

Negotiating Group on Trade Facilitation

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

Revision

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

I. INTRODUCTION

1. The sixteenth revision of the compilation incorporates the following documents:
 - TN/TF/W/109/Rev.1 from the European Communities and Mongolia;
 - TN/TF/W/110/Rev.1 from the European Communities, Mongolia, the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and Switzerland; and
 - TN/TF/W/133/Rev.2/Corr.1 from the former Yugoslav Republic of Macedonia, the Republic of Moldova, Rwanda, Switzerland and Swaziland.
2. Their reflection required a change in heading structure in a few cases, especially with respect to the transit section. Additional changes were made in response to Members' request. They relate to the sequential order in which the proposals are displayed (swap of chapters G and J and rearrangement of section headings within the former chapter J).

II. SUMMARY TABLE OF MEASURES PROPOSED

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Main Areas covered	Groups of Measures Falling Under Those Areas	Textual Proposals
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M. CUSTOMS COOPERATION	1. Multilateral Mechanism for the Exchange and Handling of Information	W/123/Rev.2/Corr.1, W/154

Related to S&D Treatment, TA&CB, Capacity Assessment and other Implementation Matters

Main Areas Covered	Textual Proposals
IMPLEMENTATION MECHANISM	W/137 and Add.1 – Add.4 W/142; Should be read in conjunction with W/147
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III. TEXTUAL PROPOSALS COMPILED

PREAMBLE/CROSS-CUTTING MATTERS

Barbados, Cuba, Fiji, Papua New Guinea, Solomon Islands, TN/TF/W/129/Rev.2

"Small Economies/developing countries which are members of a Customs Union or a regional economic arrangement may adopt regional approaches to assist in the implementation of their obligations under the Trade Facilitation Agreement including through the establishment and use of regional bodies."

A. PUBLICATION AND AVAILABILITY OF INFORMATION

1. Publication

Hong Kong, China, Japan, Mongolia, Norway, Switzerland and Turkey, TN/TF/W/155

"PUBLICATION

Each Member shall publish promptly¹ all laws, regulations, judicial decisions and administrative rulings of general application relating to or affecting trade in goods in such a manner provided for in Article X of GATT 1994. The information to be published shall include:

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

AVAILABILITY

Each Member shall ensure that the information referred to in [the] paragraph [on publication] is made available in a non-discriminatory and convenient manner via officially designated sources.

UNIFORM ADMINISTRATION

Each Member shall interpret and administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in [the] paragraph [on publication]².

¹The paragraphs of proposals TN/TF/W/115/Rev.1 and TN/TF/W/132/Rev.1 concerning prior publication provide further clarification of the term "promptly".

² The original text refers to paragraph 2. Formatting requirements for the preparation of the present compilation required a different numbering system.

GENERAL RESERVATIONS³

Nothing in these provisions shall be construed as requiring:

- (a) *the publication or provision of information referred to in [the] paragraph [on publication] other than in the language of the Member except as stated in [the third] paragraph [of the section on the establishment of an official website]; or*
- (b) *Members to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private."*

Relevant WCO documents: Revised Kyoto Convention (RKC), General Annex (GA) Chapter (§) 9; Recommendation (1999) on the Use of World Wide Web sites by Customs administrations; Revised Arusha Declaration (paragraph 3); and Recommendation (2001) on the application of HS Committee Decisions.

General remark: Proposal compatible with WCO instruments, which cover most of the points raised in this Members' proposal.

2. Internet Publication/Establishment of Official Website

United States, TN/TF/W/145

"Internet Publication

Each Member shall make available and keep current, on a publicly accessible Internet website:

- (a) *A full and precise description of its customs procedures, including procedures for the appeal of customs determinations; and*
- (b) *The forms and documents required for importation into or exportation from the territory of that Member."*

Hong Kong, China, Japan, Mongolia, Norway, Switzerland and Turkey, TN/TF/W/155

"Recognizing that electronic means of publication would be the most cost effective and easily accessible format for publication of information, each Member shall make available and keep current on one or more publicly accessible official websites:

- (a) *an outline of its border agencies' procedures, including their appeal procedures, as well as its import, export or transit restrictions, in such a manner as to enable [interested parties] to become acquainted with them.*
- (b) *all forms and documents required for importation, exportation or transit.*

³ This section equally applies to the other parts of proposal W/155 (establishment of an official website and of enquiry points.)

The outline referred to in paragraph (a)⁴ shall also include references to the relevant trade-related legislation as well as the titles of and electronic links to all forms and documents as provided for in paragraph (b)⁵.

The language of publication for the outline referred to in paragraph (a)⁶ shall, whenever practicable, be one of the official languages of the WTO."

Relevant WCO documents: RKC, GA § 9; Recommendation (1999) on the Use of World Wide Web sites by Customs administrations; and Recommendation (2001) on the application of HS Committee Decisions.

General remark : Proposal compatible with WCO instruments, as most of the elements required in the Customs area are dealt with therein, even though "forms and documents" are not mentioned specifically.

3. Establishment of Enquiry Points

Hong Kong, China, Japan, Mongolia, Norway, Switzerland and Turkey, TN/TF/W/155

"Each Member shall ensure that one or more enquiry points are available [to interested parties]. The enquiry points shall be responsible for:

- (a) answering enquiries [from interested parties] on trade-related legislation and procedures;*
- (b) providing the information and documents requested [to interested parties].*

Where a Member requires payment of a fee for enquiries, such fees shall not exceed the approximate cost of the service rendered.⁷

[The enquiry points shall reply to enquiries within a time period set by each individual Member.]

Members involved in a regional integration may establish enquiry points at the regional level."

Barbados, Cuba, Fiji, Papua New Guinea, Solomon Islands, TN/TF/W/129/Rev.2

"Small Economies/developing countries which are members of a Customs Union or a regional economic arrangement shall have the option of establishing one or more enquiry points at the regional level.⁸ The existence of a notified regional enquiry point would satisfy the requirements for the existence of an enquiry point under this current provision."

⁴ The original text refers to paragraph 4(a). Formatting requirements for the preparation of the present document required a slightly different numbering system.

⁵ The original text refers to paragraph 4(b). Formatting requirements for the preparation of the present document required a slightly different numbering system.

⁶ See footnote 4.

⁷ *This paragraph may be dropped at a later stage if this aspect is properly dealt with in a cross-cutting manner throughout the TF Agreement.*

⁸ *It is understood that individual Members benefiting from these recommendations will continue to be legally responsible and accountable for their individual notifications and other obligations under these Agreements.*

Relevant WCO documents: RKC, GA § 9.

General remark : Proposal compatible with WCO instruments; in fact the RKC Management Committee discussed this point in November 2008, and saw no need to draft additional guidelines.

4. Notification

Hong Kong, China, Japan, Mongolia, Norway, Switzerland and Turkey, TN/TF/W/155

"Each Member shall notify to the [Trade Facilitation Committee] the officially designated sources referred to in [the] paragraph [on availability], the official websites referred to in [the] paragraph [on the establishment of an official website], as well as the contact information of the enquiry points referred to in [the] paragraph [on the establishment of enquiry points]."

General remark: Proposal compatible with WCO instruments, although the WCO instruments do not require such notification.

B. PRIOR PUBLICATION AND CONSULTATION

1. Interval between Publication and Entry into Force

Hong Kong, China, Japan, Korea, Mongolia and Switzerland, TN/TF/W/115/Rev.1

"Except in urgent circumstances and other limited exceptions which are made public, Members shall ensure, within the competence of their respective government, that a reasonable interval is provided between the publication of new or amended laws, regulations and administrative rulings of general application, or their drafts or summaries, and their entry into force in such a manner as to allow traders to become acquainted with and well prepared for the compliance with them."

Relevant WCO documents: RKC, GA § 9.

General remark: Proposal compatible with WCO instruments.

2. Prior Consultation and Commenting on New and Amended Rules

Hong Kong, China, Japan, Korea, Mongolia and Switzerland, TN/TF/W/115/Rev.1

"Except in urgent circumstances and other limited exceptions which are made public, Members shall afford, within the competence of their respective government, appropriate opportunities to interested parties within their territories to comment on proposed introduction or amendment of trade-related laws, regulations and administrative rulings of general application. Members shall provide information of their policy objectives pursued and allow reasonable period for interested parties to submit comments."

Turkey, TN/TF/W/132/Rev.1

"Members shall ensure that new or amended trade-related legislation and procedures be published on the national website at least [] days before its entry into force so that the interested parties shall be able to submit their comments on the legislation and take necessary measures for the adaptation. Exceptions to this provision are the legislation requiring urgency [and cases where publication in advance may distort market conditions]."

Relevant WCO documents: RKC, GA §§ 1 and 9 (primarily).

General remark: Proposal compatible with WCO instruments.

3. Regular Consultation

Hong Kong, China, Japan, Korea, Mongolia and Switzerland, TN/TF/W/115/Rev.1

"Members shall hold regular consultations between border agencies and traders within their territories."

Relevant WCO documents: RKC, GA §§ 1 and 9 (primarily); SAFE.

General remark: Proposal compatible with WCO instruments.

C. ADVANCE RULINGS

1. Provision of Advance Rulings

Australia, Canada, Turkey the United States, TN/TF/W/153

1. A Member shall issue an advance ruling in a time bound manner to an applicant submitting a written request which contains all necessary information. A Member's authority that declines to issue an advance ruling shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

2. An advance ruling applies in respect of the applicant for a reasonable period of time after its issuance, unless the facts or circumstances supporting the original ruling have changed. Where the issuing authority revokes or modifies the ruling, the authority shall notify the applicant in writing, setting out the relevant facts and the basis for its decision.

3. A Member shall publish, at a minimum:

The time period by which it will issue an advance ruling,

The length of time for which the advance ruling is valid, and

*What information is necessary from the applicant to issue an advance ruling.*⁹

4. A Member shall provide, upon the request of the applicant, for a review by the issuing authority of the advance ruling or the decision to revoke or modify the advance ruling.¹⁰

5. A Member shall endeavour to make available information on advance rulings which it considers to be of significant interest to other traders, taking into account the need to protect commercially confidential information.

Definitions

An "advance ruling" is a determination of a Member, provided in writing to an applicant prior to the commencement of trade in the good concerned that sets forth the treatment the Member shall provide the applicant, in connection with an importation covered by the application, with regard to:

[NOTE: The co-sponsors have bracketed several items which might be included in the scope of this proposal in recognition of the interest of Members in discussing the issue further.]

- (a) The good's tariff classification;
- (b) [The application of customs valuation criteria for a particular case;
- (c) The application of duty drawback, deferral, or other relief from customs duties;
- (d) The application of quotas;]

[NOTE: Advance rulings on the good's country of origin are already provided for in the Agreement on Rules of Origin]

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

Relevant WCO documents: RKC, GA § 9; Recommendation (1996) on the introduction of programmes for binding pre-entry classification information; Recommendation (1998) on the improvement of Tariff Classification work and related infrastructure (Appendix, Part II).

General remark: Proposal compatible with WCO instruments, although the latter are more specifically concerned with tariff classification. However, the proposed text seems very prescriptive compared to the WCO's legal texts.

⁹ Note to the reader: This language may be dropped from the proposed article should it be adequately covered by the Article on publication and availability of information.

¹⁰ Note to the reader: This provision may be dropped from the proposed article should it be adequately addressed in the context of the current proposals designed to clarify appeal and review procedures under Article X, which also include an initial right to review within the issuing authority.

D. APPEAL PROCEDURES

1. Right of Appeal

Japan and Mongolia, TN/TF/W/116/Rev.1

"RIGHT OF APPEAL

1. *Each Member shall provide that any person to whom customs or another relevant border agency issues a decision has the right, within its territory, without penalty, to:*

- (a) Administrative appeal independent of the employee or office of the agency which issued the decision; and*
- (b) Judicial appeal of the decision.*

2. *The legislation of each Member may require administrative appeal to be initiated prior to judicial appeal.*

TRANSPARENCY

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

SET PERIOD

4. *Members shall ensure that customs and other relevant border agencies adopt and maintain set periods for their review and correction of decisions under the appeal procedures. The appellant shall have the right, for procedures mentioned in paragraph 1(a), in a case of undue delay, to bring the case to the next higher instance.*

OPPORTUNITIES TO RECEIVE INFORMATION AND GRIEVANCES

5. *Members shall ensure that customs and other relevant border agencies afford opportunities for traders, upon request, to receive information concerning the administrative decision such as the reasoning of the decision including applied laws and regulations.*

6. *Members shall ensure that customs and other relevant border agencies receive grievances from traders concerning the administrative decision they are addressed to".¹¹*

2. Appeal Mechanism in a Customs Union

India, TN/TF/W/122

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

¹¹ Note: Grievances would be received, for example, at existing enquiry points, divisions, sections of customs and other border agencies concerned depending on each Member's situation.

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

Such appellate decisions shall be binding on the inspection authorities of all member states of a customs union".

Relevant WCO documents: RKC, GA § 10.

General remark: Proposal compatible with WCO instruments.

