

Council for Trade in Goods

REVIEW, CLARIFICATION AND IMPROVEMENT OF GATT ARTICLES V, VIII AND X PROPOSALS MADE BY DELEGATIONS

Compilation by the Secretariat

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

INTRODUCTION

The present document contains an inventory of Members' proposals on how to review and, as appropriate, clarify and improve GATT Articles V, VIII and X, as mandated by paragraph 27 of the Doha Ministerial Declaration. It was prepared in response to a request for such a compilation expressed at the meeting of the Council for Trade in Goods at 1-2 October 2002.

STRUCTURE

The paper groups the proposals according to the GATT Article they refer to, regardless of when they were first formally presented to the Council for Trade in Goods. In doing so, the document keeps the sequencing set out in the Work Programme and followed in the CTG sessions, starting with Article X, moving to Article VIII and finally taking up Article V. Many of the proposals have overlapping content. To avoid repeated listing of similar texts and to highlight commonalities, the compilation tries to identify a number of sub-headings under which it groups the various suggestions, based on shared elements. In several cases, this implies departing from the structuring set out in the original communications. The sequencing of the sub-headings generally follows their mentioning in the GATT Article in question, while also attempting to list related issues in consecutive order. Proposals within a subheading are ranked in alphabetic order of the Member suggesting them.

To give the most authentic reflection possible, the compilation keeps the proposals' original formulations whenever feasible. Direct quotations from the original texts are marked in italic font.¹

¹ The only slight modifications concern the use of acronyms, which were normally spelled out, and the use of capital letters.

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I. PROPOSALS CONCERNING ARTICLE X OF THE GATT 1994

Written proposals regarding Article X have been submitted by the following four² delegations:

- Canada (G/C/W/379)
- European Communities (G/C/W/363)
- Japan (G/C/W/376)
- Korea (G/C/W/377)

1. Publication and availability of information

1.1. Publication and making available of all information regarding border crossing trade³/border rules and procedures⁴/international trade and customs administration⁵ (Canada, European Communities, Korea)

Specifications regarding the information covered:

- *All (relevant) laws, regulations, judicial decisions, administrative guidelines and administrative rulings affecting imports and exports; all multilateral, regional and bilateral agreements affecting international trade policy; information on customs and other border-related agency processes; conditions and qualifications for different forms of customs treatment, including any amendments to the foregoing; as well as of where (e.g., offices, websites) the above information can be obtained; (Canada)*
- *All relevant laws, regulations, administrative guidelines, specific decisions of or having general application, information on customs and other agency processes, conditions and qualifications for different forms of customs treatment⁶, right of appeal procedures, fees and charges, port, airport and other entry-point procedures, including all amendments thereto, as well as details of customs' and other government agencies' management plans relating to implementation of WTO commitments, or of their relevant reform and modernisation programmes, including for example targets, deadlines and benchmarks set in such programmes; (European Communities)*
- *Laws, regulation, judicial decision and administrative rulings of general applications, made effective by any contracting party and pertaining directly to international trade and customs administration, (referred to as 'Measures' for the rest of this paper); (Korea)*

Specifications regarding means/modalities:

- Publication and availability of information to *all interested parties*; (Canada, European Communities)

² A written contribution was also received by the United States (G/C/W/384), giving an overview of mechanisms used by its authorities in ensuring transparency, along with citing related WTO provisions and a section noting the potential for practical application of technical assistance to operationalize these mechanisms, without proposing specific measures as such.

³ European Communities.

⁴ Canada.

⁵ Korea.

⁶ Such as, for example, Memoranda of Understanding between customs and operators, criteria for authorised trader status.

- Through officially designated, readily accessible medium (including, where possible and feasible) in electronic form; (Canada, European Communities)
- *Through centralized inquiry points, publications and, where possible and feasible, through display on-line (e.g., via electronic homepages); without technology in dissemination to be a mandatory process. The information can also be made readily available in publications such as the Customs tariff, official gazettes, bulletins and public notices. These can be located at appropriate Customs offices or at other strategic locations where such information is likely to be needed, e.g., at embassies and trade missions abroad or by display in public offices such as major post offices. Special enquiry offices or desks can provide a valuable information service.* (Canada).
- *Information should be presented in a simple and accessible manner and not designed to discriminate or make it inaccessible or difficult for non-national operators to access;* (European Communities)
- *As regards information on relevant advance rulings, provision is needed whereby binding rulings can be revoked at any time if made pursuant to false, incorrect or incomplete information, but otherwise not with retroactive effect or without prior information of interested/affected parties.* (European Communities)
- *Any fees charged for the provision of information to interested parties should be commensurate with the cost of providing that service;* (European Communities)
- *Publication in full and promptly in such a manner as to enable governments and traders to become acquainted with them;* (Korea)
- *The media through which Measures are published should be notified to the (WTO) Secretariat, which would then be required to make the notified information available to all the Members;* (Korea)

Specific references to technical assistance/capacity building/special and differential treatment:

- *Open to discussing with WTO Members where technical assistance might be provided in developing either or both non-electronic and electronic similar, relevant processes.* (Canada).
- *Translation services can be considered as a part of a capacity building package to be provided to the developing country Members;* (Korea)
- *As regards notification of media through which to publish measures to the WTO Secretariat, donor Members could consider technical assistance in assisting developing country Members to make use of electronic media, such as the internet, for this purpose;* (Korea)

1.2. Identification of elements that should be provided in laws and regulations (Japan)

Specification of proposed measure(s):

- Rules identifying the required elements of trade-related procedures;
- *Providing trade-related procedures in laws and regulations, and then publicizing them to the relevant government offices;*

1.3. Identification of the means to publicize the laws and regulations (Japan)

Specification of proposed measure(s):

- *Setting rules on the practical ways for publicizing laws and regulations;*

1.4. Formulation and publication of administrative guidelines (Japan)

Specification of proposed measure(s):

- *Though securing a uniform administration of laws and regulations, it would then be necessary to formulate and publish administrative guidelines.*

1.5. Advance rulings (Canada, European Communities, Japan, Korea)

Specification of proposed measure(s):

- *Provision of binding rulings on tariff classification, possibly also on eligibility for treatment under specific customs procedures such as those offering relief from duties and taxes, including: rulings in advance of importation (in response to a written request by an importer, exporter or their representative), which are binding on the importing authorities, provided that the goods and the circumstances at importation are identical to those presented in the ruling request; Rulings could cover the main elements of import requirements, e.g., tariff classification and applicable duties, taxes and import licensing requirements; (Canada)*
- *Information made public should also include relevant advance rulings, notably binding rulings on classification and origin, provided confidentiality and commercial secrecy is respected; (European Communities)*
- *Establishment of an advance ruling system to ease accessibility to trade-related information for the private sector; (Japan)*
- *Any advance ruling of a binding nature could be included in the scope of Measures; (Korea)*

Specifications regarding means/modalities:

- *Advance rulings could be modified or revoked, after notification, without retroactive application. In circumstances where inaccurate or false information was provided, such rulings could be modified or revoked without notification and with retroactive application. (Canada)*
- *Provision is needed whereby binding rulings can be revoked at any time if made pursuant to false, incorrect or incomplete information, but otherwise not with retroactive effect or without prior information of interested/affected parties; (European Communities)*

Specific references to technical assistance/capacity building/special and differential treatment:

- *Translation services can be considered as a part of a capacity building package to be provided to the developing country Members; (Korea)*

1.6. Establishment of enquiry points/trade desks/single national focal points (European Communities, Japan, Korea)

Specification of proposed measure(s):

