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**Council for Trade in Goods**  
**22-23 July 2002**

## **MINUTES OF THE MEETING OF THE COUNCIL FOR TRADE IN GOODS** **22, 23 AND 30 JULY 2002**

Chairman: H.E. Ambassador Supperamaniam

The meeting of the Council for Trade in Goods was convened by airgram WTO/AIR/1867. Document G/C/W/399 contained the proposed agenda for the meeting. On 23 July discussion on items 4 and 9 were suspended and the meeting was reconvened on 30 July.

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## **I. TRADE FACILITATION WORK PROGRAMME: ARTICLE VIII OF THE GATT 1994**

1.1 The Chairman stated that, as set out in the work programme adopted by Members in the CTG meeting of 22 March 2002, the Council for Trade in Goods would carry out its work on trade facilitation in the course of four formal sessions until the end of 2002. Following the meeting in May, the Council was now meeting for a second session, which, like the previous one, had three core agenda items: (1) Article VIII of the GATT 1994; (2) Trade facilitation needs and priorities of Members, particularly of developing and least developed countries; and (3) Technical assistance and capacity building. Concerning the first item, the Chairman recalled Members' agreement that, while this session would focus on GATT Article VIII, delegations would be free to also address questions related to Articles V and X. Any delegation wishing to speak on those Articles would therefore have the opportunity to do so under agenda item 1 as well. This might be particularly the case with regard to Article X, where many delegations had noted at the last session that they had not had time to study some of the papers that had been submitted only shortly before the meeting. For this reason, the airgram also listed all the communications that had been previously submitted on Article X. It further included a paper the WCO had presented at the last meeting, and which had recently been circulated as a CTG document, following consultations held with one delegation. Several additional papers had also been prepared for this meeting. With respect to agenda item 1, the Secretariat had drafted another background note, this time addressing GATT Article VIII, in response to Members' request for such a document at an informal meeting on trade facilitation of 25 February 2002. Communications addressing GATT Article VIII had also been received from the European Communities, listed in the airgram as document (G/C/W/394), as well as from Canada in document G/C/W/397, Hong Kong, China (G/C/W/398), the United States (G/C/W/400) and Japan (G/C/W/401).

1.2 The representative of the Secretariat noted that the Secretariat paper had been prepared in response to Members' request for background documentation on the three GATT Articles of special importance for their deliberations on trade facilitation. The current paper resembled with first one on Article X that had been prepared for the previous meeting in May. As a second part of the overall exercise of providing background information on all three relevant Articles, it followed the structure laid down in the first document, and outlined the Article's main provisions including their negotiating history, analysed their coverage and outlined the basic obligations established thereby. A final part looked at how Article VIII had been applied in GATT and WTO jurisprudence so far. In doing so, the paper limited its focus to a factual outline of the Article from a legal perspective, and refrained from entering into an analysis of whether, and to what extent there was room for possible clarification and improvement, which remained Members' prerogative.

1.3 The representative of the European Communities stated that they had prepared a comprehensive set of ideas on how Article VIII could be made more operational, taking into account the discussions held in the CTG over the past four years, ideas expressed by a number of Members, consultations with the business community and national experiences, in order to see how Article VIII might be clarified and improved. This article expressed a desirable but not mandatory commitment to simplify fees, charges, customs and other procedures. Like Article X, it could be updated and modernised, as in the more than 50 years since it was drafted, trade volumes had increased exponentially, while customs and government resources had not. Secondly, there were new forms of business being conducted, supply chain management, just-in-time techniques, which required a commensurate kind of behaviour on the part of import and export administration. Since the Article had been written, there had been a large growth in the volume of air transport cargo, which had particular needs. Many Members had progressively introduced more regulatory requirements at the border, which had created pressures to simplify the passage of goods. Furthermore, there was now a large range of international standards and instruments in the customs area and elsewhere, which had

not been available many years ago. There was therefore a lot of scope to make Article VIII more operational rather than simply aspirational as it currently was.

1.4 With that in mind, the Communities had made a number of proposals, taking account of Members' discussions, the views of the business community, based on a number of examples and precedents in existing WTO agreements like the ones on Import Licensing, TBT and Customs Valuation. The Communities had also drawn a lot of ideas from measures which existed in a number of bilateral or regional agreements concerned with trade facilitation such as the APEC and the ASEM trade facilitation work, the EU Euromed Trade Investment Facilitation Action Plan, the recently concluded EU Mercosur Trade Facilitation Action Plan and even the ASEAN transit agreement, where the EC had found a large number of interesting ideas with direct applicability to Article VIII.

1.5 As for specific proposals, the Communities suggested that if Members wished to clarify and improve Article VIII, one might begin by making the import and export procedures subject to a number of basic GATT/WTO principles such as non-discrimination in the design and application of import and export procedures, transparency and due process in the application of those procedures, a commitment to reduce and simplify trade procedures to the extent possible and to make them proportional to the objectives being sought and regularly reviewed. Furthermore, the Communities also considered it useful to develop a commitment to use in Members' respective domestic procedures international standards and instruments where they existed, as that reduced errors, delays and costs for trade and made administration simpler. The Communities also believed that anything Members developed to clarify and improve Article VIII should not only apply to Members as federal entities, but also to any sub-federal requirements as well as to customs unions. Assumingly, no delegation would have difficulties in principle with the concept of import and export procedures and customs administrations being subject to non-discrimination, transparency, proportionality, due process and alike. However, the EC considered it necessary to go beyond that very general level and make Article VIII more operational, in tune with business needs through a number of more specific measures set out in the Community paper.

1.6 Turning to the specific measures suggested by the Communities, the EC representative remarked that in the area of fees and charges, as pointed out by the very useful Secretariat paper, Article VIII only expressed the desirability, and the importance of reducing fees and charges to a minimum, without containing an actual commitment to do so. There was no obligation, and no guidance as to how to do that. The Communities made three proposals in this respect, taking account of recent GATT and WTO panel findings. First of all, the EC proposed a commitment to simplify and consolidate fees and charges and to publish them together with a justification for their existence. Secondly, the EC proposed to tie fees and charges to specific services rendered, so that they were proportionate to their objective. One might even wish to go as far as identifying what could be legitimate services rendered for which fees could be levied. Thirdly, the Communities proposed a clarification of Article VIII to prohibit fees and charges being levied on an ad valorem basis, as - almost by definition - an ad valorem fee could not reflect accurately the cost of the service rendered. These proposals, if adopted, would have the effect of reducing the variety and the incidence of fees and charges and give much more flexibility to traders.

1.7 The second broad area the Communities suggested Members to explore further was the field of data and documentation requirements for import and export administration. Here, as clearly indicated by the business community, it was very important to see these requirements reduced to the very minimum and to standardise whatever requirements remained. Such measures could reduce errors, costs and delays, while also allowing governments to process documents and data much more quickly. This would in turn allow goods to be released from border controls more rapidly. With those aims in mind, the EC had listed a number of measures Members might wish to consider, including a general requirement to reduce documentation to the very minimum, a suggestion that in doing so, to base data and documentary requirements for trade procedures on existing international standards as

such as the UN layout key and relevant WCO simplified data sets. The Communities suggested that administrations accept information that was normally commercially available, instead of designing unique requirements solely for administrations. The EC also saw merit in measures for regular review of data requirements in consultation with the affected business community, in order to move into a process of continued simplification – a principle comparable to that already found in TBT Article 2.3. Furthermore, the Communities did see value in introducing the principle of a single one time presentation of trade documents and trade data to a single agency (normally customs). This would have a major impact on speed and efficiency of customs release and would improve the performance of administrations. Recognising however that this was a difficult measure to implement rapidly, the Communities were aware that the concept of the single window, of a one time transmission would need to be implemented in a progressive manner as it had resource implications in the short to medium term, although its longer term effect was to save resources through efficiency gains.

1.8 Another important area where the Communities saw room for simplification was on customs and other agency import and export procedures themselves. Based on the previous proposals by the EC and other Members over the last few years, the Communities made some specific suggestions for improving Article VIII in the field of customs and related import and export procedures. There was ample evidence that burdensome excessive procedures reduced trade, inhibited investment and penalised small and medium sized enterprises. Members had a good opportunity to simplify customs and other formalities and requirements to help trade and investment and to improve and raise duty collection and border controls. On pages 6 and 7 of its communication, the EC had made a number of proposals to simplify procedures, drawing on international standards of the WCO and even possibly the ICC standards in this area. The Communities further suggested that Members consider publishing their domestic standard processing times for different forms of customs treatment, and subsequently progressively reduced those standard times. Members should also look at measures in the WTO to introduce simplified release and clearance procedures. Some Members had already started to implement domestically simplified procedures. In a situation where it was not possible or desirable for customs to screen 100% of the consignments, there was a real need to introduce simplified procedures, including for compliant traders, linked to risk analysis and risk assessment. One of the proposals the Communities made was for Members to consider introducing domestically in their procedures the concept of authorised traders, whereby traders with a good record of compliance and management of their consignments would be rewarded with fast-track customs release procedures, a benefit both for the traders and for customs, and again a way of saving resources.

1.9 Another area the EC considered important to look at with the view to seeing whether one could create WTO measures, was more coordination and control between different agencies. In the previous discussions, a number of Members, including several developing countries, had drawn attention to the fact of multiple inspections at the border for different control purposes. The Communities saw merit in trying to coordinate those controls and minimize the amount of intervention on goods crossing borders. Customs automation was another important area for possible measures. Prior to automation one needed to simplify and reduce documentation and data. While the other measures the Communities proposed such as with risk assessment, authorised traders, simplified procedures could be implemented without automation, they were clearly more successful with it. Many members at all levels of development had started using automation and EDI in customs and trade administration, which was why there was a good case for considering measures or commitments in that area too.

1.10 The last subject the Communities proposed for further study was the development dimension of trade facilitation. The Communities had given careful thought on how to best integrate development issues and best capture the need for special and differential treatment if Members were to go down the road of developing future WTO commitments on trade facilitation. In doing this, the EC started from the presumption that all of the proposals the Communities as well as many other Members had made, were in themselves beneficial for development. It was generally agreed that trade

facilitation measures were supporting development. The proposed measures would in no way in themselves reduce the development space or the flexibility needed by developing countries. The Communities had also tried in its proposals to make a distinction between measures that could be implemented fairly rapidly, such as non-discrimination, and proposals which implied resource commitments, or institution building or infrastructure building, and therefore might not be possible for some developing countries to implement rapidly, such as automation or the introduction of a single customs code or body of legislation were all the procedures were in one place. While good in themselves, some of these ideas might take time to implement. Nevertheless, Members should be aware that even those trade facilitation measures which implied resources, were at the same time an important investment that in the medium term tended to recoup any initial outlay and created rapid efficiency gains, thus actually saving resources. However, the Communities would like to explore with Members the different options and possibilities for taking account of different Members' different capacities and levels of development. One option the Communities had mentioned in its paper was that LDCs and possibly other countries could be exempted from those future commitments, which were potentially resource intensive, until they had the capacity to assume them. The EC itself was not convinced that that was a good development policy. The Communities were concerned that that could create a risk of a two tier membership of continued disengagement and not convinced that that kind of approach was necessarily the best for the integration of poorer developing countries into the system, but the Communities would like to hear had Members' views on this. The other approach the Communities had explored in its paper was a more calibrated form of differentiation of commitments according to the individual situation, needs, capacity of individual developing countries. The proposal the Communities had set out for consideration was to develop an individual implementation plan with each member having particular difficulties, in conjunction with a well coordinated plan for technical assistance and capacity building. This seemed to better create the right kind of incentives for progressive modernisation and simplification of trade procedures, while preserving a degree of flexibility. Although the focus had naturally been on the least developed countries, there was no reason why this kind of calibrated approach could not be explored with other developing countries if there was an interest. The Communities thought of this approach as a kind of "ladder" of trade facilitation measures where different Members would position themselves on different rungs of the ladder and progressively move up over time in line with their improved capacities.

1.11 There was obviously a need to better organise and improve the quality and quantity of trade related technical assistance in this field. Any future work needed to see the commitment to improve quality, quantity and coordination of aid and a better response to the specific demands and needs of Members. The Communities proposed a specific mechanism for coordination between the different donors, recipients and agencies having an interest in trade facilitation, a kind of integrated framework approach. The EC also saw an important role for private sector participation in capacity building. In the consultations the Communities had had both with the European and the international private sector in the goods as well as the services field, the EC had noticed a lot of interest from a number of federations associated with future technical assistance programmes. Many of them had resources, expertise and experience; they were part of the solution and needed to have regular interface with customs and other agencies. There was a wealth of untapped potential in the private sector and a potentially easy crossover between FDI in this area and technical assistance.

1.12 In conclusion, the EC representative underlined his delegation's conviction that the time was right to consider measures to make GATT Article VIII more operational. If Members could develop progressive commitments on trade facilitation, one would ensure that everybody moved in the same direction, drawing on the same international standards and benchmarks, and that no country got left behind. Proposals along the lines of the ones tabled by the Communities as well as other Members would allow the WTO Membership to move towards the compatible harmonised approaches that were very important for trade. They would remove the risk of various unilateral, bilateral or regional initiatives going in divergent directions. The EC representative noted that the EC's proposals would

require modifications of the Communities' customs and trade procedures. The Communities were not saying "This is what we do in the EC and you should do the same." The measures the Communities proposed implied a considerable change domestically and as the world's largest importer, the benefits for the EC's trading partners of the EC moving along this road of continuous simplification and modernisation should be very evident. The EC was willing to do that in the context of a WTO exercise of negotiations.

1.13 The representative of Canada stated that their paper represented Canada's second contribution to the 2002 work programme on trade facilitation. It provided a number of Canadian ideas on how GATT Article VIII could be clarified and improved. At past meetings and in past papers, Canada had spoken of the benefits of trade facilitation to both traders and governments that might be realised by pursuing various trade facilitation measures. Today they focused in particular on the potential to address improvements in Article VIII:1(c) and those of a broader nature to Article VIII. Canada believed that the addition of business and user-friendly improvements to the core international trade procedures reflected in GATT Article VIII were vital keys to enhancing a country's capacity to trade and to integrate fully into the international trading system. Canada saw considerable potential in Article VIII to further explore opportunities to better promote cost efficient efficiencies by minimising the incidence and complexity of unnecessary or redundant border formalities and procedures without compromising the need for consumer protection, health and safety and public security. As with its earlier suggestions regarding Article X, Canada's suggestions on Article VIII were designed to separate the movement of goods from the movement of information and from the movement of the money, thereby facilitating trade while maintaining control over the importation or exportation process. Canada also believed that any proposals needed to take account of the existing and significant technology gap that currently existed in the trading environment. To this extent it believed that proposals for simplification for effective procedures should be applicable and useable in either a non-automated or a technology based environment. Canada saw many opportunities in both cases to promote efficiencies, enhance transparency and minimise procedural delays with the primary difference being the degree of change that was achieved.

1.14 In its present paper, Canada suggested several clarifications and improvements to GATT Article VIII. In many cases, these ideas drew from a number of current WTO Agreements, such as the Agreement on Rules of Origin and the Agreement on Implementation of Article VII of the GATT. These suggestions, which reflected various trade facilitation principles including: consistency, efficiency and simplification, harmonisation, consultation and cooperation, transparency and effective compliance, had been categorised under six major categories. Under the section "Simplifying border-related documents, and increasing compatibility/standardising data required for the release of merchandise" Canada had focused on the use of agreed international standards, as it saw that these would best ensure a common basis for the measures applied by different WTO Members. Increased compatibility and standardisation of data sets would facilitate the increased use of information and communications technologies (for example electronic data interchange). This in turn would improve transparency and predictability, and lower costs for traders, in particular in the preparation of trade documents and data. Simplifying and improving customs and border-related documentation based on international standards and instrument represented one of the most important ways of achieving early gains in facilitating trade. Cumbersome and repetitive border crossing procedures, related documentation and procedural delays in border controls, and haphazard documentation requirements not only had the effect of impeding the movement of traded goods, but could also ensure that such goods, which might be urgently required, stagnate in clearance depots or warehouses instead of being used productively and in a timely way. The development of common data sets of information requirements for the process of goods clearance would in turn facilitate the increased use of information and communication technologies (i.e., EDI or electronic data interchange). This development would lead to crucial gains, by reducing costs for importers-exporters, particularly for those in smaller countries and small and medium-sized enterprises (SMEs) and, as well, would produce cost savings for customs and other border-related administrations.

1.15 Turning to border agency coordination, the Canadian representative noted that in many Member countries, the customs function already coincided with, or involved interaction with, other domestic agencies or departments that regulate, control or prohibit the cross-border movement of goods. By way of example, he noted that goods might be subject to other government department requirements and might require special permits, certificates and/or examination. In other instances, customs authorities might administer the import and export interests of a number of relevant departments and agencies involved in border-processes and procedures. The focus here would be to streamline the import process for goods subject to review by agencies outside of customs by better exchanging and sharing information amongst those agencies, and by streamlining and reducing duplicative requirements thereby reducing the workload involved in the clearance of shipments. This would enable goods to be released more efficiently and quickly by reducing unnecessary duplication and strengthening inter-agency cooperation (for example through information sharing arrangements) with respect to the commercial reporting and release requirements for imported goods. Where applicable, this might include the use of technology to allow the use of relevant release information amongst interested parties involved. One very pertinent means to do this, as suggested in both Canada's paper and that of the European Communities, was through the use of a "single-window" approach whereby customs would collect all import documentation or information on behalf of government entities controlling or regulating the importation or exportation of goods. As part of these responsibilities, customs would also have the responsibility to refer, in a timely manner, any documentation (or goods) to other government entities regulating or controlling the importation or exportation of goods. In this manner, inter-agency arrangements might serve as an efficient instrument to promote efficient cooperation to streamline and expedite the release of goods.

1.16 Moving on to the issue of streamlined or special procedures, he remarked that such procedures would be founded on the principle of providing the incentive of better services and choices to those traders that comply voluntarily with customs and other border-related laws and regulations. Canada suggested that streamlined procedures be developed for authorised persons using such criteria as a history of past compliance or based upon the traders' internal systems for managing their internal records. Canada also suggested "special" or "fast-track" procedures for those traders who regularly import goods. This might include: 1) the provision of minimal documentation at time of release of goods; 2) the ability to submit a goods declaration covering multiple transactions over a certain specified period; 3) self-assessment and payment of duties and taxes owed; or 4) clearance at the importers premises or other inland locations. Such action would promote a modern concept of partnership between customs, traders and third parties within international trade. This would acknowledge those traders who maintained a good record of compliance with border requirements.

1.17 Turning to the provision of collateral or monetary security and enhanced clearance provisions, the Canadian representative noted that the use of security provisions (e.g. surety bonds) would provide added flexibility to traders in the import process and give certainty to the government that trader obligations would be met and the revenue owed to the government would be secured. Surety bonds might be used to cover imports on either a single transaction or on a continuous basis or be employed for an expanded range of uses to meet a variety of import circumstances. The use of surety bonds presented an added option for traders in addition to the more usual cash equivalent required to pay duties, taxes and other import-related charges connected to the importation process. Surety bonds would provide a guarantee that the importer would faithfully, and in a timely manner, abide by all laws and regulations governing the importation of goods into the country. Ultimately, all risk would continue to be borne by the trader who must continue to meet his obligations. Surety bonds would provide direct benefits to both traders and government. Traders would benefit from improved cash flow management and have the ability to reduce unnecessary paper and cash management burdens. The government would benefit from the security that bonds represent by securing revenue owed and by having a means to ensure that trader obligations would be satisfied.



1.18 Moving on the to use of risk assessment principles, he remarked that in a marketplace that demands multi-sourcing and just-in-time inventories, traders would need smooth, uninterrupted processes for getting goods to their domestic customers. The use of risk assessment principles would be based on the simple premise that businesses or individuals with good track records would benefit from their history of compliance by having access to options that made border-related processes and procedures easier and more convenient for all concerned, including the government. By using a risk management system focused on identifying higher-risk areas among clients, industry sectors, and trade chains, using tools such as links with international enforcement agencies, data from carrier reservations systems, client profiles, and customs audits, customs officials would be able to focus resources on identifying and effectively attending to areas of higher and unknown risk. This would free up time and resources for other purposes. This would allow the customs authority to offer a better service and choices that would minimise intervention and inconvenience for low-risk clients. In addition to the use of risk management techniques, the use of post-entry audits for compliance verification would be useful, under which customs can initiate a systems audit or periodic verification of importers' and carriers' books and records. This could range from a single program review, for example on valuation, origin or tariff classification, to a comprehensive review of all customs programs. The overall objective in using risk management techniques and post-entry audits would be 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.

1.19 Turning to express clearance or immediate release of consignments, he noted that in an era of continually increasing numbers of small consignments moving across borders, expedited and simplified procedures for speedy clearance of small consignments would be of considerable interest to those who are dependent on such goods. This would be of particular use for those traders that are involved with goods requiring immediate release in support of global integrated supply, production and distribution networks. Clear, coherent and useful guidelines in the movement and handling of such consignments could better help deliver such goods in a timely manner. The idea would be to facilitate trade while addressing the need of increased information, enabling governments to deal with higher levels of risk that could be associated with such shipments in the current environment. Such procedures/guidelines would provide for immediate release to all such consignments, provided that conditions stipulated were met and the necessary information was communicated at a specified time before the consignments arrived at destination. Procedures would take into account the different categories of goods involved and varying trade patterns and compliance requirements.

1.20 Turning to technical assistance, the Canadian representative informed that similar to Canada's earlier paper on GATT Article X on the publication and administration of trade regulations previously submitted in May 2002, Canada's present paper again flagged, in various areas, possible areas for technical assistance in support of its proposals. These areas, as identified, represented concrete subjects where Canada has been active, either solely or in concert with other providers, including regional bodies and multilateral institutions. Canada would be pleased to discuss with WTO Members where technical assistance might be provided in developing appropriate, similar and relevant processes. Canada continued 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 believed that 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 conclusion, he noted that Canada believed that simplification measures by customs and other agencies could make an important contribution to realising development objectives and in establishing a framework for technical assistance and capacity building by allowing for significant reductions in administrative costs. The introduction of simplified and relevant electronic customs clearance systems, risk assessment techniques (as opposed to physical inspections of individual shipments and consignments), pre-arrival processing and post-release audit would minimise the time spent and would make better use of resources and reduce levels of error. Canada believed that trade facilitation measures of this type could make an important

contribution to the international trading system. Canada looked forward to the opportunity of discussing these proposals further and especially welcomed the opportunity to review other suggestions in this area – such as those presented in the various excellent papers that had been prepared for this session.

1.21 The representative of Hong Kong, China expressed his appreciation to the Secretariat for its very useful paper, as well as to other Members for the wealth of ideas they had put forward. Hong Kong, China's paper was prepared as a contribution to take forward the Doha mandate to review, and, as appropriate, clarify and improve relevant aspects of GATT Articles V, VIII and X pertaining to trade facilitation. The paper focused on GATT Article VIII. In gist, it proposed to inject certain basic GATT/WTO principles commonly found in the WTO agreements, into specific provisions of GATT Article VIII, to enhance their operations, in particular as regards Article VIII:1(c) on import and export formalities, and Article VIII:1 (b) on fees and charges. These principles were not new, but principles all Members were familiar with and to which all Members subscribed. Hong Kong, China's proposal aimed at tackling certain, but not all areas under GATT Article VIII, for which it believed clarifications and improvements might help advance and modernise its operation. Cutting red tape and reducing transaction costs have become the catch phrases of all responsible governments nowadays. Hong Kong, China's prime objective was to provide a more facilitating and friendly environment for the business community in the current highly competitive and globalized trading environment.

1.22 Turning to the Articles in question, he noted that, regarding formalities and documentation requirements, GATT Article VIII:1(c) only recognised the need to minimise import and export formalities and simplify documentation requirements, without spelling out how this could be achieved. Hong Kong, China believed that one possible way to do so would be to incorporate the basic principles commonly found in other WTO agreements to guide the direction of the article's operation. Specifically, his delegation proposed to consider a number of common principles for incorporation into the Article VIII, such as the principle of least trade restrictiveness or necessity, according to which import and export procedures were not allowed to be more trade restrictive and administratively burdensome than necessary to fulfil a legitimate objective. Another such principle was the use of international standards or harmonization, requiring Members to adopt formalities and documentation requirements with reference to international standards, or to follow guidelines and recommendations in their import and export formalities and requirements where they existed and as appropriate. A further principle was the principle of review, in order to reduce unnecessary formalities and documentation requirements and to remove them in the light of changed circumstances. Another principle was the principle of simplicity and modernisation, calling for formalities and documentation requirements to be as simple as possible, and to enhance efficiency. The use of modern information technology would have to take full account of the technical capacity of individual Members. Other principles such as neutrality, consistency and predictability could also be considered for incorporation into the article.

1.23 Turning to fees and charges, he noted that Members might consider the desirability of introducing basic GATT/WTO principles like necessity and review to add meaning to the provision of Article VIII:1 (b). As regards technical assistance and capacity building, Hong Kong, China believed that full consideration should be given to the technical assistance needs of Members, particularly those of developing countries and LDCs. The WTO should fully explore with other relevant international organisations like the WCO and UNCTAD the areas where cooperation and coordination could be further enhanced. In conclusion, the representative of, Hong Kong, China expressed his delegation's hope that its proposals of injecting some basic GATT/WTO principles into the relevant provisions of GATT Article VIII could help providing better guidance on the derivation, application and administration of import and export formalities and fees by Members in order to facilitate trade. Hong Kong, China stressed that its suggestions were not novel obligations, but principles to which all Members had been aspiring in their conduct of trade. They aimed at providing more concrete and clearer guidance on how to put the "recognised needs" under Articles VIII:1 (b) and VIII:1 (c) into

practice. Hong Kong, China had an open mind on the format and language of the clarifications/improvements to the Articles. These were matters for future deliberation if Members agreed that some clarifications/improvements to these Articles were required. Hong Kong, China welcomed Members' input and comments in this regard.

1.24 The representative of the United States thanked the Secretariat for its work. As in the case with the Secretariat paper on Article X, the US very much welcomed its paper on Article VIII, which it believed to be an important contribution to Members' efforts. The US also thanked the other Members who had submitted papers. He noted that the United States' paper wanted to be complementary to the other communications. As the US had stated before, it saw the core elements of Members' work on trade facilitation being related to transparency and efficiency. Traders wanted to know what the rules were for moving goods, and wanted to ensure that the regulatory efforts at the border did not impede the logistical chain they had established to bring the product to the market place as quickly as possible. As stated by the Communities, what once deemed desirable when GATT Article VIII was authored, was now an imperative. In the view of the United States, the task was to bring shape to the requirements, to do what was needed to ensure that traders, investors and manufacturers were facing a rules-based environment that contributed to increased opportunities through transparency and efficiency.

1.25 Turning to the US submission, he remarked that it set forth a series of questions in order to identify certain issues. It was done in an attempt to suggest what Members should be thinking of, as they moved forward. The US saw this as complementary to other submissions.

