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**TRADE FACILITATION AS AN ENGINE FOR DEVELOPMENT**

Note by the UNCTAD secretariat

**Executive Summary**

The need for trade and transport facilitation has increased over the years as a consequence of trends in globalized production, changed trade patterns, logistics developments, and the spread of new technologies. The initiation of negotiations on trade facilitation at the WTO has also pushed the issue to the forefront of the development agenda of most developing countries. Prior to programming the implementation of specific trade and transport facilitation measures, developing countries and their development partners should identify particular trade and transport facilitation needs and priorities. What is needed is a clear perception of which among the possible facilitation tools are relevant under given circumstances, along with a clear understanding of the costs and benefits and the time line of their implementation. As regards the implementation of future commitments under GATT Articles V, VIII and X, Annex D of the WTO July Package provides for clear linkages between the needs and priorities of members, technical assistance and capacity building, and special and differential treatment. It will be necessary to assess the capacities of developing countries and LDCs to implement the measures and to formulate country-specific technical assistance programmes that would warrant implementation capacity and ensure full benefit from facilitation measures.

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## A. Introduction

1. During the past few decades, global trade in goods has grown two and a half times as fast as world output. This trade increasingly includes components and unfinished products that are used in the production of goods and services. Producers and traders therefore need to rely on fast, reliable and frequent logistics services, which in turn can only materialize in a trade- and transport-facilitating environment.

2. Long waiting times at border crossings or at ports, inappropriate fees or cumbersome formalities, as well as inadequate or unclear trade and transport rules and regulations, can all become serious obstacles to trade, and as a consequence adversely affect investment and the creation of employment. Developing countries depend on effective trade facilitation for their development process. They will only benefit from trade-led development, including increased exports of manufactured goods and more South-South trade, if their imports and exports are not confronted with excessive transaction costs, uncertainty and delays.

3. On 1 August 2004, negotiations on trade facilitation were included in the World Trade Organization's General Council Decision, the so-called "July Package". WTO Members have since then started a negotiating process on trade facilitation with a focus on the improvement of GATT 1994 Articles V, VIII and X, which deal respectively with transit issues, fees and formalities for imports and exports, and the transparency of trade procedures. The inclusion of trade facilitation in the negotiations at the WTO has pushed the issue to the forefront of the development agenda of most developing countries.

4. The Commission on Enterprise, Business Facilitation and Development, at its ninth session, held in Geneva in February 2005, agreed that an Expert Meeting be held on the topic of "Trade facilitation as an engine for development". This note aims at providing background information for this Expert Meeting by presenting the broader development context of trade and transport facilitation. It consists of three parts:

- Part B looks into the linkages between trade and transport facilitation and the development process. It looks at trends in international trade and logistics, trade and transport facilitation as part of a general structural change, and the need for financial and technical assistance and capacity building.
- Part C discusses the identification of needs and priorities, the process of assessing them and the relevance of such an exercise in defining trade and transport facilitation programmes from a national trade policy perspective and in view of the current negotiation process in WTO.
- Part D deals with the work of the Negotiating Group on Trade Facilitation and highlights proposals related to GATT Articles V, VIII and X, some of their common features, and the proposals that focus particularly on the modalities included in Annex D to the July Package.

## **B. Trade and transport facilitation and development**

### **Trends in international trade and logistics**

5. Trade and transport facilitation is of increasing relevance for developing countries to reap the benefits from the opportunities of global production and changing trade patterns. Globalized production processes go hand in hand with a growing share of intra-company trade and trade in components and unfinished products. Countries with inadequate trade and transport facilitation will not attract the necessary investment to participate in this process. Moreover, not all developing and least developed countries are so far benefiting from the “new geography of trade”, which generally implies higher exports of manufactured goods from developing countries as well as a growing share of South-South trade. Long waiting times at border crossings or at ports, inappropriate fees or formalities, as well as unclear trade and transport rules and regulations, are among the main obstacles for those countries that are not yet participating in the new trade geography.