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

1. Import Alerts/Rapid Alerts

India, TN/TF/W/122

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

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

- In order to ensure that the application of a system of import/rapid alert does not by itself create a barrier to trade, it shall be imposed across a customs union only if based on uniform standards and applied uniformly by all of its member states.*
- A notification against a country/exporter under a system of import/rapid alert restricting or prohibiting imports shall be issued only after it has been established on the basis of positive evidence that imports from the country/exporter concerned have not fulfilled the prescribed objective standards.*
- A notification issued under a system of import/rapid alert restricting or prohibiting imports shall not be maintained if circumstances giving rise to it no longer exist, or if changed circumstances can be addressed in a less trade restrictive manner. Circumstances giving rise to import/ rapid alert would be deemed to no longer exist if [six] successive consignments imported from the country/exporter concerned, after the issuance of import/ rapid alert fulfilled the prescribed objective standards.*
- Announcement of termination of an import/rapid alert shall be made through a public notice to be issued no later than [15 days] after a decision has been taken to terminate the import/rapid alert.*
- The speed and standard of publicity of de-notification of such alert shall equal the level applied at its issuance."*

Relevant WCO documents: RKC, GA §§ 3 and 6; SAFE; Risk Management Guide.

General remark: This proposal is not explicitly covered by WCO instruments, although they do encourage the use of risk management and compliance, as well as the sharing of information on high risks.

2. Detention

India, TN/TF/W/122

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

3. Test Procedures

India, TN/TF/W/122

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

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

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

For a customs union, the results of a confirmatory test carried out in one member state of a customs union shall be valid for and be accepted in all other member states of the customs union".

Relevant WCO documents: RKC, GA §§ 3 and 6; Risk Management Guide.

General remark: These two proposals are not covered by WCO instruments. WCO instruments do not address the question of confirmatory tests, and the proposal concerning detention raises too many questions (what situations does this refer to ?) for an opinion to be expressed.

F. FEES AND CHARGES CONNECTED WITH IMPORTATION AND EXPORTATION

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

European Communities, Korea and Switzerland, TN/TF/W/107

"Scope

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

Specific parameters.

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

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

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

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

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

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

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

Each Member shall periodically review its fees and charges to ensure that they are in line with WTO commitments and with a view to consolidating them and reducing their number and diversity".

Relevant WCO documents: RKC, GA §§ 3 and 9; Revised Arusha Declaration.

General remark: Proposal compatible with WCO instruments, but the RKC is much more specific. Unlike the Revised Arusha Declaration, the RKC does not provide for the periodic review of fees and charges.

G. RELEASE AND CLEARANCE OF GOODS

1. **Expedited/Simplified Release and Clearance of Goods**

(a) Pre-arrival Processing

Hong Kong, China, Japan, Korea, Mongolia and Switzerland, TN/TF/W/117

"Pre-arrival Processing

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

International Standards and Practices

Members shall draw on relevant international standards and practices¹² as a basis for pre-arrival processing.

Reservations

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

Special and Differential Treatment

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

Least-developed country Members shall not be required to apply these provisions until their acquisition of the necessary capacity to implement such provisions.]".

Relevant WCO documents: RKC, GA § 3; SAFE; Guidelines on the release of goods.

General remark: Proposal compatible with WCO instruments .

(b) Separating Release from Clearance Procedures

Canada and Switzerland, TN/TF/W/136/Rev.1

"1. *In cases where goods are not cleared upon arrival, a Member shall allow an importer to obtain the release of goods prior to meeting all of the Member's import requirements if the importer provides sufficient guarantee in the form of a surety, a deposit or some other appropriate instrument. A member is not required to release goods where the Member's import requirements, in accordance with that Members' WTO rights and obligations, have not been satisfied.*

2. *The guarantee shall be limited to an amount reasonably calculated to ensure compliance with a Member's import requirements and shall not represent an indirect protection to domestic products or a taxation of imports for fiscal purposes.*

3. *Once the Member has determined that its import requirements have been satisfied, the guarantee shall be discharged without delay.*

Definitions¹³

Release is the action by the Customs [and other border agencies] to permit goods undergoing clearance to be placed at the disposal of the persons concerned.

Clearance is the accomplishment of the Customs/ [border] formalities necessary to allow goods to enter home use, to be exported or to be placed under another Customs procedure."

¹² *International standards and practices include, Standard 3.25 of the Revised Kyoto Convention, WCO Guidelines for the immediate release of consignments by Customs.*

¹³ *The definitions are borrowed from the "Glossary of international customs terms", WCO, 2006.*

Relevant WCO documents: RKC, GA §§ 3 and 5; SAFE; Guidelines on the release of goods.

General remark: Proposal compatible with WCO instruments.

(c) Risk Assessment/Analysis

India, TN/TF/W/121

"A customs union shall generally apply a harmonized risk management system across the entire customs union".

Chinese Taipei, Korea and Switzerland, TN/TF/W/140

"Members shall conduct documentary and physical examination based on risk management¹⁴ for the purpose of concentrating on the examination of higher risk¹⁵ goods and facilitating the movement of lower risk goods.

In applying risk management techniques, Members shall examine imported goods based on appropriate selectivity criteria in order to provide compliant traders with greater facilitation and expedited customs procedures.

The selectivity criteria may include specific commodity code, country of origin, country whence consigned, licensing indicator, value of goods, compliance level of traders, type of means of transport and the traders' purpose of the stay in the Customs territory.

Members shall, where practicable, refer to relevant international standards and practices including the revised Kyoto Convention and the WCO Risk Management Guideline as basis for its risk management procedures.

Risk management procedures shall not be used as or have the effect of creating disguised discrimination and obstacles to trade.

Risk management procedures shall be applied, to the extent possible, to the relevant trade facilitation measures including pre - arrival processing, post - clearance audit, and authorized traders".

China, TN/TF/W/148

"Members shall apply risk management¹⁶ techniques with the purpose to reduce, to the extent possible, physical inspections on goods.

Members shall concentrate physical inspections on high risk goods while expediting release of low risk goods and providing facilitation to the compliant traders.

¹⁴ Defined as "the systematic application of management procedures and practices providing customs and other relevant border agencies with the necessary information to address movements or consignments which present a risk."

¹⁵ The proposal defines "risk" as "the potential for non-compliance with customs and/or other relevant laws."

¹⁶ Defined as "the systematic application of management procedures and practices providing customs and other relevant border agencies with the necessary information to address movements or consignments which present a risk."

- (a) *The application scope of risk management techniques includes but is not limited to the processes of customs supervision and control, post-clearance audit, tariff classification, valuation and analysis of customs statistics.*
- (b) *Appropriate criteria to select traders to be eligible for different treatments shall be established accordingly.*

Selectivity of goods for physical inspections shall be in a manner of non-discrimination to avoid constitution of trade obstacles.

Wherever practicable, the standards and instruments developed by relevant international organizations such as WCO shall be applied."

Relevant WCO documents: RKC, GA § 6; SAFE; Risk Management Guide; Standardized Risk Assessment.

General remark: Proposal compatible with WCO instruments .

- (d) Post-clearance Audit

China, Indonesia and Korea, TN/TF/W/134 and Add.1

"Members shall carry out necessary PCA on the account books, vouchers, commercial documents, customs declaration forms and other trade-related information maintained by enterprises involved directly or indirectly in the transaction of international trade upon the risk analysis results.

Members shall conduct PCA through methods of regular audit¹⁷ and targeted audit¹⁸ to identify the risk and assess the compliance of traders.

The outcome of PCA shall be fed back timely to relevant Customs officers involved in clearance procedures to take further action. The most compliant traders or low risk commodities shall be granted simplest and fastest clearance treatment by Customs.

Members shall adopt the relevant international standards and instruments as a basis for PCA¹⁹, where such standards and instruments exist".

Relevant WCO documents: RKC, GA § 6; SAFE; Risk Management Guide.

General remark: Proposal compatible with WCO instruments.

¹⁷ Regular audit is performed periodically according to auditing programs set forth by Customs focusing on business system and routine operation and management situation.

¹⁸ Targeted audit is performed on the selected traders and commodities with high risks resulting from the results of risk analysis and assessment.

¹⁹ A relevant international standard is Standard 6.6 and 6.10 Chapter 6, General Annex of the Revised Kyoto Convention.

(e) Establishment and Publication of Average Release and Clearance Times

Korea and Japan, TN/TF/W/139/Rev.1 and Rev.1/Add.1

"Members shall measure and publish their own average time for the release of goods in a consistent manner on a periodic basis, using tools such as the WCO Time Release Study.

Members shall endeavour to continuously reduce such average release time.

In case of a significant delay in the release of goods, Members shall provide the traders who have made written requests with the reasons for the delay except when such notification would impede the pursuance of legitimate policy objectives."

Relevant WCO documents: Time Release Study.

General remark: Proposal compatible with WCO instruments.

(f) Authorized Traders

European Communities and Mongolia, TN/TF/W/109/Rev.1

"Authorized traders

- *In addition to the facilitation measures provided to all operators set out in this Agreement, Members shall apply further simplified import and export formalities for economic operators, including SME's, which meet specific criteria related to compliance with customs requirements ("authorized traders"):*
- *These specific criteria may include the following: (1) an appropriate record of compliance with customs requirements; (2) a system of managing records to allow for necessary controls; (3) financial solvency (including, where appropriate, provision of a sufficient security/guarantee); and/or (4) an appropriate system of security and safety standards.*
- *The additional facilitation measures for such authorised traders shall include:*
 - 1) *the possibility of periodic declarations and payment of duties,*
 - 2) *reduced physical inspections in all but exceptional circumstances,*
 - 3) *reduced documentary and data requirements as determined by domestic legislation, and the right to submit for processing a single document covering all goods contained in a consignment, and*
 - 4) *more rapid release time.*
- *Additional facilitation measures may also include:*
 - 5) *local clearance,*
 - 6) *remote filing.*

- *The specific criteria to qualify as an authorized trader shall not be designed or applied so as to afford or create arbitrary or unjustifiable discrimination or a disguised restriction on international trade.*
- *Members shall use objective risk management techniques in the assessment of any application for authorized trader status.*
- *Members shall draw upon relevant international standards and instruments as a basis for authorized trader schemes, where such standards and instruments exist, except when they would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued."*

India, TN/TF/W/121

"Norms for authorized trader status shall be applied uniformly by all member states of a customs union".

Relevant WCO documents: RKC, GA § 3; SAFE.

General remark: Proposal compatible with WCO instruments.

(g) Expedited Shipments

United States, TN/TF/W/144/Rev.2

"Customs Procedures for Expedited Shipments

1. Each Member shall adopt or maintain customs procedures allowing for expedited shipments while maintaining customs control and selection. These procedures shall:

- Allow for the submission and processing, including through electronic means, of information necessary for the release of an expedited shipment prior to the arrival of the expedited shipment;*
- Allow for the submission and processing, including through electronic means, of a single document covering all goods contained in an expedited shipment;*
- To the extent possible, provide for the release of expedited shipments based on the single document;*
- Provide for expedited shipments to be released under normal circumstances within 3 hours after the necessary customs documents have been submitted, provided the shipment has arrived;*
- Apply to expedited shipments without regard to weight or customs value;*
- [Allow for the release of expedited shipments before and without prejudice to the final determination of the applicable customs duties, taxes, and fees owed, if, where so required, the importer provides sufficient guarantee in the form of a surety, a deposit, or some other appropriate instrument, covering the ultimate payment of the*

customs duties, taxes, and fees in connection with the importation of the expedited shipment];²⁰ and

- (g) *Provide for a de minimis procedure under which customs duties and taxes will not be assessed on an expedited shipment valued under a specified value.*

2. *A Member may require that an expedited shipment provider shall, as a condition for the application of the procedures described in paragraph 1 to its expedited shipments:*

- (a) *Provide adequate infrastructure to allow for the processing of the expedited shipment;*
- (b) *Submit specified information from the single document in advance of the arrival of an expedited shipment; and*
- (c) *be assessed fees limited in amount to the approximate cost of services rendered in providing the customs procedures in paragraph 1.*

3. *Nothing in these provisions shall prevent a Member from obtaining additional information, conducting screenings, or examining goods, where necessary to maintain appropriate border control, including through the use of systems that distinguish between low-risk and high-risk goods.*

Definitions

"Expedited shipments" means goods designated as such by an expedited shipment provider.

"Expedited shipment provider" means a person that:

- (a) *Maintains a high-degree of control over expedited shipments through the use of internal security, logistics, and tracking technology;*
- (b) *Tracks and controls expedited shipments at every point during their conveyance; and*
- (c) *Maintains the capacity for the expedited shipment provider, sender and recipient to locate expedited shipments at any point in their conveyance and to obtain current information on the estimated delivery time of those shipments.*

"Single document" means a consolidated document or record (including in electronic form) issued by an expedited shipment provider which contains the following identifying information about each of the goods being shipped:

- (1) *The country of origin of the goods, if known;*
- (2) *The shipper's name and address;*
- (3) *The ultimate consignee's name and address;*
- (4) *A specific description of the goods;*
- (5) *The quantity of the goods;*
- (6) *The shipping weight;*
- (7) *The value of the goods; and*
- (8) *An identifier or tracking number unique to a particular expedited shipment."*

²⁰ *Note to the reader: This language may be dropped from the proposed article should it be adequately addressed in the context of the proposal on release and clearance (TN/TF/W/136/Rev.1).*

Relevant WCO documents: RKC, GA § 3; SAFE; Guidelines on the release of goods.