1.26 With regard to fees, the Communities' paper had noted that there seemed to be a real need for clarification through more specification. Fees had been the subject of litigation, and there remained the need to improve and clarify the situation on fees overall. Moving to Article VIII (1) c, he noted that the whole question of formalities and requirements would come down to a main issue which was how quickly goods could be released. This was where Members' focus ought to be. There were a number of ways how this could be addressed, but the US wanted to make sure that this was central to Members efforts relating to formalities and requirements, and that Members did not lose sight of the issue of rapid release of imported goods from the custody of customs. A subset of that question and a matter that underscored the need to improve and clarify GATT Article VIII was the treatment of express shipments and the growing impact on Members economies as well as the need for special requirements for treatment related to efficiency and transparency. The US was interested in addressing the question of simplification of documentation requirements, and also noted one element of specification that could be needed as regards the use of certificates of origin. The task was simple in terms of seeking clarification, and greater specification.

1.27 Turning to Article VIII (3) and (4), he clarified that the citation in the US submission under penalties should only refer to Article VIII (3) and that the (b) should disappear. Similarly with regard to scope of coverage, the US intended to refer to Article VIII (4) in its entirety, not merely Article VIII.4.b. With regard to the question of penalties, the U.A.S. stated that Members needed to ask themselves what could be done to bring improvement that would ensure procedural fairness and address situations such as minor breaches, early rectification of clerical errors, whether further specification and clarification could not contribute substantially to a more efficient trading environment. Members' task was best reflected in looking at the content of GATT Article VIII as something desirable that the trade environment had made imperative. The US continued to hold the view that this was a true win-win situation for all Members. Everybody understood and shared the importance of this area. The United States had the intention, subject to further consultations with some of their developing country partners, to make a future submission with regard to the development dimension, and in particular with regard to the challenges of implementation. There was the overwhelmingly positive view that this area presented an opportunity to come up with creative

ways to meet those challenges of implementation, while preserving the nature of the commitments that could be improved upon in Members' work.

1.28 The representative of Japan thanked the Secretariat and other Members for furnishing many inputs to the very important discussion on trade facilitation and GATT Article VIII. Japan had submitted a paper as well which had been circulated to Members as document G/C/W/401. Japan would like to recall the benefits from trade facilitation as well as those gained from taking trade facilitation under the WTO norms for all stakeholders both from the private and the public sector. Although the current meeting was designed to discuss the whole of Article VIII, the Japanese paper focussed on Article VIII (1) c. This silence did not mean that Japan had no opinion on the rest of the elements of the Article. Article VIII (1) c of the GATT stated that Members recognized the need for minimizing the incidents and complexity of import and export formalities and for simplifying import and export documentation requirements. Such a simplification of trade procedures required the cost burden to be borne by trade operators. Some international organizations estimated that enterprises in developing countries and small and medium sized enterprises would receive more benefits than the larger enterprises in developed countries. It should be emphasized that WTO work on the simplification of trade procedures should not be designed or implemented in a way that precluded governments from pursuing its legitimate trade policy objectives. Members would need to discuss the scope of those legitimate trade policy objectives. Yet, at the same time, the Japanese delegation would like to emphasize that trade procedures should not be more trade restrictive than necessary in order to fulfil such trade policy objectives. The basic idea could be looked at in the SPS and TBT Agreements. Some Members might be concerned with this seemingly conflicting relationship between the simplification of trade procedures and the level of controls. Yet, this might not be the case. Anecdotal evidence had shown that an increase in public sector efficiency through the simplification of trade procedures might enable governments to shift redundant resources from resource-sufficient activities such as document format verification to more labour-intensive activities such as physical inspection. The fruit of such efforts might result in an increase of the collected duties or in more efficient goods' controls.

1.29 Like the previous speakers, Japan was of the opinion that saw that since the current GATT Article VIII (1) c simply recognized the need for such simplification, while not providing for any mandatory requirements in this sphere, the fruits of simplifying the present procedures had not yet been fully realized. The provisions needed to be made operational. Such WTO work on this issue would create an essential guide and benchmark for Members to improve their laws as well as the implementation process related to trade procedures. This would help countries to integrate themselves into the world trading system and contribute to the further development of world trade. Turning to some specific examples of improvements in trade procedures, the Japanese representative referred to the adoption of internationally accepted standards and instruments as a basis for setting up and implementing trade procedures, a reasonable selection of goods to be examined based on appropriate risk assessment methods or the cooperation and coordination among different authorities in charge of border controls at exist and entry points, e.g the introduction of a single window through which a trader could submit all the required data to a single agency at once for various official purposes. Other examples included the opportunity for the users of trade procedures, including the private sector to communicate their views and comments to the agency in question, the adoption of advanced control techniques such as deferred payment, post-clearance audit, the release of goods before import permission with adequate security if required, automation of border procedures and the use of internationally accepted standards. Japan also saw that some countries lacked adequate capacities. In this context, the Japanese representative noted that appropriate technical cooperation was an effective tool for introducing and implementing trade facilitation measures smoothly. When considering efficient resource allocation, the work and the expertise of specialized international organizations such as the WCO and UNCTAD should be taken into account. In order to make technical cooperation programmes more effective, it was important to create targeting goals for technical cooperation.

Japan believed that the best process for achieving such goals would be through constructive WTO negotiations.

1.30 The representative of Korea thanked the Secretariat for its background note and the EC, Canada, Hong Kong China, Japan and US for their valuable contributions on GATT Article VIII. Korea supported most of the ideas contained in those contributions. Korea had also expressed its views on this important issue to facilitate the discussion. GATT Article VIII covered fees and formalities directly related to importation and exportation. It set out the basic principles of limiting the amount, incidence and diversity of fees and formalities to the reasonable minimum. The trade environment, including customs administration, had undergone dramatic changes. Despite this, the principles laid out in Article VIII were still equally valid. Korea was of the view that WTO Members should now refine the time-honoured principles into more concrete disciplines which reflected the changes in the trading environment. Some countries were introducing voluntary measures, but only concerted efforts by all Members could deliver substantial improvement. Now that Members had the fora to discuss ways of working on Article VIII, this issue needed to be addressed more seriously in a forward looking manner.

1.31 In line with Korea's first communication for the last CTG meeting in May (G/C/W/377), Korea believed that two basic criteria, namely the degree of contribution and feasibility, should be used to evaluate the merits of potential disciplines. Many specific measures had been identified as being instrumental in facilitating trade. Some of them were expected to make significant contributions while imposing a relatively light burden of implementation, such the acceptance of commercially available information, except for some justifiable cases, which could be introduced without delay since it did not involve a significant financial or administrative burden. Such a deregulatory measure would not only lower the costs for the traders, but also relieve customs authorities of an unnecessary administrative burden. Furthermore, pre-arrival processing, post-auditing and core risk-management measures were the key measures for the rapid release of goods. This set of measures would bring benefits both to the traders and the governments.

1.32 With proper technical assistance and support for capacity building, which would represent a small financial burden, developing countries would be able to enjoy the benefits from such measures. The focus of capacity building and technical assistance should be on institutional reform and human training, taking into account that IT infrastructure could make the process more efficient. In whatever form the above disciplines were to be introduced into the WTO system, it would be 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. Those principles were non-discrimination, transparency, predictability, simplicity and reasonableness. Such principles could be inferred from GATT Article VIII together with other articles of the GATT and WTO instruments. It should be noted that such principles were not new to the WTO, and thus should be easy to agree upon. Korea looked forward to cooperating with the other Members on identifying the agreeable details of such disciplines and principles. Korea was of the view that, while the following measures would contribute to trade facilitation, they needed to be further discussed in terms of their feasibility. Some of the modern customs techniques were not easy to implement without a sound IT infrastructure. For example, single windows access would function efficiently only if a proper IT infrastructure and an efficient mechanism for information flow among the various authorities were established. Also, for EDI, an IT infrastructure would be a prerequisite. Some measures might need more common understanding. The obligatory application of international standards would, for instance, require a consensus among Members on which standard to use. And a general commitment to simplification and modernisation by itself would not be amenable to enforcement, even though simplification and modernisation would be acceptable as basic principles. Finally, the Korean representative noted that his delegation welcomed comments and better ideas on this subject and wished to comment more specifically on other suggestions tabled at the meeting at a later stage.

1.33 The Chairman stated that a request had been received from the World Customs Organisation to make a statement in their capacity as an observer organization. In this context, he drew delegations' attention to the fact that the WCO had prepared a communication dealing with Article VIII, copies of which had been made available by the WCO for this meeting.

1.34 The representative of the WCO introduced his organization's paper on GATT Article VIII. As already stated at the May meeting, the WCO saw its role as being complementary to the WTO in developing instruments to support the WTO rules. All the legal provisions and principles in the WCO instruments were compatible with and complimentary to the three GATT Articles V, VIII and X. The GATT Articles set out the high principles for trade facilitation, while instruments of the WCO, including the Revised Kyoto Convention, provided basis, practical guidance and information for the implementation of those principles. The WCO saw the WTO work programme on trade facilitation as beneficial both for the trade and the customs community. Especially with regard to customs, this could provide for the political will and commitment which was indispensable in pursuing customs reform and the simplification of procedures. The WCO knew from past experience that the success of customs reform depended on the political will at the highest level and the support from the trade community. These efforts could form a basis for good governance. With regard to the trade community, the WTO efforts would encourage its support and compliance for efficient and effective customs operations, thus ensuring predictability of the trade system. The modern customs approach was based on the partnership with the trade community and other relevant sectors. Moreover, the WTO could address trade facilitation issues that were beyond customs competence. Albeit important, customs was only one part of the global trade chain, and co-operation with other border agencies, especially through joint intervention, was also highly important to secure the smooth flow of goods. Finally, the WCO expected that the work programme would result in appropriate resources being realigned for capacity building that could promote customs reform and modernization, which both trade and customs desired. In this connection, the WCO representative reported that a recent WCO Council in June had decided that the WCO would make a contribution to the WTO strategy for capacity building by identifying Members' needs, while endorsing the complementary nature of the WCO work to the WTO activities.

1.35 Turning to GATT Article VIII, the WCO representative remarked that the Revised Kyoto Convention enhanced and supplemented the high principles contained in this article on requirements for fees and formalities, as far as the customs was concerned. He highlighted some of the guiding principles of the simplification of customs procedures contained in the Revised Kyoto Convention, making special reference to the use of risk assessment as a key concept. It was a useful tool to identify high-risk consignments and thus enabled customs to deploy an appropriate level of resources to greater areas of risk, while allowing little intervention for the legitimate flow of goods. Another important concept based on risk management was the introduction of authorized persons, by which customs gave "fast track" procedures to compliant traders. The Revised Kyoto Convention also stipulated numerous standards including those for goods declarations with minimum data requirements, simplified release, post-clearance audit and application of information technology.

1.36 For more detailed practice, other WCO instruments and initiatives supplemented the provisions set out in the Revised Kyoto Convention. The Immediate Release Guidelines developed a minimum set of data for each category of goods to be submitted to customs for requiring immediate release. The WCO initiative on a Customs Data Model would establish a standardized and simplified data set for electronic transmission of customs declarations and supporting documents. The WCO Time Release Guideline was a useful performance measurement tool to identify problems and assess improvement in customs procedures. Article VIII was particularly relevant with respect to the growing need to safeguard security of national borders. In this context, the WCO Council had recently adopted a resolution on security and facilitation in the international trade supply chain, mindful of the need to reconcile the necessary facilitation of legitimate trade with the need to increase the

effectiveness of border control. He encouraged delegations to examine carefully the contents of the WCO paper as it not only gave technical details, but also outlined the linkages and the complimentary nature of the various WCO instruments and initiatives with GATT Article VIII. He concluded by offering additional information if requested.

1.37 The Chairman remarked that the WCO paper seemed to touch upon a number of issues of relevance for Members' deliberations on GATT Article VIII, and suggested that it be distributed as a CTG document.

1.38 It was so agreed.

1.39 The Chairman suggested that, in order to have a more focussed discussion, delegations would first focus in their interventions on GATT Article VIII. After that, he would open the floor for interventions on Article V and Article X.

1.40 The representative of Colombia thanked the Secretariat for the document submitted on Article VIII and as well as all parties who had submitted proposals, including the World Customs Organisation. The note prepared by the Secretariat enabled the Colombian delegation to see the relevant aspects of the Article currently being discussed, which should be clarified and improved in order to facilitate trade exchange between our countries, and more particularly, to guarantee that what had been established in paragraphs b and c did not remain a dead letter. The various contributions submitted for the meeting set out general principles, common areas with other WTO agreements and specific provisions on which Members should work in order to give better guidance to customs administrations regarding procedures and formalities, with an aim of facilitating trade. Trade facilitation measures called for simplifying, harmonising and standardising customs procedures. From that point of view, Colombia considered it advisable to analyse the possibility of adopting international standards, such as those provided for in the Kyoto Convention, which should guarantee simplification and predictability as well as transparency and support customs administrations and commercial operators of developing countries and the least-developed countries.

1.41 Colombia also wished to suggest that an inventory of non-tariff measures should be made, starting from information given by capitals on the obstacles encountered by exporters and importers affecting the productivity and competitiveness of goods and services. Such an inventory could be accompanied by a glossary of terms which could help Members to reach an interpretation of Article VIII terms such as services, severe sanctions, approximate cost of services, or sanction to prevent errors or omissions. Colombia wished to take this opportunity to re-emphasise the importance that should be given to technical assistance in this process. Any measure proposed with the view to simplify, harmonize, or standardize customs procedures as well as measures to systematise transfers, electronic transmissions and data transmissions between users would require physical and human resources which should be obtained from donor countries, amongst them governments of developed countries and international organizations which specialized in this subject. For Colombia, GATT Article VIII was of great relevance. It was the article of greatest importance within paragraph 27 of the Doha Declaration due to the harmonization and standardization of customs procedures, which currently gave rise to delays and surcharges in trade transactions. The Colombian authorities had launched an inter-institutional coordination process in order to prepare a contribution which Colombia hoped to submit very soon.

1.42 The representative of Pakistan thanked the Secretariat for coming up with a comprehensive compilation which was very helpful for all Members. He also thanked Members for their submissions. Pakistan had not yet had the time to study those papers which had only been submitted at the beginning of the present meeting, but it would come back to them at a later stage. Turning to the submission by the EC, he noted that it was comprehensive and that it had been send to the capital for

further study. In his preliminary comments, the representative of Pakistan agreed with the EU that Article VIII needed to be more operational than aspirational. It was important not to make it aspirational for the developing countries.

1.43 While Members agreed that there was a need for simplifying border-related documentation and increasing compatibility and standardization of data requirements, it was also agreement on the need for more border agency coordination. Ideally, a single window approach would also be helpful, streamlining special procedures for authorized persons. This was an area which needed to be looked at very carefully, as Pakistan was currently doing. There were certain concepts like the provisions for collateral and monetary security, developing countries were not reasonably aware of, which was why they required further studying in more detail. All of these issues would require a considerable amount of institutional and technical capacity, which the developing countries, especially Pakistan, would lack. Pakistan would like to hear more from Members, especially developing countries, about their national experiences and about how their national governments had identified their domestic compulsions in terms of providing trade facilitation measures. Pakistan thanked the Korean delegation for presenting its paper and also for giving the opportunity of studying their national experiences on trade facilitation. Pakistan was in the process of identifying its specific areas of interest and would get back on that to Members as soon as possible.

1.44 The representative of Thailand thanked all Members who had submitted proposals on Article VIII of the GATT 1994 regarding fees and formalities connected with importation and exportation, which contributed to Members' discussion of this Article. It was clear in Thailand's interpretation that Article VIII aimed at facilitating international trade between and among Members and that it was an important tool to eliminate trade distortions. As suggested in the EC paper regarding specific provisions on fees and charges, Thailand agreed that fees and charges should be limited to the approximate cost of services rendered and should not be calculated on an ad valorem basis. Thailand was also of the view that Members should officially notify the fees and charges currently collected by them for the purpose of transparency. Thailand appreciated a summary and comparison of those fees and charges item by item, which would be of great interest and benefit to all Members for their analytical in-depth study, if they so wished. Regarding provisions on data and document requirements and procedures, Thailand could support the concept of a single window as long as its application and implementation did not impose too many burdens and commitments on developing countries. Developed countries should provide necessary technical assistance and capacity building to the developing countries and LDCs according to their needs and priorities. In that light, Thailand was ready to consider the idea on technical assistance and capacity building measures described on page 9 of the EC paper. Yet, one needed to make sure that an international mechanism as such, if set up in the future, would keep the financial implications to the WTO to the minimum. However, Thailand would like to seek clarification from the EC on its suggestion to adopt a uniform domestic customs code or similar legislation. It would like to know what modalities or components were to be incorporated in such an uniform customs code or legislation the EC had in mind.

1.45 As regards customs and related import and export procedures, it was clear that customs formalities and procedures should facilitate the clearance and release of goods, both for importation and exportation. The procedures and formalities should be efficient, simplified, rapid, non-discriminated and standardised. Thailand warmly welcomed the proposal under item D on page 6, with the understanding that such procedures were governed by the principle of reciprocity as recognised by the Marrakesh Agreement Establishing the WTO, failing which the implementation of Article VIII would come to no avail at all. Thailand also faced problems with and difficulties in every export shipment of chicken and fishery products to the EC. It was evident that every consignment was stopped and thoroughly checked by hi-tech examination equipment. Unfortunately, the EC had only limited equipment available and used it only at certain ports. Not only export shipments from Thailand, but also from Vietnam and China were delayed for customs clearance for periods ranging from one and a half to two months due to the unreasonably strict and non-standardised EC import



procedures and formalities, not to mention due to discrimination. This important example demonstrated a serious problem that every Member of the WTO, not only developing countries and LDCs, but also developed countries like EC, should be aware of in order to ensure that related import and export procedures would facilitate legitimate international trade. Such delayed customs clearance would impose financial burdens on exporters, which was not in line with the spirit of Article VIII. Customs procedures should be applied across the board on a non-discriminatory manner. Thailand would like to know when the EC would alleviate this problem when such a conduct was expected in the EC's paper.

1.46 Thailand was of the view that new obligations should not place many burdens on developing Members. As regards special and differential treatment, Thailand would like to thank the EU for this initiative. Special and differential treatment was very important, not only for LDCs but also for developing countries, to ensure that they could effectively, but comfortably implement any international commitment and obligation. Technical assistance and capacity building measures should, in this respect, cover programmes relating to the improvement of port and communication infrastructure, cargo logistics or services to exporters.

1.47 The representative of Singapore welcomed the contributions from the EC, Hong Kong China, Japan, Korea, US, Canada, the WCO as well as from the Secretariat. No-one denied the benefits of trade facilitation, which was why Singapore would not go into the arguments for the win-win situation of trade facilitation or the benefits of the various proposals. Singapore agreed with the submissions that GATT Article VIII was the core article of trade facilitation, but this was not to diminish the importance of the other GATT Articles related to trade facilitation. Singapore agreed that governing principles such as certainty, predictability, the necessity test of not being more trade restrictive than necessary, expeditiousness, and the use of international standards could and actually would apply to the three GATT Articles of special concern for Members' work on trade facilitation. Singapore shared the view that the scope of GATT Article VIII encompasses all bodies involved in consultation and exportation, and not just customs. This was implicit within GATT Article VIII itself. There were also other WTO Agreements which covered aspects of trade facilitation, such as the agreements on Import Licencing, Pre-shipment Inspection, TBT and SPS, which Singapore saw as complementary to the CTG's work programme on trade facilitation.

1.48 Looking at all the papers, Singapore had noted that there was a convergence of approaches and suggestions. Hong Kong China's proposal to inject certain basic GATT/WTO principles into Article VIII's provisions was of particular interest to Singapore. She noted that this was also the general approach advocated in the EC paper. Her delegation considered the injection of certain basic principles into Article VIII to be a good building block approach to carry out the Doha mandate of clarifying and improving relevant aspects of GATT Article VIII. Specifically, Singapore agreed that GATT Article VIII:1 c would be improved by requiring customs formalities and documentation requirements to be not more trade restrictive and administratively burdensome than necessary to fulfil a legitimate objective. Such a necessity test would check against protectionism and non-trade barriers. Singapore agreed that there probably was a need to discuss and elaborate on what constituted a legitimate objective.

1.49 Turning to the proposal to use international standards, forms and data sets, the representative of Singapore noted that this would greatly facilitate the smooth and efficient flow of trade across borders. In this respect, she noted that Singapore felt that Members could draw upon work done in other fora, where standardised data sets of formats had been developed, which met government and trade requirements to release and move goods across borders. She noted that, as pointed out in the Canadian submission, the increased compatibility and standardisation of data sets would lead towards modernisation. The increased use of technology such as electronic data interchange would process documentation more efficiently. The use of modern technology as well as simplification and standardisation would also reduce the incidence of errors, while at the same time lowering business

and administrative costs. As regards standardisation and minimisation of data sets, Singapore agreed with the EC's point made on page 6 of their paper, that this should not be a prescriptive approach. Her delegation did not think that there was any disagreement that cumbersome, laborious and repetitive paperwork for various controlling agencies increased administrative and business costs to nobody's benefit. Having a streamlined, single window, one time submission approach for import and export formalities and requirements would therefore complement the foregoing principle of having standardised and simplified data sets. Like others, Singapore recognised that some countries might not be able to implement a single window approach immediately and that those countries would need progressive steps to achieve this standard.

1.50 As regards documentation, Singapore found the query raised by the US in relation to Article VIII:2 worthy of further discussion. It would be useful to further debate whether Article VIII:1 c could be improved by specifying what certificates of origin could be said to be strictly indispensable. Singapore also supported Hong Kong China's proposal to inject the general principle of neutrality into GATT Article VIII:1 c. In Singapore's view, the administration of customs formalities and documentation requirements should be done in a fair and equitable manner and not be applied discriminatorily by distinguishing between like products. This principle was not alien, but, as highlighted by Hong Kong China and the EC, already reflected in the WTO Agreements on Import Licencing and Preshipment Inspection as well as in the language of GATT Article X: 3 a itself. It was also a concept embodied in the APEC principles on trade facilitation. Finally, the representative of Singapore remarked that Singapore also agreed with Hong Kong China that injecting the concept of review would go hand in hand with the least trade restrictiveness principle. Everybody knew that the trading environment did not remain static and that reviews were commonsensical means to update and discharge antiquated or no longer necessary measures. This was also a principle highlighted in the EC paper with respect to their specific proposals on data requirements, calling for their simplification and update.

1.51 The representative of Australia thanked the Secretariat for its background paper and the EC, Canada, Japan, US, Hong Kong China and Korea as well as the WCO for their submissions. They all raised many important issues, which warranted much more detailed reflection, not just in the current meeting, but also in the weeks and months ahead. In studying these documents, his delegation had noted that Article VIII 1 c had attracted considerable attention. It was the article dealing with minimising the complexity of import and export formalities and documentation requirements. Australia agreed that this was a very important area which provided productive avenues for improving trade facilitation in general and GATT Article VIII in particular. By taking just some of the examples of such avenues mentioned in Members' submissions, he referred to the adoption of internationally accepted standards and instruments, the introduction of a necessity test for formality and documentation requirements, greater use of risk assessment, cooperation amongst border agencies including moves to a single window, the opportunity for consultation with the trading community and the adoption of advanced control techniques promoting automation of official border procedures, noting that these measures involved many national agencies and not just customs.

1.52 The Australian representative also mentioned the submission of the WCO and its description of the relevant parts of the Kyoto Convention and the work of the WCO on common data sets as very important issues. All these things were tools which closely related to the earlier mentioned avenues for improvement. In the further consideration of Article VIII 1 c, Australia found it useful to further explore possible ways to use the principles of these instruments to further work in the WTO. Australia particularly looked at the chapters outlined in the WCO's submission, such as chapter 3 concerning clearance and customs formalities, and chapter 5 on financial security, chapter 6 on risk management and chapter 7 on information technology. Finally, he observed that all the submissions addressed the issue of technical assistance and capacity building. Australia recognised the challenges for many countries to make the required changes and strongly supported the need to develop capacity building programmes. This would need to be done in an integrated way, taking account of the range of

international organisations involved in capacity building assistance. Such assistance would need to be targeted very tightly on the implementation of the specific trade facilitation measures concerned. The issue of technical assistance deserved much further discussion. Australia was looking forward to exchanging views on this issue under agenda items 2 and 3.

1.53 The representative of Brazil expressed his gratitude for the Secretariat background paper, which, as in the case of Members' discussions on Article X, had shown to be a very valuable instrument for their work. He also thanked the WCO for the statement and for their submission, as well as all delegations which had circulated specific submissions for the current meeting. On the whole, Brazil saw these submissions as containing some constructive suggestions, although at times overly ambitious. They did constitute however a useful basis on which to undertake further work in Members' discussions during the present phase of their work. Unfortunately, the timing of these submissions did not allow Brazil to make any detailed comments, as they required detailed examination by the Brazilian authorities. What he could say on a preliminary basis was that Brazil considered the approach taken by the US to be particularly constructive. Trying to frame the issue by raising the questions that needed to be asked in an attempt to identify specific gaps in Article VIII and exploring possible solutions, were very positive ways to move forward.

1.54 He noted that there was a specific question referring to paragraph 2 of Article VIII on the question of rules of origin. As already noted in the previous May meeting, the exercise of concluding the harmonization work programme on non-preferential rules of origin was long over due and an indispensable step towards moving forward in trade facilitation, particularly as the Agreement on Rules of Origin itself recognised it had this character. Brazil was of the view that it might be difficult to define when rules of origin were strictly indispensable, if Members could not even conclude an agreement on how rules of origin for non-preferential trade should be.

1.55 Turning to the EC paper, which had been available a bit earlier, he noted that he had some very basic preliminary reactions, even though he had not yet heard from the Federal Revenue Secretariat under whose jurisdiction customs fell, and whose input was of great importance. This paper was more a proposal-driven type of submission compared to the US one. It began with a diagnosis of perceived shortcomings in the Article in question and outlined some very specific suggestions the Communities felt might help overcoming them. In examining these proposals, Brazil classified them into three broad categories. The first set of proposals went in the direction of reaffirming some core principles already embodied in GATT. Substantively, Brazil did not see any a priori difficulties with them, although his delegation was giving detailed consideration to both the implications of each proposal and the value-added of a simple reiteration of principles. Others sought to give more precise guidelines to the terms of Article VIII, particularly regarding fees and charges. Finally, there was a set of proposals which, on first reading, seemed to have an unfavourable cost-benefit ratio. Brazil's initial reaction was that an excessive amount of disciplines was being proposed for an issue which might not provide correspondingly concrete benefits to trade flows. Brazil hoped to come back to this issue in more detail at a later stage, following the careful examination of the proposals. As a last point, he raised one question relating to Colombia's intervention. If it was a proposal to have an inventory on non-tariff measures in general, it seemed to go beyond the mandate of the CTG and might fall under the mandate of the Negotiating Group on Market Access for non-agricultural products. He would appreciate clarification on the exact scope of the proposal.

1.56 The representative of Colombia clarified that her delegation had merely wanted to note that Article VIII was a matter of drawing up a catalogue of measures concerning barriers faced by exporters. At the same time, as regards the exchange of goods, if it was under Article VIII and not in general together with all the other measures which might become barriers to trade, one would go beyond the competence of the work programme mandated in paragraph 27 of the Doha Declaration. In order to shed some light on this issue, it was important to know exactly where the greatest difficulties were as regards the import of goods.