6. International trade and transportation takes place within a complex framework of legislation, rules and standards. Ideally, this framework should facilitate cross-border interaction but, in many respects, this is not the case. In some areas, such as multimodal transport liability, there is a lack of internationally uniform rules and standards, which exacerbates the complexity of the legal framework. In other areas, internationally uniform rules and standards exist, but implementation at the national level is inadequate. In many cases, applicable rules and standards lack transparency.

7. Containerization, in particular, facilitates multimodal door-to-door transport services. Since 1985, global port container moves have grown sevenfold, yet many landlocked IDCs are still being served mostly by non-containerized transport services. This situation is mainly the consequence of poor infrastructure, high risks, and the additional costs involved in transit trade. By the same token, information and communication technologies are also being used ever more in international trade and logistics operations. However, the use of outdated technologies for Customs and other trade procedures, or the duplication of data entry requirements, neutralizes any modernization efforts by logistics operators; an international supply chain is only as good as its weakest link.

8. Within global logistics expenditures, the share of transport is going up, whereas the share of inventory holding is going down. For the United States, for example, in 1980, expenditure on inventory holding still represented a larger share of the total than expenditure on transport, whereas in 2002, expenditure on transport was 90 per cent higher than inventory holding. This trend also applies to international trade, which goes hand in hand with faster, more frequent and more reliable transport services. Lengthy Customs and other procedures at border crossings or ports effectively prevent any time-sensitive trade or foreign direct investment that would require timely deliveries.

9. Several recent studies have shown that the “cost of time” has been growing over the last decades.<sup>1</sup> This cost of time in fact goes beyond the cost of inventory holding. It includes not only capital costs, but also the costs associated with maintenance, deterioration in quality, or even total loss if goods are perishable or if the consignment arrives too late for a specific date or purpose. Expenditure on transport, too, will obviously rise if vessels, trucks, containers and

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<sup>1</sup> See, for example, David Hummels, “Time as a trade barrier”, Purdue University, 2000. The study concluded that the cost of each day of delays is, on average, equivalent to roughly 0.5 per cent of the good’s value.

drivers need to be paid for over longer periods. Given the trend towards shorter product cycles, ever more sophisticated goods and expensive transport equipment, the effective costs of each day of delay are bound to continue to grow, and so is the need for trade and transport facilitation.

### **Trade and transport facilitation as part of structural change**

10. If there exists such a convincing and ever-increasing need for trade and transport facilitation, it could be asked why there still are such noticeable differences between countries regarding the implementation of trade and transport facilitation measures. Perhaps the broadest possible explanation is the fact that trade and transport facilitation has to be seen as part of the general development process of a country and the structural change of its economy. Such change implies costs, and it takes time.

11. Generally speaking, structural change refers to a shift of employment from one sector to another, for example from agricultural employment to employment in industry, from industry to services, from one region to another, or from unskilled to skilled labour. Structural change is a continuous process that follows technological change as well as the advancement of international economic integration and specialization.

12. The introduction of new technologies and the streamlining of trade procedures will generally require and promote the development of human skills. It is likely to reduce the number of jobs in some areas and create employment opportunities in others. In the case of import and export procedures, Customs automation and the streamlining of processes at entry and exit points may effectively reduce direct employment at borders or ports, including even in service areas such as hostels and other provisions for waiting truck drivers. At the same time, it is a necessary condition for the creation of new employment opportunities in agriculture, industry or services where previously production was uneconomic due to high transport and inventory costs, which were the consequence of delays and unpredictability of deliveries.

13. For trade and transport facilitation to lead to the desired effect of trade promotion, it will usually need to be accompanied by other measures such as investment in transport infrastructure, capacity building, and the modernization of the banking system to provide the necessary financial services for foreign trade operations. For trade promotion to have the desired effect of employment creation and poverty reduction it will usually have to be accompanied by broad structural change in a country's economy, the analysis of which goes beyond the scope of this issues note. Trade and transport facilitation on its own is not a sufficient condition to achieve structural change; it is however a necessary condition, without which employment shifts to new industries and export-led economic growth will not materialize.

### **Interrelationships between trade and transport facilitation and development**

14. As explained above, efficient trade procedures are a necessary condition for structural change and development. At the same time, trade and transport facilitation is usually easier to achieve in developed countries than in developing countries and LDCs. There thus exists a dynamic relation between both; trade and transport facilitation and development mutually benefit each other.

