



A Compilation of Negotiating Proposals on Trade Facilitation

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INTRODUCTION

Paragraph 27 of the 2001 Doha Ministerial Declaration states that:

27. Recognizing the case for further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations. In the period until the Fifth Session, the Council for Trade in Goods shall review and as appropriate, clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 and identify the trade facilitation needs and priorities of members, in particular developing and least-developed countries. We commit ourselves to ensuring adequate technical assistance and support for capacity building in this area.

Paragraph 1(g) and Annex D of the General Council Decision of 1 August 2004 (WT/L/579) launched the WTO negotiations on trade facilitation and provided for the modalities under which the negotiations would take place. Annex D emphasises the principle of Special and differential treatment as well as the need for technical assistance and capacity building.

This compilation is intended to assist developing countries in the trade facilitation negotiations by compiling the negotiating proposals submitted by WTO Members to the Negotiating Group on Trade Facilitation, and arranging these proposals according to the issue area or subject matter that they pertain to in the context of the GATT provision (e.g. GATT 1994 Article V, VIII, or X) under which they are grouped. Proposals relating to the provision of special and differential (S&D) treatment and to technical assistance and capacity-building are indicated as such. The name of the WTO Member making the proposal and the relevant WTO document number are indicated in brackets after each proposal.

The texts of the proposals contained in this compilation were obtained from the WTO Secretariat document no. TN/TF/W/43 (3 June 2005) entitled "Clarification and Improvement of GATT Articles V, VIII, and X: Proposals Made by WTO Members."

This compilation covers negotiating proposals submitted by Members up to the end of July 2005.

TRADE FACILITATION NEGOTIATING PROPOSALS

A. ARTICLE V (FREEDOM OF TRANSIT)

1. Matters Relating to Goods Transit

(a) Strengthened Non-Discrimination

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

(i) *Special and Differential Treatment and Technical Assistance and Capacity Building*

- "... 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" – **Technical Assistance and Capacity Building (TA & CB):** "...the following suggestions could be taken into account, based on the collaborative efforts among relevant international organizations, including the IMF, OECD, UNCTAD, WCO and the World Bank: (i) Improving measures to ensure impartial implementation of provisions and procedures in force; (ii) Improving border operations and cooperating to fight against illicit trade;(iii) Exchanging experiences on techniques to improve the control of bulk cargoes; (iv) Conducting studies on transit related conditions with the aim of finding a way to minimize transit costs; and (iv) Transferring technology and information to reduce the costs. (**Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28**).
- "..... 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." – **TA & CB:** "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**).

2. Disciplines on Fees and Charges

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

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

- "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**).

(b) Periodic Review of Fees and Charges

- "Periodic self-review of the appropriateness of the amount and the number of fees and charges imposed in connection with transit." – **Approach:** For this purpose, a permanent review mechanism, such as a commission formed by representatives of the sectors involved, could be encouraged". (**Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28**).

(c) More Effective Disciplines on Charges for Transit

- "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."¹ (**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." - **Approach:** "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**).

(i) *Special and Differential Treatment and Technical Assistance and Capacity Building*

- "The extent and the timing of entering into commitments shall be related to the implementation capacities of developing and least-developed Members."- **TA & CB:** "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."² (**Paraguay, Rwanda and Switzerland, TN/TF/W/39**).

(d) Periodic Exchange between Neighbouring Authorities

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

¹ See below regarding Article VIII proposals

² 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.

3. Disciplines on Transit Formalities and Documentation Requirements

(a) Periodic Review

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

(i) *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**).

(b) Reduction/Simplification of formalities

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

(c) Use of International Standards

- "Use of international standards applied in most WTO Members to the extent possible, where other relevant international organizations already have set up international standards, with a view to minimizing unnecessary delays or restrictions on traffic in transit." (**Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28**).
- "Promotion of the use of international instruments relating to customs transit, including the possibility of acceding to such instruments, where applicable" (**Peru, TN/TF/W/30**).

