

Negotiating Group on Trade Facilitation

SUMMARY MINUTES OF THE MEETING

Held in the Centre William Rappard
on 5-6 October 2005

Chairman: Mr. Muhamad Noor Yacob (Malaysia)

1. The Chairman set out the main purpose of the meeting, explaining that it aimed at (i) discussing new submissions and input previously received and (ii) re-visiting the overall body of contributions with a view to identifying key elements on the basis of the Secretariat's compilation (TN/TF/W/43/Rev.3). 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. As at the last meeting, the intention was to commence the meeting in formal mode to register new submissions and make other comments Members may wish for the record and have the remaining part of the session take place in informal mode.
2. In addressing the issues at stake, Members should pay particular attention to the question of technical assistance and capacity building (TA&CB). More progress was required in that area.
3. The agenda was adopted.
4. The representative of Japan wondered whether the World Bank could brief the Group on the outcome of the Development Committee Meeting held by the World Bank and the IMF at the end of September in Washington D.C.
5. The representative of the World Bank suggested to postpone the brief until after the next meeting when there would be more substantive comments to make.
6. The representative of Japan wished to inform the NG about the outcome of the Senior Officials Meeting hosted by Japan on 29-30 September. The focus of the meeting had been on how to best proceed with the negotiations on Agriculture, NAMA, Services and Trade Facilitation, with positive discussions taking place in each area.
7. With respect to Trade Facilitation, participants had been of the view that the discussions had been going relatively well compared to those on other areas, which had been welcomed by most representatives. Some countries had pointed out that the NG should now be prepared for text-based negotiations and should seek guidance from Ministers on how to move forward. As far as TA&CB was concerned, the feeling had been that more concrete discussions were required. Donor countries should make clear what kind of assistance could be given. At the same time, the needs and priorities of recipient countries should also be made more clear in order to advance with the discussions on those matters. More concrete discussions were needed to make the Hong Kong Ministerial Conference more successful in that area, and more guidance was needed from Ministers on how to best advance the negotiations.

8. The representative of Norway introduced a follow-up paper (TN/TF/W/67) on a previous proposal by New Zealand, Norway and Switzerland (TN/TF/W/36) on the simplification and standardization of trade documents.

9. The aim of the original proposal had been to identify the need for a standardized format for documents accompanying shipments and for a reduction in the number of documents required. The intention was to clarify and improve GATT Article VIII in order to make it more operational. The starting point had been that application of international standards in trade documentation would greatly benefit all countries, particularly developing countries and SMEs. The question had been what could help those standards proliferate.

10. The proposal suggested agreeing on the use of standardized document formats for export, import and transit of goods, available in several languages, to ease the work of traders and customs. To maximize the benefits of standardization of documents, the use of standard data elements in documents should be discussed. The proposal put forward the idea of a "bank standard document" that could be accessed by anyone in the language needed.

11. Many proposals had been submitted on the standardization of documents both under Article VIII and Article V, which all shared the common feature of Members having to commit to the use of standardized elements. The new New Zealand-Norway-Switzerland submission showed that a large number of developing countries already had adopted standardized documentation requirements through recent customs reforms. For example, over 115 countries had documentation requirements aligned with the UN Layout Key. The paper indicated four alternative options for how the issue could be regulated in a future text. It was not proposed that the WTO develop standard documents or standard data elements. That should be left to organizations best suited to carry out such a job.

12. The representative of New Zealand said that the paper identified the common thread running through a number of proposals on the clarification and improvement to Article VIII of there being benefit in committing to the use of standardized documentation requirements for import, export and transit formalities.

13. The paper sought to address an issue at the heart of the trade facilitation (TF) negotiations, relating to the improvement of Article VIII, 1(c) of the GATT. The use of documents was a necessary step in the trading system. It was in every Member's interest to ensure that such documentation data was not duplicated and that data requirements were kept to the minimum, while at the same time ensuring that the transparency and predictability of standards of the global trading system were preserved.

14. The proposal was of particular relevance to small economies with a large number of small- and medium-sized enterprises (SMEs). In New Zealand, SMEs had ranked complex customs formalities as the second biggest barrier to trade. The aim of the paper was to present alternative ways to achieve the objective of simplifying border formalities for traders and ensuring that all Members used standardized documents or data elements. The options presented all focused on using existing documentation standards and models that had been developed by relevant expert organizations such as the WCO and the UN, including the UN Layout Key. The key part of the paper was paragraph 6 which set out options and ideas for how to tackle the issue. They were not necessarily intended to be rigid alternatives but could be combined or merged.

15. The representative of Switzerland said that the simplification and harmonization of trade documents were most frequently quoted by Swiss business as issues they wished to see improved through the negotiations.

16. The UN Layout Key was the leading standard document and served as the basis for the most widespread standardized trade documents. It was a rationalized means for preparing documents where information was provided only once for a full set of export documents. Originally designed as a paper document when adopted in 1963, it was now also used by information systems for converting data records to printed output or for data entry. It was a logical set of data and suitable for both data processing and for traditional methods and therefore was recommended as a common basis for the presentation of documents for international trade.

17. The twin to the UN Layout Key was the UN EDIFACT (UN Electronic Data Interchange for Administration, Commerce and Transport) as the international standard for EDI and the backbone of electronic commerce. It provided the essential rules for data exchange, particularly when data had to be processed by more than one organization. It was a neutral tool to harmonize data across national sectoral and organizational frontiers and was independent of any hardware and software choices.

18. UN CEFACT (UN Centre for Facilitation of Procedures and Practices for Administration, Commerce and Transport), was promoting and developing those instruments. It was open to participation from UN Member States, intergovernmental organizations and sectoral and industry associations recognized by the UN ECOSOC. The adequacy and legitimacy of the recommendations by UN CEFACT for business was due to the fact that much of the work was carried out by private sector technical experts. It was an excellent example of cooperation between private business and public organizations.

19. The representative of Hong Kong, China (HKC) welcomed the follow-up paper from New Zealand, Norway and Switzerland on simplification, reduction and standardization of trade documents. The paper set out alternative options to facilitate Members' deliberations on how to approach the issue, covering (i) reference to relevant international organizations that had developed standardized documents, such as the WCO and UNCTAD; (ii) an obligation to use documents aligned with the UN Layout Key; (iii) reference to a bank of standard documents developed by relevant international organizations which Members must draw upon; and (iv) a list of standard documents that must be used.

20. HKC generally welcomed the standardization of data and documentary requirements across all WTO Members as a trade facilitation measure. International standards for data elements and data requirements should be adopted by individual Members as far as possible. While, in principle, supportive of the idea, HKC would like to know more about how it could be implemented. Clarification was sought on questions such as how to come up with a list or a bank of standard documents agreeable to all Members.

21. The representative of the European Communities considered the New Zealand-Norway-Switzerland paper to be very useful. The EC strongly supported the idea of standardized documents and data elements which was clearly of use to traders and governments because it could facilitate cooperation between governments.

22. The paper contained good ideas on how to get there, with paragraph 6 being particularly interesting. It set out a number of alternative options which were not mutually exclusive but could be combined. In addition to the international standards mentioned, such as the UN Layout Key and the UN EDIFACT, the EC also wished to look at some more specific international standards, such as the WCO Data Model, which was very relevant in that context.

23. Any commitments on the use of international standards should contain an element of flexibility. In some cases, a transition period would be needed if the use of a specific international standard was agreed. There could also be cases of an international standard not being suitable for a particular country due to it being ineffective or inappropriate.

24. The document was also very useful regarding many other elements of the negotiating mandate with regard to trade formalities and procedures and the use of international standards. Many lessons could be drawn from the paper in taking forward the discussion.