15. The use of information and communication technologies (ICTs) in a given country benefits from and helps to introduce trade and transport facilitation measures. If the level of

ICTs used by traders and logistics operators is high, this can also encourage the use of modern technologies at ports and border crossings. At the same time, the introduction of new ICTs by the public sector can encourage its extension to private traders and producers in developing countries. An example of this is the expanded use of the Internet by smaller and medium-size traders after the introduction of a single window for exporters in Guatemala.<sup>2</sup>

16. In many cases, the motivation to introduce specific trade facilitation measures comes as a response to complaints from domestic stakeholders. Producers, shippers or even consumers request faster, less costly or more reliable border procedures. The extent to which the public sector can and will react to such requests depends on its financial, technical and human capacities and on its responsiveness to public pressures. The general responsiveness is related to the functioning of democratic institutions and good governance. Hence, again there exists a relationship where transparent and clear border procedures contribute to good governance, just as a positive response to requests for reform benefits from good governance.

### **A coherent approach to trade and transport facilitation**

17. At the national level, trade and transport facilitation has two main components. The first is simplification, i.e. the elimination of unnecessary elements and duplication in formalities, processes and procedures. The second is alignment of national laws, procedures and documents with international conventions, standards and practices. This latter component not only benefits the country itself, but also increases the global application of international conventions, standards and practices, making them more effective. It thus contributes to the process of global standardization, i.e. the application of internationally agreed uniform rules, practices and procedures, documents and information.

18. Trade and transport facilitation is not about trade-offs, i.e. it should not be a question of promoting trade *versus* ensuring adequate controls by public entities in the areas of Customs, security, safety, health, immigration etc. Such trade-offs are rather a question of the importance a country attaches to trade promotion *versus* possibly conflicting safety or security considerations. Successful trade and transport facilitation will promote legitimate trade and maintain at least the same levels of control, or it will improve the quality of controls without implying additional hurdles to trade. By way of example, the implementation of risk management will reduce the number of necessary physical inspections, i.e. it will promote trade, and at the same time it will increase the likelihood of detecting cargo or vehicles that do not comply with the rules and regulations. Trade and transport facilitation should lead to “win/win” situations, and the challenge for policymakers is to identify and seize win/win opportunities.

19. Transport security, in particular, has become a matter of central concern, and a number of measures have been introduced at the national, regional and international level. In this respect, it is clearly important to seek to take appropriate and necessary security measures, which are “least disruptive of normal trade and related practices”<sup>3</sup> and which facilitate international trade.

20. Any specific trade and transport facilitation measure initially implies a financial investment and capacity building. Often, it also requires important institutional changes. The specific costs depend on the size and scope of the undertaking, as well as on the given

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<sup>2</sup> See, for example, UNCTAD, “The establishment and operation of an electronic single window: Case study of Guatemala”, UNCTAD/SDTE/TLB/MISC/2004/5, February 2005.

<sup>3</sup> GA resolution 58/197.

situation at the outset of the reforms. In many developing countries and LDCs, financial and technical assistance is a precondition for most specific trade and transport facilitation measures. Although in principle any investment in trade and transport facilitation should pay off in the medium term, institutional reform, capacity building, and the introduction of ICTs all require an initial effort which for many developing countries and LDCs is impossible to master without support from development partners. Equally important, prior to programming the implementation of specific measures, developing countries and their development partners need to identify the particular trade and transport facilitation needs and priorities.

### **C. Needs and priorities**

#### **International terms, tailored implementation**

21. Trade and transport facilitation tools have developed over more than 40 years and have brought a large number of solutions fashioned as international instruments, recommendations or “best practices”. They touch upon a wide variety of issues that range from standard trade and transport documentation to Customs, port operation or banking procedures. They also address electronic information processing and transmission requirements. These tools have been agreed on to meet the requirements of the trading community and governmental institutions. They aim at the adoption of cost- and time-effective, transparent and predictable, administrative and commercial, international trade and transport procedures. Nowadays, they can even be found embedded in ready-to-run information and communication packages. Thus, trade and transport facilitation solutions now form a comprehensive corpus of recommended measures that have proved very successful wherever the proper environment and adequate technical and financial resources have been provided.

