self-assessments.*

Communication from the African Group (TN/TF/W/95)

"The Elements to be included as SDT

A. How Should Flexibility be Maintained?

- *Acceptance of the principle implying flexibility for all developing countries and commitments to fit the specific circumstances of different countries.*
- *Due respect for policy space and the level of development of individual Members.*
- *Setting non-binding and long-term objectives for trade facilitation and rule setting.*
- *A country specific approach that would make implementation of any new rules a matter of national priority. This implies that any new rules would be implemented only when this conforms with or supports the attainment of national development objectives.*
- *Future commitments should not be part of the single undertaking and should exclude the dispute settlement mechanism, i.e. they should be "best-endeavour commitments".*

B. GATS-Type Commitments

Non-exhaustive illustrative list of samples:

- *Extend the GATS "positive list" approach, making certain obligations applicable only when developing countries have the capacity to implement them.*

- *Allowing developing countries to undertake fewer or limited obligations as long as this does not impose significant financial burden, i.e. opt-out possibility from applying negotiated disciplines.*
- *Link shall be made between implementation of new commitments and the provision of TA&CB.*
- *Allowing opt -outs for resource intensive agreements.*
- *When countries surpass thresholds or meet the criteria required, significant longer implementation should be incorporated to give such countries policy space.*
- *The principle of progressivity should be adopted, meaning that a developing country should enter into a commitment only after a certain benchmark is achieved indicating its ability to implement a commitment and indicating that the TA&CB obligations by developed countries have been met.*
- *Commitments are made on an individual country basis rather than expressing a set level for developing countries as a group.*
- *Provision for flexibility and more favourable treatment to developing countries in regional groupings."*

See also relevant input by a group of Latin American countries (TN/TF/W/41) as reflected in the Multiple Areas section.

MULTIPLE AREAS

Communication from the African Group (TN/TF/W/33)

Scope of the Negotiations

*(...) The scope of the negotiations conducted under the aegis of the Negotiating Group must in essence remain consistent with the objectives set forth above. The negotiations should be focused solely on clarifying and improving GATT Articles V, VIII, and X. **For the African Group, enhanced Special and Differential treatment, technical assistance, support for capacity building and implementation assistance is a critical component of these negotiations.** The right to select policy options and exercise policy flexibility granted in favour of developing and least-developed countries must remain sacrosanct.*

Supporting Trade Facilitation Needs and Priorities of Africa

The trade facilitation needs and priorities of African countries are enormous. The process of identifying specific trade facilitation needs and setting out the priorities of African countries requires intensive work to be undertaken, both at the national and regional levels, with the assistance of the relevant international organizations. The overarching objective of such an identification process should, as a minimum, aim at providing solutions to the following basic characteristics of Africa's trading environment:

- *How to reduce high transport and communication costs that impact adversely on the competitiveness of African enterprises;*

- *How to enhance the capacities of Customs Administration, including through their automation, in order to dramatically reduce delays at points of entry and exit while maximizing public revenue receipts;*
- *How to improve the integration of African enterprises/economies into the international payments and insurance systems.*

Addressing Cost Implications

The cost implications on developing and least-developed countries of proposals for new commitments on trade facilitation need to be fully assessed and examined. Any findings on the cost implications (especially with respect to the development of necessary public works infrastructure, information and communications technology infrastructure, administrative re-engineering, and human resources) should then be directly linked to the provision of adequate technical and financial assistance and support for capacity building.

It must be emphasised that enhancing technical assistance and support for capacity building is one of the primary objectives of the negotiations. As provided for in Paragraph 6 of Annex D, the implementation of new commitments on trade facilitation by developing and least-developed countries is conditioned on the provision of adequate technical and financial assistance and support for capacity-building in trade facilitation by developed countries. In this respect, the goal of assisting developing countries, especially LDCs, to address such cost implications effectively needs to be treated as priority.

Furthermore, to assist developing and least-developed countries participate effectively in the negotiations on trade facilitation, Paragraph 5 of Annex D needs to be operationalized. In this regard, the African Group would like to propose the establishment of an appropriate mechanism, to be agreed upon not later than the end of July 2005, for the provision by developed countries of technical assistance and support for capacity building during the negotiations.

