

Negotiating Group on Trade Facilitation

SUMMARY MINUTES OF THE MEETING

Held in the Centre William Rappard
on 22-24 March 2005

Chairman: Mr. Muhamad Noor Yacob (Malaysia)

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

2. Under "Other Business", the representative of Australia wished to report on a workshop on the Trade Facilitation (TF) negotiations hosted by Australia and Malaysia for APEC economies in Kuala Lumpur on 1-2 March.

3. The agenda was adopted.

A. CONTRIBUTIONS ON THE AGREED AGENDA OF THE NEGOTIATING GROUP

4. The Chairman outlined the organization of the meeting, explaining that the NG would first take up Members' new submissions, then move to the previously submitted contributions and the inputs by participating international organizations before finally reverting to the most recent communications for additional feedback. Delegations would be free to address multiple aspects at the same time.

5. The representative of Japan, introduced the Japan-Mongolia proposal on GATT Article VIII (TN/TF/W/17), explaining that it addressed the three areas of (i) fees and charges, (ii) import and export formalities and documentation requirements, and (iii) penalties for minor breaches, introducing specific examples of problems faced by the private sector and proposing specific – non-exhaustive – measures as solutions.

6. With respect to fees and charges, it was important not to impose unpublished ones, since that caused traders, especially small- and medium-sized enterprises (SMEs), unpredictable costs, which restricted their business chances. Furthermore, if fees and charges were not limited to the cost of services rendered, they imposed unnecessary costs for traders, thereby impeding international trade flows. As a solution, Japan and Mongolia proposed the periodic review of the appropriateness of the amount and the number of fees and charges, their publication and the prohibition of collecting unpublicized fees and charges.

7. Cumbersome import and export formalities and complicated documentation requirements imposed unnecessary costs on traders, especially SMEs trying to engage in trade for the first time,

thus curbing their opportunities to enter new markets. Furthermore, they hindered a government's efficient allocation of limited human and financial resources, thereby deterring economic development opportunities through the expansion of trade. As solutions to those problems within the scope of Members' legitimate policy objectives, Japan and Mongolia proposed to limit import and export formalities and documentation requirements to the least-trade-restrictive level. Periodic reviews of such formalities, based on comments from the private sector and other parties, would support that measure. The use of international standards, to the extent possible, was also an important element, and in line with paragraph 9 of Annex D of the July Package. Pre-arrival documentary examination, one-time submission of import or export documentation to one agency and documentary examination and physical inspection without delay were important measures to minimize the incidence and complexity of such formalities. Introducing risk management was also necessary to facilitate trade while at the same time ensuring regulatory control at the border, and for achieving the right balance between facilitation and control. Risk management would enable governments to allocate human and financial resources efficiently, and allow traders to reduce both cost and time spent on trade procedures. With respect to documentation requirements, the acceptance of required documents in copies (in cases where multiple authorities were involved, or where documents were required to conduct other procedures) would also contribute to saving time and costs. The same would go for the acceptance of single documentary submission of required import or export documentation in cases of repeated transactions of the same product.

8. Regarding penalties for minor breaches of import and export formalities, the rejection of documents due to a mistake in documentation which could be corrected immediately by the trader without hindering an authority's pursuit of legitimate policy objectives, would impose unnecessary costs on traders. Furthermore, if the applicable penalties were not publicized, it allowed for discretion of officials to the disadvantage of traders, especially SMEs. As a solution to such problems, Japan and Mongolia proposed to clearly state and publish penalty provisions against breaches of import and export formalities in relevant laws and regulations and to prohibit the imposition of unpublished penalties. Explaining the reason for rejecting the submitted documents at the application desk would also be an important measure to solve such problems.

9. Special and differential (S&D) treatment, technical assistance and capacity building (TA&CB), and cost implications of proposed measures were all important elements for the negotiations. As for cost implications, national experiences had shown that most of the suggested measures could be implemented by using each Member's existing facilities and resources with minimum costs for legislation and training of officials. The benefits of introducing the measures far outweighed the costs. However, it was recognized that TA&CB would be required to implement some of them. Support based on coordination amongst relevant international organizations (IMF, OECD, UNCTAD, WCO and World Bank) might also be taken into consideration for that purpose. The granting of transition periods in accordance with developing Members' implementation capacities would also be a necessary S&D element. In addition, the opportunity to sound out the implementation capacities of developing Members together with experts from relevant international organizations might be useful. Japan stood ready to continue providing necessary technical assistance for capacity building in the proposed areas.

10. The representative of Korea, presented the Korean proposal (TN/TF/W/18), saying that it contained five suggestions of how to clarify and improve GATT Article VIII, with a focus on reducing administrative burdens on import and export formalities.

11. First, Korea proposed that customs authorities accept commercially-available information such as bills of lading or commercial invoices for documentation required in the customs process to avoid repetition. In addition, traders' documentation burden would be significantly reduced if copies of documents were accepted in the export and import process.

12. Second, Korea suggested to make best use of the achievements by relevant international organizations, such as the WCO Customs Data Model and the UN Layout Key, which were both designed to standardize the format and layout of trade-related documents and widely applied by Members. They would be a good basis for setting a standard and aligning the design of trade documents.

13. Third, Korea proposed to use a "Single Window" where traders could submit all the necessary documents and data to a single agency. The merits of such facility had been emphasized on many occasions, including in the context of other Members' proposals that had been tabled. The OECD had further observed that it was easier to establish a Single Window in developing countries, as it was less difficult to set up an integrated mechanism from scratch than to overhaul an already-existing system into an integrated mechanism.

14. Fourth, it was suggested to establish and publish average clearance and release times for goods, which would enhance transparency and predictability for customs processes and benefit businesses, especially SMEs. Under that proposal, traders would have the right to seek an explanation from the customs authority if the processing time for their goods was longer than the average time.

15. Fifth, Korea supported the idea of utilizing pre-arrival processing, post-clearance auditing and risk management measures to accelerate the release of goods. Korea was aware that some Members were not ready to use extensive risk assessment and management procedures that were a pre-requisite for those measures. Therefore, an incremental approach was suggested, accompanied by proper technical assistance and capacity building support for developing countries and LDCs. Based on its own experience, Korea would also like to underscore the importance of using Information Technology (IT) to realize the maximum benefits from the suggested measures.

16. The representative of Canada introduced the Australian-Canadian proposal on collateral or collateral security (TN/TF/W/19) as an instrument to expedite the release of goods. For many economies, the use of such instruments and measures had proven to be successful in promoting efficiency in the clearance process for goods.

17. The proposal focused on areas in which arrangements for collateral security or monetary guarantees were most commonly available and most useful for traders and governments, such as when delays were encountered in the completion of final clearance procedures, including cases awaiting a decision on correct tariff classification. A trader wishing to seek the release of a good prior to completion of clearance procedures would be able to post a security instrument or cash deposit with customs or with other appropriate authorities. When the amount of duty or charges payable was finally determined, the authorities could then seek payment from the trader, and if the trader did not fulfil his obligations, payment could be obtained from the security instrument.

18. Traders would benefit from those measures by gaining improved predictability regarding the delivery times for their shipments. Customs authorities and other relevant authorities could benefit from the added assurance that traders would discharge their obligations while lowering transaction costs for governments and traders alike. The increased certainty in transaction costs provided by access to collateral security would also encourage greater investment and capital flows to the economy as a whole.

19. Appropriate provisions for S&D treatment could be incorporated to reflect the specific circumstances of individual Members. A basic and integral part of any measure on collateral security must also include TA&CB to enable countries to implement any changes that might be necessary.

20. The representative of Australia said that the current supply-chain management increasingly relied on "just-in-time" delivery of goods. Delayed release of goods pending the completion of customs formalities could add significantly to the costs of doing business (penalties, opportunity

costs), and was one of the most common complaints from exporters. Lengthy clearance procedures also generated inefficiencies for customs administrations, and incentives for non-compliance by traders.

21. One way to overcome that impediment to trade was to separate the process of fulfilment of customs obligations (including the payment of duties) from the actual release of goods, subject to the provision of sufficient collateral or monetary security as a guarantee of future payment.

22. Providing for early release of goods against monetary security made good business sense as it facilitated trade while ensuring revenue security and improved compliance by traders both through the provision of the security itself and by reducing incentives to circumvent regulations.

23. Many Members had already adopted that practice. The Agreement on Customs Valuation (CVA) required Members to allow the release of goods prior to the final determination of customs value. The proposal would simply extend that flexibility to other border formalities, as appropriate (i.e., to the extent that legitimate policy goals such as national security and sanitary/phytosanitary controls were not compromised). It would entail few new costs for Members who already complied with their obligations under the CVA. Transition costs would be essentially limited to training officers in the wider use of collateral security arrangements, and to possibly updating relevant legislation/guidelines to make the option more widely available. Initial costs should be offset by efficiency gains and improved revenue collection. Australia hoped that including commitments on monetary securities in the Trade Facilitation negotiations would enhance the implementation of Members' obligations under the CVA and mobilize additional TA&CB to help address the causes of non-compliance, where they were linked to capacity constraints.

24. The representative of Canada introduced Canada's proposal on border agency coordination (TN/TF/W/20), saying that measures on border agency coordination could address costs and delays resulting from the proliferation of cross-border procedures. For many economies, including Canada's, the use of those instruments and measures had proven to be successful in promoting efficiency in the clearance process for goods.

25. The proposal focused on basic elements to provide countries with the means to identify their specific needs in order to implement greater coordination, such as (i) compatibility among agencies in the information they required, allowing traders to present all required data to one single border agency and (ii) coordination on procedures and formalities to ensure cooperation across borders and agencies, as well as on operational aspects of regulating border controls (including, for example, the sharing of physical infrastructure between neighbouring authorities to reduce waste and unnecessary duplication).

26. Traders benefited from those measures by gaining improved predictability in procedural requirements for their transactions. The increased certainty in transaction costs provided by improved border agency coordination would also encourage greater investment and capital flows to the economy as a whole. Customs authorities and other competent authorities benefited from the efficiencies, the savings in administrative costs, and the overall rationalization of resources that resulted from such enhanced coordination.

27. The representative of Uganda introduced the Uganda-US proposal on consularization (TN/TF/W/22), stressing that TF was one of the areas with potential for utmost gains in the Doha Development Round. As a landlocked country, Uganda held the view that reduction in transaction costs was one of the stronger ways in which products could be made more competitive. Uganda was therefore particularly interested in an effective outcome of the improvement and clarification process of the relevant GATT Articles that formed the basis of negotiations on TF. It was in that context that the proposal had been made.

28. The parameters for fees and charges were an issue of great concern for Uganda and there was a need to define them with utmost precision. The objective was to take those fees and charges and carry out a selection process, retaining only those that were necessary. The elimination of the non-necessary ones would reduce transaction costs, thus boosting participation in trade, especially for SMEs.

29. The process of consularization required that goods for export must first be submitted to the supervision or certification by the consul of the importing Member country in the territory of the exporting country for the purpose of obtaining consular invoices or consular visas for commercial invoices, or consul "verification" of other elements of customs documentation required in connection with importation, such as valuation or origin. For instance, a small Ugandan trader wishing to export to a case scenario territory, had to go to an embassy or consulate to have the export papers legalized. In some cases, every shipment had document costs of US\$ 80 per page for the following documents: original invoice, customs declaration, way bill manifest, in transit non manipulation, bill of entry, packing list, with a total payment of US\$ 480 in the legalization procedure alone, per container. Yet, the exporter still had to pay other fees incidental to exporting. The list was not exhaustive. Those fees were exorbitantly high and inevitably ate into what would have been profits for the exporter, making a small exporter's goods costly and therefore uncompetitive. Considering Uganda's landlocked- , LDC- as well as small-sized enterprise characteristics, those fees worsened an already difficult situation and defeated the entire purpose of facilitating trade. They constituted, in effect, a veiled barrier to trade.

30. It was also important to note that, in the above case, a similar inspection would have to be made at the point of entry into the importing Member, causing a duplication of procedures. The requirement for consularization therefore led to a waste of time, was counter-productive and costly, and went against the spirit of facilitation, which aimed at increasing efficiency in the movement of goods.

31. It was also worth recalling the provisions of GATT Article VIII:1(b), where Members recognized the need to reduce the number and diversity of Article VIII-related fees and charges. Uganda wondered whether the above-mentioned fees and their application were not also contravening Article VIII:1 (a).

32. In light of the above, Uganda proposed the elimination of that practice, the case for which was compelling. The proposal highlighted the fact that requirements for consularization needed to be revised. Through modern administrative techniques for verification, there were other cheaper and speedier ways in which a verification of whether border requirements were being met could be made. From an historical viewpoint, the Contracting Parties to the GATT had recommended the abolition of consular invoices and consular visas and had affirmed that recommendation on several occasions. That was a strong reaffirmation that the usefulness of consularization, even as early as 1952, had been questioned. More importantly, for Uganda, consularization had been a great barrier to access into markets of countries applying that requirement.

33. The proposal also touched on the possible need for an assessment on TA&CB, as well as on elements of S&D treatment, exploring its appropriateness in the context of consularization. However, the sooner that requirement was abolished, the better for Uganda and for other Members in a similar situation.

34. The representative of the United States joined Uganda in proposing the prohibition of the requirement of consular transactions, including consularization-related fees and charges in connection with the importation of goods. The issue had been identified to the US as a problem early on in a consultation process with the private sector, particularly by representatives of smaller businesses. But it had been the explanation of the matter by Uganda in February that had helped the US fully understand the effect of those practices, which the proposal sought to eliminate.

35. It was often heard that the TF negotiations aimed at modernizing and updating relevant rules. The Uganda-US proposal underscored the truth of that theme. Recommendations for eliminating those kinds of consular formalities and fees had been made right after the initial drafting of GATT Article VIII, and were issued again in 1957. That had been followed by another recommendation by a panel of experts on consular formalities convened in March 1962. And yet, it had never been eliminated. The US was of the view that it was high time to take that long-standing advice as a very practical step towards the modernization of the trading system.

36. A second proposal by the United States (TN/TF/W/21) dealt with the release of goods, similar – albeit not identical – to that put forward by Canada and Australia. At the core of the NG's work mandate was the goal of further expediting the movement, release and clearance of goods. The US proposal on the release of goods squarely addressed that element. On the one hand, what the US proposed was very simple, because it built on a commitment already included in Article 13 of the CVA. On the other hand, a system for the release of goods when certain issues were still pending, was a tool for meeting the needs and demands of the current just-in-time global economy. The phrase "win-win" had often been used in the WTO, and it sometimes seemed like a cliché. But to the extent that Members could focus on efforts and commitments related to a system that provided for the rapid release of goods, it was a very accurate description of the results the negotiations could bring. As described well in the Canada-Australia release-proposal, which the United States supported, the implementation of such a system not only expanded trade, but also encouraged investment, and contributed to the efficiency of customs authorities in meeting their responsibilities related to compliance with applicable laws and regulations.

37. The representative of the European Communities, introduced the EC-Australia proposal on clarification and improvement of GATT Article VIII provisions on fees and charges (TN/TF/W/23). The EC had already made a submission on GATT Article X addressing the transparency of fees and charges. The new submission covered the actual rules and disciplines on the fees and charges themselves. The proposals were also relevant to the clarification and improvement of GATT Article V.

38. For business, the proposals would increase predictability and help avoid unwarranted fees and charges. For governments, the proposals would increase clarity in the design and application of fees and charges.

39. The scope of the proposals was not only fees and charges of customs, but also of other concerned agencies. The provisions should cover all fees and charges on or in connection with imports and exports, or which were a necessary condition for import or export. There was a need to ensure that all import and export fees and charges were covered to avoid loopholes.

40. On general disciplines for fees and charges, the proposal was inspired by existing WTO rules and dispute settlement rulings. There was still considerable uncertainty about what was and was not allowed. The EC proposed that (i) the service provided was related to the goods in question; (ii) that fees and charges referred to the approximate cost of the service provided, and (iii) therefore could not be calculated on an ad valorem basis; (iv) that costs not linked to the service provided could not be imposed; and (v) that there should be non-discrimination in the design and application of fees and charges.

41. GATT Article VIII recognized the need to reduce the number and diversity of fees and charges but created no obligation to do so. That was a weakness which should be addressed in the negotiations. Members should review and, if necessary, consolidate or reduce the number and diversity of fees and charges. There should be an obligation to publish or notify remaining fees and charges. For new or revised fees and charges, there should be a sufficient implementation period between adoption and entry into force – they should not change from one day to the next. In

undertaking a review, it would be useful to have rules. To that end, the EC proposed a list of permissible fees and charges and the discontinuation of consular fees.

42. The EC believed that the suggested proposals would not impose significant capacity demands. But, clearly, there would be potential for developed countries and special organizations to share their experience in designing and developing fees and charges schemes. The EC recognized that fees and charges might be an important source of government revenue for some developing countries, which should be taken into account. The fees and charges themselves could be used to help fund some of the customs services provided. The EC supported all tabled submissions on fees and charges.

43. The representative of Australia considered it very useful to address the problem of excessive and unjustified fees and charges on importation and exportation. Article VIII provided that fees and charges should be limited in amount to the approximate cost of services rendered and should not represent an indirect protection to domestic products or taxation of imports or exports for fiscal purposes. However, an examination of the NAMA NTB notifications revealed that many Members continued to levy disproportionate and unjustified fees and charges on imports and exports for fiscal or protectionist purposes, often on an *ad valorem* basis. That pointed to a need to clarify and strengthen the provisions of Article VIII.

44. The paper proposed a set of concrete disciplines to clarify and strengthen Article VIII. It did not seek to introduce new obligations but sought to set out existing obligations in explicit terms, such as (i) an explicit commitment to non-discrimination in the design and application of fees and charges, which would reflect an established WTO principle and give effect to the requirement that fees and charges shall not represent an indirect protection to domestic products; or (ii) an explicit prohibition of *ad valorem* fees and charges to ensure that fees and charges actually reflected the approximate cost of services provided. A recent OECD study (TD/TC/WP(2004)46) had found that 54 per cent of fees in high-income economies were levied on an *ad valorem* basis – adding significantly to the cost of trade. The prevalence of *ad valorem* fees in low-income economies might indicate a need for TA&CB to develop a more appropriate fees structure based on cost recovery.

45. The paper also sought to give practical effect to paragraph 1(b), which recognized the need for reducing the number and diversity of fees and charges. As a first step, it proposed that each Member reviewed, and if necessary, consolidated or reduced the number and diversity of its fees and charges. All remaining fees and charges must be made publicly and easily available, together with the justification for them. By implication, Members would be prohibited from collecting unpublished fees and charges. Publication need not be burdensome – in many cases, it was expected to simply entail consolidating information already available in various forms. That would provide greater certainty and predictability for traders and should, over time, lead to the abolition of unjustified or obsolete charges.

46. It was essential that the scope of commitments on fees and charges applied beyond customs to other agency interventions and tasks undertaken on their behalf. Otherwise, gains in one area could be diminished by unnecessary fees and charges applied elsewhere.

47. The representative of New Zealand presented New Zealand's paper (TN/TF/W/24), explaining that it contained three practical proposals. For convenience, those proposals had been arranged under the well-established principles of transparency, due process and minimizing unnecessary restrictions on trade. The proposal also discussed S&D treatment and TA&CB considerations.

48. The main goal of those proposals was to help identify rules that would increase the predictability and certainty of international trade. Those TF rules would be ultimately beneficial to all WTO Members. However, developing countries and SME exporters were likely to reap greater benefits from a more transparent, predictable, user-friendly international trading system.

49. The first proposal fell under the heading of "transparency and due process". It called for Members and traders to have the right to comment on proposed TF measures, and to have those comments taken into account. The key thought was to establish a common-sense mechanism, similar to that existing in some other WTO Agreements, so that the relevant authorities had an obligation to explain the rationale for the proposed measures to those most affected: traders and other WTO Members. New Zealand's domestic experience with implementing supply-chain security had shown that a consultation/dialogue requirement could ultimately be beneficial to both the responsible government authorities and traders affected by the TF measures.

50. The second proposal was that objective criteria be required for the tariff classification of goods. The aim of introducing a greater degree of objectivity into customs classification procedures was to ensure that tariff classification decisions were not themselves used as a disguised protection of domestic industries. Such an objective test would ensure that tariff classification decisions were based on transparent and well-established criteria and would aim to remove the high degree of subjectivity and variability in some Members' tariff classification procedures. In essence, the proposal was designed to address the practice that one had at times been confronted with, where importing countries manipulated tariff classification decisions to assign a higher tariff to imported products.

51. The third proposal fell under the principle of "minimizing unnecessary restrictions on trade". It called for Members to agree to more precise, operational and effective provisions on minimizing excessive documentation. The proposal sought to improve Article VIII by providing clearer guidelines on how best to simplify and minimize those fees and formalities, and to improve Members' and traders' understanding of the administrative frameworks operating within many Members.

52. The representative of Chinese Taipei introduced Chinese Taipei's submission (TN/TF/W/25) saying that unreasonably high fees charged by Members in the course of international trade would increase the transaction costs for traders, and thus reduce the opportunities for conducting international business. SMEs were the most affected, because they survived on very tight profit margins. For example, complaints were often heard from traders about high fees for consular invoices and certificates charged by importing Members. Not only did high charges and excessive amounts of documentation increase transaction costs, but they also caused inconvenience to applicants, often to the point where exporters were discouraged from pursuing international trade. Moreover, it could be especially burdensome when there was no consulate office in the exporting Member country, and the exporter had no choice but to apply through the next nearest consulate office in another country.

53. GATT Article VIII:1 (a) required that "all fees and charges of whatever character (other than import and export duties and other taxes within the purview of Article III) imposed by contracting parties on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes". One of the contentious issues about that provision was how to estimate the approximate cost of services rendered. Although past dispute settlement cases had touched upon the definition of a fee or charge limited to the approximate cost of services rendered, there was still no clear guidance as to exactly how the approximate cost of services rendered should be calculated.

54. Some Members had contributed their thoughts on how to proceed with that issue. For example, Hong Kong, China, had suggested that "Members might consider the desirability of introducing basic GATT/WTO principles such as necessity and review" (G/C/W/398). The EC argued that "the fees or charges in question might not therefore be calculated on an *ad valorem* basis" (G/C/W/394). The United States proposed to "establish specific parameters for fees charged by Members under Article VIII of GATT 1994" (TN/TF/W/14).

55. Chinese Taipei was of the view that the costs of services rendered could be broken down into two main components: (i) direct costs, and (ii) indirect costs. Direct costs were those directly related to the specific services provided, including labour, materials, equipment and utilities. Indirect costs, by contrast, were costs incurred that were not directly related, but were nonetheless attributable to the specific services rendered, e.g., costs of supporting labour, equipment, and office rent. Generally Accepted Accounting Principles (GAAP) might also be used, if necessary, as a reference to the allocation of direct and indirect costs. At the same time, one should not lose focus and pay too much attention to arguing whether an expenditure should be classified as direct cost or indirect cost. The fact was that they would all eventually be included in the calculation of cost of services rendered.

56. To put that concept into operation, it was suggested to use a table for analyzing costs. Periodical reviews of the levels of fees and charges imposed on or in connection with import and export should also be conducted, for example, at least once every three years.

57. The example of a "Special Cargo Examination Fee" was useful to illustrate how a Cost Analysis Table might be applied. The occasions on which a "Special Cargo Examination Fee" might be charged included: examinations conducted out of regular office hours, or at the special request of the applicants, or for goods not stored at customs-designated locations. Thus, special arrangements needed to be made. The total estimated cost of conducting a special cargo examination was made up of direct costs and indirect costs. In that particular example, the direct costs were the addition of the costs of the directly-related labour (inspector, chief and driver) and directly-related materials (gasoline and office supplies). To calculate the indirect costs, an estimate was made of the depreciation and maintenance costs of the car used partially for examination and attributable office utilities and other materials.

58. The implementation of that measure would be a feasible solution to the existing problem and would constitute a more scientific way of arriving at a level of fees that more fairly represented the real costs of services rendered in the context of Article VIII. Furthermore, from Chinese Taipei's experience, the costs of implementing that type of system were minimal. The first step would have to be the enactment or amendment of relevant laws and/or regulations to establish the necessary measures. That would need to be followed by training of the relevant accounting officers.

59. Chinese Taipei was ready to work with interested Members and other international organizations on details such as, implementing principles, design of a cost analysis table, S&D treatment and TA&CB, as necessary.

