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**PROBLEMS OF AND POTENTIAL FOR THE APPLICATION
OF CURRENT TRADE FACILITATION MEASURES**

Note by the UNCTAD Secretariat

Executive summary

This document discusses selected issues involved in the application of trade facilitation measures. It begins by addressing the following topics relating to the implementation of trade facilitation: the use of new technologies in customs and transport management systems as well as the potential consequences of recent security initiatives; the required environment for trade facilitation, including logistics, transport services and infrastructure; and the legal framework. It then reviews two key elements in the development dimension of trade facilitation: the role of regional and local partnerships in formulating trade facilitation needs and priorities; and countries' stakes and alternative positions with regard to the potential adoption of multilateral binding rules on trade facilitation.

The document includes proposals for adopting an integrated approach focusing on specific trade and transport corridors and using supply chain management analysis; for creating trade facilitation clusters at national, regional and global levels to identify needs and priorities; and for establishing multilateral cooperative networks to provide enhanced technical assistance and capacity-building to developing countries.

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INTRODUCTION

1. The Commission on Enterprise, Business Facilitation and Development, at its sixth session (February 2002), called on UNCTAD to implement a comprehensive work programme in the area of trade facilitation, taking into account the special needs of LDCs. To analyse how efficient transport and trade facilitation could improve participation by developing countries in international trade, the Commission endorsed the convening of an Expert Meeting to this effect.¹

2. This report has been prepared in order to facilitate the deliberations of the Expert Meeting. Section I provides some context for the topic; Section II reviews the implementation issues involved in trade facilitation; Section III deals with development dimension issues; and Section IV outlines specific steps that might be taken in the future.

I. BACKGROUND

3. Trade facilitation is most often thought of as a simplification or streamlining exercise that involves applying standards to procedural requirements of trade monitoring institutions. This view relates to the implementation aspects of trade facilitation. It is less commonly seen as an environment-building activity designed to help participants in trade and transport operations find solutions that benefit all stakeholders and lay the groundwork for long-term growth in trade. This second definition has to do with the development dimension of trade facilitation.

4. Currently available standards and recommendations for harmonizing and simplifying the steps involved in trade transactions have been developed mainly through regional institutions representing developed countries. Once developed and agreed, these standards have then been productively implemented in these countries. A widespread view is that standards solutions spawned and successfully applied in industrialized countries could bring similar benefits if transferred as such into developing countries.²

5. However, practice tends to prove the contrary. Experience gained through technical assistance in the field shows that imported blueprints rarely fit all kinds of environments. Different situations require different approaches, both in terms of resources and in pace. Country- or region-specific institutional innovations have proved successful when they can be based on local knowledge and experimentation, targeted to domestic traders and tailored to domestic institutional realities.

¹ Report of the Commission on Enterprise, Business Facilitation and Development on its sixth session (TD/B/COM.3/46), 7 March 2002.

² "Improvements from Trade Facilitation Could Benefit the World Economy by As Much As US\$7 Billion Every Year", Baroness Symons, the United Kingdom's Minister of State for International Trade, International Forum on Trade Facilitation, Geneva, 29–30 May 2002.

6. On the other hand, trade facilitation can actually contribute to a nation's development, and its benefits should not be limited to a given importing sector. The occurrence of this broader impact depends to a large extent on the ability of trade facilitation programmes to construct a sustainable institutional and managerial international trade capacity. This means that partial, short-term solutions restricted to particular aspects of a trade transaction supply chain can either rapidly be short-circuited or create asymmetries favouring certain sectors over others.

7. Current discussions on predictability, transparency and uniformity should take into account implementation and development issues. These are major obstacles to the effective adoption and success of trade facilitation measures. Technical solutions, required know-how and examples of successful practices are available. What is needed now is a new approach to ensure effective implementation as a factor in trade development.

II. IMPLEMENTATION ISSUES

8. Most solutions to overcoming known obstacles to the conclusion of a trade transaction have already been developed over the past 30 years. A number of intergovernmental organizations have established international instruments, standards or benchmarks aimed at simplifying documentation and information for exportation and importation, including the United Nations Economic Commission for Europe (UNECE) (e.g. the UN Layout Key for Trade Documents), the World Customs Organization (WCO) (e.g. the revised Kyoto Convention) and UNCTAD (e.g. the UNCTAD/ICC Rules on Multimodal Transport Documents). However, for various reasons these different initiatives have not been universally adopted.

9. In WTO, existing rules relating to trade facilitation can be found in various articles of GATT 1994, including Article V (Freedom of Transit), Article VII (Valuation for Customs Purposes), Article VIII (Fees and Formalities Connected with Importation and Exportation), Article IX (Marks of Origin) and Article X (Publication and Administration of Trade Regulations), as well as in WTO Agreements on Customs valuation, pre-shipment inspection, rules of origin, technical barriers to trade, application of sanitary and phytosanitary measures, and import licensing procedures. WTO member countries are supposed to commit themselves to the implementation of these rules according to agreed schedules. However, as paragraph 2 of Article XI (Original Membership) states, "The least developed countries recognized as such by the United Nations will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities."³

10. Numerous instruments are now readily available. However, trade and transport procedures remain cumbersome and costly in many developing countries. The reasons for

³ Agreement Establishing the World Trade Organization (GATT, WTO (MTN/FA II)).

this undesirable situation may be found in an aggregate of circumstances that can be reduced to two words: *information* and *environment*.