1.57 The representative of the Czech Republic thanked the Secretariat for preparing a very useful and helpful document outlining GATT Article VIII. The Czech Republic also welcomed the submissions by the EU, Canada, Hong Kong China, US, Japan, Korea and the WCO. The Czech Republic belonged to those countries whose economy very much depended on the results of foreign trade. This was why his delegation, while providing transparent and predictable customs procedures, including fees and formalities to its trading partners, was strongly interested in achieving modern and simplified procedures that would reduce the existing complexity. The Czech Republic believed that the experience of the WCO would be useful for Members' work. His delegation was in favour of a broader coverage which would include formalities imposed by other public agencies. Such an approach would benefit all Members. The question was not only to simplify, but also a question of what should be simplified, what of the requested information concerning importation/exportation might be an unnecessary duplication. A criterion for such a determination might be whether the requested information requested was processed or put on file without further application. In this respect, the Czech Republic supported further work on clarification of or reference to existing definitions of a non-discriminatory measure, of how to interpret transparency and predictability, and of what was a legitimate obstacle. As regards fees and charges, the Czech Republic supported the reduction of their number and diversity, as well as the strengthening of transparency and predictability in this field. As a first step, the Czech authorities were considering to publish a list of applied fees and charges related to foreign trade on the internet, and to update this information periodically.

1.58 The representative of Uruguay thanked the Secretariat for a very useful paper on Article VIII. He also thanked the WCO representative and other delegations for their contributions. Uruguay had a few preliminary questions. In the light of the fact that one was speaking of trade facilitation in general, it would greatly facilitate work if Members were able to get the proposals sometime prior to the meetings so that delegates could send them to their capitals and receive more substantial comments before the meeting took place. If delegations would find these documents only on the day of the meeting, all they could do was making preliminary comments, or raise preliminary questions. This facilitation would greatly help Members' work on facilitation.

1.59 Turning to the submission by the EC, the representative of Uruguay noted that it underscored special and differential treatment as well as technical assistance for developing countries. Furthermore, it contained a chapter on development, which was a very important message. When getting down to the specifics, one would find that the chapter underlined three basic parts. First, reference was made to a differentiation of commitments, but only in favour of least developed countries. As regards developing countries, there was just a reference to transition periods. A third part mentioned technical assistance and capacity building measures, but only in general terms. He therefore wanted to know from the European Communities whether, when speaking of the importance of special and differential treatment and technical assistance, the EC made a difference between the various types of developing countries, other than the reference to the least developed ones.

1.60 As regards the communication from the US, he remarked that its questions for discussion on the second page were very interesting, as an attempt was made to focus the discussion on various questions or gaps which might be found in Article VIII. This was a very useful way of discussing this issue. Under the fourth bullet, formalities and requirements, reference was made to express shipments of goods. He wondered whether that meant express delivery, as express delivery was related to goods, but also to services. If one went to the existing classification of services, one saw that W120 did not include this category of express delivery services. There was a negotiating proposal to create a possible category of express delivery services, but currently, there was no such category in classification. W120 just included postal services and courier services. The question was therefore how it was intended to carry forth the subject of express delivery in view of the fact that it related to both goods and services. Uruguay would appreciate information on this matter. Finally, as regards the idea presented by Colombia of having an inventory of non-tariff measures, he remarked that Uruguay

shared the view expressed by Brazil that this had already been included in paragraph 16 of the Doha Declaration in its section on Market Access. Greater clarification on this subject would be important and greatly appreciated.

1.61 The representative of Mexico joined delegations in thanking the Secretariat, the WCO and Members for their inputs. For reasons already mentioned by Brazil and Uruguay, his comments would also be only preliminary ones. Mexico agreed that Article VIII was the heart of the discussion on trade facilitation and it also shared the view that everything which had already been carried out in this context at the international level should be taken into account, such as, for instance, the Kyoto Convention. This did not mean that WTO Members should join those mechanisms. Principles such as transparency, simplification and non-discrimination were now in the spirit of Article VIII. Mexico believed that Members' various proposals were necessary to make this Article more operational. Such proposals were valuable and welcome to start the discussion. Mexico had no doubt that this would benefit operators. There were some practical ideas in the documents submitted by Members to make Article VIII more operational, such as the granting of benefits to certain enterprises and the establishment of financial guarantees. Nonetheless, one should not lose sight of the fact that any discipline Members wished to consider in more detail should pursue legitimate objectives and should not imply that customs lose their functions of protecting basic principles such as safety and public health, which were very important to the consumer.

1.62 The representative of Hungary thanked the Secretariat for its very useful background note which comprehensively described the provisions of GATT Article VIII and their application in GATT and WTO jurisprudence. She also thanked the EC, Hong Kong China, Canada, Japan, US and Korea for tabling valuable proposals, as well as the WCO for its presentation and submission. Hungary considered Article VIII to be the core provision for trade facilitation. The article addressed fees and formalities connected with importation and exportation, including specific legal obligations applicable to fees and charges. But there was scope to make Article VIII more operational and to improve its implementation by clarifying and improving its provisions and by reducing the complexity of import and export procedures and formalities as well as of fees and charges. Hungary was convinced that enhanced and improved trade facilitation disciplines were the guarantee of avoiding unnecessary obstacles when applying legitimate measures. Due to the late distribution of some of the proposals, Hungary could only study the EU submission in a more detailed manner. Therefore, Hungary's preliminary comments mainly related to this paper. The issues raised in the EU submission seemed to be relevant and Hungary generally supported the views and proposals expressed therein. It agreed with the view that the scope of any WTO commitment applied beyond customs to other agency interventions. One could not question the principle of non-discrimination when applying export and import procedures and formalities. The need for transparency, predictability, harmonization, and standardisation was an important issue when preparing the negotiations on the GATT Articles V, VIII and X. It was important to avoid the trade distorting application of measures taken under the umbrella of trade facilitation.

1.63 Concerning the specific provisions on fees and charges and data and document requirements and procedures, as well as regards customs and related import and export procedures, the EC paper contained very relevant proposals to simplify the different procedures. Further detailed consideration was needed on the elements of the EC proposal, taking into account the common elements of the other papers. It seemed to Hungary that there were many common ideas in the different proposals. Hungary agreed with the EC that, on a longer term basis, developing countries would also be beneficiaries of simplified procedures, and that the maintenance of a simple, transparent trading environment was of paramount importance for them. The simplification of measures could make an important contribution to realising development objectives. However, Hungary fully understood the concerns of certain developing countries as regards possible additional burdens for their administration, which was why the inclusion of a range of special and differential treatment provisions in any future WTO provisions was very important. The EC submission contained some very interesting suggestions in this respect,

like a differentiations of commitments, transition periods, technical assistance and capacity building measures, which required further discussions. Hungary was ready to further discuss all the submissions in a more focussed and constructive manner.

1.64 The representative of India thanked the Secretariat for very informative background papers on the scope and application of GATT Article VIII as well as on the trade facilitation needs and priorities of Members. India would also like to thank the EC for their paper on GATT Article VIII. While India might have certain reservations on the suggestions made therein, this did not detract from the paper's value by advancing the study process on trade facilitation as mandated in paragraph 27 of the Doha Ministerial Declaration. The Indian delegation agreed with the EC that Article VIII was the core GATT article on trade facilitation. However, India had some concerns as regards the suggestions to convert the recommendatory provisions of GATT Article VIII (1) b and c into mandatory ones. Contrary to the view expressed by EC that the absence of any operational WTO requirements to simplify or reduce fees and formalities remained a significant weakness in the WTO rule book, it was India's understanding that the recommendatory nature of the Article had served its purpose equally well. The earlier study process on trade facilitation, which now formed one of the basis of the Secretariat paper G/C/W/393, amply revealed that Members had autonomously taken steps to simplify and modernise their border clearance procedures. There was no denying of the fact that archaic and cumbersome procedures were obstacles to trade. Likewise, there was no doubt that faster clearance of cargo and fewer procedures would reduce the transaction cost of exports and imports, remove uncertainties in trade and would lead to an increase in trade and investment. Therefore, this was a win-win situation for all countries, both developed and developing.

1.65 Recognising this fact, India had autonomously taken a number of steps to simplify and modernise customs clearance procedures. The introduction of EDI had completely revolutionised the functioning of customs in India. The EDI system featured on-line assessment, duty payment and examination of goods. Under EDI, all queries raised by customs officers were processed on-line, thereby capturing the complete record of the life cycle of an import/export document. EDI had considerably reduced human interface with the trade and the processing time of goods declaration had come down drastically. An EDI gateway project was under implementation which would link customs with all its community partners such as banks, licencing authorities, export promotion agencies, freight forwarders, customs brokers and the directory general of commercial intelligence and statistics. For faster clearances, two working shifts had been introduced in seven air cargo complexes and for all working days during 8:00 a.m. to 10:00 p.m. One working shift had been introduced on holidays from 10:00 a.m. to 5:00 p.m. This apart, customs facilities could be availed of at ports, air cargo complexes, inland container depots and container freight stations etc. on payment of overtime fees when work was performed after office hours. As a measure of trade facilitation and to reduce transaction costs, the government had considerably reduced the scale of examination of export goods and had also simplified the procedures for examination of such cargo. The transshipment procedures had been considerably simplified by introducing a single window system for issuing transshipment permits. A large number of Inland Container Depots (ICDs) and Container Freight Stations (CFSs) had been set up in the Indian hinterland to enable exporters and importers to export or import goods at their doorstep. To encourage Indian ports to develop as consolidation hub ports and to reduce freight charges for exporters and importers, the consolidation of LCL, the less than container load cargo, had been permitted at Indian ports. The facility allowed shipping lines to take the containers stuffed with LCL export cargo, irrespective of destination from ICD/CFS to a gateway port, where these could be opened and reworked with cargoes received from different ICDs and CFSs. After such reworking, cargoes could be stuffed in containers destination-wise. A similar facility had also been provided for consolidation of LCL imported cargo. The procedure for movement of goods in coastal vessels had been greatly simplified and an authority for advance ruling had been set up to give binding rulings on classifications and valuation matters raised by foreign investors. A project team had also been established to work exclusively on customs reengineering. The important features of customs reengineering included the introduction of post audit, single window submission of information and

risk assessment analysis, apart from reliance on systems assessment and reduced intervention by the customs. Reengineering would be supported by increased automation including an EC/EDI gateway infrastructure.

1.66 The Indian representative noted that she had dealt at some length with some of the trade facilitation measures taken by India to highlight two issues: First, the existing Article VIII had itself been a guiding force for countries to modernise and simplify their export/import procedures, which was a trade necessity in the present competitive environment. In view of this, there did not appear to be any necessity to make any major changes to this article so as to create binding obligations. While India was moving towards simplified and modernised customs procedures, India's focus and pace was dependent upon its perceived needs and available resources. It was interesting to see the diversity and broad brush of the trade facilitation measures that countries had narrated during the earlier study process, and which had been summarised in the Secretariat paper G/C/W/393. This underlined the different meaning and emphasis given to trade facilitation by different countries, which were at various stages of development. The second point India wished to make followed from this. Members would appreciate that the focus of trade facilitation would be different for different countries, therefore India felt that a general wording of the existing GATT Article VIII would be far more appropriate than the proposal made by EC in sections (c) and (d) of their paper 394 enumerating certain specific elements of commitments to be taken under GATT Article VIII.

1.67 India would also like to make some observations on some of the points raised by the EC in their paper. On transparency and predictability issues, the EC had referred to its paper on GATT Article X. India had concerns on certain proposed transparency measures, some of which the Indian delegate would highlight. India was not very sure how the cause of transparency would be served by the EC suggestion to make available to the public information on customs and other government agencies management plans relating to implementation of WTO commitments, or on their reforms and modernisation programmes, including, for example, targets, deadlines and benchmarks set for such programmes. India felt that these were mostly policy issues and involved parliamentary approval as well as financial implications. It was therefore not always possible to share the plans of the government with the public well in advance, as these could undergo changes in the course of their passage through parliament. On the issue of advance ruling, India had in the last meeting stated that this would entail consideration of specific transactions, whereas Article X covered rules of general application and not specific transactions. India had also certain reservations regarding the suggestion to make new or revised laws, or major changes in operating procedures, known to the public in advance, particularly where these were in legislative form. Some such changes were part of the annual budgetary exercise which could not be made public before the presentation of the budget to parliament. There were nonetheless mechanisms of consultation with trade bodies and other interested parties before budget formulation. Further, with reference to setting standard time for resolution of minor appeals at administrative level, it was felt that there might be certain difficulties associated with distinguishing between minor and major appeals. She wondered whether such a distinction would be based on the quantum of duty involved, or on some other criterion. In some cases of abuse, even if the duty involved was small, it could be a major issue on account of it being taken as a precedent for future imported consignments. Presently, there was no distinction between minor and major appeals and disposal of appeals were dependent on the quantum of the intake of appeals which in India was quite high. India was also concerned with the suggestion that there should be provisions in certain circumstances to keep the duty payment in abeyance pending the outcome of the appeal. The current practice of the importer paying duty under protest as per assessment made and to claim refund in case of receipt of a favourable order from the appellate authority strikes a more appropriate balance between facilitation and revenue interests.

1.68 Turning to Japan's proposal contained in document 376 regarding formulation and publication of administrative guidelines for decision-making by customs authorities, the Indian representative noted that under the Indian Customs law, decisions on determination of classification, valuation etc.

were in the nature of quasi judicial functions. India was not sure how this could be reconciled with the proposal for a uniform administrative guideline of a binding nature. It deserved to be mentioned here that on the basis of classification opinions received from the WCO, executive instructions were issued by the government for ensuring uniformity in the assessment practice in the customs field formations. India was also not very sure how Members could give effect to a commitment proposed by the EC in paragraph 5 of its paper to avoid unnecessary procedural barriers. The question was how to define the term 'unnecessary'. Countries with different levels of development might have different perspectives about a particular procedure being labelled necessary or unnecessary. It had been recognised in the EC paper that there were various international standards and instruments which could be used as a common basis for measures applied by WTO Members. The revised Kyoto Convention was one such instrument. India was at a loss to understand as to what objections Members could have to adopt these provisions through the WCO route rather than bringing it to an already over burdened WTO. It was well recognised that the WCO was the expert customs body in this respect. The Revised Kyoto Convention incorporated an appropriate balance between customs facilitation and customs control. Any attempts to selectively import its provisions into WTO would only lead to a dilution of its provisions. As was highlighted in the last meeting, developing countries like India faced a number of challenges which including the need to safeguard customs revenue, reduce illegal imports and address the issues of poor infrastructure and lack of resources. Further account needed to be taken of the present security scenario. Security concerns varied from country to country. The multi-dimensional challenge that India was facing in this area would called for heightened vigilance at the boarder. India had made much progress in computer connectivity, but still much ground was to be covered. India was also not sure how it could have a uniform system of risk assessment methods when countries had substantially different levels of tariffs which could create different categories of challenges for border enforcement agencies.

1.69 The Indian representative thanked Canada for its paper on GATT Article VIII, which contained several useful suggestions on how this article could be clarified and improved. The introduction of simplified customs and border-related documentation, the single window approach to border agency coordination, the release of goods on the basis of security would help facilitate trade. Therefore, these suggestions need to be examined further.

1.70 However, other suggestions such as customs clearance of goods at declarants premises, submission of goods declaration covering multiple transactions over a certain specified period, self-assessment and accounting of duty and taxes by authorised persons were good concepts, but perhaps difficult to administer in practice. This was not to sound a note of dissonance with these suggestions *per se*, but only to highlight the difficulties that one may encounter in administering them. The Indian experience showed that in situations where tariffs were high and accounting experience and access to electronic information was limited, shifting to a risk-based assessment system would encourage under-invoicing and other customs frauds. Similarly, in a country of the continental size of India, clearance of goods at declarants premises would pose administrative problems. By way of an example, the Indian representative remarked that a mis-declaration of a customs classification such as a mis-declaration of high value berry grade of copper scrap as candy grade, would be difficult to detect once the goods had been taken into use in the production process. The submission of a goods declaration for multiple transactions was based on the assumption that the duty rates would remain static over a certain specified period. This may not be so. Issues of refund, short collection of duty and interests payments would need to be addressed satisfactorily. One would encounter the same problems in allowing a self-assessment facility to authorised persons. In view of this, while India fully endorsed the benefits of trade facilitation, which India was vigorously pursuing autonomously, India felt that it should be continued in the same autonomous manner. Targeted technical assistance and capacity building for developing and least developed countries would be most helpful. Making GATT Article VIII mandatory in nature would however substantially alter its character, for which India was not prepared at this point in time.



1.71 The representative of New Zealand thanked all delegations who had made submissions for the current discussions, as a means to progress the exercise of reviewing, and, where appropriate, clarifying and improving relevant GATT provisions on trade facilitation. New Zealand welcomed the indications received from a large number of Members, that they were willing to seriously analyse the proposals presented in this respect. New Zealand also thanked the Secretariat for another very useful paper as well as the WCO for their contribution. As already indicated at the last meeting, New Zealand supported the WCO's self-characterisation as having a complimentary role to that of the WTO. The WCO had pointed out the value of such a complimentary relationship, with the WTO developing high principles, further formalities and procedures and the WCO developing instruments in their support. The WCO had also highlighted the interaction that WTO provisions could play with the various WCO instruments, which could provide a means to help implement these principles, including through the provision of technical assistance.

1.72 New Zealand had found several common approaches in the proposals submitted on Article VIII. As regards procedure, there had however been different approaches, with the EC putting forward a number of very detailed proposals, while the US had chosen to raise a number of very enlightening questions, and Hong Kong China had highlighted some key WTO principles for injection in the context of trade facilitation provisions. New Zealand thought that all of those approaches were very complementary. As a package, they would help furthering Members' understanding of the relevant issues, particularly in terms of identifying current gaps and ways to overcome them.

1.73 Turning to the EC paper, the representative of New Zealand noted that her delegation supported many of the ideas contained therein. New Zealand was in the position to do so as it had been thinking about these issues and conducting customs modernisation and reform for about 15 years. New Zealand recognized that not all Members were in that situation. In this context, she noted that the US approach of asking questions had been very useful in trying to consider at a multilateral level Members' objectives in terms of reviewing, clarifying and improving current provisions. There were a number of common elements in the presented proposals, similar to Members' discussions on Article X. A large number of delegations seemed to focus on core WTO principles, such as least-trade restrictiveness, proportionality, use of international standards and transparency, which were already widely accepted in the WTO as very workable and operational principles. New Zealand very much supported the further development of these principles in a more specific context of trade facilitation, as a means to make the existing GATT Articles relevant to trade facilitation more effective and operational.

1.74 Commenting on Brazil's intervention, she noted that the Brazilian delegate had made the worthwhile point to say that some of the presented proposals and ideas might have an unfavourable cost-benefit result in that their gains not necessarily outweighed the pains of the required obligation. This was something that had to be kept in mind when analysing the ideas for improvement of the relevant Articles. The results of such a cost-benefit analysis might vary from country to country according to the different development levels amongst the Membership. This should be kept in mind when conducting the needs and priorities identification under agenda item 2. This would also further influence Members' approach to the wider discussion on possible special and differential treatment in the context of trade facilitation and technical assistance. Members had to think of creative ways to increase the ratio of gain over pain by looking at means to facilitate the implementation of any rules in this area. New Zealand was very conscious of the different starting points among WTO Members and acceding countries when thinking about S&D treatment. Those different needs needed to be kept in the front of Members' thinking about future implementation timetables of any improvements or new rules.

1.75 Turning to the comments made by the Indian delegation, the representative of New Zealand expressed her thanks to India for having shared their national experiences about ongoing developments in their customs modernisation and trade facilitation efforts. It seemed to New Zealand

that India had acknowledged the benefits in trying to implement procedures beyond those currently contained in Article VIII. New Zealand commended India for having done that, which was consistent with New Zealand's national experience in that area. New Zealand would be extremely interested to hear about the experiences of other developing countries or LDCs in that context.

1.76 The representative of Poland welcomed submissions by the EC, Canada, Japan, Korea, USA, Hong Kong China and the WCO. Poland also found the Secretariat background note very useful. All submissions were being examined with attention in his capital. At this stage, Poland would limit itself to expressing a few comments on the EC paper. In general, Poland shared the premises on which this paper was based. As experience had demonstrated, the existing WTO instruments were currently not sufficient to deal with the specific type of administrative obstacles, which were not part of governments' trade policies, but which resulted from various, often substantially deferring, regulatory and administrative practices at the border or from deficiencies in infrastructures or technical application. In this context, an improvement of GATT Article VIII was very desirable. Poland found many concrete EC proposals to be very interesting. By way of some preliminary comments, the Polish representative noted that it was right to see non-discrimination among the general commitments. At the same time, it seemed that the improvement of Article VIII would in itself facilitate the strengthening of the practical application of this principle. Poland also agreed that that principle should not interfere with Members' rights to treat consignments differently according to objective risk assessment. Poland was looking at the improvement of Article VIII as a win-win operation. Meanwhile, Poland recognised the problems that some Members had with the application of enhanced trade facilitation measures. It seemed to Poland that a rigid and unique S&D approach might not necessarily be the best solution. In the context, Poland found that some of the EC's ideas as regards differentiated special and differential treatment were very interesting.

1.77 The representative of the Philippines thanked the Secretariat for a very useful background paper on Article VIII, especially the section on its application in the GATT and WTO jurisprudence. The Philippines also thanked all delegations that had circulated papers, some in advance, others at the meeting itself as well as for the contribution from the WCO. All of the ideas contained in those papers would be studied and evaluated in the capital. The representative noted that in the age of globalisation, the Philippines were already unilaterally implementing trade facilitation measures, not because of the WTO, APEC, or ASEAN, but because the Philippines' business community is "demanding" it from the Philippine government.

1.78 Turning to the EC paper, she remarked that for a developing country, it was very comforting to note that the EC in its presentation admitted that the proposals contained in their paper would entail considerable changes in EU procedures and might entail considerable costs. The Philippines believed that some of the ideas contained in the paper had already been implemented within the Community. The Philippine delegation was curious to find out if the EC could share its experience with regards to the amount of time and resources spent to implement some of the measures they currently had in place. The Philippines also welcomed the EC recognition that measures to deliver technical assistance should be an integral part of any WTO exercise and that specific mechanisms for future coordination of technical assistance needed to be developed. The Philippines also found the presented concepts on special and differential treatment very interesting, and were of the view that they merited considerable discussion and reflection as part of the agenda.

1.79 Turning to section c on the provisions on data and documentary requirements and procedures, she noted that the proposal for a uniform, domestic customs code or similar legislation was very ambitious, as WTO Members were at different levels of economic development. Equally, on section d, on the progressive introduction of simplified and standardised import and export procedures based on international standards and instruments, the Philippines agreed with India's observation that Members should not burden the agenda of the WTO by bringing in the agenda of other international organisations like the WCO. For the Philippines, the WCO had served it well. The Philippines had

tried to comply with all the measures they had agreed on in the WCO context to the extent possible. On the Canadian paper, she noted that the Philippines welcomed the recognition by Canada that the ideas for their submission had been drawn from a number of WTO agreements, such as the Agreements on Rules of Origin and Customs Valuation. For the Philippines, the completion of the harmonization work programme on non-preferential Rules of Origin was of the utmost importance for progress in the trade facilitation agenda. As regards section b of the Canadian paper, the Philippines wanted to find out about Canada's experience with regards to the implementation of the single window interface as a step towards border agency coordination. Members had heard about this suggestion also in their discussions on Article X, which was why it would enlighten delegations to get Canada's experience on how they were finally able to do the single window interface in terms of time and resources spent. Concerning item c on streamlined or special procedures, the representative of the Philippines remarked that this concept had been unilaterally implemented in the Philippines. The Philippines had a super green lane procedure in place in its Bureau of Customs, where their top 1000 corporations were treated in a more efficient manner because they had established a good track record.

1.80 Turning to the questions raised in the US paper, she noted that if one put together all the proposals and questions that were being raised, this would be a way to move forward Members' discussion after the discussion of all the articles under the Doha mandate. On the question with regard to formalities and requirements, and the last bullet on the use of certificates origin referred to in Hong Kong China's paper, she shared Brazil's view that before one could use these certificates, the harmonization work programme for non-preferential rules of origin should be finished. Turning to Korea's paper, the Philippine representative agreed with Korea that any trade facilitation measures should be discussed as to their feasibility. Some of the ideas that had been put forward were very ambitious. The big question was how to implement all these ideas in practice. Korea's paper recognised that any modern customs techniques were not easy to implement without a sound IT infrastructure. For the Philippines, that was one of the current deficiencies.

1.81 The representative of Lithuania thanked Members for their proposals, which he found interesting and useful for the work. He also thanked the WCO for their factual papers which were valuable both for the current discussions and further work on the issue. He further thanked the previous speakers for expressing their views, clearing the doubts and raising issues Members' needed to think about. During the May meeting, Lithuania had expressed support for discussions on trade facilitation as Lithuania was one of the countries dependent on foreign trade and where cross-border problems created by some other countries increased every day. Article VIII was probably the core article of trade facilitation, and the principles reflected in the proposals were acceptable for Lithuania, especially the principles of non-discrimination and predictability in customs procedures. Lithuania considered these principles to be essential as regards customs procedures.

1.82 During the May meeting Lithuania had given the example of limitations as regards the number of check points using a country's specific criteria. Lithuania also had problems with a few countries using country-specific criteria in some customs procedures which were discriminative by definition. Problems also arose in respect of discrimination as regards modes of transport. These examples showed the necessity to address these principles and to find ways to clarify and perhaps amend GATT Article VIII. Predictability aspects were also important for Lithuania, especially in the light of other countries' practices. His delegation believed that this principle could be ensured by further clarification of Article VIII. He encouraged Members to apply international standards, and to enhance the transparency provisions which were discussed at the May meeting. Lithuania remarked that it was also looking for a further progressive introduction of international standards and instruments and related predictability aspects, as well as for some other issues like a general simplification of customs procedures and a simplified release and clearance of goods, and expressed its support for measures in these areas. The Lithuanian representative noted although some Members had been of the view that cross border issues were already covered by international conventions, like

the Kyoto Convention, and other specialised customs conventions, it was Lithuania's experience in its trade relations with some other countries, that it was not enough to have specialised convention alone. The main principles and general rules should be regulated in a wider WTO framework, making certain provisions more strict.

1.83 Lithuania also supported other aspects of the proposals made regarding customs procedures, simplified release and clearance procedures, risk assessment, coordination of official controls, or the reflection of the principle of neutrality as expressed by Hong Kong China. Regarding fees relating to customs procedures, Lithuania would support the view that it was necessary to amend this paragraph. Lithuania was of the view that the presented proposals would create a good basis for further discussions. They also showed that trade facilitation in the area of customs procedures was generally a win-win situation. There were different views as to how to address this issue, which was why Members needed to talk more about that. Lithuania understood the concerns of some developing countries regarding their capacity to implement some of the agreed proposals. Lithuania believed that this could be solved by technical assistance, including assistance in the automation of customs and in infrastructure development. Further support could be provided through S&D treatment and special implementation mechanisms, as mentioned in one proposal. Lithuania considered the current discussions were useful and saw the perspective of further fruitful work, which would have to address the problems and concerns raised.

1.84 The representative of Egypt thanked the Secretariat for its useful and informative background paper as well as the countries that had submitted proposals with regard to Article VIII. She further extended his thanks to the WCO for its submission. Egypt had not had the chance to analyze all the papers in detail but would like to make some brief preliminary comments. Her delegation agreed that benefits would be achieved from trade facilitation. The submitted proposals called for applying international standards and simplifying documentation, risk assessment and other obligations, which required structural changes and reforms in the institutional working of governmental authorities. This was not easy for developing countries and created more burdens for them. Therefore, Egypt was of the view that what was needed to fulfil the trade facilitation requirements, was adequate and efficient technical and financial cooperation rather than further obligations that developing countries might find difficult to comply with.