60. The representative of China, presented China's submission (TN/TF/W/26), explaining that it focused on clarifying and improving GATT Article X. It echoed some points already raised by other Members. The proposal covered the scope of trade regulations subject to publication, methods of publication, enquiry points and commenting periods. China was of the view that greater transparency and predictability were of utmost importance to the trading community. From the perspective of traders, it could provide them with information on trade procedures in an accurate and timely manner, avoid undue formalities and documentation requirements, accelerate trade processes, and reduce transaction costs. From the perspective of governments, it could increase an administration's efficiency, cut administrative costs, and optimize resource allocation.

61. In light of China's experience, the proposals, if adopted, would help to reduce trade costs, increase administrative efficiency and provide a more transparent and predictable environment for traders and enterprises, especially, SMEs. There were some implementation concerns Members had to give attention to, such as the fact that the establishment of enquiry points and internet sites required relatively high resource inputs, especially for some developing Members. The implementation costs were closely related to the IT modernization level of individual Members. Taking into consideration the large gap between developed and developing Members in that regard, a longer implementation period should be provided for developing Members. TA&CB tailored to the specific needs of each

individual developed Member would be very helpful to address implementation concerns. China's proposal was not exhaustive in that regard.

62. The representative of Mongolia invited the Secretariat to pay special attention to involving landlocked developing countries in the negotiations, especially those not present in Geneva, which should be given special assistance.

63. Document TN/TF/W/23 from the EC and Australia contained some elements of great importance to Mongolia. Mongolia therefore supported most of its ideas.

64. With respect to document TN/TF/W/19 by Australia and Canada, Mongolia had some concerns about the idea of making the provision of collateral security a commitment. Mongolian companies had been experiencing some problems with collaterals when exporting goods through transit countries as well as with regard to destination countries. Being a small economy, Mongolian companies were also small and had limited resources to cover required collaterals. They invested all their resources into goods for export and import and did not have extra money to pay the collateral. It took the goods weeks to reach their destination, during which the collected collateral money remained tied up in the coffer of the transit countries instead of being in circulation. Mongolia therefore wished to discuss with Australia and Canada how that concern could be incorporated into their proposal. Mongolia was not supportive of making the provision of collateral a commitment.

65. The representative of Romania wondered whether Canada could elaborate on its collateral securities proposal and explain how it was supposed to function and whether it increased costs. Romania could not see how blocking money for long periods could help to facilitate trade. With respect to Canada's proposal on establishing a Single Window, which appealed to Romania as a good measure to facilitate trade, Romania wished to know whether it was envisaged for the Single Window to create a new authority which would imply supplementary costs and fees both for the national authorities and for the exporters and importers, or whether the idea was to pick one of the existing agencies at the border to assume such function.

66. Finally, Romania would like Uganda and the US to inform the Group about how many countries still used consular visas. For Romania's traders, that did not seem to be a problem. Most of Romania's trade was done without consular visas. Perhaps the Secretariat had also some information on that matter.

67. The representative of Paraguay appreciated the practical approach taken in presenting the proposals, and was pleased to see the different obstacles being identified that existed with regard to the transit of goods, as well as with the solutions suggested. Looking at the presentations, it seemed that there was tacit agreement on concentrating work on the clarification and improvement of GATT Articles VIII and X. In order to have a balanced coverage of the negotiations, Paraguay would focus its efforts on Article V, as well as on the issue of technical assistance and capacity building. Those questions had already been covered indirectly as the three GATT Articles had a close relationship to those matters. Nevertheless, some particular aspects of Article V needed to be dealt with individually, such as its reference to the "routes most convenient for international transit" in paragraph 2, as well as the issue of controls which transiting goods had to undergo. Transparency and predictability applied to the transit of goods could also be the objectives of some of the proposals. Paraguay was aware that the current work would not be able to address all the problems in the area of goods movement, but believed that it could be a basis for more fluid trade. With technical assistance and political will, it should be possible to advance work in the field.

68. Canada's proposal on collateral or monetary security provisions was an acceptable suggestion, especially with respect to the release of implementation costs to the private sector. Such a system could have a positive influence on trade, and there were many advantages to be gained. Paraguay could invest in that type of system. However, that should not have consequences on Paraguay's

administrative structures. Looking at the technical implications, the material and the legal implications of setting up such a system, it would be necessary to know more details about its implementation, such as the type of required infrastructure, the operation costs, the procedures for the collection of the duties and the types of services which would be rendered.

69. Paraguay shared Canada's belief that coordination amongst the administrations dealing with the trans-border movement of goods was essential for streamlining trade. Single Windows and integrated border controls offered excellent possibilities to facilitate trade. Paraguay also believed in single documents and integrated controls at the borders. In Paraguay's experience, the integration of controls had varied in terms of complexity and difficulty depending on the intervening stakeholders and the volume of border movement. In order for one or more Members to cooperate at the border post, many elements would have to be harmonized. One should not set up obligations which would restrict Members to one system but limit oneself to make known the usefulness of the system and promote its use through technical assistance.

70. Paraguay shared the premise of Japan's proposal that the principle of non-discrimination had to be the basis of all measures to facilitate trade. Paraguay supported the Japanese proposal of a legal mechanism for a periodic review of fees and charges affecting importation and exportation in an automatic and reasonable way, covering all sectors. With regard to the publication of fees and charges, Paraguay wondered whether the idea was for that to take place through a medium of broad range such as the internet, or whether it was proposed to simply have a legal requirement to publish that information in a legal gazette, official journal, or a medium determined by each national legislation.

71. The use of international standards was also something that should be encouraged by organizations and donor countries through countries technical assistance and the development of projects of a regional-, but not mandatory, character. Solutions of a general design did not always have the capacity to adapt to each particular case and the cost of implementing the measures based on international standards could sometimes lead to heavy burdens which not all Members were capable of taking on. One should also not lose sight of the fact that international standards on customs formalities were numerous and different.

72. The proposals on documentary examination and physical inspection without undue delay, and on a time frame for the release of goods were highly desirable. But one could not simply have such a discipline in countries where the infrastructure did not allow for that type of release, where the personnel was scarce and not trained and where the controls of their activities were deficient. Making those processes more flexible would lead to a more efficient system. The other mechanisms suggested by Japan such as pre-arrival clearance and risk assessment would merit more detailed study in light of real experiences. Paraguay therefore wished to get more details related to the application of those measures in developing countries and LDCs. Paraguay also agreed with Japan on the need to diffuse to the maximum information on penalties which penalized omissions and offences related to the traffic of goods on the understanding that that measure was oriented at improving the transparency of the system.

73. Paraguay shared the views set out in the EC proposal on fees and charges and agreed with what had been said by the EC, the United States and Uganda with regard to consular fees. At the same time, one had to keep in mind that the adoption of the suggested measures would have direct consequences on public revenue, which had to be taken into account. Otherwise, that would create difficulties for many capitals, especially in countries with small economies.

74. The proposal by the United States and Canada with regard to release of goods upon posting of a guarantee also seemed viable in principle. Setting up the suggested mechanism would have to be preceded by a diagnosis of the situation and feasibility, accompanied, if necessary, by technical assistance to assist with the implementation. To incorporate successfully new and more efficient

mechanisms, adapted to the local needs, Members had to ensure that they did not commit to things they were not able to carry out later on. It was necessary to determine beforehand whether affected Members would in fact be able to set up and maintain the necessary structures.

75. Paraguay agreed with New Zealand on the need to create a forum to exchange views between traders and government agencies, which should work in a very efficient way. Members affected by measures on goods transit should be consulted on, or at least informed about, any amendments to new measures. Paraguay also believed that the coexistence of different systems of classification caused difficulties in transit and trade. Members should harmonize those systems based on the suggestions put forward by New Zealand.

76. Korea's proposal to accept copies of documents, however, was not appropriate, as it would lead to illegal practices. It was easier to falsify copies than to falsify originals. The suggestion was also only a short-term solution which would become obsolete once one moved towards electronic data management, which would allow more efficient work and save time and money. Such modern technologies would make transit and transport more fluid, allow trade to flow smoothly and had a better chance of being adopted by administrations. Assistance was required to enable countries to have access to that type of technology and to be able to install it. Concerns regarding the harmonization and standardization of documents were largely shared. The model proposed by the WCO would hopefully be available to Members soon and should be promoted.

77. Korea should be thanked for reminding the Group that developing countries must be proactive in the negotiations. At the same time, the task ahead was not an easy one. Many countries were not able to go as far in the area of Trade Facilitation as they would like. It was difficult to gather all the required information to draw a list of one's needs and come up with methods which could enable the finding of solutions. The assistance provided to Paraguay by some Members was very useful in enabling the country to identify some of the problems that could be addressed in the negotiations and formulate communications which had Paraguay's interests in mind. That coordination should continue to identify Members' priorities, especially those with no resources, to determine their problems.

78. The representative of Peru said that the discussions in the Group and the contributions made so far with the emphasis on TA&CB showed that the Group was heading in the right direction. Albeit still early in the process, common concerns and interests had already materialised. It could be useful if the Secretariat identified, in cooperation with the countries that had presented proposals, the main elements of those proposals. That way, developing countries would have a proper set of information for assessing the proposals and would be able to move forward in the negotiations more easily.

79. Document TN/TF/W/17, which Peru wished to co-sponsor, had the proper format in outlining problems and offering possible solutions, which made it easier to have an exchange of views on those aspects. It was sufficiently broad without being exhaustive, allowing for possible new solutions to the presented problems to materialize. With respect to the specific matter of suggesting a periodic review and publication of fees and charges connected with importation and exportation, Peru considered it important to carry out such a periodic review to bring charges in line with the changing circumstances of trade reality. Peru also considered it important for import and export formalities to be as little trade restrictive as possible, in line with the simplification Members tried to achieve when talking about Trade Facilitation. In Peru, an automated harmonized Single Window system had been developed to harmonize and simplify the formalities required for customs processing, making use of electronic means, to the extent possible, with a view to reduce time and costs.

80. Peru strongly supported the submission of information prior to the arrival of the goods as vital to improve the operationality of customs and shorten release times. Trade Facilitation must go hand in hand with suitable controls of customs operations. One way of achieving that was to use risk assessment when carrying out inspections. Traders with a good track record of compliance with

customs procedures should benefit from simplified procedures. To keep their records up to date, it was necessary to have an appropriate exchange of information between Members. In that context, a harmonized automated clearance system was useful as it allowed for the reduction of the physical presentation of the customs declaration and its documentation.

81. The possibility of accepting copies of import and export documents, wherever possible, would make commercial activities much easier and would prevent delays in the presentation of documents in cases where it was difficult to obtain the original.

82. Penalties must be clearly established in the regulations, which must be published for the knowledge of all commercial operators. The only point Peru had a reservation about was the Japan/Mongolia suggestion in the area of substantial penalties for minor breaches in documentation. Under the new Peruvian General Customs Law, a much stricter policy had been adopted, leading to the imposition of a fine in cases of breaches, even if the error had not been intentional. Japan and Mongolia suggested for such minor breaches not to lead to a refusal of the documentation. Rather, they should be corrected. But that would be difficult to apply in Peru as errors in declarations were often committed intentionally in order to obtain benefits. Under the current policy applied by the Peruvian Ministry of Economy and Customs, if the document was filled out properly, everything was made easy, but in cases of breaches, even if they were minor ones, the law was applied properly. That part of the Japan-Mongolia proposal was therefore not applicable in Peru, as it could actually open the door to fraud and lead to greater difficulties in terms of customs procedures rather than facilitate trade.

83. Peru agreed on the importance of border agency cooperation as stressed by Canada in document TN/TF/W/20. Peru was in the process of seeking increased cooperation amongst the relevant bodies through cooperation programmes. It was a very basic aspect that had to be taken up in the context of facilitation.

84. Peru also supported document TN/TF/W/21. Consular formalities should progressively be eliminated as a clear obstacle to Trade Facilitation.

85. Finally, the Group should not ignore the fact that Trade Facilitation was intrinsically linked with technical and financial assistance to allow developing countries to develop or improve means to facilitate trade in their countries. Without that, all envisaged TF measures would not be sustainable.

86. The representative of Chinese Taipei shared the views expressed in the Japan-Mongolia paper (TN/TF/W/17) and wished to co-sponsor it. At the same time, Chinese Taipei had a few comments on the proposals, and a few questions that required further clarification.

87. The proposal to periodically review the fees and charges, import/export formalities and document requirements significantly advanced Article VIII:2's provisions requiring a Member to review, upon request by another Member, the operation of its laws and regulations in the light of the provisions of the Article. Chinese Taipei was interested in hearing more about how in practice such a periodic review mechanism would work.

88. Regarding the use of international standards for import and export formalities and document requirements, Chinese Taipei was of the view that it was better to refer to the specific and detailed parts of the envisaged international standards.

89. The proposal by Uganda and the United States on consularization built on earlier recommendations on the abolition of consular invoices and consular visas and had also been supported by other Members, and was based on complaints from traders about high fees for consular invoices and certificates charged by some importing Members. The elimination of the requirement for consular transactions, including consularization-related fees and charges, would be a "quantum leap" towards the facilitation of global trade and the streamlining of bureaucratic administration. It

would also benefit developing countries' exporters, particularly SMEs. That could be one of the most significant achievements of the negotiations. At the same time, the proposal would require a lot of effort to develop the way forward on that matter.

90. As for the proposal on the release of goods by the US, Australia and Canada, the provisions in Chapter 3 of the General Annex to the Revised Kyoto Convention provided for the separation of release from clearance. The proposal also indicated that the measure was already reflected in Article 13 of the CVA. Chinese Taipei agreed with Members proposing that measure as it would provide for the quicker release of goods, cost savings from the reduction in delivery delays, and greater certainty and predictability as to cash flow and shipping times.

91. Korea was to be commended for its proposal of several important measures, including the harmonization and standardization of document formats, using international instruments, such as the WCO Customs Data Model and the UN Layout Key. Chinese Taipei also supported Korea's suggestion of establishing a Single Window. Chinese Taipei had already recommended measures such as pre-arrival processing, risk management and post-clearance auditing in its previous submission. Its national experience had shown that those measures could be achieved without significant financial and administrative burden. Chinese Taipei therefore strongly believed that by adopting and implementing those measures sooner rather than later, with proper capacity-building and technical assistance, developing and least-developed countries would be able to enjoy the benefits earlier.

92. The representative of Kenya said that the submitted proposals offered Members a wealth of information to analyze what really fell under the three Articles, and what could be eliminated for the purposes of the present exercise. A common thread running through all proposals was the role of the government, which was reduced to a minimum. Members might have to look at the role of the government as a facilitator of trade as well. One could not just keep on shedding it off and claim that it was not important.

93. Another issue running across the proposals related to the cost of implementation. The proposals suggested that implementation costs would be minimal. But what might be minimal for country A, located above the equator, might not be minimal for country B, which was situated within the equator, and that had to be taken into account. Quantification was therefore very important to get a clearer picture of what Members were really talking about.

94. A third point running across the proposals was that they tended to point towards standardization of fees and procedures. In that context, Kenya wondered whether Annex D gave Members the mandate to do that. And if it was not within the mandate of Annex D, why was it necessary to do that? Perhaps that could be explained by the authors of those proposals. Furthermore, the cost of implementation seemed not to be responding to Annex D. Annex D was very clear in that developed-country Members were to provide technical assistance, both during the negotiations and after, for the implementation. Kenya therefore wanted to hear from those delegations having made proposals what technical assistance they were providing to Kenya at the moment to participate in the negotiations and to benefit from them.

95. Another matter of concern was the fact that most of the proposals seemed to limit S&D to longer transition periods for implementation, whereas Annex D clearly stated that it had to go beyond that. Members committed themselves to that, and it had to be seriously addressed, with the proposals reflecting that commitment.

96. As for Japan's and Mongolia's suggested periodic review proposal (TN/TF/W/17), Kenya wondered whether that was really necessary, given that there were already existing mechanisms that could address the issue, such as the Trade Policy Review Mechanism (TPR). There should be no duplication of work.

97. As for the paper's references to technical assistance and support for capacity building, it seemed that that was now delegated to the international organizations, contrary to paragraph 5 of Annex D, which contained Members' commitment to do that themselves, particularly the developed ones. Kenya therefore wondered at what stage those Members would actually chip in and start providing the necessary assistance.

98. The proposal on collateral by Australia and Canada sounded very good on paper. However, one should not forget that the collateral business could also lock out small-skilled traders. In Kenya, for instance, an enterprise would typically involve a man with his wife and son, with no resources to pay for a collateral. One should not create NTBs in the name of removing some of those barriers. One had to look at those matters critically to see if they were of real interest to those small enterprises. Furthermore, when looking at the reference to Article 13, Kenya wondered whether that was an implementation issue or rather a Trade Facilitation issue.

99. With respect to document TN/TF/W/21 on the release of goods, Kenya was of the view that, sometimes, minimum checks were important to ensure what was being released was the right product. Kenya had a problem with that proposal. Just recently, a container had been released in Kenya which had proven to contain narcotic products. One therefore had to be very careful in ensuring that what was released was the correct product. Related security aspects could not be overruled. Kenya did not want its government to share the responsibility of dishonest traders.

100. Uganda's and the United States' proposal on consularization was something Kenya was very sympathetic to. It was interesting to see a very strong WTO Member come together with a weak one, which underlined the value of Trade Facilitation. What Kenya wanted to know was why it had taken them so long to phase it out, given that that matter had been discussed for many years.

101. With respect to the EC's and Australia's proposal that only legitimate fees and charges should remain, it had to be known what was meant by "legitimate" fees and charges, as there were likely to be divergent interpretations of the term. Kenya might consider all fees and charges legitimate that the proponents wished to eliminate, so it might be necessary to come up with some definitions.

102. The paper by New Zealand appeared to call on national parliaments to get input from outside. It was not clear how countries would react to external bodies providing inputs. Kenya wondered how, for instance, Congress would react if Kenya were to propose how they should amend their laws to fit Kenya's interests. That was a very sensitive area. It therefore might be necessary to reflect on what was really meant by Trade Facilitation.

103. The representative of Rwanda, speaking on behalf of the African Group, recognized the importance of Trade Facilitation for enhancing economic competitiveness at the national, regional and continental level. The African Group was preparing a communication on that important topic. In that context, the African Group would like to emphasize once again that the work of the NGTF and its outcomes had to be made relevant to the development needs as contained in Annex D.

104. The paper under preparation highlighted the issue of cost implications, raised important challenges faced by Africa's trading environment and, among other things, emphasized the issue of S&D and capacity building. The African Group expected Members to consider its concerns.

105. Technical assistance and capacity building were crucial. Annex D recognized the importance of technical assistance both during negotiations and during the implementation of its results. For the time being, given the speed of the negotiations, the African Group requested the readiness of the Secretariat, together with relevant institutions such as COMESA, SADC, ECOWAS and others, to undertake a needs assessment at the national and regional level.

106. The representative of Chile said that the principles laid out in GATT Article VIII on fees and charges should be strengthened. With regard to Japan's, Mongolia's and Chinese Taipei's proposals, Chile sought clarification with regard to how the suggested periodic review was supposed to be implemented. Chile also wished to know under what criteria the amount of appropriate fees and charges would be evaluated. Furthermore, Chile sought clarification with regard to publications. Would it be enough to have those fees and charges published in official journals by governments or did the proposal aim for some sort of commitment to publish elsewhere?

107. The EC's proposal to establish a list of permissible fees and charges was interesting as long as the idea was to reduce the number of fees and charges rather than broaden their scope. Chile also supported the proposed elimination of consular fees.

108. Canada and the United States had proposed the establishment of a mechanism for the early release of goods against monetary or collateral security, according to which the release of goods would take place before the decision on the classification, the final amount to be paid or on other customs proceedings. Canada went further by setting out a number of circumstances in which that type of guarantee would be necessary. Their proposal outlined two circumstances and Chile would like to ask Canada if they considered it necessary to negotiate specific circumstances in which the security would be asked for. In Chile, most of the customs procedures were pre-arrival customs procedures without asking for any security. It would be interesting to ensure that proposals of that type did not discourage those types of practices. Furthermore, there was a risk of misuse in that customs release was delayed without there being situations meriting it in order to demand a security from the exporters, thereby increasing the transaction costs. If such a mechanism was to be set up, one would have to look very closely not only at the different ways in which the guarantees could be asked for, but also at how to set up disciplines with regard to the implementation of those guarantees, and at what types of mechanisms would be used for returning those securities.

109. That type of financial instrument was not widespread in developing countries. With respect to the early release of goods, it was not clear that SMEs in developing countries could use that type of mechanism, especially when looking at the costs of those types of guarantees. In that context, Chile wished to seek clarification from Canada with regard to their proposal on S&D. It was not clear whether, when saying that implementation could be deferred, the reference was to commitments which developing countries would take on in order to provide those types of guarantees for their exporters, or in order to administrate and manage the guarantees which would be coming into their customs offices.

110. Korea, along with Mongolia and Chinese Taipei, dealt with a topic of extreme importance for Chile: standardization and simplification of documents required in import and export procedures. They proposed the introduction of specific measures such as the standardization of documents, using and benefiting from the work already carried out by the WCO to set up a Single Window, which should be studied.

111. In the same context, New Zealand had proposed to set up provisions which would enable the minimization of the documentation required. Chile would like to ask New Zealand for clarification on how they would implement that proposal. Did New Zealand feel that each Member should notify the documents and systems in force and that they commit as part of the negotiations to eliminate excessive documentation which might exist in their countries? And who would determine whether, and on what criteria, that type of documentation was excessive? In other words, how would Members be able to decide on the options for eliminating excessive documentation?

112. As for the proposals by Chinese Taipei, Chile would like to know if Chinese Taipei used its cost analysis in order to determine all the values of its fees and charges. With respect to the proposal by China, Chile sought clarification on the idea of a period for comments. Item four of the Chinese

proposal suggested for comments to be received after the notification but before entry into force. Chile wondered if changes could be made when legislation had already been published.

113. The representative of Pakistan said that the presented proposals all aimed at simplifying customs procedures and resulted in reduced costs for business and more transparency. Most of them sought to improve existing procedures and did not require any large-scale new infrastructure. They were just seeking the reduction of clearance formalities. Commonalities among the documents were proposals relating to (i) the harmonization and standardization of documents, (ii) the use of a Single Window, (iii) the release of goods against a security if there was a classification dispute or if the import was temporary and meant for re-export, (iv) disciplines in fees and charges including consular fees and (v) publication of trade regulations.

114. With respect to the proposal for all countries to use the same classification system such as the Harmonized System (HS), the problem was not using the HS as such, since it was already applied by over 97 per cent of world trade. Rather, the problem was for everybody to use the same version of the HS. With regard to standardization, the problem was whether existing international standards were actually applied. For example, the UN Layout Key for trade documents was not even used by developed countries.

115. Another problem was to agree on a time frame (such as the 30 days proposed by China) for implementing all customs changes. In several countries, changes in tariff rates were implemented through annual budgets. Such changes were applicable with immediate effect. Pakistan would like to learn how others were implementing changes in duty rates as allowing a long time for implementation sometimes defeated the purpose of changing a duty rate.

116. With respect to the claims for the use of guarantees or collaterals to amount to an additional NTB for small businesses, it had to be clarified that such instruments were actually meant to *facilitate* small business and *remove* an existing NTB. Normally, all importers were expected to pay up before clearing their goods, with the goods often still remaining stuck at the ports. The proposed measure would at least allow for the immediate release of goods. The alternative was for goods to remain stuck, with the required payments still having to be made. That would lead to additional costs. Most governments already allowed that facility, with its actual application however depending upon the good will of customs. It was better to have more predictability in that area.

117. Overall, Pakistan was of the view that the tabled proposals were excellent and could move work forward.

118. The representative of Venezuela said that the proposals were interlinked and required a great deal of time to analyse properly. If the Secretariat could try to summarize them, that could be a major contribution in that process.

119. The proposal by Chinese Taipei in document TN/TF/W/10 on pre-arrival clearance was very difficult for Venezuela to agree to. Venezuela's basic customs law prescribed in its Article 86 that all goods coming into the country would be subject to the customs law in force at the time of arrival for all purposes of customs formalities. An automated system for pre-arrival declaration therefore would be a problem. But documents could come in five days after the actual arrival of the goods.

120. Venezuela was currently investing in automating its customs system, with the help of technical cooperation. Many customs offices moved towards the ASYCUDA system. In line with Decision 564 of the Andean Pact, with Article 153 of Venezuela's Constitution, and the ASYCUDA system, Venezuela was doing everything possible to organize its customs clearance on the basis of risk assessment criteria. With respect to the proposal made by Chinese Taipei on express consignments, Venezuela's customs legislation foresaw that possibility and made it operational

directly at customs offices. One had to see what type of Trade Facilitation could be achieved in that regard.