11. Information is significant because a *document* is nothing but a “container” or “vehicle” for trade and transport data. In turn, a *procedure* encompasses information retrieval, storage, processing and transmittal. Therefore, trade facilitation, which is aimed at simplifying international trade documentation and procedures, is in essence an information system activity. What used to be a manual activity can now be easily improved by readily available information and communication technologies (ICT).

12. Trade facilitation is also an environment-related discipline: It cannot be successful if certain surrounding factors are not present. The feasibility and success of the implementation of trade facilitation programmes depend on surrounding factors such as the quality of public administration human and institutional resources, the availability of international transport and logistics services, and of course readiness to effectively use ICT.

13. When both information technologies and an appropriate environment are available, trade facilitation becomes a success story. This has been the case in most developed and more advanced developing countries, where trade facilitation has led to simplification and better control. Information technologies and the required environment are now discussed as major factors for successful implementation of trade facilitation in developing countries.

A. Use of new technology

14. ICT in the form of specifically computerized information management systems offer very cost-effective solutions for obstacles to trade and transport. Such obstacles include inefficient formalities, transmission delays, transcription errors, and other routine and repetitive manual tasks undertaken in public administration offices dealing with international trade procedures. Customs departments have been privileged candidates for automation among governmental agencies. Similarly, private-sector operators handling large amounts of data effectively used computer systems for more than 20 years now.

15. The use of transport operations planning and cargo movement monitoring information systems has also spread rapidly in recent decades. Such systems speed the flow of information on cargo and foster efficient use of limited assets. Developing countries' private and public sectors should make greater use of ICT for trade and transport procedures and operations. UNCTAD's development and implementation of computerized systems, such as the Automated System for Customs Data (ASYCUDA) and the Advance Cargo Information System (ACIS), are a major step in the right direction.

16. However, computerizing the activities of the various parties involved in the control or monitoring of external trade flows will be beneficial only if existing administrative and commercial practices are overhauled prior to the computerization of procedures. The following is a discussion of how these systems can be put in place at the lowest possible cost and with the most positive impact on human and institutional resources.

1. Customs clearance system automation

17. An efficient Customs administration is essential for a country's good governance policy. Customs departments have a wide scope of responsibility in the application of government policies regarding international trade, including Customs clearance of imported or exported goods; revenue collection; prevention of smuggling of arms, drugs and aliens; and provision of statistical trade data for government analysis and planning. The International Code Council (ICC) has made some suggestions regarding the key automated functions of a modern, efficient and effective Customs administration.⁴

18. For a variety of reasons, many Customs administrations are unable to comply with their responsibilities and many functions are often neglected or poorly handled. Although significant progress has been made, efficient and effective performance is not spread evenly among all administrations, or in all regions of the world. To address this issue, the WCO provides extensive technical assistance to its members and has developed a Customs Reform and Modernization Programme (CRM). This programme is designed to assist Customs administrations in becoming more self-reliant through better use of resources, strengthening of management capabilities, and designing appropriate and efficient Customs processes and procedures.

19. The implementation of a CRM programme is usually complemented by automated systems such as ASYCUDA. Since 1985, ASYCUDA has been installed in over 80 developing and transition economies throughout the world. It is designed to streamline and reduce customs forms and procedures and is based on and incorporates UNECE and WCO Recommendations and Standards (including those related to the UN Layout Key), codes and other standards. The software can be adjusted to each country's customs valuation methodology and translated into its official language. The latest version of ASYCUDA includes a module for the management of transit procedures. The introduction of such systems allows staff members to be reassigned to risk assessment and security-related activities.⁵

2. Transport management automation

20. Monitoring systems for transport equipment and cargo movement are one method of making the components of the transport chain of some developing countries more efficient. Suitable technologies are available for tracking transport equipment and cargo in and out of ports, within railways, on lakes and possibly on roads.

21. The current inability of traffic management systems to "talk" with the various modal operators limits their limited ability to provide comprehensive services and assemble efficient logistics chains. To cope with this challenge, UNCTAD has developed a transport management tool called the Advanced Cargo Information System (ACIS), a set of computer applications designed to produce management information to address multimodal cargo

⁴ ICC International Customs Guidelines (document no. 103/190), 10 July 1997.

⁵ For programme details, see www.asycuda.org.

transit and transport problems. ACIS allows the electronic interchange of data among different transport operators. It provides improved information to help control their respective operations and facilitate rational corporate planning. It is also a database available to parties registered as having an interest in a consignment and its transportation, providing them with the latest reported location and status of goods and transport equipment. As a long-term record of transport movement data, it permits governments and institutions to analyse national, subregional and regional problems and investigate alternative investment opportunities in the transport sector. ACIS has been installed in 15 countries.