22. While there is no obvious reason preventing all trading nations from taking advantage of such progress to reduce formal barriers to their trade, experience shows that not all countries are on an equal footing in terms of trade and transport facilitation readiness. One explanation for the still limited implementation of available solutions may be found in the absence of a clear perception about which among existing facilitation tools are relevant for a given circumstance. Often also lacking is a clear understanding of the costs and benefits, as well as the time line, of their implementation, a reason good enough in many situations to prevent the first step from being taken.

23. In most cases, a combination of regulatory reforms and operational improvements will be necessary. In some other cases, the use of information systems might also be required. But in all cases, none of the available solutions will be easy to choose and implement if the context for their operation and the obstacles to be overcome are not also clearly understood and delimited. It therefore seems logical that, in deciding on appropriate remedial actions to surmount operational and regulatory weaknesses, it is first necessary to establish the context and the objectives, i.e. the priorities of national trade.

24. Trade priorities usually stem from the current international trade patterns of the country, including trading partners, major products traded, trade routes and operators. In such a context, only those trade and transport facilitation actions intended to serve—to facilitate—the country's trade will need to be applied. In other words, among all available solutions applied at the international level, only the necessary ones should be made part of a trade and transport facilitation programme tailored to a country's trade priorities. For example, if road transport accounts for 60 per cent of trade, then land border posts will naturally be of crucial importance and be given primary attention, particularly in the case of landlocked countries

for which these border posts are vital, and any facilitation programme should always first address land border crossing issues.

25. Trade patterns are also influenced by formal obligations assumed by the country as part of a multilateral agreement or as a member of a given regional grouping. This is of course the case with WTO members concerning current or future GATT 1994 articles and existing separate agreements dealing with non-tariff barriers to trade. But not all undertakings will have the same bearing on the trade and transport facilitation programme of a given country. An example can be found in the WTO agreement on pre-shipment inspection (PSI), which will only matter to those Members either having a national PSI scheme in place or dealing with PSI-using trade partners.

### **A structured process**

26. The process of defining trade and transport facilitation needs and priorities may follow a clear-cut sequence in which trade is the priority to be pursued and obstacles and corresponding remedial actions become the facilitation needs to cater for. Once needs and priorities have been defined, the remaining step consists logically in designing the institutional framework and concrete appropriate action. This will be done at the plan and project formulation stage. This sequence and the details of each stage are developed below.

#### *1. Trade baseline analysis*

27. The establishment of the “priorities” of the national trade facilitation programme can start with a review of major trading partners, namely regional or relatively close neighbours, as well as overseas partners; major traded products; and existing trading infrastructures, i.e. trade support services, transport infrastructure, and production and distribution services. The prevailing regulatory framework is of central importance, including the role and operating mode of governmental agencies responsible for trade and transport controls and applicable regulations. Finally, the context assessment process will have to look at binding trade and transport agreements that define bilateral, regional and multilateral undertakings and their bearing on trade and transport functioning.

28. Next, an analysis of trade and transport operations will have to be conducted to examine the logistics channels of selected products exchanged with major trade partners. This will lead to a practical understanding of how transport services, port operations, infrastructure facilities, applied ICT solutions, commercial practices such as banking and insurance, customs and other administrative procedures and documentation contribute to transit times and costs.

29. For those requirements derived from mandatory international instruments, such as those of the WTO, the review will make it possible to identify and measure the gap between the concrete requirements of a rule and the actual capacity of the country to comply with it. For that to happen though, the rule must be known. In the case of trade patterns analysis, the initial situation is determined by actual cross-border flows of goods, but in the case of the current WTO negotiating process, countries would have to define their needs and priorities in respect of rules that have not yet been spelt out or agreed upon.

#### *2. Obstacles and remedial actions identification*

30. Once trade patterns have been detailed, including descriptions of the mechanisms of trade operations along with their corresponding cost and times, it will be possible to review these operations to categorize the main obstacles they face and identify possible remedial

actions. Concretely, this second stage of the process is aimed at determining what goes wrong in trading system channels, where the hindrances are, and who or what is responsible for the problems. In order to assess the relevance of each problem and consequently the appropriate solutions, it will be necessary to use key performance indicators to estimate costs and times for both the problems and the solutions.