- "...give careful consideration to the possibility of acceding to international instruments relating to Customs transit if they are in a position to implement them. If this is not possible, when drawing up bilateral or regional agreements with a view to setting up international Customs transit procedure, they should consider the Standards and Recommended Practices of Annex E of the Revised Kyoto Convention of 1999." **(Paraguay, Rwanda and Switzerland, TN/TF/W/39).**

(d) Promotion of Regional Transit Arrangements

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

(e) Simplified and Preferential Clearance for Certain Goods

- "Introduction of a simplified and preferential treatment for perishable goods to be transited in a territory of a Member, in order for these goods to be able to leave customs and control areas as soon as possible". **(Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28).**
- "... accord to goods in transit that do not require transshipment less burdensome treatment than goods in transit that do require transshipment."- **Approach:** "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. (...) Reduce[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).**
- "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).**

(f) Limitation of Inspections and Controls

- " ... 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 carrying 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).**

(g) Sealing procedures

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

(h) Cooperation and Coordination on Documentation Requirements

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

(i) Monitoring of transit arrangements

- "...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..." - **Approach:** "... 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).**

(j) Bonded Transport Regime/Guarantees

- "Introduction of a bonded transport regime that would allow goods to be transited in a territory of a Member without payment of customs duties, transit duties or other charges, accompanied with a provision of appropriate security". **(Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28).**
- "Introduce more effective disciplines on the level, nature and management of guarantees required from transit operators, including rules to ensure that they are not used as an instrument to raise revenue". **(European Communities and Paraguay, TN/TF/W/35).**
- "... arrangements to 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**).

(k) Risk Management

- “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. For example, the risk of illegal diversion into domestic markets is generally higher for goods which are subject to special controls or have higher duties, or both.” (**Singapore TN/TF/W/47**).

(l) Customs House

- “Under Article V: 3, traffic in transit can be entered at the proper custom house. It is not to be subject to unnecessary delays or restrictions unless there has been a failure to comply with the applicable customs laws and regulations...” “Unnecessary delays” is ambiguous and may possibly be subject to arbitrary interpretation. In this connection, Members may wish to discuss stipulating [a] time period[s], after which any further retention at the custom house could be deemed to constitute unnecessary delay.” (**Singapore TN/TF/W/47**).

4. Improved Cooperation and Coordination

(a) Improved cooperation and coordination Amongst Authorities

- "Establishment of a cross border cooperation scheme that would enable landlocked Members and their neighbouring Members to consult and cooperate on the issue of traffic in transit (including, to the extent possible, the establishment of a common border check point to minimize the possibility of duplicated formalities pertaining to traffic in transit" (**Bolivia, Mongolia, Paraguay, Kyrgyz Republic and Japan, TN/TF/W/28**).
- "Improve co-operation and co-ordination between all concerned agencies in each WTO Member and across borders. In many cases solutions to transit problems can only be found through regional collaboration since it is at the regional level that a large part of the problems related to unnecessary hindrances to transit are experienced." (**European Communities and Paraguay, TN/TF/W/35**).
- "... cooperation and coordination between authorities (...). This cooperation and coordination can take different forms reaching from the simple harmonisation of border crossing procedures and working hours to shared infrastructure (one-stop border posts) and delegated competencies (both exit and entry formalities are handled by the same authority). Under these (...) arrangements, the contracting parties set up communication systems to exchange information and fight crime in the border area". (**Paraguay, Rwanda and Switzerland, TN/TF/W/39**).
- “transit traffic is, in many cases, best facilitated through regional cooperation.... drawing up a non-exhaustive list of elements that Members should endeavour to incorporate when negotiating regional transit agreements” (**Singapore TN/TF/W/47**).

(i) *Special and Differential Treatment*

- “longer implementation time-frames for developing and least-developed countries;... allowing developing and least-developed countries to implement, on a best- endeavor basis, the more onerous obligations resulting from the Article V negotiations, including in the context of phased-in approaches.” (**Singapore TN/TF/W/47**)