Among others, such technical assistance and capacity-building support during the negotiations should support:

- *Trade Facilitation negotiations-oriented research and capacity-building projects identified and proposed by developing and least-developed country Members;*
- *The conduct by developing and least-developed countries of participatory and transparent trade facilitation needs assessment and prioritization exercises to assist them in developing their own negotiating positions and priorities; and*
- *Specific travel support for capital-based experts of developing-country Members who are knowledgeable on trade facilitation issues to enable them to participate actively in the NGTF.*

For the paper's input on S&D, see homonymous section.

Inter-Agency Cooperation

A number of international and regional organizations have considerable experience and expertise on the subject of trade facilitation. They can make important contributions to one of the objectives of the negotiations, namely the provision of technical assistance and support for capacity building to developing and least-developed countries. Of particular note is the work of the World Customs Organizations and the ASYCUDA and ACIS programmes of UNCTAD. Further, the work of the

Economic Commission for Africa, because of its Africa specificity, will be crucial for the identification of Africa's needs and priorities in this area.

The African Group is of the opinion that the work on trade facilitation provides a unique opportunity for the WTO, IMF and the World Bank to deliver concretely on the coherence mandate. In this regard, we call upon the three institutions to undertake a concrete collaborative effort with a view to, inter alia, addressing the needs and priorities that will be identified by the African Group in the course of the negotiations. (...)"

Communication from a Group of Latin American Countries³⁹(TN/TF/W/41)

Interrelationship Between the Elements of Annex D⁴⁰

"The relationships and synergies between the elements referred to could be reflected in future disciplines as follows:

Relationship between the rules and the needs and priorities of Members

The negotiating process will lead to the adoption of a series of improvements and clarifications designed substantially to enhance the effectiveness of Articles V, VIII and X of the GATT 1994. It is possible that some rules, though beneficial from the standpoint of trade facilitation, may require resources, capacity-building or institutional adjustments for their implementation, and will therefore be temporarily beyond the implementation capacity of certain Members, particularly developing and least developed countries.

In such cases, compliance with future commitments should be commensurate with the demonstrated implementation capacity of each Member. This would serve to promote gradual implementation in the manner best suited to the capacity, development level and trade needs of each Member.

The identification of the needs and priorities of Members will be a compulsory benchmark, parallel to the identification of future commitments⁴¹, within the negotiating process. To that end, a process of self-assessment by each Member – with the necessary technical assistance – would make it possible to diagnose the actual capacity for implementation of future commitments. This diagnosis would serve to determine each Member's real situation in relation to trade facilitation and the distance separating it from the capacity needed to implement obligations to be agreed in the future. It would also serve to define technical assistance and capacity-building requirements for the purpose of narrowing the gap between the rule and the actual capacity for implementation.

With a view to the implementation of the agreed commitments, Members will report on their actual capacity for implementation within a period of time to be determined.

In the case of developing and least developed countries with no proven capacity for immediate implementation of the new commitments, differential transition periods will be established, combined with programmes of technical assistance and capacity-building, and geared to the obligations to be assumed and the analysis of national needs and priorities. Upon completion of those programmes, the Members concerned could be in a position to undertake the new commitments gradually,

³⁹ Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Panama, Paraguay, Peru and Uruguay

⁴⁰ The sponsors stress that the points made in this paper are meant to apply across the board to all negotiating proposals made by Members.

⁴¹ Suggestions along these lines were recently made in the communication from the People's Republic of China and Pakistan (TN/TF/W/29).

following a timetable and a procedure adapted to their implementation capacities. Pending achievement of the required capacities, the commitments would not be enforceable.

Technical assistance and capacity-building in the light of Members' needs and priorities and the rules

Compliance with the future trade facilitation disciplines for developing and least developed countries may entail technical assistance and capacity-building, with a resulting need for resources. The experience with the implementation of the Uruguay Round Agreements demonstrated the practical difficulties to which commitments undertaken in the WTO framework give rise if resources for their implementation are lacking or if inadequate consideration is given to each country's needs for the implementation of the discipline.