1.85 The representative of Indonesia expressed his appreciation to the WTO Secretariat for its comprehensive background papers. Indonesia also wished to thank the EC, Canada, Hong Kong China, Korea, Japan and the U.S. for submitting very useful written contributions. He further thanked the WCO Secretariat for its presentation. As Indonesia had received Members' papers quite recently, it could only offer some preliminary general comments on some of the issues contained in Article VIII without prejudice to its position in the future. The representative reiterated Indonesia's recognition of the importance of trade facilitation to increase international trade flows. Indonesia saw many elements in members' papers as a good basis for improving trade facilitation, but would find it difficult to implement all of them in the context of binding WTO obligations. Indonesia believed that the framework of trade facilitation in WTO should reflect the different levels of development among Members. The Indonesian delegation would like to highlight the importance of setting a balance between the taking legitimate regulatory measures and simplifying procedures with a view to improve trade facilitation.

1.86 The representative of Indonesia noted that Article VIII of the GATT was one of the most relevant articles related to trade facilitation. It contained a solid commitment for Members to implement various obligations established therein. This article comprised a complex set of rules where a balance had been developed between those elements which contain specific obligations and those, which did not contain specific commitment. The Secretariat paper had explained in paragraph 3.2 on page 4 that certain subjects covered in Article VIII were also regulated by the specific agreements in the WTO such as the Agreements on Pre-shipment Inspection, SPS, TBT, Rules of

Origin or Import Licensing. Therefore, Indonesia noted that certain subjects related to this article had been clarified previously. However, as Indonesia understood that some Members still wished to further clarify and improve the article by making it more mandatory and operational, which might amend the article itself. In this regard, Indonesia would like to study in greater detail the various proposals contained in Members' papers. In Indonesia's view, Members should be cautious in their efforts to clarify and improve this article. One should first identify the specific problems faced by Members in implementing this article. Indonesia considered the approach pursued by the United States to raise a series of important questions to be a very good first step to identify the problem. As a the second step, if Members agreed on that by consensus, one could move forward to find solution to the problems.

1.87 One would find different formulations in Article VIII, reflecting the complex nature of the Article VIII's regulations. Members should therefore be careful to see in more depth why Article VIII would not be sufficient. In Indonesia's view, stating a recognition to certain aspects, such as the one contained in Article VIII:1 (b) or (c), should already provide a solid ground to be followed up by concrete steps by each Member. There were Members who suggested to extend the scope of Article VIII beyond customs. In Indonesia's view, the scope of this article should be defined in relation to customs related work. Other trade-related subjects had been covered by other articles or agreements in the WTO. At the same time, Indonesia agreed that trade facilitation in general involved the work of other agencies. On the standards set up by other international organisations in relation with the content of Article VIII, Indonesia considered that if other international organisations had set up a standard on a certain issue, the standard could be made applicable to their members without transposing it to the WTO. By doing so, it would not pose more burdens to the WTO, especially its developing country Members. If one issue could be settled by other international organisations, it would help the WTO to concentrate its work on other trade-related issues.

1.88 While Indonesia agreed on the importance of simplifying procedural aspects, it was of the view that measures relating to infrastructure, such as automation, would create heavy burdens for developing countries, given their weaknesses in infrastructure, human and institutional development. Turning to the issues of non-discrimination and transparency, he noted that Indonesia was of the view that they were already covered by other articles in GATT (such as Articles I and III of GATT) and that they should be applicable to all WTO works and agreements including Article VIII. It was not clear to Indonesia why one would still need to inject the non-discrimination principle into Article VIII. On special and differential treatment and the suggestion by the EC for a waiver or transition periods for LDCs, the representative of Indonesia noted that such arrangements should be made available to developing countries as well, until they were in a position to take up their obligations. There was already wide recognition that developing countries lacked of not only human and institutional development, but also infrastructure. All developing countries needed flexibility to implement their obligations. Therefore, Indonesia believed that Members had to develop a strong special and differential mechanism to address the problems faced by developing countries.

1.89 The representative of Malaysia thanked the WTO Secretariat for a very useful background note as well as all the delegations who had presented proposals. He further thanked the representative of the WCO for his intervention and the paper. As most of the papers had only been made available a few days ago, Malaysia had to limit its comments some general preliminary remarks. Based on what had been said so far, all delegations agreed that trade facilitation was important. In Malaysia's view it was definitely a very important component for a country who relied on trade for its economy growth. To achieve that, one needed to be competitive and part of that competitiveness would consist of better trade facilitation allowing for a faster movement of goods. Based on the discussion over last few years, there was this assumption that if one had the new binding rules some Members wanted to create, these rules and especially their binding nature would automatically lead to an improvement in trade facilitation. That was an issue Members would had to think more about. For the moment, Malaysia did not believe in this automatic improvement. He shared India's view that even if the

current rules were more than fifty years old, countries that made their own movement towards better trade facilitation nationally. Malaysia was no exception to that. In this context, Korea had raised an important point in its paper, as what Members would want to decide would depend on the question of feasibility. Human and financial resources were crucial. To have binding rules without having adequate resources would be a contradiction, which would not serve Members' interests, especially the ones of those who were not able to implement the required measures.

1.90 The US approach was an interesting one, which might be a basis on which to move on. Some other approaches were interesting as well. Perhaps one should start by asking whether the current situation really required clarification and if there was basis for improvement. The very ambitious approach by the EC was at the end of the spectrum, but Malaysia would look into that as well. Like Singapore, Malaysia felt that the approach pursued by Hong Kong China could merit further discussion, as injecting various GATT and WTO principles into Article VIII could be a possible way out. In Malaysia's view, legitimate policy objectives of Members should be preserved. Whenever taking actions, national policy objectives should never be questioned. Coming back to the EC paper, which was very comprehensive, very ambitious, and very technical, Malaysia's capital was still looking into it, which was why he could not yet touch on specific aspects of it. In analysing the paper, Malaysia would undertake a cost-benefit analysis. When deciding whether to take up the proposed measures, this was an important question that needed to be answered in order to get an indication of the kind of resources needed. He asked the Communities for an indication of how much it would cost them to implement their suggested proposals.

1.91 As regards special and differential treatment, or what Malaysia would prefer to call the development dimension, one should not stray away from the fact that when talking of special and differential treatment, one was talking about developing countries as a whole. One should not run away from the fact that there were others who might be at different levels of development like the least developed countries. Accepting that they required special treatment did not mean that other developing countries and their problems should not be taken into account as well. It had been said that one way of helping developing countries take on obligations was the provision of technical assistance. But, as had already been mentioned earlier, a lot of technical assistance had already been provided both bilaterally and plurilaterally, leading to the question how successful has this technical assistance programmes had been. He wondered whether the WCO could provide some figures in terms of the success rate and the amount of money needed for that type of assistance. As for the other papers, Malaysia would get back to the CTG in due time.

1.92 The representative of the United States expressed his wish to respond to a specific question as well as to comment on some of the statements made, which had been extremely important and helpful. On Uruguay's question on express shipments, that that was an area that was potentially subject to services negotiations, he noted that, from a services standpoint, what was being addressed, was the treatment of the operations and of the provider. What the United States was putting forward in its trade facilitation paper were some questions with regard to the treatment of the goods themselves, that were conveyed in an express manner. He noted that there was a need to do some definitional work, but that there was no contradiction or even a competition with what was being discussed in the services round.

1.93 Turning to the comments made by other Members, particularly by Malaysia and Indonesia, the US representative expressed his view that the question raised by Indonesia was very important. It underscored what appeared to be a coalescence of interest and of substantive agreement both on the importance of trade facilitation and the potential importance of operationalising GATT Articles V, VIII and X. As regards the use of a cost-benefit analysis, he noted that this should be part of Members' efforts in this area. It was exactly what needed to be done as Members moved forward. He had been struck by Pakistan's statement recognizing the importance of and commenting on the challenges faced in the process of operationalising these provisions, of making them less aspirational.

Currently, there was a situation of growing coalescence of the substance Members dealt with. Delegations should recognize the opportunity here, as they proceeded with their analysis and, particularly as regards the challenges, work together. All Members recognized the importance of trade facilitation, and developed a good understanding of the tools and the methodology involved. All Members analysed costs and benefits and understood the challenges faced by developing country Members. The US was very uncomfortable with suggestions that would lead to two tiers of membership. Rather it was important to take advantage of this growing coalescence on Trade Facilitation to figure out ways to move everyone forward. It was clearly in all Members' interests to make sure that Members were doing what they talked about. He hoped the current discussion to continue. The US would come back with further comments on some of the questions raised with regard to technical assistance at a later stage.

1.94 The representative of Canada first responded to the question raised by the Philippines with regard to Canada's experience with establishing a single window. He did not have all the facts available at the moment, but he would redirect the Philippines back to the Canadian paper G/C/W/238 which had been submitted in 2000 during the national experience period. There was no doubt that Canada had gone through some pains in getting the single window to work, but it *had* worked and worked to the point where Canada was now expanding it. Canada saw it as an investment both for the government and the private sector. It had helped reduce the cost of the private sector to deal with issues like SPS and TBT in terms of getting their permits and other required documentation or just to find out if their goods actually met the requirements. Secondly, it had reduced the internal cost of the government by making it clear where to send documentation to. This was the reason why the Canadian departments of Industry Canada, Natural Resources Canada and Transport Canada were looking to see if it was possible to bring them into a single window on various products.

1.95 On a more general level, he shared a lot of the views expressed by the United States in terms of where this dialogue was going and the need to have a continuing dialogue about what was actually being discussed. There was agreement at the general level that trade facilitation was beneficial. A cost-benefit analysis of each particular proposal should be undertaken. There already seemed to be an answer to that as everyone appeared to claim to already carry out trade facilitation, which raised a rather puzzling question about the concerns regarding WTO commitments on trade facilitation. Some had wondered why the WTO should get engaged when other organizations already did it. The answer could be found in the area of binding obligations. This was what the WTO was about. There were basically two reasons why one should want binding obligations. These reasons were not new, and had been brought up by many Members already. One was that a binding obligation created the political will to get things done. Secondly, it ensured that all Members were heading in the same direction. One of Canada's biggest worries was that everyone was doing trade facilitation but not necessarily the same thing. There was the danger of going in opposite directions. The reason one had rules was that everybody would strive to have a similar system so that people would be moving in the same direction, allowing a small exporter to go to any country with a good idea of his import obligations. What was wanted was a universal predictability and transparency in creating real benefits. This was one of the reasons why Canada strongly supported concepts like single window as something the WTO should undertake. Both importers and exporters could benefit from that. It was the consistency across all Members that would provide the real power of the benefits.

1.96 Having similar binding rules within the WTO would also help the delivery of technical assistance. A lot of effort had been put in technical assistance, but the question was whether everybody did the same thing, whether donors provided similar assistance for similar problems. One key element of the successful delivery of technical assistance was the knowledge what to provide technical assistance for, the definition of what needed to be done and what kind of assistance was required. This was another reason why Canada wanted to look at developing WTO rules in the area of trade facilitation. But it also really was a question of what was feasible. Canada took that very seriously. The Canadian delegation had put a number of proposals on the table which it considered to

be feasible, but it also recognized that whereas some countries could implement these proposals immediately, others were going to need time and technical assistance. This was also why Canada had always been open to the concepts of technical assistance, transition periods, and of other forms of transitional S&D. The Canadian objective was that everyone would be able to take on the same rules at some point in time. At the same time, Canada recognized that this would not be feasible for everyone at the same time and that one had to look at innovative ways of implementing whatever improvements and clarifications Members decided to adopt in terms of possible negotiations. Members had the real power to operationalize the actual benefits of trade facilitation, as opposed to having purely theoretical discussions.

1.97 Turning to the statement that it was not necessary to talk about non-discrimination in Article VIII as it was covered by Article III, the Canadian representative noted that the fact that it was only covered by Article III and not also by Article VIII was exactly the problem. But Canada agreed with Hong Kong, China that injecting WTO principles into Articles V, VIII and X would be a solid way of operationalizing the principles of transparency and efficiency. On the question of how to operationalize the principle of efficiency, he noted that the Canadian proposal for a surety system to apply to things like tariff classification and other areas, was designed to provide efficiency in the following two senses. First of all, it would provide efficiency for the importer/exporter, so that goods got across the border faster. Secondly, it meant efficiency for the government, which would get the expected money. The fact that everybody would do that was where real benefits would occur. The benefits would increase with the number of players implementing these measures.

1.98 The representative of the European Communities expressed his wish to briefly comment on the other papers as well as respond to questions raised with respect to the Communities' paper. The Communities strongly welcomed the submissions received from colleagues and partners. Even though they were all very different, they identified a number of common themes and were moving Members gradually in a common direction with shared elements. He expressed his gratitude for Canada's highlighting of the importance of securities and bonds which was a very important question the Communities should have taken up in its own paper. The Communities were very happy with the questions, which were relevant. He had tried to give preliminary answers to some of them. The representative noted that he very much liked the Hong Kong proposal to apply the concept of least trade restrictiveness, or necessity in Article VIII. What he wanted to know from Hong Kong was whether it would draw a distinction between least trade restrictiveness and proportionality of measures, or whether these were the same things for Hong Kong. He would like to know which of the two options, least restrictiveness or proportionality of measures Hong Kong considered appropriate for further exploration. Least trade restrictiveness was a very high ambitious test.

1.99 The EC representative welcomed the WCO paper, which underlined in a very sensible way what the future relationship between the WTO and the WCO could be if Members moved ahead in developing some more clear measures on trade facilitation. The WTO was the over-arching setter of commitments, while the WCO was an organization which supplied some of the detailed standards of instruments to implement certain commitments. This was a model which had been very useful and effective in a number of existing WTO agreements such as the Customs Valuation and the TBT Agreements. He was very pleased to see that the WCO saw the architecture in that light. A number of delegations had expressed concern that certain Members might want to transfer lock, stock and barrel, certain WCO conventions or instruments into the WTO, but no one had actually proposed that. The Communities certainly did not want that, but saw merit in referencing, benchmarking, as default standards, the key international instruments and standards of the WCO and a number of other international organizations. This would allow for greater harmonization and standardization.

1.100 Turning to comments and questions made in connection with the European Community paper, he noted that he was very happy with the constructive intervention by Thailand. As regards the question raised by Thailand and the Philippines on the issue of a single customs code and what was



behind that idea, he clarified that the Communities were not advocating some kind of WTO-endorsed, globally harmonized customs code every Member had to adopt. What the EC did want to propose was that every individual WTO Member adopted its own individual domestic body of customs legislation, which would differ from country to country and from customs union to customs union. There was no suggestion to internationally harmonize Members' respective customs regulations, customs codes or documentation, (although this would happen to some extent naturally via the use of WCO and other international standards in national rules) but simply one to have a body of laws in place domestically for transparency purposes. Turning to Thailand's a more specific concern about some SPS restrictions being placed on Thai exports into the European Community, the EC representative noted that he did not have the facts available at the moment but that he would communicate Thailand's concerns to Brussels and reply bilaterally to Thailand. Moving on to the comments by Brazil, he remarked that the Communities considered it reasonable to make a cost-benefit analysis of individual measures. Every information on that matter would be very useful. The vast majority of measures the Communities were proposing had already been implemented in Brazil. It therefore seemed that Brazil had done its own cost-benefit analysis domestically and decided that it was probably worth the minor pain involved in implementing these procedures. He clarified that the Communities had not proposed to notify all regulations and procedures to the WTO in a WTO language. That was something the Communities would not support from a cost-benefit analysis point of view. Apart from that, there was nothing the Communities had seen in terms of proposed measures, which would fail the cost-benefit test. Nevertheless, this was something the Communities would look at again measure by measure. His delegation was very open to doing that analysis.

1.101 He then mentioned that a number of delegations had, while welcoming the Communities' ideas on special and differential treatment, expressed concerns about their offer only being focussed on least-developed countries, while there would be other developing countries which also wished to explore various kinds of special and differential treatments further. He clarified that the Communities were not seeking to limit the flexibility it wished to explore to LDCs. An important debate had to take place about differentiation of commitments, exemptions, transitional periods, progressivity and about individual countries' needs. Turning to India's comments, he remarked that it had been very useful to listen to India's national experience. The Communities were aware of many of the ongoing reforms in India, but had not known they had proceeded far so. On the specific points raised by the Indian delegation on how would it be possible in practice to avoid unnecessary procedural barriers, he noted that he would like to put back the question to India. There had been such a proposal in the TBT and SPS area, this concept existed in those two agreements and it seemed that all Members had found the principle of avoiding unnecessary procedural barriers useful. It created downward pressure on Members' regulatory procedures. There was also a degree of flexibility. He would see no reason why the same concept which had been found very useful in other areas, could not be applied to the customs area. As regards India's remark on the necessity to safeguard customs revenue, he noted that he would share the view on the need to control illegal imports and that there had been evidence that the objectives of better control and better revenue collection were not a zero sum game but mutually reinforcing. Better control and better revenue collection were important consequences and objectives of simplified procedures. There was no trade-off but a net gain for both control and facilitation.

1.102 On transparency, the EC representative expressed his surprise over India's reluctance to consult the trading community on proposed regulations and procedures. In a modern society, Members had an interest in ensuring that regulatory procedures were actually supported by the people, companies and organizations directly affected by them. Introducing procedures which had the full backing of the affected community would actually increase a country's sovereignty over its territories. There could certainly instances where it would be impossible for fiscal purposes to announce legislation involving customs in advance, but that was the exception rather than the rule, and many WTO provisions could cater for that kind of situation. Turning to comments by Malaysia, by Indonesia and Egypt on the necessity of rule-making, he noted that Canada had already answered what he had intended to note. The benefit of establishing some basic commitments in the WTO was

that it locked in domestic reform, made transparency, non-discrimination, proportionality irreversible and that was the enormous benefit to the trading community of having a basic degree of predictability. Secondly, it allowed the establishment of shared approaches. By basing commitments on common international standards, one could achieve a greater degree of harmonization, so that the different regional approaches Members were pursuing could be more harmonized. Furthermore, the business community would be willing to invest more in this field, they would be more willing to provide technical assistance and support developing countries if they had some basic guarantee that the improvements they were contributing towards were there to stay.

1.103 The representative of Hong Kong, China expressed his gratefulness to Members who had indicated their willingness to look at the output and inject principles into developing provisions of GATT Article VIII. As some Members had pointed out, those principles were not new, but had been widely practised in all parts of the WTO agreements. They were basic to the proper functioning of an efficient trading system. On the question of the principles of least-trade restrictiveness and the question of proportionality of measures, he noted that Hong Kong China had not made any distinction between these two concepts. Hong Kong China did not think that these two concepts were mutually exclusive, nor that they conflicted with each other. When his delegation had put forward its argument of least-trade restrictiveness, it also combined it with the related notion of necessity because it wished to reduce the complexities and incidences of formalities, so that these formalities were maintained only to the extent necessary to ensure a free flow of trade. Therefore, in many respects the question of whether and to what extent a measure should be included, should have a bearing to the efficiency and the intent of the measure. To some extent the concept of proportionality was part of the consideration. Therefore, Hong Kong China had not made any distinction between these two concepts at that stage.

1.104 The Chairman observed that Members seemed to have exhausted their discussions on GATT Article VIII. He referred to his introductory remarks, according to which delegations would also have the opportunity to comment on Articles V and X, and opened the floor for interventions on these articles.

1.105 The representative of the European Communities informed Members that the EC was preparing a paper on Article V. He would like to circulate a short note on some of the issues the paper would address, in order to give some food for thought to delegations for the time between now and the October meeting. First of all, the Communities had noticed that transit was of interest to virtually all Members, not simply to land-locked countries. Land-locked countries, especially developing ones, were however especially negatively affected by lack of effective transit, which amounted to a major constraint to trade and growth. Secondly, the consultations the Communities had had with a number of trading partners and with the business community, suggested that Article V lacked specificity and did not really fully reflect the current trading realities. Therefore, in reality, there was no freedom of transit around the world, and problems raised in this context included issues such as non-standardised documentation requirements for transit purposes, excessive physical checks of cargoes, the complete non-application of some useful regional instruments and conventions, or derogations from those conventions without good reasons, customs procedures being more stringent for transit goods than for finally imported goods, and a proliferation of restrictions on transit which actually impeded the theoretical freedom of transit guaranteed under Article V.

1.106 In terms of solutions to these problems, the Communities had a number of ideas, such as ensuring non-discrimination between modes of transport and between individual carriers, who are carrying the goods in transit, simplifying documentation requirements for transit purposes, more reasonable fees, charges and securities levied for transit and strengthened obligations or commitments by Members to conclude regional transit agreements which were indispensable for the operation of regional transit regimes. As regards special and differential treatment, he noted that the ideas outlined in the present EC paper in this respect would apply *mutatis mutandis* to any future commitments on transit.

1.107 The representative of Cuba thanked the Secretariat for the very interesting note on Article VIII, as well as other delegations for their submissions. The Cuban representative also thanked the WCO for its statement, which Cuba had found extremely interesting. While reserving its rights for later comments, the Cuban delegation would like to make some comments on transparency at this stage. Cuba had two specific concerns it wanted related to Korea's proposal to establish a national coordination centre to information on customs procedures, procedures relating to imports and exports. For Cuba, such a center would be quite costly, as it would certainly also be for other developing countries. There were still countries who had not managed to streamline their customs procedures and to adapt them to new obligations of international trade, and very often they did not have the necessary structure to do so. Therefore, in Cuba's view, setting up of such an institution would constitute a requirement which would go beyond the means of some developing countries, and which they therefore could not implement adequately. Another matter of concern, and a even more sensitive one, was the European Communities' proposal to establish an advance mechanism when new laws were being passed etc. It seemed to Cuba that this kind of mechanism could give rise to various conflicts and differences, especially in the light of the differences in various Members' customs systems. Developing countries had enormous infrastructure problems and lacked human and financial resources, which might impair the proper working of such a mechanism. Also, the high administration costs of implementing such a proposal gave rise to concern to the Cuban delegation. Therefore, an advance consultation mechanism could be way beyond Cuba's ideas of transparency. Cuba would like to have information, access to legislation, to countries national rules, but the Cuban delegation would not want this to interfere in domestic legislative matters, with national laws and regulations. Cuba was open to proceed on this debate on transparency which it considered to be an important issue. Cuba also shared the view that transparency was one of the pillars of multilateral trading system. Nevertheless, some of the proposals made in this context gave rise to concern for the Cuban delegation.

1.108 The representative of Brazil had a number of questions, comments and requests for clarification on the proposals relating to Article X. As regards the EC proposals on this matter set out in section A of its submission G/C/W/363, "Publication and Availability of Information", paragraph 1 seemed to contain three specific proposals or concepts. The first one related to the scope of information that should be made public. What Brazil would like know was whether the EC was proposing a slight expansion in the current mandate of Article X. Brazil's evaluation was that Article X was already broad and generic enough to cover everything related to trade regulation or legislation. Therefore, the Brazilian delegation would like to know in what way the Communities would like to expand it. Brazil's concern was aggravated by the fact that there was a qualification put into the text submitted by the EC adding the word "relevant" to the issue of laws, regulations, administrative guidelines and alike. It seemed to Brazil that this added a subjective element into Article X, which could be a step backward rather than forward. The second concept in paragraph 1 dealt with the issue of charges for the provision of information and the fact that these should be commensurate with the service provided. This was more or less borrowed from Article II (2) c. Brazil had no fundamental difficulty with the concept and was ready to find ways of moving forward on this issue. The third concept in this paragraph raised however some concerns. It spoke of ensuring publicity of governmental agency's management plans, which, in Brazil's view, seemed to be outside the scope of Article X. Brazil was not sure how this kind of information, including elements of agency's internal reform and modernization programmes were of any real significance to traders. What his delegation saw as useful and necessary for traders was information that pertained exclusively to the legal positions in effect that impinged on their operations, and not to the internal workings of government agencies.

1.109 Paragraph 2 dealt with advance rulings in the areas of tariff classification and origin. The concept was one that had already been incorporated in the agreement on rules of origin and already existed in Articles II (h) and III (f.) of the agreement. To repeat it in this context could therefore be

somewhat redundant. Nevertheless, Brazil was ready to look at the issue of advance rulings for tariff classification. Paragraph 3 outlined a proposal for presentation of information in a simple and accessible manner. The basic concept was one that would not be objected by anyone. One possible area of difficulty on which Brazil would appreciate any further clarification, was the specification that such information should be presented in a manner "not designed to discriminate or make it inaccessible or difficult for non-national operators to access". The doubt Brazil had was that if this information was presented in the national language of the Member, whether it would be considered a discriminatory provision or an inaccessible means of providing the information required for non-national operators.

1.110 Paragraph 4 was one that Brazil found curious, asking each WTO Member to confirm that they would do nothing illegal. An obligation for an administrative and judicial review mechanism was already contained in Article X, which was a sufficient guarantee that the limits of the legal basis for decisions and rulings would be respected. Paragraph 5 related to enquiry points. Brazil agreed that they had been a useful tool in the context of TBT and SPS Agreements. However, these were two examples of particularly focussed technical issues, where it seemed more feasible to have a single enquiry point. Brazil had some reservations as regards the viability of establishing one single enquiry point that could provide information on the entire breadth of trade-related issues. In this context, the Brazilian delegation also had some doubts as to whether, the adding of one further bureaucratic layer into a government structure would help trade facilitation, or whether it would not rather hinder it, as such an enquiry point would have to rely on specific information from a number of other agencies, so that what one would get was one more stop on the way of finding the correct information.

1.111 The representative of the European Communities remarked that the points raised by Brazil were very pertinent. On the question regarding the ways the Communities envisaged for a slight expansion of the current scope of Article X, he replied that there were at least two areas where the EC proposals would constitute an expansion of current Article X requirements on transparency. One was that the Communities suggested going down to the level of administrative procedures, and not simply legislation or regulations that needed to be notified. A second expansion was the idea that customs management plans where related to implementation of WTO commitments should be published. There were many instances where the trading community had a real interest in knowing, for example, the customs medium-term plan for computerization, as whatever computer systems customs introduced had a direct daily impact on traders' transactions. Similarly, if the customs administration was planning to shift its resources from one border post to another, it had a very direct consequence for the trade. It was legitimate for the directly-affected business community to get some kind of advance knowledge of the management plans of customs and to be allowed to interact with customs and discuss these measures, in order to work solutions which met the interests of both the administration and the traders whose livelihoods were affected. There was no specific meaning to the word "all relevant laws" other than that it would exclude all "irrelevant" laws. This would of course lead to the question of what was relevant, and the Communities would look at that again to see whether the term was redundant.

1.112 Turning to Brazil's question on advanced rulings, he noted that this was as much a Canadian "baby" as it was an EC one. The WTO already provided for advanced rulings on origin decisions of general application, but there was currently no WTO commitment for binding advanced rulings on tariff classification decisions of general application. The reason for the Communities to propose that was that it gave a certain amount of predictability to traders on a day-to-day basis. Moving to the next point raised by Brazil on information being presented in a simple and not discriminating manner, and of it being inaccessible for non-national operators, he noted that the Communities fully shared the Brazil's view that Members must continue to have the right to publish in their national language. This should in no way constitute a form of discrimination. As a second point, he recalled the Secretariat's very interesting paper on Article X where it was noted that in a number of cases information had been provided by governments and customs only to their national established operators, and only given to

international operators or third country companies after a long time. That seemed to be a completely unwarranted form of discrimination which was currently under no discipline in the WTO, as it should be. Point 4 of the EC submission proposed that any decisions by the customs or other agencies should have some form of legal basis. The reality was that quite often traders were faced with customs rulings which had no legal basis, which was a problem that needed to be fixed. Finally, on the question of enquiry points, the EC representative noted that Brazil had made a good point. The Communities did not want to create an unnecessary new level of bureaucracy. What the Communities wanted was transparency. If enquiry points existed, the Communities would appreciate that, but certainly the Communities did not want to add a new layer of bureaucracy and it could be in practice that it was more practical for each agency to have its own enquiry point rather than some kind of super enquiry point at the top of the pyramid. Brazil's point was well taken.