3. Trade facilitation and security

22. The terrorist attacks on September 11, 2001, illustrated the critical yet fragile nature of the international transport system. For the global economy to flourish, this system must continue to provide safe, secure, efficient and reliable services to travellers and customers in all parts of the world. At the last G8 Summit (Kananaskis, Canada, June 2002), heads of state agreed on a set of cooperative actions to promote greater security of land, sea and air transport while facilitating the cost-effective and efficient flow of people, cargo and vehicles for legitimate economic and social purposes.

23. Such security concerns may have both immediate and long-term implications for several operational aspects of international trade transactions. The Customs–Trade Partnership Against Terrorism (C-TPAT) launched by the United States Customs Service, and the adoption of measures such as the Container Security Initiative promoted by the United States, are being considered in multilateral forums. These actions may result in one or more of the following elements’ being taken into account as potential major drawbacks for small players in international trade and transport systems:

- (a) *Geographical distribution and concentration of flows:* The selection by the U.S. Customs Service of “safe ports” may lead to the rerouting of major flows between certain origins and destinations, in particular those in the United States.
- (b) *Supply chain management capability:* The C-TPAT initiative requires trading partners to work with their service providers throughout the supply chain to enhance security processes and procedures. Various aspects of each stage of the supply chain must be monitored, including employees and the origin of goods. Although these procedures can be requested only for U.S.-bound supply chains, they will certainly influence U.S.-based importers, carriers and brokers to choose supply partners that can produce reliable and suitable information to be submitted to U.S. Customs authorities. This might exclude some ill-equipped, though trustworthy, suppliers in developing countries.
- (c) *Technological and financial requirements:* The screening of containers implies the availability and use of costly equipment for which ports in many developing countries may not be able to raise or allocate the required resources.

- (d) *Legal consequences:* Changes to current practices and procedures arising from security concerns may have significant legal implications, such as increased liabilities.

24. On the positive side, these security initiatives may well offer the opportunity to establish a new type of risk management tool based on the concept of “Facilitation (FAL) intelligence”. This notion is similar to the one applied by numerous Customs administrations, but its scope is wider. It aims at gathering sufficient information on trading communities to sort out “good” trade and transport operators from “bad” ones, and to greatly facilitate operations for legitimate trade. More Customs and security resources could then be assigned to the repression of illicit traffic.

25. Ideally, some sort of FAL intelligence could be achieved on a worldwide basis through the extensive use of interconnected ICT systems. The Internet makes this undertaking easier than ever, and the recent trend toward widely accepted clustering and networking schemes would support this development. Thus, security concerns provide an incentive for increased use of ICT.

26. Would the current security concerns add not only costs but also value to the operational and institutional trading environment of developing countries? The answer depends largely on whether the necessary assistance is provided to them, in terms of technical and financial resources and of lasting capacity to establish an autonomous, sustainable trade management infrastructure.

B. The required environment

27. In practice, an average transaction may involve some 30 parties (traders, carriers, banks, insurers, freight forwarders, customs brokers, etc.) and require some 40 documents (many of these not just for governments but for carriers, bonded warehouses and other components of the trade process).⁶ Furthermore, various segments of the international trade transaction, such as sale, transport, insurance and payment, are normally supported by relevant rules and regulations. The efficient functioning of international trade therefore requires not only the proper management of supply chains, supported by appropriate transport services and infrastructure, but also an appropriate legal framework.

1. The supply chain management approach

28. Although international trade transactions have common features, considerable differences appear when distribution chains and marketing channels are looked at from the perspective of a specific product. Here again the environment (basically, services and infrastructure) has a great impact on the speed, cost and predictability with which trade operations are actually completed. In other words, the efficiency of trade operations depends largely on the overall efficiency of the framework within which they are undertaken. Port

⁶ Fermin Cuya, senior vice president, Mattel, Inc., at the WTO Trade Facilitation Symposium, Geneva, March 1998.

productivity depends as much on the skill of the labour as this skill depends on the cultural context, social background, nutrition, climatic conditions and other factors that all affect the learning capacity of the workers.

29. Given all this, can developing countries suffering from unfavourable contextual conditions and lower economic development ever succeed in reaching efficiency in their operations? The answer is probably yes, if one draws conclusions from best practices found in specific situations where the well-known systemic approach of supply chain management has been applied.

30. For instance, car assembly lines in developing countries manage to operate with a one-day stock and organize just-in-time delivery of relevant inputs and parts coming from several distant origins, including local suppliers. They make extensive use of advance programming, ordering and product-tracking techniques. Port operations productivity in Malaysia and Panama has reached levels equivalent to those in the most modern and best-run harbours of the developed world. In Brazil, bulk unit train operations rank among the most cost-efficient, and intermodal operations for iron ore exports can be considered to represent best practices on a global basis.

31. What, then, is the recipe for success in building an efficient operation? An intermodal transport system will not necessarily attain its optimal productivity when each and all of its segments are working at full drive, but rather when these segments adapt their operations to one another. This supply chain management approach, where different worlds meet and adjust to each other, thus becomes a model for a trade facilitation puzzle where different pieces have to fit together in order to complete the picture.