Technical assistance and capacity-building should be directed to the establishment of programmes conducive to implementation of the outcomes of the negotiations. In other words, when rules are considered for possible adoption in the WTO, simultaneous consideration should be given to technical assistance so as to guarantee the viability of their implementation.

An assessment should be made of the desirability of establishing a mechanism to organize and coordinate technical assistance and capacity building in the area of trade facilitation, pooling the efforts of donors, recipients and other international organizations. This mechanism would ensure that technical assistance is adapted to the needs of the recipients, so as to guarantee transparency, coherence and effective assistance to developing and least developed countries in the implementation of commitments in this field.

Special and differential treatment and its relationship with the other elements of Annex D

Special and differential treatment, which must go beyond the customary granting of transition periods for the implementation of commitments, is horizontally related to each of the above-mentioned elements of Annex D. This principle should therefore form an integral part of the clarification and improvement of Articles V, VIII and X of the GATT 1994, of the identification of each Member's needs and priorities, as well as of the means of providing technical assistance and support for capacity-building. Moreover, the effectiveness of special and differential treatment will depend on the way in which the existing links and relationships between the above-mentioned elements are given effect in the final outcome."

Communication from Chinese Taipei (TN/TF/W/62)

Establish "a long-term mechanism, in the form of either a committee, a working group, a task force, annual periodic meetings, any other appropriate structure, or even recourse to an existing mechanism, in order to deal with trade facilitation issues, especially customs matters. The functions of the long-term mechanism might include, but would not be limited to, the following:

- (a) Review the effectiveness of the support and assistance provided to developing Members, especially least-developed Members, so as to ensure progress on the implementation of the results of the negotiations. If difficulties in implementation are encountered by developing or least-developed Members, the mechanism, in conjunction with additional developed Members and/or relevant international organizations, shall ensure provision of the necessary technical assistance and capacity building.*
- (b) Grant to developing Members, especially LDCs, upon request, specified, time-limited exceptions from obligations, in whole or in part, taking into account their financial,*

trade and development needs with a view to ensuring full compliance with the final results of the negotiations.

- (c) *Provide a regular forum to allow Members to consult on any matters relating to trade facilitation.*
- (d) *Maintain close contact with the relevant international organizations in the field of trade facilitation with the aim of securing the best information on trade facilitating measures, and thus avoiding unnecessary duplication of efforts.*
- (e) *Encourage the use of international standards, guidelines, or recommendations by all Members.*
- (f) *Serve as a forum for Members to share national experiences and exchange views on trade facilitation matters. The mechanism shall also promote effective cooperation between customs, or any other appropriate authorities, on trade facilitation and customs compliance issues.*
- (g) *Serve, as appropriate, as a platform for the coordination of matters relating to trade facilitation with other WTO Committees.*

Communication from Chinese Taipei (TN/TF/W/118)

"We propose the establishment of a Committee on Trade Facilitation (CTF) composed of representatives from each of the Members. The Committee shall select its own Chairman and meet periodically. The WTO Secretariat shall act as the secretariat to the CTF. A non-exhaustive list of responsibilities of the CTF, which is open for further discussion, may include the following:

- (i) *To further the objectives of the Agreement;*
- (ii) *To afford Members the opportunity of consulting on any matters relating to the operation and implementation of the Agreement;*
- (iii) *To review periodically progress of implementation of the Agreement by Members;*
- (iv) *To provide Members with up-to-date information on the work of relevant international organizations, in particular on the establishment and adoption of international standards by these organizations;*
- (v) *To encourage the use by all Members, to the extent possible, of standards, guidelines or recommendations by international organizations;*
- (vi) *To review needs and priorities as notified by Members and any requests for technical assistance and special and differential treatment."*

Communication from Pakistan and Switzerland (TN/TF/W/63)

"One of the key messages of Annex D is that Trade Facilitation obligations would become effective for a country when, in the view of the WTO Members, the country has acquired the capacity to administer efficiently the rules. Any measures will become binding obligations once the capacity to implement has been achieved. Part C of this paper proposes elements of a mechanism that strives to

operationalise this objective. The following three elements would complement this operational mechanism:

An Inventory of Trade Facilitation Measures

(...) The WTO Secretariat's compilation document TN/TF/W/43 and subsequent revisions provides a good basis for such an inventory.