General remark: Proposal compatible with WCO instruments, although this proposal does seem more prescriptive than the WCO instruments; also, the latter do not restrict the application of simplified procedures to expedited shipment providers.

H. CONSULARIZATION

1. Prohibition of Consular Transaction Requirement

Uganda and the United States, TN/TF/W/104

"A Member shall not require a consular transaction²¹, including any related fee or charge, in connection with the importation of any good".

General remark: Not covered by WCO instruments.

I. BORDER AGENCY COOPERATION

1. Coordination of Activities and Requirements of all Border Agencies

Canada and Norway, TN/TF/W/128/Rev.1

"A Member shall ensure that its authorities and agencies involved in border and other import and export controls cooperate and coordinate in order to facilitate trade.

A Member shall endeavour to cooperate with bordering Members to coordinate customs procedures at specific border crossings by, among other things, aligning working days and hours."

Relevant WCO documents: RKC, GA § 3; SAFE; Customs Compendium : Integrated Border Management.

General remark: Proposal compatible with WCO instruments.

J. FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION

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

(a) Periodic Review of Formalities and Requirements

Hong Kong, China and Switzerland, TN/TF/W/124/Rev.2

²¹ Defined as "the procedure of obtaining from a consul of the importing Member in the territory of the exporting Member, or in the territory of a third party, a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shippers' export declaration, or any other customs documentation in connection with the importation of the good."

"Each Member shall review its formalities and requirements at reasonable and regular intervals, taking into account relevant new information and business practices, availability and adoption of techniques and technology, international best practices and input from interested parties."²²

Relevant WCO documents: RKC.

General remark: Proposal compatible with WCO instruments .

(b) Reduction/Limitation of Formalities and Documentation Requirements

Hong Kong, China and Switzerland, TN/TF/W/124/Rev.2

"Members shall minimize the incidence and complexity of import and export formalities and decrease and simplify import and export documentation requirements. In doing so, Members shall consider whether alternative formalities and requirements that can achieve the legitimate objectives are reasonably available, and adopt those formalities and requirements which are significantly less trade restrictive. Members shall ensure that the formalities and requirements are applied in an efficient manner so as not to constitute an unnecessary obstacle to trade.

Any such formalities or requirements shall not be maintained if the circumstances or objectives giving rise to their adoption no longer exist".

Mongolia, Norway and Switzerland, TN/TF/W/130/Rev.1

"Recognizing the need to minimize the incident and the complexity of trade documents, Members shall ensure that:

1. Documentation requirements are no more administratively burdensome or trade restrictive than necessary to achieve their legitimate objectives; and
2. The following is aligned with international trade facilitation standards and recommendations as set out in paragraphs 2(i) to (iii):

National trade document formats with the UN-Layout Key or its future updated electronic counterparts in accordance with the Customs Co-operation Council Recommendations on the matter;

National data elements in trade documents with the UN Trade Data Elements Directory (UNTDDED) and future updated versions in accordance with the Customs Co-operation Council Recommendations on the matter; and

Electronic messages to be interchanged and inter-operated between Customs administrations and between Customs administrations and other trade operators with internationally widely accepted standards for electronic information exchange."

Relevant WCO documents: RKC, §§ 3 and 7 ; Recommendation (June 1990) on the use of the UNTDED; Recommendation (June 1990) on the use of UN/EDIFACT.

General remark: Proposal compatible with WCO instruments .

²² This self-initiated review shall not affect Members' rights and obligations under paragraph 2 of Article VIII of GATT 1994.

(c) Use of International Standards

Mongolia, Norway, South Africa and Switzerland, TN/TF/W/131/Rev.1

"Article [Use of International Standards]

1. *Members shall use relevant international standards or parts thereof as a basis for their laws, regulations and administrative procedures that lay down requirements for formalities and procedures in connection with importation, exportation or transit.*

2. *If regional standards are a more efficient means to facilitate international trade, Members of that region are encouraged to use them or relevant parts thereof as a basis for their laws, regulations and administrative procedures as provided for in paragraph 1²³.*

3. *Members are not required to use relevant international standards or relevant parts thereof which would pose fundamental technological problems in a Member, or where they would be an ineffective or inappropriate means for the fulfilment of the objectives of this Agreement.*

4. *With a view to facilitating international trade, Members are encouraged to take part, within the limits of their resources, in the preparation and periodic review by appropriate international intergovernmental organization of standards relevant to the operation of this Agreement.*

5. *For the purposes of this Agreement, the term "international standards" shall be understood to refer to International Conventions or Agreements related to facilitating international trade and administered by relevant international intergovernmental organizations, [inter alia]: World Customs Organization (WCO) and United Nations Organisations Centre for Trade Facilitation and Electronic Business. As appropriate, the list of relevant international organizations may be complemented by other relevant international organizations as identified by the Trade Facilitation Committee.*

[5. *Alternative: For the purposes of this Agreement, the term "international standards" shall be understood to refer to International Conventions or Agreements related to facilitating international trade and administered by relevant international intergovernmental organizations: World Customs Organization (WCO), United Nations Organisations Centre for Trade Facilitation and Electronic Business, International Maritime Organisation (IMO) and International Civil Aviation Organisation (ICAO). In particular, the following conventions shall apply: Convention (2005) on Facilitation of International Maritime Traffic, Convention (2006) on International Civil Aviation, Convention (1990) on the Temporary Admission of Goods (Istanbul Convention), International Convention (1986) on the Harmonized Commodity Description and Coding System (HS Convention), General Annex of the International Convention (1999) on the Simplification and Harmonisation of Customs procedures (Revised Kyoto Convention). As appropriate, the lists of relevant international organizations and conventions may be complemented as identified by the Trade Facilitation Committee]."*

General remark: Proposal compatible with WCO instruments.

(d) Acceptance of Commercially Available Information and of Copies

²³ *In this case, these regional standards prevail over the relevant international standards as provided for in paragraph 1.*

Hong Kong, China, Korea and Switzerland, TN/TF/W/112

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

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

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

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

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

Customs and other border agencies shall not require a translation of the particulars of supporting documents (e.g., invoices, bills of lading), except when necessary to permit processing of the Goods declaration".

Relevant WCO documents: RKC, GA § 3; SAFE.

General remark: Proposal compatible with WCO instruments.

(e) Single Window/One-time Submission

Korea, Singapore and Thailand, TN/TF/W/138/Rev.2

"Members shall maintain or establish the 'single window'²⁴, where documentation and/or data requirements for exportation, importation and transit are submitted one time only. The single window shall undertake onward distribution of the aforementioned documentation and/or data requirements to all the relevant authorities or agencies which require them. The authorities or agencies that receive the documentation and/or data requirements through the single window shall notify the results of their examinations to the applicants through the single window in a timely manner.

²⁴ A single window is defined as a facility that allows parties involved in trade and transport to lodge standardized documentation and/or data with a single entry point to fulfil all import, export, and transit-related regulatory requirements.(UN/CEFACT Recommendation No. 33)

In cases where documentation and/or data requirements have already been received by the single window, the same documentation and/or data requirements shall not be requested by other authorities or agencies except in urgent circumstances and other limited exceptions which are made public.

Members shall notify other Members through the WTO Secretariat of the details of operation of the single window, which may include the participating authorities and agencies, the functions of the single window, the contact point for the single window as well as the procedure of its usage²⁵.

Members are encouraged to use, to the extent possible, information technology to support the single window.

Members shall, where practicable, use relevant international standards and practices such as UN/CEFACT Recommendation No. 33 as a basis for the single window schemes.

With regard to the scope of participating authorities or agencies and documentation and/or data requirements, Members are allowed to implement the single window in a progressive manner taking into account each Member's implementation capacity."

Relevant WCO documents: RKC, GA § 3; SAFE.

General remark: Proposal compatible with WCO instruments. It should be noted that the RKC contains no references to the Single Window, but some of its provisions do cover, in part, the operation of the Single Window.

(f) Elimination of Pre-shipment Inspection

European Communities and Chinese Taipei, TN/TF/W/108

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

²⁵ Note to the reader: This article may be dropped from the proposed text should it be adequately covered by the Article on publication and availability of information.

General remark: Not covered by WCO instruments.

(g) Use of Customs Brokers

European Communities, Mongolia, Chinese Taipei and Switzerland, TN/TF/W/110/Rev.1

1. *Where a Member requires the compulsory use of customs brokers, this Member shall ensure that licensing requirements and procedures are transparent and proportionate.*
2. *All qualified economic operators, subject to the licensing requirements in paragraph 1, shall be eligible for a license. In the case of legal persons, they may operate with their own in-house customs brokers, licensed by the relevant authority for this purpose in accordance with paragraph 1 above.*
3. *The number of licenses shall be unlimited.*
4. *From the entry into force of this commitment, Members not requiring the compulsory use of customs brokers shall not introduce or apply any new requirements to use customs brokers."*

Relevant WCO documents: RKC, GA §§ 3 and 8.

General remark: § 1 of this proposal contradicts Standard 8.1 of the GA to the RKC, which gives persons concerned the option of either transacting business with Customs directly or designating a third party to act on their behalf. The meaning behind §§ 2 and 3 is not easy to grasp.

(h) Same Border Procedures Within a Customs Union

India, TN/TF/W/121

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

General remark: Not covered by WCO instruments.

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

India, TN/TF/W/121

"All documentation requirements relating to import clearance shall be uniform for all member states of a customs union".

General remark: Not covered by WCO instruments.

(j) Option to Return Rejected Goods to the Importer

India, TN/TF/W/121

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

General remark: Not covered by WCO instruments.

K. TARIFF CLASSIFICATION

1. **Objective Criteria for Tariff Classification**

New Zealand, TN/TF/W/126

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

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

Relevant WCO documents: HS Convention (especially the General Rules for the Interpretation of the HS) (see also the Recommendation (June 2001) on the application of HS Committee Decisions).

General remark: Proposal compatible with WCO instruments.

L. MATTERS RELATED TO GOODS TRANSIT

1. **Scope**

The Former Yugoslav Republic of Macedonia, the Republic of Moldova, Rwanda, Switzerland and Swaziland, TN/TF/W/133/Rev.2/Corr.1

"Definition of traffic in transit: Goods – including those moved via fixed infrastructure, inter alia pipelines and electricity grids²⁶ –, and means of transport (including baggage and the personal

²⁶ "At least some of the proposed commitments in the proposal have been written with only transit of goods by moving means of transport in mind. Co-sponsors recognize that the text will need to be further worked through to ensure that language is consistent with our intention to cover all means of transport. One option worth exploring could be to have separate paragraphs or separate proposals on freedom of transit by moving means of transport on the one hand and by fixed infrastructure on the other hand."

belongings of the person operating the means of transport) , shall be deemed to be in transit across the territory of a Member when the passage across such territory is only a portion of a complete journey beginning and terminating beyond the frontier of the Member whose territory the traffic passes. Traffic of this nature is termed "traffic in transit" irrespective of (i) trans-shipment, short-term storage, breaking bulk, or change in the mode of transport, and (ii) whether the goods or means of transport, after passing across a territory of a Member, return to the territory of a Member in which they originate or through which they have previously transited. Means of transport shall be deemed to be in transit also if they carry exclusively goods in transit, even if the means of transport are not in themselves in transit according to the above definition.

Each Member undertakes that if it establishes or maintains a State enterprise, wherever located, or grants to any enterprise, formally or in effect, exclusive or special privileges, such enterprise shall, in its regulations, formalities, fees and charges – including transportation charges –, on or in connection with traffic in transit, act in a manner consistent with the provisions on traffic in transit of this Agreement and otherwise solely in accordance with commercial considerations.

Exception: The provisions on traffic in transit of this Agreement shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage)."

2. Basic freedom of transit

The Former Yugoslav Republic of Macedonia, the Republic of Moldova, Rwanda, Switzerland and Swaziland, TN/TF/W/133/Rev.2/Corr.1

"There shall be freedom of transit through the territory of each Member via the routes most convenient for international transit. No distinction shall be made in the treatment of traffic in transit which is based on flag of the vessel, the place of origin, departure, entry, exit or destination, or any circumstances relating to the ownership of goods or means of transport".

3. Exceptions, Regulations, Restrictions and Non-Discrimination

The Former Yugoslav Republic of Macedonia, the Republic of Moldova, Rwanda, Switzerland and Swaziland, TN/TF/W/133/Rev.2/Corr.1

(a) General and security exceptions

"Members recognize that the general and security exceptions provided for in GATT Articles XX and XXI shall be fully applicable."²⁷

The Former Yugoslav Republic of Macedonia, the Republic of Moldova, Rwanda, Switzerland and Swaziland, TN/TF/W/133/Rev.2/Corr.1

(b) Regulation

"Regulation on Traffic in Transit: All regulation imposed by contracting parties on traffic in transit to or from the territories of other contracting parties shall be reasonable, having regard to the conditions of the traffic."

²⁷ Note to the reader: this paragraph may be dropped at a later stage if the issue is properly covered in another Article of the Agreement.

(c) Disciplines on Restrictions to Freedom of Transit

Turkey, Georgia and Paraguay, TN/TF/W/146/Rev.1

"1. In order to ensure freedom of transit, a member shall not seek, take or maintain any restrictive measure in transit.

2. Members may only take necessary measures to fulfil a legitimate objective stemming from the general exceptions laid down in GATT Articles XX and XXI. Members shall ensure that any such measure shall not be more restrictive than necessary and shall be applied in a transparent manner.

