

WORLD TRADE ORGANIZATION

RESTRICTED

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Negotiating Group on Trade Facilitation

SUMMARY MINUTES OF THE MEETING

Held in the Centre William Rappard
on 5-7 April 2006

Chairman: Mr. Tony Miller (Hong Kong, China)

1. The Chairman explained that the main purpose of the meeting was to provide delegations with another opportunity to contribute on the agreed agenda of the Group, both in terms of offering new input and reacting to the contributions previously received. Furthermore, 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. The agenda was adopted.
- A. CONTRIBUTIONS ON THE AGREED AGENDA OF THE NEGOTIATING GROUP
3. The Chairman invited delegations to contribute on the Group's agenda. Members would have noticed the airgram setting out its traditional elements, reflecting the various components of the negotiating mandate. Work in those areas had continued since the last session, leading to a great number of new contributions. "New" might actually not be the best way to qualify them, as they largely built on previous submissions, consolidating suggestions and building on relevant ideas.
4. Delegations would have probably seen most of those papers, thanks to the useful practice of informal pre-circulation amongst Members ahead of a session. At the same time, he was conscious of such previews not being a substitute for formal reaction and preparation time, which remained a bit on the short side this time in light of the papers' late submission.
5. To make up for that fact and to ensure best use of scarce meeting time beyond preliminary statements, he wished the session to commence with an informal exchange, allowing delegations to raise questions and obtain clarification at the unofficial level.
6. The informal discussion would then be followed by a formal one, providing Members with an opportunity to present statements they wished to make for the record, both with respect to new submissions and proposals previously received. To avoid repetition in the introduction of contributions and to allow for a focus on each paper without having to engage in a confusing series of jumps from formal to informal mode, he proposed a procedure whereby *presentations* of proposals would be considered formal and reflected in the minutes despite them taking place under the informal chapeau. The initial *reactions* to those papers would, however, remain informal and therefore off the record. In other words, the NG would consider the *introduction* of new proposals to fall under the formal category of contributions for the purposes of record taking, despite being made in the informal part of the session, while *reactions* to the papers would remain informal in all respects.

7. Within the presentation of those new papers, he suggested a thematic approach, grouping submissions by similar topic as listed in the compilation document. Special room would then be given for cross-cutting proposals, especially the ones on the key pillars of S&D and TA&CB. The opting for that particular sequence was mostly dictated by technical considerations, such as translation matters. The late arrival of certain submissions unfortunately did not allow for their availability in all official languages, making it advisable to start with the logistically fully processed ones.

8. The representative of the United States introduced document TN/TF/W/89, remarking that, in a sense, it was not a new proposal. The US had put forward a clarification or working document that laid out some of the elements it had previously proposed.

9. The present proposal on Internet publication had two elements. First, the US took note of the fact that there were already requirements under GATT Article X for publication of laws, regulations and rulings of general application. What the United States was proposing with regard to that existing commitment was that there would be an alternative way to meet it, which would be on the Internet in terms of publication. The purpose of that proposal was to acknowledge that, while many used the respective federal gazette systems to publicize, that was very expensive. In the United States, the costs represented thousands of dollars per page. The US proposal was that there could be an alternative way to meet that current commitment for publication, which would be through the Internet.

10. The second component pertained to some basic information in the form of importation requirements. That was not really clear currently in terms of Article X's publication requirements, which made reference to regulations and rulings of general application. It would be a great improvement if Members would commit to publication of their importation requirements. Furthermore, it would be of enormous practical value if Members would commit to put this information on the Internet. The information would then be available particularly for small enterprises. The intention of the proposal was to provide something very practical and it would render a significant result.

11. The paper merely attempted to set out those elements. They had already been referred to in a previous US proposal with much more surrounding information. The US now put forward the core elements. There were also elements Members had to do further work on, specifically as regards SDT and TA. The paper set out some ideas in a very concrete and succinct form. They were not meant to be exhaustive, but represented matters Members should discuss. The proposal was intended to be something that just took Members' work forward. It was necessary eventually to achieve more substantive discussions of each of the proposals. The present paper, as well as others, were an attempt to further that work.

12. He recognized that many countries had already made some efforts towards Internet publication and that Internet publication would impose an additional cost to many developing countries. That should be taken into account.

13. The representative of Canada introduced document TN/TF/W/80, explaining that it had been developed with a view to crystallize the currently available proposals. Members were at a point where they had a series of proposals covering numerous topics. Over 50 proposals had been put forward by Members on Trade Facilitation. Naturally, there were some proposals that touched on elements covered in other proposals. Canada had considered it useful to use the central document of the negotiations, the Secretariat's compilation in its latest revision, to try to extract the common themes on advance ruling and to group them together. The purpose of the present short paper on advance ruling was to consolidate the various proposals on advance rulings tabled in the Negotiating Group in order to draw out the common elements and highlight which issues required further discussion. Canada also considered it important to outline, in a preliminary way, the possible options for TA&CB and SDT. The paper had been developed jointly with Australia and the United States and

was hoped to function as a springboard for a more substantive discussion on the possible commitments on advance rulings.

14. The first section identified the six core elements of what Canada saw as the skeleton of commitments on advance rulings. When talking about advance rulings, the sponsors were talking about a document that was issued in writing in a time-bound manner. It was issued to a person with a justifiable cause, be it an exporter, an importer or a producer, that had made a written request accompanied by relevant factual and supporting material. The applicant to an advance ruling could withdraw at any time his request or amend it prior to it being issued as a ruling. The ruling was valid for a specified period of time, as long as the relevant facts and conditions remained the same and until such time as a ruling was modified or revoked by the issuing authority. The advance ruling recipient was provided with a notification in cases of modification or revocation. And it would be provided with reasons for it. Finally, there was need to have adequate treatment of confidential information. Those were the common elements contained in the seven proposals that had been made by various delegations on advance ruling.

15. There were elements that still required further discussion, reflecting also the questions that had been raised in the past by delegations. For instance, was the scope of advance rulings limited to tariff classification? Did it include valuation, duty drawback or other aspects? With respect to transparency of advance rulings, should there be a requirement to have those rulings published? There were differences of views among Members. Probably the most significant aspect was that Members had to define how TA&CB and SDT would work. It had to be properly assessed. That could only be done on the basis of further discussions among Members, examining the specific details and specifics of potential commitments on advance rulings. Consideration of TA&CB and SDT had to be based on individual Member's analysis of where they stood at that moment and what would be their needs in terms of technical assistance and capacity building in the future in connection with envisaged specific commitments.

16. The representative of the European Communities presented document TN/TF/W/94, explaining that his introductory remarks on this paper would apply also to the three other submissions sponsored by the Communities to some extent. The Chair had been correct in remarking that, although there were a number of new submissions, the content of most of them was in fact not new, but essentially a compression of various proposals already made in the past. The proposals made by the EC and a number a co-sponsors on fees and charges fell into that category. There were no new innovative ideas in the paper. At that point in the negotiating process, the EC considered it opportune to not have major new ideas but to try to consolidate and compress into a more easily readable short format the proposals that had been made in the past and that appeared in the compilation document.