32. Television sets produced in Korea and sold in the European Union do not follow the same path – do not make use of the same trading channels – as do jute bags produced in Bangladesh or bananas exported from Cameroon to Canada. Trading channels may also be different for different types of Bangladeshi jute bags, or they may differ when destination markets are different. At the same time, when stuffed into a container, all these different products, from different origins and manufacturing processes, end up being loaded and carried on the same ship and unloaded at a given port of destination or transit. Some support infrastructure, equipment and services are common to all of them.

33. In each case, the systemic, end-to-end perspective provided by the supply chain management approach may help design and adjust trade facilitation solutions to suit the general requirements and specific needs of trading channels related to specific products' trade transactions.

2. Logistics, transport services and infrastructure

34. Transport plays a major role in the logistics and service quality of the supply chains. It has to meet increasing quality requirements in terms of flexibility, speed and reliability in order to deliver the goods at a precise time and place. Taking into account the complex interaction of sourcing, suppliers, manufacturers, retailers and consumers, multimodal

transport is emerging as a solution for tailoring transport systems to the logistic needs of the ultimate customer. It allows the integration of a broad range of transport services in the supply chains, supported by well-functioning ICT. This integration can easily provide pre- and on-carriage information exchange as well as advanced services, such as real-time information, that accelerate the information flow, make it more reliable and enhance service quality.

35. The successful development of efficient transport services depends not only on basic transport infrastructure, but, more importantly, on the establishment of effective mechanisms that warrant the most efficient use of available infrastructure. The problem in many developing countries is that regulation, planning and management of the different elements of trade-supporting infrastructure are highly disjointed and without effective coordination. Laws and regulations governing the conduct of trade and the organization of trade-supporting services and infrastructure are often outdated. There is thus a need to develop modern policies and administrative arrangements that bridge institutional as well as organizational disparities and inconsistencies.

36. The diversity of legal and regulatory constraints encountered at local and national levels of government creates substantial confusion, unnecessary delays and cost, and pressure on governments to adhere to international standards and practices. A special challenge for a country is therefore to design regulatory provisions and organizational arrangements that will yield optimal use of existing physical network structures, gradually shifting government's role to being a promoter rather than a manager of trade-supporting infrastructure and services.

37. Any trading nation in today's global market is forced to adjust to the trade management practices of its partner countries and, by implication, to the practices of the international logistics and transport industry. The trading community must therefore take a close look at its value-added chain (supply chain management), and government must stimulate effective transport management systems by providing a physical and regulatory infrastructure that will allow the establishment of efficient trade and transport-related services.

38. Government and commercial parties must work jointly to develop properly functioning domestic markets and transport networks and provide conditions permitting the best possible use of available transport and communications technologies. As a result, enterprises would have access to transport corresponding in quality and performance to their needs and expectations. The cost of access to these facilities should be reasonable and take into account their long-term maintenance and development.

39. The distribution of responsibilities in transport activities between the public and private sectors requires a clear definition of the public sector's mandate and of its relationships with private partners, with a view to fostering private-sector-led investment, capacity development and operational efficiency. This implies a comprehensive understanding of the interests at stake, so that public and private partners can be in a position to provide each other with the services they are the best placed to deliver: an efficient and

clear regulatory environment, a basic set of well-integrated infrastructure networks for the public sector and a cost-effective transport services system for the private sector.⁷

40. A number of developing-country governments and local business communities are unaware of how competitive practices in international markets are changing in accordance with modern logistics management concepts. Because of their inability to adjust to these new market practices, they risk becoming marginalized in international trade markets.

3. The legal framework: multimodal transport

41. International conventions and legal instruments pertaining to international trade and transport primarily aim at creating a consistent, transparent and predictable legal environment to facilitate trade. They provide governments and the trading community with the necessary tools and standards to improve international trade through the harmonization of applicable laws and regulations as well as the simplification of formalities and procedures. This creates more certainty and enables traders to assess in advance the potential risks and legal exposure involved in a given transaction, and to take the necessary protective measures.

42. While in most areas of international trade and transport law a certain degree of international uniformity has been achieved, in other areas this is still not the case. Multimodal or door-to-door transport is an important example. The exponential growth of container transport has considerably affected modern transport patterns and practices. Shippers and consignees are often interested in dealing with one party (multimodal transport operator or MTO) which arranges for the transportation of goods from door to door and assumes contractual responsibility throughout. In door-to-door transport operations, it is often difficult to identify the stage or mode of transport where a loss, damage or delay in delivery occurs. Under the present regulatory framework, however, both the incidence and the extent of a carrier's liability may depend crucially on (a) whether a loss can be localized and (b) which of a considerable number of potentially applicable rules and/or regulations is considered to be relevant by a court in a given forum.

43. In spite of various attempts to establish a uniform international regime governing liability arising from multimodal transportation, to date no such regime has been established. The United Nations Convention on International Multimodal Transport of Goods, which was adopted in 1980, did not win a sufficient number of ratifications to enter into force. The UNCTAD/ICC Rules for Multimodal Transport Documents, which came into force in January 1992, are a set of standard terms designed for incorporation into commercial contracts. Because of their contractual nature, however, the Rules are subject to any applicable mandatory law and, as a result, are not apt to provide international uniformity of regulation.