- Establishment of enquiry points or trade desks providing information on measures proposed by the EC under 1.1, 1.5 and 1.7 for use of governments and traders on a non-discriminatory basis and notification to the WTO Secretariat; (European Communities)
- Establishment of inquiry points to ease accessibility to trade-related information for the private sector; (Japan)
- Establishment of a Single National Focal Point (SNFP) *to respond to inquiries by Members and traders regarding Measures or any information directly related with customs procedures, importation or exportation. The contact information relating to the SNFP should be notified to the WTO Secretariat, which should then make such information available to the other Members (and traders). The Single National Focal Point should respond to the inquiries within a reasonable period of time.* (Korea)

Specific references to technical assistance/capacity building/special and differential treatment:

- As regards the establishment of a single national focal point, *a flexible implementation period for establishing and notifying the SNFP and a relaxation of the responding period could be considered.* (Korea)

1.7. Legal basis for administrative actions, decisions or rulings (European Communities)

Specification of proposed measure(s):

- *Members could confirm their commitment only to take administrative actions, decision or rulings affecting importers or exporters where a legal basis to do so is established.*

1.8. Notification of core Measures (Korea)

Specification of proposed measure(s):

- *Members could consider a notification requirement of Measures (or their core subset) and their amendments in one of the official WTO languages to the WTO Secretariat. The Secretariat can make the notified information available to all Member governments. The Members could further consider allowing access to such information by private traders through an electronic means managed by the Secretariat. One should introduce the same level of notification requirement as is used in the TBT/SPS Agreements.*

Specific references to technical assistance/capacity building/special and differential treatment:

- *As a capacity building package, the donor Members can support the provision of translation services to the developing country Members. Or as a special and differential treatment package, the period for notification can be relaxed for developing countries.*

2. Consultative/feedback mechanisms and minimum time periods before entry into force

2.1. Provide for opportunity for all stakeholders/interested parties to consult and comment on proposed rules and procedures before their formal adoption/implementation (Canada, European Communities, Korea)

Specification of proposed measure(s):

- *Provide early opportunities for stakeholders to comment on prospective rules and procedures (i.e., before the rules and procedures are implemented), including: (i) early notice of a proposed regulation, e.g., in an annual regulatory plan; (ii) a requirement that a public consultation process be launched to give interested persons an opportunity to make their views known within a specified time period, e.g., within 60 days; (...) ⁷ (iii) prepublication of the draft regulations in the official gazette before they can be put in place to give those who are interested in a regulatory proposal the opportunity to determine the extent to which the proposal is in keeping with previous consultations. (Canada)*
- *Establish a provision for consultation between interested parties, both governments and private sector, on proposed new legislation, regulations and other procedures affecting import and export administration, before formal adoption or entry into force. The scope of any such provision should be further discussed. This could be extended to include a requirement to establish a regular consultative mechanism with representative private sector bodies including importers, exporters, carriers, chambers of commerce, relating to new or revised laws and regulations, and to major changes in operating procedures, particularly where these are in legislative form.*
- *Establishing a prior consultation mechanism among interested parties or major stakeholders; (Korea)*

Specific references to technical assistance/capacity building/special and differential treatment:

- *As a special and differential treatment measure, a relaxation of the allowed time could be considered; (Korea)*

2.2. Adequate time periods for such comment (European Communities)

Specification of proposed measure(s):

- *Standard, and adequate time periods (should) be provided for comment (...)*

2.3. Allow for reasonable/adequate (standard) time periods between adoption and entry into force of regulations (European Communities, Korea) ⁸

Specification of proposed measure(s):

- *Standard, and adequate time periods (...) should be provided (...) between adoption and entry into force of regulations, to allow trade to adjust. (European Communities)*

⁷ An additional measure is listed under subsequent section 2.4 focusing on its particular content.

⁸ See also Canada's suggestions under 2.1, page 7.

- *The Members should allow a reasonable period of time before the formal introduction of Measures.*(Korea)

Specific references to technical assistance/capacity building/special and differential treatment:

- *As a special and differential treatment measure, a relaxation of the allowed time could be considered;* (Korea)

2.4. Publication of reasoned motivations for a proposed measure (European Communities, Canada)

Specification of proposed measure(s):

- *Publication of the reasoned motivations for a proposed measure in relation to the policy objectives sought, the availability of other, possibly less trade restrictive measures etc.* (European Communities)
- *Analysis to explain what the regulatory proposal is meant to achieve, what alternatives have been considered, what consultations have been carried out, what the reply of the department or agency is to the concerns voiced and, what mechanisms are built in to ensure compliance with the regulations;*(Canada)

2.5 Review and update of primary legislation (European Communities)

- *A commitment could be considered whereby the primary legislation would be reviewed, and as necessary codified or consolidated at reasonable intervals in order to ensure it remains up to date and so as to ensure efficiency in the information process.*(European Communities)

3. Review and appeal procedures and due process

3.1. Non-discriminatory, legal right of appeal (Canada, European Communities, Japan, Korea)

Specification of proposed measure(s):

- *There should be a non-discriminatory, legal right of appeal against customs and other agency rulings and decisions, initially to a higher authority within the same agency or another body, and subsequently to a separate judicial or administrative body.* (Canada, European Communities)
- *Improving accessibility to independent judicial, arbitral or administrative tribunals and making more readily available procedures to review and correct administrative actions related to customs matters. This could include provisions to ensure that trade is not unduly affected pending the outcome of appeal procedures and could include the following: (i) ensuring that stakeholders seeking redress with respect to decisions resulting from the interpretation of rules and procedures have access to appropriate appeal mechanisms; (ii) providing right of review and appeal for tariff classification and other customs rulings;⁹ (...)*

⁹ An additional measure is listed under subsequent section 3.2 focusing on its particular content.

Appeal procedures should be clearly outlined in legislation, and the legal requirements and procedures for filing an appeal should be made readily accessible to the trade community and the general public; (Canada)

- *Appeal procedures, and standard times and conditions for appeal should be made publicly available. A standard time should be set for resolution of minor appeals at administrative level. Procedures for appeal should be easily accessible, including to SMEs, and costs should be reasonable and commensurate with costs in providing for the appeals. (...) Appeal procedures should also be available in respect of decisions relating to goods in transit and exports, as well as imports. Companies should have right to be represented at all stages of appeal procedure by an agent or legal representative. (European Communities)*
- *In order to make appeal procedures effective, as stipulated in Article X, the establishment of a system, as well as the formulation of laws and regulations, which would make the system workable is necessary. (Japan)*
- *A non-discriminatory, legal right of appeal against customs and other agency rulings and decisions should be ensured. (Korea)*

3.2. Mechanism for goods to be released and possibility for duty payment to be left in abeyance in certain situations (Canada, European Communities)

Specification of proposed measure(s):

- *Providing a mechanism to allow goods to be released and the possibility, in certain situations, for payment of duties and taxes to be left in abeyance, subject to the requirements of national legislation, to the payment of a surety, guarantee or other form of bond pending the outcome of the appeal. In certain circumstances, pending the outcome of an appeal, goods could be released on the basis of the provision of collateral or some form of monetary security to ensure that obligations of importers, exporters, warehouse operators or international transporters of goods would be met. Care needs to be taken to ensure that the enforcement activity of customs or other agencies is not reduced or unduly impeded by an unfettered right of release of goods.(Canada).*
- *Goods should normally be released, and the possibility be available in given circumstances for duty payment to be left in abeyance, pending outcome of appeal, subject, where required by national legislation, to the payment of a surety, guarantee or other form of bond. (European Communities)*

4. Technical assistance, capacity building, special and differential treatment

Apart from the specific references to technical assistance, capacity building and special and differential treatment already listed in the context of the measures they relate to, Members' proposals also contain the following (separate) references to these issues:

- *Technical assistance can assist developing countries, particularly the least developed countries, who face resource and capacity constraints in implementing improvements and clarifications of GATT Articles V, VIII and X. Developing countries may also need time to implement new commitments. (...) Members will need to discuss in greater detail how best to identify, coordinate and deliver technical assistance where and when it is needed to implement future commitments on trade facilitation. (...) Reference to the interrelationship of technical assistance to future WTO commitments in the area of trade facilitation. (Canada)*

- *The (...) proposals (...) may in some cases justify the provision of technical assistance for some developing countries, who lack resources to implement them, or who may need time to introduce changes. For these reasons it is important that Members provide Technical Assistance to assist developing countries, especially least developed, to establish requisite information platforms, particularly in electronic format, in order to fulfil transparency requirements. Where necessary, assistance may also be provided to support the implementation of other commitments that Members may enter into based on the above proposals. The possible scope and nature of, special and differential treatment provisions for, in particular, the least developed countries, also needs further discussion. (...) More generally, the issue of how to integrate the technical assistance/capacity building dimension in the final result of the process on trade facilitation needs to be considered in depth, taking into account the sum of trade facilitation commitments that WTO members will take on. (European Communities)*
- *For developing countries, appropriate technical assistance would be helpful for the purpose of implementing the measures mentioned above. As mentioned in the Doha Ministerial Declaration, technical assistance is important. Thus, consideration must be given to developing countries, especially the LDCs, which would enable them to reap the benefits of an open, rules-based multilateral trading system. There are certain international organizations which have the expertise in the area of trade facilitation, for example, the WCO in the field of customs procedures. Any existing work done by such international organizations should be taken into account in order to ensure technical assistance in this area and to avoid any unnecessary duplication from the viewpoint of work efficiency. (Japan).*
- *In examining various ideas, Korea finds it important to consider two basic criteria: (1) the level of contribution in facilitating trade, and (2) feasibility. Any proposal or idea should be evaluated and prioritized according to how much it can contribute and how easily it can be drawn into relevant WTO rules and be eventually implemented. What S&D or TA/CB package it offers should also be taken into account in assessing the feasibility. (Korea)*

II. PROPOSALS CONCERNING ARTICLE VIII OF THE GATT 1994

Written proposals regarding Article VIII have been submitted by the following six¹⁰ delegations:

- Canada (G/C/W/397)
- Colombia (G/C/W/425)
- European Communities (G/C/W/394)
- Hong Kong, China (G/C/W/398)
- Japan (G/C/W/401)
- Korea (G/C/W/403)

1. General provisions to make Article VIII more operational

1.1. Scope and coverage (European Communities)

Specification of proposed measure(s):

- *Pursuant to GATT Article VIII, the provisions would apply to all procedures, formalities and requirements, and fees and charges applied to products by customs authorities or by any other government body in connection with importation and exportation, to the extent not already covered by other WTO articles and agreements (including procedures and formalities applied by customs on behalf of other agencies);*

1.2. Geographical coverage (European Communities)

Specification of proposed measure(s):

- *Any provisions agreed should also obviously apply to sub Federal authorities where appropriate, as well as to procedures and requirements applied by customs unions.*

1.3. Non-discrimination (European Communities)

Specification of proposed measure(s):

- *Non discrimination in the design, application and effect of export and import procedures and formalities imposed on the goods of all Members.*

1.4. Transparency and predictability (European Communities)

Specification of proposed measure(s):

- *Transparency and predictability in the design, application and effect of procedures and formalities.*

¹⁰ A written contribution was also received by the United States (G/C/W/400), identifying more generally elements within the context of GATT Article VIII the US considers to warrant clarification and improvement, in the form of questions intended to contribute to the discussions. The communication does not propose any specific measures as such.

1.5. Avoidance of unnecessary procedural barriers (European Communities)

Specification of proposed measure(s):

- *A commitment to avoid unnecessary procedural barriers to trade in the design, application and effect of import and export procedures, and in particular to ensure that such procedures do not unduly slow down the movement or release of goods. This should also include a commitment not to design or apply procedures and formalities with a view to or with the effect of giving additional protection to domestic products. This would be done by ensuring that import and export procedures shall not be more trade restrictive than necessary to fulfil legitimate objectives (which (...) should be specified or given in an illustrative list).*

1.6. Abolishment of procedure or requirement in case of changed circumstances or less trade restrictive alternative (European Communities)

Specification of proposed measure(s):

- *A provision whereby Members should no longer maintain a procedure or requirement if the circumstances giving rise to its introduction no longer exist or if the changed circumstances or objectives can be addressed in a less trade restrictive manner.*

1.7. International standards and instruments (European Communities)

Specification of proposed measure(s):

- *Members should base their import and export procedures on agreed international standards and instruments, except where such international standards would be an ineffective or inappropriate means to fulfil the legitimate objectives sought.*

1.8. Special and differential treatment (European Communities)

Specification of proposed measure(s):

- *A commitment to the principle and application of Special and Differential Treatment for developing countries, in particular the least developed countries.*

2. **Specific provisions regarding fees and charges**

2.1. Interpretation of paragraph 1 (a) (European Communities)

Specification of proposed measure(s):

- *Interpretation of Article VIII:1 (a) on the following lines: (i) the service provided must be related to the products in question; (ii) fees levied must refer to the approximate cost of the service rendered; (iii) the fees or charges in question may not therefore be calculated on an ad valorem basis; (iv) administrative or operational costs not associated with treatment of imports or exports respectively may not be imposed on such imports or exports.*

2.2. Commitment regarding paragraph 1 (b) (European Communities, Hong Kong, China)

Specification of proposed measure(s):

- *Establish a commitment by Members to review, and if necessary, consolidate or reduce the number and diversity of their fees and charges, and to notify remaining fees and charges together with the justification for them in terms of the provisions of Article II and Article VIII of the GATT. Consideration could be given to establishing a list of types of permissible fees, e.g. an illustrative list, or an exclusive list etc.* (European Communities)
- Introduction of basic GATT/WTO principles like necessity and review into paragraph 1(b) to add more meaning to this provision; (Hong Kong, China)¹¹

3. **Specific provisions regarding data and documentation requirements and procedures**

3.1. Simplification, reduction and standardisation of documentation and data requirements and procedures (Canada, Colombia, European Communities, Hong Kong, China)

Specification of proposed measure(s):

- *Simplifying border-related documentation and increasing compatibility/standardizing data required for release of merchandise by (i) using existing international standards where appropriate, developing common data sets to be requested in the process of clearance. The objective would be to create standard, international compatible data sets that will meet government and trade requirements for international cross-border trade; (ii) increased compatibility and standardization of data sets would facilitate the increased use of information and communication technologies (i.e., EDI or electronic data interchange).* (Canada)
- *Commitment to reduce excessive documentation;*¹²(Colombia)
- *Commitment by Members to simplify and reduce documentation and data requirements to the absolute minimum, consistent with the need to enforce legitimate policies, including the use of agreed international standards as a basis for documentation and data requirements (both for format and content of documents and data). The WCO's simplified data set could be developed further as the basic reference point/standard, while the UN layout key is also relevant here. Members could agree to abolish excessive documentation requirements such as demands for consular invoices and the like, and in cases where physical documentation is required, routinely accept copies and not originals of documents, except in narrowly defined and clearly identified circumstances.* (European Communities)
- Inject basic GATT/WTO principles such as least trade restrictiveness/necessity, use of international standards/harmonization, review, simplicity/modernization, neutrality, consistency and predictability into paragraph 1 (c) to make it more operational. The suggested measures include (i) a requirement for import and export formalities and documentation requirements to be not more trade restrictive and administratively burdensome than necessary to fulfil a legitimate objective, (ii) a requirement for Members to adopt formalities and documentation requirements

¹¹ See also section 7.1 on pages 20 and 21.