17. The current paper simply sought to present in a more shortened and justifiable form proposals the EC had made in the past. Article VIII of the GATT recognized the need to reduce the number and diversity of fees and charges for import and export but gave no guidance as to how that need should be discharged. Firstly, the present proposal, among other things, gave more precision as to how in practice the reduction of the number and diversity of fees and charges could be accomplished. Secondly, the proposal sought to codify the outcome of previous dispute settlement panels on the question of fees and charges and which kind of fees for import and export were or were not legitimate. Thirdly, the submission proposed to fine-tune or clarify a little further the provisions of Articles VIII and X in respect of the imposition of fees and charges, the proportionality of fees and charges for trading transactions and on their publication and advance information on new fees and charges. There was nothing particularly innovatory about the proposal. It only reflected ideas that had already been circulated in the NG. The EC considered it useful to add to the WTO Rules Book those clarifications and improvements on the question of fees and charges, which were still a major concern and preoccupation for traders around the world.

18. The representative of Hong Kong, China (HKC), as a co-sponsor of TN/TF/W/94, said that HKC was one of the proponents to support clarifying and improving GATT Articles VIII and X on fees and charges. HKC's ideas in that regard was contained in document TN/TF/W/31. The intention of the current short paper was to collaborate with Members with similar proposals and, more importantly, to stimulate and facilitate discussions by all WTO Members. The paper was very much a working document and by no means final. There were some areas requiring further discussions and elaboration. It would be improved when more comments and suggestions were received.

19. The representative of Switzerland introduced submission TN/TF/W/85, recalling that the discussions on trade facilitation in the WTO did not take place in a vacuum. The importance of trade facilitation had been recognized in the early stages of global trade and technical work on TF had been ongoing for over half a century. The GATT, the UN Economic Commission for Europe (UNECE), the International Civil Aviation Organization and the International Road Transport Union had been the first international organizations to start important work in 1947. Other international organizations (International Maritime Organization, World Customs Organization etc.) had quickly joined that movement. Those activities were responses to the demands made by the International trading community and their operators.

20. In the context of TF, it was not only important to recognize the work done by other specialized organizations but also to acknowledge the practical importance of international standards in global trade. Members had discussed the issue already in the Negotiating Group. Switzerland wished to just recall three aspects: (i) International standards reflected some common view of the majority of members on TF issues. Switzerland's research had shown that WTO Members were represented in the vast majority of relevant international organizations. It was essential that one did not reinvent the wheel in the NG; (ii) Small- and medium-sized enterprises (SMEs) would benefit most from complying with only one standard instead of complying with many different ones; (iii) The electronic environment in which traders operated naturally "imposed" the use of international standards, namely with regards to trade documents.

21. The proposals made so far on international standards as well as the discussions Members had had in the NG had mainly focused on four areas of particular interest for the use of international standards. Those were: national/regional import, export and transit procedures; the alignment of national/regional trade document formats such as the UN Layout Key or UNEDocs; the alignment of national/regional data elements in trade documents; the electronic exchange of trade data by using for instance the UN/EDIFACT.

22. The proponents of the present paper had identified the need to also engage in broader discussion on how to draw on work done by international organizations and to integrate international standards in the WTO work on TF. As for methodology, there would seem to be three approaches. The level of specificity in respect of concrete standards depended on the choice of approach. One approach was a general obligation to use international standards where they existed with some limited exceptions. Those exceptions could either be decided in the Agreement itself or at national level, but in the latter case, some guidance had to be given concerning the use of exceptions. A second approach could be a reference to the relevant international organizations that had developed international standards such as Standards developed based on the UN Layout Key. A third possibility was a reference to provisions in other international Agreements. In that case, a mechanism should deal with obsolete and new standards. It was important to acknowledge two things in that context. First, the proponents did not think that those three approaches were mutually exclusive. A combination of them might be feasible. Second, adopting that approach did not mean in any case that any WTO Member had to become a signatory to any of those international treaties, even though Switzerland would of course encourage that. Finally, Switzerland was ready to engage in a discussion on the pros and cons of various options and looked forward to hearing the views of other Members on the issue of international standards which it believed to be key to the TF negotiations.

23. The representative of Korea, as a co-sponsor of TN/TF/W/85, fully supported the basic ideas contained in the paper. The use of the WCO Data Model should be incorporated as a reference at a later stage because that model greatly enhanced the harmonization and standardization of customs data requirements. Under that model, the names and definitions of data requirements required by customs authorities would be harmonized to eliminate ambiguity for traders. It would also enable a seamless data flow between exporting and importing countries. Therefore, rather than simply listing the conventions of international organizations, stating specific international standards could be more meaningful. Concerning the level of commitment, there were three options suggested in this paper. Clearly, Korea shared the same view that the three options were not mutually exclusive. At the same time, Korea had some preference for the second form like the one applied with respect to the SPS Agreement, which stipulated specific international agreements for reference while maintaining the general principles to adopt. But Korea was of course open to other options which depended on the provisions, if necessary.

24. The representative of Switzerland presented submission TN/TF/W/92, explaining that it was based on the contributions by various countries such as Japan, Mongolia, Chinese Taipei, Peru, Korea, EU, New Zealand, Norway and Switzerland. It was also based on the written questions by Egypt and India and had taken on board the general discussion that had taken place in the NG. The paper dealt with two measures that aimed at reducing the administrative burdens of traders: the acceptance of copies of originals and of information contained in commercial documents such as business-to-business information, invoices, bills of lading and the like. Before entering into discussions on whether copies should be accepted instead of originals, the first thing to do was that customs should only require those documents which were really necessary to permit control.

25. On the question of acceptance of copies instead of originals, the key issue to be addressed was the legitimate requirement by customs to take measures that limited fraudulent actions by traders. To do that, originals were sometimes indispensable, but there were situations where originals were not necessary to ensure the proper function of customs. Switzerland had identified two situations where copies could be accepted. One was commercial documents such as invoices, bills of lading and the like. The second situation related to instances where government agencies already held originals and where multiple government authorities were involved. Of course, customs could always call for originals if they had reason to do so.

26. The paper also dealt with electronically launched documents which had been authenticated through customs by electronic signatures or procedures. In that case, the electronic document was deemed to be the original.

27. On the acceptance of commercially available information, customs and other border agencies should be able to forego certain information, namely on supporting documents available in the context of commercial transactions. That could be done when the supporting documents and the commercially available information were clearly established and the information was presented.

28. India had made the interesting observation about whether the requirement to accept commercially available information would not undermine the effort of using standardized documents. As a proponent of the idea of basing trade documents on international standards such as the UN Layout Key, it was certainly not Switzerland's intention to undermine those efforts. It was not unusual that information was required, namely on supporting documents that were used for cross-checking but that did not represent the core information required. In those cases, information on the bill of lading or invoices, should suffice.

29. The paper finally introduced two issues that had not extensively been discussed yet. The first was to allow, if appropriate, for certain supporting documents not to be presented to customs, such as in the case of a dangerous goods declaration being just mentioned with a reference number. In some

cases, customs had access to international data banks where they could check that number and get hold of the originally deposited certification. Of course, traders had to hold this information available to customs. The second issue was that a translation of the particular supporting documents should not be required, except when necessary, to process the goods declaration.