3. The restrictive measure shall not be maintained if the circumstances or objectives giving rise to its adoption no longer exist or if the changed circumstances or objectives can be addressed in a less restrictive manner.

4. Members taken such measure shall notify other members [through the relevant WTO body-Trade Facilitation Committee] on the objective and the necessity of the restrictive measure.

5. Members taking the restrictive measure, upon request of the parties that are affected, [through the relevant WTO body-Trade Facilitation Committee], shall provide all pertinent information which shall include the evidence that the measure is the least restrictive way of achieving the objective."

(d) Strengthened Non-discrimination

Cuba, TN/TF/W/127

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

The Former Yugoslav Republic of Macedonia, the Republic of Moldova, Rwanda, Switzerland and Swaziland, TN/TF/W/133/Rev.2/Corr.1

" National treatment: With respect to all [laws, regulations, formalities], fees and charges, including transportation charges, imposed on or in connection with transit, each Member shall accord to traffic in transit to or from the territory of any Member, treatment no less favourable than that accorded to its own exports or imports, and their movement.

Most-favoured-nation treatment: Without prejudice to paragraph 0²⁸, with respect to all laws, regulations, formalities, fees and charges – including transportation charges – , on or in connection

²⁸ The paragraph reads: "Members shall promote bilateral and regional transit agreements or arrangements with a view to reducing trade barriers and enhance freedom of transit. Members shall take full account of international standards and instruments when designing and applying those agreements or arrangements. In particular, contracting parties to regional transit agreements or arrangements shall strive to:

- (i) agree on common, simplified documents, or electronic messages, that shall be aligned with international standards;
- (ii) allow the same set of documents or electronic messages to accompany the consignment from the country of departure to destination;
- (iii) mutually recognize authorized economic operator schemes;

with transit, each Member shall accord to traffic in transit to or from the territory of any other Member treatment no less favorable than the treatment accorded to traffic in transit to or from any third country. This principle refers to like products being transported on the same route under like conditions.

Treatment preceding and following transit: Each Member shall accord to products and means of transport which have been or will be in transit through the territory of any other Member treatment no less favorable than that which would be accorded to such products and means of transport if they hadn't traveled or will not travel from their place of origin to their destination without going through the territory of such other Member. Any Member shall, however, be free to maintain its requirements of direct consignment existing on the date of the GATT 1994 in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of the goods at preferential rates of duty or has relation to the Member's prescribed method of valuation for duty purposes. "

4. Disciplines on Fees and Charges

(a) Publication of Fees and Charges

The Former Yugoslav Republic of Macedonia, the Republic of Moldova, Rwanda, Switzerland and Swaziland, TN/TF/W/133/Rev.2/Corr.1

"Publication: Members shall publish promptly information on all transit fees and charges. This information shall include the reason for the transit fee or charge (the service provided), the responsible authority, the transit fees and charges that will be applied, and when and how payment is to be made. The information shall be published via an officially designated medium, and to the extent practicable, an official website."²⁹

Prior publication: Except in urgent circumstances and other limited exceptions, which are made public, Members shall accord an adequate time period between the publication of information on new or amended transit fees and charges and their entry into force."³⁰

(b) Periodic Review of Fees and Charges

The Former Yugoslav Republic of Macedonia, the Republic of Moldova, Rwanda, Switzerland and Swaziland, TN/TF/W/133/Rev.2/Corr.1

"Periodic review: Each Member shall periodically review its transit fees and charges to ensure that they are in line with WTO commitments and with a view to reducing their number and diversity, where appropriate"³¹.

(iv) define common measures relating to the monitoring of transit, inter alia the appointment of national transit coordinators; performance indicators (e.g., target clearance times) or public private partnerships to manage and monitor the arrangement;

(v) include matters which are relevant beyond customs in the context of transit, such as road and transport issues. "

²⁹ Note to the reader: this paragraph may be dropped at a later stage if the issue is properly covered in another Article of the Agreement.

³⁰ Note to the reader: this paragraph may be dropped at a later stage if the issue is properly covered in another Article of the Agreement.

³¹ Note to the reader: this paragraph may be dropped at a later stage if the issue is properly covered in another Article of the Agreement.

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

The Former Yugoslav Republic of Macedonia, the Republic of Moldova, Rwanda, Switzerland and Swaziland, TN/TF/W/133/Rev.2/Corr.1

"Members shall exempt traffic in transit from customs duties and from all transit duties and other fees and charges imposed in respect of transit, except

- (i) *reasonable charges for transportation (such as tolls, road charges and similar), having regard to the conditions of the traffic, or*
- (ii) *reasonable transit charges commensurate with the administrative expenses entailed by transit or with the cost of the service rendered. Any transit charge shall:*
 - *only be imposed for transit services provided directly linked to the specific transit movement in question;*
 - *not exceed the approximate cost of the transit service rendered; and*
 - *not be calculated on an ad valorem basis."*

Turkey, Georgia and Paraguay, TN/TF/W/146/Rev.1

"Charges for transit shall be commensurate with the cost of the services rendered and be equally applied irrespective of the country of origin, destination or the nationality of the vehicle. All charges and fees applied in transit regime shall be notified to [the relevant WTO body-Trade Facilitation Committee]."

5. Disciplines on Transit Formalities and Documentation Requirements

(a) Publication

The Former Yugoslav Republic of Macedonia, the Republic of Moldova, Rwanda, Switzerland and Swaziland, TN/TF/W/133/Rev.2/Corr.1

"Publication: Each Member shall publish all transit formalities and documentation requirements, and regional transit agreements or arrangements[, except if a non-Member-Party to such an agreement or arrangement opposes publication]]. The information shall be published via an officially designated source, such as the official gazette, the official journal or an official web-site.³²

Prior publication: Except in urgent circumstances and other limited exceptions, which are made public, Members shall accord an adequate time period between the publication of new or amended transit formalities and documentation requirements and their entry into force.³³"

³² Note to the reader: this paragraph may be dropped at a later stage if the issue is properly covered in another Article of the Agreement.

³³ Note to the reader: this paragraph may be dropped at a later stage if the issue is properly covered in another Article of the Agreement.

(b) Periodic Review

The Former Yugoslav Republic of Macedonia, the Republic of Moldova, Rwanda, Switzerland and Swaziland, TN/TF/W/133/Rev.2/Corr.1

"Periodic review: Each Member shall periodically review its transit formalities and documentation requirements to ensure that they are in line with WTO commitments and with a view to consolidating them and reducing their impact on trade. Such reviews shall allow for the participation of all interested parties and, as appropriate, may be held at a regional or international level."

(c) Reduction/Limitation/Simplification/Adjustment

The Former Yugoslav Republic of Macedonia, the Republic of Moldova, Rwanda, Switzerland and Swaziland, TN/TF/W/133/Rev.2/Corr.1

"Any Member may require that traffic in transit through its territory be entered at the proper customs office without prejudice to the other commitments on transit, but such traffic in transit through their territory shall not be subject to any unnecessary delays, restrictions, inspections or controls[, except in cases of failure to comply with applicable laws and regulations,] and shall be granted expedited and simplified treatment at border crossing points, including sea, fluvial and air ports or inland terminals as applicable. Such expedited and simplified treatment implies, inter alia:

- (i) Special border crossing facilities for transit: To the extent practicable, physically separate transit lanes shall be made available for traffic in transit.*
- (ii) Formalities adjusted to the specificities of the goods in transit: In designing and applying transit formalities and documentation requirements, Members shall take account of the characteristics of traffic transit.*
- (iii) Limited physical inspections of goods: Where goods are placed under a transit procedure, Members shall use risk management techniques adapted to the specific risks of traffic in transit to enable any inspections to be targeted on the basis of the degree of risk attached to individual consignments. Furthermore, Members shall not apply quality controls or controls of compliance with technical standards.*
- (iv) Reducing the administrative burden for traffic in transit: Transit formalities and documentation requirements shall be reasonable having regard to the conditions of the traffic, applied uniformly and be not more trade restrictive than necessary to permit the control of the operation and to ensure that all requirements relating to the application of relevant law have been complied with. For traffic in transit, Members shall provide for:
 - the processing of transit documents and data prior to the arrival of the transiting consignment;*
 - the use, to the extent possible, of any commercial or transport document setting out clearly the necessary particulars as the descriptive part of transit declarations as a complement of the paper based transit declarations;*
 - the establishment of a single window; and**

- the establishment of an authorised trader scheme with a view to grant simplified treatment to traders with a good track record of compliance with transit formalities and documentation requirements."

6. Bonded Transport Regime and Guarantees

The Former Yugoslav Republic of Macedonia, the Republic of Moldova, Rwanda, Switzerland and Swaziland, TN/TF/W/133/Rev.2/Corr.1

"Where a Member operates a guarantee system to avoid inland diversion of goods in transit, any person required to provide security shall be allowed to choose any form of security provided that it is acceptable to the customs and other border authorities. This Member shall also ensure that the guarantees required from transit operators are:

- (i) reasonable having regard to the conditions of traffic and the characteristics and the nature and value of the consignment in question, and limited to the amount of customs debt or other charges which may be incurred in respect of the goods;*
- (ii) designed and applied on a regional or international basis to as great an extent as possible; and*
- (iii) released or discharged promptly and in full after the completion of the transit operation.*

Where a Member operates a guarantee system for goods in transit, this Member shall allow guarantees to be renewed for subsequent consignments once a previous one is proved to have reached its destination. No fees and charges shall be imposed in relation to the use of bonded transport regimes and guarantees except for those directly related to the approximate cost of any service rendered.

In cases where a Member chooses to apply other appropriate measures to prevent the inland diversion of goods, no guarantee shall be required for the transit of goods."

7. Regional Transit Agreements or Arrangements

The Former Yugoslav Republic of Macedonia, the Republic of Moldova, Rwanda, Switzerland and Swaziland, TN/TF/W/133/Rev.2/Corr.1

"Members shall promote bilateral and regional transit agreements or arrangements with a view to reducing trade barriers and enhance freedom of transit. Members shall take full account of international standards and instruments when designing and applying those agreements or arrangements. In particular, contracting parties to regional transit agreements or arrangements shall strive to:

- (i) agree on common, simplified documents, or electronic messages, that shall be aligned with international standards;*
- (ii) allow the same set of documents or electronic messages to accompany the consignment from the country of departure to destination;*
- (iii) mutually recognize authorized trader schemes;*

- (iv) *define common measures relating to the monitoring of transit, inter alia the appointment of national transit coordinators; performance indicators (e.g., target clearance times) or public private partnerships to manage and monitor the arrangement;*
- (v) *include matters which are relevant beyond customs in the context of transit, such as road and transport issues.*

Regulations and formalities in connection with transit agreed upon in such agreements or arrangements shall be reasonable, having regard to the conditions of the traffic. These agreements or arrangements shall be designed and implemented in such a way that they do not constitute a disguised restriction on international trade or an arbitrary or unjustifiable discrimination between Members.

Members participating in bilateral or regional transit agreements or arrangements shall afford adequate opportunity for other interested Members to negotiate their accession to such an agreement or arrangement or to negotiate comparable ones with it."

8. Improved Coordination and Cooperation

- (a) Amongst Authorities

The Former Yugoslav Republic of Macedonia, the Republic of Moldova, Rwanda, Switzerland and Swaziland, TN/TF/W/133/Rev.2/Corr.1

"Amongst authorities: Members shall ensure cooperation and coordination between all concerned authorities and agencies in their territory to facilitate traffic in transit. Members shall ensure cooperation with other Members on issues of traffic in transit, including with regard to standardizing transit formalities and documentation requirements, coordinating operations of border crossings and mutual recognition of authorized trader schemes. To this end, neighbouring Members shall, as far as necessary, meet periodically to discuss and come to an understanding on the fees and charges, formalities, legal requirements and practical operation of transit regimes relating to goods moving in transit between them."³⁴

- (b) Between Authorities and the Private Sector

The Former Yugoslav Republic of Macedonia, the Republic of Moldova, Rwanda, Switzerland and Swaziland, TN/TF/W/133/Rev.2/Corr.1

"Between authorities and the private sector: Members shall provide opportunities for interested traders or their representatives to comment on the transit regime and its operation, including with regard to the introduction of new or amended transit fees and charges, and transit formalities and documentation requirements, with a view to minimizing unnecessary delays and restrictions on traffic in transit."

³⁴ Note to the reader: this paragraph may be dropped at a later stage if the issue is properly covered in another Article of the Agreement.

Relevant WCO documents: RKC, GA §§ 1, 3, 5, 6, 7 and 9 + Specific Annex E, § 1; Customs Compendium No. 3.

General remark: The proposals related to Article V are compatible with WCO instruments. Some of them are, however, strictly concerned with the clarification of Article V of the GATT (definition of traffic in transit, freedom of transit and exceptions, principle of non-discrimination,...) and are not covered by equivalent provisions in WCO instruments. The Article V definition of traffic in transit differs slightly from the sphere of application of Chapter 1 of Specific Annex E to the RKC.