¹² Referred to as a medium-term priority.

with reference to international standards, or to follow guidelines and recommendations in their import, and export formalities where they exist and appropriate, (iii) a requirement to review formalities and documentation requirements in the light of changed circumstances and objectives and to remove/reduce such formalities and documentation requirements if the circumstances or objectives which gave rise to their adoption no longer exist or if they could be addressed in a less trade-restrictive manner, (iv) a requirement to streamline procedures, and simplify and reduce data/documentation requirements to the minimum and an encouragement to adopt information and data exchange through electronic means,¹³ (v) a requirement for procedures to be neutral in application and administered in a fair and equitable manner, and for any necessary import and export formalities maintained for the conduct of trade to follow the principles of consistency and predictability so as to minimize uncertainty and discretionary practices (Hong Kong, China)¹⁴

3.2. Introduction of uniform domestic customs code (European Communities)

Specification of proposed measure(s):

- *Introduction by each WTO Member, or customs union between two or more Members, of a uniform domestic customs code or similar legislation, as well as single import and export declarations, administrative message or data set.*

3.3. Acceptance of commercially available information (European Communities, Korea)

Specification of proposed measure(s):

- *Acceptance of relevant commercially available information and documents as the norm, as well as regular review of documentation and data requirements in liaison with representatives of the trading community with a view to continued simplification¹⁵; (European Communities)*
- *Acceptance of commercially available information and copies, except for some justifiable cases; (Korea)*

3.4. Single, one-time presentation to one agency (Colombia, European Communities, Japan,)¹⁶

Specification of proposed measure(s):

- *Establishment of a single-window facility at border points, with efficient carrier media¹⁷; (Colombia)*
- *Introduction of the principle of a single, one-time presentation to one agency, normally the customs, of all documentation and data requirements for export or import, subject to any exceptions to be identified. For developing countries, the commitment should be to implement this provision in a progressive manner. (European Communities)*

¹³ The proposal notes that "This requirement however would need to take full account of the technical capacity of individual Members." G/C/W/398, page. 3.

¹⁴ See also section 7.1 on pages 20 and 21.

¹⁵ For the acceptance of copies, see also the EC proposal under section 3.1. (page 13).

¹⁶ See also Canada's suggestions under section 6.1 on page 19.

¹⁷ Referred to as a medium-term priority.

- (...) introduction of "single window" through which a trader can submit, once and for all, the required data to a single agency for various official purposes;¹⁸ (Japan)

4. Specific provisions regarding customs and related import and export procedures

4.1. Simplified/standardised trade and/or clearance procedures (Canada, Colombia, European Communities, Japan)

Specification of proposed measure(s):

- Devising of a series of expedited, differentiated, simplified procedures for speedy clearance through customs of large volumes of small consignments requiring immediate release.

Such procedures/guidelines should provide for immediate release to all such consignments, provided that conditions stipulated are met and the necessary information is communicated at a specified time before the consignments arrive at destination. Procedures should take into account the different categories of goods involved and varying trade patterns and compliance requirements.

In developing such a system, goods could be grouped into certain categories as noted below. However, with the exception of restricted goods under suggested category 4, it should be clearly noted that prohibited or restricted goods would not be included under such an expedited system.

1. *Correspondence (personal letters, post cards) and documents (i.e., printed matter in non-commercial quantities, securities, bank documents and statements, other legal documents, airline tickets and business correspondence).*
 2. *No value, or low value, non-dutiable and/or non-taxable consignments, e.g., transplant organs, human remains, pets, etc; material for mass distribution in commercial quantities; literature for the blind; unsolicited gifts below a specified value and trade samples.*
 3. *Low value dutiable consignments (i.e., above the value and/or duty and tax limits of category 2 or those not qualifying for remission or waiver).*
 4. *High value consignments (consignments not falling under other three categories above) that could include restricted goods. Consignments in this category could be granted immediate release with subsequent clearance if a provisional or a simplified goods declaration or invoice with the minimum information required by customs to grant release is provided and there are adequate financial guarantees to customs to secure the payment of duties and taxes. Any required permits, certificates, etc. may be furnished at the time of release or prior to clearance. For restricted goods, any permits, certificates, etc., would be required at time of release. (Canada)*
- *Accession to the conventions administered by the World Customs Organization (WCO) which seek to harmonize customs procedures, in particular the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention), the Convention on Temporary Admission (Istanbul Convention) and the Brussels Convention on Nomenclature for the Classification of Goods in Customs Tariffs, inter alia, which include mechanisms for the progressive adoption of commitments, selectivity as regards the inclusion of regulations and the possibility of reservation¹⁹; (Colombia)*

¹⁸ Also mentioned under section 6.1, "border agency cooperation".

¹⁹ Referred to as a medium-term priority.

- *Progressive introduction of simplified and standardised import and export procedures, based on international standards and instruments (eg the WCO's Kyoto Convention). This could include a commitment to the progressive modernisation of customs administrations (e.g. through implementing the WCO's Customs Modernisation Programme and the Arusha Declaration), and agreement by each Member to establish, notify and, within realisable targets, progressively reduce, its domestic standard processing times for goods release.*

Introduction of simplified release and clearance procedures (eg. Presentation of simplified data sufficient for rapid release, followed by submission of more detailed data later; or/and periodical submission of data and company auditing). Members could consider drawing up a list of agreed types of simplified procedures for adoption. (European Communities)

- *Adoption of internationally-accepted standards and instruments, if any, as a basis for setting up and implementing trade procedures; (...) use of internationally accepted standards (as regards the automation of border procedures for imports and exports, including customs procedures) (Japan)*

4.2 Use of international standards (Colombia, Hong Kong, China²⁰)

- *Adoption of international standards on the harmonization and simplification of customs procedures;*²¹ (Colombia)
- *(...) The operation of GATT Article VIII:1(c) could therefore be enhanced by requiring Members to adopt formalities and documentation requirements with reference to international standards, or follow guidelines, and recommendations in their import and export formalities and requirements where they exist and as appropriate. (Hong Kong, China)*

4.3. Special procedures for authorized traders (Canada, European Communities)

Specification of proposed measure(s):

- *Streamlined special procedures could be developed for authorized persons, i.e., frequent importer/exporter who satisfies criteria such as having an appropriate record of compliance with official import/export requirements and a satisfactory system for managing their commercial records in exchange for authority to have goods released quickly.*

This could be based on the development and implementation of a risk management program to determine which goods and traders are generally compliant with official border procedures and posing low risk for control purposes. Approval of traders for special or "fast-track" procedures requiring minimum official intervention at the border might be considered appropriate for traders who regularly import/export goods, e.g., - (i) Provision of minimal information at time of release of goods; (ii) Clearance at the declarant's premises or other inland locations; (iii) Ability to submit a goods declaration covering multiple transactions over a certain specified period; (iv) Self-assessment and accounting of duties and taxes by an authorized person; (v) Ability to make a goods declaration by a bookkeeping entry in the commercial records of an authorized person. (Canada)

²⁰ Also referred under section 7.1 on pages 20 and 21. Other references to international standards have been listed in the respective sections dealing with the substantive content of the measures where use of existing standards has been suggested.

²¹ Referred to as a medium-term priority.