25. The representative of Australia generally supported the initiative which was an essential part of the streamlined trade facilitation regime. The standardization of information requirements was a very desirable ambition. It was useful to note the significant work done by the WCO such as the WCO Data Model or the Revised Kyoto Convention as important instruments for the simplification of procedures and standardization of the reporting of cargo at the border, thereby providing a boost for international commerce.

26. Australia had legislation in place regarding the reporting of cargo which mandated the electronic reporting of export, import and transhipped goods to customs. Australia used international standard data elements and international standard message formats for that purpose. It was important to note that initiatives in this area should recognize that electronic systems were required, creating the need for standardized data requirements rather than the actual layout of physical documentation. In that regard, Australian Customs was working towards a standardized data set, linking requirements of all border agencies, putting in place a kind of Single Window to the Australian Government for reporting of international trade consignments.

27. It was worth noting that the lack of electronic documents within the industry represented an impediment to the development of such initiatives. In that regard, interesting work was being carried out by the International Air Transport Association (IATA) on producing an electronic airway bill. A conference would be held Geneva in early November between airlines and other interested parties on working towards an electronic airway bill. In a recent document, IATA had noted that every year, air cargo required 40 jumbo jets full of paper for customs clearance purposes. To streamline the process, it was necessary to note the work required by both industry and governments.

28. It was useful to note the work being done by UN CEFAC and UN EDIFACT. Work on new technologies, specifically web technologies, was of particular interest and relevance to developing and least-developed economies. It was not necessary to invest in existing technologies such as UN EDIFACT. Rather, they could leapfrog that step and use those standardized data elements, using web technologies. The paper noted the work of organizations such as the WCO, UN and UNCTAD. ASYCUDA, for instance, was currently used in 80 customs administrations. It was useful to note the prevalence of that system and to look at the linkages between ASYCUDA and the work proposed in the document.

29. The representative of the Philippines said that the contribution from New Zealand, Norway and Switzerland gave Members ideas on how one could proceed with improving Article VIII, paragraph 1(c). It was interesting to hear that over 115 countries had already documentation requirements aligned with the UN Layout Key and that there were many which also had National Associations affiliated to the International Federation of Freight Forwarders Association (FIATA). The paper also recognized that other developing countries would need technical assistance and that they could provide technical assistance for those countries not yet in the system.

30. Paragraph 6 was a good option that Members should carefully look into. There should be an element of flexibility. The point mentioned in paragraph 9 about not reinventing the wheel but using what had already been developed by other organizations was important to keep in mind when proceeding with detailed discussion of the proposal.

31. The representative of Brazil considered the New Zealand-Norway-Switzerland proposal to be a major step forward in trade facilitation measures. The use of standardized documentation and data would have benefits not only in allowing for a more streamlined transit of goods but also on helping to prevent fraud.

32. Brazil agreed that there would be need for flexibility with respect to the measure proposed in paragraph 6. Many countries, including developing ones, already used standardized documentation. With respect to the implementation of the proposal, there might be need for appropriate time frames and technical assistance as some developing countries were quite advanced in that regard, while others were not. One should not re-invent the wheel nor duplicate work. It was quite appropriate to use what was developed and being developed by other international organizations.

33. The representative of India recognized that standardizing and simplifying documents was one of the key elements to improve the movements of goods across borders and that the best way of doing that was to adopt international standards. To that extent, India was very much in agreement with the general trust of the proposal. However, India also recognized that the paper was a preliminary one which required further work.

34. Paragraph 6 was perhaps the most important aspect to focus on. India had already mentioned its preference for clarity regarding the international standards on which obligations would need to be taken. With respect to the listed relevant international organizations involved in standard making, additional names could be added, such as IMO and IATA. The landscape of international organizations developing standardized documents was huge and had to be recognized. While recognizing that the adoption of international standards was the right path to trade facilitation, much more work had to be done to have clarity on which international organizations and which standards would be subject to commitments. It was important that Members understood the actual details as to what standardized documents one was talking about to be able to see which of them could usefully be brought into the discussion. India supported the EC's observation that, when discussing the adoption of international standards, flexibility would be required to account for individual peculiarities and concerns of Members.

35. Clarification was sought on whether there was a link between the first and the fourth bullet. On the second bullet, suggesting an obligation to use documents aligned to the UN Layout Key, it was necessary to elaborate and precisely set out those documents. The reference to a bank of standard documents was a good idea, but required further consideration as to how and who would set up such a bank, who would operate it and what documents would be part of the bank.

36. The representative of Chile said that the number of import/export documents and data and documentation requirements might be excessive in some cases, with identical information being required via different means. That delayed trading activities and did not facilitate the exchange of information between customs administrations and border control authorities. Chile was in favour of standardizing and reducing documents and of establishing a list of data required for classification and uniform denomination which would facilitate trade.

37. The New Zealand-Norway-Switzerland proposal went along those lines and was positive. However, the four options were not exclusive. Rather, the paper spoke of "a list of standard documents" to be used. It also introduced an element of flexibility, making reference to the standard documents developed by international organizations. Chile wished to pursue this idea and see how it could be implemented. The proposal should be discussed further.

38. The representative of Kenya said that the United Nations was the mandated organization to set definitions, standards and procedures on data collection. Simplification and harmonization of standards and procedures was crucial for effective policy-decision making on matters of international

trade. Ministers and policy makers were every day engaged in a constant policy-decision making process. They did not require data that did not communicate any information. Rather, they needed organized sets of information, and data presented in simple formats to allow them to make informed decisions. Kenya was aware that sophisticated procedures increased transaction costs in terms of delayed decisions or making wrong decisions.

39. It was therefore important that the process of simplification, harmonization was given serious thought. Sophisticated processes led to knocking out enterprises, especially small- and medium-sized ones, which constituted the largest portion of trading groups in developing countries. In that regard, Kenya endorsed the proposal by New Zealand, Norway and Switzerland and supported the principles of simplification and standardization. That was consistent with the call made by the United Nations in the area of simplification. Kenya urged, however, that the process be deepened in terms of understanding how the proposal interfaced with the already existing systems. Members must also recognize that there would be need for delivering investments in that area, especially for those countries that did not have the systems to implement the proposal.

40. The representative of Malaysia agreed with the general thrust of the New Zealand-Norway-Switzerland paper which could provide further important improvement to Article VIII. Malaysia had also undertaken measures to improve and expedite customs clearance, such as the standardization of customs forms aligned to the UN Layout Key, in the belief that electronic submission of import and export documentation was important to improve and expedite customs clearance. Therefore, electronic submission of import and export documentation was conducted.

41. Malaysia agreed with the point by the EC that flexibilities were needed for developing countries in terms of the use of international standards. Malaysia looked forward to further discussions on paragraph 6 of the paper to see how one could have better coherence on the instruments already existing.

42. The representative of Turkey supported the New Zealand-Norway-Switzerland proposal and the idea of establishing international standards in trade documents and data requirements. Paragraph 6 of the proposal was very interesting, especially its reference to the UN Layout Key. His delegation wished, however, to make a point regarding data requirements.

43. About 10 years ago, designers of customs automation systems had been very interested in the UN EDIFACT data sets. It was at that time that the WCO had developed its Data Model. To date, many designers took that model into account, even if the WCO Model had not yet found pervasive use in customs automation systems. While having some concerns about a reference to data sets or proposed models regarding data requirements, which could be a challenging task, Turkey invite the NG to further reflect on the matter.

44. The representative of Guatemala said that Guatemala had implemented measures in line with international standards and had ensured compliance of the standards used in Guatemala with those used by its trading partners. Guatemala, therefore, generally supported the proposal which was the right path to take. There was room for improvement, however, especially with respect to the investment to be made in computerized systems to enable them to use electronic documents. That was an area in which the Guatemalan authorities required assistance as had been reported when completing document TN/TF/W/59. And that was why donors and international organizations such as the World Bank and others should train the officials for the use of those international documents in customs matters. The suggested measures would be of great benefit for SMEs, representing the majority of traders in Guatemala.