M. CUSTOMS COOPERATION

India, South Africa and Sri Lanka, TN/TF/W/123/Rev.2

"Cooperation Mechanism for Customs Compliance

1. *Members shall, upon request, exchange information and documents on matters such as HS classification, description, quantity, country of origin and valuation of goods in identified cases of import or export, where there is reason to doubt the truth or accuracy of a declaration filed by the importer or exporter.*
2. *A Member making the request shall ensure that [,to the extent possible,] all appropriate internal verification has been undertaken including, inter alia, verification of the status of the importer/exporter and inspection of the relevant documents made available to or obtained by the customs administration.*
3. *A Member making the request shall provide a brief summary of the case in respect of which information is sought including the reasons for doubting the truth or accuracy of the declaration made before it; the results of verification made; and, specify the information and documents required.*
4. *The requested Member shall:*
 - (a) *Provide information only to the extent it is available in the import or export declaration(s);*
 - (b) *If requested, provide documents filed in support of a goods declaration, such as commercial invoice, packing list, certificate of origin and bill of lading, in the form in which these are filed, whether paper or electronic;*
 - (c) *Confirm that the documents provided are true copies of the documents submitted by the importer/exporter and accepted by the requested Member; and*
 - (d) *Provide the information, to the extent possible, within a period of 90 days from the date of receipt of the request.*
5. *Such exchange of information or documents shall not require Members to:*
 - (a) *Modify the format of their import or export declarations or their procedures;*
 - (b) *Call for documents other than those filed with the goods declarations;*

- (c) *Modify the period of retention of such information or documents; or*
- (d) *Introduce paper documentation where electronic format has already been introduced.*

6. *Any information or documents exchanged shall be treated as confidential and shall not be disclosed to any third party except to the extent required in judicial proceedings. Such information or documents shall not be used in a criminal proceeding unless specifically authorized by the requested Member.*

7. *Each Member shall designate and notify to the WTO an agency within its administration for exchange of information and documents.*

8. *The request for information or document shall be made in one of the three official languages of the WTO or in a language mutually acceptable to the requesting and the requested Member.*

9. *The request for information or document shall not be made later than two years after the importation or exportation of the goods.*

10. *A Member shall not make more than [X] requests for information and documents from another Member in a calendar year.*

11. *Information or documents exchanged shall not be used for purposes other than that for which it was sought unless the requested Member agrees otherwise."*

Canada, TN/TF/W/154

"Recognizing that a Member may have to address cases where it has reason to doubt the truth or accuracy of information provided by traders in support of the declared value of imported goods;

Recognizing the importance of protecting commercially confidential information in safeguarding the commercial interests of traders;

Members may seek assistance from other Members in accordance with the following requirements:

1. *A Member shall seek to obtain and review the relevant and necessary documentation from the importer respecting the declared value of goods and shall conduct a verification before it requests assistance from another Member.*
2. *If the Member has reasonable grounds to doubt the truth or accuracy of the supporting documentation referred to in paragraph 1, it may request assistance from the exporting Member on mutually agreed terms consistent with the requirements of this proposal.*
3. *A Member shall not require an original or copy of export declarations issued by the authorities of the exporting Member as a requirement for importation.*
4. *Each Member shall notify to the WTO a contact point for making a request pursuant to paragraph 2.*
5. *Where a Member requests information from the exporting Member respecting the declared value of goods being imported, the requesting Member shall protect commercially confidential information. For greater certainty, the protection of commercially confidential information means the treatment required by Article 10 of the Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade, 1994.*

6. *The requesting Member shall provide the requested Member with a written summary of the request, including:*
 - (a) *The matter at issue and reasons for the request;*
 - (b) *The specific information, including documents, requested;*
 - (c) *The purposes for which the Member requires the information;*
 - (d) *A confirmation that the requesting Member conducted the verification required by paragraph 1;*
 - (e) *An explanation of why the requesting Member still has doubts respecting the truth or accuracy of information provided by the importer after conducting the verification required by paragraph 1;*
 - (f) *The identity of the official making the request;*
 - (g) *The names and addresses of the persons to whom the request relates, if known; and*
 - (h) *The applicable legal provisions in the domestic law, including provisions relating to confidentiality, of the requesting Member.*
7. *The requested Member should offer cooperation and assistance, consistent with its domestic law and procedures:*
 - (a) *If the requested Member is satisfied with the verification referred to in paragraph 1;*
 - (b) *If the requested Member is satisfied that the required confidentiality of the information will be maintained; and*
 - (c) *Only to the extent that the information is available.*
8. *Such exchange of information shall not require a requested Member to:*
 - (a) *Modify the format of their import or export declarations or their procedures;*
 - (b) *Require documents other than those filed with the declaration of the goods;*
 - (c) *Initiate inquiries to obtain the information;*
 - (d) *Modify the period of retention of such information;*
 - (e) *Introduce paper documentation where electronic format has already been introduced; or*
 - (f) *Translate into any language the information or documents.*
9. *Subject to paragraph 11, the requesting Member shall use the information solely for the purposes stated in the request, unless the requested Member agrees otherwise in writing. The requesting Member shall be subject to any restrictions imposed by the Member providing the information.*

10. *The requesting Member shall provide the information only to its customs administration. In the case that the requesting Member is required by its domestic law to share the information with a governmental agency other than its customs administration or in a judicial or quasi-judicial proceeding, the requesting Member shall inform the requested Member.*
11. *A requested Member may postpone or refuse providing information if the provision of such information would interfere with an ongoing investigation, prosecution or proceeding.*
12. *A requested Member shall respond in writing to a request made pursuant to this proposal.*
13. *The request for information shall not be made later than [two years] after the importation or exportation of the goods.*
14. *A Member shall not make more than [X] requests for information and documents from another Member in a calendar year.*
15. *If a requesting Member does not treat information received from another Member in accordance with the requirements of this proposal, the requested Member may refuse any further requests for assistance pursuant to this proposal.*
16. *Nothing in this proposal shall be construed to prevent a Member from entering into a bilateral arrangement respecting sharing of customs information. [In the case of an inconsistency between a provision of such an agreement and this proposal, that agreement shall prevail to the extent of the inconsistency]."*

Relevant WCO documents: Johannesburg Convention, Nairobi Convention, Guide to the Exchange of Customs Valuation Information and RKC.

General remark: Proposal compatible with WCO instruments. However, these proposals include some significant requirements which are not necessarily part of the WCO instruments. One example is the Canadian proposal that Members be prohibited from requiring an original or copy of export declarations issued by the authorities of the exporting Member as a requirement for importation. Also, WCO instruments do not place any restrictions on the number of requests for information.

Textual Proposals Related to S&D Treatment, TA&CB, Capacity Assessment and other Implementation Matters

Albania, Armenia, Canada, Chile, China, Colombia, Costa Rica, Dominican Republic, Ecuador, EC, Georgia, Guatemala, Honduras, Japan, Kyrgyz Republic, Mexico, Moldova, Nicaragua, Pakistan, Paraguay, Peru, Sri Lanka, Switzerland and Uruguay, TN/TF/W/137 and addenda.

"Implementation Mechanism of Trade Facilitation Commitments Including Key Elements for Technical Assistance

A. *TRANSITIONAL PROVISIONS*

0. *Signing of the single undertaking (including the Trade Facilitation Agreement)*

1. *Provisions will be applicable after the signing of the single undertaking including the trade facilitation agreement. A Working Group is established for the duration of the transitional period to handle matters related to the implementation of the results of the trade facilitation negotiations*³⁵.

1. *Capacity self-assessment*

2. *For the purpose of ascertaining their capacity to meet the agreed obligations, each developing*³⁶ *and least-developed Member shall complete a capacity self-assessment in relation to the provisions in the trade facilitation agreement. On request, donors, including relevant international organizations*³⁷, *shall assist Members in this exercise on mutually agreed terms and conditions*³⁸.

2. *Notification procedure*

3. *On the basis of its capacity self-assessment, each developing and least-developed Member shall notify all other Members, through the WTO Secretariat for which obligations it needs (i) technical assistance and capacity building, and (ii) additional time which shall not exceed [N] years, to implement and be made available on Members' site of the WTO Internet portal.*

4. *Members shall not notify other Members of (i) measures they are ready to implement from the date of entry into force of the agreement, (ii) measures regarding provisions they have already implemented, and (iii) provisions in the trade facilitation agreement which are designed to apply from its entry into force.*³⁹

5. *For the sake of transparency and predictability, Members shall engage in a multilateral dialogue on the notifications [...] months before the entry into force of the Agreement at the latest. Notifications shall be made one month before the multilateral dialogue takes place. The Secretariat shall support Members in organizing this multilateral dialogue providing the necessary documentation they may request in order to facilitate the dialogue and to ensuring that it is completed before the entry into force of the trade facilitation agreement.*

³⁵ [Remark: The functions of this body will be developed at a later stage].

³⁶ In the context of these provisions, the following countries shall enjoy the same rights and obligations as developing countries: Armenia, Georgia, Kyrgyz Republic and the Republic of Moldova.

³⁷ Relevant international organisations as referred to in Annex D of the July framework, including the IMF, OECD, UNCTAD, WCO and the World Bank.

³⁸ [Explanation: This phase of the text is also dealt with in C-(A) Transitional Provisions under Key Elements of Technical Assistance and Capacity Building].

³⁹ [Explanation: The idea expressed here is that Members would negotiate a selection of obligations comparatively easier to implement, namely such obligations that already exist through GATT Articles V, VIII and X].

6. *Members may modify their Notification until the entry into force of the Trade Facilitation Agreement. Positive consideration should be given to comments by Members.*

7. *Members shall finalize their Notification before the entry into force of the trade facilitation agreement, which shall be published on the Members' site of the WTO Internet portal.*

B. PROVISIONS OF THE TRADE FACILITATION AGREEMENT

3. Entry into force of the Trade Facilitation Agreement

8. *Developing⁴⁰ and least-developed Members will enjoy special and differential treatment in accordance with the following provisions and other relevant provisions set forth in other articles of this agreement.*

9. *The obligations set forth in this agreement apply from the date of its entry into force, except for those contained in the Notification, which shall apply for each Member as from the end of the implementation period set out therein and from the Notifications of the capacity acquisition in accordance with paragraphs 20 to 22 hereafter.*

10. *The Notifications are hereby made an integral part of this agreement.*

4. Formulation of the capacity building plans

11. *For obligations requiring technical assistance and capacity building as contained in the Notification, each developing, least-developed Member shall detail its requests and enter into discussion with donors, including relevant international organizations. On this basis, capacity building plans shall be prepared by the parties involved. On request, donors, including relevant international organizations, shall assist Members in this exercise on mutually agreed terms and conditions.⁴¹*

5. Notifications of capacity building plans

12. *The capacity building plans shall contain: (a) the obligations for which the need for technical assistance and capacity building has been signalled in the Notification; (b) intermediary steps as necessary; (c) the implementation periods; (d) the donors; and (e) the implementation agency if appropriate. These as well as other relevant data shall be notified to the Committee on Trade Facilitation and made available on the Members' site of the WTO Internet portal.*

13. *Members shall, on request, be provided with the opportunity to engage in consultations with the notifying Member.*

14. *The Notifications shall be up-dated with the information contained in the capacity building plans no later than [...].*

6. Implementation of trade facilitation commitments

15. *Members shall take actions at the earliest possible moment to achieve compliance according to the implementation periods specified in the Notifications.*

⁴⁰ *In the context of the following provisions the following countries shall enjoy the same rights and obligations as developing countries: Armenia, Georgia, Kyrgyz Republic and the Republic of Moldova.*

⁴¹ *[Explanation: This phase of the text is also dealt with in C-(B) Provisions of the trade facilitation agreement under Key Elements of Technical Assistance and Capacity Building].*

16. *Progress in implementing notified obligations shall be reviewed by Members on a periodic basis.*

17. *Any request for modification of a Member's Notification needs to be brought to the Committee on Trade Facilitation for decision as soon as an implementation problem has been identified.*

7. Verification of capacity acquisition

18. *At the end of each implementation period related to the provision of capacity building and technical assistance contained in the Notification, the implementing developing and least-developed Member and, if so agreed, the other parties involved⁴², shall assess whether capacity building and technical assistance has been effectively provided according to the mutually agreed terms and conditions and whether capacity has been acquired.*

19. *Should this Member come to the conclusion that capacity has not entirely been acquired, this Member and the donor Members involved shall so report and make recommendations to the Committee, which will review the matter and decide on a case-by-case basis.*

8. Notification of the acquisition of capacity

20. *Members who successfully acquired the capacity to assume a certain provision shall notify this, at the latest 6 months after the capacity acquisition to the Committee on Trade Facilitation. The obligation shall apply after this notification.*

21. *The Notifications shall be up-dated with the notified information.*

22. *In case a Member fails to notify within this time period, the provision becomes applicable 6 months after the end of the implementation period of that obligation.*

9. Full implementation

23. *Members shall ensure full implementation of the obligations contained in the Agreement.*

C. KEY ELEMENTS OF TECHNICAL ASSISTANCE AND CAPACITY BUILDING

C-(A) TRANSITIONAL PROVISIONS

1. Technical assistance and capacity building in the transitional provisions

24. *Members shall carry out a clear and precise diagnosis of the situation in each developing and least-developed Member through capacity self-assessment with, upon request, donor support to assist this assessment on mutually agreed terms and conditions. The diagnosis could be done through existing tools developed for this purpose by relevant international organizations such as the World Bank and the World Customs Organisation. While carrying out the diagnosis relevant work done in the context of the Integrated Framework for LDCs and other international or regional development programmes shall be taken into account.*