31. The evaluation of both problems and solutions and the responsible factors will provide a general idea for selecting the type and sequence of actions to be included in the plan and project formulation process. These actions will generate the country's needs as to trade and transport facilitation. The suggested approach here consists in examining the trade distribution channels for selected products making use of proven methodologies, notably the Trade Facilitation Audit Methodology developed by the World Bank and self assessment tools developed by the World Customs Organisation. Private sector supply management techniques will also be of help for this flaw identification stage.

### *3. Plan and project design and implementation*

32. This is the last stage of the process. It will lead to concrete formulation of the ways and means to implement the remedial actions identified in the second part of the assessment. Once the decision has been taken as to what to do, it is then necessary to decide who will do it, when, and how, and with what human, institutional, technical and financial resources. The design of institutional arrangements for plan and project formulation and implementation is crucial at this stage. As experience shows, and Annex D of the July Package rightly points out, close cooperation among different institutions, both private and public, is central to avoid conflicts of interests and exploit potential synergies. The design of trade and transport facilitation programmes should therefore take into account the benefits of such cooperation and propose solutions for the creation of lasting and evolving collaborative structures.

33. The design and implementation of specific projects, such as those for Customs automation, transit transport arrangements, or port operation improvement, will determine the requirements in terms of technical assistance and capacity building. They will also establish clearly the cost and the time required to complete these projects and therefore to be able to actually facilitate trade and transport operations.

34. In the WTO process, the implementation planning stage can be fundamental, as it will determine the special and differentiation treatment required in order to reach full capacity to comply with a rule. The actual development of the capacity to fulfil the obligations of WTO rules on trade facilitation should be seen as both the only way for developing Members to benefit fully from agreed trade facilitation measures and for the rule to be effective in promoting international trade. The WTO offers a unique context for international cooperation among trading partners to achieve these two objectives through technical assistance and capacity building that can be established in a multilateral agreement.

### **Core objectives of a national trade and transport facilitation programme**

35. Congruent with this rationale, and considering the many available solutions existing beyond the sphere of the WTO, one of the objectives of any trade facilitation programme and related sectoral projects should be compliance with agreed international facilitation practices. This can be achieved by aligning national trade and transport practices with international standards or harmonizing and simplifying trade and transport documents. This is one way in which a tailored approach can contribute to a common and more predictable environment for international trade operations.

36. Other national objectives include of course enhancing international trade competitiveness by lowering trade transaction costs and improving the speed and reliability of goods transport and delivery, and by improving the administrative performance of governmental agencies by means of capacity building, institutional development through such techniques as single window solutions, technological development including making extensive use of ICTs to improve import/export management, customs procedures based on risk evaluation techniques, pre-arrival processing, post-clearance audits, etc.

37. As mentioned above, trade and transport facilitation activities provide an excellent opportunity for joint efforts in trade and transport communities, which typically include shipping lines, customs brokers, freight forwarders, traders and shippers, but also customs administrations and other relevant governmental institutions. Thus, trade and transport facilitation programmes offer an ideal environment to build public/private partnerships (PPPs) that promote greater cooperation between traders and customs or among governmental agencies — single windows — and contribute to efficient technology transfer through the participation of private enterprises in administrative projects. PPPs are thus both a means and a major objective of trade and transport facilitation programmes. Because they involve all stakeholders, PPPs ease participative reforms in the transport sector and trade support services. They are also required to adapt and successfully implement internationally agreed recommendations tailored to local institutional capacities, regulatory frameworks and cultural contexts. Finally, PPPs ensure concrete ownership of solutions by all contributing sectors gathered in lasting trade and transport facilitation cooperative platforms.

### **Scope and time line of trade and transport facilitation programmes**

38. If the evolution of recommended facilitation practices, stemming from the experience in developed countries, can be taken as a model, then it would appear that the lifespan of facilitation processes in developing countries can be expected to last for several decades. Even considering that available technology and the fact that no country would actually start from scratch would certainly shorten effective implementation times, it cannot reasonably be expected that in the short or medium term most trading nations would be on a par. Trade and transport facilitation programmes should therefore be considered long-term efforts to build a national capacity to design and implement national solutions based on self-assessed needs and priorities and aimed at complying with existing international standards.