1.113 The representative of Korea responded to Cuba's remark on the Korean proposal, noting that the EC had already commented on that. In further clarifying this point, the Korean representative noted that the character of the Single National Focal Point was one of a liaison office to connect the information seeker with the competent authorities. Korea quoted its proposal, according to which "It should function no more than as "a focal point", "a contact desk", which liaisons with the other domestic competent authorities in order to respond to the inquiries." He noted that such a focal point was quite useful, especially for small-sized traders who were not capable of gathering all the required information. This type of focal point or contact point already existed in other areas of the WTO. It also did not cost much. Korea had no intention of creating a big organization, or big bureaucracies, but only suggested the establishment of a contact desk.

1.114 The representative of Brazil commented on section B of the EC Article X paper addressing predictability issues, noting that the basic concept in these proposals was the issue of establishing a consultation mechanism between the private sector and the government in the preparation and elaboration of legislation and guidelines. It seemed a bit excessive to Brazil to try to legislate on this matter. There might be instances in which governments would like to consult with the private sector to get their views. But there might also be instances in which they would not want to do so, referring to their governmental authority and prerogative in this respect.. Therefore, it seems somewhat of an overkill to try and determine that in each and every instance of trying to approve a regulation or a legislation, a government would have to consult with and give adequate notice of these measures. He noted that in certain cases there was a need for emergency measures, which would not allow for this period of prior consultation or publication. In any case, Brazil was somewhat concerned that this type of proposal might go a bit beyond the Doha mandate. There was nothing in Article X regarding the issue of prior consultation with the private sector, and introducing it now would seem to go a bit beyond the Doha mandate.

1.115 The representative of the European Communities noted that the Doha mandate did not simply mandate Members to clarify Article X, but also invited them to, where appropriate, improve it. Also, Article X was not only about transparency – it was about administration of trade regulations and it was perfectly legitimate within the meaning of Article X to make proposals for the better administration of regulations. One way of doing this was through ensuring that there was good public consultation in the process with the affected parties. Therefore the EC proposals were not going beyond the scope of the Doha mandate. On the more substantive point that it was excessive to make a proposed commitment in this area, and that there would be circumstances where one would be unable or unwilling for various reasons to consult the affected trading community, he agreed that there could be emergency measures one would take without prior consultations for very good reasons. This was why the EC paper noted that the scope of any such provision should be further discussed, as the Communities realized one could not have a simple comprehensive catch-all provision and that there had to be some flexibility. Nonetheless, the Communities would also note that the concept of consultation with the effected trade was something that was recommended in the WCO Kyoto Convention as a standard. The Communities were trying to base its idea on good international

standards which had been developed and which had found consensus. The idea to hold consultations, barring specific circumstances, was also something that already existed in other WTO agreements such as the TBT Agreement. Holding consultations was one of the most useful provisions in the area of trade facilitation because the business community needed to know what was going on and governments, using tax payer's money, needed to discuss their proposals with affected traders.

1.116 The representative of the United States underscored that the US had heard a lot from its private sector as well about the need to have advance notice of changes in regulatory approach or procedures. The legitimate concern raised by Brazil was something that should be addressed. At the same time, he considered this to be the exception and that, if anything, it might present a challenge to Members to see if one could not it explore a little bit more to see whether one could capture those situations. There should be notice and comment procedures, but one should also explore exceptions. He would like to add the United States' voice to what the US had heard from the private sector on the need for more transparency. It was essential to not being caught unaware of new regulations and to get advance notice. Nevertheless, the points raised by Brazil needed to be addressed. As the months proceeded, Members might meet that challenge through further discussion and articulation.

1.117 The representative of Australia noted the Brazil's concerns were relevant. However, it should be stressed that the most important part of the EC submission was the title "Predictability". Australia thought that the proposals advanced by the European Communities served to increase predictability. No-one could dispute that, or the fact that predictability was at the heart of GATT Article X.. What needed to be discussed was how this predictability could be achieved and how Article X could be improved and clarified to ensure better predictability for traders. A modest contribution from Australia in this regard was that the Australian Customs Service had established service level charters to provide predictability for traders in their dealings with customs. By way of an example, he informed Members that Australia published a service standard that aimed at having electronic cargo reporting systems available twenty hours a day. This could be another idea for Members to take up and consider when talking about how predictability could be enhanced alongside the ideas that had been put forward by the European Communities.

1.118 The representative of Cuba thanked Korea for its comments which she would refer to her capital. Cuba would revert to this matter at a later stage.

1.119 The representative of Brazil expressed his thanks for the clarifications. Brazil would reflect on them. His delegation had no basic objection to the principle of predictability. Brazil's concern was only that this could not be a blanket obligation for each and every measure, as that could, in certain instances, constitute a semi-paralysis of a government if each measure of whatever level had to go through such complex consultation procedures. Moving to the question of appeal procedures and due process, as dealt with in paragraph 9 of the EC paper, he noted that Brazil was confused as to what the real proposed change was from Article X's current paragraph, which already seemed to ensure the availability of procedures for an appeal process and its conditions. The one element that seemed to be new was the issue of standard time and cost for appeal procedures. Brazil was still looking at the feasibility of having such things for each and every appeal procedure.

1.120 On paragraph 10, Brazil would appreciate more clarification on this proposal. Paragraph 3 of Article X referred to appeals relating to customs matters. It did not specify that these were related to imports only, which was why Brazil sought clarification as to why the proposal mentioned that it should be extended to cover transit and exports. It was Brazil's understanding that these were already covered. Brazil was also puzzled by the statement that "transit operators and exporters' interests are not necessarily guaranteed by national treatment provisions". It seemed to Brazil that either the operator was a national of the Member and therefore had his legal rights under national legislation, or he was a foreign national, in which case the national treatment should also ensure his legal rights. Brazil did not see any other situation which would require clarification, which was why Brazil would

appreciate more information on this. Turning to item 11 on the release of goods pending a surety bond or similar measures, he noted that Brazil recognized that there was already a similar provision in the Customs Valuation Agreement. His delegation was not exactly sure what situation this proposal intended to cover, having been presented under Article X. It would seem more logical that this proposal should be addressed under Article VIII.

1.121 The representative of the European Communities responded to Brazil's question on the new element in the EC's proposal to establish a right of appeal, that the current Article X did not contain such a requirement. The Article only stated that Members should institute appeal procedures "as soon as practicable" without making it an obligation. The Communities would argue that fifty years later, it should be practicable that every Member had some sort of appeal procedures against adverse customs decisions. The EC had added to that the suggestion that the relevant WCO standards, which had been negotiated by consensus in the WCO, could be a good benchmark reference for modern, simple appeal procedures. On the second question from Brazil, asking for more clarification about the proposal that transit operators or exporters should have the right of appeal, he replied that where Members had established a right of appeal, they did not allow all traders access to appeal procedures in all cases. On Brazil's suggestion that releasing goods, pending appeal, subject to a bond or surety, belonged to Article VIII, Brazil was probably right.

1.122 The representative of the United States noted that the US submission on Article X contained mechanisms the United States really considered relevant in this context. His delegation would like to underscore its interest in improving or clarifying Article X as regards the word "or" right now. Currently, Article X spoke of providing appeals through administrative or judicial tribunals. The US would raise the question whether there would be an improvement to GATT Article X if, such as under the Customs Valuation Agreement, it provided for traders to have the right to appeal and review procedures, both in terms of administrative and judicial tribunals for customs matters. The US experience was that if one spoke about efficiency, particularly where time matters were involved, administrative appeals would actually improved the situation for traders. The other element he would like to raise was whether the option of obtaining prompt review applicable as regards customs unions was an improvement of GATT Article VIII, given the US experiences of its traders seeking such an accomplishment.

1.123 The representative of Canada concurred with the previous points made with regard to right of review and appeal, which was an area Canada had also cited in its Article X paper. Canada considered it worthwhile providing a right of review and appeal at two different levels. There would be benefit in further clarifying the precise areas that would be covered. Especially in the area of tariff classification one should do this, as well as in certain other areas. Canada would provide an illustrative list because it would not want to close the door. There are some places where improvement could be made by just clarifying what customs matters were. He would not engage in a discussion as to whether the surety bonds issue related to goods, or whether the right of review and appeal should be in Article X or Article VIII. This was not really the issue. It was something Canada would like to bring in as a clarification and improvement to both Articles. The reason for putting it under Article X was that this surety bond was being provided in the context of releasing a good that was currently under some sort of review and appeal procedure.

1.124 Turning to Brazil's request for further clarification with regards to advance rulings, he noted that what Canada really had in mind was building on the Rules of Origin Agreement, where there were specified periods of time in which one was supposed to provide the advance ruling and where one got some clarification as to when those advance rulings were binding. Canada also considered it an improvement in terms of clarification if one could identify the areas eligible for advance rulings. The Canadian paper cited tariff classification, applicable duties, taxes and import licensing requirements. It would be worthwhile if one could get an advance ruling on whether a product was subject to import licensing, in order to know for the exporter in advance whether he had to go and get

an import license for that product. Canada was also looking at some other areas which were not cited in its paper. There might be certain elements under the Customs Valuation Agreement where it might be worthwhile having an advance ruling. Canada was currently exploring these areas. His delegation would come back to the concept of advance rulings in greater detail in subsequent meetings.

1.125 The representative of Brazil noted that when first reading the document, he had been somewhat disappointed to see that special and differential treatment was in some ways being equated to the concept of technical assistance. In Brazil's view, this was an entirely different concept. The latest submission from the EC seemed to give an entirely different approach to the issue, which was why he would like to reflect a bit further on this issue before commenting on it. A number of other submissions had been made regarding Article X. There was a broad degree of overlap with what was included in the EC paper, which was why he would just highlight one or two points that were not covered by the EC submission. With regard to the submission of Japan contained in G/C/W/376, a new issue was the question of identification for transparency purposes of a medium through which transparency of internal legislation would be ensured. Brazil considered this to be a very positive suggestion and was willing to give very positive consideration to such a proposal.

1.126 Moving on to Korea's submission (G/C/W/377), the Brazilian representative remarked that Brazil's major concern was a requirement of notify all legislation, acts and regulations to the WTO. Brazil saw this as technically unworkable. The volume of information was so monstrous that even translating it for notification would be a major problem, not to mention the problems it would cause in the WTO itself having to circulate this amount of information relating to 144 Members. It seemed essential to ensure that all the information was available to those who really needed it. It was not the delegates in Geneva that needed the information, but the traders. Therefore, what one had to concentrate on was ensuring that the information was available in an easy and practicable way. Turning to the submission of the US in G/C/W/384, he noted that this paper was very interesting in that it did not contain specific proposals for changes to Article X. Rather, it was a diagnosis on how the US implemented its obligations under Article X, which was very valuable to know for Members. The paper also outlined what technical cooperation the US was providing under different aspects of that Article. It went some way along the lines of Brazil's view that Article X in itself was not plagued by any substantial or fundamental flaws. Perhaps there was room for some improvement or fine-tuning in some points, but the sense Brazil had was that – especially in the case of Article X – the problems experienced were essentially due to a lack of institutional and financial capacity, and that technical cooperation would go a long way to overcome some of the perceived difficulties in the implementation of Article X.

1.127 The representative of the United States shared the assessment given by Brazil that, while Article VIII required exploration, analytical work, cost-benefit analysis and the pondering on other elements, Article X was fairly straightforward. The United States saw some room for improvement, but concurred with the characterization given by Brazil, that technical cooperation could go a very long way. At the time of the information age, there was so much that could be done and some methods had not yet been embraced simply for reasons of capacity, such as the use of the internet to put a country's regulations on the internet. This could be overcome. The US would foresee a further outline of that in the next months. He informed delegations that the United States would submit a revision of their GATT Article X paper. The US had gathered further and more specific information on their technical assistance work, some elements of which related to elements of GATT Article X. The right combination of technical cooperation and some very basic improvements to GATT Article X could significantly advance the trading environment.

1.128 The representative of Japan stated in response to India's question on advance rulings that the European Communities and Canada had already responded very well. In its previous contribution on Article X, Japan had outlined measures which might be able to contribute to the improvement of predictability. Japan was of the view that the development of an advance ruling system could



contribute to improving transparency and predictability and indicated that such a system, by using the phrase "where appropriate" in its contribution, was used as an example. With respect to customs classification, Japan might be able to consider advance rulings, but Japan could leave this discussion for a further occasion.

1.129 The representative of Korea remarked that Brazil had made a useful point and that he wanted to briefly clarify Korea's suggestions. Korea had no intention of creating a WTO notification requirement for all laws and regulations, but only suggested Members to notify selective core measures as well as important changes of these measures to the WTO Secretariat, using the same notification requirement as in the TBT and SPS Agreements. Korea's suggestion was to find a workable way to this problem and was open to discuss to scope of the core measure that should be notified at a later stage.

1.130 The representative of Mexico thanked Brazil for their interesting questions to the European Union which had clarified many of Mexico's points of concern. He noted that, while he was not sure whether the EC proposals went beyond the Doha mandate, they were certainly ambitious.

1.131 The Chairman concluded that there had been a very frank and constructive exchange of views and observations on agenda item 1. He noted that while it was not his intention to summarize the discussions, it might be appropriate to highlight some major points which had emerged from these discussions, without attempting to give a comprehensive description of all the issues raised. It seemed to him that all delegations agreed on the importance of furthering the facilitation of trade, which was very positive. Many Members had noted that the clarification and improvement of GATT Article VIII would bear a number of benefits and several of them had proposed specific measures to this end. Among the proposals which had been made were the simplification, standardization and strengthening of procedures related to importation and exportation, the modernization of procedures and instruments, the reduction of data requirements and the increase of their compatibility, the enhanced use of automation, and the establishment of enhanced clearance systems, including security provisions, the use of risk assessment, express clearance, pre-arrival processing, post-auditing and single window. Proposals had also been made on the improvement of clarity and specificity of certain terms and the enhancement of transparency, predictability, non-discrimination and least-trade restrictiveness. There had also been a proposal relating to the adoption of internationally-accepted standards and the acceptance of relevant commercially available information, as well as the proposal to coordinate the work of all agencies present at borders. He noted that there had been a common understanding both in the proposals as well as the oral interventions on the importance of technical assistance and capacity-building. Several Members had also made reference to the need for special and differential treatment.

1.132 While agreeing on the importance of trade facilitation, several delegations had expressed certain reservations with respect to some of the proposals made. Those Members had expressed the view that certain proposed measures were ambitious, and a number of developing countries noted that would be difficult for them to implement some of these proposals in the light of their constraints caused by their different levels of development. Particular concern had been expressed with respect to the objective of developing binding rules. A number of delegations pointed at the many challenges developing countries face in their efforts to facilitate trade, such as the need to safeguard customs revenue, infrastructure deficiencies, lack of human and financial resources and security concerns. There had been some indication of a preference for trade facilitation measures to take place at the national, rather than at the multilateral level. Delegations might consider it useful to further reflect on the points made in the course of the discussions.

1.133 The Council took note of the statements made.

## II. TRADE FACILITATION NEEDS AND PRIORITIES OF MEMBERS, PARTICULARLY OF DEVELOPING AND LEAST DEVELOPED COUNTRIES

2.1 The Chairman stated that this agenda item was related to the part of paragraph 27 of the Doha Ministerial Declaration that called upon the Council for Trade in Goods to "...identify the trade facilitation needs and priorities of members, in particular of developing and least-developed countries." As already pointed out by many delegations at the previous meeting, such an identification stood in close relation to the other elements of the Doha trade facilitation mandate: (i) the review and possible clarification and improvement of GATT Articles V, VIII and X; and (ii) the provision of adequate technical assistance and capacity building. Identifying Members' trade facilitation needs and priorities could also facilitate discussion on agenda item 3: technical assistance and capacity building.

2.2 Members had discussed several ways to approach this identification exercise, and reference had been made to the importance of receiving inputs from delegations themselves, in order to substantially advance and guide our discussions on this subject. Several delegations had noted that their capitals were already working on identifying their needs and priorities, and were encouraged by others to follow their example. To support delegations' work on this matter, Members had decided to ask the Secretariat to prepare a compendium of the information on this subject (G/C/W/393).

2.3 The representative of the Secretariat noted that the present document aimed at meeting the request made by Members at their previous May meeting for a compendium of the already existing material on Members' trade facilitation needs and priorities that was available at the Secretariat. As suggested by delegations, the document gave an overview of the relevant information contained in the communications Members had submitted to the Secretariat from the Singapore Ministerial onwards, as well as of relevant material included in the two reports on the 1998 Trade Facilitation Symposium and the 2001 Technical Assistance Workshop. It further tried to consider submissions by other organisations to the extent relevant. The existing material had been grouped into four categories and four corresponding sections: (i) national experience papers, (ii) other relevant submissions by Members, (iii) the two reports of the workshops and (iv) relevant submissions by other intergovernmental organizations, with each section presenting the material in a table outlining author, document number and – most importantly – a short summary of the main points relating to trade facilitation needs and priorities. The challenge in this exercise had been that most of the examined material did not address trade facilitation needs and priorities of Members as such, but rather focused on particular experiences with specific trade facilitation measures and programs, or proposed approaches to future WTO work on this subject. This had meant that the issue had to be approached in a somewhat indirect manner, by basing the document's references to needs and priorities mainly on information concerning TF measures that had been proposed or already carried out by Members, and on what delegations presented as main obstacles to the facilitation of trade. Such an approach was not without difficulties, as the problems and measures described in the communications which were sometimes several years old did not necessarily represent an accurate reflection of what Members would see as their *current* needs and priorities. Also, some of the material was fairly general, without providing specific information on the subject at hand. Furthermore, while agenda item 2, in the context of which Member's request for this compilation had been made, particularly called for the identification of the needs and priorities of developing and least developed countries, a large number of the existing material came from developed rather than developing countries, with only one submission from a LDC and certain regions (especially Africa) not being represented at all.

2.4 As a final remark, the representative of the Secretariat noted that while the paper tried to cover all relevant information, a document like the present one naturally had to limit itself to an overview of the main points raised in the submissions, without being able to enter into an exhaustive examination of each and every document. In conclusion, she remarked that while these constraints had not allowed for a comprehensive in-depth identification of Members needs and priorities, it was

the hope of the Secretariat that the present document would be a starting-point in Members' exercise of identifying their needs and priorities, and that it would help stimulate the current discussion and trigger additional inputs from delegations on what their specific trade facilitation needs and priorities really were.

2.5 The representative of the Philippines thanked the Secretariat for the helpful compilation. She shared the observation of the Secretariat that the contribution for it had mainly come from developed countries. But at the same time, she had seen on page 14 of the document on the results of the trade facilitation seminar, that there had been an overview of experiences by recipient Members. The enumeration contained in the section "Main points related to trade facilitation needs and priorities" was very general and needed to have more substance. The Philippines knew that they had to submit something to be able to get the assistance they needed. She encouraged all developing countries to focus on what their specific trade facilitation related-technical assistance needs were. Only then would the donor community be able to respond. In this context, the Philippines' also appreciated the paper of the EC pointing out that technical assistance should be a component part of any future work on trade facilitation.

2.6 The representative of Pakistan thanked the Secretariat for its contribution. He considered the paper a very useful document, although of a general nature, because there was not much substantial input given by the developing countries. He informed Members that his capital was in the process of identifying Pakistan's needs and priorities and that his delegation would submit a document on this matter before the next meeting.

2.7 The representative of Brazil thanked the Secretariat for a very comprehensive and useful compilation of proposals that had been put on the table before. It was almost like a very compact menu of trade facilitation measures that had been considered in the past. Members had debated the meaning of the mandate's reference to identifying needs and priorities. At that time, Brazil had indicated that, in its view, this was not an issue that was limited to the aspect of technical assistance and capacity building. The mandate was broader than that. His delegation understood that it was important to provide technical assistance as recognized in the mandate itself. Brazil had also indicated that it was beginning to consider on what it understood as possible needs and priorities for Brazil. His delegation was still working on that. Some tentative ideas were being discussed within the government. Unfortunately, the representative was not yet in a position to discuss this in the Council. But his delegation was moving forward and he hope to present some ideas for consideration in the CTG at the next meeting.

2.8 The representative of Paraguay thanked the Secretariat for the preparation of its document which it considered very important and interesting. As a landlocked country, Paraguay had many problems with trade facilitation, not just as regards transport. Apart from page 7, Paraguay also considered the paper's list on page 16 very interesting. His delegation was studying these forms of technical cooperation in order to facilitate the transport of goods to and from Paraguay, since Paraguay had to go over the territories of third countries. Paraguay was looking for more convenient, more economic and faster ways to address this transit problem, both for those countries who had traffic going through them and for land-locked countries such as Paraguay. The needs were multiple and covered not only technical cooperation, but also financial cooperation. On many occasions such as the Monterrey Conference, Paraguay had asked different international financial institutions like the World Bank or the Inter-American Development Bank for help financing for infrastructure for the transport of goods on the basis of low interest loans. Paraguay was now studying these problems, which also included the customs aspects. This was one of the bottlenecks. One had to find a better solution. Paraguay's participation in the Colorado Group had been due to all these problems it had in the area of trade facilitation as a land-locked country. Paraguay hoped to submit a corresponding request rapidly to find out who could cooperate with it in order to solve all these problems.

2.9 The Chairman thanked the delegations for their interventions. It seemed to him that this agenda item was a subject which received serious consideration by delegations. Some of them needed a bit more time to identify their specific needs and priorities and to present a paper on that issue for discussion at the next meeting. Several delegations had indicated their intention to submit proposals on this particular item very soon. He was certain that also many other developing countries were looking into that exercise very seriously and would be in a position to contribute positively to Members' deliberations on this matter at the October meeting. One point that had come out at the present meeting was that the question of identification of trade facilitation needs and priorities went beyond just technical assistance and capacity building. He stressed the importance of developing countries to prepare national experience papers for the discussions of this item at the next meeting, as this would bring out some of their needs and requirements.

2.10 The Council took note of the statements made.

### **III. TRADE FACILITATION: TECHNICAL ASSISTANCE AND CAPACITY BUILDING**

3.1 The Chairman recalled that Ministers had committed themselves at Doha "*to ensuring adequate technical assistance and support for capacity building*" in the area of trade facilitation. Previous discussions had clearly highlighted the importance delegations attached to this matter. A number of Members had outlined the specific problems they faced in their efforts to facilitate trade, and the Chairman expressed his hope that many others would follow that example, in order for the donors to be able to adapt their programs to these necessities. Several donor Members had outlined the technical assistance and capacity building activities they were currently undertaking, and he encouraged others to do so as well, in order to give a more comprehensive picture of what kind of assistance was actually available and to facilitate the necessary coordination among donors. The Secretariat was also carrying out a number of technical assistance activities and planning a new program for the following year. He stated that the Canadian delegation had requested an update on the current state-of-play of this programming exercise. In addition, the Canadian delegation had also made reference to a document on technical assistance they would like to see updated. technical assistance they would like to see updated. As the current version of this document had been prepared by the Technical Cooperation Division, the Chairman suggested that member of that division would brief delegations on these issues and reply to any questions Members might have in this respect.

3.2 The representative of Canada thanked the Chairman for pursuing Canada's request. The Secretariat's report would provide a basis to continue the discussion on what had been identified as a key issue in Members' work on trade facilitation. As at the last meeting, Canada would encourage other donors to provide information on what they were doing in the area of trade facilitation-related technical assistance. This would help in better coordinating the efforts in this work, which was precisely the same reason why one needed to be updated on the progress in the development of the WTO technical assistance programme. Secondly, Canada was very interested in hearing from the developing countries how they thought one might go about ensuring that donors had a firm grasp and understanding of their technical assistance and capacity building needs so that Canada could advance this issue. Canada saw this as an interactive process. It was clearly linked with agenda items 1 and 2. The importance of technical assistance was underlined by the fact that all Members agreed that this needed to be a separate agenda within the overall package.

3.3 The representative of the European Communities underlined his delegation's interest in being briefed about the progress of the WTO Technical Assistance Plan. He wondered whether it might also be possible to get some kind of feedback from the recipient Members, from the Members who had actually received the technical assistance provided by the WTO in the course of this year. It would be useful to get their point of view as well to see how useful it had been for them and what lessons one could draw. The Communities had made a fairly extensive intervention at the last meeting on this

subject, so there was no need to go over that again, and the only thing he would do at this stage was provide a rapid update on the technical assistance programme the EC had been involved in since the last discussion at the CTG. In the EC's current 5 year cycle of development aid programming, trade-related assistance was one of the five core components of development aid for the next 5 years and within that the Communities had included trade facilitation and customs simplification reform as a item in every single technical assistance programme they were designing or providing. It was up to the recipient to actually demand technical assistance in the area of trade facilitation. It was not something the EC wanted to impose, it really had to be at the request of the developing country in question and it was not always the top priority of some countries to have customs simplification or trade facilitation measures in the programming. The other thing the EC had done was to concentrate quite a lot of its development aid in this area on a regional basis, as opposed to a national basis, particularly in the ACP countries, where the EC was in the process of negotiating a series of bi-regional free trade agreements with specific ACP regions. There was an obvious value-added in trying to promote and support simplification measures, regional customs infrastructure and so on at the regional level. This was increasingly the focus of the EC's programming, rather than purely at the national level.

3.4 The third thing he wanted to mention was that to complement the WTO's short term technical assistance programmes in this area, the EC was also arranging a series of regional workshops on tariffs and trade facilitation in various parts of the world: one in Central America, which the EC was co-organising with Costa Rica for the central American region, and two workshops the EC hoped to arrange together with UNCTAD for the Andean Community and in South Asia towards the end of the year. The EC would provide more of those workshops in the course of 2003. The EC was also organising a one month university course to be held towards the end of the year for developing countries trade officials, which included several elements on trade facilitation as well as other areas. It was a bit similar to the WTO's training course to be offered in an European University in December. That was just an update of a few of the initiatives the EC was undertaking.

3.5 The representative of New Zealand thanked the Secretariat for their compilation of the existing material of Members' trade facilitation needs and priorities. New Zealand had prepared a general statement on technical assistance. New Zealand considered technical assistance to form a very important part of the work on trade facilitation and it continued to attach great importance to the provision of technical assistance as evidenced in New Zealand's submission G/C/W/380. Such activities provided the opportunity to assist countries seeking to refine their own customs procedures as efficiently as possible. It had been evident during the discussions that Members had not necessarily been mandating technology, but mandating efficiency, which in New Zealand's view formed a very important part of technical assistance in terms of the relevance of technical assistance. Canada had made a very valid point in saying that a key factor in giving technical assistance was whether it was relevant to ones trade facilitation objectives. Nonetheless, the last two days had clearly shown that every Member acknowledged the benefits of trade facilitation, but that they were also realistic as to what countries could do, especially developing countries, and least developed countries. New Zealand was well aware of their considerable resource and capacity restraints. Therefore, well focused technical assistance was important, if not crucial. New Zealand continued to concentrate its technical assistance regionally.