25. *Developing and least-developed Members that lack capacity to carry out a capacity self-assessment shall so inform the WTO Secretariat which shall circulate this information to Members and relevant international organizations in the field of trade facilitation.*

⁴² *The parties involved means: the recipient Member, donor Members providing technical assistance and capacity building in that Member as well as the implementing agency.*

C-(B) PROVISIONS OF THE TRADE FACILITATION AGREEMENT

2. General principles

26. *Members shall endeavour to apply the following principles and elements for providing technical assistance and capacity building with regard to the implementation of this agreement:*

- (i) *Handle technical assistance and capacity building in a manner that is consistent with the relevant principles of good practices of the Paris Declaration on Aid Effectiveness (2005) including issues of ownership, harmonization, alignment, results and mutual accountability. Account should also be taken of the principles of good practices set out in the OECD/DAC guidelines on Harmonizing Donor Practices for effective Aid Delivery (2003 and 2006) in areas such as donor cooperation, diagnosis, sector-wide or program based approaches and reporting and monitoring.*
- (ii) *Take account of the overall developmental framework of recipient countries and regions.*
- (iii) *Design and strengthen targeted technical assistance and capacity building with mutually supportive components to build trade facilitation capacity also taking into account ongoing reform programmes. Particular attention should be paid to ongoing trade facilitation reform activities of the private sector when designing support programmes.*
- (iv) *Coordinate with and between Members and relevant international organizations coordinated with the Integrated Framework for LDC's. Avoid inconsistencies in reform activities through close coordination of technical assistance and capacity building interventions. In particular, strengthen coordination at national level and build capacities to plan, manage, implement and monitor technical assistance and capacity building.*
- (v) *Designate focal points to coordinate the implementation of the trade facilitation agreement both in donor as well as in partner countries.*
- (vi) *Facilitate in-country coordination structures such as round tables and consultative groups to coordinate and monitor implementation activities.*
- (vii) *Take into account developing countries' readiness to provide capacity building to other developing and least-developed countries and consider supporting such activities.*

3. Joint platform for cooperation and coordination

27. *Members, as part of the work of the WTO Committee on Trade Facilitation shall operate, without the creation of a new body outside the WTO, a joint platform on technical assistance and capacity building to facilitate the implementation of this Agreement. The platform shall not duplicate the activities of existing coordination mechanisms, but shall coordinate with them and use such instruments to help it fulfil its functions. It shall take into account relevant work being carried out in the context of the Integrated Framework for LDCs, and other instruments for development. The platform shall:*

- (i) *promote international transparency, cooperation and coordination of technical assistance in the field of trade facilitation, bringing together donor Members and*

recipient Members, relevant international organizations, regional groupings, as well as other intergovernmental organizations with a role to play; and

- (ii) *help ensure, where necessary, coordination of assistance between donors and recipients so that potential gaps are filled.*

28. *A role may be provided for the private sector in such transparency and coordination efforts, where the private sector is already providing assistance or investment in trade facilitation, is interested in doing so, or is directly affected by measures.*

4. *Technical assistance and capacity building in the phase of formulating capacity building plans*

29. *Members shall take into account the following elements when providing, on request, technical assistance and capacity building on mutually agreed terms and conditions:*

- (i) *Capacity building plans should, as appropriate, provide for adequate long-term assistance and for post-implementation support.*
- (ii) *Training, deployment of in-country advisors, particular attention to SMEs, could be reflected, as appropriate and as requested, in capacity building plans.*
- (iii) *Technical assistance and capacity building could be also provided to support initiatives to overcome sub-regional divides and facilitate regional or sub-regional integration.*
- (iv) *To the extent practicable, account should also be taken of the implementation plans of neighbouring countries.*

30. *A Member that has not managed to finalize the capacity building plan shall so inform the Joint Platform for Cooperation and Coordination, which shall take the necessary steps to facilitate interaction with donors. On request and within mutually agreed terms and conditions, relevant international organizations should assist developing and least-developed Members in formulating capacity building plans".*

Core Group of Developing Countries on Trade Facilitation, TN/TF/W/142

"Proposal on Implementation Mechanism for Special and Differential Treatment (S&D) and Technical Assistance and Capacity Building (TACB) Support

Preamble – General Principles on Special and Differential Treatment

The principle of special and differential treatment shall be fully reflected and taken into account in the adoption and implementation of trade facilitation-related commitments by Members. Developing and least-developed Members, including low-income economies in transition, shall not be required to undertake obligations that would require investments in trade facilitation-related infrastructure projects beyond their means. The extent and the timing of entering into commitments shall be related to the implementation capacities of developing and least-developed Members, including low-income economies in transition.

The provision of technical assistance and support for capacity building is vital for developing and least-developed countries to enable them to fully participate in and benefit from this Agreement. Members, in particular developed countries, therefore commit themselves to adequately ensure such

support and assistance. In cases where required support and assistance is not forthcoming, and where a developing or least-developed Member continues to lack the necessary capacity, implementation will not be required

Least-developed Members have the right to undertake only those obligations that are consistent with their individual development, financial and trade needs or their administrative and institutional capabilities. Least-developed Members shall be accorded special consideration and attention in the provision of technical assistance and capacity building support under the provisions of this Agreement.

These general principles on special and differential treatment in trade facilitation shall guide, be taken into account, and be reflected in the implementation and interpretation of the provisions of this Agreement.

A. Transitional Provisions

Provisions applicable after signing of the Trade Facilitation Agreement

1. The provisions of paragraphs 1 to 9, 11(v), 20 to 25, 27 and 28, and 30 and 31 hereunder will be immediately applicable after the signing of the Trade Facilitation Agreement.

Establishment of the Trade Facilitation Technical Assistance and Capacity-Building Support Unit (TFTACBSU)

Ibis. Within three months from the date of the signing of the Trade Facilitation Agreement, the WTO Secretariat shall establish the TFTACBSU within its structure and reporting to the WTO Committee on Trade Facilitation, to:

- (i) Monitor and annually report on the compliance by developed Members with their obligations to provide technical assistance and capacity-building support to developing and least-developed Members, including low-income economies in transition, under this Agreement;*
- (ii) Monitor and annually report on the extent, efficacy, and usefulness for the beneficiaries of the bilateral provision of trade facilitation-related technical assistance and capacity-building support among Members;*
- (iii) Monitor and inform Members of the various trade facilitation-related technical assistance and capacity-building facilities being provided by other relevant international organizations which developing and least-developed Members, including low-income economies in transition, could access or resort to;*
- (iv) Work with other relevant international organizations to establish and/or expand trade facilitation-related technical assistance and capacity building resources for developing and least-developed Members, including low-income economies in transition; and*
- (v) Serve as the focal point for coordinating the provision of technical assistance and capacity-building by establishing a Trade Facilitation Register for the entry of notifications and requests for technical assistance and capacity-building provided by Members hereunder. The Register of notifications and technical assistance and capacity building requests shall be published on the WTO Members' Internet portal.*

Capacity self-assessment

2. For the purpose of ascertaining their capacity to meet the agreed obligations, developing and least-developed Members, including low-income economies in transition, shall commence, after the signing of the Agreement, a capacity self-assessment exercise in relation to the various processes and obligations involved in the provisions which form part of the Trade Facilitation Agreement. On

request, developed Members, and other donors (including relevant international organizations to the extent appropriate and feasible within their organizational mandates⁴³), shall assist Members in this exercise in accordance with the provisions of paragraphs 21 to 23. Developing and least-developed Members, including low-income economies in transition, shall commence the capacity self-assessment no later than [X] months from the start of receipt of support for such self-assessment from developed Members and other donors.

Notification procedure for obligations subject to a transition period

3. *On the basis of their individual capacity self-assessment, developing and least-developed Members, including low-income economies in transition, shall, no later than [X] months after the conclusion of the capacity self-assessment exercise referred to in paragraph 2 above, through the WTO Secretariat's TFTACBSU, notify all other Members of the obligations under paragraph 11(ii) below for which it needs additional time which shall not exceed [N] years to implement. This Notification of obligations subject to a transition period for deferred implementation may indicate if technical assistance and capacity-building support should be provided by developed Members or other donors in order to shorten the transition period, and shall be made available on the WTO Members' Trade Facilitation Internet portal.*

4. *Members may modify their Notification pursuant to paragraph 3 above at any time prior to the entry into force of the Trade Facilitation Agreement and the deposit of their instrument of ratification. Such modification shall be notified to the TFTACBSU for information as soon as the problem has been identified.*

5. *Members shall finalise their Notification before the entry into force of the Trade Facilitation Agreement, which shall be published on the Trade Facilitation portal of the WTO Members' section of the WTO Internet portal.*

5bis. *The Notifications are hereby made integral parts of this Agreement.*

Formulation of the capacity building plans

6. *For obligations requiring technical assistance and capacity building under paragraph 11(iii), each developing country or least-developed country Member, including low-income economies in transition, shall detail its requests for technical assistance and capacity building and enter into discussions with developed Members and other donors, including relevant international organizations as appropriate and to the extent feasible within their organizational mandates. On this basis, capacity building plans shall be prepared and notified by the developing or least-developed Member concerned pursuant to paragraph 7 below. On request, developed Members and other donors, including relevant international organizations as appropriate and to the extent feasible within their organizational mandates, shall assist Members in this exercise of preparing capacity-building plans in accordance with the provisions of paragraphs 7 to 9, 21, 24 and 25. Developing and least-developed Members, including low-income economies in transition, shall commence the preparation of their respective capacity-building plans no later than [X] months from the start of receipt of support for such preparation from developed Members and other donors.*

⁴³ *Relevant international organisations as referred to in Annex D of the July framework, including the IMF, OECD, UNCTAD, WCO and the World Bank.*

Preparation and notifications of capacity building plans

7. *The capacity building plans referred to in paragraph 6 above shall be notified to the TFTACBSU no later than [X] months from the date of their finalization and made available on the Trade Facilitation Register and shall contain at least the following information:*

- (i) The obligations for which technical assistance and capacity building will be required;*
- (ii) Intermediary steps as necessary;*
- (iii) The capacity building implementation periods that may be needed for the provision of such technical assistance and capacity building for each specific obligation;*
- (iv) The potential or identified donors, if any;*
- (v) The implementation agency if appropriate;*
- (vi) "Benchmarks" that the technical assistance and capacity building support being provided must meet in order to ensure that such support delivers on developing the implementation capacity of the recipient country; and*
- (vii) Other relevant data.*

8. *Members shall, on request, be provided with the opportunity to engage in consultations with the notifying Member.*

9. *The Notifications shall be up-dated with such additional information as may be needed to be included in the capacity building plans in the course of their implementation.*

B. PROVISIONS OF THE TRADE FACILITATION AGREEMENT

Entry into force of the Trade Facilitation Agreement

10. *This Agreement shall enter into force at the same time as the entry into force of all other agreements under the single undertaking of the Doha Work Programme; provided, however, that for developing and least developed Members, including low-income economies in transition, under the principle of special and differential treatment, the obligations under this Agreement will not apply unless the provisions of paragraphs 2 to 9 above have first been complied with.*

Applicability of Trade Facilitation obligations

11. *The obligations set forth in this paragraph shall apply to Members in accordance with the provisions below:*

- (i) All obligations shall be immediately implemented by developed Members upon the entry into force of this Agreement or the deposit of their respective instruments of ratification, whichever is later;*
- (ii) The following obligations shall immediately apply to developing and least-developed Members, including low-income economies in transition, from the date of the entry into force of this Agreement or the deposit of their instruments of ratification, whichever is later:*
 - (a) Xxxxxx*
 - (b) Yyyyy*
 - (c) Zzzzzz*

Provided, however, that those obligations covered by this sub-paragraph (ii) which are listed under a Notification submitted by a developing or least-developed Member, including low-income economies in transition, pursuant to paragraph 3 above shall be applicable only after

the expiration of the transition period indicated in such Notification. The provision of technical assistance and capacity building support to shorten the transition period for obligations listed under such Notification shall be in accordance with the provisions of paragraphs 21 and 26;

- (iii) *Obligations not covered under paragraph 11(ii) above shall, without need for prior notification, be deemed as requiring the acquisition of capacity to implement by individual developing or least-developed Members, including low-income economies in transition. These obligations shall be implemented by such Members only after: (a) the entry into force of the Agreement or the deposit of their respective instruments of ratification, whichever is later, (b) the provision of the necessary technical assistance and capacity-building support hereunder; and (c) the submission of the Notifications of acquisition of implementation capacity in accordance with paragraphs 16 to 18 hereafter;*
- (iv) *All Members shall endeavour to implement to the extent practicable, taking into account their individual capacity, as soon as possible after the entry into force of this Agreement or the deposit of their respective instruments of ratification, whichever is later, the following obligations:*
 - (a) *Aaaaa*
 - (b) *Bbbbb*
 - (c) *Ccccc*

Developing or least-developed Members may prepare capacity building plans and submit their requests for technical assistance and capacity building support to implement the obligations under this sub-paragraph to developed Members and other donors, including relevant international organizations as appropriate and to the extent feasible within their organizational mandates. Such capacity building plans shall conform to paragraph 7. On request, developed Members and other donors, including relevant international organizations as appropriate and to the extent feasible within their organizational mandates, shall assist Members in this exercise of preparing and implementing capacity-building plans for obligations under this sub-paragraph in accordance with the provisions of paragraphs 24 to 26.