121. With respect to advance rulings on tariff classification, Venezuela could offer facilities for greater transparency and legal certainty due to its technical infrastructure to offer tariff classifications before the goods actually arrived. Additionally, access would soon be available on the internet to a database with binding criteria on tariff classification for internal and external users, and all that would be necessary was to print from the web page the automated customs declaration, followed by a decision on whether the goods qualified for the orange or the red channel. Customs services were carrying out efforts at the national level to ensure there was suitable infrastructure for facilities connected to customs and trade services. Venezuela was now working on a project for a customs centre in the port of LaGuaria for the Americas. For customs and customs-related services, Venezuela would be able to offer an integrated service for all users.

122. With respect to Japan's proposal on fees and charges contained in document TN/TF/W/17, Venezuela had heard from the questionnaires used by the WTO some years ago on tariff customs services, that the fees applied by Venezuelan customs were not proportionate to the quality of the services. This situation had changed drastically after the progressive implementation throughout the country of the ASYCUDA project. With respect to the simplification of customs procedures and formalities, efforts were made on that matter to see whether there was room for negotiations or not.

123. With respect to the centralization of the receipt of import-export documents, all trade policy measures had to be dealt with through customs in Venezuela. The customs authority was responsible for 90 per cent of the controls and reception of the declarations and forms needed for import and export, and for drug controls. Japan's proposal on minor breaches was a very sensitive topic for Venezuela, since it had a legal reservation in that area. More details were required from Japan with respect to the penalties aspects which were not in proportion to the breach. Venezuela would like to maintain the possibility of levying fines or penalties with respect to breaches in line with their seriousness. The area of timely reimbursement of taxes was one where Venezuela had made major efforts, so that there should be no problem to deal with that. It would merely be a matter of perfecting the system.

124. Overall, the proposals posed several problems to Venezuela due to its laws, constitution and legal framework, making it very difficult for Venezuela to accept some of them. On the area of technical assistance, Venezuela made major efforts to have customs system in sync with the times. Nonetheless, major amounts of money were required to implement all of those decisions to ensure they covered the entire territory. That had to be borne in mind as well.

125. The representative of Singapore said that progress in the NG would largely be fashioned by the proposals Members tabled on the three Articles. In that context, Singapore welcomed the new proposals on Articles VIII and X. Proposals were also required on technical assistance and Article V. All of the proposals tabled so far were a useful resource for the Group's work. The proponents had made efforts to build in elements relating to S&D, TA&CB into their various proposals, which was welcomed. They had also made efforts to be clear and concise, which had facilitated a better understanding of the proposals. Despite some overlaps, the various proposals also served to highlight the different aspects and annoyances of the relevant Articles. As Members moved towards July and Hong Kong, Singapore encouraged more proposals on the three Articles to ensure that a comprehensive package of proposals for the Ministerial Conference.

126. With respect to Japan's proposal for a periodic review of fees and charges, Singapore wondered whether it envisaged any time frame for such reviews. Regarding the proposal on documentary examination and physical inspection, Japan had indicated that Members could also take other relevant measures, providing the example of returning necessary documents to traders without delay. Singapore wondered what other measures Japan had in mind for that provision. Further

examples would be useful. Singapore also wondered what was meant by "high-level of compliance" in Japan's suggestion to introduce simplified import and export formalities for authorized traders with a high level of compliance with trade-related laws and regulations. Did Japan envisage some sort of benchmark to determine that high-level of compliance? If so, how was that to be operationalized in practice?

127. Korea's proposal contained a number of interesting ideas which Singapore shared. Simple and effective ways to reduce administrative burdens had to be found, but without sacrificing legitimate policy goals. Note had been taken of Korea's point that standardizing the format of customs documents reduced costs related to documentation and paperwork. In that connection, Singapore concurred with Korea's implementation concerns, particularly for developing countries and LDCs, that the standardization of document formats might involve substantial, albeit one-time, costs. Singapore noted the point that once the new format was in place, the additional costs of utilizing those formats could be minimal. Singapore also agreed with Korea that developing countries and LDCs would need assistance, particularly from international organizations, with regard to carrying out time-release studies for goods. In point 4.4, Korea had suggested that, in cases where the release took longer than the average time, traders would have the right to ask customs authorities for the reasons why the processing time for their goods had been longer. Singapore would like Korea to elaborate on what they had in mind when introducing the notion of average time. In practice, Members would probably have different average times. Was Korea envisaging that each Member had its own average time or did the proposal aim at a single, or a range of average times for all Members? How was it intended to take into account the situation of developing countries and LDCs who might possibly require longer average times?

128. As for New Zealand's proposal, Singapore welcomed the fact that New Zealand had deliberately and specifically built in S&D and TA&CB elements. Singapore also broadly agreed with the suggestion of the universal use of the HS classification system when making tariff classification decisions. However, as proposed by New Zealand, it would be necessary for developing countries and LDCs to be provided with the necessary technical assistance when moving towards using the HS classification.

129. New Zealand had made important observations on the issue of prior comments. Singapore agreed with the general principle that the NG should ascertain ways to give better protection to exporting Members. On New Zealand's suggestion to consider a menu of various steps to reduce excessive documentation requirements, it would be useful if New Zealand could clarify what menu of what steps it had in mind and provide some examples to better clarify the concept.

130. The representative of Mauritius said that the submitted proposals contained some interesting ideas which were currently being examined. One general observation was that further elaboration on the S&D and technical assistance elements would be useful, not only in general, but with respect to each element of the proposals, including their sub-elements. That would help to fully assess those suggestions and determine their implications on the respective countries.

131. Mauritius agreed with what Kenya had said about costs. There was also another perspective to that. If all proposals had low cost implications, it would be fine to look at them in isolation, but if one tried to put them all together in a package, one would end up with quite significant costs. One had to be mindful of that and of the impact for small countries and those with a very low share of trade.

132. The US-Uganda proposal on consular fees had given a clear picture on how that particular measure could hamper trade in the country and affect its competitive opportunities. It was an area the Group should seriously look into in its future work.

133. The representative of the Philippines said that the Core Group considered the new proposals and the presented country experiences to help Members' work as the process continued.

134. The Philippines sought clarification on the Japan-Mongolia proposal to periodically review fees and charges. Was the intention to have national authorities conduct such reviews on their own initiative or was the idea that relevant WTO bodies provided the forum for that? The paper also proposed to prohibit the collection of unpublished fees and charges and the imposition of unpublished penalties, which appeared to be a disproportionate remedy for a Member's omission. The example given on page 2 under import and export formalities seemed to suggest that goods need not always be subject to physical inspection if the company maintained a high-level of compliance. That notion of a "high-level of compliance" did not appear to be the standard accepted or agreed in other relevant WTO Agreements, such as the ones on SPS and TBT. The Philippines wondered about the definition of such high-level of compliance from a conceptual point of view and about the basis for adopting such a concept.

135. With respect to the suggested application of a necessity test based on the criterion of a least-trade-restrictive formality or documentary requirement, the Philippines found the basis for such a necessity test to be too narrow and inflexible. If, indeed, a necessity test was to be adopted, the Philippines would consider more favourably the idea of having it based on the standard of reasonableness. Alternatively, Members might also consider the standard of not more burdensome than necessary or not more trade restrictive than necessary. The Philippines would also like the proponents to clarify what "other relevant international organizations" they had had in mind when suggesting the use of international standards taking due account of the relevant work of such organizations. Those standard setting bodies might not be those in whose work developing countries were able to actively participate, which might prejudice the situation.

136. The representative of India welcomed the new proposals on how to clarify GATT Article VIII. India's endeavour was to understand and clarify the issues proposed for negotiation. In light of the number of submissions that had recently been presented, India would limit its comments to the paper by Japan and Mongolia (TN/TF/W/17), as well as to the papers submitted at the last meeting, which the Group had not been able to discuss in detail. The intervention by the Philippines on behalf of the Core Group was supported.

137. Japan's and Mongolia's proposal for a periodic review of the appropriateness of the amount and the number of fees and charges imposed on or in connection with importation and exportation contained some words which were not amenable to a uniform understanding. Clarification was sought from Japan and Mongolia as to what parameters would be used to judge the "appropriateness" of the amount and the number of fees and charges. Judging "appropriateness" in terms of cost could be difficult. India would like to know whether it would be on the basis of nationwide cost or related to a particular customs station. Similarly, greater clarity was needed on what "periodic review" meant. Would it be a uniform period for all countries or would the commitment only be in terms of a provision for a periodic review with its frequency being left for the individual Members to determine?

138. The proposal to publish fees and charges imposed on or in connection with importation or exportation had already been addressed when discussing similar proposals by other Members. India had systemic concerns regarding the suggestion to prohibit the "collection of unpublicized fees and charges". The discussion should be more focused on how to ensure transparency in the publication of fees and charges rather than on setting a low threshold of mere non-publication of a charge making it null and void even though it was otherwise legally valid. India did not favour the principle of linking the legality assessment to a plain transparency threshold.

139. There was also a general matter that needed to be discussed regarding the issues mentioned before. In the present environment of privatization of ports and air ports, and the setting up of private handling terminals and warehouses, there could be a possibility that related fees and charges could be

in a private domain for some Members and under the government domain for others, with some Members perhaps having a combination of both. It was necessary to reflect as to what would be the scope of commitment for publication and periodic review of fees and charges in such cases. India did not have any proposal at the present stage but wanted to bring the issue to Members' attention.

140. As for Japan's and Mongolia's proposal to limit import and export formalities to the least-trade-restrictive level, with a view to minimizing the incidence and complexity of import and export formalities, the standard of "least-trade-restrictive level² was difficult to implement in concrete terms. It was necessary to understand whether the proponents had any idea as to how in practice that would be achieved. Similar comments would apply for "minimizing the incidence and complexity of import and export formalities". In the context of GATT Article X, there were already certain proposals for prior consultation before bringing new import and export formalities into force. The proposal for a "periodic review" of import and export formalities based on comments from the private sector and other parties would need to be examined from that perspective. If prior consultation was to be a basis for bringing into force new import and export formalities, was there a necessity for also having a mechanism for a periodic review? Also, would the periodicity of reviews be left for individual Members to decide?

141. To understand the proposal to use international standards to the extent possible, where other relevant international organizations had already set up international standards, with a view to minimizing the incidence and complexity of import and export formalities, it would be very useful to have a listing of existing international standards of other relevant international organizations concerning the export and import formalities the proponents had in mind. Without that, the proposal was unclear regarding the scope and extent of the proposed commitments. India however welcomed the flexibility built into the proposal through the expression "to the extent possible".

142. The proposal to conduct documentary examination and physical inspection after receiving the application without delay was not clear. It could not be the case that any customs administration would delay examination and inspection of consignments in a routine manner. On the contrary, all customs administrations were expected to conduct examination and inspection of goods without delay. However, there could be delay in exceptional cases on account of incomplete documentation or on account of certain queries raised in connection with the classification, valuation or other relevant particulars concerning import and export. Seen from that perspective, the proposal did not seem to suggest any additional commitment than what Members already practiced. India would request the proponents to clarify whether that understanding was correct or whether they had in mind certain specific elements of commitments to enforce that proposal. It was also necessary to understand what was meant by returning documents to traders where no further action was required. Such a situation mostly arose where documents had been withdrawn for investigation and enquiry. In the normal course of import and export, some documents might need to be submitted as part of a legal requirement and might need to be preserved by the authorities for a fixed period of time. It was not clear whether the proposal sought to address both types of situations and India therefore requested an elaboration on that subject.

143. With respect to the proposal to introduce procedures for accepting and examining documents prior to the arrival of goods to further expedite import and export formalities, India requested clarification of whether that would relate only to customs or to other relevant agencies as well.

144. As for the proposal on risk management and authorized traders, the principle to adopt such measures was a desirable goal. However, it would be important that the specific criteria for risk management and for authorized traders be left to individual Members to adopt. The proposal might also require substantial TA&CB for several Members. It was therefore suggested that a dedicated discussion could be conducted on that subject where those Members which had already adopted a well functioning system of risk management and authorized traders could share their country's experience

in designing and implementing those systems, including problems faced and methods adopted to continually upgrade them.

145. The proposal for a one-time submission of import or export documentation to one agency pursued a desirable end but would be very difficult to implement for many countries, including for India. It should therefore not be subject to a binding commitment, at least for developing countries. Implementing that proposal would also require considerable technical assistance. However, the proposal to coordinate the timing and place of physical inspection among the relevant authorities to the extent possible was useful, and India welcomed the flexibility built into it.

146. With respect to the proposal to limit import and export documentation requirements to the least-trade-restrictive level and to periodically review import and export documentation requirements, based on comments from the private sector and other parties, India requested a clarification from Japan as to whether they had any criteria in mind for documentation to be "least trade restrictive" and any fixed time frame for the review. Furthermore, India wanted to know whether documents were based on international standards, and what would be the value added to having a system of periodic review.

147. Regarding the suggestion to use international standards to the extent possible, where they were set up by other relevant international organizations, to decrease and simplify import and export documentation requirements, it would be useful to discuss the existing international standards for documentation requirements to understand the type of commitment being envisaged. India, however, welcomed the flexibility indicated in the proposal by use of the expression "to the extent possible".

148. As for the proposal to accept required documents in copies to the extent possible, to reduce the time and costs to meet the requirement for originals for import and export documentation, especially in cases where multiple authorities were involved or where documents were required to conduct other procedures, India understood the suggestion not to uniformly adopt a system of accepting copies instead of originals. It was India's understanding that it was proposed for those cases where multiple agencies required original documents. For such cases, one would need to evolve a system for accepting copies or to have the original document issued in more than one copy. It would be difficult to accept a general principle of accepting copies in all cases as original documents were often a requirement in legal proceedings.

149. India had serious concerns about the proposal to accept a single documentary submission of import or export documentation requirements in cases of repeated transactions of the same products, and that the exemption of documentary submissions for each importation or exportation should be permitted. In the present system of clearance, a goods declaration had to be co-related to the Import General Manifest of a particular vessel. That was necessary for control purposes, both for revenue and for port accounting. The present proposal would weaken that control system. It would also have serious implications on safeguarding revenue since the rate of duty was presently determined on the basis of the date of filing of the goods declaration. If the same goods declaration was to be valid for several consignments to be imported in the future, it would be burdensome in law and for enforcement to collect any differential duty in case there was a change in the duty rate during that period (or a refund of additional duties in case of duty reduction).

150. With respect to the suggestion to clearly state and publish penalty provisions against breaches of import and export formalities in relevant laws and regulations, and to prohibit the imposition of unpublished penalties, it was India's understanding that penal provisions would be a part of the customs laws and to that extent it would be clearly stated in the relevant laws. As those laws as a whole were to be given publicity, the penal provisions would also be duly publicized. Therefore, that proposal did not seem to add to the existing transparency proposals. Furthermore, India did not support prohibiting the imposition of unpublicized penalties for the same reasons as stated earlier before with respect to unpublicized fees.

151. Finally, as regards Japan's and Mongolia's proposal to explain why the authority rejects the submitted documents at the application desk, India sought a clearer understanding of the meaning of the term "application desk". Was it the same as the field level officer assigned with the task of assessing duty and would the commitment be limited only to important issues such as the rejection of a submitted invoice or technical literature? Or would it also relate to more routine temporary rejection of a document on account of rectifiable mistakes such as information being incomplete, where such documents were accepted subsequently upon rectification of the mistake?

152. The representative of Bolivia said that GATT Articles VIII and X had been improved by valuable contributions, strengthening principles of non-discrimination, transparency, predictability, simplification and reasonableness, although that was a difficult notion to define. A principle relating to expeditiousness should be included as well, which should apply to customs clearance, transit and the transportation of goods.

153. Most proposals called for publication of trade norms and regulations, and Bolivia shared that view. At the same time, the legal framework of each country had to be taken into account. Some of the proposals covered risk management, which should contribute to Trade Facilitation. However, in some cases, especially when it came to landlocked countries, goods often had to pass through three different customs regimes and transit systems, possibly requiring therefore a more rigid risk management system. That should be subject to future analysis.

154. With respect to the proposal to accept copies of documents rather than originals, clarification was required as to what documents were supposed to be covered by that suggestion and why copies were considered to be as valid as the originals. Bolivia agreed with the view that customs clearance was a matter of shared responsibility between customs and other government authorities. Bolivia also agreed on the need to clarify that only those services actually rendered should be taken into account. With respect to S&D treatment, so far proposals focused on longer implementation periods. Bolivia understood that, as the identification of elements for clarification and improvement advanced, the S&D principle would have to be developed with more specificity.

155. Bolivia supported Peru's proposal for the Secretariat to compile proposals to facilitate future work.

156. The representative of Fiji, speaking also on behalf of Papua New Guinea and the Solomon Islands observed that S&D components and TA&CB ran through most of the proposals. Further elaboration of those elements was required in the future in line with what was contained in Annex D, paragraphs 2 and 5.

157. With respect to the paper by New Zealand (TN/TF/W/24), Fiji was delighted with its introductory paragraph attaching great importance to S&D and TA&CB. The paper's reference to small economy exporters, such as Fiji's, was also appreciated.

158. As regards the proposal concerning prior consent, Fiji would like to hear from New Zealand as to how they would see the proposal being implemented. Further elaboration of that would be extremely useful, although, at the present stage, Fiji remained rather concerned about it.

159. The representative of China said that Members' contributions had led the Group's discussion into a more constructive and solution-seeking mode. More time, however, was required to study them.

160. With respect to Japan's and Mongolia's suggestion of a periodic review of the appropriateness of the amount and the number of fees and charges imposed or in connection with the importation and exportation, China sought further explanations on the terms used. In particular, China wanted to know whether the referenced periodic review was supposed to be a self-review as provided for in

paragraph 2 of Article VIII, or whether the intention was to resort to the existing mechanism such as the Trade Policy Review Mechanism (TPRM). It was necessary to know what agency would be entrusted with carrying out the review and through what mechanism. China would appreciate if the proponents could elaborate more on the specific process and parameters for that review.

161. As for Japan's and Mongolia's proposal to introduce simplified import and export formalities for authorized traders with a high level of compliance with trade-related laws and regulations, China agreed with the proponents' view that introducing risk management was very important to facilitate legitimate trade while maintaining necessary control at the border. However, China was concerned about how to determine which enterprises were qualified for high levels of compliance. If the concept was not appropriately defined, it might be used as an excuse for discriminative treatment.

162. Regarding the proposal for a one-time submission of import or export documentation to one agency and Korea's proposal to use a Single Window where traders could submit all the necessary documents and data to a single agency, China's experience showed that that kind of practice required powerful IT support, very close coordination as well as strong consistency among relevant border agencies. China was interested to learn about the proponents' experience in practising those procedures, any specific problems encountered and ways to address them.

163. With respect to the suggestion to periodically review import and export documentation requirements based on comments from the private sector and other parties, China would like to receive further explanations on the envisaged process and the criteria for such reviews. As for the acceptance of copies suggested by Japan, Mongolia and Korea, China considered documentation to be submitted at the border to fall under two categories: one for controlling admissions, including certificates of guarantee, compulsory identification of products, and another one for determining traders' rights and obligations, covering contracts, invoices, bills of lading and alike. In China's view, it was not appropriate to handle all those documentations on the basis of one single criterion. Secondly, due to the diversity of Members' legal systems, commercial environment, degree of integration and the compliance situation, one would have to be very careful to adopt such a kind of measure.

164. Regarding the establishment and publication of average release and clearance times of goods proposed by Korea, China considered it an important measure for rising the level of transparency and predictability of the trade environment and to facilitate legitimate trade. However, the key to carrying out that proposed commitment was to establish a commonly acceptable definition of "average time". According to China's experience, in most cases, the time needed for clearing and releasing goods depended not only on the process of the customs authorities but also on the process of the other border agencies. Sometimes, it even depended on the process of the private sector. In assessing the time for clearance and release of goods, the whole chain of processing should be taken into consideration.

165. As for substantial penalties for minor breaches, the key to further clarifying and improving the relevant provisions of Article VIII was to provide appropriate definition for minor breaches, hopefully including illustrative lists. At the same time, the definition of parameters for the substantial penalties should be given to avoid incidence of imposing substantial penalties for minor breaches.

166. The representative of Brazil said that Brazil would favour an advance rulings procedure and saw merit in examining an institutionalization of that practice. In particular, Brazil favoured the Canadian suggestion for the authorities to maintain the possibility to revoke a decision if conditions changed, which was essential.

167. With regard to a review of fees and charges, Brazil also saw merit in some of the proposals and stood ready to explore the EC's idea of work on an illustrative list of permissible fees. One should focus on such an illustrative list rather than work on the fees that were not allowed. With regard to the simplification of documents and standardization, Brazil had some doubts. There was

merit in first looking at the WCO Data Model or the UN Layout Key, but as a reference, without agreeing on any binding models to be used worldwide.

168. Clarification was needed on the proposal to establish a Single Window. It was one thing to have a Single Window to present information, but quite another to agree on one Single Window agency, which would require a complete restructuring of a country's internal system of customs and other agencies involved. Brazil wondered how that was supposed to be implemented. Was the intention to create a new agency or was it envisaged to create it out of the existing agencies, concentrating the assessments by those different bodies? Brazil did not see that as adding value and as facilitating trade. Rather, it would add another layer of bureaucracy in the process. Brazil currently had one single channel for the information to be registered, but the answer was forwarded by each separate agency responsible for assessing and treating the information, which seemed more efficient. A recent OECD study had pointed out that only two countries in the world currently had a Single Window agency, and it had been recognized even by a proponent that a number of Members would not be in a position to do so. Brazil was ready to discuss the issue further, but would favour an agreement on a Single Window to *present* the information rather than treat it.

169. Brazil supported the request by Venezuela, Peru and Bolivia for the Secretariat to start working on a compilation of the different proposals, but suggested that the compilation took into account the current provisions of all WTO Agreements, such as the ones on Import Licensing, Rules of Origin, Pre-shipment Inspection and Customs Valuation, to make sure that there was coherence and no duplication of activities.

170. The representative of Nepal said that, while it was good to note that a number of proposals had come up on a variety of issues, it was not easy to analyse their implications for a country such as Nepal. No one disputed the significance of Trade Facilitation. Nepal's main concerns related to the cost implications for LDCs and their limited capacity to sustain measures to facilitate trade.

171. Substantial financial and technical assistance for capacity building as envisaged in the July Package was therefore a prerequisite for LDCs in that process. Furthermore, the conceptual approach to Trade Facilitation should be confined to the agreed parameters, taking into account the real development value, the existing implementation capacities and the support from the international community in that context. It was fundamental to limit work to the scope identified by the modalities, keeping in mind the development dimension of the negotiations.

172. The representative of Trinidad and Tobago viewed the large number of proposals as indicative of the high-level of engagement Members had shown in the Negotiating Group and the importance given to the negotiating process.

173. Trinidad and Tobago associated itself with the statement made by the Philippines on behalf of the Core Group. There were common threads running through the various proposals. One such element was the absence of any elaboration on technical assistance or concrete S&D offers, although they were integral elements of the Group's work.

174. With respect to the proposal made by Japan and Mongolia in paragraph five of document TN/TF/W/17, Trinidad had concerns similar to those expressed by India. They related to the parameters to determine the appropriateness of fees and charges imposed. Clarification was also sought on the procedure envisaged for carrying out the proposed periodic review. It was necessary to know whether such a review would be limited to the national authority or whether it involved a body in the WTO.

175. Trinidad and Tobago was thankful to Uganda for having brought up the issue of consularization and related fees. In that context, Trinidad and Tobago wished to underscore the

importance of Members highlighting their individual experiences with respect to the challenges they faced, as well as regarding their successes in implementing measures to facilitate trade.

176. The representative of Antigua and Barbuda said that the proposals generally seemed to head towards the right direction. Being a small island heavily dependent on smooth and streamlined trade, Antigua and Barbuda placed great importance on Trade Facilitation. Some of the proposals were of great importance to Antigua. More elaboration on technical assistance and S&D issues was however required. The current references to those elements had to be fleshed out more in terms of how to actually apply them. Countries' different levels of development had to be taken into account. Many of the proposed procedures were already in place in some of the proponents' countries, while they would have to be set up in other countries, as they were at lower levels of development. Those differences had to be taken into consideration. It was also necessary to consult more with developing countries on their needs to meet some of those requirements. Full participation by all Members was required to allow for the necessary full discussion of those measures first.