30. Switzerland acknowledged that the issue of accepting commercially available information and of copies was very technical, because one had to draw the line between measures to reduce the administrative burdens of traders and those to prevent fraud in the case of copies, and also draw the fine line between measures to reduce administrative burdens of traders and customs efficiency. That was why further discussion would be necessary to ensure that this fine line was properly drawn. Switzerland would continue to work on the submission with the proponents and was happy to engage in discussions with any delegation.

31. The representative of Korea introduced a Non-Paper on the introduction of a Single Window/One-Time Submission on behalf of all co-sponsors. A number of Members, including Japan, Mongolia, Chinese Taipei, Peru, Turkey, EC, Chile, Canada, Singapore, Thailand and Egypt, had already submitted proposals on the issue of Single Window. The main purpose of a Single Window was to allow traders to lodge required information and documents with a single entry point on a one-time basis. That would clearly reduce administrative burdens and costs for traders. What Korea had listed in the present paper as key elements were the elements that constituted a fundamental and common part of establishing a single window/one-time submission based on prior proposals. More complicated issues that required further clarification through discussions among Members were presented as “elements for further discussion”.

32. Korea had identified three key elements from Members' prior work. The first was that the fundamental mechanism of a single window in itself was that all documents and data requirements for exportation and importation were submitted one time only to a single entry point and distributed to all relevant authorities. The second was the coordination among the relevant authorities, which was prerequisite for effective implementation and possible introduction of information technology. Third, Korea presented the use of high-tech information and communication technology as something that was not a pre-condition for single window, although one could expect enhanced trade facilitation if information and communication technology was introduced.

33. Another part of the paper presented seven elements which were suggested to require further clarification. Of the seven, the last three were related to the so-called cross-cutting issues, which were built-in flexibilities, SDT, and TA&CB. In that context, Korea would like to draw Members' attention to one of the suggested flexibilities, a phase-in approach for implementation from normal customs procedures to progressive extension to more specific ones.

34. Other elements requiring further discussion were (i) the use of international standards, for example UNCEFACT, the WCO Revised Kyoto Convention or the IMO Convention; (ii) a single point of decision-making for the release of cargo; (iii) the means of achieving a single window submission environment, including the option of using electronic forms; and (iv) notifying a single window through the Secretariat to Members. The proposal was not a final one. Korea was looking for Members' active discussions and input on those elements which needed further discussions.

35. The representative of Singapore, as a co-sponsor of the Non-Paper, was pleased to know that there had been many constructive proposals on Single Window to date from both developed and developing countries. Based on the discussions in the Negotiating Group so far, there was general acceptance that the introduction of Single Window with documentation and data requirements for exportation and importation being submitted one-time only to a single entry point and distributed to all the relevant authorities, could bring significant benefits to traders by minimizing the incidence and

complexity of import and export formalities and in decreasing and simplifying import and export documentation requirements.

36. Bearing in mind Ministers' instructions to the NG in Hong Kong and in an effort to take the negotiations forward, the paper identified a working definition of a Single Window and common elements in the various proposals in the Single Window to date. The paper highlighted that a Single Window did not necessarily imply implementation and use of high tech information and communication technology, although facilitation could be enhanced if relevant ICT technologies were identified and adopted. From Singapore's own experience in implementing Single Window, Singapore recognized that its implementation was an ambitious and resource-intensive undertaking. Flexibilities, SDT and TA&CB would be essential components of any commitment in that area. Singapore believed that any implementation of a Single Window would have to take into account each Member's unique requirements and conditions and should take place through a progressive phase-in approach. For developing countries and LDCs, there could be SDT in the form of longer implementation time, temporary exemptions and partial application of commitments, which was highlighted in the paper. With regard to TA&CB, assistance could be provided in identifying specific needs and priorities, human resources training, and by building up coordination capacity between agencies.

37. The representative of Japan, as a co-sponsor of the Non-Paper, said that the concept of Single Window/One-Time Submission was not new to the WTO Agreements. The Agreement on Import Licensing Procedures already stipulated the idea of a one-time submission in its Article 1.6.

38. The representative of the European Communities presented submission TN/TF/W/90, saying that it represented a shortened and simplified form of a proposal the EC had made in the past. Among other things, the EC considered it to be an important outcome to the negotiations to see an end to the use of pre-shipment inspection (PSI) systems for official purposes. Twenty years ago, PSI systems had been introduced to substitute for non-functioning or poorly functioning customs administrations in a small number of countries. Sometimes, they had been introduced as part of an overall set of IMF or other loan conditionalities. When PSI practices and systems were introduced into certain countries they had been intended to be of a temporary nature. The countries using PSI should have had some kind of exit strategy for the use of PSI. Secondly, there had been the intention to have some form of progressive strengthening or building-up of the custom administrations so that they would have been able at a given point in time to replace the PSI provider, and for the PSI system to be eliminated.

39. Unfortunately, the reality was that many PSI companies seem to be there to stay. Clearly, PSI companies had no obvious economic interest in promoting their own abolition. Members had to take a position on that question in the WTO, given that PSI was intended to be a temporary fix, pending the building-up of functioning customs. The proposal was to see the progressive elimination of PSI for official purposes, subject to parallel support in terms of TA to build-up the capacity of local customs administrations where it was lacking. Not only did some WTO Members still use PSI, but there were also one or two countries in the process of accession to the WTO who were using PSI or on the verge of doing so. That would have rather damaging effects on trade interests. It was also for that reason that it was important to foresee the elimination of PSI for official purposes, coupled with the requisite development aid to build-up customs where that was necessary.

40. The representative of the European Communities presented submission TN/TF/W/88, noting that it was a very brief and self-explanatory paper. The EC did not see any *rationale* for the practice of mandatory use of customs brokers to carry out customs release and clearance procedures on behalf of importers, as it was a reality in a few countries. The market should be left more to itself to deal with that. Traders themselves should have the unfettered right if they wished to carry out all the procedures necessary to process consignments to deal with import or export declarations and traders should not have to be required under the laws of a country to channel their work through customs

brokers. It was a simple proposal that would be of great interest to many companies, large and small, around the world.

41. The representative of Uganda introduced submission TN/TF/W/86 on consularization, thanking its co-sponsors for the assistance with mainstreaming that very important issue. Uganda was also thankful to delegations who had introduced other proposals, most of which were a clarification of previous submissions. Uganda further appreciated the approach proposed by the Chair that would give Members more time for discussion. The informal mode helped Members to have more focused discussions. Uganda was also thankful to other Members for the continued engagement and support they had shown for Uganda's proposal TN/TF/W/22 on the requirements for consularization within the context of Article VIII of GATT.

42. Most of Uganda's traders who participated in exportation, fell in the SME category. They operated on low budgets and could not afford to meet unnecessary requirements such as those envisaged under consularization. Having to fulfil such requirements inflated their production costs, and rendered their products uncompetitive, thus putting them out of business.

43. It was along the same rationale that Uganda would like to seize the opportunity to spell out its expectations regarding that commitment to the Negotiating Group in clearer terms. It was a necessary next step for the negotiations, particularly as Members prepared to move to a text-based stage.

44. In a nutshell, Uganda, and the co-sponsors of the proposal called for a prohibition of requiring consular transactions. It was proposed that there should be no consular transactions, including consularization-related fees and charges, required in connection with importation or exportation of goods, as the case might be.