3.6 The representative of New Zealand also supported the EC's "ladder" approach to trade facilitation and recognised that each proposal was relevant to a rung in the ladder. If countries could place themselves by their rung, that would be a useful reference point in deciding what technical assistance was relevant. New Zealand appreciated any comments from delegations on that point. It would also like to reiterate the WTO's complementary role in providing technical assistance. There was a key push in the WTO to coordinate technical assistance. It had been good on the part of the Director General of WTO to give his voice to the WCO, who had an important complementary role, in providing technical assistance. He concluded by expressing his thanks one more time to the

Secretariat for their paper and by noting that his delegation was looking forward to the stock take note on technical assistance.

3.7 The representative of Japan informed Members that Japan was currently preparing a list of technical assistance and capacity building activities. It hoped to present a respective submission at the next meeting. Japan was currently examining the possibility of holding a joint WTO - Japan International Cooperation Agency (JICA) seminar on trade facilitation designed for developing countries and least developed countries, the details of which had not been decided yet. It hoped to hold the seminar next year, and that such a seminar would be helpful for participants to better understand trade facilitation.

3.8 The representative of the Secretariat provided a brief overview of the technical assistance activities carried out by the Secretariat in this area. She noted that over the course of 2002, training on trade facilitation had been conducted in national missions in Cote d'Ivoire, Ghana, Morocco and the Kyrgyz Republic. It was also conducted in a regional seminar in Jordan for 12 other Arabic speaking countries in cooperation with the World Customs Organization. Some of these training activities had targeted officials from the ministry level, while others addressed customs officers, although ministry level officials have always been invited to attend. The training activities had covered an overview of GATT Articles V, VIII and X, with a particular extensive discussion of the issue of transparency, advantages of trade facilitation, barriers to trade, the Doha mandate and the current status of work on trade facilitation. Activities included a number of practical exercises such as a taking part in an exercise on risk assessment or discussions on how an advanced rulings program could assist in more efficient and uniform application of the customs valuation law.

3.9 She noted that the activities were generally very well received. However, she had also been told by a number of participants that their countries were still in the early phases of development and lacked the human and monetary resources necessary to implement these programs. She concluded by informing Members that there were 10 more missions planned for this year: five regional ones and five national missions.

3.10 The representative of China expressed his thanks for the excellent paper prepared by the Secretariat. China also appreciated very much the papers presented by Canada and New Zealand. As a recipient Member, China appreciated very much the technical assistance given by the donor Members. Technical assistance on trade facilitation was important to raise the capacity of the developing Members to take part in the future negotiations. China also very much appreciated the work programme mentioned by the Secretariat, which was a very impressive programme for future technical assistance. China was of the view that technical assistance should be more focused on the specific needs of developing members. Different Members had different concerns. For Paraguay, for instance, as a land-locked country, transportation was more important, while other Members had other concerns. If technical assistance could be focused on the specific need of each developing Member, it would be more efficient and more helpful in raising the capacity of developing Members to take part in future negotiations. China had presented a paper on June 28 about its needs and priorities to the Secretariat and it would provide more specific papers to explain its specific concerns and priorities.

3.11 The representative of the Secretariat noted that he would like to address two issues at this point. The first one related to the development of the Doha Development Agenda Trade-Related Technical Assistance and Capacity Building Database. He recalled that there had been a high level briefing the week before where detailed presentations and information was given to delegations by the Deputy Director General Ravier, by the Director of the Technical Cooperation Division, Mr. Osakwe, by the Director of Training Institute Mr. Mercier and by Director of the Technical Co-operation audit unit Mr. Rolian. There had been a very fruitful and positive exchange of views at that point. Furthermore, Members had been briefed on the activities the Secretariat had been able to develop this year and on what remained to do be for the rest of the year. As regarded the database, he informed

Members that there had been working group meetings of country and agency technical assistance providers, where objectives, parameters and calendar for the database had been agreed upon. The database was jointly managed by the WTO and the OECD. The server home would be at the WTO Secretariat. The agreed objectives for the database included transparency of trade-related technical assistance delivery, exchange and sharing of information, minimization and avoidance of duplication, estimation of progress in the implementation of the Doha technical assistance mandate, coordination and coherence, and the meeting the objectives of the report mandated in paragraph 41 of the Doha Ministerial Declaration. In essence, the material contained in the database would be the bulk of the report mandated in paragraph 41 of the Doha Ministerial Declaration. The query parameters had been agreed upon and there had also been an agreement on trade-related technical assistance and capacity building categories. Information could be requested in terms of technical assistance categories, in terms of beneficiary country, in terms of donor country provider and in terms of agency provider. The database was a web-based application and the data was requested jointly by the WTO Director General and the OECD Secretary General on 16 May 2002. The deadline for reporting data was 31 July 2002 from country and agency providers. The current data in the database, the prototype that had been developed, were WTO technical assistance activities and trade integration activities under the Integrated Framework by the Quad and the World Bank. The representative of the Secretariat expressed his appreciation to both agencies and Member governments who had already reported data for the database. He urgently asked others to do so as well before 31 July.

3.12 Turning to the preparation of the Technical Assistance plan for 2003, he noted that 2002 had been a transitional period. The Secretariat had had to implement the Doha Development Agenda mandate very quickly, as it had to plan for the Pledging Conference in March 2002 with a very tight schedule. Implementation was proceeding and the Secretariat hoped that implementation would be satisfactory by the end of this year. However, the Secretariat was trying to plan in a much better way and with many more elements for the Technical Assistance Plan 2003. The Secretariat was trying to work towards having the plan approved and endorsed by the Committee on Trade and Development by October, and by the Budget, Finance and Administration Committee by November, enabling the required Pledging Conference to be scheduled before the end of this year. This would put the Secretariat in a better position within the parameters agreed and approved by the General Council on the Doha Development Agenda Global Trust Fund. For this purpose, it was crucial to stick to the deadline of 31 July 2002 for the submission of technical assistance and capacity building requests by developing countries, least developed countries and transition economies. It was therefore essential that delegations consulted their capitals and transmitted their needs and requests as soon as possible. The representative of the Secretariat reported that sadly, there had been very few responses so far. Only 30 responses had been received from 30 countries, while there were about 120 developing countries, transitional economies and least developed countries whose needs the Secretariat had to respond to.

3.13 The representative of Canada thanked the Secretariat for providing Members with an update on the current situation, which was not entirely encouraging. He would like to add his voice to the WTO Secretariat in encouraging Members to make submissions as early as possible so that the entire plan and the approval of the plan could stay on track.

3.14 The representative of Pakistan addressed several questions to the Secretariat. In the course of the briefing for the high level senior officials on the technical assistance and related questions, there had been two issues of particular significance. One had been that the Trade-Related Technical Assistance Database had four categories, of which three had not yet been accessible due to lack of information provided so far. He wondered whether there had been any progress on that yet. The second question was that Members had been told that it might not be possible in the future to have demand-driven technical assistance for all countries, and that the Secretariat would be looking at a horizontal type of technical assistance where all countries could participate. Hearing this had somewhat dampened Pakistan's spirit and this might perhaps also be the reason why technical

assistance requests were not coming in to the Secretariat. If that was the case, and if one was looking at that kind of scenario in the future, Pakistan would like to know whether any plans were being made by the Secretariat for horizontal type of technical assistance in the area of trade facilitation.

3.15 The representative of the European Communities thanked the Secretariat for the presentation, which he had found very useful and instructive. It was no secret that the Communities had not been very happy with elements of the 2002 WTO Assistance Plan for trade facilitation. The EC thought it had been rather haphazardly designed and without always responding to the needs of many Members. The European Communities were very keen to see that the 2003 programme was better as they were sure it would be. Like others, the Communities strongly encouraged developing countries to make requests for 2003. They strongly encouraged requests to be made on a regional basis, because there were a lot of economies of scale and learning between countries to be gained if programmes could be delivered in a regional or sub-regional rather than a national basis. In an effort to encourage poorer developing countries to come forward with requests, the EC had made a démarche in every single sub-Saharan African country, encouraging them to come forward to the WTO with their request, and had also contacted the various regional body Secretariats in Africa for the different regional groupings to encourage them to make requests on a regional basis. He wondered whether the Secretariat itself had approached Members encouraging them to submit requests, either individually or through their different regional groupings, or whether that was something the Secretariat considered doing.

3.16 The representative of the Secretariat expressed his appreciation for the support from Canada and the EU in joining their voices to his plea for developing countries to present their technical assistance needs. Turning the question raised by Pakistan, he noted that as regards accessibility, the database would be hopefully fully operational by September/October of this year. It was currently operating on the basis of fragmentary information. There were three main categories in the database. One on trade policy and regulations, including all the subjects dealt with at the WTO, such as dispute settlements, customs valuation, services, TBT etc. A second category covered trade development, included areas such as trade promotion, strategy, design and implementation, market analysis and development, business opportunities and institutions, public-private sector networking, e-commerce and trade finance. So, while category one included all the subjects for which the WTO was responsible, for category 2, the components were the responsibility of external bodies, external organisations, be they regional, inter-governmental, governmental, international business, private sector, public sector or even civil society. The third category was on infrastructure on the basis of donor Members, such as Canada, Japan, the EU and its Member countries, the US, the World Bank and the OECD. The Secretariat had not received full information on the second category. It was still incorporating information. At this point, it was indeed difficult to link the three categories, mainly category 2 with category 3, but the Secretariat hoped that with the development of the database and the receipt of more information, it would be fully operational by October or November 2002.

3.17 On the question of the concept of demand-driven or horizontal activities, he recalled the extensive debate that had taken place in the WTO on the best use of resources and the limitation of resources in the WTO Secretariat, especially as regards human resources. As had been pointed out by one delegation, from the Secretariat's point of view, regional activities were more efficient due to the possibility of reaching a large number of countries. On the other hand, from the point of view of Member countries, national activities might be more important due to the possibility of reaching a larger group of people from different ministries, from the private sector, etc. within a single country. One had to reach a balance, a kind of a level of equilibrium on regional and national activities. This should not discourage countries from submitting requests at the national level or from presenting what their priorities were. The Secretariat was moving towards a more priority-based programming rather than a purely demand-driven one. In terms of the demand-driven programming, the Secretariat welcomed all sorts of demands from different Member countries, but would discuss with them to determine what their priorities were, and whether the needs they had expressed were exactly the needs that had to be fulfilled on a priority basis. The Secretariat would not set the priorities for Members, on



the contrary, but it hoped that Members would set their priorities and that one could jointly determine on the basis of those priorities what activities would be developed. He did not see why this expression of demand-driven versus horizontal or priority-based programming might have dampened the desire of Member countries to request activities. He recalled that if the Secretariat would not receive Members' requests by 31 July from a country, nothing would be programmed for it in the 2003 Plan. The Secretariat would not be able to programme anything for these countries as it would lack their input. Those countries would mostly likely still benefit from regional activities, but if they did not submit any input expressing their priorities, it was impossible for the Secretariat to guess their priorities, and to determine what was required. Generally, there were some issues that could be better approached on the regional level, while others could be better addressed at the national one. The Secretariat's implementation programme for example, had to be done on a national basis. In the area of trade facilitation as well as with regard to other Singapore issues, first steps had been made through regional activities. Turning to the question by the EU as to whether the Secretariat had approached Members or regional institutions, he informed that the Secretariat had indeed written to all Members as well as to all international and regional organisations having a relationship with the WTO such as UNCTAD, the World Bank, the IMF and others, asking them to inform the Secretariat about their plans by 31 July 2002, so that the Secretariat could programme accordingly.

3.18 The representative of the European Communities noted that his question to the Secretariat had been more about whether contact had been made with Secretariats of regional or trading entities, such as ASEAN, the Andean Pact, Mercosur and those in different African regions, which tend to have regional Secretariats that organised their activities. He had not so much been interested in knowing whether contacts had been established with international organisations.

3.19 The representative of the United States thanked the Secretariat for the report. The United States were interested in the answers to the question presented by the Communities as well. The United States did not see it so much as a question of horizontal versus demand driven, but rather as one of reaching an equilibrium between meeting the resource needs while at the same time providing the most practical way to meet the priorities. They did not see it as necessarily a dichotomy, but as a method to go. The US representative registered his concern over the fact that so few requests had been made. As had been demonstrated the day before, there were many areas where one was trying jointly to move forward. It was important to remember that the Doha technical assistance mandate was a mandate for all Members, and that it could only be successful if one moved forward together, including also the recipients. The United States encouraged the submission of requests before the deadline.

3.20 The representative of the Philippines thanked the Secretariat for the briefing and assured that her delegation was currently working on a submission regarding technical assistance. The question had been posed as to how many technical assistance requests the Philippines could realistically submit. There were currently competing interests in the Philippines, and advice had been given to prioritise the needs. The Philippines were also aware that not all the technical assistance activities would be provided by the WTO Secretariat, which was why the Philippines were looking forward to the trade database of information as it would them to inform themselves already when submitting their technical assistance needs. But the basic question really was how many requests the Philippines could realistically submit on a national basis, as they would not like to dampen the spirits of the agencies preparing its technical assistance needs only to be told at the end of the day that only so much could be done. This had unfortunately been one of the experiences the Philippines had had in submitting some of their technical assistance needs in the area of customs valuation. There, the Philippines had submitted a request four years ago which had not been responded to until now. The Philippines would not want to repeat this kind of experience.

3.21 The representative of the Secretariat first replied to the question of contacting regional organizations, confirming that the WTO was indeed in close contact with several regional

organisations, particularly in the Latin American and the African areas. As Members may have seen from the meeting the Director General had had with the heads of the regional development banks, the WTO considered it very important to establish these strategic alliances with not only the regional development banks, but also with the regional secretariats, in order to make the delivery of technical assistance more efficient. Turning to the point raised by the Philippines, he noted that he appreciated their comments and that the Secretariat was looking forward to receiving their requests. It might not be appropriate for the Secretariat to comment on how many national activities a Member could expect. He encouraged delegations to think about the fact there were now about 120 Members who potentially received trade-related technical assistance and capacity building. This meant that if, just for the sake of a number, one would schedule 2 activities per country, that would lead to about 240-250 activities at the national level, plus the ones for acceding countries. There were about 28 acceding countries, which meant another 56 activities and 300 activities a year at the national level. In the 2002 Technical Assistance Plan, the Secretariat had programmed 514 activities, both national and regional. Of those 514 activities, about 40% were regional ones. However, since the Secretariat was trying to plan much better and more efficiently than in 2002, it would like to concentrate more on regional activities, given also the fact that 2003 would be a ministerial year.

3.22 The representative of Paraguay thanked the Secretariat for the information given. Paraguay would like to know how the WTO was working with UNCTAD, since at the beginning of the year, the Secretary-General of UNCTAD, Mr. Ricupero had presented a very ambitious post-Doha technical assistance and capacity building program. Paraguay understood that this was closely linked to the results of the Doha Ministerial meeting and to what the developing countries needed in terms of capacity building for programme launched in Doha. Paraguay would like to get some information on how work was being carried out and on what the relations were between WTO and UNCTAD.

3.23 The representative of the Secretariat replied that the WTO was working very closely with UNCTAD, as mandated by the Doha development agenda. As mentioned by Paraguay, UNCTAD had presented a technical assistance and capacity building plan and was now in the process of fund raising for that programme. He would not want to comment on the case of UNCTAD as this was not his role. But the WTO was working with UNCTAD on a case-by-case basis. Working groups such as the ones on Trade and Investment and Trade and Competition Policy had close programmes of work with UNCTAD and were organising activities with UNCTAD. The question of availability of resources was being resolved on a case-by-case basis on the merits of each activity to be organised. The WTO was in the process of consultations with UNCTAD on a more formal basis to continue the work, but for the moment, it was proceeding on a case-by-case basis.

3.24 The representative of Uganda thanked the Secretariat for the information provided. Following up on the question posed by Paraguay, he remarked that the issue of cooperation with UNCTAD on a case-by-case basis referred to the delivery of the technical assistance programme within the WTO. However, there was also a need to cooperate in the sense of trying to see that what the WTO was doing within its technical assistance programme was not done by UNCTAD as well, in order to avoid duplication of activities.

3.25 The representative of the Secretariat thanked the delegation of Uganda, and assured him and as well as other Members that the Secretariat tried to avoid that duplication. The Secretariat was constantly exchanging information with UNCTAD on respective activities.

3.26 The representative of Colombia thanked the Secretariat for its presentation. Such an update was very useful. It was similar to what had been presented in another committee a month ago where Colombia had had an opportunity to remark that it was necessary to link each country's needs and their identification with the needs arising in the framework of each Agreement. For Colombia as a developing country, this was a bottleneck in the process of identifying its internal needs, and in prioritising these needs, because Colombia had found that it could have many needs, without always

knowing for which one to make a request for. There had always been a conflict in deciding which seminars should be held on a national level, and which on the regional level, especially when Colombia was planning its response to the WTO on its technical assistance needs. Unfortunately, at the internal level, Colombia had no guide book which allowed it to know beforehand as to what Colombia was going to do at the national level and what at the regional one. At the regional level, Colombia could not always plan either whether it was going to work with group X, or Y, or with an inter-governmental institution which might be providing support. She wanted to mention this because in drawing the technical assistance plans in 2001, 2002 and now for 2003, Colombia had not identified trade facilitation, although it had many needs in this area and wanted support, but at the national level, authorities had considered that it more important to ask for seminars directed towards training, so as to prepare Colombia for the forthcoming negotiations. For Colombia, things were therefore not all that clear. It was aware that the database would be an important element in this process, but it would like to have other tools which could be of help in this difficult process.

3.27 The representative of Pakistan shared the concerns expressed by Colombia. As Members moved into substantive work in the WTO, they found that their needs were multiplying because it was very difficult to really get into substantive discussions and consultations due to technical inadequacy. Whereas Pakistan was also in the process of trying to prioritise its needs and would come back to the Secretariat on that by 31 July, it felt that the source constraints of the WTO might finally affect the capacity building and technical assistance programme for developing countries and LDCs. This was a real concern for Pakistan. Pakistan would also like to follow up on a question regarding UNCTAD. In the presentations made for the senior officials, it was indicated that UNCTAD was also facing financial resource problems and might perhaps not be in a position to go ahead with the ambitious plan they had for technical assistance and capacity building. The question therefore was to what extent the WTO depended on assistance from UNCTAD in terms of human and financial resources, and whether in case such assistance was not forthcoming, there were any contingency plans to meet those shortcomings.

3.28 The representative of the Secretariat shared Pakistan's and Colombia's concern about identifying and prioritising technical assistance needs, and the resource constraints of the WTO. As regards UNCTAD, he recalled that the Doha Ministerial Declaration specifically mentioned UNCTAD in some areas. The WTO Secretariat was resorting to UNCTAD to fulfill the Doha mandate, not only because of the mandate but also because it was recognized that UNCTAD had extensive expertise in some of these areas, and in some cases even more in-depth technical expertise than the WTO. Therefore, to the extent possible, the WTO was making efforts to organize joint activities with UNCTAD or to have at least UNCTAD's participation in those activities. The idea was also that UNCTAD had its own resources, whether with difficulties or not, but it was an organization that had its own resources and initially, in principle, some of the joint activities that were to be organized with UNCTAD, had to be organized and financed on a 50/50 basis. There had been some financial difficulties within UNCTAD, and the WTO had tried to solve the situation on a case-by-case basis, so that activities could take place. It was for Members to tell the WTO Secretariat where the WTO could use the Global Trust Fund to fund the participation of other international organizations in its activities. If the WTO Secretariat got a "yes", it would go ahead with that. He recalled the agreement regarding technical assistance, according to which the WTO Secretariat would use the funds according to Members' instructions. He expressed his hope that one would reach a solution for the problem of UNCTAD's participation in technical assistance activities.

3.29 The Chairman sought a clarification from the representative of the Secretariat. He had noted that there were some difficulties between the WTO and UNCTAD in terms of implementation of some technical assistance activities, and that that some of these activities were being financed on a 50/50 basis. Furthermore, he had noted that it might be necessary to get back to the Members to see if the Global Trust Fund could be used, at least in respect of those areas where UNCTAD was now having difficulties in terms of resources. In this context, the Chairman raised the question whether the

Secretariat had been able to identify the specific technical assistance activities where problems with joint WTO-UNCTAD activities had occurred.

3.30 The representative of the Secretariat replied that there had been some problems in the areas of Trade and Investment and Trade and Competition Policy. He did not want to go into details at this stage as he did not have the full information, but apparently there had been certain difficulties. He further clarified that he had not wanted to suggest that one should come back to Members in a formal or official way. Rather, this had been done on a case-by-case basis in consultations with Members and green light had been given in the case of some activities. Delegations had received full information on this situation in the two respective working groups. He further mentioned a High Level Briefing for Senior Officials which had been held the week prior to the CTG meeting, where a note had been prepared by the Secretariat on the situation of WTO with other international organizations.

3.31 The representative of UNCTAD stated that as regards trade facilitation, UNCTAD had had the opportunity in the past to present Members what it was doing in the area of technical assistance and capacity-building. There had been a very good meeting a few months ago on this subject, which was why he would not outline what UNCTAD would do in this area at this stage. Rather, he would like to inform Members what UNCTAD had tried to do in the post-Doha context. In the area of trade facilitation, UNCTAD had been asked, to prepare a chapters of a document on technical assistance in the post-Doha context. UNCTAD had prepared a fairly ambitious project proposal of a wide-scope and significant resource implications UNCTAD's technical cooperation body presented this document to various potential donors. So far, there had been no answer, which meant that, since it was supposed to be a two-year project, it was already too late for Members to have something ready for discussion prior to the next WTO conference. The proposal had been prepared in February, and UNCTAD had hoped to start the program by July.

3.32 However, UNCTAD had also prepared a proposal to run small short-term workshops to provoke discussions at the national and regional level on trade facilitation. UNCTAD foresaw to run this workshop in cooperation with the WTO and had already discussed it with the Secretariat. There were possibilities which might emerge. So far, this workshop had been proposed to hold jointly with UNIDO. The government of Austria was considering the possibility of financing this workshop in two places in Africa on a regional basis. UNCTAD had also used the same workshop and linked it with a workshop on tariffs, which it might run together with the European Union in Africa and Latin America. UNCTAD planned to hold the workshop in a country which had requested it and which had the finance for it. But UNCTAD itself did not have the funding, which was its main problem. His organization did not have the funds run the workshop on its own. UNCTAD's approach was a demand-driven one, but it required funding. The cases mentioned by him were cases countries have offered the resources to cover the costs. But in other cases where there was no money, there could be no activity. In conclusion, the representative of UNCTAD stated that cooperation with the WTO had been very positive in the area of trade facilitation and that they had been working closely with the Secretariat since the beginning of the discussion on trade facilitation within the WTO, and he looked forward to strengthening those relations.

3.33 In response to a question he then clarified that there were three regions UNCTAD would most likely work on, Africa, Asia and Latin America.

3.34 The representative of Uganda commented on the technical assistance plans of UNCTAD and the WTO. His delegation would like to see synergies, and that there was no duplication. He also emphasized that the two technical assistance plans were not the same. His delegation was interested in seeing both organisations carrying on with their technical assistance plans. Uganda was aware that most of UNCTAD's activities were undertaken on the basis of extra-budgetary resources. In this context, Uganda appealed to the donor community to also enable UNCTAD to implement its plan. On the question of UNCTAD's participation in technical assistance activities of the WTO, he noted

that the WTO could not implement its plan without UNCTAD. They could not do so because while the WTO was concentrating on explaining the rules, it would not provide negotiating proposals, which was being done by UNCTAD and which was very useful for the beneficiary countries participating in the negotiations. On the other side, Uganda was aware that there were no resources within the budget of UNCTAD to participate in the WTO activities, which was why he was wondering whether, while it was for the Budget Committee of the WTO to discuss these questions, the WTO Secretariat was considering to formally ask the Budget Committee to look at other possible ways of getting UNCTAD to participate, including the possibility of UNCTAD's participation being financed from the WTO fund. The 50/50 cost sharing basis was not working because UNCTAD had difficulties in getting the necessary resources.

3.35 The representative of the Secretariat noted that it was not for the WTO Secretariat to solve UNCTAD's financial resources problems. This was a matter to be solved by the UNCTAD Secretariat with UNCTAD Members. One would see how the programme developed between now and the time one had to go to the Budget Committee for the endorsement of the plan for 2003, and if the problem persisted, the WTO Secretariat might flag the problem, but it would have to be a solution provided by Members of the WTO.

3.36 The Chairman concluded that Members now had a fairly good idea of the WTO technical assistance activities. The 2002 plan was in the process of implementation, and for 2003, one was still in the process of drawing up a programme. Some disappointments had been expressed in this context regarding the fact that inputs had not been coming from developing countries to facilitate the Secretariat's work of drawing up a programme deemed to be comprehensive and targeted at the needs of countries seeking technical assistance. There had been a brief exchange of ideas as to how much of it should be national-based as well as on the need to factor in activities on a regional basis. Reference had been made to the need to balance national and regional activities. Members had been informed that the WTO Secretariat was currently in touch with a number of other international and regional organizations, as well as with other entities with a view to drawing up a useful technical assistance programme. On UNCTAD's capabilities in this area, he suggested to leave this issue where it was at this stage, as this could not be solved at the moment in the current forum. Members would have an opportunity to raise this in UNCTAD itself and see how some of the technical assistance activities that had been planned there could be carried out if the resources were made available. He was confident that some of the problems in UNCTAD could be resolved.

3.37 The Council took note of the statements made.

#### **IV. DOHA MINISTERIAL DECISION ON IMPLEMENTATION-RELATED ISSUES AND CONCERNS: REQUEST FOR THE CTG TO EXAMINE PROPOSALS CONTAINED IN PARAGRAPHS 4.4 AND 4.5 RELATING TO THE AGREEMENT ON TEXTILES AND CLOTHING (WT/MIN(01)/17)**

4.1 The Chairman recalled that the Doha Ministerial Decision on Implementation-Related Issues and Concerns set out in its Section 4, two proposals in relation to the Agreement on Textiles and Clothing which it requested the Council to examine and to make recommendations to the General Council by 31 July 2002 for appropriate action. He said that, pursuant to this Ministerial Decision, the Council had conducted an examination of the proposals through formal meetings combined with informal consultations. He was in the process of preparing a draft report on the outcome of the examination; however, his consultations on this draft report were not yet complete. Accordingly, it was necessary to provide some additional time to arrive at the text of the draft report.

4.2 In this regard, the representative of Hong Kong, China recalled that at the last Council meeting on 13 June, the US had given to the Council detailed comments on the two implementation

proposals mandated by Ministers at Doha to examine and to make recommendations to the General Council for appropriate action by 31 July 2002. He had given his immediate reaction to the US comments at that meeting, and wished to add more considered reflections on this occasion. He said that the arguments made by the US, and also to a greater or lesser extent by the two other restraining Members, rested essentially on three points: that the two proposals would require a modification of ATC provisions; that the ATC had allowed imports to grow, hence implementation was on track; and that the proposals would result in significant changes in the substantive economic provisions and would disrupt the balance of the ATC.