(b) Cooperation and coordination between Authorities and the Private Sector

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

5. Operationalization and Clarification of Terms

- "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).**

B. ARTICLE VIII (FEES AND FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION)

1. Fees and Charges Connected with Importation and Exportation

(a) Making GATT Article VIII more Operational

- Proposes: “Make more Non-discrimination in the design, application and effect of export and import procedures and formalities imposed on the goods of all Members...” “...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...” “...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...” “...Undertake Periodic Review of 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...” “...Use relevant International Standards and Instruments...” “...Commitment by Members to simplify and reduce documentation and data requirements to the absolute minimum, consistent with the need to enforce legitimate policies...” “...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...” “...Progressive implementation of simplified and standardized import and export procedures, based on international standards and instruments, including the WCO Kyoto Convention...” “...A commitment by each member to introduce simplified customs release and clearance procedures...” “...Use of risk analysis methods based, as appropriate, on relevant international standards and practices...” “...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...” “...Requirement to apply objective criteria for tariff classification of goods...” “...Elimination of Pre-shipment Inspection Arrangements...” **(European Communities TN/TF/W/46)**

(i) Special and Differential Treatment and Technical Assistance and Capacity Building

- “Targeted S & D: least-developed countries be exempted from proposals that presuppose broader customs reform 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” “...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...”- **TA & CB:** “The EC already dedicates considerable development assistance to trade facilitation, both at a national and regional level, and intends to continue to do so in the framework of the EC’s development assistance, particularly if a set of WTO provisions, setting common standards to which assistance can in future be progressively targeted, can be established.... the EC plans to increase its volume of development aid, including in the trade area, and some of this increased aid can, if requested by development partners in their development cooperation

discussions with the EC, be directed to implementing trade facilitation measures, in both the narrow (WTO) and the broader (building up infrastructure for trade) sense....”
(**European Communities TN/TF/W/46**)

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

(a) Specific parameters for fees/ charges

- "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). – **Approach:** "A table for analyzing relevant costs would be helpful." (**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**).

(i) Special and Differential Treatment and Technical Assistance and Capacity Building

- "Examine the question of whether appropriate transition mechanism would be necessary to address particular needs." (**United States, TN/TF/W/14**).
- **TA & CB:** "To the extent that least-developed countries and possibly other Members would seek advice on the design and implementation of new fee structures, the EC would be prepared to consider favourably such requests for assistance. Furthermore, international organizations and Members have relevant experience that could be used." (**European Communities and Australia, TN/TF/W/23**).

(b) Publication/Notification of Fees/Charges

- "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**).

(i) Special and Differential Treatment

- "... 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) **Collection of Unpublished Fees and Charges**

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

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

- "Periodic review of the appropriateness of the amount and the number of fees and charges imposed on or in connection with importation and exportation" (**Japan, Mongolia, Peru and Chinese Taipei, TN/TF/W17**).
- "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."– **Approach:** "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**).

(e) **Automated Payment**

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

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

- "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"... "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**).

4. Formalities Connected with Importation and Exportation

(a) Periodic Review of Formalities and Requirements

- "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" - **Approach:** "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**).

(i) *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**).

(b) Reduction/Limitation of Formalities and Documentation Requirements

- "Limit import and export formalities and import/export documentation requirements to the least trade restrictiveness level" - **Approach:** "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**).
- "... agree to more precise, operationally effective provisions on minimizing excessive documentation" - **Approach:** "... 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**).
- "(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." - **Approach:** "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**).

- "... 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**).

(i) *Special and Differential Treatment and Technical Assistance and Capacity Building*

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

(c) **Use of International Standards**

- "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." - **Approach:** "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**).
- "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 - **Approach:** 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**).
- "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 " - **Approach:** 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**).

(i) *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**).

(d) **Acceptance of Commercially Available Information and of Copies**

- "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" – **Approach:** "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**).

(e) **Automation of customs procedures**

- "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**).

(f) **Single Window or One-Time Submission**

- "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**).

(i) *Special and Differential Treatment and Technical Assistance and Capacity Building*

- "...developing countries may require a longer period of time to institute these measures." (Korea, TN/TF/W/18) - **TA & CB**: "... 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**)

(g) **Customs and related import and export procedures**

- "Simplified and standardised procedures and standard processing times"... "Non-discrimination in relation to modes of transportation"... "Phasing out mandatory use of "customs brokers"...Simplified customs release and clearance procedures"... "Use of Risk analysis and introduction of authorised trader systems"... "Convergence and co-ordination of official controls... Application of objective criteria for tariff classification Elimination of pre-shipment inspection (**European Communities TN/TF/W/46**).