45. It was further proposed that documentation of goods intended for export, should not, as a condition of exportation, be subject to inspection, review, supervision, certification or approval of any kind, by the consul or representative thereof, or be subject to any fee or charge related to such processes.

46. For purposes of clarity, the paper also provided a definition for a "consular transaction" also known as "consularization" or "legalization" as the requirement that goods intended for export to a Member must first be submitted to the supervision or certification by the consul, or representative thereof, of the importing Member in the territory of the exporting Member, for the purpose of obtaining consular invoices or consular visas for commercial invoices, manifests, shippers' export declarations or consul "verification" of other elements of customs documentation required in connection with importation or exportation such as valuation or origin.

47. In order to avoid circumvention, it was proposed that any wording eventually adopted prevented such an outcome particularly in cases where Members might simply appoint an agent, possibly in a third country, charged with similar functions of consularization. An example could be where a Member required that goods for importation or exportation must be "consularized" in a territory other than of the exporting Member, such as by an Embassy that served a number of countries.

48. True to the spirit of these negotiations, the proposal also stressed the need to clearly define elements of SDT, including the need for TA&CB following individual needs assessments. Uganda hoped that its communication assisted Members in better understanding the proposal and once again called on their support for the suggestion contained therein.

49. The representative of the United States, as a co-sponsor of TN/TF/W/86, noted the commonality of interest, particularly with regard to small enterprises. Much of Members' work

related to that. It was a situation small enterprises both in Uganda and the United States were particularly affected by.

50. The representative of Switzerland announced her delegation's intention to co-sponsor the submission. Switzerland recommended delegations to look at the definition of consularization. It was important to know the precise coverage of the proposal. The definition given in TN/TF/W/86 made clear that one did not talk about all consular fees. It did not include non trade-related areas but merely covered trade facilitation issues.

51. The representative of Canada introduced document TN/TF/W/83, explaining that it was an attempt to consolidate previous proposals. Basically, there were three proposals that had been made on the matter, by Canada, by Peru, and by the EC. There was also a very useful paper submitted earlier by Norway sharing its national experience, a very concrete example of how border agency coordination could work. What had been done in the case of the present paper was to work together with partners to outline elements of what could constitute principles for border agency coordination.

52. The first aspect in terms of facilitating trade was that it was important that all authorities and agencies involved in border or in import and export controls to facilitate trade encouraged cooperation and coordination. But beyond that cooperation in the work of those authorities, another important element was to promote compatible import and export data and documentation requirements of those agencies involved in border controls.

53. Another important aspect of border agency coordination related to the promotion of the convergence of controls to a one stop shop, with a view to establishing, to as great an extent as possible, a single location for one-time documentary physical verification of consignments by all these agencies. It had some commonalities with a Single Window. It was a convergence towards the objective of a Single Window without necessarily requiring the establishment of a Single Window. It was important to consider that there was a way to come very close to a Single Window without actually setting up a Single Window. It was a location where one could do almost all processing in a very timely fashion by moving from one window to another. Technically speaking, it was not a Single Window, but it was getting very close to it.

54. The last point the sponsors of the proposal were identifying in those elements was to stress the fact that when talking about border agency coordination, the efforts of coordination could take place on one side of the border, but they could effectively also take place across the border. The sponsors of the proposal had their own experience in that regard. Canada, sharing a very long border with a major trading power south of its border with very significant daily flow of trade had found it to really ease trade if one coordinated, to the extent possible, the activities across the border, even in co-location. That was another element the sponsors of the proposal would suggest Members to envisage in the context of the negotiations to have the possibility of developing commitments that would encourage and promote coordination among agencies both on one side of the border and across the border.

55. The sponsors of the proposal had indicated that they were open to consider a variety of options in terms of SDT as well as TA&CB. The authors of the paper were talking about principles or good regulatory practices. In order to implement commitments in that area it was less the IT equipment or infrastructure that was needed. Rather, it was often an adjustment in the mindset of the authorities and agencies involved in border controls. Canada looked forward to further discussing the proposal.

56. The representative of New Zealand, as a co-sponsor of TN/TF/W/83, said that the proposal highlighted the importance of overall coordination, implementation and monitoring of future trade facilitation measures. Like Canada, New Zealand believed that the principles in the proposal might

also be relevant to other measures which required such border agency coordination, in particular the Single Window/One-time submission of trade documentation and enquiry points proposals.

57. The representative of Japan introduced a Non-Paper on Pre-arrival Processing, noting that it was also authored by the EC, Korea, New Zealand, Switzerland, and Chinese Taipei. The regime was well known as one of the effective trade facilitation measures and had already been adopted by a number of developed and developing Members because it was easy to implement by using existing facilities and resources. It could be also applied to various trade procedures other than customs procedures. The Non-Paper elaborated the basic concepts of pre-arrival processing and introduced the key elements which were drawn from existing proposals by Members. It also identified the elements that needed further discussions among Members.

58. In the normal procedure, importers were required to submit an import declaration to customs after cargoes arrived, even if they had all the necessary documents and information beforehand. To handle such situation with certain flexibility, pre-arrival processing regimes had been widely introduced. It was a function allowing traders to submit import documentation and other required information before the arrival of goods so that customs and other relevant border agencies could conduct documentary examination in advance. In cases where it was decided that no further examination was required, goods might be released immediately upon arrival.

59. Pre-arrival processing could expedite the release of goods while reserving the right of the authorities to conduct further examination where necessary and while maintaining appropriate border control with the use of the risk management concept. The benefits of the regime had been widely recognized in relevant international organizations. For example, the WCO Revised Kyoto Convention required customs to introduce the regime. Japan believed that it was beneficial to draw on such relevant international standards and practices as a basis for the regime. Japan had introduced the regime in 1991. In 2004, usage rate of the regime was 28 per cent for sea cargoes and 54.8 per cent for air cargoes. According to the time release survey, the average time of release with the use of the regime was 30 per cent less than without the use of the regime.

60. Regarding the implementation costs of the regime, since it merely required to change the timing of an import declaration submission, it could be implemented by using existing facilities and resources. The use of IT was not a pre-condition. Therefore, it should not incur substantial costs.

61. While Japan believed that the regime could be introduced at a minimal cost burden, Japan shared the concerns over the implementation capacity of some Members who had not yet adopted the regime. Therefore, SDT, including progressive implementation of commitments and TA to assess the situation and to identify individual specific needs and priorities were the elements identified for further addressing. In addition, Japan had been providing TA to developing-country officials in the area of customs procedures, including pre-arrival processing and was willing to continue this.

62. The representative of Switzerland, as a co-sponsor of the Non-Paper, recalled the previously raised question concerning legitimate objectives. On that issue, which was addressed by the proposal in section (b), second bullet, Switzerland saw "the use of international standards as a basis for pre-arrival processing". There might be some cases where one could deviate from that like circumstances where Articles XX or XXI of the GATT would apply.

63. The representative of the European Communities confirmed his delegation's intention to co-sponsor the document. Pre-arrival processing was a major facilitation measure which did not in itself require automation or any sophisticated use of IT.

64. The representative of Pakistan said that his delegation wished to be added to the list of co-sponsors of the Non-Paper.