45. The representative of Costa Rica agreed that the use of international standards was a desirable objective of the negotiations. It was a necessary element of the future agreements on trade facilitation, especially due to the benefits it would bring to SMEs.

46. The alternatives listed for achieving the objective were not exclusive. Members would benefit from a discussion about those alternatives as well as from finding out more from the international organizations on the use of those standards. Costa Rica agreed with the conclusion of the paper that the only way to derive maximum benefits was for all Members to commit on using those standards. That was the principle one should be working on.

47. The representative of Canada said that the New Zealand-Norway-Switzerland paper was very useful. It defined not only what could be done in the area of promoting the use of international standards but also how Members could deal with it in the context of the negotiations. It was important to look at things through that prism. The more Members were using the same standards or documents, the easier was the flow of goods.

48. Regarding the interface with existing standards, the communication made clear that the suggestion was not to have the WTO develop standardized data elements. That was fully shared by Canada. It was clear that the WTO was not a standard setting body; there were other bodies to do that. The issue was therefore not to develop standards such as the WCO Data Model or the UN Layout Key. The real value added by the work in the WTO was the promotion of those standards. Commitments to promote the use of international standards as part of the commitments developed on Trade Facilitation would make a major contribution to the objective of the negotiations, leading to greater predictability and enhanced facilitation of trade.

49. There was a variety of possibilities to do that as also mentioned in paragraph 6 of the document. A number of proposals had already been made in that regard, going in the same direction. A commitment to use international standards developed by standard setting bodies as the basis for data and documentation requirements would be an important result of the negotiations. It could be left for each Member to choose which international standard to use.

50. Canada recognized that in some cases, a country might not be in a position to fully apply an international standard, but that should be the exception rather than the norm. A party having recourse to such deviation from international standards should have to justify why it was doing so. There were trade rules in the WTO system that could serve as a source of inspiration for developing that.

51. The representative of Chinese Taipei said that Chinese Taipei generally supported the idea expressed in the New Zealand-Norway-Switzerland paper.

52. Chinese Taipei was aware of there being concerns on paragraph 6, relating to, for instance, the question of how to implement flexibility and how to ensure coherence of TA&CB work. A paper had been submitted by Chinese Taipei (TN/TF/W/62) proposing the establishment of a long-term mechanism such as a Committee to authorize the use of international standards.

53. The representative of the United States said that the New Zealand-Norway-Switzerland paper laid out matters the NG had to think about, as it advanced towards taking commitments in this area, and suggested potential approaches for doing so. It touched on an area considered key by the private sector for advancing facilitation and particularly important to SMEs. Assuming commitments in that area would also improve the cooperation and information exchange environment. There were linkages to proposals made by the United States, and need for concrete follow-up proposals in this area.

54. The representative of Korea fully supported the New Zealand-Norway-Switzerland proposal. Korea had also made a proposal on this matter. One point his delegation wished to draw attention to was the leapfrogging issue. From Korea's experience, when trying to set future rules for the next 10 years, it was necessary to consider what kind of systems would be good in the next 10 years, and what would be most suitable in the future. In that context, it was sometimes possible to jump directly to more advanced systems, even if it implied certain investments.

55. The representative of Sri Lanka supported the New Zealand-Norway-Switzerland proposal. Sri Lanka also believed that using simplified documents based on international standards made life easier for traders, particularly SMEs. Paragraph 6 of the document setting out various options was the paper's most important part. In Sri Lanka, the content of good declarations was in conformity with the UN Layout Key. For the automated customs clearance process, the format for the electronic launch of declarations was based on international standards for electronic information, EDI. Sri Lanka, being a small developing country, realized that the application of standardized and simplified documents had speeded up clearance times and increased compliance.

56. The representative of Ecuador shared the views expressed in document TN/TF/W/67 on the very important issue of standardization. Standardization would promote transparency and facilitate trade. Ecuador shared the general aim of the proposal and considered the alternatives referred to in paragraph 6 to be very interesting.

57. It was important to enhance the investment in information systems. There was need for technical assistance for some countries in that regard. The technological progress in that area also had to be born in mind, as well as future cooperation required to re-modernize those systems.

58. The representative of Australia introduced his delegation's experience paper on Australia's advance ruling regime for tariff classification and valuation (TN/TF/W/66). The paper built on a proposal submitted jointly by Canada and Australia (TN/TF/W/9) on possible commitments on advance rulings.

59. The availability of advance rulings in areas such as tariff classification, valuation and origin facilitated trade by providing certainty for traders and their agents as to how their goods would be treated by border agencies. Advance rulings promoted confidence between customs agencies and traders, thereby encouraging compliance and minimizing delays, complaints and appeals.

60. Australia believed that it would be appropriate for an advance ruling commitment to be included as part of the outcome of the TF negotiations. Multilateral commitments on advance rulings would be consistent with the aims of Article X of GATT, whose principal purpose was to encourage transparency of cross-border trade requirements and processes. Commitments on advance rulings, such as in areas of tariff classification and customs valuation, would represent a logical and sensible outcome, an outcome that was modest and achievable and one that delivered real commercial benefits.

61. The objective of the paper was not to suggest that Members should model their advance ruling system on Australia's regime. Rather, the intention was to share Australia's experience and to identify guiding principles that underpinned Australia's advance ruling arrangements, principles which could form the basis of future WTO commitments in that area. Those principles included that rulings should be issued in writing, be binding and remain valid for a defined period of time, with the system nonetheless incorporating flexibility for authorities to modify or revoke rulings. A review mechanism had to be part of the system, making available information on rulings with precedent values while balancing the interest in information with legitimate confidentiality considerations. Internal records of rulings should be kept to ensure consistency, and information on the process for obtaining advance rulings should be easily accessible.

62. Commitments on advance rulings would not be new. Members were already required to provide advance rulings on origin under the terms of the Agreement on Rules of Origin, Article 2(h) and Article 3(f) in respect of non-preferential Rules of Origin, and Annex II in respect of preferential Rules of Origin.

63. To a large extent, adopting commitments on advance rulings in the WTO context would formalize widespread practice in developed and developing countries alike. In addition to Members' obligations under the WTO Agreement on Rules of Origin, advance rulings for matters such as tariff classification and customs valuation increasingly were becoming an integral part of modern bilateral and regional preferential trade agreements.

64. As advance rulings were an established customs practice, and since Members already had an obligation to provide such rulings for origin determination, extending that requirement to other issues such as tariff classification and valuation in the WTO, should not be overly burdensome. Australia certainly recognized that the cost of implementing such a system would depend on the type of advance ruling regime adopted by Members. The costs outlined in Australia's paper reflected the automated nature of the Australian system. Nevertheless, Australia considered it to be a relatively undemanding initiative. Some Members might require technical assistance to adjust or extend their current advance ruling systems.

65. The representative of Japan welcomed the Australian paper. Clarification was sought on three points, starting with the binding nature of rulings. According to paragraph 18, customs treated Valuation Advice Service (VAs) as internally binding, although not codified in legislation. How was the binding nature of VAs ensured without any codification in law? Information was also sought on how the procedures referred to in paragraphs 25 to 34 were stipulated in the administration. Was it by laws, by administrative guidelines, or something else?

66. Reference was also made in the paper to appeal and review procedures against customs decisions on advance rulings, explaining that the binding nature of advance rulings was not codified in the legislation with import declarations based on the importer's own assessment. Japan wondered whether that kind of procedure was legally required at such an early stage without any actual damage being suffered.