- (...) introduction by each Member of a system of authorised traders, using transparent, objective and non-discriminatory criteria. (...) Would grant to compliant traders willing to support the customs' regulatory work with simplified or other premium procedures for their import and export activities. (...) should not exclude the participation of small and medium sized enterprises. Members could consider developing in WTO or under WCO auspices a coherent international standard or model for authorised trader status. (European Communities)

4.4. Risk assessment and/or advanced control techniques (Canada, European Communities, Japan, Korea)

Specification of proposed measure(s):

- *Development of disciplines covering the use of risk assessment principles and post-entry audits as a step forward in addressing the trade facilitation principles of efficiency and effective compliance. (...)*

The use of risk management techniques can be supplemented by post-entry audits (or compliance verifications) under which customs can initiate a systems audit and or a periodic verification of importers' and carriers' books and records. This could range from a single program review (e.g., valuation, origin, tariff classification) to a comprehensive review of all customs programs. The overall objective in using risk management techniques and post-entry audits is to allow customs to be able to identify and effectively attend to areas of higher and unknown risk while allowing the optimal use of resources to facilitate legitimate trade. (Canada)

- *Use of risk assessment methods based on international standards and practices (...) Such system should not exclude the participation of small and medium sized enterprises. (European Communities)*
- *A reasonable selection of goods to be investigated/examined, based on the appropriate risk assessment methods;*

Adoption of advanced control techniques, such as deferred payment, post-clearance audit, and release of goods before import permission (with an adequate security, if required); (Japan)

- *Pre-arrival processing, post-auditing and core risk-management measures are the key measures for the rapid release of goods. (Korea)*

Specific references to technical assistance/capacity building/special and differential treatment:

- *The focus of the CB/TA should be on institutional reform and human training, taking into account that IT infrastructure could make the process more efficient. (Korea)*

4.5. Automation (Colombia, European Communities, Japan)

Specification of proposed measure(s):

- *Commitment to press forward with programmes to automate procedures, and to ensure better use of information technology²², (Colombia)*

²² Referred to as a medium-term priority.

- *Automation of customs and other agency procedures for import and export, including the possibility to present electronically the customs' and other declarations, and for the payment of duties or other fees and charges.*(European Communities)
- *Promoting the automation of official border procedures for imports and exports, including customs procedures;* (Japan)

4.6. Non-discrimination

Specification of proposed measure(s):

- *Non-discrimination in terms of requirements and procedures applicable to like products irrespective of their mode of transportation (procedures are unlikely to be identical – but they should not give rise to discriminatory treatment). Non-discriminatory criteria should also apply in respect of licensing of customs brokers, together with an undertaking to phase out, over time, any requirements for their mandatory use.* (European Communities)

4.7. Streamlining of operations and enhancement of transparency (Colombia)

- *Systematization of the processes of the different customs administrations, border crossings, storage warehouses and places of arrival and departure necessarily involves streamlining operations and ensuring transparency in the work of customs officials, as well as removing barriers and the possible discretion to which this gives rise.*²³

Specific references to technical assistance/capacity building/special and differential treatment:

Technical assistance and capacity-building must (...) target this issue, to ensure that all countries are in a position to implement the standards and disciplines adopted.

5. **Specific provisions related to collateral or monetary security**

Specification of proposed measure(s):

5.1. Collateral or monetary security provisions (Canada)

- *WTO Members could consider an enhanced clearance system that includes security provisions (bonds, financial guarantees, surety bonds) or other forms of collateral to ensure the obligations to customs of importers, exporters, warehouse operators or international transporters of goods, are properly discharged. For example, such a system could be used to secure payment of duties and taxes where payment is deferred or where goods are provisionally released pending completion of final clearance procedures (i.e., such as in cases awaiting a decision on the correct tariff classification). A similar relevant process is already reflected in Article 13 of the Agreement on Customs Valuation. Such a provision would allow for quicker release of goods by separating the accounting (payment) process from the movement/importation of the goods.*

In addition, it would also be useful in ensuring goods that are imported to fulfil a specific purpose are subsequently duty-paid or exported after use, e.g., authorization to import goods for “inward

²³ Referred to as a long-term priority.

processing” without payment of duties and taxes, providing the finished goods are subsequently exported.

6. Cooperation and coordination among different authorities; communication with traders

6.1. Border agency coordination (Canada, Japan)

Specification of proposed measure(s):

- *Consideration of ways and means to ensure that the activities and requirements of all agencies present at borders are coordinated in a manner designed to facilitate trade. This might include increasing the compatibility of, or standardizing the import/export data requirements of such agencies with the objective of allowing importers and exporters to present all required data to only one border agency. Such a “single window” approach could be designed to take into account, where possible, the use of relevant electronic technology.*

It could also include the coordination of procedures and formalities. Agreements to ensure cooperation between customs authorities on coordinating border controls and to establish technical and operational measures to regulate the functioning of integrated border controls could be considered (e.g., controls through a single, shared physical infrastructure in which the neighbouring countries’ customs services operate side by side). (Canada)

- *Cooperation and coordination among different authorities in charge of border controls at entry and exit point, e.g., introduction of “single window” through which a trader can submit, once and for all, the required data to a single agency for various official purposes; (Japan)*

Specific references to technical assistance/capacity building/special and differential treatment:

- *Open to explore the possibility for developing specific technical assistance and training in this area. (Canada)*

6.2. Convergence of official controls (European Communities)

Specification of proposed measure(s):

- *Where documentary or physical verification of consignments by more than one agency is necessary this should be carried out at a single place and time, to the extent possible, and at hours that meet traders’ needs.*

6.3. User – agency communication (Japan)

Specification of proposed measure(s):

- *Providing the opportunity for the users of the trade procedures, including private sectors, to bring forward their views and comments to the agency in question;*

7. Injection of GATT/WTO principles

7.1. Injection of basic GATT/WTO principles into specific provisions of GATT Article VIII (Hong Kong, China)

- (...) *proposes injection of certain basic GATT/WTO principles, commonly found in the WTO agreements, into specific provisions of GATT Article VIII to enhance their operation. It is neither intended to be comprehensive in identifying elements for clarification/improvement nor exhaustive in suggesting possible GATT/WTO principles for application to the provisions identified.*

A. Formalities and Documentation Requirements²⁴

Proposal to look at the basic GATT/WTO principles under certain WTO agreements like the TBT, SPS, or Import Licensing (IL) Agreements and consider their applicability to import and export formalities and documentation requirements. The following cites a few common principles which might be considered for incorporation into GATT Article VIII:1(c) to make it more operative. These suggestions are however purely illustrative in nature and without prejudice to possible future discussions on the format and language of the clarifications and improvements required.

(i) *Least Trade Restrictiveness/Necessity*

Apply a necessity test similar to the one used in the SPS, TBT and IL Agreements to the derivation and enforcement of import and export procedures. Hence, it could be introduced to improve GATT Article VIII:1(c) by requiring import and export formalities and documentation requirements to be not more trade restrictive and administratively burdensome than necessary to fulfill a legitimate objective. Certainly, more thoughts are required to identify a list of “legitimate objectives” which might include first and foremost prevention of deceptive practices. The list would be subject to the agreement of Members and should take into account the specific needs of different Members in the process of derivation.

(ii) *Use of International Standards/Harmonization*

(...) The operation of GATT Article VIII:1(c) could therefore be enhanced by requiring Members to adopt formalities and documentation requirements with reference to international standards, or follow guidelines, and recommendations in their import and export formalities and requirements where they exist and as appropriate.

(iii) *Review*

A requirement to reduce and remove unnecessary formalities and documentation requirements in the light of changed circumstances (...) could be introduced under GATT Article VIII:1 (c) with reference to relevant provisions in the TBT Agreement or IL Agreement. (...)

(iv) *Simplicity/Modernization*

(...) The IL Agreement explicitly requires that application and renewal procedures shall be as simple as possible. This principle of simplicity could be extended to import and export formalities and documentation requirements by stressing the need to streamline procedures, and simplify and reduce data/documentation requirements to the minimum. In the light of developments in

²⁴ A (shorter) reference to these proposals was also made under the section 3.1 presenting suggested measures as regards documentation requirements (pages 13 and 14).

information technology, Members could perhaps be encouraged to adopt information and data exchange through electronic means. This requirement however would need to take full account of the technical capacity of individual Members.