65. The representative of the United States introduced proposal TN/TF/W/91, explaining that it was a streamlined version of an earlier proposal. The US had also attempted to make one addition. A workshop had been conducted by the United States with regard to its proposal pertaining to commitments regarding express shipments, where it had become clear that there had to be a greater understanding that what the US was proposing was not some sort of special gift, but an arrangement almost in terms of a contract. The US had attempted to capture that in the second bullet which spoke of the creation of a mutually acceptable arrangement with provided for adequate infrastructure, financial security and advance information in return for the procedures the US was talking about in the context of the present proposal.

66. The US was cognisant that the proposal was perhaps more complicated than others. On the other hand, there was an extraordinary opportunity presented through its implementation. Small businesses utilized it and it was increasingly important to creating a manufacturing base. Express shipments had also been shown to advance or work around infrastructure difficulties. For all those reasons, the US intended to conduct another workshop, which would be announced. The US wished to advance the discussions on the proposal, which was simply a tool to advance the work.

67. The representative of Korea introduced a Non-Paper on Risk Management. A number of Members had already taken a great interest in the topic. As an introduction and to deepen Members' understanding on risk management, it should be recalled that, according to the WCO Risk Management Guide, risk management referred to the systematic application of management procedures and practices providing customs and other relevant border agencies with the necessary information to address movements or consignments which presented a risk. That clarified the fundamental concept and mechanism of risk management. The document also described that the main purpose of risk management was for border agencies to achieve trade facilitation while maintaining appropriate border controls.

68. Korea had identified three common elements of risk management from Members' proposals. First, the establishment of a differentiated inspection mechanism based on the risk level. It meant to concentrate on examination of high-risk of goods and facilitate the movement of low-risk goods in order to achieve the best allocation of limited resources and maximum benefits. Secondly, Members were encouraged to use international standards and practices as a basis for risk management procedures except for legitimate objectives pursued. Third, it was specified that risk management should not be used as a disguised discrimination and obstacle to trade.

69. The paper also identified elements for further discussion, such as (i) the scope of customs and other data for analyzing risks, what kind of data could be used in each category (classification, valuation, origin of goods etc.); (ii) continued monitoring/revision of risk profiles, since there was always the possibility of a change in their nature, level or significance. One had to adopt new risk profile and to analyze and monitor those changed conditions in order to achieve the maximum effectiveness of risk management system; (iii) SDT and TA. Risk management, in principle, did not necessary entail huge costs to Members for implementation. However, Korea, to some extent, recognized that some Members might need TA&CB to implement. That could be discussed further. Korea welcomed any comments or questions from Members to the paper.

70. The representative of the European Communities introduced document TN/TF/W/87, saying that Article VIII of the GATT recognized the desirability of reducing the incidence of import and export formalities but gave no guidance as to how that might be done and did not require it to be done. Like many others, the proposal was aimed at making a particular provision of Article VIII more operational. The EC was of the view that authorized trader arrangements were extremely valuable and important facilitation measures because such arrangements achieved the objectives of better security and border controls and better facilitation measures. The EC shared the view expressed by China that authorized trader systems or arrangements formed increasingly an important component of

countries' overall risk management approach. Many Members, although not all, at various levels of development, had begun to introduce authorized trader systems and measures to the point that one could now see them in several LDCs. The Revised WCO Kyoto Convention recognized the concept of authorized traders as a valuable trade facilitation measure in one of its new standards.

71. What the EC meant by authorized trader systems was, with some variations and new answers, the common feature of an arrangement to provide additional trade facilitation measures for companies, for traders who were compliant and had a good track record of compliance with customs requirements. Such systems rewarded compliance by, for example, providing for faster release of goods, reduced levels of physical inspection by the customs or perhaps the right to pay customs duties periodically rather than on a consignment-by-consignment basis. Those were obviously benefits for trade for honest compliant traders. Authorized trader systems were also a value to customs administrations themselves because they reduced the need for physical intervention by the customs on individual shipments and allowed that customs concentrated their inevitably sparse resources on controlling high risk shipments within the framework of an overall risk management strategy.

72. Authorized trader programmes were beneficial for trade, saved customs resources and improved border protection and physical security. The specific proposal that the EC and the other co-sponsors were putting forward was that each WTO Member would make a commitment to introduce over time an authorized trader mechanism. The EC agreed that that would take time and that capacity building would be essential for some small developing countries to implement these arrangements. Not all authorized trader systems could, or should, be identical. The scope of them, the criteria for eligibility of traders and the actual kinds of additional facilitation given to authorized traders would differ from Member to Member. It was not feasible to try to harmonize these across the board. That was not being proposed. Rather, the EC proposed the establishment through a WTO provision of some minimum basic features that should be common to all Members' authorized trader systems. And, in that respect, it would be feasible to indicate the very basic types of additional facilitation that would be granted to authorized traders. Four such facilitation measures were mentioned in the paper itself, namely more rapid release of goods, a lower incidence of physical inspections, facilitations with regard to the way of paying the duty, and simplified documentation and data requirements.

73. A second element of the proposal was that Members would commit to ensure that, when introducing authorized trader arrangements, the eligibility criteria were fair, neutral, non-discriminatory and were transparent and published. Any company capable of demonstrating its ability to comply with those objective criteria should be eligible. The EC would not want to see a situation where Members established authorized trader systems whose criteria were such to effectively exclude for example all small- and medium-sized companies. That was not the objective of the systems. The EC would like to see a basic criteria in the provisions to ensure that companies irrespective of their size, origin and the like, would be able to apply on fair terms for an authorized trader status.

74. To some extent, the concept of an authorized trader system could deal with one issue and concern raised earlier, notably on the question of express shipments and the interest of express carriers. One way to satisfy the particular trade needs of the express sector was through authorized trader systems. That was perhaps one element worth considering. At the previous meeting, the Indian delegation made a proposal on a number of issues, including the proposal that within a customs union, authorized traders recognized by one member of the customs union should be recognized by the other members of that customs union. Obviously, that was an issue which would be particularly relevant for the EC. The EC was currently discussing legislation in the Council on exactly that issue. Therefore, the EC could, in principle, approach the Indian proposal in a positive light.

75. The representative of Canada presented document TN/TF/W/84, saying that it had been tabled in an effort to consolidate previous proposals that had been made on the separation of release from clearance. It contained also proposals on other measures to simplify release and clearance. The main

idea of the proposals was to provide a mechanism for the release of goods in cases where custom matters such as the determination of tariff classification, or origin were still in question. The proposals did not deny customs authorities the right to inspect goods for reasons such as ensuring compliance with health and safety requirements, with sanitary and phytosanitary standards, the prevention of contraband, the fight against drug trafficking, and the like. The legitimate rights of customs were fully safeguarded. What the sponsors of the proposal were trying to do was to find ways that could further facilitate the expeditious release of goods.

76. The paper was structured in two parts. The first part was based on proposals that had been initially submitted by the EC, Australia, Canada, the US and Peru. The current proposal was that, subject to the prescribed documents being presented, a guarantee of some kind (it could take the form of a security or other forms such as cash, certified checks, etc. could be provided by the trader to allow for the release of goods. The second part suggested some other measures to simplify release and clearance. They were based on proposals that had been submitted by Chinese Taipei, Korea, Peru, the EC, and jointly by China and Korea. Delegates could see that there were other ideas in terms of how one could, for example, make use of a mechanism for release of goods with post release, reconciliation of documents or duties payable, how one could help trade or allow traders to make periodical declarations or duty payment as opposed to separate duty payment on each transaction, and to allow traders to have clearance procedures completed at their premises, subject to conditions based on risk management and to resource constraints.