67. Clarification was also sought on the publication of advance rulings. In order to enhance predictability of treatment by customs authorities, it was important to provide information to the public while paying sufficient attention to confidentiality issues to protect the interest of the businesses. According to the Australian document, this information could be accessed via the internal information network systems of Australian Customs and it seemed that some authorized traders could access that data. But it was unclear whether other interested parties could obtain past rulings or the thrust of past rulings which could be utilized for enhancing transparency or predictability. Some kind of central function was desirable to ensure uniformity of treatment among local customs. The measures listed in paragraph 40 could be in line with Japan's proposal to address the requirement of uniform administration while aiming at enhancing efficiency.

68. The representative of India said that the Australian paper added to Members' overall understanding of the important but complex matter of advance rulings. India supported Australia's observation that Members had to implement advance rulings in a way best suited to their own domestic customs infrastructure and according to available means. Most of the principles proposed in the Australian paper were good ones and broadly acceptable. Certain observations nevertheless had to be made.

69. On the third bullet, India wished to point out that a ruling would be valid for a defined period of time if the facts and the laws remain unchanged. It might be useful to state that up front. On the sixth bullet, regarding the balance between the desirability of making information available and legitimate confidentiality considerations, India sought clarification as to how that kind of a balance was envisaged to be achieved.

70. Clarification was also sought on the opportunity for traders to seek review of rulings. Was a regular appeal procedure envisaged, a modified appeal procedure, or were there advance rulings in the nature of an arbitral proceeding? How did it interface with the appeal system?

71. Paragraph 3 of the Australian paper indicated that in 2004-2005, Australian Customs had issued 3,254 advance rulings on tariff classification. India's experience showed that once duty rates had been reduced substantially and harmonized across tariff lines, the dispute on tariff classification had substantially come down. India therefore wondered about the motivation for seeking that many advance rulings in Australia. With respect to advance rulings on valuation, India wondered whether the final content of the rulings was limited to the principle of valuation or did it also extend to the actual declared value.

72. The representative of Hong Kong, China (HKC) said that the Australian paper enhanced Members' understanding on the possible procedures and commitments for establishing an advance ruling system. Such a system would no doubt help to facilitate trade. Article II(h) of the Agreement on Rules of Origin was a good reference.

73. While welcoming further deliberations on the details of the system, HKC noted that some Members might have concerns over the potential course relating to the adoption of the system. In that regard, Australia had provided very useful information relating to the implementation. HKC encouraged other Members to also share their experience with advance ruling systems.

74. The representative of the United States said that his delegation was a strong proponent of a commitment on systems to provide advance rulings. The United States saw particular value in the Australian paper. It showed that the experience had been a positive one, as had also emerged from other discussions. The US also supported the principles and conclusions drawn in the Australian paper.

75. The representative of Singapore agreed with Australia that enhancing transparency, certainty and predictability in the application of border regulation procedures were the core objectives of GATT Article X. Singapore's experience in the area of advance rulings had shown that advance rulings were one way to expedite border clearance. Knowing customs rules and regulations in advance minimized unnecessary delays and costs for traders. Benefits also existed for customs authorities through encouraged compliance and minimized complaints and subsequent appeals. The paper provided useful information on Australia's advance rulings and the principles underlying the system and represented a useful resource for Members' work on the subject.

76. Singapore recognized that least-developed countries (LDCs) and some developing countries might have difficulties implementing advance ruling programmes. TA&CB would be needed to assist those Members. To that end, it was necessary to ascertain how one could apply leverage on the TA&CB programmes already being provided by international, regional and other organizations. APEC, for instance, had put a collection action plan into place for the establishment of advance ruling systems in the Member economies. Seventy Members had already adopted procedures to provide for advance rulings on classification.

77. Apart from TA&CB, special and differential treatment (S&D) should also be an integral part of any commitments in that area. Members might also wish to discuss the procedural elements that could be included in Members' advance ruling programmes. For example, developing countries and LDCs might initially only have to commit to advance rulings on tariff classification. Members could also discuss the possibility of longer implementation timeframes for developing countries and LDCs as well as other phased-in approaches. Developing countries and LDCs could also look at the possibility of implementing the more onerous commitments in that area on a best-endeavour basis, perhaps in the context of those phased-in approaches.

78. In conclusion, Singapore wished to stress that it was possible to strike a balance between providing predictability and certainty to traders, on the one hand, and ensuring that customs authorities would not be overburdened, on the other.

79. The representative of the Philippines wondered how long it had taken Australia to set up its current advance ruling system. The information provided on related costs was very valuable. The Philippines welcomed Singapore's suggestion on phasing in some of the approaches on rulings that might be finally agreed on at some point to operationalize S&D and less than full reciprocity. Some countries might be able to agree to binding rulings on tariff classification in the first instance, and then later on extend it to other areas such as valuation or origin.

80. With respect to valuation, the Philippines wanted to know if the valuation advice issued in Australia covered the actual duty, and what were the procedures followed to issue a valuation advice so that importers were in a position to have an idea about the actual valuation themselves.

81. The representative of Bolivia said that the Australian paper was important for countries such as Bolivia where an advance ruling system did not form part of the legislation. Clarification was sought on whether the inclusion of that type of system in any country could be incremental. Some Members applied advance rulings only in regard to tariff classification and not on valuation or origin. Bolivia wondered whether that type of legal system would be a gradual one. Information was also sought on the specifics of APEC's Collective Action Plan. Did it contain any transition mechanisms? What type of measures were those Members going to adopt?

82. The representative of Switzerland said that Switzerland was a strong proponent of advance rulings and agreed with the benefits highlighted by other delegations. Switzerland practiced advance rulings and believed that the ideas put forward in paragraph 45 of the Australian submission provided a good basis to discuss the way forward and could be taken up in the compilation even though they had been presented in the context of an experience paper.

83. The representative of Kenya said that Australia's communication on binding advance rulings would contribute to Members' understanding on the subject. Kenya shared the view that advance rulings enhanced transparency, certainty and predictability in the application of border measures. Kenya was pleased to note that Australia was not calling for adoption of common standards and practices in that area. The approach of focusing on principles rather than prescribing detailed rules merited further consideration. Kenya also shared the view that a wider scope would be particularly burdensome for developing countries, such as Kenya, which faced a number of challenges, such as with respect to laboratory analysis of samples to determine tariff classification. That made it difficult to implement advance rulings.

84. The need for TA&CB for developing countries was an important issue that required consideration. In that context, it would also be useful to hear from Australia about the costs involved in putting up the advance ruling regime in Australia. Kenya was also interested in understanding how Australia dealt with confidential information in view of the fact that advance rulings were rather specific.

85. The representative of Malaysia said that advance rulings provided an important element of certainty and predictability regarding the treatment of imported goods. Malaysia already issued pre-import classification which provided tariff classification and endeavoured to also provide advance rulings on applicable duties, customs valuation and duty referral in the future. But that was still being studied and Malaysia was also looking at related cost implications. Any binding commitment should not be more burdensome than necessary to developing countries, particularly in terms of costs. S&D to LDCs should be an element to be considered in any future decision. Malaysia could agree to Singapore's proposal in terms of a phasing-in approach as part of such S&D element.

86. The representative of South Africa said that the Australian paper added to the NG's discussions on advance rulings that highlighted certain principles that were important in such a system such as the trader having the right to a review, the right of the administration to actually reverse its determination if, for example, the given information was inaccurate or incomplete, or the system encouraging consistency within customs itself and transparency with traders in general. To that effect, South Africa welcomed the contributions made so far.

87. The second aspect South Africa welcomed in the Australian paper was the fact that it mentioned the question of cost, even if that would not be applicable to each and every country. The paper at least gave an indication of the costs involved. Obviously, there had been initial costs of starting up the system.