177. With respect to the proposal by New Zealand on the right to comment on proposed customs rules and procedures (TN/TF/W/24), it would be interesting to see how that all worked. It was difficult to envisage how that could be applied in some countries.

178. Antigua and Barbuda had concerns regarding the measures proposed on fees and charges in document TN/TF/W/23. It was necessary to take a closer look at that. Some of those fees were revenue issues, while others were not. It was also necessary to look at the proposal on the release of goods contained in document TN/TF/W/21. Some of the suggested measures required additional costs due to countries' different levels of development, which had to be taken into account.

179. The representative of Colombia considered it useful to think about a way of analyzing the proposals which would facilitate their understanding and help in identifying common elements. It would further facilitate feedback from capitals, which would improve the participation in the negotiations and allow to check the proposals against national realities and assess the possibility to accept the suggested measures.

180. With respect to technical assistance and capacity building, two interpretations had been offered. Some delegations had stressed the need to better develop and specify those elements in the proposals. Others had stressed the contributions the proposals made in that regard. Both comments deserve to be taken into account. In that context, Colombia wished to recall a previous comment on the need to begin working on a coordination mechanism with other intergovernmental organizations involved in providing technical and financial assistance. Information on the conditions of the offer in the area would facilitate the identification of Members' needs to meet requirements more effectively.

181. With respect to the proposals on advance rulings, Colombia provided such rulings on customs classification since 2000. The experience with such rulings had been very positive in improving predictability and reducing the amount of discretion of customs officials in the clearance process of goods. Colombia was also making progress in developing its information and publication methodologies. In that context, Colombia sought further details on Korea's proposal to create a national coordination center implying the establishment of a Single Window to reply to questions. Colombia wondered whether the proposal was one for a virtual office, a physical center or a call center. If Korea's proposal was one for a virtual office, the computer systems would need to be adapted in the various agencies in order to guarantee coordination between them and with the commercial users, which would require financial resources to be allocated.

182. Colombia was also making those ideas compatible with the implementation of a Single Window for foreign trade, supported by electronic means, which the Colombian authorities were hoping to implement before the end of June.

183. Colombia shared some of the ideas suggested by Japan, Mongolia, Chinese Taipei and Peru, particularly on the possibility of submitting import and export documents, to have a one-time submission and a single office, and to have the physical inspection of goods take place at the same time by all the competent authorities. It was a very useful idea to have periodic reviews of the fees and charges and the procedures and import and export requirements, taking into account the observations made by the private sector and other parties involved in foreign trade. Colombia's legislation contained simplified import and export requirements for regular customs users. Colombia also supported the proposal on risk management for authorized traders.

184. The proposal by Canada and the United States would be considered in more detail once Colombia had checked them against its current legislation. The advantage of allowing clearance of goods pending the conclusion of a proceeding should be weighed against the financial costs which would be incurred in setting up securities, particularly for SMEs.

185. New Zealand's proposal to establish objective criteria for advance rulings in the area of tariff classification was very good. It would indeed be useful for all countries to use the HS system. Nevertheless, it was important for the WCO to illustrate the costs that would be incurred and the advantages that would be gained for adhering to that Convention. As for reducing charges and administrative burdens, Colombia shared the view on its importance, but wished to know in more detail how it was envisaged to implement that. Colombia shared the concern on the proposal to handle comments and observations on customs rules and procedures.

186. The EC's and Australia's proposal to review and, if necessary, consolidate or reduce the number of fees and charges connected with imports in order to make them more efficient, was useful. However, Colombia was of the view that that process would require time and resources, especially in order to fully justify those fees and charges. It was not entirely clear on what basis the envisaged list of permitted fees and charges would be drawn up. The joint proposal from Uganda and the United States on consular fees could be considered in that context, taking into account the contribution of those fees to government revenue in some countries.

187. The representative of Mexico said that the submitted documents were valuable and had helped Members think about their needs in trying to develop the TF negotiations. Some of the comments would help the Secretariat come up with common elements that could assist Members with their tasks.

188. Japan's paper contained interesting proposals to help Members resolve problems faced by international traders at customs. Some of the proposals on excessive fees connected with importation and exportation were already applied in Mexico because under Mexican legislation, it was necessary to publish all information connected with any fees or customs charges on import and export requirements in Mexico's Official Journal and in a common newspaper. As regards import and export requirements, Mexico's policy was to simplify as much as possible the use of necessary documents for importing goods.

189. As for pre-arrival clearance of goods, Mexico currently studied such a measure but did not have a date yet for implementing such a requirement. Nevertheless, Mexico could give favourable consideration to the Japanese proposal even if not all measures suggested in the document had been implemented yet. Mexico was improving technologies for it to be possible in the near future to adapt all procedures to international standards.

190. The representative of Costa Rica said that the structure of the submitted documents allowed Members to deal with the various issues connected with the modalities. One could see some convergence in the issues dealt within the proposals. There might be some differences in terms of their scope or content, but they were all pointing in the same direction and were based on the same principles. Costa Rica supported improved disciplines under GATT Article VIII in an attempt to

resolve shortcomings and simplify import-export documents with the view to reduce costs and comply with requirements in international trade. Members should take into account in their procedures existing international standards such as those referred to by Korea and Japan.

191. With respect to the publication of import-export documents, Costa Rica agreed with measures to simplify and make requirements more predictable. That should not be restricted to customs procedures but should take into account all border procedures and controls as mentioned in Japan's and Mongolia's document. Those proposals were particularly aimed at SMEs, which had problems with import and export formalities being extremely complex and costly, which restricted their opportunities in gaining access to new markets. It also limited the already restricted human and financial resources of such small economic enterprises. The number of administrative burdens should therefore be restricted to facilitate trade, and the complexity of administrative burdens reduced to the extent possible. Members should also limit the number of requirements for import and export documents to reduce and simplify burdens. The principle of Trade Facilitation should be applied to those documents, as with respect to the application of fees and charges, which should not exceed the cost of services rendered, as prescribed by paragraph 1 of Article VIII.

192. Risk management mechanisms were very valuable for facilitating and simplifying procedures for the clearance of low-risk goods, and for improving procedures for high-risk goods. Members could consider basing inspection and clearance procedures and *a posteriori* control on risk management principles to avoid having to inspect every consignment in great detail. The possibility for customs authorities to make more extensive checks should also be possible, where necessary. Costa Rica supported any way of facilitating trade in the multilateral framework. Modern customs should be capable of establishing risk management controls and automatic procedures, physical and document requirements should be methodical and carried out in a scientific manner. Costa Rica had not introduced control systems based on risk management yet but used procedures and standards in customs based on selection criteria, with a computerized system determining which goods should be subject to immediate controls. Costa Rica's legislation required for verification procedures not to be based on subjective criteria. They should not be up to the discretion of the official. In the near future, Costa Rica intended to introduce those standards based on risk management. Implementing that kind of measure did not necessarily require major reforms in the laws of each country. Laws were flexible enough to implement those kinds of procedures where costs were not enormous.

193. Costa Rica also supported the one-time submission of documents to a Single Window, as proposed by Canada, Australia, Korea and Japan, and the ideas to simplify import and export requirements. Such a mechanism could make qualitative and quantitative improvements in terms of simplifying export and import formalities and offered users a standardized process in dealing with import and export procedures, which would reduce the time and cost involved for commercial operators. Costa Rica had implemented such a measure, and the system had helped to make quantitative and qualitative improvements. It had simplified operations, particularly for exports and imports. There were offices and branches in every customs office in the country with a direct counsel of private and public sector advisers helping to improve the system even more. The system was not controlled by a single agency independent of the various institutions dealing with border controls, but they had been coordinating it themselves. In centralizing procedures in one Single Window with representatives from the Ministries of Health, Agriculture and Foreign Affairs, Costa Rica had managed to cut waiting times to a maximum of thirty minutes.

194. A few months ago, Costa Rica had introduced a new feature to the system in an attempt to make it more flexible and help develop import-export procedures, and simplify them. The main purpose was to allow sectors to carry out procedures automatically. They could do it 24 hours a day, 365 days a year. In recent years, Costa Rica had tried to apply that kind of measures, first without automatic systems, and then recently using automatic procedures, which facilitated the process even more. Canada's proposal raised some elements which could be steps forward in establishing that kind of measure: contact between agencies, coordination between requirements, coordination between

operational aspects. As Korea indicated, it was essential to take into account that not all Members were in a position to establish such a mechanism. Costa Rica had initiated the process with great determination, but recognized that there were difficulties for other Members. There should be progressive implementation.

195. As for prior processing of clearance of goods, one of the concerns frequently expressed by the private sector was that customs required the physical presence of goods as a *conditio sine qua non* to authorizing clearance. As Japan and Mongolia mentioned, introducing mechanisms for accepting examining documents before arrival of goods, should be one of the main objectives of the negotiations to make import and export procedures more flexible. Costa Rica already allowed customs declarations on importation and exportation to be made before the arrival of goods at customs. That made export procedures easier, provided that the other requirements were met.

196. The use of electronic means for dealing with data on consignments from transport companies when available was another instrument which helped to make export and import procedures more predictable and helped that to be done before the arrival of the goods. In terms of import procedures, those measures had helped to improve the flow of goods and had allowed users to have the goods as soon as they arrived in the country. As for the acceptance of copies, that was less important when introducing electronic means of dealing with goods. The use of a Single Window would also mean that the use of copies would no longer be relevant.

197. Costa Rica supported the EC's proposal on fees and charges and agreed with the publication of fees and charges. At the same time, it was recognized that adequate criteria would have to be established for deciding upon that.

198. The representative of Hong Kong, China was encouraged by the number of proposals and the fact that their sponsors included several developing Members. It reflected Member's recognition of the importance and benefits of Trade Facilitation, the promotion of which was best achieved by the reduction – if not elimination – of fees and formalities restricting trade. That particular area was also the core issue GATT Article VIII aimed at. The proposals should inject real business sense and commercially meaningful benefits into Article VIII. In that regard, the top priority should be to reinforce the principle of necessity and least-trade-restrictiveness in Article VIII. Hong Kong, China was glad to note the reference to that key element in submissions by Japan, Mongolia, Peru, Chinese Taipei and New Zealand.

199. Many delegations had put forward comments and questions, highlighting issues of common concern to all Members. With respect to the proposals on consularization, Hong Kong, China had supported work on that problem since the early days of the WTO. The only notification under the decision on reverse notification on non-tariff measures in the Committee on Market Access was from Hong Kong, China and it concerned the matter of consularization.

200. Other mentioned ideas worth exploring further were the release of goods against guarantee, harmonization and standardization of data and documentary requirements, use of international standards, pre-arrival processing of customs information, risk management, authorized traders and others. They were all valuable and pragmatic ideas to facilitate trade and would reduce not only business costs but also administrative costs on the part of the governments. Hong Kong, China therefore encouraged Members to carefully consider those proposals and see how improvements to Article VIII could be made. It was the business community whose interests were at stake with the business sector of developing Members also having a great interest in those matters. Hong Kong, China therefore encouraged developing Members to come forward with proposals and to provide comments to the proposals already tabled.

201. The representative of Norway said that all proposals reflected the need for transparency. Transparency in rules and regulations as well as regarding fees and charges was of great importance

to both traders and the authorities. Making rules and procedures simple and predictable and easily available to authorities and traders was a cornerstone in Trade Facilitation.

202. The documents from Korea, the EC, Australia, Japan, Mongolia, Uganda and the US all dealt with different aspects of the issue of fees and charges which was very important as well. Norway particularly wished to highlight the need for transparency in applying those fees and charges. In addition, clearer regulations on the utilization of consular fees were important for many traders, particularly the smaller ones. The contributions on fees and charges helped to assess the problem in a constructive way, leading to a better understanding of the improvements needed.

203. Concerning the need for standardization of documents and the information to be given, Norway also saw the advantages of applying certain global standards. In the EU and in the EFTA countries, a "Single Administrative Document" (SAD) had been in use since 1988. The document had multiple uses. It was used as a transit document as well as for import and export declarations. There was also a standard proof of origin in the EUR.1 certificate and the GSP Form A. That "standardization" had been very useful both for traders and the authorities.

204. The Canadian proposal on "Border Agency Cooperation" was an area where Norway also had some experience as far as customs was concerned. The Nordic countries did the work for each other. For instance, when goods were exported from Norway, usually a Swedish, Finnish or Norwegian customs office did all the work related to both export from Norway and import into the EU, or from the EU (Sweden or Finland) into Norway. That cooperation had continued after Sweden and Finland had joined the EU. Also in the EEA agreement between EFTA countries and the EU, the cooperation between border agencies and "the one-stop principle" was foreseen in a separate protocol on simplification of border formalities. The protocol covered all aspects and possible controls to be carried out with regard to the cross-border movement of goods. Norway's experience with that kind of cooperation was quite good as it saved time, money and man-power for both the border authorities and the economic operators.

205. Norway had not yet developed a full fledged "Single Window", but would encourage further discussions on the issue in the negotiations, as it could be a very useful tool in facilitating trade and cross-border traffic.

206. So far, the proposals were mainly related to Articles VIII and X. More proposals on Article V were due to follow. While some of the proposals were of a more general nature and others were more specific, they all clearly demonstrated that the Group was moving into a more in-depth dialogue with regard to clarifications and improvements of the GATT Articles under discussion. Taken together, they pointed in the direction Norway wished to move.

207. The representative of Thailand welcomed the new proposals, which were good contributions to the process. Although very little time had been given to study the many proposals for the meeting, Thailand had a few preliminary comments and requested clarification on a number of points. Regarding the acceptance of copies of documents suggested by Korea in document TN/TF/W/18, Thailand would like Korea to draw up a list of documents of which copies should be accepted. Many Members had already indicated their concerns regarding that matter.

208. With respect to Canada's document TN/TF/W/20, Thailand would like Canada to further clarify paragraph 4 (b), especially its section (ii). Thailand wished to know the meaning of "a single, shared physical infrastructure in which the neighbouring countries' customs services operated side by side" and wondered about the terms "physical infrastructure" and "single shared". In Thailand, the borders with neighbouring countries were divided by a river so that, physically, the custom officers had to be situated on both sides of the river. Therefore, Thailand wished to know whether the suggestion for a single shared physical infrastructure was one for one single building to be shared by the customs offices from both sides as was the case at the border between France and Switzerland.

That would be difficult to implement for Thailand due to its geographical situation. More time was needed to study all the proposals.

209. The representative of Indonesia stressed that the work of Negotiating Group and its outcome had to be relevant to the development needs as set out in Annex D of the July Package. Indonesia also wished to reiterate its concern about S&D treatment, financial and technical assistance and capacity building being integral components of any review and clarification of GATT Articles V, VIII and X. So far, it seemed that the tabled proposals neither contained any definitive or concrete S&D offers nor financial and technical assistance components. It was important that such components were integrated into each and every proposal.

210. With regard to the EC suggestion for "a provision requiring Members to publish and make easily available, on a non discriminatory basis" a number of measures and information (TN/TF/W/6), Indonesia wished to have clarification on the meaning of "make easily available" and on what kind of standard should be fulfilled. Furthermore, in paragraph 3, the EC proposed a requirement to consult interested parties as an improvement to Article X. Indonesia already had an internal consultation mechanism with all stakeholders before introducing legislation or regulations. But Indonesia supported the statement by the Philippines on behalf of the Core Group expressing serious reservations about having to consult and offer prior comment rights to other WTO Members as a matter of multilateral obligation before introducing new legislation or regulations domestically.

211. With respect to the recent proposal by Japan and Mongolia on the periodic review of fees and charges (TN/TF/W/17, paragraph 5) Indonesia was of the view that such a measure would represent a burden in terms of increasing cost or administration. Indonesia also sought clarification on the precise scope of the fees and charges targeted in that context. While such a mechanism would benefit Indonesia's policy, it would also lead to an administrative burden for the port authority. Regarding the suggestions made in paragraph 1 (d) on substantial penalties for minor breaches, Indonesia wondered whether that was indeed necessary, provided that traders were given the opportunity to correct minor breaches before submitting customs declarations. They had a chance to consult with the customs desk with regard to customs formalities for clearance and release of the goods or services. Therefore, Indonesia did not differentiate between unintentional and intentional minor breaches.

212. Korea's proposal on the establishment of a Single Window (TN/TF/W/18) was a good concept which would increase Trade Facilitation efforts tremendously. However, it was very costly, and also involved the use of high technology, creating a burden for developing countries. Indonesia further shared India's concerns regarding fees and charges which were not merely under government/public domain but also involved the private sector.

213. The representative of Switzerland said that the tabled proposals all contributed to clarifying and strengthening Articles VIII and X.

214. The submissions by Australia, Canada and the US on the provision for collateral or monetary security touched upon a matter that one should pay particular attention to as being one of the most efficient ways to accelerate customs clearance. Switzerland fully supported all elements contained in those submissions. In countries without a separation between executing customs obligations (and the payment of duties) from the effective clearance of goods, the customs clearance of imported goods was subject to regular delays.

215. Separating those processes implied the use of real or monetary guarantees. Such a measure was well-advised in the cases mentioned by Canada in paragraphs 2 a) and b) of its submission, namely, when a problem of taxing arose (e.g., a laboratory test was necessary to determine the specific classification), but also when goods were imported for inward processing or were permitted temporarily. It was also a suitable means in the procedures for express shipments. In Switzerland, securities were also applied with authorized traders when they preferred to make their payments

monthly upon invoice. In those cases, the security ensured due payment. It allowed enterprises to save administrative costs. In Switzerland, in the case of temporary taxation, goods could be cleared if the customs duties were guaranteed at the highest rate applicable, according to their type. Thus, the system was without prejudice for the collection of due payments.

216. Switzerland agreed with Pakistan that many countries knew already a system which allowed for the use of guarantees, but without it being anchored in laws and regulations governing customs procedures. Thus, traders had no assurances that the procedure would be applied. Swiss legislation knew those procedures with every person presenting the required documents being able to benefit from them without, however, being required to do so. However, in case of problems, goods remained blocked and could not be removed before customs released them.

217. As for Chile's concern about that system discouraging traders to use other procedures to facilitate customs clearance, such as preliminary notice, Swiss experience had shown that that was not really the case. A mix of mechanisms could be observed. With regard to SME exporters, it had to be noted that the guarantee was made in the country of importation.

218. The deposit of guarantees played a crucial role in transit, notably with regard to the TIR Convention, but also regarding other similar agreements. The Convention contained useful measures allowing to gain an idea of the required framework to be put in place to have the system work. In the case of transit, guarantees were generally made in the country of departure.

219. With respect to the submission from Australia and the EC, the submission from Chinese Taipei and the paper from Uganda and the US on different aspects in relation with fees, there was no doubt that the use of fees and charges was of great importance. The main point was that fees and charges should be related to the approximate cost of service rendered and therefore could not be calculated on an *ad valorem* basis. In Switzerland, for the bulk of payments, a definite fee was foreseen, based on the approximate costs of the service rendered. For the rest, a time-based fee was indicated. Different services were listed, specifying that they shall not be subject to any tax. That concerned most of the daily current operations. Switzerland's legislation also made it possible to have a flat rate for similar or repetitive operations, which also streamlined administrative procedures.

220. Switzerland appreciated the submission by Uganda and the United States and found it strange that the recommendations to eliminate consular fees had never been implemented. Switzerland did not have any consular fees.

221. Canada's submission on border agency coordination could contribute to Trade Facilitation, especially regarding the coordination of procedures and formalities. Coordination should include simple measures such as shared infrastructure and opening hours. Switzerland also supported Norway's intervention.

222. Korea's submission covered five extremely important points which could clarify and make Article VIII more efficient. Switzerland agreed with the ideas laid out in that proposal. Switzerland found it useful to specifically state how to achieve objectives such as harmonization and standardization of documents.

223. The paper by Japan, Mongolia, Chinese Taipei and Peru contained important points which could clarify Articles VIII and X. Like the EC submission TN/TF/W/6, that submission set up strong provisions which would enable to avoid an abuse by the authorities in applying fees and charges. In Switzerland, any fees levied by the authorities in goods transit were already set out in laws. Switzerland appreciated that the contribution highlighted the usefulness of using international standards. A useful instrument in that regard was the United Nations Compendium of Trade Facilitation Recommendations which covered not only their recommendations but also those of other competent bodies such as the WCO or the ITC.

224. Regarding the use of international standards, one would have to coordinate between all interested parties to ensure optimum harmonization. Ideally, there should be one single international standard. As for the suggestion to accept copies of documents, especially when several agencies were involved, it would be interesting to hear more. It seemed that the legal base for that type of change did not exist. It was necessary to know for which types of formalities copies would be sufficient and where originals would be indispensable. As for the paper's proposals regarding penalties for minor breaches of regulations, Swiss sanctions could be found at the end of the applicable laws and regulations. The scale of applicable fines could also be found with their minimum and maximum amounts, depending on the gravity of the situation. The obligation to explain the reasons for rejecting documents seemed to constitute an obvious necessity in all countries.

225. New Zealand's submission raised the extremely important point of the use of an objective system for the classification of goods. The HS allowed for a logical classification of goods according to outlined criteria. The Harmonized System Committee had drawn up explanatory notes, classification opinions and other opinions for the interpretation of the HS. Work in that area had to be consistent with the activities by the WCO. The proposal on how to make the simplification of currently applied formalities operational would enable Members to come closer to the realities in the field. Successive reductions of the number and diversity of documentation and taxes and fees in line with international recommendations in that area was an idea meriting further discussion.

226. Switzerland also largely shared the views expressed in the Chinese submission.

227. The representative of Sri Lanka said that while a second wave of proposals had been received with even more proposals to come, the cost and implementation implications of the earlier suggestions presented at the last meeting were yet to be analysed. As already mentioned by Nepal, it was not an easy task for small delegations to analyse those proposals. The new proposals seemed useful but needed closer examination and assessment. Sri Lanka generally supported the papers' basic thrust of attempting to introduce improved disciplines to facilitate trade, simplify export and import formalities, reduce costs and avoid unnecessary procedures, as access to information and delays were costly for SMEs.

228. Measures to discipline fees and charges to ensure their limitation to the cost of services rendered were a useful idea. Japan's and Australia's ideas on that matter were worth looking at positively. Consularization and legalisation entailed costs and procedures which were really cumbersome for SMEs, and therefore had to be addressed in the negotiations, particularly from the perspective of those enterprises. Border agency coordination could make life easier for many of Sri Lanka's business communities as well. The Single Window idea, if it could be achieved, was useful, but not many developing countries had the capacity to do so. While Sri Lanka welcomed any support for such system, the problem was whether relevant TA&CB would be forthcoming. There were technological issues and other infrastructure issues which had to be addressed.

229. The representative of India commented on the proposals presented at the last meeting, stating that, as regards Korea's submission TN/TF/W/7, India had serious concerns on the proposal to increase the scope of 'prior comment' to include even other WTO Members. Prior consultation should be limited to domestic consultations only.

230. As for Canada's and the United States' proposals on advance rulings (TN/TF/W/9 and TN/TF/W/12), India recognized that a system of advance rulings could lend greater predictability to the trade regime and would thus advance the cause of Trade Facilitation. However, it had to be carefully considered whether it could be covered under the scope of GATT Article X, which dealt with the publication of rules and regulations of general application rather than for specific cases, as was the case for advance rulings. Members also had to carefully consider the coverage of commitments under advance rulings. A coverage of tariff classification and applicable rate of duty could be a relatively easier objective. There, the only note of caution India wished to sound was that

rulings for the rate of duty would be valid only on the date of giving the ruling and could be subject to change if subsequently there was a statutory change in the duty rate. More importantly, India had concerns regarding the suggestion to include elements like customs valuation and duty drawback in the scope for advance rulings. Regarding the proposal to make advance rulings publicly available, India would seek clarification from Canada whether that was expected to be in terms of putting it on a website or something more. Regarding non-publication of confidential information, India would request Canada to give some illustrative examples of the kind of information that could be kept confidential. India also sought clarification on Canada's proposal to identify situations where customs administration could decline to issue advance ruling. India would like to know whether the proposal was to identify such situations during the negotiations, or whether that would be only at the level of broad principles, with it being left at the discretion of the individual administrations to identify such situations.