77. For all those proposals, the paper indicated a variety of options in terms of SDT and TA&CB that Canada would be open to consider. They could include transition periods and TA&CB based on needs assessment. Canada looked forward to further discussions on that set of proposals.

78. The representative of Switzerland, as a co-sponsor of TN/TF/W/84, wished to make a link to the submission previously discussed. The second bullet of the document's section on "other measures to simplify release and clearance", offered typical examples of treatment that authorized traders could receive. That might be useful for delegations to take into account.

79. The representative of Paraguay presented document TN/TF/W/81, recalling that since the beginning of its work, the NGTF had generated more than 80 different communications. Large and small delegations from all parts of the globe had contributed to the negotiating process. The characteristic dynamism of the TF negotiations constituted a concrete sign of the general importance attributed to trade facilitation and the desire on the part of all Members to arrive at a very satisfactory and balanced agreement in that area.

80. For that to be possible, it was necessary to have a package of measures and SDT that would make it possible for developing countries and LDCs to draw maximum benefits from the results of the negotiations. But at the same time, they should not have to take on board obligations that weakened capacities. In the absence of such SDT, a lot of countries would be reluctant to negotiate obligations as they wanted to avoid repeating the error of taking on board commitments that exceeded their possibilities.

81. Annex D offered the basis for the creation of an innovative architecture that allowed every Member, independent from its level of development, to improve the structures to support its trade and allowed it to benefit from TF measures enacted by other countries as well. In order to stimulate the discussion on how one could operationalize the interrelationship between the various elements in Annex D, and to direct work towards constructing just, realistic and balanced S&DT, 18 Latin American countries had presented document TN/TF/W/41. Some of the co-sponsors of that document had also authored the new submission, which deepened the treatment of the ideas contained in TN/TF/W/41 and at the same time proposed an SDT mechanism for developing and LDC countries in the area of trade facilitation.

82. The process that gave rise to the presentation of document TN/TF/W/81 had involved a number of long working sessions and discussions and a lot of brainstorming by more than 10 delegations. The resulting communication was based on a lot of thinking, but was not a definitive answer to the question of how to deal with the question of SDT within the framework of the result of the negotiations. It should be interpreted as work in progress, open to any idea capable of improving it. The sponsors wanted to see the NG continue dealing with the theme in a focused way while also looking at new pathways.

83. Document TN/TF/W/81 was broken down into four chapters. In the first chapter, the sponsors looked at some preliminary considerations. The second chapter looked at the aim of the proposal. Chapter three dealt with the SDT mechanism that could be applied within the framework of the negotiations on a step-by-step basis. In chapter four, the sponsors looked at some preliminary text, seeking to exemplify the way in which the proposal could take shape in a number of operational disciplines in the area of SDT. The inclusion of the last chapter was meant to satisfy the Ministers' mandate to move into text-based negotiations in all areas of the negotiation.

84. TN/TF/W/81 also contained some annexes in order to facilitate the understanding of the various themes looked at in the document. The proposed mechanism encompassed four different stages: (i) self-assessment of capacity; (ii) notification; (iii) capacity development/ building; and (iv) measurement of the obtaining of further capacity. The proposal was based on the premise that the capacity of a Member would determine the various commitments it could take on within the framework of the upcoming agreement on trade facilitation. Each Member would only become committed commensurably with this capacity. It was going to be necessary to measure the capacity in the light of the various obligations. The self-assessment would be carried out before the entry into force of the agreement.

85. The sponsors of the document wanted to see to it that Members did not take on more responsibilities than they could actually handle. Once the self-assessment had been carried out before the entry into force of the agreement, every developing Member and every LDC would then notify the WTO the obligation it would not be able to take on until the capacity was there. They would also notify the various obligations that would be complied with within a time-frame that would be set out in the notification. The obligations that a Member did not include in its notification would be binding starting from the entry into force of the agreement. The commitments that were taken on board within a time-frame would become mandatory as of that time. In order for Members to take on their further responsibilities, Members would develop plans for capacity building. Those plans and projects could be executed thanks to the backing of international, regional and other bodies providing support. The focal points of those plans must also be notified to the WTO. Once the information plans had been implemented, there would have to be a verification mechanism that would be part and parcel of the project so as to make it possible to assess the capacity of the Member. That mechanism would be formed by the receiving Member, the donor and the executing body.

86. If it was seen that a Member had the capacity to assimilate further commitments, a notification should be made to the WTO. From the date of the notification, the Member would be obliged to comply with that obligation within three years after the entering into force of the agreement. Members that were not able to submit their plans for capacity building to comply with one or several obligations would communicate that to the supervisory body of the agreement. That body would then make the necessary arrangements for those Members to obtain the necessary backing or support. The notification that would be made by Members within that framework would be published on the Members' website of the WTO. The purpose of the exercise was transparency in the application of the agreement and to make it possible for people to be aware of the state of advancement of the various measures. Members should be able to develop the capacity necessary to take on further commitments in the framework of the agreement.

87. The paper did not set out all structures and functions related to the proposed mechanism in detail. While it was a necessary topic of discussion, the sponsors had decided to first focus on constructing a mechanism and then look at the various details once the negotiations had reached a sufficient point of advancement. As mentioned by the United States at the last session, nobody would be dealing with the question of SDT if not Members themselves. Members had to work on it on a factual basis. The present proposal could provide that basis. The authors hoped for Members to draw a maximum benefit from it and to put in place the various schemes for rules that could be positive for everyone.

88. The representative of Chile, as a co-sponsor of TN/TF/W/81, associated his delegation with the statement by Paraguay. Chile wished to take the opportunity to express the reasons for co-sponsoring the document. Chile had been a *demandeur* in trade facilitation long before the negotiations had begun, and had a strong interest in seeing an ambitious outcome in the area. Chile had interest and expectations to try to take on all of the obligations derived from the negotiations and obviously wished to see most other WTO Members, both developed and developing, take on most of these obligations from the very beginning as well. At the same time, Chile was aware of the difficulties many developing countries had in implementing all obligations they wished to take on in the negotiations. That reality had been recognized by Ministers in the Hong Kong Declaration. Consequently, Chile, together with a group of developing countries from the region, was proposing a procedure which sought to take those difficulties into account and tried to enable developing countries to participate more pro-actively in the negotiations.

89. Chile was not talking at the moment about the specific aspects of the procedures which Paraguay referred to, but would simply like to stress that the proposal was a very serious attempt, and a very valuable one, to contribute to the discussions in the NG. The co-sponsors of the document were all Latin American countries, but it was perfectly possible to apply the procedures to realities in other regions and other developing countries. Chile hoped to have good discussions on the proposal and that one could learn from the comments of other Members, both developed and developing.

90. The representative of Honduras, as a co-sponsor of TN/TF/W/81, associated his delegation with the paper and supported the statement made by Paraguay. The Negotiating Group had a mandate from Ministers on the issue of SDT. Members had to be creative and get good results on the matter and the paper intended to do that. It included ideas which could be improved and perfected by the Membership.