88. South Africa agreed with India that Members should implement advance rulings according to their unique circumstances. Information was sought from Australia on whether they had started with a manual format for advance rulings before moving into an electronic format. If that was the case, it would be interesting to learn about the benefits of each system. What had been the benefits of one over the other? Related to that was the question of cost benefit that one had to look into. It would be interesting to get more details as to how much more it would cost to graduate to an electronic system. Based on the cost-benefit ratio, the question then was whether it was worthwhile to look at an electronic system. Obviously, the question of capacity building would have to come into place. It was important to get a general idea of the process Australia went through to get where they were now, including the time taken. When reading those papers, people sometimes got the wrong impression that one could get those systems running overnight.

89. As for experience papers in general, it might be useful to start looking at a compendium of some sort, although that might entail a lot of work. But organizations such as the WCO, the World Bank, the OECD, and others, had done quite a lot of work in finding out those experiences, involving case studies of reforms in customs and the like, and the Secretariat might want to link up with them. A compendium could be useful when it came to capacity building when Members would be talking about figures and would have a rough idea of the costs and processes involved to put certain things into place.

90. The representative of Turkey said that his delegation was one of the proponents of advance ruling systems to be established as the outcome of the negotiations and very much welcomed the proposal by Australia. Turkey's customs legislation provided for advance ruling systems for origin and tariff classification issues, but not yet on valuation requests. It would be interesting to learn from Australia about the content of the decisions and the principles applicable to the situation in question. Did it provide the clear customs value to be declared? That would be a concrete indicator about how to deal with that issue. In addition, more examples, or mock examples of a real ruling not providing confidential information could help in getting a better idea of the system in place in Australia.

91. The representative of Guatemala said that the issue was obviously relevant for trade facilitation. At the same time, there were still lacunae, especially with regard to implementation for LDCs and developing countries, such as Guatemala, particularly when thinking about having binding

multilateral commitments in the area of advance rulings. Obviously, it was important to understand national experiences. Australia's paper was welcome and would encourage other developing countries in the implementation of measures such as the ones presented by Australia. There were areas to be improved. Guatemala was already implementing the system, but needed to improve other areas. That was why TA&CB were very relevant. The information on costs was useful as it touched upon an aspect everybody had to take into account when looking into this area.

92. The representative of Argentina said that Australia's important document demonstrated the details of an advance ruling system. Clarification was sought on paragraphs 21 to 24. According to that section, Australia had a large number of advance rulings, amounting to over 3,000. It would be interesting to know the percentage of advance rulings which were contested. How many requests had there been for review? And when a review was requested and it was brought before an administrative appeals' tribunal or a court of competent jurisdiction, how much time did it usually take?

93. Further information was also sought on the issue of precedent value. Paragraph 34 mentioned that some of the decisions were subject to further, in-depth examination by customs with a selection of those "audited" decisions being kept in a separate PRECEDENT database available to Customs officers and owners/agents for precedent purposes. Argentina wished to know what the audit process consisted of. Was there any implication that there might be a conclusion different from the original decision, bearing in mind that the decision ruling was already communicated? And was there sometimes a different conclusion reached? What was the percentage of rulings that had a precedent character? Finally, Argentina also wondered about the qualification of precedents with regard to the request for information to be kept confidential?

94. The representative of Cuba raised several concerns with respect to the Australian paper. One related to costs and staff required to implement the mechanism. Paragraph 42 of the document said that two officers were required to issue VAs and 35 officers to issue Tariff Advices (TAs), among other tasks. Bearing in mind Cuba's limited capacities with regard to human resources, a real possibility to implement such a mechanism was not within reach. Cuba endorsed the statements by Kenya, South Africa and the Philippines on the costs of implementing the system. Information was sought from Australia about the transition from manual to electronic application. Cuba shared India's concerns and supported Argentina's remarks on the need for a balance between protecting confidential information and providing information required for advance rulings.

95. The representative of China said that Australia's paper helped better understand the advance ruling system. China shared the view of advance rulings being a good practice that provided predictability, certainty and transparency in trade. To further explore the idea, China wished to share some of its preliminary thinking on implementing the concept.

96. In practice, the provision of advance rulings was comparatively easy in some areas such as the origin of goods, but in others, such as on valuation, it was much more complex. Like India, China was interested in hearing whether advance rulings on valuation were rulings on the principles of valuation or the actual declared value.

97. While the concept of advance rulings was very good and worthwhile, further discussions were required in terms of coverage and specific commitments in different areas. In that regard, China fully supported the paper's observations that Members had to implement advance rulings in the way best suited to their own national customs infrastructure and according to the means available to them.

98. The representative of Indonesia considered Australia's submission to be a valuable contribution to Members' work on improving GATT Article X. While recognizing the importance of advance rulings to provide greater certainty, transparency and predictability for traders, Indonesia

wished to further underline the importance of S&D elements and TA&CB. Furthermore, the costs of implementing advance rulings should not represent an additional burden for developing countries.

99. The representative of Tanzania said that Australia's important document highlighted all the elements involved in an advance ruling system, particularly with regard to costs. For that reason, Tanzania wished to associate itself with the statements made by Kenya, the Philippines, Malaysia, South Africa, Cuba, and Indonesia on the matter.

100. Having participated in a Workshop organized in Chinese Taipei, for which Tanzania wished to express its thanks, Tanzania had learnt something about cost implications. It had become clear that, in the year 2000, it had cost Chinese Taipei US\$5 million to upgrade their air-cargo clearance automation system. A similar system had been set up in 2004 for ocean-going cargoes with a total budget of about US\$6.5 million. Chinese Taipei had also developed an internet environment and virtual trading centre concept with a budget of US\$100 million. Tanzania had also been told that Chinese Taipei had implemented the Container Security Initiative (CSI) by installing three x-ray machines at a cost of about US\$100 million each, with other APEC Members also required to set up such machines at 20 ports.

101. It should be realized that WTO Member countries differed from each other in many aspects, such as with regard to their economic development, geographical, geopolitical conditions, and even in terms of reforms in trade facilitation measures conducted under various international regimes. For example, last year customs authorities in Tanzania had introduced a destination inspection scheme to replace the pre-shipment inspection scheme. The system was associated with a computerized risk management system. Tanzania had migrated to ASYCUDA++ to replace the ASYCUDA 2.7 version. The Tanzania Logistics Community had recently been formed to exchange information electronically. However, it had been difficult to implement and maintain the system due to financial implications.

102. In light of the different situations in different countries, and in the absence of an agreement on which proposals should constitute TF measures and what level of reforms would represent the threshold, Tanzania doubted that document TN/TF/W/59 would provide an accurate picture regarding TA&CB.

103. The representative of Canada welcomed the Australian paper. As a co-sponsor of another paper on advance rulings, Canada attached great importance to that area. The Australian document provided value added in two respects. First, its concluding section set out the key elements that would have to be considered in further developing commitments in the area.

104. Second, it showed one possible way of doing advance rulings and the costs associated with it. Costs were an important matter that Members had to address. But it was also important to keep in mind that there were different ways of implementing advance rulings. That was an area where the often heard reference to there not being a "one-size-fits-all" was especially appropriate.

105. Australia had opted for a system that was very elaborate and very advanced, which had led to certain costs. The costs for setting up an advance system in Canada had been different, despite the two countries' similar levels of development. Canada did not provide advance rulings on valuation, leading to a difference in costs. Furthermore, the number of binding advance rulings issued by Australian customs on tariff classification was at least three times the volume of Canada's, despite Canada having a higher volume of trade. The costs varied from one country to another.