(v) Other Principles in Operation

(...) Members may however consider the need for injecting into GATT Article VIII:1(c) the more general principle of neutrality, as enshrined in the IL Agreement which requires that rules for import licensing procedures shall be neutral in application and administered in a fair and equitable manner. In addition, it would be important to ensure that any necessary import and export formalities maintained for the conduct of trade do follow the principle of consistency and predictability so as to minimize uncertainty and discretionary practices which act as serious impediments to trade.

*B. Fees and Charges*²⁵

(...) Members may consider the desirability of introducing basic GATT/WTO principles like necessity and review, (...) to add more meaning to GATT Article VIII:1(b) which stipulates that contracting parties recognize the need for reducing the number and diversity of fees and charges but has not provided a clear indication as to how Members would put the recognition into deeds. Such clarification/improvement may entail reference to GATT Article VIII:1(a) which other Members may also have suggestions for improvement.

Specific references to technical assistance/capacity building/special and differential treatment:

- *In view of different economic development among Members (...) full consideration should be given to the technical assistance needs of Members, particularly the developing and least developed country Members, in following these basic GATT/WTO principles in their administrations connected with importation and exportation. In this regard, the WTO should explore fully with other relevant international organizations like the WCO and the UNCTAD on areas where cooperation and coordination could be further enhanced. Given the wide spectrum of issues covered under GATT Articles V, VIII and X, and the resource constraints, it would be important for Members to prioritize areas where technical assistance and capacity building is most required in order to develop a more targeted programme.*

7.2. Use accepted GATT/WTO principles as reference for legal interpretation and guideline for matters not specifically covered by Article VIII's provisions (Korea)

- *(...) useful to reiterate some of the widely accepted principles with a view to providing a clear reference for legal interpretations as well as a guideline for the matters not specifically covered by the operative provisions. Such principles can be inferred from GATT Article VIII together with the other Articles of the GATT and WTO instruments: (...) (i) Non-discrimination: MFN and national treatment; (ii) Transparency; (iii) Predictability (...); (iv) Simplicity, (v) Reasonableness;*

²⁵ A (shorter) reference to these proposals was also made under the section 2.2 presenting suggested measures as regards documentation requirements (page 13).

8. Specific work programme

Apart from the identification of several medium and long-term priorities which have been listed under the respective headings relating to the content of the suggested measures, the Colombian delegation further proposed the establishment of a work programme.

8.1. Work program

Specification of proposed measure(s):

- *Preparation of a glossary of the terms used in Article VIII and which help to define its scope and interpretation, such as: "services rendered", "substantial penalties", "approximate cost of services" and the scope of a "penalty in respect of an omission or mistake ... necessary to serve ... as a warning", inter alia;*
- *preparation of an inventory of the measures adopted by Members under Article VIII of the GATT, in particular those relating to the documents and procedures used in foreign trade operations and the fees charged in all cases;*
- *analysis of the relationship between the provisions of and commitments under Article VIII of the GATT and the WTO multilateral agreements;*
- *review of internationally agreed standards on the streamlining of documentation and procedures;*
- *exchange of information between Members on their experiences with streamlining procedures and rationalizing costs;*
- *preparation of a comprehensive technical assistance and capacity-building programme for developing countries, tailored to their individual requirements;*
- *exchange of information between Members and international organizations on their experiences with systematizing customs and other national authorities involved in import and export procedures, as well as on electronic data transmission.*

9. Technical assistance, capacity building, special and differential treatment

Apart from the specific references to technical assistance, capacity building and special and differential treatment already listed in the context of the measures they relate to, Members' proposals also contain the following (separate) references to these issues:

- *Full support of the integrated approach of developing WTO commitments and ensuring technical assistance and capacity building where required to assist in implementing such commitments. We believe this is best pursued through Member discussion on how best to identify, coordinate and deliver technical assistance in the context of implementing future commitments in trade facilitation. (Canada)*
- *(...) aware of the limitations suffered by (...) customs and trade authorities in terms of physical and human resources. (...) (R)eiterate the importance of both technical assistance tailored to the needs and expectations of the different countries and time to move ahead with the planned programmes and actions.*

- *Ultimate aim of developing a multilateral agreement on the interpretation and application of Article VIII, which takes, among others, the element of special and differential treatment into consideration. (Colombia)*
- *Any agreement or understanding on GATT Articles V, VIII and X should recognise the needs and difficulties faced by developing countries, especially the least developed, and provide practical means to assist their development. (...) any future WTO provisions should therefore include a range of special and differential treatment provisions, including less onerous initial commitments for poorer developing countries, transitional periods for the assumption of commitments, and more stable provisions regarding the supply of technical assistance.*

(i) Differentiation in commitments: a number of commitments may require resources or capacity building measures to implement, and may thus at the moment be beyond the means of, in particular, least developed countries. This may be the case of the proposals on a single one time presentation to one agency of data and documentation, automation of customs processes, and introduction of certain kinds of simplified release procedure, but there may be other specific procedures which pose difficulties in the short term for particular Members.

In these cases, two options could be considered (...): a) the commitment in question should not apply until such time as the Member in question is in a position to implement them, and in the meantime developed country Members and intergovernmental organisations should continue as far as possible to provide technical assistance to help implementation. The drawback however with this option is that it risks creating a semi permanent “two tier” Membership and may contain insufficient incentives for the Member in question to implement what are at the end of the day valuable improvements to its trading potential. The EU is therefore not convinced that this would be the best option, but would like to know the views of LDC members. (b) all LDC Members do enter into commitments to implement all the provisions established in the WTO but that, in doing so, individual transitional periods would be established for each Member seeking time, in conjunction with a specific technical assistance programme that would be worked out and agreed with the country in question. The advantage of this approach is that it would increase the prospect of LDCs actually to join and implement the commitments while maintaining considerable flexibility and giving specific consideration to their individual development constraints.

(ii) Transitional periods: Transitional periods should also be considered to enable developing countries other than the least developed to implement commitments in a progressive or staged manner, in particular where commitments have appreciable resource implications. However, commitments relating to transparency and non-discrimination could be implemented immediately.

(iii) Technical assistance and capacity building: The EC already dedicates considerable development assistance to trade facilitation and intends to continue to do so, particularly if a set of WTO provisions, setting common standards to which assistance can in future be mobilised, can be established. The definition of trade facilitation, in technical assistance programmes, is of course traditionally wider than customs and border crossing measures, and broader than the subject matter of GATT Articles V, VIII and X. Assistance for trade facilitation often covers also measures relating to, for example, the improvement of port infrastructure, cargo logistics, or services to exporters. (...) The EC proposes the following arrangements for the improved provision and coordination of assistance in the field of trade facilitation:

a) Members should (...) increase the level and quality of technical assistance for trade facilitation. Where competing requests for assistance are made, priority should be given to those

countries whose needs are clearly identifiable and which have demonstrated clear political commitment to carrying out simplification measures.

b) Where a Member, as part of its development aid, is providing trade related technical assistance to another Member it should, if requested by that other Member, include in such assistance trade facilitation measures and support. (...)

c) Consideration should be given to setting up an international mechanism for the future organisation of technical assistance in the field of trade facilitation, bringing together donor Members and recipient Members and regional groupings, along with the WTO, UNCTAD, WCO, World Bank, IMF, UN regional economic commissions, and as necessary other intergovernmental bodies such as the ICAO, IMO and UPU. This international mechanism would be charged with ensuring that recipient needs are matched with donors, that potential gaps are filled, that transparency, coherence and where necessary coordination takes place between donors and recipients, and that assistance is directed, among other things, to implementing WTO commitments in this field. This kind of coordinated approach simply does not exist today and is needed.