(h) **Documents and data formalities**

- "Simplification and reduction of documentation and data requirements"... "Introduction of a uniform customs code or aligned customs legislation"... "Single, one-time presentation of all documents and data requirements, to the extent" (**European Communities TN/TF/W/46**)

(i) *Special and Differential Treatment and Technical Assistance and Capacity Building*

- "...clarify and improve GATT Article VIII to make it more effective and operational in the same way that, in recent years, Members have made more specific and operational GATT Articles and provisions relating, for example, to customs valuation, import licensing and technical barriers to trade.... ensure that basic GATT principles are applied to trade facilitation, that any measures proposed restrict trade as little as possible". (**European Communities TN/TF/W/46**).

5. Consularization

(a) **Prohibition of Consular Transaction Requirement**

- "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**).

(i) Special and Differential Treatment and Technical Assistance and Capacity Building

- "Examination could take place on whether appropriate transition mechanisms would be necessary for addressing particular individual need associated with an existing consularization requirement." **TA & CB**: "An assessment should be made "whether implementation of the proposal would require technical assistance". (**Uganda and United States, TN/TF/W/22**).

6. Border Agency Coordination

(a) Coordination of Activities and Requirements of all Border Agencies

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

(i) Special and Differential Treatment and Technical Assistance and Capacity Building

- "Special and differential treatment provisions reflecting the specific circumstances of individual Members could be incorporated within commitments, for example through provisions for progressive implementation." **TA & CB**: "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**).

7. Release and Clearance of Goods

(a) Pre-Arrival Clearance

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

(b) Expedited Procedures for Express Shipments

- "The handling of express consignments can be simplified by using as a reference the WCO Customs Guidelines for Express Consignments" (**Chinese Taipei, TN/TF/W/10**).
- "Provide specific expedited procedures for express shipments" – **Approach:** "... 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**).
- "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**).
- "...recommend that the Members apply the following main principles of the WCO Guidelines: *De minimis* threshold values: Consignments may be divided into four categories for the purpose of granting immediate release: correspondence and documents without commercial value, low value consignments for which no duties and taxes are collected, low value dutiable consignments, and high value consignments..." "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"... "Risk management: Customs are encouraged to examine suspicious consignments based on risk management techniques"... "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"... "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..." "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..." (**Chinese Taipei, TN/TF/W/44**)
- "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..." "Establishment of a time limit for customs release would be useful to increase the predictability of the customs procedures. In this respect, the WCO Time Release Study can be utilized..." "...Lack of coordination among different agencies results in unnecessary delays at borders. In this regard, efforts toward the one-stop service clearance/release facilities through inter-agency coordination, plus remote filing and local clearance facilities are crucial..." "We 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. 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..." "An agreement on trade facilitation may cover provisions on a Single Window approach whereby Members gradually undertake necessary measures..." "...In order to introduce expedited clearance procedures an agreement on trade facilitation should promote the widespread implementation of the principles of the WCO on Express Consignments, which are the international standard procedures for clearance of express good..." "acceptance of copies of certain documents used in import and export formalities is necessary to accelerate customs clearance procedures ..." (**Turkey TN/TF/W/45**)

(i) Special and Differential Treatment and Technical Assistance and Capacity Building

- "... 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." – **TA & CB:** "... promising for private sector participation in technical assistance efforts." (**United States, TN/TF/W/15**).
- "The Technical Assistance Programme of the APEC Sub-Committee on Customs Procedures (SCCP) could provide a useful reference for WTO Members wishing to implement an express clearance system in compliance with the *WCO Guidelines for the Immediate Release of Consignments by Customs...*" "...Technical assistance could be arranged via relevant international organizations or the WTO. Experienced Members could also offer their national experiences on a bilateral basis. Alternatively, they may choose to team up with relevant international organizations and/or interested private operators to develop a programme..." (**Chinese Taipei, TN/TF/W/44**).