91. The representative of China introduced submission TN/TF/W/82, saying that, when negotiating multilateral rules, the traditional roadmap was usually the negotiation of rules as the first step, followed by the settlement of relevant issues with regard to implementation. However, the negotiations on trade facilitation were somewhat different from other negotiations in that the result of trade facilitation negotiations might be technically more complicated to implement. Given their limited resources and comparatively low levels of development, one of the major concerns of some developing Members was that the commitments they had to undertake might be well beyond their implementation capability and that the promised technical assistance and capacity building support might not be sufficient to meet their needs. In addition, they might be confronted with the prospect of dispute settlement cases for not honouring their commitments.

92. Based on those observations, China, India, Pakistan and Sri Lanka submitted the proposal TN/TF/W/82 on the process of trade facilitation negotiations. In view of the concerns described, rather than struggling through the negotiating process, the sponsors proposed to take up those concerns and solve relevant issues in parallel with the rule drafting process so as to lay a good foundation for text-based negotiations. Those issues were basically the ones Members had to address in the establishment of all trade facilitation rules. They were (i) the arrangement of commitments for developing Members, (ii) the provision of technical assistance and capacity building support, and (iii)

the applicability of the dispute settlement mechanism. The basic idea was that since they were tangible issues that gave deep impact on the decisions to be taken by Members during the negotiations, Members would have to deal with them sooner or later. It might be better to face up to them now rather than later to make the decision-making effort smoother and easier. Of course, it was up to the Negotiating Group to decide as to when to take them up. The proposal was submitted to flag the issues.

93. Proposal TN/TF/W/82 also illustrated some possible options to solve the three issues described. However, as stated in the paper, those were just ideas to give Members some food for thought during the work process. It was without prejudice to any new options that might be identified in the future and to the position of any Members on a specific option. According to a Chinese saying, one had to "throw out a brick to attract a jade". Others might come up with valuable opinions. China would be more than happy if the proposal could serve to be such a "brick". It was believed that with concerted efforts of the NG, Members would finally come up with a result of the negotiations that was beneficial to all Members. China welcomed comments from other Members and would be happy to discuss them further.

94. The representative of India, as a co-sponsor TN/TF/W/82, supported India's statement and wished to reiterate that the objective was not to be overly prescriptive. It was suggested, as an option, for Members to identify commitments for which they would require longer implementation periods, or technical assistance, or both. Additionally, there could be different levels of standard to which a Member committed. For instance, publication of Rules and Procedures could be done in different ways such as via Internet, official gazettes, newspapers, or even circulation through trade associations etc., depending upon what constituted the most effective means of communicating the information.

95. Similarly, Members could have different levels of risk management or different standards for measuring cargo clearance time. India hoped that the proposal would also help in focusing the need for technical assistance. Another objective was an attempt to suggest a less onerous and legalistic dispute settlement mechanism. The suggested mechanism was also hoped to be useful in other areas of the negotiations, such as non-tariff barriers.

96. The representative of Pakistan, as co-sponsor of TN/TF/W/82, wished to compliment China's introduction by sharing the thinking which had gone into the preparatory stages of the proposal.

97. It was an admitted fact that the WTO Membership offered a diverse landscape. That was equally true for different Members' different levels of implementation capacity. Some Members might be resource starved to reach a level in trade facilitation they would like to achieve. Various Members had shared their concerns regarding SDT for the proposed measures. It was against that background that the paper proposed a "modular" approach for commitments. The intention was clear. The sponsors would like that every Member had to contribute, but proportionate with its ground realities and capacity to implement. The "basic module" would contain those elements which could be implemented by all Members as "the least common denominator". That module comprised the majority of the proposed measures. The other modules could be opted -n by Members who had the capacity to implement. Others, however, could link it to the provision of TA&CB. The intention of the proponents was not to shy away from the commitments, but to take a considered decision before making a commitment so that it was transparent and predictable and successfully implemented at the promised time. What was proposed was that all Members had the same finishing point, but a different starting point.

98. While the submission proposed a modular approach for different measures, it also had in mind different levels within the same measure, a concept which had been termed as "temporary partial application of commitments" by Australia, Canada, and the US in their proposal TN/TF/W/80. He wished to mention two areas: in the context of advance rulings, tariff classification could be in one

module, valuation in the other, and drawback in yet another. Similarly, in case of publication, the publication in the official gazette could be done in one module and Internet publication in another. The publication of Trade Law and Procedure and Customs law and procedure could be in one module whereas the publication of administrative and judicial decisions could be in another. The objective was to commit what could be implemented fully and in a timely manner.

99. Annex D provided that developing countries shall not be required to implement those measures for which they lacked implementation capacity. China's, India's, Pakistan's and Sri Lanka's proposal was not intended to reinforce that aspect. Rather, the proposal sought to improve implementation capacities that could lead to commitments and their implementation. Those who had the resources must try to build such capacities. Pakistan appreciated the sensitivities attached to this issue, including the sovereignty in decision-making to pick a country by the donor itself. Even for international financial institutions, there were certain working procedures. It was not suggested to circumvent them. The sponsors were also clear that the WTO was not a development agency and did not have sufficient human resources to deliver such an important and sensitive task. Pakistan just wished to flag this issue so that Members could discuss it while working towards text-based negotiations, lest it was said that Members collectively failed to take on the responsibility which could have improved the trading disciplines of the world.

100. The application of the DSU to any future agreement was another issue to be flagged. Pakistan was convinced that the DSU provided the "security and predictability" to all WTO Agreements. The issue was flagged to avoid negative implications on the negotiating process and the congenial atmosphere Members had created during the last one and a half years. If any such discussion could provide comfort to delegates to come on board, Pakistan would appreciate that. It was up to the Membership to discuss details further. But all of those issues had to be discussed, as ignoring them could act as a disincentive. Pakistan wanted to move forward, but also wanted to take every one along, especially those who were comparatively less privileged.

101. The representative of Zambia, speaking on behalf of the LDCs, said that as Members were aware, the negotiations on trade facilitation were launched on the premise that their outcome would provide developmental benefits for developing countries, especially the LDCs. These developmental benefits were supposed to be achieved through the clarification and improvement of the provisions of GATT Articles V, VIII and X, as one pillar of the negotiating mandate, and, as the other pillar, the provision of adequate TA&CB support to developing and least-developed countries before, during and after the negotiations.

102. In carrying out these tasks, an appropriate balance must be properly sought – one that took into account the needs of LDCs with respect to such TA&CB before, and during the negotiations so that they could effectively participate and negotiate and also to ensure that the development objectives of the negotiations were met. This implied that during the negotiations and before text-based negotiations got under way, assistance-focused TA&CB support must, at the very least, be adequately provided to those Members that needed it.

103. Members could not, therefore, expect those Members who had not identified their trade facilitation needs or priorities due to institutional or domestic capacity constraints to sufficiently comprehend the complexities and implications of the negotiations and participate on an informed basis. The urgency of providing this assistance was very clear.