231. As for the proposal by the US and Chinese Taipei on express shipments (TN/TF/W/15, TN/TF/W/10), India requested clarification on the scope of the term "express shipment". India also sought clarification from the US as to why they proposed to have no weight or value restriction for an express shipment. Such restrictions could be a result of the domestic risk assessment or even infrastructure constraints. It would therefore be India's understanding that individual Members would need to be given flexibility regarding the goods eligible for clearance as express shipment and also regarding restrictions that could be imposed for extending the facility of express shipment. India also did not favour setting time limits for clearance of express shipments.

232. Regarding the US proposal on fees (TN/TF/W/14), India would need greater clarity on the types of fees and charges Members were discussing in the course of the negotiations. For instance, there were several types of charges imposed by one agency, namely ports, such as (i) charges levied by the ports (wharfage charges on import and on export, demurrage charges) or (ii) charges levied by port trusts to shipping lines (vessel charges, berth hire charges, crane handling charges, tugging charges, container handling equipment charges, trailer charges, port trust labour charges or destuffing and stuffing charges). Some of those charges were levied by port authorities, which were under government control. However, there were increasing numbers of private ports and private terminals whose charges might not be under government control. India needed to have greater clarity on how to address such diverse situations.

233. On Chinese Taipei's proposal for the introduction of risk management (TN/TF/W/10), India had already made certain observations with reference to Japan's proposal (TN/TF/W/17) and that would hold good there too. Regarding a post clearance audit system, there had to be flexibility in taking on any commitment. Often, an importer might not have a permanent office for a long enough period to be subject to periodic audit at their office. SMEs might find audit at their premises burdensome. In view of those considerations, there was a need for flexibility in any commitment concerning post clearance audit. India also needed clarification on Chinese Taipei's proposal regarding setting up a 'one-stop service centre' at every clearance station. The proposal did not specify the range of services that would have to be required to be provided at such centers. India sought greater elaboration of that proposal. India would particularly like to understand whether it was expected to take place in the nature of a Single Window for filing documents and obtaining clearances.

234. With respect to the paper by Japan, Mongolia and Chinese Taipei (TN/TF/W/8), India reiterated its observations on that paper made during the last meeting. Elaboration was needed of the scope of the proposal to publicize decisions and examples of customs classification. Did the 'decision' mean only judicial decisions or something more? India would like to understand what the term 'examples of customs classification' meant. India also had concerns regarding the suggestion to ban the collection of unpublicized fees. India had already stated its concerns on that issue in the comments on Japan's Paper (W/17). One should only discuss positive commitments regarding publication and ways to ensure their implementation.

235. India also sought greater elaboration of the proposal to publish standard processing periods for major trade procedures. India requested clarification of the term “major trade procedures”. How were Members expected to calculate the standard time period? The time for the clearance of goods was a sum of the time taken by various actors after the goods arrived in the docks, including time taken for unloading the goods, time taken in filing the relevant documents by the shipper and the importer; time taken by customs and by any other relevant agencies in processing the documents and examining the goods wherever required, time taken for duty payment by the importer. Which of those elements were expected to be publicized? India also sought clarification regarding the use of the term ‘imposing trade related restrictions’. Some discussions had taken place regarding giving objectives for introducing a new trade ‘procedure’. Did that proposal have the same intention or did it aim at something different? India had reservations regarding the proposal to publish a summary of trade regulations. Such a summary might not give a complete picture and might at times be prone to an interpretation different from that of the main regulation. Regarding the suggestion to publish the legislative purpose of prospective trade-related laws and regulations, India proposed that to be in terms of a best endeavour clause through the use of the expression, ‘to the extent possible.’

236. At the last meeting, India had suggested more deliberation regarding the structure, location and number of enquiry points. On the proposal to set up enquiry points in line with the existing enquiry points in the SPS and TBT Agreements, it would be India’s preference not to duplicate the work of the existing enquiry points. Further, it was India’s assessment that the creation of a single enquiry point would be very burdensome and perhaps not effective. India’s suggestion was to provide for the creation of separate enquiry points to deal with relevant issues such as customs procedures, licensing procedures, health procedures, phytosanitary procedures, etc. India also requested greater clarity on the proposal to ‘explicitly state the required trade procedures in the relevant laws and regulations’. Laws were normally part of the main legislation and procedures were often incorporated as part of subordinate legislation, like a regulation. It was India’s understanding that putting both aspects in a single legislation might not always be practical. The ends of transparency would be met if the procedures were also published in the same manner as the laws.

237. India also sought greater clarification on the proposal to establish a central function within the government which had the primary responsibility to interpret trade regulations such as those relating to customs classification and valuation. Interpretation of trade regulations was normally carried out by the relevant officials dealing with a particular case in a custom station. That was a quasi judicial function and subject to appeal procedures. India did not support changing that system and entrusting all those functions at a central level. That would be very unwieldy and a very inefficient system of dealing with day-to-day issues. India could only have a central body to act in such cases where different interpretations on classification for the same good or on a certain principle of valuation existed. India also needed greater clarity regarding the proposal to compile and distribute casebooks of examples of customs classification and customs valuation. Was that meant to be a separate exercise or would it be related to the publication of judicial decisions on those issues? Furthermore, that was beyond the current scope of transparency provided under GATT Article X in its current form, seeking to provide transparency for officials, and could be burdensome.

238. India also sought clarity regarding the proposed establishment of complaint desks. Were they expected to work as an alternative to the appeal mechanism or as part of it? It was India’s understanding that it would need to be distinct from the appeal mechanism. Second, India needed clarity as to whether it was expected to be a centralized body or be set up in every custom station. It was India’s experience that such complaint desks were more effective if set up at the level of individual customs stations which could address day-to-day difficulties faced by traders. A centralized complaint desk would require additional resources and might not be as quick in addressing local problems.

239. India had concerns regarding the proposal to publish major judicial and administrative decisions. First, it was difficult to categorize judicial decisions as minor or major. Second, India had a

number of benches of appellate tribunals, High Courts and a Supreme Court. It would be very burdensome for the government to take on a commitment on publishing all those judgments. On the other hand, India had a large number of private publications which published all major judicial decisions and whose citations were accepted by the courts. India needed to keep the standard of transparency for judicial decisions flexible enough to take into account the judicial publications available in the private domain as well. Putting that burden only on the government would entail prohibitive costs and would also be an uncalled for expenditure in situations where such judicial decisions were already available to all interested parties through private publications. Finally, India wished to reiterate its reservation regarding extending the scope of Article X to integrity issues.

240. The representative of Kenya sought to comment and request clarification on certain aspects of the proposals submitted at the last meeting, particularly those relating to Article X.

241. Kenya noted with concern that the EC submission TN/TF/W/6 sought to expand the information that had to be published to also cover the internal decision making process, substantive content of each measure affecting foreign trade and operational details of customs authorities. The proposal to expand the coverage of information required for notification fell outside the scope of GATT Article X and therefore outside the Group's mandate. Kenya wished the EC to clarify why such a proposal should be considered as falling within the scope of Article X. Furthermore, the proposal would be very demanding and impose unnecessary burdens on developing countries such as Kenya in fulfilling notification obligations in the area, as well as constrain those countries' ability to achieve the appropriate balance between expediting the movement of goods across borders and the needs for customs controls, to address issues such as security concerns. Regarding the specific measures and the information to be notified, Kenya wanted the EC to clarify the relevance of publishing information such as internal customs management plans as well as modernization programmes. Regarding the proposal to publish information on-line and to establish enquiry points, it was Kenya's understanding, in line with paragraph 6 of the modalities on Trade Facilitation, that, in the absence of adequate long-term and effective technical and financial assistance, the implementation of new commitments by developing countries in the area, would be voluntary.

242. With respect to the proposal for prior consultations on the new and amended rules and procedures, Kenya wanted clarification as to why the EC was seeking binding obligations in the area, when in fact, prior consultations were already taking place, as part of Members' commitment to good governance at the national level. Kenya had serious reservations regarding multilateral of commitments on prior consultations, as that would constrain the ability of many countries to respond to many challenges faced in the area of Trade Facilitation. Such a proposal would be counterproductive as it would constitute unnecessary barriers to Trade Facilitation efforts. Article X related to the right of Members to be informed. Therefore, Kenya had difficulties with the suggestion to expand the Article to include a right of Members to be consulted for comments.

243. Regarding appeal procedures and due process, Kenya sought clarification from the EC on what was meant by terms such as "minor appeals", "easily accessible" "reasonable" and "commensurate with costs in providing for appeals" as proposed under paragraph 5, since the interpretation of those terms could significantly vary among Members. The proposal to have separate judicial and administrative points outside the customs administration to deal with appeal cases would impose an additional cost burden on many developing countries. Such obligations should be voluntary for developing countries since their implementation capacity was normally dictated by the availability of resources, which were usually limited. Kenya wanted to hear from the EC about their commitment in assisting those countries to meet such obligations.

244. Regarding TA&CB, Kenya was concerned about the EC's proposal in paragraph 7, which was of a best endeavour nature, proposing to provide technical assistance within the framework of the EC's development assistance. That meant that the EC would retain its full discretion in determining the eligibility on conditions for accessing funds in that area. It implied that the EC was not willing to

commit additional funds that would easily be accessible by developing countries to implement commitments on Trade Facilitation. Kenya sought clarification on whether it was to be understood that the EC was already backtracking on its commitment in that area.

245. With respect to Korea's submission TN/TF/W/7, Kenya was concerned about the suggestion to introduce advance rulings within the scope and application of Article X. Advance rulings mainly related to specific transactions. Therefore, it would be important for Korea to clarify how that would be applicable under Article X relating to the publication and administration of laws, regulations, judicial and administrative rulings of *general* application. Korea's attempt to introduce advance rulings in Article X through the back door was not appropriate.

246. The proposal contained in paragraph 6 to publish information on the internet as the only widely accessible means, might not be possible for countries where the usage of IT was still very low. It should be left to the discretion of each Member to determine widely accessible means, which in the case of Kenya could be an official government gazette. Regarding Korea's proposal for WTO to disseminate notified information to other Members and to other interested parties, Kenya sought clarification on who those other interested parties were.

247. Clarification was also sought on Korea's explanation of what was meant by core measures and how they could be distinguished from non-core ones. On the implementation of commitments, Kenya requested clarification from Korea on why that should only be defined in terms of longer transitional periods. The implementation of Trade Facilitation measures was directly linked to availability of adequate resources. Therefore, lack of resources could not be substituted by longer implementation periods. Kenya wished to reiterate that implementation of trade facilitation measures was usually dictated by the availability of resources. Commitments for providing more resources to assist developing countries faced with implementation difficulties was the only appropriate way forward in that area.

248. With respect to the submission by Japan, Mongolia and Chinese Taipei (TN/TF/W/8), Kenya would like to know why the sponsors were seeking to establish an appeal system when it was already provided for in Article X:3.b of the GATT. In Kenya's view, the issues raised in W/8 on appeal systems did not relate to the current process of clarification but concerned the lack of implementation of existing commitments on the part of some Members due to resource constraints. Availability of adequate resources was key for countries to establish effective appeal systems. Developing countries faced with resource constraints should be assisted in that regard.

249. On the submission by Canada (TN/TF/W/9) and the US (TN/TF/W/12) on advance rulings, Kenya needed clarification of the specific Article of the GATT they sought to clarify. Any aspect proposed for clarification that did not fall within the scope of Articles V, VIII and X of the GATT should be considered as being outside the negotiating mandate. The was the case with the issue of advance rulings.

250. Regarding the US' submission (TN/TF/W/13), Kenya was concerned that many developing countries, especially those in Africa, faced with underdevelopment of IT infrastructure were likely to have great difficulties in complying with commitments under Article X that would require internet publication of information. Kenya would like to seek clarification from the US on the kind of S&D provisions for those countries envisaged under the proposal.

251. Kenya hoped that there would be further opportunity in the future to examine those proposals. Many proposals had been received within a very short period and the Group had to really move very carefully so that the interest of some Members were not prejudiced by accelerating the process. It was important that adequate opportunity was given for Members to comment on the proposals that had so far been submitted.

252. The Chairman assured that he indeed intended to allow for further discussion of the proposals in the future.

253. The representative of Turkey said that Article X comprised transparency provisions regarding the publication and uniform implementation of trade related laws, regulations, administrative decisions and trade-related procedures. In that respect, Turkey was in favour of improvements to that Article, which would imply simplicity and accessibility of related information for the trading community on a non-discriminatory basis. To achieve that goal, trade related information referred to in Article X, including possible amendments, should be published through a widely accessible medium. Turkey understood the term "publication" to include electronic transmission methods such as internet-based availability.

254. The establishment of enquiry points should also be envisaged to improve the accessibility of trade-related information to any interested party. Furthermore, enquiry points could alleviate the workload of national authorities and respond effectively to the information needs of both importers and exporters. However, Turkey was not convinced of the practicality and necessity of border authorities providing third parties with a "legitimate purpose or objective in imposing trade-related restrictions" as proposed by Japan in TN/TF/W/8.

255. Similarly, Turkey was of the view that the notification of all trade-related rules and procedures to the Secretariat as proposed by Korea and Japan would be burdensome for both national authorities and the Secretariat. The establishment of enquiry points guaranteeing wide availability of trade-related information would make such a requirement redundant. On the other hand, many of the proposals tabled so far on Article X extended the transparency requirements contained in that Article to the policy formulation stage. In that respect, the papers submitted by the EC, Korea and Japan called for a prior consultation mechanism before the trade-related regulations' entry into force.

256. Prior consultation on new and amended rules before their entry into force would contribute to further transparency and predictability. A reasonable time span could be left for consideration of the drafts in principle. However, duty and tax regulations and enforcement concerns, which might pose urgency in respect of national priorities, should be acknowledged as exceptional conditions in which governments should be free to regulate irrespective of time requirements. Bearing that limitation in mind, only the drafts of primary legislation should be required to be publicized prior to their adoption.

257. With regard to due process, Turkey believed that appeal procedures on the administrative level would be beneficial for the application of trade-related rules in a uniform and impartial manner. In respect of the release of goods, the extension of the scope of Article 13 of the CVA needed some further reflection on whether it covered the release of goods subject to a disputed decision with regard to health standards or consumer protection. Likewise, the release of goods in cases of disputes on tariff classification could also create problems. Tariff classification was a process lying at the heart of customs procedures which determined the applicable trade policy measures. Certain licensing or certification requirements might differ according to the results of classification tests. Turkey would appreciate if the proponents of that proposal could clarify it more.

258. As for the proposals on advance rulings, Turkey considered that their provision upon request by traders on certain specific areas such as tariff classification, origin determination or tariff preferences would be helpful to improve predictability. However, Turkey believed that the scope of the application of advance rulings should be defined clearly. Furthermore, they should be case-specific and binding only to the extent that the declared data was correct and that the relevant national legislation on which the ruling had been provided remained unchanged.

259. Lastly, Turkey fully supported the proposal by New Zealand of making the WCO's HS system a GATT discipline and a commitment for Members to use.

260. The representative of Chinese Taipei commented on the US documents TN/TF/W/12-14, agreeing with most of its suggestions.

261. On the proposed binding advance rulings, some developing Members, particularly LDCs, had been concerned about the coverage of such rulings. It might be appropriate for the Group to explore practical ways of refining the subjects covered. In particular, Chinese Taipei was of the view that the question of whether customs valuation should be included might require further discussion, in view of its inherent complexity.

262. Regarding the US idea of a “mutual recognition” of advance rulings between Members as a possible means to implement the proposed measure, it would be appreciated if the US could further clarify whether it was envisaged for the mutual recognition to be a bilateral or a multilateral mechanism. Also, Chinese Taipei wondered whether an international organization such as the WCO could develop an instrument for implementing that kind of measure in the future.

263. Regarding transparency and publication, Chinese Taipei strongly supported the suggestion in the US, EC, Japan and Korea proposals to clarify and improve relevant current transparency-related provisions under Article X by using the internet as the medium of publication. Regarding the implementation of the proposal, Chinese Taipei supported the idea of Members working together to seek the assistance of international organizations and to undertake country-specific technical assistance.

264. On the proposal to establish specific parameters for express shipments, Chinese Taipei shared the views of the US. To establish a sound logistical and supply chain-oriented infrastructure to meet the needs of a modern, “just-in-time” business environment, Members’ commitments to providing specific expedited procedures for express shipments were needed. That would contribute to their economic development.

265. Chinese Taipei agreed with the proposal to establish a “central function” within the government with the primary responsibility to interpret trade regulations, such as those relating to customs classification or customs valuation. That was a possible measure for further improving Article X:3 (a), which currently required that “each Member shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of the Article.”

266. The representative of the Philippines informed that the Core Group was currently preparing a list of questions for clarification on the first wave of proposals. The Core Group would also like to thank UNCTAD for their assistance and continued engagement with the Group in the form of workshops on Articles V and VIII issues.

267. The Philippines wished to seize the opportunity to offer some comments and raise certain queries in respect of the ‘first wave’ of proposals to review and clarify, in particular, Articles X and VIII of the GATT as contained in documents TN/TF/W/6 to W/16. The questions had been discussed with Members of the Core Group.

268. With respect to the proposals on Article X, the Philippines had serious concerns regarding the EC proposal (TN/TF/W/6) to require consultation with interested parties. While some countries, including the Philippines, notified and sought comments from affected private stakeholders prior to introducing legislation or important regulations as a matter of policy, the Philippines had serious reservations about having to consult and afford prior comment rights to other WTO Members as a matter of multilateral obligations before being able to introduce new legislation or regulations.

269. Clarification was sought with regard to the EC's proposal to require the provision of an appeal procedure, in which the EC seemed to suggest not only an appeal procedure within the same agency

or other body, but also ‘*subsequently to a separate judicial or administrative body*’. Was the intention for Members to establish a separate or additional judicial or administrative infrastructure to handle those administrative appeals? Given the resource constraints in most developing countries, the question had to be answered about who was supposed to cover the costs of such an establishment, as well as of the training of legal officers to hear such appeals.

270. With respect to Korea’s suggestion that ‘Members publish the laws, regulations, judicial decisions, administrative rulings as defined in Article X.1 of the GATT, and *advance rulings of general application and a binding nature*’ (TN/TF/W/7), the Philippines wondered whether the referenced rulings applied only to those relating to Art. X.1. Otherwise, the phrase ‘general application’ might be interpreted as being too broad and all-encompassing.

271. As for Korea’s suggestion that ‘Members were required to make any exceptions, derogations, or changes to the items listed above readily available, *non-discriminately* at no cost or cost.’, there might be certain exceptions or derogations which would necessarily be *de facto* discriminatory insofar as they would apply only to certain qualified transactions from certain Members. The Philippines therefore wondered how Korea intended to address those situations.

272. Korea further stated that their proposal for notifying the WTO Secretariat of ‘media through which aforementioned measures and amendments were published’ was a ‘somewhat weaker provision than the provisions in the TBT Agreement.’ And yet, reading through paragraphs 7 and 8 of document TN/TF/W/7, it would seem that the Korean proposal was just as strong, if not stronger, than the existing requirements in the TBT Agreement. As for Korea’s proposed notification and prior comments obligations, the comments on the similar EC proposal likewise applied. Paragraph 9, tiret 3 of the Korean document seemed to suggest a narrower set of exceptions regarding the ‘interval between publication and implementation’ than General Exceptions under Article XIV of the GATT provided. The Philippines wondered whether it had been Korea’s intention to afford a more limited scope of exceptions to the proposed obligation regarding the time period between publication and implementation of regulations.

273. Document TN/TF/W/8 by Japan, Mongolia and Chinese Taipei referred to the requirements under Art. III of the GATS to address concerns regarding transparency. In that context, it should be noted that, notwithstanding the legal mandate therein, compliance by most, if not all, Members with that Article remained quite low, if not problematic. The lack of compliance was apparent not just for developing, but also for developed countries. The Philippines therefore wondered whether similar GATS-like or even ‘GATS-plus’ transparency obligations would not result in similarly inadequate levels of compliance, especially if the intended scope and coverage of regulations was overly broad. The ‘Disciplines on Domestic Regulation in the Accountancy Sector’ (S/L/64) cited therein also had detailed elements of how increased transparency could work. However, those obligations were quite deep-cutting and were perceived to be too nervous by some who were familiar with services trade. There was a reason why those disciplines had not been extended to other specific services sectors. It would be prudent for Members in the NGTF to be even more prudent in adopting such elements, as they would then apply to *all* trade in goods, and not just a specific sector.

274. Paragraph 15 relating to ensuring predictability of regulations suggested to include ‘providing opportunities for interested parties including the private sector to comment on prospective trade-related laws and regulations’ as a ‘possible element of a solution’. The Philippines wondered whether that meant that other WTO Members were interested parties, in a way that a government had to seek ‘prior comment’ from other WTO Members before being able to implement a regulation. Under the same paragraph 15, it was suggested that Members develop an ‘advance ruling system’. The Philippines wished to request clarification on that point.

275. In paragraph 19, in regard to impartiality and uniform administration of trade regulations throughout the Members’ territories, it was suggested that Members develop a ‘compilation and

distribution of casebooks of cases and examples of customs classifications and customs valuation. The Philippines sought clarification as to who was going to finance the cost of such preparation.

276. Canada's and the US' proposals on advance rulings, and all the other proposals containing elements on 'advance rulings', would appear to fall outside the scope of the NG's mandate insofar as it fell outside the parameters of Article X. Whereas Article X appeared to refer to publication requirements, those proposals suggested an obligation to establish a distinct substantive system for issuing advance rulings. The Philippines wondered about the legal implications of such a proposal in the context of a possible (albeit still contested) applicability of the WTO's dispute settlement mechanism. Furthermore, for most developing countries which had not yet established such a system, there would be costs incurred. It therefore had to be known who was proposed to shoulder such costs. While there was a similar requirement under the Rules of Origin Agreement for the purpose of assessing origin, the additional elements proposed to be subject of advance rulings relating to tariff classification, applicable rate of duty or tax applicable upon importation were quite distinct and different, and might require more specialised competencies. Therefore they did not represent limited incremental costs as Canada had claimed.

277. With respect to the proposals regarding Article VIII, Chinese Taipei had proposed the prior release of consignments and the conduct of a thorough review of the documents of selected consignments after release (TN/TF/W/10). The Philippines' experience and also the experience of other Core Group Members had shown that such a system failed to address problems relating to importations made by fly-by-night entities or one-time import operations, the juridical entity for which then disappeared after the importation was made. Once the entity disappeared or the entity's corporate address turned up empty and irrelevant once the post-clearance audit was sought to be conducted, the risks associated with such a proposed system became apparent. The Philippines therefore wished to know how Chinese Taipei intended to address those problems. Chinese Taipei also proposed the use of the WCO Customs Guidelines for Express Consignments as a 'reference.' In that context, the Philippines wished to know whether the intention was to make that document a legally binding 'reference paper'.

278. In document TN/TF/W/14, the US suggested as a proposed next step in the negotiations that 'Members develop specific parameters for the application of fees.' From the Philippines' perspective, it would appear that a sufficient parameter was already laid down, i.e., that it was 'limited in amount to the approximate cost of services rendered.' Further, harmonisation of parameters – to be applied multilaterally – bore the risk of failing to take into account existing differences in Members' infrastructure in the implementation of customs operations. That would appear to be particularly disadvantageous to developing countries. In the last tiret under the same section, the US seemed to suggest taking account of the work of 'International Organisations'. The Philippines wondered what organisations the US was referring to and who determined which work of those organisations should be taken account of.

279. Another US document (TN/TF/W/15) proposed 'separate expedited procedures' for express shipments, including individual elements such as 'an absence of weight or value restrictions on what was considered express.' While the Philippines appreciated the thrust of the US approach, several WTO Members might have carved out postal services monopolies on the basis of, e.g., weight restrictions, which might therefore be excluded under their legislation from the possible coverage of 'express delivery'. The Philippines wondered how the US intended to address that issue. With regard to the proposed next steps in the negotiations, it might be useful to cross-refer to the useful work in the services negotiations in relation to possible commitments in express delivery and express shipments.

280. The representative of Cuba said that as Members advanced in the process of clarifying the proposals in Geneva, their authorities at home would be in a position to assess the compatibility of those measures with the procedures and standards available in the respective countries and their

compliance with other international instruments. One could look at the feasibility of implementation, considering the fact that many of those measures would involve short- and medium-term investment infrastructure and staffing and would lead to reduction in fiscal income. There were major aspects with respect to North-South relations and as to whether all Members would depend on the skills of negotiators in achieving a result which would manage to combine expectations and realities.