(c) **Risk Management**

- "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**).
- "Define risk management as the systematic application of management procedures and practices which provide Customs with necessary information to address movements or consignments which may present a risk..." "...establishment of primary risk management platform by adopting advanced information technology where 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..." "... 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..." "...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..." "...Establish enterprise classification management to allow Customs to conduct risk assessment to enterprises with respect to their self-compliance and risk level..." (**China and Korea TN/TF/W/49**)

(i) Technical Assistance and Capacity Building

- "...with the proper technical assistance and capacity building support, developing and east-developed countries will be able to enjoy the benefits from such measures." (**Korea, TN/TF/W/18**).
- "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"- **TA & CB:** "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).

(d) Post-Clearance Audit

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

(e) Release from Clearance Procedures

- "... 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)." – **Approach:** "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).
- "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).

(i) Special and Differential Treatment and Technical Assistance and Capacity Building

- "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"- **TA & CB:** "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**).

- "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**).

8. Establishment and Publication of Average Release and Clearance Times

- 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" – **Approach:** "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**).

9. Tariff Classification

(a) Objective Criteria for Tariff Classification

- Require objective criteria for the tariff classification of goods - **Approach:** "... 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**).

(i) 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**).

C. ARTICLE X (PUBLICATION AND ADMINISTRATION OF TRADE REGULATIONS)

1. GATT Article X Publication and Availability of Information

(a) Publication of Trade Regulations

- 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;" and (ix) make "easily available" this information - **Approach:** "... 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 and also related EC-Australia proposal in TN/TF/W/23**).
- Publish: " ... 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 – **Approach:** "... information should be widely available and in a non-discriminatory fashion, at no cost or costs,³ through widely accessible means⁴;" with Members also being "required to make any exceptions, derogations, or changes (...) readily available, non-discriminately at no cost or costs. 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 "disseminate[ing] this notice to other Members as well as interested parties" (**Korea, TN/TF/W/7**).
- Publish (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 pre-shipment 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" – **Approach** (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

³ "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."

⁴ "Widely accessible refers to, for example, official gazette or an internet website".

official WTO languages on the website ..." (**Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8 and Corr.1**).

- Publish: "... 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" - **Approach** "... 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**).
- Publish "... all relevant legislation [and other information] on customs procedures relating to the various customs regimes ..." including "the legal basis for administrative decisions" - **Approach**: "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**).
- Publish: "All measures referred to in paragraph 1 of Article X of GATT 1994..." – **Approach**: "(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**).

(i) *Special and Differential Treatment and Technical Assistance and Capacity Building*

- "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." – **TA & CB**: "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**).
- "... 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 single national focal point (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" - **TA & CB**: "Technical assistance and capacity building tailored to the specific needs of each individual developing Member would be very helpful ..." (**China, TN/TF/W/26**).
- "In addition to technical assistance, a longer implementation period can be considered" – **TA & CB**: "Technical assistance should be provided to Members in need to implement" (**Hong Kong, China, TN/TF/W/32**).
- **TA & CB**: "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**).

(b) Publication of Penalty Provisions

- "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**)

(c) Internet Publication

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

(i) Special and Differential Treatment and Technical Assistance and Capacity Building

- "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." - **TA & CB**: "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" (**United States, TN/TF/W/13**)

(d) Internet Publication of Specified Information

- "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**)
- "...Create on the official WTO web page 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..." "... supplemented by an e-mail account, for example consultation_Member@wto-tradefacilitation.org, 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**).

(i) Technical Assistance & 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...” “...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”(Argentina TN/TF/W/40).

2. Notification of Trade Regulations and New Amendments

- 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 – Approach: "at the earliest possible stage" (**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" – Approach: "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**)

(i) *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**)

3. Establishment of Enquiry Points/Single National Focal Points/Information Centres

- "Establish enquiry points or trade desks, providing information on all (...) measures and information" "Such provisions could be based on provisions on enquiry points in certain WTO Agreements such as TBT and SPS" – Approach: ".... on a non-discriminatory basis" (**European Communities, TN/TF/W6**),
- Establishment of a Single National Focal Point as a centre for communication with other domestic competent authorities to more efficiently respond to inquiries. "The SNFP should, within a reasonable period of time; supply not only the information requested but also any other pertinent information, which the SNFP considers the interesting parties, should be aware. In addition, the contact information relating to the SNFP should be notified to the WTO Secretariat. The Secretariat should make such information available to the other Members and interested parties." – Approach: ".... on a non-discriminatory basis" (**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 centres or inquiry points with competent officers to provide responses to inquiries – Approach: "... information centres 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**).