The contribution by the African Group TN/TF/W/56 suggests further support for clarification and educative process, including training of customs officials, with respect to the measures contained in the compilation document related to GATT Articles V, VIII and X. We welcome this proposal and encourage Members and relevant international organizations to contribute to this educational process. We also encourage proponents to voice their specific interests in the NGTF and bilaterally.

Assessment of the Current Situations (Needs and Priorities)

Undertaking an assessment of the current situation vis-à-vis trade facilitation and the future needs and priorities is necessary for each Member so that it can then define which technical measures under negotiation it can implement and in what timeframe. Where do countries currently stand in trade facilitation? What gaps exist between ground facilities and proposed commitments? We tend to agree with China and Pakistan⁴², as well as with a number of Latin American countries⁴³, which see this assessment exercise as a continuous process that has to accompany the negotiations.

(...) Like other Members that have made proposals on assessment, we believe that each Member needs to undertake a thorough self-assessment.

*Complementing the picture of the assessment of Members' needs and priorities, Members should also get a clearer idea on **ongoing and planned TA&CB and infrastructure-financing activities** related to the inventory of trade facilitation measures.*

(...) Because this needs to be accurate and done on a country-by-country basis, we suggest that the recipient Members make this compilation (...).

Sequencing of measures

Determining the sequencing and interrelationship of the technical measures being negotiated is equally essential. Indeed, sometimes a combination of measures allows to reap real benefits on the ground. Also, some advanced measures may require the prior implementation of other basic measures. Experienced international organizations could be of valuable support to Members by assisting them to organize these interrelationships and their sequencing.

It is our assessment that the measures enumerated in the inventory of trade facilitation measures⁴⁴ are of a different nature: such that would not require investments in expensive infrastructure but primarily require administrative – although sometimes politically not easy to implement – actions and such that are increasingly demanding, both in terms of resources and implementation capacities. Members should not preclude devoting different treatment to these two categories of measures in a final Text on trade facilitation. As a starting point, Members could individually classify the measures

⁴² TN/TF/W/29.

⁴³ TN/TF/W/41.

⁴⁴ TN/TF/W/43 and subsequent revisions.

contained in the Secretariat's compilation document according to the matrix provided by the WB/WCO at the July 2005 session, annexed to this document (see Annex).

A Possible Mechanism to Relate TA&CB and Financing to Reform

A basic requirement for this mechanism is that it is predictable and transparent, and to quote from TN/TF/W/56: 'such mechanism should ensure that the needs and priorities with respect to trade facilitation ... are addressed effectively; that available resources will be efficiently used; and that there will be long-term sustainability of technical assistance programmes.'

This mechanism could comprise a set of components:

- (vii) action plans containing obligations, implementation periods and required means;*
- (viii) pledging mechanism for TA&CB and funding;*
- (ix) multiple channels to provide TA&CB and funding*
- (x) WTO Trade Facilitation Committee (TFC) to endorse Members' obligations (TF measures) and commitments (TA&CB and funding); and*
- (xi) multilateral endorsement of implementation capacities."*

Document TN/TF/W/63 provides more detailed views on (i) to (v).

Communication from Mauritius on behalf of the ACP Group (TN/TF/W/73)

Making Annex D Operational

[...]

"The principle of special and differential treatment for developing and least-developed countries must be fully reflected and made directly operational in any negotiated outcome. The concerns of developing and least-developed countries relating to the cost implications of proposed measures shall be effectively addressed. Therefore [...] the ACP would not want to see any new disciplines or commitments which would impact negatively on existing policy space and the flexibility of developing countries in adopting trade facilitation measures. It is also critical that a balance be struck between the legitimate objective of border control and the economically desirable goal of trade facilitation. In addition, full account should be taken of the economic structure of and levels of development in ACP countries."

The paper's input on Technical Assistance and Capacity Building can be found in the homonymous section.