281. Cuba shared many of the concerns raised by Members with respect to the scope and feasibility of the measures proposed as possible multilateral commitments, and would incorporate them in the joint Core Group's document presented in due time. Regarding proposals TN/TF/W/6, W/7 and W/8, developing countries generally had serious technological and infrastructural limitations as well as limitations in terms of qualified staff. Therefore, all of the proposed measures would involve major implementation costs in the short- and medium-term. Cuba needed a cost estimate and a menu of options with respect to S&D, TA&CB for implementation. S&D, understood as longer periods, was only one component of the assistance package required for implementing the results.

282. More information was required from the EC with respect to the type of assistance they were prepared to offer to developing countries, including LDCs, for the implementation of the proposals related to publication and the availability of information based on on-line access to information and the establishment of trade inquiry services to provide information on all the measures and regulations and trade agreements of Members. That would imply high costs in terms of new technologies and training. Cuba also wished to ask the EC what they meant by the clarification statement in paragraph 7 of the proposal TN/TF/W/6, saying that assistance would be given within the framework of their development assistance programme. Cuba wanted to know whether that was part of the EC 's normal development assistance programme or whether it was an addition.

283. Some of the proposals contained in TN/TF/W/6 and TN/TF/W/7 called for the establishment of consultation mechanisms and time-periods to provide comments with respect to proposed laws and regulations that would be open to the private sector and in some cases to comments by WTO Members. In both cases, there would be a possibility of having an influence on the content of new regulations. However, it would appear that the interpretation given to the scope of Article X referred to publication and implementation of laws and regulations and not to the substantive content. Cuba wanted to ask the EC and Korea if their proposals were in line with that interpretation or whether it really was a matter of extending the scope of Article X of the GATT. With respect to the establishment of a national coordination centre or single window to reply to enquiries made by other Members and interested parties on customs formalities and border-crossing issues, Cuba did not have such a centre and its establishment would require institutional reforms. Cuba shared the concerns expressed by other delegations in that regard and felt that more thought should be given to the desirability of adopting a system that only a few countries currently had in place. With respect to new notification obligations and the establishment of new information services, it would be a good idea to have a cross-cut review of all proposals in order to simplify the examination of similar measures. Cuba was not in favour of new notification commitments which would mean increased obligations.

284. Finally, Cuba wanted to thank UNCTAD for the assistance provided.

285. The representative of Egypt said that when talking about periodic review, it was necessary to know who was supposed to carry out such reviews. The proposal to grant WTO Members and traders the right to comment on the rules and regulations, with those comments then having to be taken into account, could not be accepted. As for advance rulings, that was a useful tool for the facilitation of trade, but there should be some kind of measures to assure its proper use.

286. The proposal on the parameters for fees (TN/TF/W14) was very general and had to be made more specific. Regarding Korea's call for the harmonization and standardisation of document formats in document TN/TF/W/18, Egypt was of the view that the WCO was doing a good job in finalising the WCO Data Models, which would be of great help in that context.

287. The representative of Jamaica said that the many new proposals showed the depth and the breadth of interest in the subject. Jamaica had interpreted the mandate of clarifying and improving relevant aspects of Articles V, VIII and X quite restrictively, assuming that it implied looking at what was actually contained in the Articles and what of the existing parts could be clarified and improved.

288. Some of the proposals went beyond that, seeking to incorporate new elements. They seemed to be intended more broadly on remaking the border procedures and, in some cases, even the procedures and regulations behind the border, which might not have any bearing on trade at all. For some Members, especially smaller ones, where 70 – 80 % (or even more) of GDP was connected with trade, imports and exports, those were sweeping and potentially far-reaching proposals in terms of their possible impact. Members should proceed cautiously and with full regard for the economic structure and levels of development of other Members. The WTO negotiating history contained recent examples of agreements that had turned out to have much more far-reaching implications than anticipated for developing countries.

289. Jamaica remained fully persuaded of the relevance of footnote 1 in Annex D, which said that work was without prejudice to the possible format of the final results of the negotiations and would allow consideration of various forms of outcomes.

290. Jamaica was keenly interested in pursuing the work of the NG within the parameters set out in Annex D, and was actively engaged in its own initiatives in reforming and modernizing customs and implementing other trade and business facilitation measures. In 2004, the World Bank had listed Jamaica as one of the 10 least regulated economies globally. Jamaica reiterated its view on the need for an inventory of what measures were in place in which Member states, especially with regard to the proposed measures. Jamaica would be very interested in seeing offices in which those measures were actually being implemented, as that would help in the evaluation of what was doable, and in what circumstances.

291. Jamaica fully supported the statement by the Philippines on behalf of the Core Group. With respect to the proposals, there were common themes. One of them was fees and charges imposed on or in connection with importation and exportation. The concerns expressed in those papers appeared to relate to what should be charged, the amount of charges and the transparency and notification of charges. The EC and Australia, for example, called for a ban of *ad valorem* charges to ensure that "administrative and operational costs not constituting a service associated with the treatment of imports and exports might not be imposed on such imports or exports". As indicated earlier, imports and exports constituted the overwhelming portion of the economic activity of some Members. Extensive administrative and operational costs were therefore associated with servicing trade. It was not clear, *a priori*, what administrative and operational costs did not constitute a service associated with the treatment of exports and imports and how the proposed prohibition would add clarity to Article VIII. It went without saying that fees should be transparent. Jamaica was also willing to discuss what the least costly method could be of achieving the fullest transparency. On the question of reducing the number and diversity of fees and charges, however, more information was needed to be able to proceed sensibly. Article VIII set out guidelines regarding the kind and amount of charges that were permissible. It was not known whether it was realistic or possible to list *a priori* in a specific way the entire universe of charges that fell within those parameters. That was something other bodies of the WTO had been established to deal with in the context of specific charges levied in concrete circumstances with which some Members had difficulties.

292. Japan's and Mongolia's proposal for a periodic review of the appropriateness of the amount and number of fees imposed on or in connection with importation and exportation was not clear in terms of whether such a review would be country specific or general, and who should carry it out. Chinese Taipei's effort to break down how costs of services rendered might be measured was straightforward. All of that was helpful, but there was little one could do *a priori*. It might be possible to reach agreement on broad categories of services that might not, or should not, fall within

the ambit, such as consular fees, but it would be very difficult to fix in law in a specific way the detailed fees and their amounts that were permissible, and qualify as being in connection with exportation and importation. One should not forget that it was the domestic economy and the importer who bore the burden of high transaction costs, including excessive fees. An important part of Members' work should be to promote awareness and activism amongst those constituencies, so that they worked to ensure that fees were reasonable and were connected to the services rendered on their behalf, with the fall back of judicial proceedings to be invoked in connection with the implementation of Article VIII, if necessary.

293. On import and export documentation requirements, Jamaica supported the use of international standards whenever possible. But there should be no obligation to harmonize. Regarding the use of photocopies, it was very important to prove the legitimacy of documentation. It was also important to achieve a balance between facilitation and control. Jamaica would have great difficulties in accepting photocopied documents. However, Jamaica's customs modernization programme provided for pre-arrival processing, allowing importers to submit documents well ahead of time and before the arrival of the consignment, so that a just-in-time effect could be achieved for a cargo which needed to be cleared particularly promptly.

294. The proposals on a Single Window approach had great merit in terms of the objectives pursued. However, Jamaica did not envisage them as candidates for binding obligations, due to their financial, technological and time implications. It did, however, support increased and enhanced coordination between the relevant stakeholders in that area in a non-binding form.

295. As for the proposal on commitments to release goods upon provision of collateral security or other sufficient guarantees, Jamaica was of the view that that might be onerous for small traders. It should in no way be a substitute for efficient, expeditious customs clearance, but should be considered an optional facility for traders upon request (as was the case in Jamaica).

296. Many proposals also sought to allow for prior comments from external parties on proposed customs rules and regulations, and to have their comments taken into account. That was normal procedure with domestic constituencies in Jamaica. Jamaica did not, however, consider it to be a matter for binding obligations with regard to other Members and external traders. Rather, Jamaica saw it as an important aspect of both improving transparency and developing rules and obligations which were broadly responsive to the needs of the trading community, domestically and generally.

297. A schematic compilation of the proposals in a thematic way would facilitate Members' consideration of them. Jamaica hoped that the Secretariat would give some attention to that.

298. The representative of Japan replied to the request for clarification on the proposed "publishing the decisions and examples of customs classification" in paragraph 9, page 2 of Japan's proposal TN/TF/W/8 that Japan proposed the measure because publicizing representative examples and past cases of tariff clarification, not limited to judicial decisions, would contribute to enhancing transparency and predictability on tariff classification. Japan did not expect all decisions to be publicized, but only representative ones. That was how it was done in Japan customs.

299. As for concerns expressed about the idea to "ban the collection of unpublicized fees and charges" (paragraph 9, page 3), the reason behind that proposal was that Japan received a number of comments from the private sector that the imposition of unpublished fees and charges often placed a heavy burden on traders. Japan believed that both publicizing fees and charges and prohibiting unpublicized fees and charges would contribute to enhancing transparency and predictability, and also to reducing the number and diversity.

300. As for the question as to how Members could calculate "the standard processing period for major trade procedures" (para. 9, page 3), the WCO had a guideline to measure the standard time

required for the release of goods, and Japan conducted "the Time Release Study" on the basis of that guideline and published the result every two to three years. In particular, Japan published: (i) the average time taken from the arrival of the goods to carrying them into the customs warehouse; (ii) time from carrying the goods into the customs warehouse to lodging the goods declaration; and (iii) time from lodging the goods declaration to the permission of the importation. The average time from the arrival of goods to the permission of importation had been reduced from seven days in 1991 to 2.8 days in 2004, and those goods included the goods requiring examination and inspection. That substantial reduction was the result of various TF measures Japan had taken. Japan recognized that the standard processing period differed from country to country, and also regarded the standard processing time as a reference for traders, not as an obligation for the government.

301. As for the request for clarification on the "legitimate purpose of imposing trade related restriction", particularly the meaning of "restriction" (para. 10, page 3) Japan believed that it was important to clearly state the legitimate purpose when introducing new obligations, for example when requesting the submission of additional information from traders for the sake of enhanced security against terrorism or for the sake of enhanced public health. Therefore, the restrictions in that proposal could mean both documentary requirements and procedural formalities.

302. Regarding concerns about the idea of publishing a summary of trade regulation to cause an additional burden and the proposal to make that happen as a best endeavour clause instead (para. 11, page 3), Japan would like Members to understand that that proposal was made with regard to the publication of laws and regulations on the WTO website in at least one of the official WTO languages. Japan believed that that was a useful means to further enhance transparency of Members' trade laws and regulations, but Japan was aware that that idea could lead to an additional burden. Therefore, in order to reduce such burden, Japan was suggesting publicizing not the laws and regulations but the summary of the main ones, so that traders could understand a Member's typical trade procedures. That was what Japan did on its official website in English in various border agencies in Japan.

303. As for the request for clarification in enquiry points, and the remarks about such enquiry points not having to duplicate existing enquiry points required by the TBT or SPS Agreements, Japan had no intention to duplicate the roles of various enquiry points, nor was it suggesting to create a single enquiry point to be able to answer all kinds of questions. As long as traders could obtain the necessary information or the right contact point to get the information they needed, the form or the number of enquiry points could be left up to each Member's discretion depending on the circumstances.

304. With regard to the request for clarification on the proposal on "explicitly stating the required trade procedures in the relevant laws and regulations" (para. 15, page 5), the reason for Japan making that proposal was that the trade procedures in relevant laws and regulations were vague, leaving much room for discretion and interpretation by officials. Private businesses complained that to be one of the reasons why applications of laws and regulations became inconsistent. Detailed procedures did not have to be defined in laws, as long as they were clearly defined in regulations or administrative rules and were published for the private sector, which was sufficient.

305. As for the request for clarification of the proposal to have "the central function to interpret trade regulations" (para. 19, page 5), Japan proposed the establishment of such a central function in order to ensure the impartial and uniform administration of trade laws and regulations within a Member's territory. Naturally, the central function did not have to produce interpretation of all aspects of trade laws and regulations, but they should work so as to prevent the different interpretations when there was such a risk, depending on, for example, the customs house or region.

306. With respect to concerns about the compilation of casebooks on customs classification and valuation going beyond the scope of Article X, Japan would like to clarify that the purpose of

compiling the past examples and cases in a casebook and of distributing such a casebook to border agency officials was to ensure the impartial and uniform application of trade laws and regulations by relevant officials. Therefore, Japan believed that the measure was within the scope of Article X.

307. On the question on the establishment of a complaint desk and whether that was part of an appeal procedure or an addition to the appeal procedure, Japan wished to clarify that the reason for making the proposal had been the conviction of the usefulness to establish within the border agency a desk where traders could lodge complaints in an easy manner before moving to the formal appeal procedures. The enquiry point could function also as a complaint desk.

308. Concerning the concerns and the question as to the idea of publishing major judicial and administrative decisions against lodged appeals and whether that could be done by the private sector (para. 20, page 6) the publication of major judicial and administrative decisions was one of the measures to enhance predictability and transparency. Japan did not expect all administrative decisions to be published due to confidentiality reasons. If the judicial and administrative decisions were publicized by private sector, the government must be already publishing such information. Private companies should be free to publish such information in the form of journals.

309. Regarding the concerns about the issue on integrity (para. 21, page 6), Japan believed that provision of sufficient training to relevant officials in border agencies, including the issue of maintaining integrity, was very important to ensure the uniform and impartial administration of trade laws and regulations as stipulated in Article X para. 3(a), and thus believed that the issue fell within the scope of the TF negotiations.

310. Some Members had mentioned that Article X already obliged the establishment of an appeal system and wondered why Japan was proposing the same on page 6 of its proposal, saying that the lack of proper implementation of an appeal system was a matter of lack of resources. The purpose of Japan's proposal was to improve the existing Article by adding some new elements such as the establishment of a complaint desk or the publication of major decisions. Japan recognized the concerns of developing Members to implement those measures, and would like to continue to discuss how to implement them, including the provision of necessary TA&CB together with relevant international organizations.

311. Some Members had also mentioned that the notification of laws and regulations to the WTO in one of the official WTO languages was burdensome to Members. The most important measure to secure transparency was for each Member to publicize its own laws and regulations promptly in their official website or gazette. However, in addition to that, it would be very useful, particularly from the view points of SMEs, if they could learn about the major part of trade regulations of various WTO Members through their access to the WTO website in one of the WTO languages. Japan recognized that that could be an additional burden for developing Members and therefore suggested that the WTO Secretariat or other international organizations could provide translation services. Another practical solution could be for the WTO Secretariat to establish a link on its website to Members' websites, as long as they published major trade laws and regulations in one of the WTO languages at home.

312. With respect to the comment from the Philippines regarding the issue of compliance with requirements, Japan was of the view that compliance was a very important subject. Japan did not want to see rules which could not be complied with and wished to have further information to increase the compliance with possible rules in the negotiations.

313. Regarding the question about advance rulings, Japan was of the view that at least rules of origin, classification and valuation questions should be included in that procedure.

314. As regards the issue of comments on potential laws and regulations prior to their implementation, Japan's position had already been clearly stated and did not require repetition. For

the private sector, such a possibility was very important to increase transparency and improve the quality of the laws and regulations.

315. The representative of Canada endorsed the comments made by Pakistan and Switzerland with regard to the issue of collateral securities. The objective of the Canada-Australia proposal was to enhance clearance procedures, not to impede them further. What Canada was suggesting was for customs to be required to establish procedures that would allow for quicker release of goods than would otherwise be the case, in the event that traders were able to provide customs with some financial guarantees. The proposal was not meant to require or to allow customs to impose monetary securities on all customs transactions.

316. Delays in release of goods at border points were often due to the fact that customs authorities needed time to determine the classification and the value of goods imported for the purpose of determining the duty to be paid. What Canada was proposing was to separate the payment process from the actual movement/importation of the goods, in order to accelerate the release of the goods.

317. Such procedures would provide traders with the possibility to have their goods released before customs completed the final clearance procedures should they wish to do so. Under such a system, customs authorities would feel comfortable releasing the goods before completion of final clearance procedures, as they would have the possibility of recovering duty owed in the case of default payment from the monetary security.

318. Regarding a point made by Chile on the specific circumstances Canada listed in its proposal where collateral securities might be used, Canada would like to clarify that they had been mentioned primarily for illustrative purposes. Canada agreed with Chile that circumstances might differ from country to country. Canada believed, however, that in cases with significant delays in final clearing procedures, it was important to provide traders with the possibility of having their goods released as quickly as possible.

319. In relation to the question from Kenya, Chile and Colombia regarding SMEs, Canada fully shared Pakistan's assessment in that regard.

320. On Kenya's query regarding the proposal's reference to Article 13 of the Customs Valuation Agreement, Canada would like to reassure Kenya that Canada had no implementation concerns in relation to that Article. The reason for mentioning the Article had simply been to illustrate that the concept of providing for the use of collateral securities already existed in the context of customs valuation, and that Members might wish to apply it in other circumstances as well.

321. With respect to the example provided by Mongolia in the case of goods in transit, Canada's proposal would not impede their movement. In Canada's view, goods in transit should not be subject to the payment of any duties, as long as they were not destined to the intermediate country. The Canadian proposal was relevant only to the extent that customs was in a position to impose duties on a given good.

322. Regarding the question of Paraguay as to how, in practice, such a system could work, Canada believed that there were different ways to implement such a system in individual countries, depending on the legal framework and the financial services system in place.

323. Finally, regarding Turkey's concern that release of goods on the basis of collateral security could possibly undermine controls, such as those related to specific licensing requirements related to tariff classification, Canada believed that countries should have reasonable flexibility in determining when release on collateral security might not be available, for reasonable and legitimate reasons. In Canada's experience, for example, goods subject to health-related or public safety requirements might provide grounds for the unavailability of collateral security. The release of such goods might require

the submission of more extensive information, their physical examination, and a possible re-assessment at the time of entry.

324. The representative of the European Communities replied to the questions raised by delegations with respect to the EC's submission TN/TF/W/23.

325. With respect to the concerns about the implications of the proposed measures on government revenue, the EC fully recognised that customs (and potentially other concerned agencies) fees and charges could be an important source of government revenue. The modalities stated that Members shall address the concerns of developing and least-developed countries related to cost implications of proposed measures. In taking the proposals forward, country experiences were potentially useful. In a number of interventions, Members had already outlined their experiences with Trade Facilitation reforms. More generally, a lot of work had already been done on country experiences by the World Bank and others, on which Members could draw in their work. There was a consistent finding that Trade Facilitation reforms boosted government revenue. Experience had also shown that, where there were costs, they were far outweighed by benefits. It was necessary to work together in the NG to address concerns.

326. As for the criteria for determining the legitimacy of fees and charges, the EC had proposed two elements. Other Members had come forward with additional ideas. A first element was disciplines or parameters on fees and charges inspired by GATT Articles VIII and V and dispute settlement rulings. A key element was that fees and charges should be related to the cost of services provided and not the value of the product. A second element was the establishment of a list of permissible fees and charges. That would be a useful way to decrease the number and diversity of fees and charges. There was need to reflect on the precise criteria. The EC did not yet have any specific proposal in that regard, but some useful ideas had come up in the discussions, such as the discontinuation of consular fees, which added no value and were unnecessarily burdensome on trade.

327. With respect to the questions raised on EC document TN/TF/W/6 and the expressed concerns on their scope of the proposed measures in relation to the modalities, the modalities defined the scope of the negotiations in terms of the clarification and the improvement of GATT Articles V, VIII and X. The text of GATT Article X had been unchanged for a long time. There were omissions and loopholes that needed filling in terms of clarifying and improving the Article. There was a clear need to ensure that information of use to traders was available to them, such as guidelines and guidance in terms of interpretative or explanatory notes issued by customs or specific border points. It would be useful to capture that to ensure that day-to-day business needs were addressed and clarified and improved rules had a real impact.

328. On the question about the meaning of "management plans", the EC was ready to reflect on the terminology but would like to capture the spirit of its proposal for the publication of information on management plans. Management plans could be seen as significant plans by customs and other relevant agencies, which had an impact on import, export and transit. Those plans could be related to the implementation of clarified and improved Trade Facilitation commitments and to potential WTO commitments. Examples included plans to switch to the electronic submission of documents and plans to change the functions of certain customs offices.

329. As regards the expressed concerns about capacities for internet publication, the EC believed that, where feasible and possible, there should be access to information on-line. Paragraph 2 of the modalities was clear on the link between implementation capacities and commitments. As proposals came forward, the Group could look at capacity issues and identify Members' current situations, their needs and priorities, gaps, cost implications and possible technical assistance needs. In the case of internet publication, the EC believed that the capacity implications would be limited.

330. As for the question of whether there was a need for multilateral rules on prior consultation, the EC considered that to be an important issue. The EC had focused on consultative mechanisms concerning traders. Other Members had come forward with other useful ideas (such as notifications, etc.). There was a need for prior consultation to ensure Members made informed choices and to help avoid unnecessary barriers to trade. There had been a positive experience with prior consultation under other WTO Agreements and the EC had a positive experience with its own consultation procedures (e.g., internet consultation on the reform of the Community Customs Code). Multilateral rules on prior consultation could help domestic reform, locking in good practice. It could help reform in trading partners.

331. With respect to the understanding of “minor appeals”, the EC considered appeals in cases of low value assignments, of imports by individuals and appeals in cases where duties payable were below a certain threshold to constitute relevant examples. A standard time should be set for their resolution. One should not lose sight of other appeals, which were also important and where improved disciplines had to be developed as well.

332. With respect to technical assistance, there was no equivocation on technical assistance needs in relation to commitments advanced in context of the Trade Facilitation negotiations. That was clear from the negotiating modalities. Certain proposals, for example on GATT Article X, might not be resource intensive. As proposals came forward, one had to look at Members’ situations, their needs and priorities, capacity constraints and possible technical assistance. The rapid submission of proposals was important to facilitate that. The EC and its Member States were main donors of technical assistance. Trade-related assistance was a priority for EC development co-operation and Trade Facilitation was a key element of that. The EC worked closely with recipients to identify projects, both ongoing and planned, and also worked in close collaboration with international organisations.

333. As for the requested clarification of the EC’s appeals proposal, the EC was of the view that appeals to a body issuing a decision were potentially the easiest and quickest way to resolve disputes. If a dispute could not be resolved by that, there should be the possibility to appeal to a separate independent body or agency. One had to look at resource constraints and a possible role for technical assistance.

334. The representative of New Zealand agreed with Switzerland on applying an objective standard in tariff classification and on requiring all Members to use the HS system. For most Members, it was already the practice. New Zealand saw a role for the WTO in ensuring that Members applied an objective standard to all tariff classification procedures.

335. As for the concerns raised by Kenya, Fiji, and Antigua and Barbuda about the proposal for Members and traders being given the right to comment on proposed rules/procedures/policies with commercial effects to go too far with respect to inputs and ideas from outside their domestic stakeholders, New Zealand wished to recall that its suggestion was very similar to the kind of obligation already existing in other WTO Agreements such as the ones on Technical Barriers to Trade. It would be anomalous not to include a similar provision in relation to Trade Facilitation measures. Also, what New Zealand proposed would not diminish or remove the sovereign right of Members to introduce measures, but would simply seek to ensure that such measures were well-founded. The idea was to provide a mechanism to better involve the players directly affected by new rules, regulations and procedures relating to Trade Facilitation. That would not only mean that decision-makers were better equipped to make fully-informed decisions but also help ensure that those directly affected by their decisions had at least the opportunity to register their viewpoint.

336. Chile's and Singapore's questions about New Zealand's suggestion to agree on more precise and operationally-effective provisions to minimize documentation and develop a menu of standards to that end raised useful points about how that might work in practice. That should be considered further

as Members developed the proposal. The background to that proposal was that New Zealand had been hearing from its traders about excessive documentation requirements in many Members. At the same time, New Zealand had found it hard to get a sense of the scale of the problem. The impression had been that there was little understanding about Members' current administrative and documentation frameworks and that it therefore would be useful to begin with a one-off notification of documentation and entry systems which Members currently had in place or in preparation.

337. New Zealand recognized that it might seem ironic to ask Members to create more paperwork in order to then be able to reduce it, but saw it as a necessary first step. Based on that information, Members could then look at practical ways to minimize documentation requirements at the border.

338. Korea's proposal to accept copies of documents and harmonize and standardize documents might also be a useful part of the menu for reducing excessive documentation foreshadowed in New Zealand's proposal.