- (v) *Least-developed Members shall not be required to implement any of the obligations under sub-paragraphs (ii), (iii) and (iv) above unless their requests for the provision of technical assistance and capacity-building support in the course of negotiations, including prior and up to the signing of the Agreement (such as, but not limited to, support for travel and training of officials to enhance participation in the negotiations) and for needs and priorities assessments have been adequately responded to promptly and in a timely manner by developed Members on a demand-driven, need-based, and sustainable basis, specifically tailored to the needs and requirements of each individual recipient country, and in accordance with paragraph 21. In addition, special consideration and attention shall be provided to least-developed Members with respect to the provision of the requisite technical assistance and capacity building support after the signing and entry into force of the Agreement, including but not limited to the provision of such additional time periods as they may require, for the conduct of capacity self-assessments, provision of notifications, the preparation and implementation of capacity-building plans, and the implementation of their obligations.*

Implementation of trade facilitation capacity-building plans

12. For obligations under paragraph 11(iii) above, Members shall take actions at the earliest possible moment to achieve compliance according to the implementation periods for the acquisition of capacity specified in the Notification under paragraph 7 above. In this regard, on request, developed Members and other donors, including relevant international organizations as appropriate and to the extent feasible within their organizational mandates, shall assist developing and least-developed Members, including low-income economies in transition, in implementing their capacity-building plans in accordance with the provisions of paragraphs 21 and 26. Developing and least-developed Members, including low-income economies in transition, shall commence the implementation of their capacity-building plans no later than [X] months from the start of receipt of support for such implementation from developed Members and other donors.

13. Progress in implementing notified capacity building plans shall be reviewed by Members on a periodic basis.

Verification of capacity acquisition

14. At the end of each implementation period related to the provision of capacity building and technical assistance with respect to each obligation as contained in the Notification under paragraph 7, the implementing developing or least developed Member and, if so agreed by the parties, the other parties involved⁴⁴, shall assess whether capacity building and technical assistance has been effectively provided according to the mutually agreed terms and conditions and whether capacity has been acquired.

15. Should this implementing developing or least-developed Member comes to the conclusion that capacity has not been satisfactorily acquired, this Member shall so notify the TFTACBSU. The latter shall, upon receipt of such notification, immediately assist the Member concerned in taking the necessary steps to satisfactorily acquire capacity as soon as possible.

15bis. Should such implementing developing or least-developed Member still deem itself as lacking in implementation capacity after the assistance referred to in paragraph 15 above has been provided, the TFTACBSU shall, within [X] months from the end of the initial implementation period for the capacity building plan notified under paragraph 7, report and make recommendations to the Committee on Trade Facilitation, which will review the matter and decide on a case-by-case basis on the appropriate action to take.

Notification of the acquisition of capacity and applicability of implementation of trade facilitation obligations

16. Members who deem themselves as having successfully acquired the capacity to implement a certain obligation falling under paragraph 11(iii) shall notify this, at the latest 6 months after the capacity acquisition to the TFTACBSU. The obligation shall apply after this notification from a date to be indicated by the concerned Member.

17. The Notifications of capacity acquisition may be modified as needed with up-dated information at any time prior to the date of application of the obligation. The date of application of the obligation may not, however, be modified unless such modification has been approved by the WTO Committee on Trade Facilitation.

⁴⁴ The parties involved means: the recipient Member, donor Members providing technical assistance and capacity building in that Member as well as the implementing agency.

18. *In case a Member fails to notify within the time period under paragraph 16, the obligation becomes applicable 6 months after the end of the capacity building implementation period of that obligation*

Full implementation

19. *Members shall ensure full implementation of the obligations contained in the Agreement in accordance with the provisions herein.*

C. KEY ELEMENTS OF TECHNICAL ASSISTANCE AND CAPACITY BUILDING

Obligations of developed Members relating to technical assistance and capacity building support

20. *Developed Members, no later than [X] months from the date of the signing of the Trade Facilitation Agreement but prior to the entry into force thereof, shall:*

- (i) *establish appropriate mechanisms or modalities for the provision of technical assistance and capacity-building support to developing and least-developed countries that lack the necessary implementation capacity to adopt and implement such obligations. Such mechanisms or modalities shall provide for simple and time-bound procedures to be followed for such assistance and support to be accessed, and shall also identify the financial and technical assistance resources that they are going to make available taking into account the elements in paragraphs 22, 24 and 26; and*
- (ii) *notify the WTO Secretariat's TFTA CBSU of the mechanisms or modalities and of the resources to be made available for technical assistance and capacity building support referred to in sub-paragraph (i) above.*

21. *Developed Members shall provide the requested technical assistance and capacity-building support no later than [X] months from the date of receipt of the request from a developing or least-developed Member, including low-income economies in transition, for such assistance and support.*

Technical assistance and capacity building in the transitional provisions

22. *Members shall carry out a clear and precise diagnosis of the situation in each developing and least-developed Member, including low-income economies in transition, through capacity self-assessment with, upon request, developed Member and other donor support to assist in this assessment exercise. Such assistance from developed Members shall be prompt, timely, demand-driven, need-based, sustainable, and specifically tailored to the needs and requirements of each individual recipient country. Such diagnosis shall assess and identify factors that need to be addressed which would otherwise compromise the success of domestic implementation of the obligations. While carrying out the diagnosis relevant work done in the context of the Integrated Framework for LDCs and other international or regional development programmes may be taken into account, such as existing tools developed for this purpose by relevant international organizations such as the World Bank and the World Customs Organisation.*

23. *Developing and least-developed Members, including low-income economies in transition, that lack capacity to carry out a capacity self-assessment shall so inform the TFTA CBSU which shall circulate this information to Members and relevant international organizations in the field of trade facilitation.*

Technical assistance and capacity building in the phase of formulating capacity building plans

24. *Members shall take into account the following elements when providing on request technical assistance and capacity building:*

- (i) *Capacity building plans shall provide for adequate long-term assistance and access to sustainable funding and also provide for post-implementation support.*
- (ii) *Training, deployment of in-country advisors, particular attention to SMEs, to be reflected, as appropriate and as requested, in capacity building plans.*
- (iii) *Technical assistance and capacity building could be also provided to support initiatives to overcome sub-regional divides and facilitate regional or sub-regional integration.*
- (iv) *To the extent practicable, account should also be taken of the implementation plans of neighbouring countries.*

25. *A developing-country Member that has not managed to finalize the capacity building plan shall so inform the TFTACBSU, which shall take the necessary steps to facilitate interaction with developed Members and other donors. On request, developed Members and other donors, including relevant international organizations as appropriate and to the extent feasible within their organizational mandates shall assist developing country Members in formulating capacity building plans.*

General principles for technical assistance and capacity building support in implementing capacity building plans

26. *Members shall apply the following principles and elements for providing technical assistance and capacity building with regard to the implementation of this agreement:*

- (i) *Provide technical assistance and capacity building in a manner that is demand-driven, need-based, and specifically tailored to the needs and requirements of each individual recipient country. Further, such technical assistance and capacity-building shall be sustainable, i.e. provided over a reasonable period of time with adequate funding that will allow for the development of domestic implementation capacities in the recipient country.*
- (ii) *Reflect the overall developmental framework of recipient countries and regions.*
- (iii) *Design and strengthen targeted technical assistance and capacity building with mutually supportive components to build trade facilitation capacity also taking into account already ongoing reform programs. Particular attention should be paid to ongoing trade facilitation reform activities of the private sector when designing support programs.*
- (iv) *Coordinate with and between Members and relevant international organizations coordinated with the Integrated Framework for LDCs. Avoid inconsistencies in reform activities through close coordination of technical assistance and capacity building interventions. In particular, strengthen coordination at the national level and build capacities to plan, manage, implement and monitor technical assistance and capacity building.*
- (v) *To the extent practicable, assign focal points to coordinate the implementation of the trade facilitation Agreement both in donor as well as in partner countries.*
- (vi) *Facilitate in-country coordination structures such as round tables and consultative groups to coordinate and monitor implementation activities.*
- (vii) *Take into account developing countries in a position to do so to provide capacity building to other developing and least developed countries and consider supporting such activities.*
- (viii) *Make efforts to reduce administrative burdens for partner countries in the management of technical assistance and capacity building including for requests.*
- (ix) *Provide trade facilitation-related technical assistance and capacity building support which is additional and complementary to the developed Members' existing or already allocated resources for official development assistance. Developed Members shall ensure that the*

provision of such assistance and support shall be adequate, responsive to, commensurate with, and based on the capacity-building plans and requirements of the developing or least-developed Member requesting such assistance and support.

- (x) *Donors shall make efforts to organize availability of the required technical assistance identified in the capacity building plans as necessary to achieve implementation capacity. To the extent possible, financial assistance needed to put in place the necessary capacity, structures or processes for the implementation of required procedural changes by Customs or other border agencies should be provided.*

Joint Platform for Cooperation and Coordination

27. *Through the TFTACBSU, Members, as part of the work of the WTO Committee on Trade Facilitation, shall operate, without the creation of a new body outside the WTO, a joint platform on technical assistance and capacity building to facilitate the implementation of this Agreement. TFTACBSU shall not duplicate the activities of existing coordination mechanisms, but shall coordinate with them and use such instruments to help it fulfil its functions. It shall take into account relevant work being carried out in the context of the Integrated Framework for LDCs, and other instruments for development. The TFTACBSU shall, in addition to its terms of reference under paragraph 1bis above:*

- (i) *Promote international transparency, cooperation and coordination of technical assistance in the field of trade facilitation, bringing together donor Members and recipient Members, relevant international organizations, regional groupings, as well as other intergovernmental organizations with a role to play (e.g. UNCTAD, UN regional economic commissions, etc.); and*
- (ii) *Help ensure, where necessary, coordination of assistance between donors and recipients so that recipients' needs are matched with donors, and that potential gaps are filled.*

28. *A role may be provided for national and international trade federations in such transparency and coordination efforts, where such trade federations are already providing assistance or investment in trade facilitation, are interested in doing so, or are directly affected by measures.*

D. EXCEPTIONS

29. *Nothing in this Agreement shall be construed to prevent the adoption or enforcement by any developing or least-developed Member of measures that may be justified under GATT Article XX (General Exceptions) or GATT Article XXI (Security Exceptions).*

E. DISPUTE SETTLEMENT

30. *No developing or least-developed Member, including low-income economies in transition, shall be brought by any other Member to dispute settlement proceedings under the Dispute Settlement Understanding in order to enforce compliance with obligations that such developing or least-developed Member, including low-income economies in transition, is not yet obliged to implement.*

31. *Members shall prioritize the use of consultations, good offices, conciliation or mediation as mechanisms for ensuring compliance with the obligations, including the obligations relating to the provision of technical assistance and capacity building support under paragraphs 20 and 21, which they are implementing. As the last resort, the Dispute Settlement Understanding may be resorted to in order to settle disputes in this regard."*

TN/TF/W/142 should be read in conjunction with TN/TF/W/147.

Core Group, ACP Group, African Group, LDC Group, TN/TF/W/147

"A. Introduction and General Concepts – Development-friendly Approaches to Trade Facilitation

DEVELOPING A TF PARTNERSHIP: LINKING TACB TO TF COMMITMENTS

1. *To ensure a win-win and development-friendly outcome that mutually benefits all Members, especially developing and least-developed Members, in the Trade Facilitation (TF) negotiations, there is a need for balance between the contributions of developed and developing Members in terms of mutually beneficial commitments. In this regard, the submitting Members recall that Annex D of the July 2004 Framework (WT/L/579) and Annex E of the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC) stress the importance and necessity of providing precise, effective, and operational TACB to developing Members during the negotiations and for the implementation of the results thereof by such Members.*
2. *This means that there must be clearly defined operational mechanisms established to ensure that TACB is actually provided to those Members that need them. A mutually beneficial win-win outcome of the TF negotiations requires that Members engage in a partnership in which TACB is provided by developed Members to assist developing Members in the implementation of new TF commitments. Such TACB should be tailored to the specific needs, circumstances and priorities of the recipients in order for it to be effective, precise and operational. TACB should be equitably provided to all those that require it. The importance of TACB also necessarily implies the equal importance of ensuring that any new TF agreement incorporates a strong role for the WTO in coordinating and facilitating the provision of such TACB from donors, and for the donor community, including developed Members, to commit to providing adequate modalities and mechanisms through which such TACB could be accessed by those who need it. Developing countries should not be required to implement TF commitments for which TACB is needed if such TACB is absent.*

PROPOSED MEASURES ON TF

3. *The various proposals submitted by Members reflect valuable and useful ideas on improving TF in Members and thereby enhance cross-border trade in goods. The proponents of this communication believe that these proposals have to be studied and agreed upon on their individual merits, in order to ensure that their inclusion in any negotiated outcome provides development benefits to developing Members, and so that the appropriate S&D treatment can be incorporated in such proposals.*
4. *The assessment of the proposals submitted reveals that there will be implementation difficulties faced by developing members either individually or collectively.*
5. *These implementation issues will need to be considered and addressed. New TF commitments should therefore be approached in a way that would enable developing Members to commit to a specified minimal level or standard of implementation of commitments, with appropriate flexibility for least-developed Members, and subject to the provision of TACB where needed. Developing Members could then, at their discretion, progressively go into higher levels or standards of implementation as and when capacity exists to do so taking into account their development context. For example, developing Members could agree to a commitment requiring mandatory publication in government gazettes of relevant existing customs procedures in the local or national language, but Internet publication of such procedures would be at their discretion as and when capacity arises to enable them to do so.*