44. Thus, the current legal framework consists of a mix of international conventions designed to regulate unimodal carriage (sea, road, rail and air); diverse regional, subregional

⁷ See "The Role of Logistics in Stimulating Economic Development", a paper presented at the Logistics Seminar in Beijing, China, by Marc H. Juhel of the World Bank in November 1999.

and national laws and regulations; and standard term contracts. The proliferation of diverse regional, subregional and national laws and regulations in recent years has resulted in a trend towards further “disunification” at the international level. Although these laws and regulations are to a certain extent based on the Multimodal Transport Convention and the UNCTAD/ICC Rules, there are significant differences on key issues such as the questions of liability, limitation of liability and time bar.⁸

45. Following the recommendations of an Ad Hoc Expert Meeting convened by the UNCTAD Secretary General in November 2001, the secretariat is now conducting a feasibility study to determine whether an international instrument governing liability arising from multimodal transportation would be desirable, acceptable and practicable. It is envisaged that the results of the study will be available early in 2003 and will also assist the deliberations of an UNCITRAL Working Group, which has recently begun consideration of a “Draft Instrument on Transport Law”. The Draft Instrument is primarily designed to govern sea carriage but is proposed to also apply to all multimodal contracts involving a sea leg.

46. The subject is clearly of utmost importance and requires careful consideration by all public- and private-sector entities involved and/or interested in facilitating global international trade.

III. DEVELOPMENT DIMENSION ISSUES

47. Trade facilitation must be considered and implemented as a development factor and not simply as an administrative tool with an impact limited to border-crossing trade operations. It can foster better public capacity to monitor and supervise foreign trade as well as support existing and potential national exporting trading communities. At the same time, the facilitation needs and priorities of countries may differ with regard to the structure of trade, the trading partners involved and the available transport infrastructure and services.

48. Rules on trade facilitation are currently being discussed within the WTO Council of Trade in Goods, with a view to determining the modalities of possible negotiations after the Fifth Session of the Ministerial Conference and identifying the trade facilitation needs and priorities of members.

A. Needs and priorities

49. International trade transactions are bilateral by definition: for a given trade operation, there are always one origin and one destination. Transactions may become simpler or more cumbersome depending on commonalities among trading partners (in particular, cultural, economic and geographical proximity or lack thereof). Being close or far apart entails having more or fewer commonalities. Trade facilitation is all about creating commonalities in standards and practices not only between the trading partners’ respective environments but also between different actors within the same country.

⁸ See the UNCTAD secretariat’s report “Implementation of Multimodal Transport Rules” (UNCTAD/SDTE/TLB/2 and Add. 1).

50. Priorities in implementing trade facilitation measures are therefore usually driven by common interests among trading partners. In most cases, major trading partners are also neighbouring countries, and increasingly neighbours are also becoming associated with a regional integration groupings.

1. Regional frameworks for trade facilitation

51. International trade facilitation basically involves three possible nonexclusive levels:

- (a) *Adoption of equivalent procedures*: Similar procedures and data requirements may be found among partners, but they are undertaken independently; uniform commercial documents are examples of this first level.
- (b) *Adoption of complementary procedures*: At this more advanced level, some of the procedures accomplished in one partner country are recognized and therefore valid in the other(s); the TIR system is an example of this second level.
- (c) *Adoption of integrated or unified procedures*: This occurs within groupings such as the European Union, where Customs clearance procedures undertaken in one country are recognized in the other member States.

52. Currently, trade facilitation is a priority issue in most existing regional groupings. Examples of well-advanced multilateral trade facilitation programmes can be found in the European Union and other regional economic groupings in Latin America, Asia and Africa. Experience shows that regional groupings remain the most successful context for engaging in trade facilitation at the international level.

53. While to a certain extent the development of trade facilitation is speeded up if countries belong to trading blocks, actions at the national level may also ease foreign exchange of goods and services for all trading partners of the concerned nation. For example, Switzerland and Chile have established unilateral solutions benefiting these countries and their trading partners.

54. The ultimate goal of any trade facilitation action is to make it possible to complete an international trade transaction as a one-stage operation, a single, uninterrupted door-to-door physical flow, fully monitored but never interfered in by administrative and financial proceedings agreed to by all concerned actors. Developing countries wishing to establish a trade facilitation programme should therefore take into account the main origins and destinations of their current and planned trade, and define their needs and priorities – when applicable, together with their partners from a given integration grouping.

2. Local public and private partnerships

55. At the national level, needs and priorities are best defined in the context of local trading and transport communities. For this purpose, clusters of interested parties should be created. These clusters should include the private and public sectors, including transport and

terminal operators, freight forwarders, traders, customs administrations and other relevant governmental institutions. The core function of the trade and transport facilitation clusters should be to review major obstacles and possible improvements and establish requirements for efficient trade and transport operations.