339. The representative of the United States replied to questions raised with respect to the US proposals.

340. With respect to internet publication, one of the questions received from India expressed concern about judicial decisions having to be published by the government against the background of private reporting companies doing publications of some of those decisions in India. The US wondered whether India could define its question since it believed that Article X already required judicial decisions to be published promptly in such a manner as to enable governments and traders to become acquainted with them. The US assumed that India was not suggesting to eliminate that publication requirement as an improvement or clarification of Article X. The US proposal on internet publication was based on the US conclusion that internet publication was an even more cost-efficient way for a Member to meet a commitment on publishing decisions, regulations and the like. The United States knew that, sometimes, that could even be accomplished as easily as through a simple hyperlink to another website where such decisions would be available. In that regard, the United States welcomed India's question as it raised the need for working together on further refinement as Members clarified what publication commitments should exist for a 21st century trading environment.

341. The US' comments on internet publication were also relevant to Kenya's question about the sufficiency of federal gazette publication. First, the United States would like to note as a practical matter that Kenya's revenue authority had taken an excellent approach to maintain a comprehensive internet access to its customs legislation, tariff schedules and other information, even providing the ability to quickly download the forms needed for customs transactions. The United States would like to see that undertaken by other countries, representing potential markets, where they could not afford to hire someone to check the official gazette. While there were important gains from the positive effects of enhanced transparency, internet publication was also far less costly than physical publication.

342. Concerning advance rulings as an initial matter, the United States agreed with Egypt and others that such rulings would not be applicable in the case where customs determined that the party who obtained the ruling misrepresented the fact of the transaction. Several Members had asked about the scope of Article X and how advance rulings fitted within that. The United States was of the view that it was clear that a proposed commitment for an advance ruling regime represented a significant improvement to the current provisions governing "the publication and administration of trade regulations" as stated in the title of Article X. Notably, the first provision in Article X reflected the relationship between transparency and certainty. It articulated a commitment to publish a wide range of items on specific matters such as tariff classification or valuation "in such a manner as to enable traders to become acquainted with them". The ability to become aware of the treatment to be accorded to one's own goods upon importation, in advance of the importation, was the very core of Article X's 1st paragraph. Already in 1947, the value of providing certainty to the smooth flow of

trade was acknowledged. A rulings regime improved what was already set out in Article X, providing even greater certainty in advance of the trade being conducted. And that was a benefit to traders and customs authorities alike.

343. Concerning the scope and subject matters for rulings, the United States appreciated all the comments. That was exactly the kind of exchange Members needed to conduct. The United States looked forward to addressing those topics in greater detail as work proceeded. The United States also fully agreed with Jamaica that country experiences in undertaking those measures were highly relevant to the consideration of such a proposal. More information would be provided.

344. Regarding Chinese Taipei's question on what the United States had in mind for mutual recognition regarding rulings, the United States did not yet have a specific proposal. What the US had in mind was for all Members to explore together the possibility of that commitment being implemented through means other than for each Member to establish a ruling regime. The United States believed that there were perhaps other options such as maintaining a regional authority or other mechanisms such as bilateral or plurilateral mutual recognition. Or, using experience outside the capacity of some Members. It was necessary to work closely with those Members and to further refine and explore those ideas. The US would not preclude a role for the WCO.

345. As for express shipments, express delivery as an industry was moving away from simply shipping high priority documents. That was still being done, but it was moving in the direction of shipping components for manufacturing. The global economy had really changed over the last 20 years. Manufacturing operations had become inter-continently integrated with the production of parts occurring in one country and final assembly occurring in another, half-way round the world. Size and weight limitations on express delivery services made investment decisions in many developing countries more problematic and could prevent investments altogether. Many manufacturers had high-value electronic components, for instance, such as robotic controls from manufacturing assembly operations and needed express delivery to send replacement parts to customers all around the world, because it was too costly to maintain an inventory of replacement controls at the assembly site or to shut down the assembly operation to wait for the replacement parts. Restrictions on value which India enquired about could prevent express delivery companies from meeting that need in the market. Mining operations in developing countries had also been made feasible by the capability of highly sophisticated mining equipment to diagnose its own mechanical operations into transmitting a signal by satellites if a pending failure was detected. Replacement parts for mining equipment were often huge and restrictions on the size of express shipments could make it much more costly, if not impracticable, to use the most modern mining equipment in developing countries. Those were just a couple of examples of why there should not be either value or weight limitations on express shipments. The global economy continued to change in ways that could not always be foreseen. But the need for rapid and reliable logistics was certain to be part of the economy in the future. Placing arbitrary limits on the ability of express delivery companies to serve customers and countries did not serve any evident purpose and could have significant adverse consequences.

346. The representative of Korea replied to the questions on the Korean proposal to accept copies of documents that the relevance of information on originals was already at the hands of customs authorities or other relevant agencies or customs brokers. If there were originals and there was information, copies could be accepted. Also, when traders were not able to provide originals in a speedy manner copies could be accepted first if the originals could be provided later. As for the type of copies, examples included bills of lading, invoices and relevant certificates of imported goods. With respect to concerns about falsification and fraudulent intent, Members could always request originals at a later stage, and if false intention was found, penalties could be imposed. The temptation to deceive documents was usually stronger with respect to originals, so that there was reason to mistrust originals, while there was no need and no temptation to deceive copies as the originals were already in the hands of customs authorities.

347. As for the question on the suggested establishment and publication of average release and clearance times, defining the average time should be left to individual Members, as every country's situation was different. Korea did not envisage one universal set of average time. There were some international guidelines, such as the WCO's Time Release Study, that could be used.

348. On the proposal for a Single Window for data and documentation submission, Korea felt that establishing such a Single Window was not a simple task. However, it was one of the pertinent means of facilitating trade. Therefore, Members should recognize such a system. With respect to the harmonization and standardization of document formats, Korea proposed to use the WCO Customs Data Model and UN Layout Key because it had been designed and created by experts in the field.

349. With respect to the questions on Korea's first proposal (TN/TF/W/7), the suggested Single National Focal Point could be created by internet websites for virtual offices, or Members could set up an enquiry desk, depending on their capacity. The actual choice on the type of agency would be left to the Member country. The main suggestion was for the Focal Point to deal with all the information and facilitate information distribution and sharing. As for the envisaged interested parties as addressees of the information, Korea basically intended to include both domestic- and international parties. Korea was, of course, also sharing information with all domestic interested parties, but wanted to expand that mechanism to the WTO level. As for the media used by Members for publication, Korea had mentioned that both internet websites and widely accessible means such as official gazettes could be a reasonable tool.

350. As for the Philippines' comments on the coverage of publication and whether advance rulings of general application was related to Article X.1, Korea would revert to that at a later stage. With regard to the Philippines' concern about the prior comments system, Korea proposed only a very limited fashion aimed at reviewing core measures, which did not go beyond commenting. Korea did not demand any revision or accommodation of the comment. It would be up to each Member to decide on whether to accept the comment. In that sense, Korea's proposal was no stronger than what was provided for in the TBT Agreement.

351. The representative of Australia agreed with Egypt that advance rulings were a good tool to facilitate trade. Australia's proposal accommodated the concern raised by Egypt that there should be no commitment for the customs authority to issue an advance ruling if there was a misdescription of goods. In particular, Australia envisaged that the customs administration could decline to issue an advance ruling if the request was incomplete or inaccurate. Moreover, as noted in paragraph 4, customs authorities would have the option to modify or evoke an advance ruling immediately, should circumstances change or where inaccurate or false information had been provided.

352. The representative of Chinese Taipei replied to Chile's question on whether Chinese Taipei used the proposed calculation tables for its fees that that was indeed the case. All fees imposed by Chinese Taipei's customs had been adopted on that basis. However, as those kinds of calculating tables had only been introduced two years ago, more time might be required to adjust some fees on that basis.

353. With regard to the proposed periodic review, it was Chinese Taipei's experience that such reviews could be conducted by competent government agencies to evaluate the necessity and appropriateness of the levels of the applied fees and charges so as to reflect the approximate costs of service rendered. The review should take into account the changes for administrative costs and expenditures as well as other relevant factors.

354. As for the proposed one-stop services, the goal was to set up such a facility at every clearance station to provide a full range of services to business sectors and to resolve promptly the problems, especially regarding clearance. Currently, around-the-clock services were provided for all express consignments and cargos to be released alongside the aircraft or ships. For some import and export

shipments, customs assigned an officer to process urgent importation and exportation, if advance applications were duly made. However, at the moment, Chinese Taipei only wished to recommend that information centres or enquiry points were established, which was more feasible.

355. Regarding the Philippines' comments on the proposal to use the WCO Customs Guidelines for Express Consignments as a reference, Chinese Taipei had just been informed by the WCO that the title of the Guidelines had changed to Guidelines for the Immediate Release of Consignments by Customs. The Guidelines had no legal character or binding force. As for the question of whether Chinese Taipei wanted to make those comments a legal binding reference, Chinese Taipei was open to discussing that further.

356. The representative of Uganda responded to the questions raised by delegations with regard to document TN/TF/W/22, noting that it would add more clarity to the three Articles.

357. As for Romania's request for information on how many countries still used consular fees, that information was not available to Uganda. While it might not be possible to list the specific countries which continued to apply the practice, there were certainly many which still did. There were some initial findings pointing to that and efforts would be made to revert with more figures at a later stage. What was clear was that the problem existed and that Ugandan traders had repeatedly complained about that. In the case of Uganda, some countries charged consular fees at the destination of exports of major interest to Uganda. The level of those fees posed a major constraint to expanding and sustaining Ugandan exports to those destinations.

358. As for the question raised by Kenya on why the issue had taken so long to be resolved, it was apparent from the negotiating history of Article VIII that the issue had always been recognized as an impediment to trade. It was an issue that ought to be discussed and resolved. One must recall, however, that the emphasis on revenue implications probably were at the heart of the matter. However, when one recalled that Article VIII prohibited the collection of fees and charges for fiscal purposes, the argument did not hold water. Therefore, Uganda believed that instead of dwelling on why it had taken so long to resolve the issue, the focus should be on what could be done, and one should seize the opportunity to eliminate such fees. The reduction that that would have on transaction costs which would allow Ugandan exporters to participate in international trade. It was a great opportunity for Uganda within the context of the Doha Development Agenda to score development results. The Doha Development Agenda should be seen as a development Round and for Uganda, facilitating trade lay at the heart of development and therefore, any efforts to ensure that trade was facilitated and that the smaller countries, particularly the LDCs and the landlocked countries, gained much from the trade, would facilitate their development. Therefore, Uganda saw that issue as an issue of development.

359. The representative of Kenya said that Members had to remind themselves that clarifying and improving the three Articles did not necessarily mean creating additional obligations. Work had to be restricted to the three Articles. Looking at what happened on the ground might lead to broadening the mandate, which was not the purpose of the Group's exercise. Good work was being carried out, but Kenya was questioning the need to have rules on those areas if things were working well. One should try not to kill the currently existing motivation in going beyond the three Articles. The advance ruling proposals, for instance, did not qualify since Article X talked of laws, regulations, judicial decisions and administrative rulings of general application, while advance rulings were quite specific. Furthermore, Kenya wondered whether binding rules were needed for that purpose.

360. The comment about establishing an internet facility not being costly was not helpful. What was required from the proponents was a picture of what exactly a proposed measure would cost to be implemented. That would help developing countries that had not even been able to identify their priorities to know what kind of assistance they needed. So far, this was not coming out clearly.

Developing countries needed to know what would be required to undertake the proposed measures without committing themselves to anything.

361. New Zealand's principle on which they based their proposal on prior consultation went against some other WTO principles. Agreeing on comments before a measure's entry into force, while at the same time also having agreed on certain parameters for domestic laws, went beyond the improvements Members needed to make in the course of the negotiations. It was gratifying to hear from Korea that those comments would not have to be taken into consideration. But that also posed the question about the purpose of the whole exercise.

362. The US comments on express delivery reminded Kenya of the need to have trade facilitation in services. Kenya was not sure whether that fell within the mandate but if it was to be considered within the NGTF, one could consider the possibility of looking at mode 4, as that would also facilitate trade in services.

363. The paper prepared by the World Bank was welcomed. The points mentioned on pages 4 and 6 could help Members rethink whether the proposals actually fell within the Group's mandate.

364. The representative of India clarified in response to Japan's observations that, the comments about judicial decisions being available in public domains were references to them being available with the government as a first step. That was not the case in India. In India, those judgements were pronounced by the courts and from the courts they were made directly available to the public. The government did not have a role in that. India did not want to take away the commitment which was already provided for in Article X regarding the publication of judicial decisions. India was very much aware of the value of transparency of judicial decisions. India's suggestion was merely to have the realities of the 21st century taken into account and to see whether transparency requirements always had to be complied with by the government or whether it was not also possible to meet the transparency requirements through other domains. Would that not be enough to fulfil that commitment? In India, there was a lot of private publication which would make India fully compliant with transparency obligations regarding judicial decisions.

365. The representative of the World Bank said that a successful and ambitious outcome from the negotiations was good news for all. LDCs and developing countries probably had the most to gain from the process. The Bank was very interested in supporting the process to the extent possible.

366. Based on Annex D and its specific mention of the World Bank, the Bank looked very hard to see how to best contribute to the process and really add value based on the comparative advantage that the Bank had. Soundings had been undertaken with negotiators involved in the process. Two possible ways had emerged from that on how to go about it. The most obvious was in terms of long-term development finance for implementing anything that came out of the negotiations. But the Bank also felt it could play an active role in better equipping Geneva-based negotiators to actively participate in the negotiations process as such. A Trade Facilitation Negotiations Support Project had therefore been developed, which was fairly simple.

367. The project itself was based on four key assumptions. The first one was that the subject matter was rather technical and sometimes complex. While the proposals looked simple, there was actually a lot of data that needed to be worked out. For non-customs or border processing experts, that could be quite difficult. The second assumption was that many developing and least-developed countries only maintained relatively small offices in Geneva, with the officials stationed in those offices having to cover a broad range of issues. They had no time to develop the kind of technical expertise required to participate in the process as fully as they possibly should. The third assumption was that negotiators did not have timely and real time advice from their capitals, which was something that had repeatedly been reported to the Bank. Therefore, when proposals were put on the table and sent back to capitals,

the responses were often not as timely or as comprehensive as they should be. It had also been assumed that, in many cases, the necessary coordination mechanisms had not been established yet.

368. The Trade Facilitation Negotiations Support Project was designed to assist those Members which felt that they needed such assistance to establish appropriate coordination mechanisms in their capitals. It brought together specialists from customs and other border management agencies to identify needs and priorities and implementation issues, specifically as they related to the WTO Trade Facilitation negotiating agenda. The second goal was to create a real time analysis and reporting link between Geneva-based negotiators and the capital-based experts. And, thirdly, the project aimed at supporting countries by providing an assessment framework to assist Members to examine the costs and benefits of any proposal made. The TA&CB needs of individual Members would vary, depending on how much had already been done on what the domestic capacity was and on what kind of arrangements existed in each country. The TA&CB needs donors and developed country Members would have to respond to would therefore vary from country to country. It was, therefore, also necessary for the Bank to actively work on that needs and priorities assessment process.

369. The Trade Facilitation Negotiations Support project had three core components. The first was the preparation and distribution of a Trade Facilitation Negotiations Support Guide, a copy of which had been made available for the meeting. That document was currently in draft form and the Bank was very keen to receive feedback from Members about it in any form. The guide was a self-standing tool. It was available and ready-to-use. Any Member could take it, read it and use it to establish the kind of coordination mechanisms mentioned previously. It was very practical, as opposed to theoretical, and it was non-prescriptive. Each country could adopt its own approach to that.

370. The second component dealt with conducting a series of pilot programmes at the national level to assist countries establishing those mechanisms and to test the relevance of the Guide. The Bank intended to conduct 6 or 7 of those that year, 3 or 4 before the summer. At present, and as a start to those programmes, the Bank was going into final details with 3 countries (Jamaica, Uganda, and Sri Lanka). The Bank was also looked at a French-Speaking African country as candidate for a pilot programme before the summer. As part of that approach, the Bank would also be looking at conducting some regional training-of-trainers seminars. The first would be in Latin America and the second one in Southern Africa.

371. The third part of the Project dealt with information and knowledge sharing. The Bank would be conducting seminars and preparing discussion papers about the core issues of concern to Members and would be doing whatever possible to share the lessons learnt from the pilot projects.

372. The Guide had 4 chapters. The first chapter provided some background and an overview of the negotiations. The second chapter offered some guidelines and advice on establishing effective coordination and consultation mechanisms. They were non-prescriptive and would vary from country to country. The third offered a very simple framework for analyzing the key issues involved in the negotiations. The Bank would assist countries to look at the costs, benefits and implementation issues associated with any proposals tabled in Geneva. The 4th chapter provided advice and guidelines on how to establish real time feedback mechanisms to allow capital-based experts to provide advice in a timely fashion.

373. The framework for covering those issues consisted of a number of elements. It looked at any legal implications of proposals that had been considered, as well as at administrative or procedural changes that were required to comply with potential commitments, which would depend on a country's particular circumstances. Looking at what had been proposed so far one could see that many of those measures had already been agreed on as a commitment under regional trading arrangements or bilateral agreements. From a customs' point of view, it was sometimes more difficult to have two systems in place than one. The framework would also look at coordination issues

between Ministries and agencies as not all of the things that had been proposed so far related only to customs. It would also look at financial and other resource requirements. As mentioned by Kenya, some of the things that had been suggested really did not cost much. But when put together, collectively, the costs could be quite significant for some countries. That was something that the process would assist in identifying. It would look at what the training, technical assistance and capacity building needs were, specifically as they related to the negotiating agenda. It would also look at the time requirements and difficulty involved to achieve implementation, which would have implications for the S&D issues. And most importantly, and perhaps somewhat understated so far, it would look at what the benefits to both governments and trade were.

374. Following the presentation of the draft Guide, the Bank would look at how to improve it further based on the feedback received. Then, the Bank would engage in a pilot project in April, with 2 or 3 more envisaged for May and June. The results of those pilots would be shared. The first one at the May meeting, and the next one at the June meeting of the NG. The Bank would also conduct additional national and regional activities after the summer. In all cases, the pilot programmes would be conducted with the full support and participation of the WCO. The Bank did, however, still need financial support to roll that programme out in the longer term. The Bank had obtained some funding for the initial 3 or 4 programmes but was looking for additional funding support from donor organizations.

375. The material the Bank was providing, not only the Guide but the programme for the national and regional workshops, lesson plan and any other supporting material, was always going to be public domain information. Therefore, if national donors or international donors would like to use that material to conduct their own workshops and seminars and pilots to assist Members to implement that tool, the Bank very much welcomed that. The materials would all be available for Members to take with them.

376. The representative of the OECD presented two documents prepared by the OECD. The first was a compilation of analysis documents the OECD Trade Committee had prepared during 2002 and 2003, addressing different aspects of GATT Articles V, VIII and X and related country experiences. The documents contained in the compilation were all based on proposals that had been presented by WTO Members in the period between end-2002 and Cancun on ways to clarify and improve relevant aspects of GATT Articles V, VIII and X. As the OECD had been involved in work on good regulatory practices in OECD countries and outside the OECD, it had been considered useful to share those country experiences with best practices and benchmarking with the WTO Membership, in order to support their efforts in clarifying and improving the 3 Articles under discussion. The trade community had decided to draw on their regulatory issues database in current good practices on how to bring transparency and simplification in border procedures. The compilation also contained two documents on experiences from developing countries that had introduced customs and border procedure reforms.

377. As for the content of the analysis in that special issue on Trade Facilitation, a review of the information collected by the OECD Trade Committee through its regulatory fund programme showed that many of the proposals WTO Members had put on the table in the area of Trade Facilitation had already been enforced in varying degrees in several OECD and non-OECD countries. Bilateral cooperation in regional or global integration appeared to be important driving forces behind the introduction of facilitation measures at the domestic level, with endeavours to enhance government efficiency and productivity through customs modernization and automation also playing an important role. But it also showed that there was much more to be gained if further coordination and simplification could be achieved, including through multilateral WTO initiatives.

378. Many of the proposals currently discussed had been analyzed in those papers, covering a variety of tools, including risk assessment techniques, the downscaling of physical inspection, cooperation between import and export authorities, pre-arrival processing of data, development of

Single Window mechanisms, post-clearance audits or special programmes for authorized traders. It showed that there had been different ways for implementing those tools. One size did not fit all in that area. Country practices demonstrated that very clearly. The document could give inspiration as to how possible commitments could be introduced and implemented at the national level.

379. As far as reforms in developing countries were concerned, it had been seen that countries had proceeded in customs and border agencies modernization because of a series of pressing symptoms of malfunction, unsatisfactory revenue collection and the fact that transaction costs imposed on businesses by inefficient customs operations were found to offset some countries' competitive advantage of low labour costs. Successful reform endeavours in developing countries had produced impressive results in terms of enhanced revenue collection and reduced operating costs, and often paid back quickly the investments made for customs modernization. What was important was to properly identify the problem areas and to coherently design reform programmes.

380. The second document was an analysis of customs fees and charges on imports by the OECD Trade Committee. The objective of the study was to provide as clear a picture as possible of the use of different types of customs fees and charges and the problems they might cause to traders. Data had been collected for that purpose from WTO Trade Policy Reviews, NAMA notifications and a number of other reports. The study showed that various types of customs fees continue to affect world trade, particularly in low and middle-income countries. Fees related to customs inspections and similar services were found to be applied by half of the WTO's Member states and customs surcharges were applied in a third of the reviewed Members. The study also revealed that the use of customs fees and charges had evolved over time. If one compared recent information with data collected in the early 1980's, the use of both customs surcharges and consular invoice fees had markedly declined and taxes on foreign exchange transactions now seemed to be abolished. On the other hand, more countries now charged quota fees for the use of various customs-related services. A great majority of all fees were applied *ad valorem* rather than with regard to the underlying costs of the service rendered. Half of the fees and charges applied by high-income economies were *ad valorem*, while the corresponding figures were around 3/4 in middle-income economies and 5/6 in low-income economies. The frequent use of high *ad valorem* fees indicated that several countries applied customs fees for reasons other than to cover the costs of rendering customs services. The paper concluded that, although GATT Article VIII required customs fees and charges to be limited in amount of the approximate costs of services rendered, frequent applications of high *ad valorem* fees and charges signalled that clearer guidelines on how customs fees and charges should be calculated would be useful and would remove some of the uncertainties regarding the legality of their application. In addition, a more precise definition in Article VIII:1 a of what constituted the services whose costs were intended to be reflected in the fees would also remove some of the uncertainties in the interpretation of the Article and potentially lead to a reduction in trading costs.

381. The representative of Sri Lanka considered the Trade Facilitation Negotiations Support Guide to be very useful for small delegations. Sri Lanka would have liked to have responded to some of the more than twenty-five submissions that had been submitted within the span of merely two meetings of the NG and have given a more detailed response like India, the US, Australia or other developed countries. Unfortunately, Sri Lanka lacked the capacity to do so. Support in identifying and recognizing real needs and in providing response in real time, as offered by the World Bank was therefore important to be able to engage in the negotiations effectively. The inclusion of Sri Lanka in that project would therefore be welcomed. It might enable Sri Lanka to then respond in substance, and in a more coordinated manner, involving all relevant agencies. The OECD documents, too, were useful.

382. The representative of Nicaragua considered the contributions by the OECD to be very valuable. A correction was however required regarding Mr. Engman's "Analysis on Non-Tariff Measures: Customs Fees and Charges on Imports", which made reference to consular fees being

applied in Nicaragua on page 34. Those consular fees had however been eliminated by Nicaragua in 2003.

383. The representative of Egypt wondered whether the OECD could help other countries in their regulatory reforms and what would be the mechanism for seeking such help.

384. The representative of the OECD thanked Nicaragua for the information. Unfortunately, it had not been possible for the OECD to check whether there had been any changes since the last Trade Policy Review. The data would be corrected.

385. As for Egypt's question, the OECD did indeed work increasingly with Non-Member countries on supporting regulatory reforms. In the context of the various cooperation programmes the OECD had with regional groupings, an initiative called "Mena" had recently been set up which could be of particular interest to Egypt. While its focus was more on traditional trade subjects, it was an easy path for enhancing cooperation on regulatory issues. There were other programmes dealing with regulatory issues in non-Member countries, one of them being carried out in cooperation with APEC. A series of self-assessments had been elaborated. The OECD was working on ways for assisting leading non-Member countries interested in tackling domestic governance improvements.