39. As to scope of application, trade and transport facilitation measures are intended to address the whole spectrum of operational, regulatory, managerial and technological obstacles that hinder efficient international trade and transport. This is a perspective that goes well beyond the limited scope of the provisions of the three articles of the GATT under consideration, or even that of the proposals for improvement.

40. In the current WTO negotiating process, intended to “review and as appropriate, clarify and improve relevant aspects of articles V, VIII and X of the GATT 1994”, it therefore seems appropriate to examine the merit of a given proposal in the perspective of the capacity of developing Members to implement it, taking into account long-term technical assistance and capacity-building needs.

## D. GATT articles V, VIII and X

### From Singapore to the July Package

41. At the Singapore Ministerial Conference in 1996, the WTO Council for Trade in Goods (CTG) decided to undertake an assessment of the scope for WTO Rules concerning the simplification of trade procedures. This assessment indicated that, in many countries, international trade was hindered by national trading environments characterized by:

- A lack of transparency in respect of the implementation of import and export formalities, procedures and related documents, resulting in excessive formalities for traders, and inadequate or outdated administrative procedures requiring disproportionate information;
- A lack of automation and insignificant use of information technology;
- A lack of modernization of and cooperation among Customs and other government agencies, which thwarts efforts to deal effectively with increased trade flows.

42. Practical and remedial actions clearly pointed to the core of the main trade facilitation principles that are mentioned either in deliberations or in literature on trade facilitation:<sup>4</sup> transparency, predictability and non-discrimination; simplification, harmonization and standardization of formalities, procedures and documents; but also due process, consultation and cooperation in the implementation of the same. It also emerged from the work of the CTG that trade facilitation measures should not be limited to facilitating border crossing, but should also expedite the movement of goods through the efficient operation of transport modes and interface facilities.

43. In their Declaration at the Fourth Session of the WTO Ministerial Conference in Doha,<sup>5</sup> Members of the WTO agreed to "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" and committed themselves to providing their support for technical assistance and capacity building on trade facilitation.

44. In the process of preparing for the Cancún Ministerial Conference (September 2003), a number of countries made a proposal to include trade facilitation in the WTO Agreements. As the Cancún meeting remained inconclusive, the WTO General Council, in its Decision dated 1 August 2004, agreed to take action regarding trade facilitation.<sup>6</sup>

45. The so-called "July Package" retained trade facilitation as the sole "Singapore issue" forming a major element of the Decision. Paragraph 1(g) contains the decision of the General Council to commence negotiations on the basis of the modalities set out in Annex D. This Annex clarifies issues contained in paragraph 27 of the Doha Ministerial Declaration and takes into account some of the major concerns of developing countries, particularly the least developed among them. It recognizes the need for special and differential treatment beyond the granting of transition periods, taking into account countries' implementation capacities. Over and above this, LDCs will only be required to undertake commitments consistent with their development, needs and capabilities.

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<sup>4</sup> "Possible linkages between trade facilitation principles, measures, potential benefits and trade-related technical assistance and capacity-building", a contribution from Canada, document G/C/W/448 (10 March 2003).

<sup>5</sup> WT/MIN(01)/DEC/W/1, 14 November 2001.

<sup>6</sup> See paragraph 1(g) and Annex D of document "Doha Work Programme, General Council Decision of 31 July 2004" (sometimes referred as the "WTO July Package"), WT/L/579, 1 August 2004.

46. The Annex goes at length into the issue of the need for technical assistance for developing countries and LDCs. In this context, it also recognizes the technical assistance and capacity-building activities of UNCTAD and requests member States to invite international organizations (specifically IMF, OECD, UNCTAD, WCO and the World Bank) to undertake collaborative efforts in the provision of technical assistance.