6. *All developed Members should undertake all commitments upon entry into force of the any TF agreement. There should be two categories of commitments to be implemented by developing Members, subject to the provision of TACB where needed. These categories would be:*
 - (i) *A minimal set of commitments which would be determined individually by developing Members to be implemented after entry into force; and*
 - (ii) *A set of commitments that would be implemented after the conclusion of a transition period of X years determined on the basis of Paragraph 10 below after the entry into force of the TF agreement.*
7. *Other commitments that do not fall under either category above would be implemented by developing and least developed Members as and when appropriate in their development context.*

B. Needs Assessment and TACB before signing

8. *The proponents recall Paragraph 5 of Annex D of the 2004 July Framework and Paragraph 6 of Annex E of the Hong Kong Ministerial Declaration that stress the importance of the provision of TACB to assist developing Members in fully participating in the negotiations. Such commitments have yet to be made operational. Full and effective participation by developing Members in the TF negotiations is an essential prerequisite towards ensuring that the negotiated outcomes reflect their issues and concerns. In this regard, TACB must be provided to support effective involvement of developing Members' experts in the negotiations, provide for policy research and analysis (especially with respect to specific proposals), and identify individual country-specific TF needs and priorities.*
9. *The other area of focus for TACB is to assist developing members to undertake capacity self-assessment to determine the commitments for which domestic implementation capacity already exists and where technical assistance is required.*

C. Needs Assessment and TABC Post-entry into Force and the Role of the WTO TF TACB Support Unit

NEEDS ASSESSMENT AND TRANSITION PERIODS FOR IMPLEMENTATION

10. *In addition to the conduct of TACB-supported capacity self-assessment prior to the signing of the TF Agreement, the transition period referred to in Paragraph 6(ii) above should be of sufficient duration after the entry into force of the TF agreement within which to: (a) develop a plan for the implementation of commitments; and (b) undertake the domestic measures that may be needed to enable developing Members to implement these mandatory commitments. The determination of acquisition of implementation capacity should be at the discretion of the individual LDC concerned.*
11. *For both sets of commitments under Paragraph 6(i) and (ii) above, implementation by developing Members should be deferred if they continue to lack implementation capacity.*

PROVISION OF TACB

12. *In the spirit of mutual partnership, donors and developed Members should provide TACB support to those developing Members that require and request such support in connection with: (i) the conduct of the negotiations; (ii) the conduct of the self-assessment for the determination of commitments for which implementation capacity already exists; and (iii) the*

building of implementation capacity for the other commitments referred to in Paragraphs 9 and 10 above.

13. *Requests for TACB support for implementation of commitments identified by individual developing countries should be submitted to the WTO TF TACB Support Unit. The procedures for requesting TACB should be simple, transparent and not unduly burdensome for developing Members, especially for LDCs, given their financial means and other constraints.*
14. *The TACB to be provided should be on the basis of the request and specifications of the requesting Member. Developing Members requesting TACB could also consult with donors to determine the TACB projects or activities that will be required to build implementation capacity for specific commitments. The developing Member who is a TACB recipient should be the one to determine to its satisfaction when such implementation capacity has been acquired, or it may also choose to work out a mutual arrangement with the donor concerned for joint determination of the acquisition of implementation capacity.*
15. *Such support shall be on the basis of the requesting Member's needs and capacity-building plan and shall be provided in coordination with donors and developed Members. It should also be without prejudice to supplemental TACB requests as further TACB needs may arise. TACB should be provided, with the assistance of the WTO TF TACB Support Unit, to least-developed Members to enable them to prepare their TACB requests.*
16. *The implementation of mandatory commitments shall be undertaken by developing Members after X months after they have concluded that individual implementation capacity has been acquired pursuant to the provision of the necessary TACB support. Verification of capacity acquisition shall be self-determined or, if agreed by the developing Member concerned, in consultation with the donor or developed Member that provided the relevant TACB support.*

THE ROLE OF THE WTO TF TACB SUPPORT UNIT

17. *Providing adequate, effective, precise and operational TACB is a question of mutual partnership between the donors and the recipients. The WTO should assist Members in coordinating and facilitating TACB resources that must be provided by developed Members with the TACB needs that may be identified by developing Members. A TF TACB Support Unit could be created within the WTO Secretariat to handle this function.*
18. *Furthermore, the TF agreement should contain clear and operational commitments by developed Members to provide TACB support to developing Members. Operational modalities that facilitate and improve the delivery of such TACB to the recipients, and which are appropriate to the requirements and resource constraints of developing Members, should also be incorporated in a TF agreement.*

D. Flexibility and Special and Differential Treatment in Levels of Commitments

19. *Appropriate special and differential treatment should be provided to developing Members under which they can identify the specified minimal level of implementation of a measure to which they will commit to be bound. Any further progressive implementation of such measure beyond the bound level would be undertaken at the discretion of the developing Member as appropriate and necessary for their domestic needs and capacity. Developed Members, as appropriate and to the maximum extent possible, may wish to support such progressive implementation of measures beyond the minimum bound levels by providing additional TACB support as needed.*

20. *Previous proposals from developing Members (such as the African Group in TN/TF/W/95) have stressed that GATS-rules type provisions could be used as the possible template for making binding commitments in a new TF agreement. This means that for each specific obligation, developing Members could also indicate the limitations or restrictions that they wish to place on their commitment to implement such obligation. This would provide for effective, precise and operational special and differential treatment that goes beyond transition periods, as provided for in Annex D of the 2004 July Framework.*
21. *Such special and differential treatment is necessary because of the varied development and economic conditions and circumstances that developing Members face. Domestic regulatory flexibility continues to be required as a key element of national economic policymaking so as to allow them to take into account and respond to country-specific circumstances and situations. One other way of ensuring special and differential treatment is to include a specific provision that safeguards domestic regulatory flexibility for developing Members when required for reasons of national development policy.*

E. Exceptions to Commitments

22. *GATT Articles XX and XXI will apply to any TF agreement.*

F. LDC Provisions

23. *Least-developed Members would not be required to implement any commitments unless their requests for the provision of the necessary TACB support have been adequately responded to in a timely manner by developed Members on a demand-driven, need-based, and sustainable basis, specifically tailored to the needs and requirements of each individual recipient country.*
24. *When an LDC Member has acquired capacity to implement any Trade Facilitation commitments, the implementation of these commitments shall be determined by the Least Developed Member concerned.*

G. Early Warning Mechanism

25. *Consideration could be given to an early warning mechanism under which developing and LDC Members can inform the WTO that there is going to be a delay in implementing a commitment.*

H. Dispute Settlement

26. *Members should first exhaust the use of Consultations, Good Offices, Conciliation or Mediation as mechanisms for ensuring compliance with commitments, including commitments on the part of developed Members to provide both TACB modalities and TACB support itself, which they are implementing. As the last resort, the Dispute Settlement Understanding may be resorted to in order to settle disputes in this regard.*
27. *Finally, no developing or least-developed Member should be brought by any other Member to dispute settlement proceedings under the Dispute Settlement Understanding in order to enforce compliance with commitments that such developing or least-developed Member is not yet implementing."*

Chinese Taipei, TN/TF/W/141

"Establishing a Committee on Trade Facilitation

A Committee on Trade Facilitation is hereby established, and shall be composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall meet as necessary, but no less than once a year, for the purpose of affording Members the opportunity to consult on any matters related to the operation of this Agreement or the furtherance of its objectives. The Committee shall carry out such responsibilities as assigned to it under this Agreement or by the Members. The WTO Secretariat shall act as the secretariat to the Committee.

The Committee shall establish working parties or other bodies as may be appropriate, which shall carry out such responsibilities as may be assigned to them by the Committee in accordance with the relevant provisions of this Agreement."

Barbados, Cuba, Fiji, Papua New Guinea, Solomon Islands, TN/TF/W/129/Rev.2

"Members and the WTO, within its competence, shall provide technical and financial assistance, on mutually agreed terms, to small economies/developing countries to support the establishment, modification and maintenance of these national and regional enquiry points.

Members and the WTO shall consider the advantages of providing assistance to the regional body, where one exists within a Customs Union or regional economic arrangement, which will assist those members in the implementation of their obligations under the Trade Facilitation agreement."

IV. ANNEX A: TEXTUAL PROPOSALS ON GATT ARTICLES V, VIII AND X

Symbol (TN/TF/..)	Sponsor(s)	Title
W/107	European Communities, Korea and Switzerland	Fees and Charges
W/108	EC and Chinese Taipei	Pre-shipment Inspections
W/109/Rev.1	EC and Mongolia	Authorized Traders
W/110/Rev.1	EC, Mongolia, Chinese Taipei and Switzerland	Customs Brokers
W/111	New Zealand	Objective Criteria for Tariff Classification
W/112	Hong Kong, China, Korea and Switzerland	Acceptance of Commercially Available Information and of Copies
W/115/Rev.1	Hong Kong, China, Japan, Korea, Mongolia and Switzerland	Proposals on prior Publication and Consultation
W/116/Rev.1	Japan and Mongolia	Proposals on Appeal Procedures
W/117 and Add.1	Hong Kong, China, Japan, Korea, Mongolia and Switzerland	Proposals on Pre-Arrival processing
W/121	India	Proposal on Article VIII
W/122	India	Proposal on Article X
W/124/Rev.2	Hong Kong, China and Switzerland	Reduction/Limitation and Periodic Review of Formalities and Documentation Requirements
W/126	New Zealand	Objective Criteria for Tariff Classification
W/127	Cuba	Improvement and Clarification of Article V of the GATT: Strengthening of the Principles of Non-discrimination and Most-Favoured Nation Treatment
W/128/Rev.1	Canada and Norway	Draft Text on Border Agency Cooperation
W/129/Rev.2	Barbados, Cuba, Fiji, Papua New Guinea, Solomon Islands	Regional Approaches to Trade Facilitation
W/130/Rev.1	Mongolia, Norway and Switzerland	Simplification and Harmonization of Trade Documents
W/131/Rev.1	Mongolia, Norway, South Africa and Switzerland	The Use of International Standards
W/132/Rev.1	Turkey	Proposal on Internet Publication

Symbol (TN/TF/..)	Sponsor(s)	Title
W/133/Rev.2	The Former Yugoslav Republic of Macedonia, the Republic of Moldova, Rwanda, Switzerland and Swaziland	Transit – Revision of Textual Proposal TN/TF/W/133/Rev.1
W/134 and Add.1	China, Indonesia and Korea	Proposal on Post-Clearance Audit
W/136/Rev.1	Canada and Switzerland	Draft Text on Separation of Release from Clearance
W/138/Rev.2	Korea, Singapore and Thailand	Proposal on Single Window
W/139/Rev.1 and Rev.1/Add.1	Korea and Japan	Proposal on Release Times of Goods
W/140	Chinese Taipei, Korea and Switzerland	Proposal on Risk Management
W/144/Rev.2	United States	Draft Text on Expedited Shipments
W/145	United States	Draft Text on Internet Publication
W/146/Rev.1	Turkey, Georgia and Paraguay	Quota-Free Transit Regime in Road Transportation
W/148	China	Draft Text on the Introduction of Risk Management
W/153	Australia, Canada, Turkey and United States	Draft Text on Advance Rulings
W/155	Hong Kong, China, Japan, Mongolia, Norway, Switzerland and Turkey	Publication and Availability of Information

V. ANNEX B: TEXTUAL PROPOSALS ON CUSTOMS/OTHER AGENCY COOPERATION ON TRADE FACILITATION AND CUSTOMS COMPLIANCE ISSUES

Symbol (TN/TF/...)	Sponsor(s)	Title
W/123/Rev.2	India, South Africa and Sri Lanka	Cooperation Mechanism for Customs Compliance
W/154	Canada	Customs Cooperation

VI. ANNEX C: TEXTUAL PROPOSALS ON S&D TREATMENT, TA&CB, CAPACITY ASSESSMENT AND OTHER IMPLEMENTATION MATTERS

Symbol (TN/TF/...)	Sponsor(s)	Title
W/129/Rev.2	Barbados, Cuba, Fiji, Papua New Guinea, Solomon Islands	Regional Approaches to Trade Facilitation
W/137 and Add.1–Add 4	Albania, Armenia, Canada, Chile, China, Colombia, Costa Rica, Dominican Republic, Ecuador, EC, Georgia, Guatemala, Honduras, Japan, Kyrgyz Republic, Mexico, Moldova, Nicaragua, Pakistan, Paraguay, Peru, Sri Lanka, Switzerland and Uruguay	Implementation Mechanism of Trade Facilitation Commitments Including Key Elements for Technical Assistance
W/141	Chinese Taipei	Establishing a Committee on Trade Facilitation
W/142	Core Group of Developing Countries on Trade Facilitation	Proposal on Implementation Mechanism for Special and Differential Treatment (S&D) and Technical Assistance and Capacity Building Support
W/147	Core Group, ACP Group, African Group, LDC Group	Technical Assistance and Capacity Building