- "Each Member shall, in accordance with their real situations, establish or designate one or more trade policy enquiry points where, upon request of any individual, enterprise or WTO Member, all information relating to the above-mentioned laws, regulations and measures may be obtained. – **Approach:** 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**).
- "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"- Approach: "... free-of charge 24-hour service or an informative website..." (**Peru, TN/TF/W/30**).

4. Time Period between Publication and Implementation

(a) Interval between Publication and Entry into Force

- Allow for "an adequate time period between the publication of rules and their implementation" **Approach:** - "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**).
- "... 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" - **Approach:** 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**).
- "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" - **Approach:** 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**).
- "Establishment of minimum time periods before the entry into force of new regulations" (**Peru, TN/TF/W/30**).

5. Consultation and Commenting on New and Amended Rules

(a) Prior Consultation and Commenting on New and Amended Rules

- Provide "opportunities for interested parties including the private sector to comment on prospective trade-related laws and regulations" (**Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8**).
- Give "Members and traders (...) the right to comment on proposed customs rules, procedures, and policy with commercial effects and either amend the proposed rule or procedure, or as the case may be, provide an explanation to traders and other WTO members as to why their comments have not been taken into account." (**New Zealand, TN/TF/W/24**).

- "Members should, without discrimination, allow reasonable time for other Members to make comments in writing, and take these written comments into consideration after such laws, regulations and measures are publicized while before implemented or enforced" (**China, TN/TF/W/26**).
- "(i) Each Member should establish effective mechanisms for exchanges with traders, whose views should be duly taken into account, concerning the administration of measures referred to in paragraph 1 of Article X of GATT 1994. (ii) When formulating, implementing and reviewing any measures referred to in paragraph 1 of Article X of GATT 1994, opportunities should be provided for consultation with traders if substantial trade interests or major changes to the existing measures are involved." (**Hong Kong, China, TN/TF/W32**).

Suggested Approach/Means

- "Such a consultation requirement could include the establishment of a regular consultative mechanism on rules and procedures with representative private sector bodies including importers, exporters, carriers, chambers of commerce, etc." Moreover "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**)

(i) Special and Differential Treatment

- "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**)

6. Information on Policy Objectives Sought

- "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**).

7. Advance Rulings

(a) Provision of Advance Rulings

- “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 - **Approach:** 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," and also "To the extent possible, and subject to confidentiality requirements, advance rulings should be made publicly available" (**Canada and Australia, TN/TF/W/9**).
- Advance rulings on tariff classification – **Approach:** "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**).
- "Make available, upon request of a trader in advance of trade, binding rules in certain specific areas (e.g., tariff classification, customs valuation, and duty deferral)" – **Approach:** "... upon request of a trader" (**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." – **Approach:** "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." Also “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**).

(i) Special and Differential Treatment and Technical Assistance and Capacity Building

- "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." - **TA & CB:** "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**).

- "... 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." - **TA & CB**: "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**).
- "Special and Differential Treatment should 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**).
- Rulings could cover the main elements of import requirements, such as tariff classification and applicable duties and taxes. Turkey considers that advance rulings to be provided upon request by traders on certain specific areas such as tariff classification or tariff preferences would be helpful in improving predictability. However, these 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 N/TF/W/45**)

8. Appeal Procedures

(a) Right of Appeal

- "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.." (...) - **Approach**: "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**).
- "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**).

(b) Release of Goods in Event of Appeal

- "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**).

(c) Other Measures to Enhance Impartiality and Non-Discrimination

9. Uniform Administration of Trade Regulations

- "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."... "Compilation and distribution of casebooks of cases and examples of customs classification and customs valuation"..."Provision of staff training based on casebooks on customs classification and customs valuation" (**Japan, Mongolia, Chinese Taipei, Pakistan and Peru, TN/TF/W/8**).

10. Maintenance of Integrity among Officials

- "Development of codes of conduct for staff of border agencies"..."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**)

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