47. It is interesting to note that, while in previous texts, including the Doha Declaration, the issue of support for developing countries was dealt with in relatively abstract terms, Annex D and in particular paragraph 5 and 6 thereof contain more concrete obligations for donor countries. At the same time, the text accepts that, without such assistance and consequently without implementation capacity, developing countries may not be required to implement commitments resulting from negotiations. Support and assistance are to be extended during negotiations, as well as in the implementation phase. Such support and assistance are essential, as it appears that there is still a need to create the necessary awareness on trade facilitation issues in terms of substantive understanding and assessment of the economic impact of possible commitments.

### **Work under the Negotiating Group on Trade Facilitation**

48. The Negotiating Group on Trade Facilitation (NGTF), established by the CTG as mandated in paragraph 10 of Annex D, has scheduled six meetings<sup>7</sup> in addition to its launching meeting on 15 November 2004. At the time of its fifth meeting, a total of 47 documents had been submitted, of which six by the WTO secretariat, one by the WCO secretariat and 40 by WTO Members. Of these 40 proposals, seven were of a general nature; five were specific to Article V, 14 to Article VIII, and 11 to Article X; two covered both Articles VIII and X; and one covered the three articles.<sup>8</sup> Without entering into a detailed analysis of the specific proposals and of the discussions generated by these proposals, the issues addressed converge towards a broad range of measures aimed at:

- (a) The application of WTO/GATT core principles to official trade procedures: transparency (availability of information, predictability, establishment of local inquiry point, due process); non-discrimination between consignments and traders based on the application of objective criteria and controls; and the principle of "proportionality", i.e. that control measures be both for legitimate purposes and as little trade-restrictive as possible;
- (b) Adhesion and adaptation to international standards to simplify trade transactions;
- (c) The modernization and simplification of Customs and other government agency procedures. This third set implies notably:
  - (i) Simplification and reduction of trade data and documentation requirements, and their alignment with international standards;
  - (ii) Reform of customs legislation and procedures: new customs techniques such as risk assessment, post entry audit and simplified procedures for authorized traders with a good track record of compliance;

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<sup>7</sup> 22-23 November 2004; 7-8 February 2005; 22-23 March 2005; 2-3 May 2005; 13-14 June 2005; and 25-26 July 2005.

<sup>8</sup> See the compilation prepared by the WTO secretariat for the June session of the NGTF: "Clarification and Improvement of GATT Articles V, VIII and X: Proposals made by WTO Members" (WTO document NT/TF/W/43), 3 June 2005. During that session, Members submitted eight additional documents, of which seven addressed clarification and improvement of the articles (NT/TF/W/40; NT/TF/W/42; and NT/TF/W/44 to W/48) and one addressed the links between the elements of Annex D (NT/TF/W/43).

- (iii) "Single windows": establishment of the principle that submission of data or other information for either export or import be one-time only and to a single agency (normally Customs or a trade department), which will then ensure onward transmission of data to other relevant agencies;
- (iv) Streamlining of customs procedures for low-value shipments or express shipments;
- (v) Where automated systems are in place, introduction of remote filing and local clearance facilities: introduction by individual administrations of systems permitting the filing of customs and other documents at a location different from the port of export or arrival of the goods; electronic payment of tariffs and duties.

49. The following sections refer to some specific issues highlighted in the proposals related to the Articles, to some of their common features, and to the few proposals that focused particularly on the modalities included in Annex D, namely: needs and priorities; technical assistance and support for capacity building; and special and differential treatment.

### **Features of Article V**

50. The clarification and improvement of Article V focus particularly on transit issues. Proposals are concerned with transit operations (e.g. "the routes most convenient for international transit"), as well as possible discrimination related to, inter alia, means of transport, fees and charges, delays and restrictions. Proposals on this article include:<sup>9</sup>

- Strengthened non-discrimination;
- Disciplines on fees and charges;
- Disciplines on transit formalities and documentation requirements;
- Improved coordination and cooperation;
- Operationalization and clarification of terms.