Communication from the Kyrgyz Republic and the Republic of Moldova (TN/TF/W/74)

Special Flexibilities and Technical Assistance and Capacity Building for Small Low-Income Countries in Transition

- "... Members which are small low-income economies in transition [should] be also granted special flexibilities with regard to trade facilitation and be provided with an adequate technical assistance and capacity building in accordance with paragraphs 2,3,5 and 6 of Annex D of the General Council's Decision of 1 August 2004."*

Communication from China, India, Pakistan and Sri Lanka (TN/TF/W/82)

The Arrangement of Commitments for Developing Members

In view of the different requirement of proposed trade facilitation measures and the limited resources of developing Members, it would be desirable that proper arrangements of commitments are made for developing Members. A possible mode of commitment arrangement might be that the rules to be established are divided into different modules, depending upon the degree of difficulty and the extent of resources and capability required for implementation. There could be the kind of module rules that is comparatively easier to implement and forms the basic commitments by the developing Members. For these rules, the developing Members might take the commitments the day the agreement comes into effect and may also have (X) years of transition period if they so require. For those modules of rules that require technical assistance and capacity building support, commitments shall be taken subject to a period of transition and provision of relevant assistance and support guaranteed under the technical assistance and capacity building mechanism established from the negotiations. It needs to be made clear that the actual mode of arrangement of commitments and the specific working mechanism is yet to be decided in further discussions and there is no attempt to prejudge the issue here.

Technical Assistance and Capacity Building Support Mechanism

There are already specific submissions from Members on how to solve the issue. These include the idea of "establishing a coordination/collaborative mechanism or building upon any existing mechanism involving various partners engaged in trade facilitation to enhance synergies and ensure efficient use of available resources" (TN/TF/W/56), an organizing and coordinating mechanism ensuring that "technical assistance is adapted to the needs of the recipients, so as to guarantee transparency, coherence and effective assistance to developing and least-developed countries in the implementation of commitments" (TN/TF/W/41), and a possible mechanism to relate TA&CB and financing to reform (TN/TF/W/63). However, more in-depth discussions are needed to kick off proper arrangements in this area.

The Application of Dispute Settlement Mechanism

In the past it has been suggested that, given the nature of implementation of a Trade Facilitation Agreement and that thousands of transactions everyday could be subject to this Agreement, there is need for Members to have some creative thinking and to consider dispute settlement rules that would address the concerns of the developing Members without otherwise diminishing the fundamental rule of the WTO dispute settlement process. A possible solution could be the establishment of an agreement-specific process of consultation or mediation. Disputes would first be brought to a dedicated body, such as a Committee on Trade Facilitation, to be discussed and mediated there. The dispute settlement mechanism should only be the last resort when there is no hope of settling the dispute within the Committee. There has been no discussion in the Negotiating Group on this issue and this would need to be addressed at the appropriate stage.

VI. ANNEX A

PROPOSALS ON ARTICLES V, VIII AND X AND RELATED S&D AND TA&CB MATTERS

Symbol (TN/TF/...)	Sponsor(s)	Title
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
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

Symbol (TN/TF/...)	Sponsor(s)	Title
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
W/28 and Add.1	Bolivia, Japan, Kyrgyz Republic, Moldova, 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 Transhipment
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/38	Singapore	Procedural Elements for Advance Rulings
W/39	Paraguay, Rwanda, and Switzerland	Improvement of Elements related to Transit
W/40	Argentina	Proposal to Improve and Clarify Article X of the GATT 1994
W/42	Japan	Risk Management
W/44	Chinese Taipei	Establishing a System for Immediate Release of Express Consignments
W/45	Turkey	Proposals to Improve GATT Articles VIII and X