104. Furthermore, despite submissions from the ACP Group in document TN/TF/W/73 and the African Group in documents TN/TF/W/33 and TN/TF/W/56, among others, on how the mandate of this important issue, that was clearly stipulated in Annex D of the July Framework, could be made operational, there had been little or no positive movement in this area. That was rather unfortunate because, securing effective and adequate TA&CB in the course of the negotiations and in the

implementation phase after the negotiations (i.e. implementation-related TA&CB) was an essential element in the negotiations.

105. The recently circulated text-oriented proposals by some Members seemed to indicate that the negotiations were now entering the drafting of new rules or obligations with regard to GATT Articles V, VIII and X. It was the view of the ACP Group that this move might be premature because the cost implications of proposed measures had not yet been fully assessed. Moreover, the general lack of commitment to provide adequate and timely TA&CB support would make it difficult for LDCs and other developing countries to benefit from the outcome of such negotiation.

106. The Chairman moved the meeting back into formal mode and asked whether there was any item a delegation wished to raise for the record. Time would also be given at this stage for reactions on earlier proposals from the last meeting.

107. The representative of India commented on several proposals previously made.

108. With respect to TN/TF/W/79 by Armenia, Canada, EC, Japan, the Kyrgyz Republic, Mongolia, New Zealand, Paraguay, and the Republic of Moldova, India welcomed the comprehensive proposal on Article V. India recognized that it had many positive features and supported them. India had raised a few concerns on some aspects of the paper, such as the principle of non-discrimination during the last meeting and had a few more observations on the submission. The first one related to the proposal to publish 'justification and basis' for fees and charges as well as for laws, regulations, requirement and procedures concerning transit. It was not clear to India how that commitment could be fulfilled. India also felt that such a requirement would be onerous. Furthermore, India sought a clarification that the commitment to publish fees and charges would be limited only to government charges.

109. The second observation related to the proposal under the heading reduction/simplification of formalities. India sought a clarification regarding the second tiret of the proposal concerning use of commercially available information, documents and data, including as part of a transit declaration. Did the proposal seek to introduce a principle that a goods declaration for transit could be substituted by a commercial document, in cases where it had all the relevant details? India would have difficulty in agreeing to such a proposition. In India's understanding, filing of a transit declaration should be a mandatory requirement and could not be substituted by commercial documents of the operator. However, India agreed with the principle that the details of the declaration should be drawn from the commercial documents. India also had a reservation under the third tiret, namely, adoption of a Single Window for traffic in transit. That was a resource intensive requirement. Also, its value was not so obvious as minimal agencies were involved in clearance of goods under transit.

110. The third observation related to the bullet 'Promotion of regional transit agreements or arrangements'. India supported the principle of promoting bilateral and regional transit arrangements and felt that Members would be bound to act according to such arrangements. Hence, India felt that the additional proposal under that bullet, namely, "Members shall not enforce unilateral rules affecting traffic in transit which were not in accordance with the bilateral or regional transit agreements or arrangements in which they participate", was superfluous and should be deleted.

111. The fourth observation related to the bullet under 'simplified treatment'. In India's experience, transit procedures were very simplified and rarely needed detailed intervention of customs authorities at the points of transit. Hence, India did not feel the need to have a mandatory commitment for all Members to provide for a system of extending authorized trader status. India instead suggested that the establishment of an authorized trader status scheme could be considered *where necessary*.

112. The fifth observation related to the bullet dealing with ‘Bonded transport regime and guarantees.’ India sought clarification of the term ‘customs debt.’ In India's understanding, it should also include the notion of fines and penalties that could potentially be levied in case the conditions of transit were not fulfilled, including diversion of goods *en route*. Hence a system of fixation of the amount of bond and guarantee had to recognize the principle that this could be inclusive of the elements of fine and penalty. In India's understanding, this would constitute part of what had been referred to in the proposal as ‘customs debt.’ India looked forward to hearing the proponents understanding on this issue.

113. The sixth observation related to the bullet dealing with Freedom of Transit and routes most convenient for international transit. India had consistently expressed its reservation regarding giving the traders the right to choose the route most convenient for international transit. India felt that this would alter the fundamental balance currently provided under Article V:2 which recognized that “there shall be freedom of transit through the territory of each contracting party, *via the routes most convenient for international transit...*” The most convenient route had to be chosen in consultation between transit giving and transit receiving countries by taking into account considerations such as infrastructure, adequate control points, etc. India had serious reservations in altering this balance completely in favour of the operator. However, India was willing to recognize the principle that an operator could have the freedom to choose between those routes which had been mutually agreed between transit giving and transit receiving countries as international transit routes.

114. The seventh observation related to the same bullet and concerned the proposal that “no distinction shall be made which was based on the choice of means of transport, the flag of vessels, ..” India had earlier presented examples under which treatment between means of transport could be different based on how secure a mode of transport was – such as a closed train wagon and an open truck. Similarly, risk to revenue could be better covered when transport was through a government-owned transport system (such as railways) and through private means (such as trucks). On account of the considerations, India suggested that one should qualify this proposal at the end with the phrase “except what was reasonable to safeguard legitimate public interest and public revenue.”

115. With respect to proposal TN/TF/W/70 by Chile, India had made certain observations during the February 2006 meeting. India had two additional observations on this paper. The first related to Section IV concerning the proposal on a webpage. Chile had proposed several elements for publication on a webpage. Amongst them, India had a reservation on the suggestion to publish rulings on customs related issues on the web site. As India had pointed out earlier, a large number of judicial rulings were issued by various judicial fora such as the Tribunals, High Courts and the Supreme Court. These were easily available in the public domain through private publications. It would be onerous and resource intensive to also publish all the rulings on the website. India therefore suggested to look at a more liberal transparency requirement for publication of rulings. Furthermore, India did not understand the difference between ‘documents’ and ‘formats’ suggested for publication on the web page.

116. The second observation related to the proposal on confidentiality under paragraph 10. The proposal seemed to suggest establishing a register specifying circumstances under which trade-related regulations would be kept confidential. India was not very clear as to what circumstances could necessitate keeping a regulation confidential. In fact, a regulation could be made operational only if it was publicly available. India looked forward to clarifications on all these issues.

117. The Chairman observed that Members had reached the end of very useful discussions. A lot of ground had been covered by going over the proposals. He had seen further evidence of a refining of thoughts, the collation of proposals and a narrowing down and focusing on the operational side of commitments. He sensed a fair degree of comfort in the NG with respect to the types of commitments Members would ultimately be looking at. That was excellent. One had seen late starters turn into

front runners with two papers on cross-cutting issues, which was remarkable. He had not thought to see SDT as the first area to benefit from bottom-up text-based proposals. It posed an interesting challenge to those working on the article-related papers. He hoped that, over the coming weeks or months, Members would be working together to surprise him further.

118. Thanks were due to Members for having produced so much work. When commenting in the TNC about the need to pick up the pace, he had not realized just how far ahead of him Members already were.

119. 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

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

121. It was so agreed.

C. OTHER BUSINESS

122. The Chairman addressed the issue of the Group's next meeting, recalling Members' agreement on holding additional sessions on 6-7 June and 24-26 July. Judging from Members' feedback on the work ahead, he sensed that more time would be required than the meetings slotted in so far. He therefore proposed to have two informal inter-sessional meetings on 11-12 May and 10-11 July. Furthermore, he strongly encouraged Members to engage in discussions amongst themselves.

123. It was so agreed.

124. The meeting was adjourned.