4.3 Concerning the first point, on the re-opening of the ATC, he said that the proposal in paragraph 4.4 simply asked Canada and the US to apply the same methodology in calculating growth in quota levels for small suppliers as had already been used by the EC in implementing the same provision under the ATC. Unless the EC was wrong, how could this require any change in the ATC? Furthermore, Articles 2.13 and 2.14 of the ATC clearly prescribed only the minimum level for increases in growth rates; the specific language was "not less than" under both paragraphs. They did not prescribe any ceilings, or prohibit any further increases. On the second point, the purported increases in imports, he said that he had pointed out at the last meeting that the share of restrained Members in textile and clothing imports into the US had dropped from 76.6% in 1994 to 65.9% in 2000, while that in the EC had decreased from 45.6% to 43.1%. The figures for clothing alone showed the trend even more clearly. Developing countries' import share in the Canadian market had stagnated during the same period.

4.4 He also noted that, as regards the EC, developing Members might now be worse off under the ATC than they would have been under the MFA. The EC would not have been able to justify continuing all of the restraints under the MFA over a period in which unrestrained exporters, including non-WTO Members, had greatly expanded their trade to well over half the share of imports. He suggested that restrained exporters should, perhaps, consider if their legal rights more broadly under the WTO gave them the same protection as the old MFA would have done. Citing another set of figures, he said that, according to the data in WTO document G/C/W/366, US textile and clothing global imports had been increasing by 9.5% per year. But if one looked more closely, one would discover that the annual growth from restrained Members was only 6.8%, while that from unrestrained Members was 16.6%. For clothing imports, the comparable percentages were 6.3% for restrained Members and 21.5% for unrestrained Members. These differences were startling, as they had already taken into account the effect of enhanced quota growth factors for restrained Members under the ATC. It appeared that the traditional suppliers to the US, which had patiently put up with GATT-inconsistent restraints for decades, were still being heavily penalized for their early but now historic market successes.

4.5 The representative of Hong Kong, China considered that this phenomenon had allowed the US, of its own volition, to expand greatly its preferential trade, which was tied closely to its domestic industry through highly restrictive rules of origin. In these circumstances, it was not acceptable to blame all the resultant increases in imports on Hong Kong, China and other exporters in a similar position. All the figures pointed to one conclusion: not only had progressive liberalization under the ATC not taken place, but also the adjustment now faced by the domestic industries in the restraining Members was clearly due to factors other than implementation of the ATC.

4.6 Finally, he referred to the purported disruption to the balance of the ATC and noted that developing exporting Members had repeatedly cited instances under which their market access had been seriously impaired by new restrictions in violation of the provisions of the ATC, unjustified antidumping actions on products already under quota restrictions, and other Customs/administrative formalities including changes in rules of origin. A 16-page document had been prepared by ITCB members in the context of the second major review (G/C/W/304) which comprehensively made the

case that the balance in the ATC had, indeed, been impaired, to the detriment not of the restraining Members but on the contrary, of the developing exporting Members.

4.7 The representative of India also noted that a number of issues had been raised by major textile-importing Members in their intervention at the last meeting and he wished to respond to some of them. He agreed with the comments made by Hong Kong, China. He noted the reference by the US to the fact that acceptance of the implementation proposals would require amendments to the ATC. In India's view this understanding of the ATC was not correct. The ATC, in fact, provided for minimum thresholds for increases in the growth rates but did not prescribe any ceiling or prohibit any further increases thereto. In fact, there were instances wherein the restraining Members had provided increased quotas above the growth-on-growth provisions. Although these circumstances had been few, they nevertheless pointed to the fact that the growth rates prescribed in the ATC were minimum thresholds and not the upper limits.

4.8 In these circumstances, it was not clearly understood how some of the importing Members had argued that acceptance of the implementation proposals would necessarily require amendments to the ATC. On the contrary, if the words "not less than" in Article 2.14 of the ATC were to have any meaning it would be an obligation on the restraining Members to apply growth rates higher than those indicated subsequently in the provisions of Article 2.14. In fact, the EC had stated at the CTG meeting held on 2 May that advanced implementation of the growth-on-growth provisions did not imply the amendment of the ATC. The proposal under paragraph 4.4 of the Implementation Decision called upon the US and Canada to apply the same methodology as employed by the EC. The EC would not have applied the methodology if it was not permitted under the ATC or would have involved the re-opening of the Agreement. He recalled that an assertion had also been made to the fact that increased imports into the restraining Members had been a result of the ATC implementation. Such assertions were based on questionable premises which ignored the startling differences between the increases in imports between unrestrained Members to the disadvantage of restrained Members. To illustrate, in the US market during the period 1994-2000, while imports from unrestrained Members had increased by 16.6%, those from restrained Members had increased by 6.8%. In respect of clothing alone, imports from unrestrained Members had grown at an annual rate of 21.5% compared to 6.3% annual growth for restrained Members. Looking at the figures for the share of restrained Members in the US market, it became clear that restrained Members were being marginalized. Overall, the share of restrained Members had declined by 11 percentage points while this decline in clothing was particularly acute, to the extent of 14 percentage points. In the market of another restraining Member a similar trend could be discerned, although the extent of decline in the share of restrained Members was less than that in the case of the US market.

4.9 The representative of India said that there had been references to the stratospheric levels of specific duties in respect of textiles and clothing products. He agreed that specific duties on textiles and clothing products did exist, including in the US. However, this was not the main issue of consideration of the implementation proposals. References had also been made by restraining Members concerning continuous autonomous industrial adjustment to the effect that the restraining Members had made such adjustment while the restrained Members could not make such a statement in respect of their own industries. He argued that the developing Members and their domestic industries had provided the breathing space to the textile industries of the developed Members. While the ATC envisaged progressive integration of this sector during various stages, which by itself was backloaded, the manner in which restraining Members had gone about the process of integration in the three stages would leave the bulk of restriction to be removed only on 1 January 2005. As mentioned earlier, also in India's case, with some of its major trading partners more than 95% of clothing, fabric and yarn trade would remain unintegrated even after the third stage. Acceptance of the implementation proposals would have been a small step in exposing the domestic industry to increased competition from imports and would have made the process of transition to the post-ATC scenario a small step for such industries.

4.10 He recalled that, in the statement made during the CTG meeting on 13 June, restraining Members were of the view that adoption of the implementation proposals would subvert the carefully negotiated balance of the ATC. This was surprising as, in the view of the developing countries, it was the restraining Members which had created imbalances in the implementation of the ATC. The progressive liberalization envisaged in the ATC had not materialized; in fact, most of the quota restriction continued to remain in place. Also, unjustified and arbitrary trade defence measures had been resorted to by the restraining Members to further limit the market access for the restrained exporters. In India's intervention at the last meeting on the CTG, they had given facts and figures on the adverse impact of anti-dumping proceedings on cotton fabrics and cotton bedlinen on the share of export from targeted countries. Rules of origin affecting textile and clothing products have been changed by the US in pursuit of trade policy objectives, thereby subverting the integration process. Acceptance of the implementation proposals would, in fact, restore the balance in the ATC.

4.11 The representative of India recalled the mandate given by the Ministerial Conference at Doha. Through this mandate, the CTG was to make its recommendations to the General Council on these two proposals for appropriate action by 31 July 2002. The developing, exporting Members had made their case by logic, facts and flexibilities provided by the provisions in the ATC. Nevertheless, successful resolution of this problem continued to elude the Council. He stressed that the textile implementation proposals also needed to be viewed in the context of the Marrakesh Agreement Establishing the WTO which recognized the need for positive efforts designed to ensure that the developing Members and the least-developed Members secured a share in the growth in international trade commensurate with the needs of their economic development. It could not be denied that the share of developing Members in international trade in textiles and clothing had not shown any appreciable increase over the past years. This had, in part, been due to the resort of some Members to arbitrary trade defence measures against imports originating in developing Members, some of which had been commented upon by panels and the Appellate Body. He said that the Ministerial Declaration had attached the utmost importance to the implementation issues and concerns and had expressed their determination to find an appropriate solution. However, they were still not able to see any successful resolution to these proposals.

4.12 The representative of China concurred with the statements of Hong Kong, China and India. At the last CTG meeting on 13 June 2002, the developing Members had urged the restraining Members to show flexibility and adopt a positive attitude towards the two proposals in order to maintain their confidence in the multilateral system. They had also said that the resolution of this implementation issue would facilitate the completion of the Doha agenda. He commented on the points made by some of the restraining Members, especially the United States, at the last meeting in relation to these issues. The importing Members had argued that the adoption of the proposals would require modifying the Agreement and that would be difficult for them to do so at this stage. This argument, however, was not convincing. The ATC, as negotiated, did not prohibit increases in quota access beyond the strict, prescribed minimum percentages in growth rates. Furthermore, all three restraining Members had found it possible during the ATC period to go beyond those minimums in certain cases; they could not have done so if this required modification of the ATC. He considered this, in itself, sufficient to prove that the approval of the two proposals did not require any change to the Agreement. The restraining Members had argued that since imports had increased in their markets, therefore, the ATC had been implemented fully. That was not an accurate statement. While imports into the restraining Members' markets might have increased during the ATC period, the import share of restrained Members in the US had fallen dramatically from 76.6% in 1994 to 65.9% in 2000. In the EC market, it had fallen from 45.6% to 43.1% in the same period. The declines in their shares in clothing imports in both markets were even higher. These facts proved that the import increases could not be due to ATC implementation. Also, the developing Members had presented a good analysis of why the adoption of the two proposals would serve the purpose of redressing the imbalance under the ATC during the past seven years while the importing Members had not advanced any convincing reason to demonstrate that the proposals would somehow disrupt the balance of the



ATC. China believed that the two proposals did not require any modification of the Agreement. Their approval would redress the imbalance that had been experienced in the implementation of the ATC and would provide encouragement to the developing Members that the multilateral trading system could address the problems and concerns raised by them.

4.13 The representative of Pakistan recalled the detailed statement by the United States on 13 June 2002 on the proposals relating to the Agreement on Textiles and Clothing referred to this Council by the Doha Ministerial Conference. He said that, in the US statement, it was claimed that the two proposals would require an explicit change in the ATC and that the Agreement should not be re-opened through these proposals in final years of the implementation period. Also, he recalled the claims that the ATC had allowed imports to grow rapidly and, therefore, the implementation of the ATC was on track and working well and that the adoption of the two proposals would upset the carefully negotiated balance of the Agreement. He recalled that, in the CTG meeting held on 13 June 2002, the US representative had stated that both proposals would require doing something that was not mandated by the ATC as now written, and therefore, would require an explicit change in the Agreement. He noted that, although the US representative made this assertion in their statement at the meeting of 13 June 2002, it did not appear in the document circulated subsequently (G/C/W/387). Nevertheless, paragraph 25 of that document did contain the US view that the ATC should not be re-opened by the proposals in its final years. The statement by the US delegation did not provide any reason or justification as to why the two proposals involved re-opening of the ATC. No specific points had been put forward to support this contention.

4.14 He said that the ITCB members, through their submission contained in document G/C/W/368, had repeatedly pointed out that the proposals fell within the existing provisions of the ATC and their adoption would not require any modification in the Agreement or in domestic legislation of the restraining Members. It was clear from a plain reading of the proposal under paragraph 4.4 that in the case of small suppliers, the restraining Members were only required to apply the most favourable methodology available under the growth-on-growth provisions and extend the same treatment to least developed Members.

4.15 What this would mean was that the two restraining Members, the United States and Canada, would apply the same methodology as had been done by the EC when implementing the ATC provisions. He was sure that the EC would not have applied such a methodology if it had not been permitted under the ATC or would have involved a re-opening of the Agreement. Furthermore, if such methodology had been inconsistent with or not allowed by the provisions of the ATC, the TMB would definitely have pronounced itself on it.

4.16 The representative of Pakistan also noted that the ATC provided minimum thresholds for increases in quota levels from the beginning of the three integration phases. It did not prescribe any limits or ceilings or prohibit any increases above the minimum thresholds. If any restraining Member had enacted its legislation as though the percentage increases were the maximum permissible, that Member would be in violation of its obligation under Article XVI, paragraph 4, of the WTO Agreement which provides that "each Member shall ensure the conformity of its laws, regulations and administrative procedures, with its obligations as provided in the annexed Agreements". He said that the two proposals under consideration were designed to provide increases in quota access. It was a matter of record that all three restraining Members had provided increases in quota levels during the course of the ATC without any change in the Agreement. With effect from 1 January 1998, Canada had provided quota increases for a restrained category. Their notification to the TMB was contained in document G/TMB/N/316 of 16 January 1998. The United States also provided quota increases for a restrained Member on two occasions, the US Federal Register Notices of 6 September 1993 and 21 May 1998 contained information on these increases. Similarly, the EC had also provided increases in quota access for certain Members. It was, therefore, apparent that no changes were required to be made in the ATC, nor did it involve any re-opening of the Agreement to enable these Members to

implement these increases. As such, no change would be required to the ATC to adopt these proposals. He also noted that the EC had accepted that the proposals would not imply amendment of the ATC. In this connection, he recalled that in the CTG meeting of 2 May 2002, the EC representative had stated that "he accepted that the advanced implementation of the growth-on-growth provisions did not imply the amendment of the ATC" (paragraph 1.18 of the document G/C/M/60).

4.17 Concerning the issue of rapid growth of imports in the restraining Members, Pakistan considered that the purported increases in imports was neither relevant to assessing the fulfilment of obligations under the Agreement, nor could they provide a justification for violating any of those obligations. In the CTG meeting of 26 October 2001, the US representative had stated "it was clear that imports had increased in the US market, this would never be a pretext for failing to fulfil legal obligations" (paragraph 5 of G/C/M/56). It was also a fact that no commercially meaningful products had so far been integrated. It was, therefore, obvious that increases in imports could have been the result of ATC implementation. In this regard, the growth of imports into the US market from restrained Members had been suppressed at 6.8% per year as compared to 16.6% for unrestrained suppliers.

4.18 With reference to the US statement that "adoption of the two proposals would subvert the carefully negotiated balance of the Agreement", as explained by the ITCB in document G/C/W/368, contrary to this claim, the adoption of the proposals would in fact go some way in rectifying the imbalance created by the restraining Members which, unfortunately, the statement failed to mention. In sum, despite the passage of seven years, very few quotas had been removed or phased out. The United States had invoked a number of safeguard actions for new restrictions which had impacted more than \$1 billion of exports from affected exporting Members. Virtually, all of these actions were subsequently found to be violations of US obligations under the ATC, either by the TMB or by the dispute settlement panels and the Appellate Body. Another restraining Member had initiated and/or imposed anti-dumping measures on products which were already restrained by quotas. This action was also subsequently found to be unjustified by a dispute settlement panel and the Appellate Body which faulted the EC methodology for dumping determinations on several grounds. The EC had removed quota restrictions on non-WTO Members while it had retained them on WTO Members, in violation of the MFN principle and, thereby, Article 1.6 of the ATC. The US had changed its rules of origin relating to textiles and clothing for trade policy purposes and to raise unjustified protection against imports. The ATC objective of facilitating the integration process and progressive phase-out of quota restrictions had been nullified by deferring integration of the restrained products until the end of the transition period. These actions by the restraining Members had impaired the balance of the Agreement and the adoption of the two proposals would go some way towards restoring this balance.

4.19 The representative of Indonesia said that the developing Members had placed such a great hope in these issues, especially because Ministers at Doha had expressed the determination to take concrete action to address issues and concerns raised by the developing Members regarding the implementation of some WTO Agreements, in particular the ATC. It was surprising to see the wide gap between the political commitment by Ministers and the reality in Geneva. It did not make for an environment of confidence among the developing Members. The reasons advanced by restraining Members would fail to convince any ordinary observers. For example, the argument that the market access enhancing proposals would change the ATC, could not withstand scrutiny. The ATC provided for minimum threshold for increases in growth rates; it did not establish or prescribe any ceiling and, in fact, all restraining Members had provided increases in quota growth rates in addition to the normal growth-on-growth in a few cases. The facts were undeniable that while only a few quota restrictions had been phased out, there had been several anti-dumping actions, including against imports of some products from Indonesia. Likewise, there had been changes in rules of origin in another major importing Member and the EC had removed quota restrictions on non-WTO members while retaining them on WTO Members in non-violation of the principle of equity. The balance of the Agreement had not been kept. Under those circumstances, it was surprising to hear from the restraining Members

that the balance of the Agreement could be disrupted if the two proposals were approved. The fact was that, on the contrary, that adoption could go some way towards redressing the imbalance. Indonesia placed much importance of this issue and expected the CTG to fully discharge its mandate. Resolution of this issue was critical in helping to advance the WTO programme.

4.20 The representative of Brazil endorsed the statements of Hong Kong, China and other representatives of exporting Members. He said that the key was that there was an undeniable imbalance in the implementation of the ATC and this imbalance had to be redressed. The path of implementation had been unsatisfactory to the exporting Members. A sign of this was the significant proportion of quotas that were left to be integrated only at the end of 2004. This was not what they understood as progressive liberalization of the quotas in the terms of the ATC itself. The two proposals on the table constituted an attempt to correct this situation. It was very important to note that they did not require any amendment to the ATC, contrary to what was being stated by the importing Members. Moreover, their adoption would send a very positive signal as regards the commitment of developed Members concerning implementation as a whole.

4.21 The representative of the United States noted that there had been frequent reference to the statement that the US delegation had made at the last formal meeting of the CTG; he proposed to make a response. He referred to three areas which had been cited by speakers. The first issue was the possible modification of the ATC. It was clear that since Norway had been able to entirely eliminate its restraints in the course of the implementation of the ATC, there was no question that there was no upper limit on what could be done. On the other hand, when the ATC was negotiated and presented to the US Congress, a commitment had been made that the US would do what it was required to do by the ATC and in the case of small suppliers and the relevant methodology, the US had implemented what they thought was the plain meaning of what had been negotiated in that part of the Agreement. One strong indication that the US reading of the small supplier methodology was correct was the fact that it had never faced legal challenge in the WTO. Members had not been reluctant to take the United States to dispute settlement on other textile issues, and if this was an area where the United States was truly vulnerable, this would have come out in the dispute settlement process. He said that it had been noted that the EC had adopted a different, more generous methodology and he would argue that they did not, in fact, choose a methodology that was required by the ATC. Why the EC had chosen their methodology was something for them. For the US, they were comfortable with their methodology; this was what was required by the Agreement. That was the aspect being referred to when they spoke about modification of the Agreement, and what they were required to do by the Agreement. A modification would be required in order to change what that methodology would have to be.

4.22 With respect to the question of growth rates, the representative of the United States said that this referred to the total increase in imports over the period of time that the ATC has been in operation. He did not see a disagreement on the numbers that had been put forward but the interpretation was selective and presented a misleading picture. On the one hand, the point had been made that the share of the US market held by restrained Members had dropped from three quarters to two-thirds over the period the ATC had been in operation. On the one hand, two-thirds of the US market was still a very substantial percentage. He did not think it possible to argue that having a two-thirds share indicated a marginalization in the US market. The fact that the share of US imports held by restraining Members had dropped was something that could have been predicted at the time that the ATC was negotiated. Apparently, this had not been the case in the EC and Canadian markets; nevertheless, it followed quite naturally from the fact that if Members were restrained by quotas over a ten-year period, their export growth rates were not going to be as high as unrestrained suppliers. He said that it had been stated that the United States had maintained that the changes that would be required in the two proposals before the Council represented an unbalancing of the rights and

obligations that were negotiated into the ATC and this had been linked to the question of the legitimate expectations of the exporting Members and the overall lack of satisfactory increases in market access over this period. From the US standpoint, what they had achieved in the negotiation that created the ATC was a ten-year phase out for their industry. They knew that the quota growth that would occur during that time was going to put their industry under pressure and that adjustment was going to be the inevitable result. In fact, over this period, 61% of the increase in US imports had come from restrained Members. This was expected and they knew that adjustment would take place. They also knew that the import share of foreign suppliers was going to be increasing over this time but what came as a surprise was how fast this period of adjustment was compressed in the first seven years of the ATC. At the time that the ATC came into force, there were almost a million clothing workers in the United States. That number had dropped; the latest number was a bit more than 400,000 and was decreasing. Therefore, when exporting Members argued that they had not received the benefits from the ATC; that everything was backloaded; that there really had not been any meaningful adjustment; that the progressivity of the Agreement had been ignored, these arguments completely ignored the facts at our disposal, that the period of adjustment that was supposed to take place over ten years had gone faster than expected. The idea that adjustment should be further accelerated, given the rapid declines in employment and the numerous bankruptcies that US firms are facing, was not justified based on what was in the Agreement and what the US experience had been with the Agreement.

4.23 The spokesman for the European Communities stated that they had faithfully implemented the obligations and requirements of the ATC. In this regard, he pointed out that there were no specific provisions beyond the dates and the percentages at the different stages which were written into the Agreement, as well as the requirement as to how the different categories must be covered in the integration process. Therefore, the EC had respected the requirements of the ATC. They would study very carefully the statement made by Hong Kong, China because when it came to statistics, there were some differences of interpretation from the statistics they had presented. According to EC statistics, imports from 1994 to 2000 had gone up by 61% for restrained Members as compared to imports from all sources of 54%. According to these figures, there was favourable treatment for restrained Members. Reference had been made to the CTG meeting of 2 May with respect to paragraphs 4.4 and 4.5, where the EC had stated that the growth-on-growth proposals contained in paragraph 4.4 would, in fact, have to be considered, if accepted, as a new concession and not something which was due. As a new concession it would have to be considered in the overall textile negotiations package. It was also mentioned that acceptance of the proposals in paragraphs 4.4 and 4.5 would change the overall balance of rights and obligations of the ATC.

4.24 Referring to the specific point raised by developing Members concerning anti-dumping, the EC considered that the application of anti-dumping rules had followed the specific provisions of the WTO. In fact, they were taking place in a different forum, under the special rules which deal with these problems. An anti-dumping action was currently in place between India and the EC and it was subject to a specific procedure within the institutions of the WTO and in this matter, the EC considered that it was acting in full compliance with the panel findings. In fact, its compliance had gone beyond the requirements of the panel to which reference had been made. Concerning statistics, the EC had asked for data concerning imports from non-restraining Members to be elaborated and circulated along with a request concerning the tariff structure. The figures were extremely significant when it came to imports from certain non-restraining Members. He said that the figures were tremendously low and this could be linked to the balance referred to in ATC Article 7 to which the EC and others attached so much importance in terms of the general liberalization of trade in textiles and clothing. He said that reference had been made to the EC's treatment of non-WTO Members which appeared to be a major problem to some Members. It was the EC's contention, however, that relations with non-WTO Members were not covered by the ATC. In the specific cases, he pointed out that the countries in question had granted virtually free access to the Community and that had been accompanied by a generous import policy from their side.

4.25 The representative of Canada said that they had met and exceeded their obligations under the Agreement on Textiles and Clothing in its transitional arrangements. It remained their view that the facts did not support the exporters' contentions regarding the implementation problems or that there had been any impairment or any imbalance of their rights and obligations. He pointed to two examples; first, nowhere in the ATC was there an explicit phase-out schedule specifying dates and amounts for the elimination of quotas during the transition period before 1 January 2005. What was required was that the integration process be based on two conditions: meeting minimum volume thresholds and meeting the product coverage requirements. Second, concerning developments in import levels, clothing imports from restrained Members were up over 80%. In Canada from 1994 to 2001, the import market share of the restrained Members had stagnated from 69% in 1994 to 70% in 2001. The import growth from the restrained Members had grown more than three and a half times faster than the growth of the Canadian market. And the market share held by the restrained Members had increased by more than 10%.

4.26 He said that Canada remained committed to the full integration of the textiles and clothing sector into GATT 1994 disciplines by 1 January 2005, as stipulated in the ATC and, hence, the elimination of all remaining quotas by that day. He agreed fully with the United States on this point, that the ATC provided a negotiated, ten-year transition period to allow the domestic industry to adjust. That was the purpose of the ten-year period in the transitional provisions set out under the Agreement. This commitment to the ten-year transition period represented a fundamental commitment that Canada had made to its industry. He noted that there had been a number of statements to the effect that these proposals would not require an amendment to the Agreement. The ITCB Members had pointed out with respect to the growth-on-growth provisions that the ATC established "minimum thresholds"; he agreed. The ATC set the floor but it did not require anybody to do more than this, although Members could choose to do so. That the EC had chosen a methodology which they agreed was not inconsistent with the ATC, was a choice for the EC. Canada had chosen to include in its implementation of the small exporters' provision five more Members than they had to. Likewise, they had chosen in 1998 to increase the quota level unilaterally on outwear by 10%; that was their choice. That was part of their adjustment strategy. However, there was one fundamental point that seemed to have been overlooked. What the ITCB members were asking for was that these proposals be mandated, that the restraining Members be required to do this. In other words, they would be required to do something that was not required by the ATC. Canada remained fully committed to this Agreement but did not agree with proposals that would fundamentally alter the specific legal requirements of the Agreement in terms of what they needed to do.

4.27 The representative of Hong Kong, China expressed appreciation for the responses of the restraining Members which went some way to clarifying, at least partially, some of the points which had been at the heart of the arguments that they had been making in recent months over this issue. He said that it was very clear from what the US and Canada had said that their position was that they would not do anything more than the minimum that they were required to do. Furthermore, they had explicitly, in one case, and implicitly in another, accepted that the implementation proposals would not require amendment or modification to the ATC provisions. They appeared to be saying that they would require modification to the undertakings to their domestic industries and political institutions which was a very helpful clarification which took them a stage further.

4.28 Concerning one point which the US had said on the statistical issue, they seemed to be giving the impression that the restrained Members' share of the US market had dropped from about three quarters to the two-thirds level. This referred to import shares which was clear from the earlier statistical exchanges. He also noted the argument that the restrained Members had to expect that their import shares would drop as a result and that the presence of quotas meant that export growth rates would be smaller. But he considered that the whole emphasis in the ATC was to ensure that growth rates did indeed increase remarkably. He also heard reference to an equity argument which would have been relevant under the MFA and would probably still be relevant today under a detailed legal

analysis. The ten-year phase-out was going faster than expected and the adjustment period was being compressed. This was true but the developing Members had it clear in their statement that this was, in fact, due to the increase in preferential trade. In the case of textiles and clothing, the increase in preferential trade was tied to highly restrictive preferential rules of origin and that was having a very large effect on the picture. He referred to the comment by the US that employment in the industry had dropped from one million down to 400,000, and he asked if that was due to the traditionally restrained Members. If so, that would be fully justified as many of the traditional exporters enjoyed comparative advantage in this area just as exporters in the US, Canada and the EC enjoyed comparative advantages in other areas. Undoubtedly, part of this change was the result of increased imports from the traditionally restrained Members. But the point was that imports from preferential sources had increased far more strongly, Canada among them. So, why should Hong Kong, China be held accountable for these effects which were in fact "self-inflicted" by the parties to these preferential trade agreements. He noted that US imports from Canada had increased phenomenally in this sector; he questioned, however, if there were not other Members which were better equipped to export textiles and clothing. Unless those economies were allowed to export where they had this advantage, then clearly world markets were going to be distorted as they had been for 40 or 50 years in this particular case.