Symbol (TN/TF/...)	Sponsor(s)	Title
W/46	European Communities	Improvements to GATT Article VIII and Formalities and Requirements Connected with Importation and Exportation and Related Proposals on S&D and TA
W/47	Singapore	Freedom of Transit
W/49	China and Korea	Clarification and Improvement of GATT Article VIII – Applying Risk Management
W/60	Dominican Republic	Reinforcing the Ethical Conduct of Staff and the Integrity of Customs Administrations
W/62	Chinese Taipei	Establishing a Long-Term Mechanism on Trade Facilitation Matters
W/64	Cuba	Improvement and Clarification of Article V of the GATT: Strengthening of the Principles of Non-Discrimination and Most-Favored Nation Treatment
W/67	New Zealand, Norway and Switzerland	Clarifications and Improvements in GATT Article VIII – Follow-Up to TN/TF/W/36
W/70	Chile	Proposal by Chile
W/77	India	Proposal on GATT Article VIII
W/78	India	Proposals on GATT Article X
W/79 and Add.1	Armenia, Canada, the EC, Japan, the Kyrgyz Republic, Mongolia, New Zealand, Paraguay and the Republic of Moldova	Proposals on Transit
W/80	Australia, Canada and the United States	Common Elements of Advance Rulings
W/83	Canada, EC and New Zealand	Border Agency Coordination
W/84	Canada, EC, Peru and Switzerland	Separation of Release from Clearance and other Measures to simplify Release and Clearance
W/85	Chile, Korea, Norway and Switzerland	The Use of International Standards
W/86	Uganda and the United States	Consularization
W/87	Chinese Taipei, EC, and Switzerland	Proposals on Authorized Traders
W/88	Chinese Taipei, EC and Switzerland	Proposals on Customs Brokers
W/89	Chile, Peru and the US	Internet Publication
W/90	Chinese Taipei and EC	Proposals on Pre-shipment Inspection

Symbol (TN/TF/...)	Sponsor(s)	Title
W/91	United States	Express Shipments
W/92	Hong Kong, China, Korea and Switzerland	Acceptance of Commercially Available Information
W/94	EC, Chinese Taipei, Korea and Switzerland	Proposals on Fees and Charges Connected with Importation and Exportation
W/96	Chinese Taipei, Costa Rica, EC, Japan, Mongolia, New Zealand, and Switzerland	Proposals on Publication and Availability of Information
W/97	Chinese Taipei, Costa Rica, Japan, Mongolia and New Zealand	Proposals on Appeal Procedures
W/98	Chinese Taipei, EC, Japan, Korea, Mongolia, New Zealand, Pakistan and Switzerland	Proposals on Pre-arrival processing
W/99	Chinese Taipei, Japan, Korea, Mongolia, New Zealand, Singapore and Switzerland	Proposals on Risk Management
W/100	Chile, EC, Japan, Korea, Mongolia and Singapore	Proposal on the Introduction of Single Window/One-Time Submission
W/101	Chinese Taipei, EC, Japan, Korea and Mongolia	Proposal on Time Release of Goods
W/102	Costa Rica, EC, Japan, Korea, Mongolia, New Zealand, Singapore and Switzerland	Proposal on Prior Publication and Consultation
W/104	Uganda and the United States	Consularization
W/107	European Communities, Korea and Switzerland	Fees and Charges
W/108	EC and Chinese Taipei	Pre-shipment Inspections
W/109	EC, Chinese Taipei and Switzerland	Authorized Traders
W/110	EC, Chinese Taipei and Switzerland	Customs Brokers
W/111	New Zealand	Objective Criteria for Tariff Classification
W/112	Hong Kong, China, Korea and Switzerland	Acceptance of Commercially Available Information and of Copies
W/113	Armenia, the European Communities, the Kyrgyz Republic, Mongolia, the Former Yugoslav Republic of Macedonia and the Republic of Moldova	Transit
W/114	Japan, Mongolia and Switzerland	Proposals on Publication and Availability of Information
W/115	Hong Kong, China, Japan, Korea, Mongolia and Switzerland	Proposals on prior Publication and Consultation