386. The representative of the WCO introduced the latest product of the collaborative effort between the WCO and the World Bank in support of the Trade Facilitation negotiations called Time Release Study Software. The Time Release Study (TRS) had already been briefly explained last November as one of the WCO instruments referred to in the Customs Diagnostic Framework. Given that one of the negotiating objectives was to expedite the cross-border movement of goods, the TRS might be of interest to WTO members. Designed to assist governments to measure the average time taken between the arrival of the goods (on the means of transport) and their release from customs custody, and at each intervening step, the TRS might identify problems and bottlenecks in the cross-border movement and clearance of goods. Its findings might be a base for identifying a country's trade facilitation needs and priorities. The TRS was also used to stimulate efforts to improve the efficiency and effectiveness of customs clearance procedures and, possibly, other government agencies' trade procedures. Egypt, Japan, Kenya, Korea, Malaysia, Poland, Sweden, Tanzania, Tunisia and the US had already used the TRS.

387. Assessing the findings might need some care, however. With respect to individual transactions, the variation from the aggregate average could be large, the time required for the release of goods widely varied depending on the mode of transport, character of goods, intervention of non-Customs agencies, compliance records of the traders, etc. In addition, different countries had different situations (e.g., number of cross border points, main mode of transport, trade patterns etc).

388. The IT software for use with the TRS had been produced in co-operation with the World Bank and Japan. It was currently being placed under final customer test conducted in the WCO. A field test had concluded last week in Tanzania. Upon the final fine-tuning of the software, it would become available to all the WCO members and members of the World Bank. Distribution of the software would be made on request. WTO Members interested in the software were requested to register their interest with the WCO Secretariat or through their customs administrations. That was also the case for other products such as the Immediate Release Guide, Customs Data Model and HS.

389. The representative of UNCTAD updated Members on UNCTAD activities related to the Group's work.

390. With regard to technical assistance in the negotiating process, a first workshop had been carried out with the Core Group on Articles V and VIII. UNCTAD also participated in activities for the African Group, jointly organized in the WTO by the ECA, ECE and UNCTAD. Cooperation was becoming really good.

391. UNCTAD had also started developing technical notes on issues related to the proposals submitted to the NG. A first one had been completed on customs automation and would be available soon through the GFP as the common platform of the organizations mentioned in Annex D. As for the Trust Fund, a series of activities were planned both in Geneva and in capitals. In Geneva, UNCTAD planned follow-up measures with the Core Group in April and May. There would also be seminars or workshops in Asia, Southern Africa and Latin America. Spain had announced a contribution to that Trust Fund for activities related to Latin America countries. Other donors were welcome to contribute.

392. An ad hoc Expert Group meeting had further been set up. The Expert Group meeting would take place in September, with the intention of placing the Trade Facilitation process into a development context. It would be organized together with the next meeting of the GFP in Geneva. Progress had also been made with regard to customs automation in the framework of ASYCUDA, which related to some of the proposals made in the negotiations such as those on risk assessment or authorized traders. 88 countries were using it now.

393. UNCTAD had also looked at the question of Single Windows in the context of a developing country, the results of which had been published in a document called "The Establishment and Operation of an Electronic Single Window, the Case Study of Guatemala", available on UNCTAD's website. That case study would also form part of the basis of a Trade Facilitation Handbook UNCTAD was finalizing. A first volume on institutional arrangements of Trade Facilitation dealt with Single Window arrangements as well as with national trade and transport facilitation committees UNCTAD had a lot of experience with.

394. The representative of the Philippines said that a recurring theme in the discussions within the Core Group had been country experiences. Case studies and concrete technical assistance such as the one on Guatemala was what developing countries needed to understand exactly what was required for the suggestions tabled in the various proposals. For instance, to evaluate the usefulness of the proposal to provide advance rulings, it would be most useful if those countries that had already experience with advance rulings could share their experiences in terms of what it entailed, how long it took them to implement it and at what cost. Only when having such information would developing countries feel comfortable and be able to seriously assess whether they would be able to move in the proposed direction. There might be some financial implications to that request, but, what was really needed were those country experiences. They should include a kind of history of what happened before those countries were able to implement something successfully. The Philippines therefore appealed to all international organizations and to those Members having presented proposals to provide assistance in that regard and document country experiences. It would be a valuable source of information for everyone.

395. The representative of Kenya informed that Kenya was one of the countries which had undertaken the Time Release Study, assisted by the World Bank and the WCO. It had allowed Kenya to find out why they were not able to meet the deadlines they had set for themselves to clear goods, which was 48 hours. One element of information that had emerged from that was that the blame was not on customs but on other cooperating agencies. For instance, customs authorities could not get their advance manifest in time. The study had helped Kenya see the necessity of acting as a team. The joint cooperation employed ever since really worked, allowing Kenya to conduct verification jointly with other organizations if required. It had also helped identify shortfalls and ways to overcome them.

396. It also made Kenya wonder whether there was actually need for binding rules. Everybody knew what was good for oneself, for one's traders and even good for those exporting to one's country. The way things were working in Kenya, with customs authorities and cooperating agencies trying to improve things, it would be sufficient to have some standard – non-binding - rules to guide Members on how to go about Trade Facilitation at the multilateral level.

397. With respect to the OECD, a clarification was required regarding Michael Engman's "Analysis of Non Tariff Measures Customs Fees and Charges on Imports". On page 31, Kenya was listed with a fee of 1% on the c.i.f value of agricultural value and suspended duties of up to 70% etc. Those figures had been relevant in 2000 but were no longer up-to date as the duties had been abolished. Kenya would be in touch with the OECD about that. Also with respect to charges, page 16 indicated that Kenya levied an import declaration fee of 2.75% of customs value. That was correct, but the rest of the information was not, as the 1% indicated as charged by the Kenya Bureau of Standards was actually included in the 2.75%. The information in the report seemed to have been based on the Trade Policy Review of 2000 which did not reflect the latest state-of-play.

398. The representative of Australia expressed interest in having more information on the technical notes UNCTAD had mentioned as one of its projects on some of the issues under negotiation in the Negotiating Group. It would be interesting to hear what they consisted of, how they were prepared, what sources were used to prepare them, what would be the topics, and whether there was an intention to make them publicly available.

399. The representative of Rwanda endorsed the statement made by the Philippines. Case studies would assist countries in participating better in the negotiations, in evaluating needs and costs and in having more confidence in the events taking place in the course of the negotiations. The presence of UNCTAD was welcomed. The case study on Guatemala needed to be highlighted as other countries might benefit from it. The presentation by the WCO had been interesting as well, and the software presented seemed very useful. Rwanda also appreciated the document presented by the World Bank, which was very useful for small delegations.

400. Given the pace of the negotiations, Rwanda wondered, however, to what extent the organizations mentioned in Annex D would be able to effectively help developing countries and the least-developed ones to better participate in the negotiations, to know their needs, assess the costs implications etc. What effective machinery could be set up in order for those countries to benefit from the know-how of those organizations? Needs assessments at national level or, as a minimum, at regional level were important for making progress in the negotiations. While UNCTAD's Trust Fund was appreciated, additional contributions might be necessary to cover additional regions such as East or West Africa. If each organization could inform as to what they had set up to assist those countries, at least in making a needs assessment before July, that would be useful. A joint meeting between those international organizations, the African Group or the LDCs could assist in that regard to see to what extent those organizations could assist those countries.

401. The representative of Egypt emphasized that the data included in the OECD report needed to be corrected because its data depended on the Trade Policy Review published in 1999. A new Presidential Decree in Egypt Number 300 enacted in August 2004 had changed many of tariffs. Since that time, Egypt did not levy a 2% or 3% surcharge on goods and services. The data therefore had to be revised.

402. The representative of China corrected a section of the OECD report on non-tariff measures, on customs fees and charges on imports. Annex E of that report mistakenly claimed that China had notified an overhead of 0.15% of declared value levied by customs on all commodities. That information dated from 2003 and was no longer up to date, as that kind of fee had actually been abolished last year.

403. The representative of the United States said that the requested corrections of the OECD document underlined the compelling need for enhanced transparency of fees and charges on the internet by all WTO Members. If such a system were in place, there would not be that much confusion. The OECD made their best efforts to collect that data based on the information available, but trying to get the information all in one place was obviously quite difficult. That underlined the case for the transparency proposal made by the United States.

404. Korea's proposal articulated several key elements of modern techniques. Its focus on the importance of timely clearance and release of goods was closely linked to the fundamental element of systematically providing the means of rapid release of goods through a guarantee such as a surety or bond. New Zealand's submission also made the case for focusing on how to ensure rapid clearance. The United States looked forward to working with Members to explore and refine an approach and how best to proceed in that area.

405. The Japan-Mongolia submission (TN/TF/W/17) touched on a number of important elements that should be addressed in the negotiations through concrete improvements to current commitments under Article VIII. The US agreed with the discussion about the need to clearly state and publicize penalty provisions and problems caused by inappropriate penalties for minor breeches. That disproportionality particularly harmed SMEs. Article VIII needed further clarification and improvement on that point, to give more certainty to traders and authorities on those questions. The US intended to submit concrete proposals along those lines very soon.

406. There was a need for improving and clarifying procedural fairness. The US agreed with the EC's submission on those matters and also intended to submit some proposals along those lines very soon, consistent with what had already been submitted by Japan and the EC.

407. The US was not sure whether a dedicated session was needed on the proposals on authorized traders. The recent discussion suggested that Members had different interpretations.

408. The EC's and Australia's proposal on fees was welcomed and seemed to build on the US proposal tabled at the last meeting, developing and refining the elements. The paper contributed to the needed refinement and development and represented a model for progressing on a particular issue. Its intention to capture some of the clarification brought in the context of past dispute settlement cases was familiar to the one pursued by the United States. It was a good basis for filling in whatever blanks might exist, which would result in greater certainty. That was also the case for the paper by Chinese Taipei. Its cost analysis suggestion might prove valuable as Members refined their work on fees.

409. The US also agreed on the suggestion to discontinue consular fees and to establish a list of permissible fees and charges. The paper appeared to build on the previous US proposal for greater transparency and added elements requiring a presentation of a justification for fees. That idea was interesting as well although it would require Members to closely work together. Many Members had an interest as exporters facing such fees, while at the same time, also implementing those fees, which enhanced the opportunity for a workmanlike approach, to bring in clarity and improvement.

410. The United States welcomed the paper from China, especially its reference to the importance of internet publication as the first option of publication and the proposals on enquiry points and commenting periods before the implementation of regulations.

411. The US looked forward to further refining the proposed commitments.

412. The representative of Malaysia said that Malaysia found the proposals very useful for Members to continue to facilitate the negotiations on Trade Facilitation.

413. With regard to paper TN/TF/W/17 from Japan and Mongolia, Malaysia had a concern regarding the suggested periodic review on fees and charges and also on import and export formalities. Malaysia sought clarification on the mechanisms for such periodic reviews. Clarification was also solicited with respect to the proposal to conduct risk management, and provide authorized traders with a high level of compliance with trade-related laws and regulations. Malaysia sought clarification of the definition of "high-level of compliance". Malaysia equally sought clarification

from Japan as to what had been the intention when suggesting the introduction of benchmarks on high-level of compliance.

414. Clarification was further sought regarding the proposal to establish and publish average release and clearance times by Korea in document TN/TF/W/18. It was important to know Members' different capacities. Malaysia provided different levels of time for the release of goods. Malaysia wondered whether Korea would also be looking at certain standards of time for the release of goods.

415. The proposal on the use of a Single Window was useful. However, some Members' limited resources should be taken into account. Coordination among agencies also had to be addressed.

416. Malaysia agreed there was a need to address consularization, as stated in the paper by Uganda and the United States. It would provide efficient movement of goods across borders and benefit traders. Malaysia would like to suggest for the sponsors of the paper to list the consular formalities, fees and charges imposed on traders.

417. Malaysia had also concerns regarding the proposal by China (TN/TF/W/26) on commenting periods on measures, laws or regulations prior to their implementation. Malaysia would like to seek clarification on the interest that proposal would serve, given that rules and procedures needed to be implemented immediately based on national interest. Therefore, the determination of the reasonable time to be provided before the proposed measure was introduced should be left to the discretion of the authorities.

418. The representative of Turkey commented on the proposals regarding Article VIII.

419. The proposals on pre-arrival clearance by Chinese Taipei (TN/TF/W/10) and Japan (TN/TF/W/17) were appreciated as useful for the facilitation and acceleration of the supply chain. Turkey wondered whether it would cover all traders who would like to benefit from it, or, whether it was restricted to authorized traders with an acknowledged establishment and the ability to guarantee a proper use of their privilege.

420. Turkey also supported the suggestions in those proposals on the use of risk management techniques in customs clearance and post-clearance audit option in customs formalities as well as simplified procedures for authorized traders. Further elaboration would be welcome.

421. Japan's proposal to arrange import and export formalities in compliance with international standards elaborated by several organizations was supported as well. Turkey would appreciate if Japan would provide an illustrative list of international standards on import and export formalities to be disciplined under the prospective agreement so that each Member could elaborate its own conditions.

422. Turkey also considered the acceptance of copies of certain documents used in import and export formalities. Turkey accepted copies of invoices that must be appended to customs declarations on the condition that the originals be submitted in 15 days. Failing to do so resulted in annulment of the operation from the outset. Turkey was open to further consideration of Japan's and Korea's proposal.

423. Turkey further supported Korea's idea of the harmonization and standardization of documents used in import and export as well as the minimization of document requirements within the limits of the administrative capacity of competent authorities. In that context, the use of generally-accepted international standards or recommendations on documentations developed by organizations such as the relevant UN bodies, WCO etc., would be helpful to reduce the formal errors and processing time in trade operations. Also, regional initiatives to approximate legislation concerning border operations and data exchange agreements should be encouraged and acknowledged in standardization efforts.

424. Turkey positively approached the proposals to discipline the fees and charges collected in relation to import and export. The number and diversity of fees and charges should be reduced and the amount of these should be proportionate along with the cost of services rendered.

425. The representative of Egypt said that, assured about the benefit of using the pre-arrival process, Egypt had started to apply a system for pre-arrival clearance more than a year ago. A national center had been set up, with it being possible to use such a system at 170 borders posts, where it was possible to submit copies of the documents and make declarations, pay the customs duties, identify the proper classification of the goods as described in the documents, with the duties being calculated accordingly. Later, when the goods arrived, officers at different ports, who were linked via computer with the centre, would carry out an inspection, if needed, with the computer identifying whether a good should be considered for green or red channel treatment. The outcome from that project had been more than positive, both for traders and the government. As a result, the projected had been expanded.

426. The representative of Japan replied to the questions and comments made with regard to the suggested periodic review of fees and charges, formalities and documentary requirements, noting that it was essentially the responsibility of Members themselves to review their fees and charges, formalities and documentary requirements. As time went by, the factors to justify the level of fees and charges, formalities and documentary requirements might change, and they needed to be properly reflected in a country's laws and regulations. At the same time, when carrying out such reviews, it was very important to listen to the comments and opinions of the private sector and other Members.

427. It was necessary to further clarify the periods for review and the criteria against which to check the appropriateness, but Japan recognized that those parameters would be different from country to country. With regard to the method of publishing fees and charges, Japan proposed that Members publicized them through their official gazette or official website. A question had been raised in that context as to why Japan addressed that issue in Article VIII rather than in Article X. Japan believed that the publication of fees and charges was related not only to Article X, but also to Article VIII, because publicizing the fees and charges would contribute to reducing their number and diversity, which was an issue for Article VIII. It was necessary to further elaborate how such a review process would be carried out. Naturally, it would focus on trade facilitation aspects, and complement other procedures such as the TPRM.

428. As for international standards, there were already international standards existing for some parts of trade procedures or formats, and it would be reasonable to try to base one's procedures and format on them (such as, for example, the WCO's Revised Kyoto Convention, the IMO's Convention on Facilitation of International Maritime Traffic, the UN Layout Key, UN/EDIFACT or the WCO Data Model). Japan recognized that developing Members might have difficulty in adopting those standards within a short timeframe, and that there was a slight difference between the membership of the WTO and those of other international organizations. Therefore, it would be difficult to expect all WTO Members to formally accede to such international standards. For that reason, Japan used the wording "use of international standards to the extent possible". Further elaboration on the wording of that concept was necessary.

429. With respect to developing Members' implementation capacities, Japan fully understood that developing members might have difficulties in implementing some of its proposals, such as, for example, the establishment of risk management and a Single Window. Developing Members should be able to adopt those measures gradually. One should further discuss the aspects of S&D and TA&CB for developing Members to adopt those measures together with experts from international organizations.

430. With respect to Japan's proposal for documentary examination and physical inspection without delay, examples included the return of documents to traders when they needed them for other

purposes including other transactions, or customs duty refund procedures in the case of a re-exportation needed to be facilitated and to be carried out without delay. Japan proposed such measure because private business claimed that they often faced related problems in their daily trade operations.

431. Judging the necessity of examining and inspecting cargo based on its risks in the context of a risk assessment mechanism was an important element to balance the need for Trade Facilitation with that for border control. In principle, the risks of the cargo should be determined on a country-by-country basis. In the case of Japan, factors such as the trader's history of compliance with regulations, origin and travel routes of goods and their nature were taken into account. With regard to simplified procedures for authorized traders, one example was the reduced chance for examination and inspection of goods for authorized traders, as long as the authority was satisfied with their compliance.

432. As for pre-arrival documentary examination, that should not only cover customs procedures but also procedures of other border agencies.

433. With respect to the acceptance of copies, Japan had started to accept copies of some business documents such as invoices some time ago, which had contributed to the facilitation of private business. However, when there was a legitimate need for the authorities to accept original documents, they should be able to do so.

434. Regarding the acceptance of a single documentary submission, Japan's experience showed that for repeatedly imported goods, a waiver for the requirement to submit certain documents could be given. Examples of such cases included waivers of the requirement to submit documents on valuation for repeatedly imported goods by the same importer.

435. As for the concept of "least-trade-restrictiveness", the idea was the following: every country and border agency naturally controlled the flow of goods for legitimate objectives such as the prohibition of illegal trade of drugs and firearms, commercial fraud or the protection of public health. However, if the border agency tried to examine all the cargo in spite of there apparently being no risk, or simply a low one, that was not "least-trade-restrictive". The appropriate wording of that concept should be explored further. In that regard, Japan welcomed the Philippines' suggestion to use the term "reasonable" as a possible alternative.

436. On the comment that an authority had to reject an application even if there was a only minor breach, as there might be a fraudulent intent behind it, Japan would like to point out that it was obvious even from the current Article VIII, paragraph 3, that each Member had the right to reject the application if there was an apparent fraudulent intent. On the other hand, authorities should not reject applications on those grounds, as that would add significant burdens on private business. On the other hand, the amount of a penalty should depend on the seriousness of the breach. Therefore, Japan accepted the general principle that serious breaches could be subject to major penalties.

437. As for implementation costs, several national experiences as well as research, including a OECD document, showed that most of the proposed measures such as pre-arrival examination, and acceptance of copies could be implemented with minimum incremental costs. With regard to automation, it was Japan's position that, while automation was very useful and important to facilitate trade, it was not a prerequisite for Trade Facilitation in the context of the WTO negotiations as many measures could be implemented without the use of IT, such as the avoidance of unnecessary documentation etc. Japan recognized the importance of implementation costs for developing Members, which was something that should be elaborated further as the issues of S&D, TA&CB were taken up further. On the question on which measures proposed by Japan would become binding and which not, Japan was of the view that that should be addressed at a later stage of the negotiations, when Members had a clearer idea of the elements of the trade facilitation rules.

438. The representative of the United States added to the reply given by Uganda on the questions regarding consularization that it might be difficult for anyone to come up with a list of all the countries applying consular fees or of the kind of different types of uses that Malaysia and Romania had requested precisely because there were no transparency or notification requirements on that information at the moment.

439. With respect to the United States proposal on the release of goods, the proposal had been drafted with SMEs in mind. No-one was more harmed by goods being held for an unduly long time, both from import and from export stand points, than those enterprises. The release system proposed was a critical element for SMEs, and central to the negotiations. The US had noted the reports on current practices limiting the use of such a regime, and the questions about costs and potential other burdens. Those questions provided a good basis to proceed in considering that issue.

440. The United States wondered why there would be a practice that limited the availability of such a release system to certain situations rather than having it available for all general trade, as a matter of efficiency and facilitation. As for costs to traders, experience had shown that to be as low as a matter of pennies on the dollar, which was a value when considering the importance of obtaining more rapid release of goods. The US attached great importance to achieving robust results with regard to issues relating to the release of goods. More information would be provided.

441. With respect to the question of how the United States was going to address costs, S&D treatment and any other element of Annex D, the US wished to clarify that when making a proposal and articulating its summery understanding of costs involved, or when describing the United States' experience in providing technical assistance or in noting that S&D treatment needed to be addressed as the Group moved forward, the US agreed that those kinds of statements were not a complete response for meeting the negotiating mandate. What the United States said in its proposal was not the last word. Kenya was right when saying that it was not enough to say the costs were minimal when that might be different for Africa. Trinidad and Tobago and Antigua were correct to say that one had to ensure that all elements of the mandate were being addressed, and Nepal was correct to point out that LDCs, in particular, would need technical assistance.

442. The success of the negotiations was keeping things simple and practical. The US believed in an informal bottom-up approach to assessing resource needs, costs, availability of technical assistance and the other ramifications as the negotiations proceeded. For instance, it had to be examined whether a Member already had its imports procedures published on the internet. One had to find out the individual costs and other ramifications which might differ. The US did not see a need for a formal elaborate or complex process. The Secretariat, the World Bank and WCO had diagnostic tools ready to customize the proposals submitted in the Group. WTO Members such as the United States could also contribute to that bottom-up assessment in the next several months, specific to the United States' own proposals. Such an informal bottom-up approach to assessment would help develop an understanding of current and future needs for technical assistance and address the other issues in a practical concrete way that fitted into the negotiations.

443. The Chairman said that the Group had had a very rich and interesting debate, which had provided much food for thought for further exchanges. He was pleased with the level of engagement and constructive participation.

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

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

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

446. It was so agreed.

C. OTHER BUSINESS

447. The representative of Australia, presented a report on a recent APEC Workshop on the Trade Facilitation Negotiations in Kuala Lumpur on behalf of Australia and Malaysia (TN/TF/W/27), informing that over 70 customs, trade and business representatives from 13 economies, including economies from Non-WTO Members, had attended the workshop. There had been a sense among workshop participants of the value in building on current GATT rules. Four points had emerged as key lessons for the negotiations: First, there was an ongoing need for confidence building in the Negotiating Group as work progressed. The bite-size approach was helpful in framing digestible proposals. Second, there was a need to focus on technical assistance and to seek inputs from most developing countries in need of assistance to specify where they needed help, not just with respect to implementation but also in the course of the negotiations themselves. There was no shortage of resources for TA&CB but greater coordination and focus was needed in the delivery. Third, it would be essential to develop tailored implementation plans, as needed, with respect to the various commitments based on an analysis of individual Members' situations during the course of the negotiations. Fourth, there was a need for better internal coordination between trade and customs authorities, between Geneva-based negotiators and capitals and between governments and the private sector.

448. The representative of Malaysia appreciated that Australia had co-sponsored the APEC Workshop on the WTO Trade Facilitation Negotiations with the help of Mr. Andrew Stoler. The co-sponsors were delighted that the workshop had managed to cover important issues and latest developments in the TF negotiations.

449. The representative of Rwanda supported what had been said about improved coordination in respect of technical assistance during the negotiations. Rwanda wondered how such coordination could be achieved and what was the role of the Secretariat. Annex D was explicit regarding the importance of technical assistance during the negotiations and during the implementation phase. Rwanda proposed that, during the negotiations, an initiative was taken to coordinate the assistance, or that there be some kind of coordination mechanism to that end. It would also be useful to report on the various initiatives taken within the framework of technical assistance for developing countries and LDCs, mentioning those developed countries which had contributed to the assistance machinery.

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

451. The Chairman recalled the list of meeting dates communicated to Members at the Group's first session, according to which the next meeting was due to take place from 2 - 4 May 2005.

452. The Philippines said that many Members wished not to hold the NGTF meetings back-to-back with the meetings of the NG on Non-Agricultural Market Access (NAMA), as the burden of that many meetings over such a short period of time was too great for most developing countries.

453. The Chairman said that, while the burden of holding the TF meetings back-to-back with the meetings on NAMA was recognized, the 2-4 May slot was the only slot available, and consequently suggested to proceed with the originally proposed dates of 2-4 May 2005.

454. It was so agreed.

455. The meeting was closed.