d) In the case of a Least Developed Country Member seeking to implement specific commitments only after a transitional period (...), the Member in question could develop and agree with other donor Members and institutions a specific action plan, whose implementation could be reviewed and monitored through the joint mechanism described above. Such action plans should define the activities, funding and timing for implementation, the commitments to be made by the donors and the recipient, and where appropriate the regional dimension of implementation.

e) (...) interest from a number of trade federations in contributing to assistance to implement trade facilitation measures, notably if some basic rules have been agreed in the WTO to which that assistance could be targeted, (...) should be encouraged. (...) national and international trade federations or interested companies (should) be invited to participate in capacity building/technical assistance programmes – either in respect of specific country programmes, or specific areas of expertise - via the proposed international framework. (European Communities)

- For some countries that lack adequate capacity, appropriate technical cooperation is an effective tool for introducing and implementing trade facilitation measures smoothly. To this end, when considering efficient resource allocation, the expertise and work of specialized international organizations, such as the WCO, shall be fully taken into account. In order to make technical cooperation programmes more effective, it is important to create targeting goals for technical cooperation. Japan believes that the best process for achieving such goals would be through constructive WTO negotiations. (Japan)*

III. PROPOSALS CONCERNING ARTICLE V OF THE GATT 1994

Written proposals regarding Article V have been submitted by the following three delegations:

- Canada (G/C/W/424)
- European Communities (G/C/W/422)
- Korea (G/C/W/423)

1. Customs procedures and documentation requirements

1.1. Limitation, simplification, standardization of customs procedures and documentation requirements (Canada, European Communities, Korea)

Specification of proposed measure(s):

- *Develop new provisions to limit any undue documentation requirements on arrival, or on any intermediate or subsequent stops in the Customs territory while in transit and on departure of goods in transit.*

(...) limit Customs formalities on arrival, on subsequent stops within the Customs territory and on departure to the minimum necessary to ensure compliance with Customs law in the territory of the contracting party. Such formalities should as simple as possible taking into account necessary control measures.

Provide for the use of risk management principles to permit special procedures for those traders (and/or their authorized consignee) that have demonstrated a good record of compliance with Customs requirements for goods in transit through the Customs territory. This might include special arrangements under which Customs formalities are reduced by agreement between the Customs and the trader and/or the authorized consignor or consignee, similar to the proposals made by Canada in its submission on Article VIII.

Provide for a provision to promote “the simplification of customs regulations concerning traffic in transit”. The Havana Charter originally included provisions to “promote international agreement relating to the simplification of customs regulations concerning traffic in transit, the equitable use of facilities required for such transit and other measures designed to promote the objectives of this Article.” This exhortation is captured in part by the provisions of the current wording from Article VIII, paragraph 1c) “*The contracting parties also recognize the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements*”. This has similar application to the provisions of Article V. (Canada)

- *As a general aim, (...) Members could consider provisions to limit to the minimum and harmonise to the best possible degree the extent and nature of the documents and data to be presented purely in respect of transiting goods. It would seem appropriate that any specific rules in this context should begin with specifying that the requirements and procedures applied to traffic in transit should be significantly less onerous than that for imported or, as the case may be, exported goods. (...)*

The most operational way to proceed will be to introduce a rule that stipulates that the data required for transit and any other procedures applied must be:

a) Based on international standards where they exist (comparable to the proposals in the EU paper on Article VIII). b) The minimum needed and for a legitimate purpose. c) Based on the presumption that they be less comprehensive and onerous than those for importation. (European Communities)

- *Apart from the measures proposed for the improvement of Article VIII of the GATT, a further simplification of customs procedures for goods in transit should be instituted. Documentary requirements and physical inspection for transit traffic should be further simplified in due consideration that transit traffic usually poses lower risks than final destination goods. “Authorization of a consignor” can be one method of simplifying customs requirements for goods in transit and setting appropriate risk-based customs procedures.*

Documentation data sets should be standardized internationally while reflecting risk elements in terms of transit. The uniformity of data sets can improve risk management, and can also facilitate the use of electronic systems for customs procedures. (Korea)

1.2. Review and removal of unnecessary or overburdensome procedures (European Communities)

- *There may also be requirements and procedures relating to excessively cumbersome or inefficient consignment reporting or forms of unjustified customs intervention. It would be useful to hear the views of other Members on problems encountered which could be resolved through a tightening up of the commitments in GATT Article V. In identifying such “problems” experienced by operators, it will of course be necessary to distinguish between procedures that are necessary to carry out a legitimate control objective, and those which are unwarranted.*

1.3. Promotion of use of transit instruments (Canada, European Communities)

Specification of proposed measure(s):

- *Promote the use of international instruments relating to Customs transit including the possibility of accession to various instruments relating to Customs transit²⁶, where applicable. (Canada)*
- *Members could consider whether it would be useful, in the framework of GATT Article V, to promote the establishment of regional transit regimes and provide guidance on their main elements. WTO members could also envisage provisions encouraging accession to international instruments relating to customs transit, or to take account of the standards in such instruments when drawing up bilateral or regional instruments. (...) (European Communities)*

2. Non-discriminatory treatment

2.1. Non-discrimination between modes of transport in relation to transit procedures (European Communities)

²⁶ Reference was made to the following international instruments: 1) The Customs Convention on the International Transport of Goods under cover of TIR Carnets (TIR Convention), Geneva, 14 November 1975; 2) The Convention on Temporary Admission (done at Istanbul, 26 June 1990) (as per Annex A as it relates to ATA Carnets); 3) The Customs Convention on the ATA Carnet for the Temporary Admission of Goods (ATA Convention), Brussels, 6 December 1961.

Specification of proposed measure(s):

- (...) *Discussing further how, in practice, the requirement for non-discrimination between different transit modes is applied, in transit procedures, documentary and data requirements in view of Members' need for flexibility in terms of transport and other policy choices. In addition to "classic" modes of transit such as air, road, rail or boat, it should be noted that the carriage e.g. of oil and gas and other products via pipelines or other means may also fall within the scope of transit. WTO Members may wish to evaluate whether freedom of transit for such goods is effective and whether there is any need or scope for reassessing GATT Article V to take account of the special nature of this form of transit. (European Communities)*

2.2. Non-discrimination between individual carriers in relation to transit procedures (European Communities)

Specification of proposed measure(s):

- (...) *to draw up some illustrative guidance as to measures that would or would not be considered consistent with GATT V, paragraph 2. However, to the extent that any such measure operates as an unwarranted restriction on the services provided (in a broader sense than transit alone) through cross-border supply or through commercial presence of foreign operators, this would be an issue more appropriately raised in the context of the GATS. The EC simply wants to note at this point the need to better clarify the interface between the freedom of transit for third country vehicles and vessels guaranteed by GATT Article V and the fact that, under the GATS, the right to provide a transport service in or across the territory of a third country depends on specific commitments having been made by that third country. It would be useful if Members were to consider this inter-relationship further to ensure, at a minimum, consistency between work being done in the GATS (including scheduling of commitments in the transport sector) and that in the CTG as regards Article V. This issue could usefully be drawn to the attention of the Council on Trade in Services. (European Communities)*

2.3. Non-discrimination between types of consignment (European Communities)

Specification of proposed measure(s):

- *In cases where freedom of transit is denied for carriage of certain (usually controlled) goods, with local carriers being given the sole right to transport them across the transiting territory, notwithstanding security/safety guarantees being given by the exporting/importing Member, (i)t is important to distinguish whether, in such cases, these measures are being applied for legitimate public protection reasons of the kind referred to earlier, or simply to favour domestic operators. It should be recognised that certain types of goods will always be subject to special provisions or may even be excluded from transit altogether. The solution is therefore not to accord carte blanche freedom of transit to all consignments: this will not be possible or even desirable. WTO members could however consider the need for countries individually to publish a list of such "sensitive" goods and strengthening the obligation of WTO members to ensure consistency of treatment for such goods and for operators so that when goods are allowed to transit only subject to exceptional guarantee requirements, those requirements are proportionate and applied uniformly. (European Communities)*