Symbol (TN/TF/...)	Sponsor(s)	Title
W/116	Japan and Mongolia	Proposals on Appeal Procedures
W/117	Japan, Korea, Mongolia and Switzerland	Proposals on Pre-Arrival processing
W/119	Mongolia, Paraguay, Rwanda and Switzerland	Trade Facilitation: Improvement of Elements related to Transit
W/120	Turkey	Advance Rulings
W/121	India	Proposal on Article VIII
W/122	India	Proposal on Article X
W/124/Rev.1	Hong Kong, China and Switzerland	Reduction/Limitation and Periodic Review of Formalities and Documentation Requirements
W/125	Australia, Canada and the United States	Draft Text on Advance Rulings
W/126	New Zealand	Objective Criteria for Tariff Classification
W/127	Cuba	Improvement and Clarification of Article V of the GATT: Strengthening of the Principles of Non-discrimination and Most-Favoured Nation Treatment
W/128	Canada	Draft Text on Border Agency Cooperation

VII. ANNEX B

NATIONAL EXPERIENCE PAPERS

Symbol (TN/TF/...)	Sponsor(s)	Title
W/48	Norway	Border Agency Cooperation
W/50	Malaysia	Trade Facilitation: Malaysia's experience
W/53	Japan	Explanatory Note on Pre-Arrival Examination – Japan's Experience
W/55	Korea	Post-Clearance Audit in Korea
W/58	Singapore	Singapore's National Experience in implementing a "Single Window" System via TradeNet®
W/61	Thailand	Trade Facilitation: Thailand's Experiences
W/65	Guatemala	Experience in Implementing a Special Procedure for the Rapid Clearance of Express Consignments
W/66	Australia	Binding Advance Rulings – Australia's Experience
W/69	Egypt	Reforming Customs Authority, Fighting Corruption and the Usage of Computers – Egypt's National Experience

Symbol (TN/TF/...)	Sponsor(s)	Title
W/75	Egypt	Egypt's National Experience Concerning Measures Related to Articles V, VIII and X of GATT 1994: Future Needs and Priorities
W/105	Singapore on behalf of ASEAN	Experience on the development of the ASEAN Single Window

VIII. ANNEX C

PROPOSALS ON CUSTOMS/OTHER AGENCY COOPERATION ON TRADE FACILITATION AND CUSTOMS COMPLIANCE ISSUES

Symbol (TN/TF/...)	Sponsor(s)	Title
W/57	India and the United States	Proposal on the Establishment of a Multilateral Mechanism for the Exchange and Handling of Information between Members ⁴⁵
W/68	India	Cooperation Mechanism for Customs Compliance
W/103	India	Cooperation Mechanism for Customs Compliance
W/123	India	Cooperation Mechanism for Customs Compliance

IX. ANNEX D

PROPOSALS ON CROSS-CUTTINGS ISSUES WITH NO DIRECT LINK TO A SPECIFIC MEASURE

Symbol (TN/TF/...)	Sponsor(s)	Title
W/29	China and Pakistan	A Proposal on Identifying Trade Facilitation Needs and Priorities
W/33	African Group	Trade Facilitation
W/41 and Add.1 and Add.2	Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, México, Panama, Paraguay, Peru and Uruguay	Links Between the Elements of Annex D
W/56	African Group	Operationalizing Technical Assistance and Capacity Building in Trade Facilitation

⁴⁵ Added by the Secretariat. The document does not have any specific title.

Symbol (TN/TF/...)	Sponsor(s)	Title
W/63	Pakistan and Switzerland	Development-related issues in Trade Facilitation
W/73	Mauritius on behalf of the ACP Group	Issues in the Negotiations on Trade Facilitation and the Importance of Promoting Development Objectives Through Technical Assistance and Capacity Building
W/74	Kyrgyz Republic and Republic of Moldova	Special Flexibilities and Technical Assistance and Capacity Building for Small Low-Income Countries in Transition
W/81	Chile, Dominican Republic, Ecuador, Guatemala, Honduras, Mexico, Nicaragua, Paraguay, Panama, Peru and Uruguay	Special & Differential Treatment: Application and Inter-relationship with Commitments Arising from the Trade Facilitation Negotiations
W/82	China, India, Pakistan and Sri Lanka	Proposal on the Process of Trade Facilitation Negotiations
W/95	African Group	Implementing the Technical Assistance and Capacity Building and S&D Treatment Mandates of Annex D of the July 2004 Framework
W/118	Chinese Taipei	Institutional Matters related to Trade Facilitation