106. It was very useful to have a national experience paper from an advanced developed country like Australia. It would also be extremely informative for the NG to have experiences shared by other countries, especially developing countries, either in written or verbal form. Relevant systems were for instance in place in Zambia and Barbados and seemed to be functioning relatively well. Kenya was

also considering establishing such a system as part of their ongoing customs modernization plan. It would be interesting to hear from those countries about their experiences in terms of implementing those procedures. That was not to minimize the importance of costs, which was a key factor, but to note that it would be a function of what was the commitment to be negotiated in that area, and what was the level of detail and flexibility required for individual countries to implement a system that fit their needs and priorities.

107. The representative of Korea appreciated Australia's paper and supported the advance ruling proposal. Korea's experience had shown advance rulings to be clearly beneficial for both trade and customs authorities. The system allowed customs authorities to have sufficient review periods, enabling them to make better informed decisions and thereby reducing complaints. It was therefore also beneficial from an administrative point of view.

108. Clarification was sought on one particular point. Paragraphs 13 and 19 mentioned the right of customs to revoke or amend their decision within five years. Could not some honest importers face unexpected damage by such action? Was there any limit for a decision not to be amended or revoked? It was also indicated that a VA could be amended or revoked within the same period if customs had issues conflicting with VAs. Would not that raise an issue of credibility or certainty of the system?

109. The representative of Sri Lanka shared the view that advance rulings contributed to certainty and predictability. Such rulings were not new to Sri Lanka's customs administration, although they had only been applied in a limited way such as, for example, on tariff classification. Expanding the scope of advance rulings comprehensively, as suggested by Australia, would pose genuine capacity-related problems. Sri Lanka was, however, open to discussing the matter further. That was why Sri Lanka supported India's idea that expanding the scope should be commensurate with Members' individual capacities of Member countries. In the interest of its traders who had welcomed the country's recent initiatives, Sri Lanka stood ready to further discuss how to improve this important area.

110. The representative of Panama welcomed the new proposal while also sharing the concerns expressed with respect to the capacity of some Members to take on this responsibility. One way for countries to have an advance ruling system would be through implementation in phases. The proposal seemed very interesting. Panama had already undertaken certain preliminary steps towards such a system in relation to other agreements and was interested in responses from other delegations having already implemented the measure.

111. The representative of Norway wished to reply in an initial manner to questions and comments received on the New Zealand-Norway-Switzerland paper, welcoming the feedback made. The subject under discussion was an important one.

112. The paper was intended to further organize Members' thoughts on the various aspects of standardization. The preliminary comments received in that regard were most helpful in creating a good basis for further deliberations in the Negotiating Group.

113. Norway would actively engage in a necessary follow-up in more detail to the various questions raised at a later stage, especially with respect to paragraph 6 of the proposal. The idea behind paragraph 6 was to create a good starting point rather than a firm conviction that Norway had found the answer to Members' deliberations on the topic. Norway therefore very much welcomed Members' comments and also took due note of the calls for flexibility. When working on the paper, Norway had been very conscious not to re-invent the wheel. That was why paragraph 9 had been introduced.

114. Norway agreed with the remarks by the United States that the present paper was a first follow-up paper and hoped that it could inspire others to follow. With respect to the questions raised in regard to the paper, Norway wished to suggest for them to be presented in writing as that would help develop the deliberations further.

115. The representative of New Zealand expressed her delegation's satisfaction with the overwhelmingly positive reaction to the New Zealand-Norway-Switzerland paper. The comments indicated the need for further work on the matter. New Zealand wished to respond, on a preliminary basis, to three of the issues that had come up in the discussions.

116. The first related to the use of existing standard data models. As indicated in the paper, there was no intention to re-invent the wheel or duplicate work. Rather, the idea was to build on existing standards. Further work and more details were certainly required in this area and useful input had been provided by several delegations. Australia's idea on air-cargo clearance and on the need to closely work with industry, were particularly valuable.

117. The suggestion by Hong Kong, China and India to come up with a common list of usable standards was certainly one means of achieving the objective Members were aiming at. New Zealand was prepared to explore that. Further details would be required about what standards existed and how they were currently being used.

118. The issue of flexibility had to be carefully reflected on in developing the paper. New Zealand agreed that some degree of flexibility was necessary. But in looking at the various available options, it was New Zealand's impression that they already provided for quite some degree of flexibility. New Zealand therefore endorsed the comments by Costa Rica that the maximum benefit of the proposal was to ensure that all Members committed to use standardized data elements and that any flexibility should be the exception rather than the rule.

119. With respect to electronic systems and Australia's suggestion that the proposal relied on them, New Zealand wished to clarify that the proposal did not assume that electronic automated systems had to be in place. But it did recognize that as being the ultimate goal for Members to achieve. That was why a specific reference to technical assistance could be added. Further discussion was required on the matter.

120. The representative of Switzerland commented on the evolution from paper-based to EDI systems and from there to web-based solutions in standardized documents, noting that that was also a development ASYCUDA had experienced. But whatever solution Members were talking about, be they paper-based, EDI-based or web-based, the data model behind was the same. It was not necessary for Members to decide on one of the three solutions as they would all continue to co-exist for some time.

121. The representative of Australia wished to offer a general response to some of the questions raised. More detailed answers would be provided in writing at a later stage.

122. Australia was conscious of the presented system being one that met Australian requirements both from a customs and a trader perspective. Australia did not necessarily see it as a system that had to be implemented in other administrations as it was. But the conclusions were generic and could be subject to reflection in commitments when Members reached that stage of the negotiations.

123. The binding nature of the advance rulings was set by customs administrative direction in the Australia's customs manual. It was endorsed by the Chief Executive Officer of Australian Customs who had the statutory responsibility for putting those procedures into place. On the issue of balancing confidentiality interests with interests in providing information to a broader audience, it should be

noted that the information was only provided to the traders that had requested the ruling. There was no general publication of either advance rulings for tariffs, rules of origin, or valuation. In TAPIN, traders had access to their own data and their data alone. There was precedent information of a generic nature available on a broader basis to the public but that related to tariffs only.

124. With respect to the issue of centralization, one of the reasons Australia looked at that was the question of uniformity and consistency while also paying attention to cost effectiveness.

125. Costs were an important consideration. The system described was specific to Australia. The question of whether Australia had had a manual tariff advice system could not be answered immediately since TAPIN had been in existence for a while but further clarification would be sought on that point. Australia certainly was conscious of cost implications. The system had been approached from the overall perspective of the benefits of, and cost savings from, automation. The process of tariff advice and advance rulings provided benefits for both government and traders. There were several savings for administrations from putting into place automated procedures. The cost-benefit analysis had to be done on a case-by-case basis.

126. The representative of India wished to comment on papers TN/TF/W/51 to TN/TF/W/59 and TN/TF/W/62 to TN/TF/W/64.

127. India wished to thank the World Bank for their valuable and constructive contribution to the ongoing negotiations through their Trade Facilitation Negotiations Support Guide circulated as TN/TF/W/51. The Guide contained useful ideas to assist Members in the ongoing negotiations. Similarly, India wished to thank the WTO Secretariat for preparing a very useful compilation of written questions and answers on various Members' proposals (JOB(05)/222). Thanks were further due to Japan for their papers TN/TF/W/52 and TN/TF/W/53 in which they had shared information concerning their technical assistance activities and their system of pre-arrival examination, respectively. India also wished to thank Korea for their paper on post-clearance audit (TN/TF/W/55). India was also in the process of developing a post-clearance audit regime and had found the paper to provide useful information.

128. India welcomed the questionnaire prepared by the Secretariat which was a good tool to carry out an internal assessment of the existing procedures *vis-à-vis* the proposals made so far. In India's assessment, the questionnaire could elicit more information if another column was added seeking brief details regarding the implemented measures where the answer was "yes" or "partly yes". India recognized that that might be burdensome for some Members and therefore, suggested that that column be indicated as optional.