4.29 The representative of Hong Kong, China referred to the statistics raised by the EC and pointed out that the figures that he had been quoting were based on WTO statistics, while those of the EC seemed to have a different product coverage and were perhaps in terms of a different currency than the statistics that he was quoting. Furthermore, concerning the EC's point about relations with non-WTO Members not being covered by the ATC, he referred to Article 1.6 of the ATC which said that "Unless otherwise provided in this Agreement, its provisions shall not affect the rights and obligations of Members under the provisions of the WTO Agreement and the Multilateral Trade Agreements". He also suggested that Members bear in mind Article 1 of the GATT, where it states that "any advantage, favour, privilege or immunity granted by any contracting party to any product originating in or destined for any other country" (not GATT Member or WTO Member) "shall be accorded immediately and unconditionally to the like product originating or destined for the territories of all the other contracting parties". On this basis, he considered that it would be regrettable to suggest that it was possible to discriminate against WTO Members in favour of non-WTO Members.

4.30 The representative of Honduras recalled that, during the Ministerial Conference in Doha, Members had reached a consensus on many of the necessary elements in order to support the Doha Development Agenda. There had been some subjects in relation to the implementation of commitments in the Uruguay Round which had not been settled in November, many of which were of great importance for the developing Members. These included their concerns on the implementation of the ATC. This Committee was required to examine the progress made and the consensus to be achieved in July in this connection. He considered that the ATC should not be separated from the other elements of the Doha Development Agenda. This very name reflected the role which the developing Members were to play; his country was committed to this. He said that they would like to have success in the clothing industry, in particular, in view of the fact that since the middle of the last decade restrictions were being raised and they had witnessed the importance of open markets. This was reflected in their commitment to negotiate with other countries in their hemisphere and to search for a free-trade area. Honduras had committed to eliminating all barriers to trade and supported the movement towards more open markets in the Western Hemisphere as well as the rest of the world. In the Doha Ministerial Meeting, the CTG had been asked to draw up recommendations for the General Council in order to carry out appropriate actions and to improve on some of the provisions of the ATC. The object of this was not to renegotiate the Agreement. The intention had been to search for a mechanism in order to improve access to their markets; however, at this meeting they had heard opinions which showed the contrary. He expressed the hope that all of the concerns which had been expressed would be taken into consideration in order to search for a satisfactory solution. Honduras supported the view that the best way the WTO could contribute to improvements for the developing

Members would be to set up a wide agenda which would help most Members with specific emphasis in favour of the developing world. Their economies needed this momentum towards liberalization, in particular in view of the existing environment.

4.31 The representative of the United States referred to the comments by Hong Kong, China with respect to the statistics that he had mentioned and he clarified that, in fact, the US was referring to the relative share of restrained Members versus unrestrained Members dropping from three quarters to two-thirds. In respect of the import share of all clothing exports to the United States, there were some definitional problems, particularly due to the problems of counting the re-export trade; however, imports were currently taking 85 to 90% of the US market for clothing.

4.32 The representative of Canada sought to clarify a comment by Hong Kong, China to the effect that all the restraining Members had accepted that the proposals would not require amendments to the ATC. He would not agree with that; rather, he would say that the proposals would effectively raise the floor established by the ATC and by raising the floor, that would change the Agreement in terms of its substantive basis. Canada had, on a number of occasions, gone beyond the Agreement but that was part of their overall plan. The proposals were changes that had not been contemplated and now were being argued for, but the bottom line was they would raise the floor established by the ATC as it had been negotiated during the Uruguay Round.

4.33 The representative of Hong Kong, China understood the comments by Canada to mean that in the particular area of the two proposals as in some other areas having to do with the implementation of the ATC, which prescribed a floor or a minimum, Canada could go beyond the minimum if it was part of an overall plan. He accepted that the proposals were not part of their overall plan since they had gone further in the past in some other areas, however, they could go further if the matter was part of their overall plan; he wished Canada could be persuaded that these proposals should be part of their overall plan. Saying that an actual amendment of the ATC would be required in order to accommodate the proposals would be stretching things beyond the point of credibility.

4.34 The representative of Canada responded that it was difficult to contemplate other ways of expressing their position on whether the proposals would involve a change or not, one that would not change anything that they were required to do under the Agreement. The ATC was in the last two and a half years of the transition period and Canada planned to fulfil their obligations during those two and a half years as the ATC stands. Canada would meet their obligations within the Agreement on 1 January 2005.

4.35 Having heard these interventions, the Chairman said that the Council had taken the discussions as far as it could. He then proposed that the Council agree to suspend the discussion of this item and to resume discussion at a further meeting which he would convene for this purpose before the General Council meeting scheduled for 31 July. He also asked Members' agreement for convening this meeting on a shorter than normal notice in view of the obvious time constraints.

4.36 The Council noted the Members' statements and agreed to the Chairman's proposals.

4.37 When the CTG resumed on 30 July, the Chairman recalled that the process of examining the proposals began in March and April, with three informal meetings to discuss the ways of approaching the task. It was decided that the best means of advancing the work would be to begin the examination at the formal CTG on 2 May, to be followed by a series of informal sessions which would go into the details of the proposals and prepare the draft report and recommendations, along with the formal meetings to put matters on record. Up to the present time this item had been on the agenda of four formal sessions, in May, June and July, and had been discussed at eight informal consultations over this period. A great deal of documentation was provided during this exercise in support of the argumentation made in the meetings, both in the form of statistics on trade developments during the

ATC period, as well as detailed submissions setting out the position of the different Members. It became clear from the outset that there were fundamental differences in the views and understandings of the restraining Members and those of the developing, exporting Members on both the contents of the report and on recommendations. A great deal of effort went into trying to present these views in a factual and balanced manner in a draft report. However, discussion of the draft text led to repeated demands for further points to be included which, in turn, resulted in demands for balancing texts. The draft report was rewritten repeatedly to accommodate these requests, however, the required consensus on the report and on recommendations did not take shape. In view of all of this, he saw no alternative but to conclude the exercise without results. Consequently, he was not in a position to put before the CTG a draft report with recommendations to the General Council. This would be his statement to the General Council on the next day and he proposed that delegations reserve their views on this matter for the General Council meeting.

4.38 It was so agreed.

**V. REQUEST BY COSTA RICA; INDIA; INDONESIA; PAKISTAN; PERU AND HONG KONG, CHINA: CTG'S OVERSIGHT FUNCTION PURSUANT TO ARTICLE IV OF THE AGREEMENT ESTABLISHING THE WTO – TRANSPARENCY REGARDING NEW RESTRICTIONS ON TEXTILE AND CLOTHING PRODUCTS COMMENTED ON BY THE TEXTILES MONITORING BODY (G/C/W/260/REV.1)**

5.1 The Chairman noted that this item had been brought before the Council some time ago by Costa Rica; India; Indonesia; Pakistan; Peru and Hong Kong, China in relation to a specific matter as well as to a wider concern with the CTG's oversight function for the ATC. He reported that he had conducted consultations on this issue and had discussed it with the interested parties. He believed that he was in a position, on this occasion, to say that these discussions had resulted in a greater understanding on both sides on some of the issues involved. Consequently, he considered that it was not necessary to further pursue these consultations.

5.2 The Council took note of the Chairman's report.

**VI. MAJOR REVIEW OF THE IMPLEMENTATION OF THE AGREEMENT ON TEXTILES AND CLOTHING DURING THE SECOND STAGE OF THE INTEGRATION PROCESS, PURSUANT TO ARTICLE 8.11 OF THE ATC (G/C/W/396)**

6.1 The Chairman said that he was pleased to place before the Council, a draft report for its consideration on the major review of the implementation of the ATC during the second stage of the implementation process. This draft report was contained in document G/C/W/396.

6.2 The Chairman recalled that the Council had conducted the major review of the ATC's implementation in three formal sessions held in September and October of last year. At that time, both the developing Members and the restraining Members had set out in considerable detail their experiences and concerns with the ATC implementation process during Stage 2, that is, the 1998 to 2002 period. Full details of those discussions were contained in the Minutes of those meetings in documents G/C/M/51, 52 and 56. Following this, efforts had turned to the preparation of a report on the discussions for consideration and adoption by the Council. The Council had agreed to conduct this exercise based on informal consultations with all the Members that had expressed their wish to participate. Preparing the draft report had proven to be extremely difficult, particularly in respect of the efforts to reach agreed conclusions on certain aspects of the implementation process. The great



importance and sensitivity of textiles and clothing trade for so many Members; the differences in the perceptions of the goals and objectives of the Agreement; and concerns with the consistency of certain measures had taken during the implementation process made consensus very difficult to achieve.

6.3 However, the Chairman informed the Council that the goodwill and understanding of both developed and developing Members, combined with a tireless determination to arrive at a consensus report had made it possible for him to prepare the draft which was before the Council. He proposed that the Council adopt the draft report.

6.4 The representative of Hong Kong, China thanked the Chairman for his efforts in preparing the draft report on the second major review of ATC implementation. He also noted, in this regard, the work carried out earlier by the two previous chairmen of the Council. He said that, while Hong Kong, China endorsed the draft report, they were not fully satisfied with the conclusions. They would have preferred some of the conclusions to be much more substantive, as the mandate for the review clearly required the Council to make an overall statement of the progress in the integration process towards meeting the ultimate objective of full integration of the textiles and clothing sector into the normal GATT rules by 2005. The mandate, and in particular ATC Article 8l.12, also required the Council to take appropriate decisions to ensure that the balance of rights and obligations embodied in the ATC was not being impaired. He noted that the matter had been pending for over six months. Since failure to conclude the mandated review would have risked undermining the oversight function of the Council, Hong Kong, China had been prepared to show a considerable degree of flexibility in a spirit of compromise.

6.5 What stood out in the draft report was that, while the Council could arrive at certain conclusions, in paragraph 22 of the report, it could not arrive at any agreed conclusions on a number of other very important issues raised by developing Members. These issues were discussed in paragraphs 23 to 29 of the report. There were also points in the consensus conclusions which merited some emphasis. First and foremost was the reaffirmation by all Members of their commitment to achieve the full and faithful implementation of the ATC and the importance of achieving the full integration of this sector into WTO rules and disciplines by 1 January 2005. In the light of this overarching objective, it was all the more important for the Council regularly to oversee and evaluate the functioning of the ATC in accordance with Article 4.5 of the WTO Agreement and Article 8 of the ATC. In this regard, he stressed that while the ATC provided for bilaterally agreed arrangements, it must always be remembered that what might be agreed bilaterally was constrained by the multilateral rules and that it was the responsibility of the Council to ensure multilateral surveillance. Another important feature of ATC implementation was the need to allow for continuous autonomous industrial adjustment and increased competition in Members' markets as mandated under Article 1.5 of the ATC. This was all the more important in view of the fact that the restraining Members had implemented the ATC in such a way as to leave the bulk of quotas in place until the very last day of the ATC. In this regard, he recalled the need for Members to provide information to the Textiles Monitoring Body from time to time on relevant developments in this area. Less than two and a half years were left before the ATC and all restrictions thereunder terminated.

6.6 The representative of Hong Kong, China concluded by once again stressing that the Council and the entire membership must stay vigilant in the remaining 30 months to ensure that they reach the final goal of full integration on 1 January 2005. As he had said on previous occasions, the full engagements of a significant number of developing Members in the current Doha Development Agenda was clearly predicated on the full delivery of the results of the Agreement on Textiles and Clothing. This meant that ATC implementation was a subject of interest not only to those directly concerned with the trade in the sector, but also to the membership as a whole.

6.7 The representative of Bangladesh recalled that in the Council meetings he had expressed concern that the major review of the ATC implementation, of the single most important sector of trade to the economies of the developing Members, including Bangladesh, had yet to be concluded and that the CTG had been prevented from taking decisions pursuant to its mandate under Article 8.12 of the ATC. Thanks to the Chairman's concerted efforts, the major review had been completed and the CTG had the report before it. While Bangladesh could go along with the CTG adopting this report, he wished to record their disappointment with the very meagre results. Firstly, it was obvious that the CTG had not been able to make any decisions in accordance with the mandate that it should ensure that the balance of rights and obligations embodied in the Agreement was not being impaired. He regretted there was no mention of this provision in the body of the report. Indeed, he understood that the restraining Members were opposed to mentioning this. Secondly, it was regrettable that the CTG had not been able to arrive at any agreed conclusions in respect of a number of points that were relevant to assessing whether the balance of the Agreement had been kept. This was obvious from the paragraph 23 to 29 of the report. Thirdly, as for the specific provision of the ATC in favour of small suppliers and the least-developed Members, the report merely "reaffirms the importance of full implementation of those provisions" in indent 4 of paragraph 22. It did not, however, show that, so far, these special and differential provisions had not been implemented fully and faithfully.

6.8 As Bangladesh had repeatedly said, the special dispensation of the Agreement and related Ministerial Decisions in favour of least-developed Members had, in fact, been completely ignored by the major restraining Members in applying quota restrictions on their exports. From that perspective, Bangladesh had hoped and expected that the concerned restraining Members would inform the CTG about how they proposed to give effect to the latest decision in this report, which reaffirmed the importance of full implementation of those two provisions. Finally, he believed that the conclusions of this report had an important relationship to the agenda item pertaining to the examination of the two proposals referred to the CTG by the Ministers in Doha. He urged that these conclusions be fully taken into account in considering those proposals and in the consequent recommendations to the General Council, as per the mandate given by the Doha Ministerial Decision.

6.9 The representative of the United States expressed his appreciation for the approach to the draft report of other speakers. It had been a difficult process and the result was a substantial one that Members were able to collectively agree by consensus. He agreed that it would have been a major failure if they had not been able to reach that agreement. He noted that there were areas in which the exporting Members had continuing concerns and dissatisfactions. The US also was not entirely happy with all aspects of the implementation of the ATC, but in the spirit in which this issue had been approached, he thought that the approach of Members would serve the Council best.

6.10 The spokesman of the European Communities expressed his appreciation for the Chairman and for his predecessors who had presided over this lengthy procedure. This report had completed the process of the review to the extent that everybody was equally dissatisfied with it, Members could consider it to be a fair result.

6.11 The representative of Canada after extending his appreciation to the Chairman, expressed his agreement with Hong Kong, China on the importance of meeting the mandate for fulfilling the report. All Members had to show a great deal of flexibility in order to achieve the report. In terms of substance, Members would not be fully satisfied with any particular part of the report, but they all had recognized that it was a balanced report that probably accurately reflects the overall view.

6.12 The representative of India also noted the efforts of the Chairman in bringing this important exercise to a conclusion. He also appreciated the positive contribution in the process of the former CTG Chairmen. He noted that the Council was responsible for overseeing the implementation of the ATC and for this purpose was required by Article 8.11 to conduct a major review before the end of each stage of integration process. The completion of this major review had been long overdue. As

per Article 8.11 of the ATC, the Council was to complete the second major review before 31 December 2001. He said that textile and clothing was an extremely important sector for the Indian economy and a major source of export earnings and employment generation. While he endorsed the second major review report and the conclusions contained therein, it did not mean that they were fully satisfied with them or that the conclusions met their reasonable expectations. Developing Members had been expressing concern over the manner in which some developed Members had been implementing various provisions of the ATC. During the series of formal and informal consultations, developing Members had argued objectively, with facts and figures, how the balance of rights and obligations under the ATC had been impaired. Concrete suggestions for adoption by the Council to restore the balance had also been made.

6.13 Article 8.12 of the ATC required that "in the light of its review the Council shall by consensus take such decisions as it deems appropriate to ensure that the balance of rights and obligations embodied in this agreement is not being impaired". The ATC was a transitional arrangement aimed at bringing to an end, by 1 January 2005, the discriminatory quota regime. The main objective of the ATC was to ensure that as of 1 January 2005 this sector would be completely integrated into GATT/WTO disciplines. The main path of achieving this objective was the progressive and gradual integration and elimination of quotas. The fact was that the bulk of quotas remained in place and would be removed only on 1 January 2005. These concerns were highlighted in paragraph 8 of the report. While India was pleased that the Council could arrive at some conclusions, as contained in paragraph 22, on a number of other important issues raised by developing Members, no clear conclusions could be reached. Repeated use of anti-dumping measures on restrained products, subsequently found to be unjustified, had had serious adverse effects on the exports of some developing Members. Paragraph 29 of the report noted the concerns of the developing Members in this context. Paragraph 28 of the report highlighted the exporting Members' concern with regard to changes in rules of origin for trade policy reasons, disrupting the utilization of market access to developing Members. He said that some other measures by the major textile importing Members that had impeded the attainment of the objectives of the ATC included elimination of quota restriction on certain non-WTO members, while maintaining them on WTO Members; lack of faithful implementation of obligations under Article 1.5 of the ATC for allowing continuous industrial adjustment; customs and administrative requirements, among others. It was extremely important that provisions of the ATC were implemented in letter and spirit in the remaining two and a half years of the ATC.

6.14 The representative of India reiterated the importance of the second major review of the ATC implementation as it came at a critical time, the ATC and all restrictions thereunder would stand terminated on 1 January 2005. He was pleased to note the conclusion in paragraph 22 of the draft report underlining the importance of the full integration of this sector into WTO rules and disciplines by 1 January 2005. Also, he noted the report's conclusion stressing the importance of the Council overseeing and regularly evaluating progress in the functioning and implementation of the ATC because, as the present review had revealed, exporting Members were facing many problems with regard to its implementation. Equally important was the conclusion underscoring the importance of maintaining full transparency in all aspects of the implementation process, notification requirements, and of facilitating the examination by the TMB of all measures taken under the ATC. He also underlined the importance of the decisions taken by the Ministerial Conference at Doha with reference to the ATC which were contained in section 4 of the Decision on Implementation-Related Issues and Concerns, which was reflected in paragraph 30 of the report. The major review was not just a routine exercise, but was envisaged to review the implementation of the ATC. It provided opportunity to Members to highlight their concerns with respect to implementation of the ATC so that appropriate corrective action could be taken to address these concerns. He expressed the hope that the conclusions reached by the Council on some of the issues would be kept in mind by Members during the remaining period of the ATC and that all Members would endeavour to achieve full and faithful implementation of the ATC in the remaining two and a half years.

6.15 The Chairman, in concluding the discussions, stressed that it was the goodwill and understanding, flexibility and pragmatism, shown by all delegations that permitted him to bring this exercise to a successful closure. He also referred to the work of his predecessors, that had, in fact, laid down a very strong foundation.

6.16 The Council took note of the statements by Members and adopted the report.

## **VII. REVIEW OF THE OPERATION OF THE TRIMS AGREEMENT UNDER ARTICLE 9 (G/C/W/307 AND ADD.1)**

7.1 The Chairman recalled that the Goods Council had initiated the review under Article 9 of the TRIMs Agreement in October 1999. Since then, there had been an invitation outstanding to delegations to submit written contributions on this issue. To date, none had been received. At the last meeting, the Council had continued its discussion of a background study produced jointly by the WTO and UNCTAD Secretariats on trade-related investment measures and other performance requirements (G/C/W/307 and Addendum 1), and some delegations had indicated that they might wish to make further comments at a later stage. Also, a number of questions had been raised for consideration by Members. He suggested that the CTG continue the discussion of the study.

7.2 The representative of Colombia said that her delegation had great interest in the review of the TRIMs Agreement and that it had suggested several elements to be taken into account in the review concerning, for example, its duration and scope. In this regard, her delegation considered the Fifth Ministerial Session in Cancun as the deadline to deal with the review and that the objective should be to submit a document for the Ministers' consideration by that time. Her delegation believed the review should include a factual aspect and she suggested that the Secretariat prepare a document, containing the TRIMs notifications made by countries and their coverage, both from a sectorial point of view and in terms of their share in total imports. This document would be presented to Ministers and would allow Members to identify the sectors in which TRIMs existed and their commercial dimension at the world level as well as in terms of the imports of the countries applying the measures. The document might also include the countries that had already eliminated TRIMs as of 1995, in order to find out whether this commitment was present for these countries in other regional agreements, not just in the WTO. Concerning the need to analyze the relationship between the TRIMs Agreement and Articles III and XI of the GATT, on which other countries had insisted, her delegation considered that it was important to have a background document on the relationship between the TRIMs Agreement and other multilateral agreements, such as the Agreement on Import Licensing Procedures. The Secretariat could contribute this paper, which Members could then use as an additional input in the review.

7.3 With respect to the joint WTO/UNCTAD study, she noted that this document stated that the rationale for some of the TRIMs requiring local content was based on the lack of perfect competition conditions, which would negatively affect the creation and consolidation of domestic supply. In this regard, it would be interesting to ask whether it would be necessary to prohibit developing countries from using this type of instrument. This question was all the more relevant if one considered that, as a result of the reforms to the economic model and the adjustment processes, the structural deficiencies in the markets of developing countries, in particular those related to internal marketing and distribution had become considerably more serious. In answering this question, one should also take into account the conclusion of the joint WTO/UNCTAD study that TRIMs had only negligible or almost non-existent trade distortion effects.

7.4 The representative of the European Communities said that his delegation was looking forward to continuing the discussion on the Article 9 review, preferably on the basis of written submissions. Reacting to Colombia's suggestion that the Fifth Ministerial Conference should be the deadline for the

review and that Ministers should have a report by then, he said that that was not really what Article 9 of the TRIMs Agreement said. Therefore, he believed Members needed to discuss further whether that was the preferred option as well as what should come out of the review. He realised that, at some stage, Members should have a result from this exercise. He recognized that another exercise going on under the next agenda item, also had a deadline, but that was a different deadline. He said his delegation would like to come back to the points raised by Colombia at a later stage in order to fully understand how the Colombian delegation saw the process.

7.5 The representative of Brazil confirmed that his delegation would soon be submitting a document in the context of the Article 9 review of the TRIMs Agreement. He considered that Colombia had made a number of useful suggestions for further Secretariat analysis and studies. In that regard, his delegation considered that, apart from the empirical verification of trade distortive effects of TRIMs-like measures, one important issue to look at was also the relationship between preferential rules of origin and the disciplines of the TRIMs Agreement. This was one of the issues that his delegation's written submission would develop.

7.6 The representative of the United States said that his delegation believed that written inputs would help Members to move the process forward. Reacting to comments by Colombia and Brazil, he said that his delegation did not believe that the intent of the review was to decide if measures disciplined by the TRIMs Agreement did or did not have harmful effects and, therefore, should not be disciplined. While his delegation was open as to how this process would proceed, he wanted to make it clear that the review should not be seen as an opportunity to lower the standards outlined in the TRIMs Agreement.

7.7 The Council took note of the statements made and agreed to revert to this item at its next meeting.

## **VIII. DISCUSSION OF IMPLEMENTATION ISSUES BY THE TRIMs COMMITTEE – REPORT TO THE COUNCIL FOR TRADE IN GOODS**

8.1 The Chairman recalled that at its meeting of 7 May 2002, the CTG had decided to assign to the TRIMs Committee the responsibility for conducting the work on the outstanding implementation issues reflected in tirets 37 to 40 of document JOB(01)/152/Rev.1. The TRIMs Committee had also been requested to report regularly on the progress of its work to the CTG. Accordingly, he invited the Chairman of the TRIMs Committee to give a report.

8.2 The Chairman of the TRIMs Committee reported that, at its meeting of 10 July 2002, the TRIMs Committee had continued its discussions on the outstanding implementation issues related to the TRIMs Agreement. At that meeting, Members had offered greater details on the objectives and nature of their proposals and a useful exchange of views had followed. Members had reiterated the importance of the discussion of implementation issues related to TRIMs and their willingness to continue participating constructively in this exercise with the view to concluding a report at the next meeting of the Committee on 14 October. The report would then be submitted to the Council for Trade in Goods. He said that in order to allow for a more focussed discussion of the outstanding implementation issues, some Members had announced that they would be presenting written proposals before the next formal meeting of the Committee. It had been agreed that once this proposals were tabled, the Chairman of the Committee would convene an informal meeting to discuss them. For more information on the developments of the discussions on this subject in the TRIMs Committee, he drew Members' attention to the relevant section of the minutes of the meeting held on 10 July, which would be distributed shortly. He would keep the CTG informed of any further developments and discussions on these issues after the next formal TRIMs Committee meeting, scheduled for 14 October.

8.3 The Council took note of the report of the Chairman of the TRIMs Committee.

**IX. PREPARATIONS IN CONNECTION WITH PARAGRAPH 18 OF THE PROTOCOL ON THE ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA**

9.1 The Chairman recalled that this item was discussed in the CTG at the meetings on 24 May and on 13 June 2002. It was also agreed that the Chair would conduct informal consultations to best determine how the CTG should carry out its obligations under this review within the time-frame for our report to the General Council. He informed the Council that his consultations in this matter were continuing and proposed to suspend discussion on this item and to revert to the matter at the appropriate time.

9.2 It was so agreed.

**X. OTHER BUSINESS**

10.1 The representative of Canada informed that, as his delegation had already mentioned in the CTD, on 27 June 2002 the Canadian Prime Minister Jean Chrétien had announced that effective 1 January 2003 Canada would provide duty-free, quota-free access to imports from 46 of the world's least-developed countries for all products except dairy, poultry and eggs. Canada was taking this action to help least-developed countries develop by increasing their opportunities to trade and encouraging investment in these countries. Canada had received direct representations from LDCs to provide improved market access. Other international organizations, including the WTO, the IMF, the World Bank and the UN, had also noted the benefits of granting greater market access to least-developed countries. This was part of a coherent policy approach for developing countries, including a wide range of issues Canada also announced on 27 June at the G8 meeting in Canada to support the efforts of the African countries, such as an additional 20 million dollars for Africa in trade-related technical assistance. He noted that Canada's least-developed market access initiative covered the major products of interest in exports to Canada from these 48 least-developed countries, including apparel, accounting for more than half of Canada's imports from these countries.

10.2 The Canadian representative further remarked that Canada was also developing new rules of origin and procedures for textiles and apparel for these preferences that were designed to provide real opportunities and benefits that LDCs could realise by taking directly into account the production capacity of LDCs. Benefits would further occur by allowing accumulation, so that beneficiary countries would get the benefits for developing countries as well as those for LDCs who produce imports such as yarns and fabric, that were used by least-developed countries to produce apparel and other finished textile products. Thirdly it would ensure that the benefits went to where they were intended, while protecting against illegal transshipment and without imposing undue major administrative burdens. By way of example, he noted that apparel imported from an LDC would qualify for duty-free access if, first, the apparel was assembled in the LDC, and secondly, it was made from fabric cut or knit to shape in that LDC, and thirdly, the fabric or yarn originated in the same LDC. But apparel cut and sewed in an LDC could also qualify if it would use imported fabrics or yarns as long as first, there was 25% value added in the LDC in producing the apparel, such as by cutting and sewing the apparel, and secondly, the imported fabric or yarn originated in another LDC or a developing country. For a fabric to be considered originating from this country it must be made from yarn produced in an LDC or a developing country and the yarn must be spun in the LDC or developing country. In short, the rules of origin for apparel would allow accumulation not just from other LDCs but also developing countries, hence encouraging greater trade with developing countries as well as with Canada. To fully ensure that the benefits would go where they were intended, LDCs

would be required to sign an undertaking to cooperate on an exchange of information for verification purposes. Canada would also put in place an enhanced and more targeted monitoring verification investigation regime on textiles and apparel, with the purpose of deterring illegal transshipment and routing the benefits to LDCs. In addition to apparel, Canada was extending duty-free, quota-free access for LDCs on other key products of interest to these countries, including textiles, most agricultural products, as well as other industrial products. He concluded by noting that more details would be provided in autumn as Canada prepared to implement its new duty-free, quota-free regime on 1 January 2003.

10.3 The Chairman informed delegations that the next meeting of the CTG was scheduled for Tuesday, 1 October 2002. The agenda for the meeting would close on Thursday, 19 September.

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