2.4. National treatment (Canada)

Specification of proposed measure(s):

- *Paragraph 5 currently calls for most-favoured-nation treatment for traffic in transit, building on the general provisions of most-favoured-nation treatment that is outlined in GATT Article I. There is, however, no explicit accounting of the complementary principle of national treatment on internal taxation and regulation as contained under GATT Article III. The extension of national treatment to goods in transit would add more certainty to this Article overall.*

3. Differentiation of transshipment and non-transshipment

3.1. Differentiation of transshipment and non-transshipment (Korea)

Specification of proposed measure(s):

- *(...) Different requirements for goods in transit without transshipment than for goods in transit with transshipment. In the case of maritime countries, if goods in transit do not involve transshipment into different means of transportation within the Member country, a simple goods declaration and fairly simple set of service fees may be sufficient for transit procedures since there is only a minimal risk that the goods may be released into the transit country, and the services that the transit country authorities provides will be relatively small.*

On the other hand, for goods in transit which involve transshipment within the transit country, there may be a need for additional inspection and security measures to prevent the smuggling of goods in transit into the transit country as well as other illegal activities during the process of transshipment. It seems reasonable for the transit countries to require a minimal amount of additional paperwork and service fees.

In the case of landlocked countries, transit traffic, which may or may not involve trans-shipment, may cross many borders. Given the higher risk of the illegal release of transit goods, it may be necessary for these landlocked countries to implement more sophisticated risk management procedures compared to maritime countries that do not necessarily require border-crossing transits.

Therefore, it may be useful to discuss the different requirements in each of these circumstances, and devise appropriate customs measures for each of these cases in order to minimize the burdens on the traders engaged in transit traffic, while still maintaining a reasonable degree of safety and order for the countries that these goods pass through.

4. Fees and charges and securities

4.1. Clarification of fees and clearer definition of terms (Canada, European Communities)

Specification of proposed measure(s):

- *GATT Article V states that all fees and charges shall be “commensurate with administrative expenses entailed by transit or with the cost of services rendered” and “shall be reasonable”. It would be useful to provide a clearer definition of this to clarify that fees and charges should only be charged on a amount representative of the approximate cost of services rendered.*

Canada’s submission on GATT Article VIII on fees and charges connected with importation and exportation made a number of proposals to clarify such fees. These proposals might provide a basis to elaborate parallel provisions on fees and charges in connection with transit (Canada)

- *GATT Article V, paragraph 4 states that all fees and charges shall be “reasonable”. It would be useful to provide a clearer definition of this and that fees should only be charged in respect of the provision of legitimate services necessary to ensure the effective transit of the goods. WTO members could consider establishing an indicative list of such legitimate services. The further work on this should take into account the fact that charges or fees could be justified not only by direct and specific services connected with the movement of goods but also fees caused by services of more general benefit to transporters, e.g. derived from the use of harbour waters and infrastructure maintenance for which public authorities are responsible. Excessive fees charged for overflying WTO Members' airspace would also appear to be covered by such a provision, to the extent such operations fall within the scope of Article V paragraph 7.*

The EC submission on GATT Article VIII concerning and fees and charges connected with importation and exportation, made a number of proposals to clarify such fees, and these proposals may constitute a good basis for elaborating parallel provisions on fees and charges in connection with transit. (European Communities)

4.2. Notification of fees and charges (Korea)

Specification of proposed measure(s):

- *Notification by members of any changes of fees and charges for transit traffic would be helpful. Fees and charges for transit traffic themselves would still be subject to the discretion of each WTO Member.*

4.3. Securities (Canada, European Communities)

Specification of proposed measure(s):

- *Provide for the possible use of “surety bonds” in cases where the Customs might require security to be furnished for goods in Customs transit passing through its territory. This might also potentially address those instances where the Customs transit operation is terminated and the goods in transit are subsequently entered for importation. (Canada)*
- *As regards securities, in view of the problems identified in part 4 h) above, it would be useful to introduce disciplines on the level, nature and management of securities or deposits demanded from transit operators, to ensure that such requirements do not have a chilling effect on trade. (European Communities)*

5. **Cooperation**

5.1. Cooperation among customs authorities (Korea)

Specification of proposed measure(s):

- *A mechanism to institutionalize cooperation among the Members' customs authorities could be considered. It would deal with the coordination of transit policies and the sharing of information on goods in transit among WTO Members.*

5.2. Harmonization of transit policies (Korea)

Specification of proposed measure(s):

Harmonization of transit policies among WTO Members can facilitate transit traffic to a considerable degree because traders need comply with only one set of customs requirements. (..)

5.3. Information sharing among customs authorities (Korea)

Specification of proposed measure(s):

- *Sharing of information among the customs authorities of WTO Members whose territory goods pass through can relieve traders of the burden of providing the same information to different customs offices or going through repetitive procedures and thus be instrumental in reducing paperwork and costs for traders. (Korea)*

6. **Technical assistance, capacity building, special and differential treatment**

Apart from the specific references to technical assistance, capacity building and special and differential treatment already listed in the context of the measures they relate to, Members' proposals also contain the following (separate) references to these issues:

- *(...) want to look to a wider discussion that might better place proposals for technical assistance and capacity building into an appropriate context that could link with more specific proposals resulting from earlier discussions on Articles VIII and X. We believe this is best pursued through Member discussion on how best to identify, coordinate and deliver technical assistance in the context of implementing future commitments in trade facilitation. In this regard, Canada continues to support fully the integrated approach of developing WTO commitments and ensuring technical assistance and capacity building where required to assist in implementing such commitments. (Canada)*
- *Proposals to improve the quality and quantity of trade related technical assistance are also obviously relevant to transit, in cases where Members lack adequate domestic infrastructure. (...)*

Special and differential treatment in trade facilitation could encompass:

- (a) possible differentiation in commitments, particularly for least developed countries, but also possibly for other developing country Members with specific needs or facing specific difficulties in implementing commitments which may carry appreciable resource implications.*
 - (b) the use of transitional periods to enable progressive implementation of the results, at a pace and in a manner suited to the needs of developing country Members.*
 - (c) and action to improve the quality, quantity and co-ordination of technical assistance, aimed at improving the conditions of transit for developing countries, including through more systematic co-operation between donor bodies and recipient Members, while involving as appropriate the private sector. (European Communities)*
- *Members should also consider the need to provide technical assistance and capacity building measures to developing country Members in order for them to build the necessary infrastructure and service facilities, and integrate various regulations in order to facilitate the transit of goods. (...)*

(..) proper technical assistance and capacity building measures should be provided to support the developing country Members to implement some of the above-mentioned suggestions. To facilitate transit traffic, technical assistance should be expanded to support developing countries in their efforts to integrate their regulations, modernize infrastructure and service facilities for transit (such as road, rail, airport and waterway facilities), and automate their transit systems.

Technical assistance can be provided through various means such as workshops, training programs, or direct financial assistance to install electronic data systems. Such technical assistance can substantially improve the capacity of developing countries to expedite the processing of goods in transit.

Best practices or a model transit system, which developing countries can easily introduce, should be developed. Longer implementation periods according to the features of the system can be considered as special and differential treatment.

In order to provide appropriate technical assistance, an understanding of developing countries' needs and capabilities in terms of transit measures are also essential. Therefore, developing countries should take steps to determine in which areas they most need technical assistance.
(Korea)