129. India welcomed the suggestion to create on the WTO website a section dedicated to TA&CB in the context of the trade facilitation negotiations. On the subject of a coordination mechanism, India supported the view that such a mechanism should have some kind of an oversight by the WTO, both during the negotiations and during the implementation of commitments. At the same time, India shared the view that such an oversight mechanism did not need to be overly bureaucratic and did not require substantial additional resources.

130. India supported the African Group proposal in TN/TF/W/46 and agreed on it being important to provide technical assistance both during the clarification process as well as beyond the negotiations phase. On the issue of TA&CB, India was prepared to extend such assistance in terms of making available its faculty and training infrastructure. However, India would require financial support from either multilateral agencies or bilateral donors to meet the operational expenses linked to extending such technical assistance.

131. With respect to Singapore's paper TN/TF/W/58, India wished to know how the system of TradeNet® handled some specific technical follow-up queries arising out of information filed through that system. For instance, if India's technical literature or a catalogue was required to determine the correct classification of a good, India wished to know whether such follow-up enquiries were to be answered only through TradeNet® or would they be dealt with by the relevant agency.

132. The paper by Chinese Taipei (TN/TF/W/62) regarding the establishment of a long-term mechanism on trade facilitation matters was useful and recognized the importance of the long-term need for TA&CB. It also contained some useful ideas regarding use of international standards. The focus should be on specifically identified international standards instead of a generic discussion on all international standards. India supported the suggestion to create a body to oversee the kind of functions mentioned in the proposal. India particularly welcomed the suggestion that such a body should also promote cooperation between customs or any other appropriate authority on trade facilitation and customs complaints issues. Clarification was sought as to whether the proposed body was envisaged to be different from any other WTO body that might be created to oversee the outcome of the negotiations on Trade Facilitation and, if so, what kind of inter-relationship was envisaged between the two.

133. India welcomed the important and useful proposal by Pakistan and Switzerland (TN/TF/W/63) which attempted to address the vital issue of a mechanism to link commitments to implementation capacities. India supported several ideas mentioned in the paper, such as carrying out an in-depth gap analysis of domestic laws with their rules and the assessment of technical, financial and human resources required to fill the gap, and multiple channels for providing TA&CB and funding. The idea of a pledging mechanism was interesting and would add to Members' comfort level in taking commitments. However, the challenge would be to make the mechanism effective and at the same time not too rigid. It was also necessary to reflect whether all, or only some commitments, had to be subject to a pledging mechanism. For a large country such as India, commitments on a specific rule might be possible for certain entry points but not for others. Hence, flexibility for TA&CB and financing might be required for some rules which a Member might otherwise agree to implement at a broad level.

134. India welcomed the paper from Cuba (TN/TF/W/64) to strengthen the non-discrimination provisions in GATT Article V. India supported the idea that Members must preserve their rights to apply the exceptions provided for under GATT Articles XX and XXI. It was India's understanding that any improvement of the principle of non-discrimination should apply with reference to both commercial and non-commercial considerations.

135. The representative of Colombia commented on the paper by Chinese Taipei, considering it timely to begin to develop a long-term mechanism in order to guarantee the supply of TA&CB, particularly beyond the negotiations phase. Paragraph 15 of TN/TF/W/41 proposed to examine the appropriateness of establishing a mechanism to organize and coordinate technical assistance in the area of Trade Facilitation. Even given the donors and beneficiaries in other international organizations, that mechanism would ensure that technical assistance be adjusted to the needs of beneficiaries in such a way as to guarantee transparency, consistency and effectiveness and to facilitate Members' compliance with rules in that area.

136. Colombia recalled Chinese Taipei's suggestion to take the experience of the Committees on Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary Measures (SPS) into account, which was interesting. But it would be appropriate to first carry out an assessment of the functioning of technical assistance in those Committees for the implementation of related disciplines before deciding whether to establish a committee, working party or similar body in the TF context. Colombia agreed that the chosen form should keep in close contact with competent intergovernmental organizations to avoid duplication of activities. It should be decided how the link should be created.

137. Colombia considered it premature to determine that the long-term mechanism would be able to authorize specific waivers for developing countries, especially LDCs, from requirements to comply with obligations. That was something which should be developed during the negotiations through the link of the three pillars of Annex D.

138. The representative of Chinese Taipei responded in a preliminary manner to questions raised on its proposal in TN/TF/W/62. With respect to the reminders of Chile, Brazil, Argentina and Columbia of the idea suggested in TN/TF/W/41 of a mechanism to organize and coordinate TA&CB, pooling the efforts of donors and recipients and other international organizations, Chinese Taipei wished to note that it supported the idea, which shared the same overall spirit and goal of the Chinese Taipei proposal. Chinese Taipei would therefore be happy to add it to its revised communication on both proposals.

139. With regard to the concerns raised with respect to the suggested use of international standards and instruments and the requested clarifications, Chinese Taipei was aware that the use of such standards was an essential issue. Many of the ideas expressed by Members in response to communication TN/TF/W/62 gave a rough guide as to what international standards would be able to accelerate customs procedures. The discussions on New Zealand-Norway-Switzerland proposal had also been useful in that regard. The issue had to be addressed very carefully. Chinese Taipei suggested the establishment of a long-term mechanism, for example, in the form of a committee, to discuss the possible solutions. With respect to the reference in Chinese Taipei's communication to the SPS and TBT Committees, it had now been decided to resort to commissioning a research institute for a comprehensive study on trade facilitation and international standards. Chinese Taipei looked forward to sharing further details in that respect in the future.

140. The representative of Honduras commented on the proposal by the Dominican Republic (TN/TF/W/60), saying that taking up the theme of strengthening the ethical conduct and integrity of customs officials contributed to the benefit of public policies with respect to the income due to the state as well as to other matters.

141. The proposal to establish a code of conduct setting out the rights and obligations of public officials was a positive one. To be effective, a code of conduct had to be clearly defined with standards of conduct for customs officials and provide a guide on ethical questions that occurred in the daily activities of customs officials. Honduras had such a code of conduct for official employees and auxiliaries of customs. It was prepared in conformity with the WCO Ethical Standards Code and the Inter-American Center of Administrative Tributaries (CIAT).

142. Honduras also already had the computerized system proposed by the Dominican Republic to eliminate or reduce interference of officials in those matters. ASYCUDA ++ provided for a clearance of merchandise based on "red", "yellow" and "green" channels indicating whether goods should be reviewed by customs officials and at which level. Theoretically, that procedure eliminated the discretionary capacity of the official involved.

143. The representative of Sri Lanka shared Sri Lanka's experience in respect of Korea's proposal TN/TF/W/55, which was very relevant to Sri Lanka as a developing country keen to introduce improved trade facilitation measures. Facilitating legitimate trade was one of Sri Lanka's main objectives. It was necessary to apply proper control measures while at the same time securing proper governmental revenue.

144. Post clearance audit measures adopted in Sri Lanka focused on valuation of imported goods. The legislation had been amended to implement the valuation rules based on the WTO Customs Valuation Agreement. It was now mandatory for the importers to keep import and transaction records

for three years. Customs officers were empowered to audit and examine records on any matter pertaining to Customs.

145. With respect to administrative policy and procedures, customs import declarations were verified to ascertain whether the values declared were acceptable in terms of valuation rules. If the declared values were acceptable, goods were released to the importer. In case of a doubt regarding the declared value, a post clearance audit would be carried out subsequently. Sri Lanka had set up a post clearance audit branch for that purpose. If there was a delay to determine the value, importers could remove the goods on a provisional basis by paying the due governmental revenue, calculated on the basis of the value declared in addition to placing a security. Suspected valuation frauds were investigated separately.