56. Facilitation clusters would gather interested parties at the seaport end, at border crossing areas and at main inland destinations/origins of trade and transport operations. Clusters would also serve the purpose of sharing knowledge among members and exchanging information and solutions with associated networked clusters in other locations of the corridor.

57. Single-window arrangements are a good example of a type of trade facilitation cluster. Single-window administrative departments have spread in many countries. In this arrangement, all procedures can start and end in a single and same place. Documentation related to the requirements of different government agencies may be received and checked for validity and consistency in one administrative department before being dispatched to interested parties within governmental offices. Once documentary procedures have been accomplished, final authorization, clearance or permits may effectively be delivered at the same place where they were originally requested. This very simple solution nonetheless requires an organisation that is well equipped both in terms of civil servants' education and in terms of interagency coordination and communication. Private-sector involvement and, particularly, user participation are essential.

3. International cooperative networks

58. In April 2002, following a request from the United Nations Chief Executives Board High Level Committee on Programmes (HLCP), UNCTAD convened the first interagency meeting to identify trade facilitation issues to be effectively addressed in a coordinated manner.

59. Although a very preliminary step, the meeting established contact among the main United Nations agencies dealing with trade facilitation. It agreed to establish a mechanism for sharing knowledge and experiences among participating agencies. It also created a basis for cooperation in providing developing countries with enhanced technical assistance and capacity-building.

60. As trade facilitation measures have been adopted at the national, regional and global levels with contributions from concerned international organizations, these organizations have adjusted their respective roles over the years in differing and complementary ways. Organizations such as UNECE, the International Civil Aviation Organization (ICAO), the International Maritime Organization (IMO), the International Organization for Standardization (ISO) and WCO operate as engineering and development centres for most of the existing international facilitation standards. The World Bank Global Facilitation Partnership is now a well-established focal point for the dissemination of trade-facilitation-related information, as well as a global discussion forum. UNCTAD's technical assistance remains a leading source of effective implementation and development strategies.

61. Developing countries wishing to improve their foreign trade performance now have a wide choice of available instruments and institutional structures. Technical cooperation is certainly an area where multilateral efforts should be coordinated to help developing countries take advantage of each agency's role and competence as part of a knowledge-building, action-oriented machinery.

B. Possible rules on trade facilitation

1. The current situation and foreseen changes

62. According to paragraph 27 of the Doha Ministerial Declaration,⁹ the WTO Council of Trade in Goods will review GATT Articles V, VIII and X and identify the trade facilitation needs and priorities of WTO members. This exercise is aimed at adopting through explicit consensus a decision to start negotiations on a future trade facilitation agreement at the Fifth Ministerial Conference, scheduled to take place in 2003 in Cancún, Mexico.

63. Apart from the GATT rules, however, trade facilitation activities have remained mostly the fruit of voluntary efforts by governmental or private sectors. Mandatory rules are still the exception. Other than in international transport conventions such as the Convention on the Contract for the International Carriage of Goods by Road (CMR) or the Uniform Rules concerning the Contract for International Carriage of Goods by Rail (CIM), which include simplified documentation requirements, most trade facilitation instruments recommend, rather than impose or require, compulsory measures.

64. This situation may change radically in the coming years, if and when trade facilitation rules become part of a multilateral compulsory legal environment for the trading system. This would constitute a major development requiring a considerable effort from those countries where trade facilitation still lags.

65. Without entering into a detailed analysis of the three articles mentioned in paragraph 27, they contain provisions that require members to take basic actions in order to meet their obligations. For example:

- (a) *To comply with Article V*, an administrative system to monitor, without hampering, the free transit of goods may be established.
- (b) *To comply with Article VIII*, a system may be installed to ensure that fees and formalities are applied fairly, on a nondiscriminatory basis.

⁹ "Recognizing the case for further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations. In the period until the Fifth Session, the Council for Trade in Goods shall review and, as appropriate, clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 and identify the trade facilitation needs and priorities of Members, in particular developing and least-developed countries. We commit ourselves to ensuring adequate technical assistance and support for capacity building in this area."

- (c) *To comply with Article X*, it seems appropriate to establish and maintain a public access national trade information system. (Box 1 describes the United States Government's International Trade Data System as an example of such a complex system.)

2. Alternative positions

66. Depending on their level of development and their individual progress in complying with the existing articles, countries may wish to take a position on the general desirability of negotiations, or, alternatively, feel ready to join negotiations under certain modalities. Modalities could include, inter alia, a clear and binding commitment from members to provide the technical assistance and capacity-building programmes required to implement the amended provisions, or the granting of special and differential treatment to give time for the assisted implementation to take place. Negotiating rules on trade facilitation may not be appropriate in view of all the recommendations and standards already available. However, their existence as such would not be a valid reason to refrain from negotiating a new instrument. Rather, their contents should rather be taken into consideration in this process, particularly in view of the fact that they have not been effectively implemented.

67. Indeed, paragraph 27 of the Doha Declaration may offer a first opportunity, though probably not the last one, to discuss, link and hopefully solve some difficult aspects of trade facilitation:

- (a) *Trade facilitation is meant to bring actual benefits to both public administrations and private trading sectors:* While unnecessary obstacles to simpler, freer and less onerous regional or global trade have to disappear, at the same time, public administrations responsible for monitoring foreign trade should become more effective and efficient. This important issue has recently acquired new urgency in light of increased security measures being implemented to counter illegal traffic. Technical assistance and capacity-building programmes resulting from binding arrangements could ensure actual improvement of administrations' performance and lasting solutions serving the public interest.
- (b) *Securing technical and financial resources for implementation:* As a voluntary activity, trade facilitation has been systematically downgraded in the list of priorities for the use of scarce financial resources. The reverse approach should be used in contexts where noncompliance with a rule ends up being more costly than the implementation of the required measures. In situations where binding obligations exist, government must lead the process of change and can ask the private sector to help provide the necessary know-how in international trade and transport operations.

68. Possible mechanisms aimed at avoiding a standstill should be sought for countries wishing to adopt a positive position regarding the negotiation of new trade facilitation rules. The case of Canada and Costa Rica merits particular attention.

69. In April 2001 Canada and Costa Rica signed a Free Trade Agreement (FTA) that includes a whole chapter on trade facilitation.¹⁰ Inter alia, this chapter is intended to make trade procedures more efficient and reduce formalities and costs for Canadian and Costa Rican businesses. It is the first bilateral free trade agreement containing innovative stand-alone provisions on trade facilitation.

70. Both countries agreed to administer their import and export processes for goods traded under this Agreement on the basis of efficient, transparent, predictable procedures based on any international trade instruments or standards to which the Parties have agreed. Essential elements are consultations, cooperation, technical assistance and the exchange of information, including information on best practices, for the purpose of promoting the application of and compliance with the trade facilitation measures agreed upon under this Agreement. In particular, technical cooperation is considered of fundamental importance in facilitating compliance with the obligations set forth in the Agreement and for reaching a greater degree of trade facilitation.

71. The provisions contained in the chapter on trade facilitation could serve as an example of the effective implementation of measures to facilitate trade operations between trading partners. Although the Agreement was designed as a bilateral instrument, aspects of it could probably be adapted and replicated at the regional and multilateral levels.

¹⁰ The text of this agreement can be found at www.dfait-maeci.gc.ca/tna-nac/Costa_Rica_toc-e.asp.

US Government ITDS
Example of a national information system
Complying with GATT 1994 Article X



21st Century System for
Trade and Security

ITDS is a project for the development of a system to collect all information for the US Federal processing of trade that crosses our borders. The ITDS system is being developed to improve trade procedures, trade promotion, trade policy development, and trade statistics to benefit both the Public and the Government.

The International Trade Data System (ITDS) is a federal government information technology initiative (Initiative IT06) of the National Performance Review. The goal of the initiative is to implement an integrated government wide system for the electronic collection, use, and dissemination of international trade data. The ITDS was chartered in September of 1995 under then Vice President Gore's memorandum, "Implementing the International Trade Data System" (September 15, 1995), and was reaffirmed in the Government Information Technology Services Board report, "Access America: Reengineering Through Information Technology" (February 1997).

Initially, a special project office for the ITDS system was established under the Secretary of the Treasury. On November 17, 1999, the ITDS office and its functions and support were transferred to the Customs Service where it is now part of the Office of Information and Technology. A multi-agency board of directors, currently chaired by a representative of the U.S. International Trade Commission, guides the ITDS project.

The ITDS system will facilitate information processing for businesses and the over 100 federal agencies involved in international trade. While Customs current automated processing system, the Automated Commercial System (ACS), is designed to accommodate the needs of some federal agencies, ITDS will be designed to accommodate all agencies that need international trade data, including those agencies not serviced by the current ACS system.

When importing or exporting, trade participants (traders) are required to submit information to appropriate trade agencies to enable agencies to determine, for example, the legal admissibility of imported merchandise, the duty applicable to imported merchandise, the safe or unsafe condition of a truck intended to be used on U.S. highways, or whether food products are safe for consumption. Currently, traders are required to provide this information to each individual trade agency using a variety of different automated systems, a multitude of paper forms, or a combination of systems and forms. The United Nations Conference on Trade and Development (UNCTAD) has estimated that submission of redundant information and preparation of documentation is equal to 4 - 6% of the cost of the merchandise.

With ITDS, traders will submit standard electronic data for imports or exports only once to ITDS. Then, ITDS will distribute this standard data to the pertinent federal agencies that have an interest in the transaction for their selectivity and risk assessment. The ITDS will provide each agency only information that is relevant to its mission. Thus, the ITDS system will serve as a government data collection and distribution facility, a "single window" system through which information necessary to trade transactions can flow efficiently from traders to agencies. Requirements that force traders to submit redundant information to multiple federal agencies will be eliminated. The ITDS system will support the processes of multiple agencies, including data collection, processing, use, dissemination, and storage. In addition to assisting federal government agencies in the processing of import and export transactions, ITDS will provide the framework to collect information on behalf of those agencies and will enable Customs to more effectively assist them in enforcing laws and regulations relating to international trade.