146. As for governmental coordination, amendments to the law required for the implementation of those valuation rules had been enacted in 2003. The implementation of the WTO Customs Valuation Agreement with the introduction of a post clearance audit system had had the benefit of expediting the import cargo clearance process and facilitating legitimate trade. With respect to administrative policy and procedures, Sri Lankan Customs currently practiced case-by-case audits. Audit systems such as planned audits and comprehensive audits were not carried out yet. The application of case-by-case audit systems alone had not delivered the expected results with many shortcomings experienced in its application which had resulted in a considerable loss of governmental revenue.

147. Sri Lanka supported Korea's proposal in TN/TF/W/55 and wished to note that a planned audit system could be used as an effective tool to address revenue evasion by under valuation of goods. Planned and comprehensive audit systems could also address the existing weaknesses of the case-by-case audit system.

148. As for training and TA&CB needs, the provision of proper training programmes for customs officers to conduct audits in a systematic manner was an essential need. Another immediate need was TA&CB for the identification of items under high risk categories. With respect to resource requirements, Sri Lanka also wished to emphasize the need for TA and training support. Sri Lanka was thankful for Korea's expressed willingness to assist developing countries to build up a proper post clearance audit system. Such a system would not only accelerate customs clearance and encourage compliance but also ensure the collection of due government revenue.

149. The representative of Singapore asked India to circulate its statement containing questions on the TradeNet® system to enable Singapore to provide responses by the next meeting.

150. The representative of Venezuela commented on Cuba's proposal (TN/TF/W/64), appreciating its focus on the important principle of non-discrimination. Venezuela agreed that the GATT had the necessary provisions for exceptions provided in Articles XX and XXI without having to adopt measures of extra-territorial scope which affected the principle of non-discrimination as stipulated by Cuba. Venezuela considered Cuba's proposal to be of particular interest.

151. The representative of Brazil welcomed the proposal by Chinese Taipei in TN/TF/W/62 on the establishment of a broad mechanism of technical assistance and on the use of international norms. Brazil supported the idea of establishing such a mechanism but believed that any new institutional arrangement should not repeat the activities already being carried out by other organizations. Brazil was concerned about such a new mechanism creating more confusion. Any new instrument would have to fill clearly identifiable gaps in the field of technical assistance.

152. Brazil also welcomed the proposal by Switzerland and Pakistan on the same issue which had some points in common with the proposal by Chinese Taipei. Any TA&CB mechanism should not be unnecessarily complicated. Therefore, Brazil was somewhat concerned about the proposals

suggestion to submit national action plans for approval to a future body in charge with overseeing future obligations on Trade Facilitation.

153. Concerning document TN/TF/W/60 by the Dominican Republic, Brazil believed that the conduct of customs officials had a major role in streamlining the transit of goods. Brazil had a code of ethical conduct for public officials which provided for the criminalization of certain inappropriate conduct. At the same time, Brazil had doubts about that being an area in which the WTO was competent to act. It would be more appropriate to leave that for individual governments' internal regulations. Brazil preferred that the matter was not dealt with at the WTO level.

154. The representative of Korea said that while Korea had very limited resources for TA, one could discuss bilaterally how to carry out more training on that issue.

155. The representative of Hong Kong, China (HKC) commented on Cuba's proposal TN/TF/W/64, appreciating its suggestion to strengthen GATT Article V:2 by adding a new paragraph. While having no doubt that the fundamental GATT principle of non-discrimination should apply to the perspective arrangements on Trade Facilitation even without express mention, HKC believed that more discussion was required to work out some of the terminology mentioned, such as on non-commercial reasons.

156. The representative of Turkey appreciated the Pakistan-Swiss paper TN/TF/W/63. Turkey attached great importance to development-related issues. Clarification was sought on paragraph 14. Which were the referenced "experienced international organizations" that were considered to be of valuable support in that regard? Furthermore, did the paper foresee TA&CB in the course of the negotiations? Some Members would need technical assistance while conducting self-assessment. The paper seemed to concentrate mainly on the mechanism explained in part III. Clarification was also required on the paper's reference to "independent and internationally-recognized experts (some kind of technical committee)".

157. Turkey shared the concerns expressed by Pakistan and Switzerland in paragraph 33. There seemed to be a risk for countries currently playing only a marginal role in world trade since those countries might not receive adequate funding for TF measures.

158. Chinese Taipei's proposal (TN/TF/W/62) of setting up a long-term mechanism to monitor technical assistance was a significant one. It seemed to be a good idea to set up such a mechanism and Turkey looked forward to discussing the matter further.

159. The representative of the Dominican Republic wished to offer further explanation of his delegation's proposal. The proposal had received very positive feedback. Logically, every new proposal gave rise to doubts, especially when touching upon a very sensitive matter. But there seemed to be more doubts than usual.

160. With respect to the question on the need to involve the WTO in the matter, Members had to ask themselves if they wanted the WTO to make rules without an idea of the environment in which they were to be implemented. WTO rules were sometimes indicative, allowing countries to gradually adopt their content. It was not a question that could easily be answered. The Dominican Republic considered it necessary to present the idea of integrity of customs officials to guarantee effective compliance with the results attained in the TF negotiations. It could therefore be necessary for the WTO to address the issue in the negotiations.

161. The proposal by the Dominican Republic was based on five concrete points, four of which appeared in many other documents. There was also a WCO Code of Ethics forming part of the proposal. One aspect of the proposal related to the introduction of computerized systems to reduce

the level of autonomy in decision making by authorities. References to the level of discretion exercised by officials had been made in virtually all statements. Computerized systems were at the heart of the matter, as agreed by many delegations.

162. As for TA, the Dominican Republic agreed with virtually everything that had been said in that regard. The establishment of coordination had given rise to concerns and questions. Coordination was required in order to have an indication of what was desired.

163. The aspect causing most problems related to offences against the law or the code of conduct. The WTO should intervene in that area, not by requiring something binding, or by imposing something for all countries, but by giving an example. Each country was different. In many countries, the measures proposed by the Dominican Republic had already been applied for years. Other aspects had to be implemented gradually. When an indication was given of a system of penalties or sanctions, that was something that might be availed of by customs authorities. That was what had been proposed in TN/TF/W/60. It should be kept on the table and the issue should continue to be discussed at the WTO.

164. The representative of China requested the use of correct terminology when referring to WTO Members. There was no Member called "Taiwan". China wished to see that comment placed on record.

165. The representative of Chinese Taipei objected to China's remark being placed on record.

166. The Chairman informed that the formal mode of the discussions left no choice but to reflect comments in the minutes of the meeting.

167. The representative of Brazil wished to clarify a statement made in connection with the proposal by the Dominican Republic. Brazil was not entirely convinced that the penalization of violations against a code of conduct was something that should be handled in the WTO. The remaining aspects of the proposal had merit and Brazil wished to continue examining them.

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

B. TECHNICAL ASSISTANCE AND CAPACITY BUILDING

169. This part of the meeting was conducted in informal mode.

C. 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

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

171. It was so agreed.

D. OTHER BUSINESS

172. The Chairman informed that the requirements of submitting input for the NG's report for the Hong Kong Ministerial Conference by early November necessitated another meeting in October. He therefore proposed to hold an additional session on 24 and 25 October dedicated to preparing the Group's input to the Ministerial report. In respect of the agreed Member-driven nature of the process

and by means of a bottom-up approach, the idea would be to have most of the session take place in informal and non-plenary mode, allowing Members to engage amongst themselves in bilateral, plurilateral and confessional-style discussions in search for common ground on the NG's Hong Kong report, with the Chairman also making himself available for anybody wishing to meet with him. In procedural terms, this would imply opening the meeting to adopt the agenda in the morning of 24 October and then adjourning the session for bilateral and plurilateral discussions until the afternoon of the 25th, when the NG would reconvene to share the results from those deliberations.

173. It was so agreed.

174. The meeting was adjourned.