Development of ITDS will be coordinated with the development of the Customs Automated Commercial Environment (ACE), the broader Customs Modernization effort, and the current and future requirements of other agencies' processing systems.

Source: ITDS Background - <http://www.itds.treas.gov/itdsivr.html#ITDS>

IV. THE WAY AHEAD

A. Analysis of problems and possible solutions

72. When a WTO member country, particularly one of the less advanced members, takes obligations in areas of “domestic” regulation or trade processes, meeting these obligations will require changes, including the implementation of new systems and enforcement processes. Stakeholders in the public and private sectors are then very concerned by such implications. Will the proposed WTO rules correctly diagnose the so-called problems affecting trade? Will the proposed rules prescribe an appropriate remedy? What are the costs and expected benefits of supporting these rules? Finally, what funds are available to ensure adequate technical assistance and support for capacity-building in trade facilitation?

73. Answering these questions in qualitative terms is probably possible but cannot necessarily be done very objectively. Providing quantitative answers is surely not an easy task. Indeed, the complexity of international trade, the diversity of the goods traded, and the variety of conditions under which goods are moved, payments transferred and information exchanged among very different trading partners require so many assumptions that any quantitative assessment is probably meaningless.

74. One reasonable approach might be to work on the basis of two trading partners and identify the major class(es) of goods or commodities they are trading. (For example, a class might be considered major in terms of export value or in terms of added value generated at the national level by the export transaction.) For this limited number of classes, the supply chain from producer to consumer could be analysed.

75. This analysis would therefore concentrate its activities on defined trade and transport corridors serving selected goods or commodities. This would make it possible to study and improve the management of supply chains using a sequential approach in which suppliers are the trade and transport support services, and the line of production is the trade operation itself. The “product” of such a line of production is the completed import delivery or export shipment. Methods of measurement would have to be established to identify weak stages or significant cost and delay factors and develop improvement strategies.

76. In such an approach, the quality of the corridor should be measured for the selected goods or commodities, in terms of timeliness or delays incurred, unnecessary costs, and safety (i.e. whether goods are transferred in proper condition to the next agent). The corridor’s throughput could be measured in metric tons or units of the selected goods or commodities; its productivity as throughput in relation to time or cost factors; and its competitiveness by comparing the corridor’s infrastructure and services throughputs and productivity to similar indicators or benchmarks in other regions.

77. Such an analysis would identify essential problems faced by the selected goods along the selected corridors. Appropriate measures could then be taken to solve these problems. Such measures could be taken directly from existing, recognized international best practices

or conventions or adapted – to the extent possible – to the local conditions of the trading partners. In the pilot stage, application of these measures might well be limited to the selected goods in the selected corridors.

78. Taking into account the need to confront security threats, the analysis should aim to develop specific actions to build up a trade and transport facilitation intelligence system based on ICT and techniques such as risk management and selectivity of controls, as well as on partnerships between administrations and private trading and transport sectors.

B. Technical assistance

79. Multilateral cooperative actions should be identified to assess the potential consequences of global rulings on trade facilitation as part of the WTO trading system and the modalities of the implementation of these binding trade facilitation measures in developing countries at the national and regional levels. Possible schemes of cooperation between UNCTAD and WTO should be explored to arrive at a coherent, comprehensive and complementary implementation of technical assistance activities.

80. The scope of technical assistance and capacity-building in the area of trade facilitation should not be reduced to the ongoing discussions on possible negotiations. Such a shortsighted approach would reduce, postpone or even annihilate the possibility for more comprehensive efforts in many developing countries. Technical assistance and capacity-building activities in the post-Doha context might improve the awareness level of actors and negotiators, but they are unlikely to reach the numerous actors in many countries who strive for better trading conditions as a means of surviving in the global economy.

81. New initiatives should focus on the long-term sustainability of capacity-building in developing countries and concentrate on the participation of national and regional private and public entities. “Think global, build local”: Trade facilitation based on standardized international references can be effectively implemented only if the application of such references is tailored to local circumstances such as institutional and human resources capacity, regulatory frameworks and cultural contexts.

82. Unlike traditional technical assistance based almost exclusively on the expertise of foreign specialists, this approach would heavily rely on local and regional experience and know-how. This would allow relevant international standards and recommendations to be enforced in specific environments. This approach is meant to guarantee ownership to beneficiaries and the construction of lasting learning and innovations in trade and transport facilitation structures.

83. A global initiative could be launched that would take advantage of current trends in and widespread knowledge about clusters and their well-proven benefits in creating innovation and learning structures that foster sectoral competitiveness.

84. This initiative, under a name such as CLEAR-Trade, standing for “Community of Like-Minded Enterprises and Administrations to Release Trade”, would link trade facilitation

clusters established by interested parties in trade and transport at the multilateral, regional, national and local levels. Such an initiative could be launched by the United Nations Chief Executives Board through the High-Level Committee on Programmes and would be open to both the private and public sectors as well as to other multilateral, international and regional organizations.

85. UNCTAD could help prepare a work programme and a proposed operating structure for the establishment of CLEAR-Trade. Some governmental agencies with experience in partnership initiatives could make positive contributions to such a proposal.