51. Regarding the specific problems of landlocked developing countries, discussions within the NGTF address the issue of how the clarification and improvement of GATT Article V should be best addressed in conjunction with proposals concerning GATT Articles VIII and X.<sup>10</sup>

### **Features of Article VIII**

52. Clarification and improvement of Article VIII have attracted particular attention among WTO members. Most of the proposals aim at increased transparency through the simplification of formalities and administrative procedures, the simplification of documents, and the corresponding automation. Some of the measures under this Article cover aspects pertinent to Article X (e.g. publication of fees and charges); others are equally applicable to transit issues (e.g. simplification of border-crossing procedures for transit or use of international standards). Proposals on this article include:<sup>11</sup>

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<sup>9</sup> Ibid.

<sup>10</sup> WTO document TN/TF/W/35, 29 April 2005.

<sup>11</sup> For details on the measures covered in these proposals, see the compilation prepared by the WTO secretariat for the June session of the NGTF: "*Clarification and Improvement of GATT Articles V, VIII and X: Proposals made by WTO Members*" (WTO document NT/TF/W/43), 3 June 2005.

- General disciplines on fees and charges imposed on, or in connection with, importation and exportation;
- Reduction/minimization of the number and diversity of fees/charges;
- Disciplines on formalities and documentation requirements connected with importation and exportation;
- Prohibition of consular transaction requirements;
- Coordination of activities and requirements of all border agencies;
- Expedited release and clearance of goods;
- Establishment and publication of average release and clearance times;
- Objective criteria for tariff classification.

### **Features of Article X**

53. The proposals on clarification and improvement of Article X would essentially result in greater transparency and better governance. They would induce Member countries to provide a more predictable trade environment that would benefit local traders as well as their international trade partners. This may consequently stimulate foreign direct investment. Proposals on this article include:<sup>12</sup>

- Publication of trade regulations;
- Publication of penalty provisions;
- Internet publication;
- Notification of trade regulations;
- Establishment of enquiry points, single national focal points, information centres;
- Intervals between publication and entry into force;
- Prior consultation and commenting on new and amended rules;
- Information on policy objectives sought;
- Provision of advance rulings;
- Right of appeal;
- Release of goods in event of appeal;
- Uniform administration of trade regulations;
- Maintenance of integrity among officials.

54. While the WTO principle of transparency is the common denominator for these proposals, NGTF discussions demonstrated that a number of practical issues remain to be solved. These issues include, inter alia: the language to be used in the publication of trade regulations; the timely availability of the publication; and the legal value of translated publications. Another example regarding the simplification and reduction of documents is the use of the WCO's simplified dataset as a basic reference standard. While desirable, it may prove to be difficult for Member countries to move immediately to such minimum requirements.

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<sup>12</sup> Ibid.

### **Some common features in the clarification and improvement of the three articles**

55. A number of proposals rely on a capacity to use information and communications technology (ICT). This capacity may not be readily available in developing countries, a situation that may affect implementation of obligations and require technical assistance.

56. Similarly, a number of proposals refer to measures that require a high level of networking between different agencies in technical terms (e.g. use of ICT for a “single window” facility), as well as in institutional and infrastructure terms (e.g. joint border-crossing operations). This level of networking would require both technical and financial assistance to put in place the required technical and/or institutional mechanisms.

57. In this context, clarification and improvement of Articles V and VIII point to similar measures since, at the time cargo is crossing a border, some of the procedures applicable to an importation operation, an exportation operation or a transit operation may be similar.

### **Other important issues related to identification of needs and priorities, technical assistance and support for capacity building, and special and differential treatment**

58. In addition to the submission of specific proposals on how to clarify and improve GATT Articles V, VIII and X, Members have also addressed issues related to the scope of the negotiations, trade facilitation needs and priorities, cost implications, special and differential treatment, and inter-agency cooperation.

59. The most commonly shared feature of the documents submitted at the sessions of the NGTF consists in their identification of specific problems and the suggestion of practical ways to improve the relevant elements of Articles V, VIII and X of the GATT 1994 and enhance their effectiveness. Furthermore, the documents reflect the fact that technical assistance and support for capacity building are an indispensable element for the effective implementation of the measures proposed. However, the relationship between implementation of the measures and identification of needs and priorities, technical assistance and support for capacity building, and special and differential treatment remains to be clarified.

60. At the June session of the NGTF, a large group of countries submitted a document<sup>13</sup> recalling that the modalities of Annex D establish links and conditions with regard to rules, the identification of the needs and priorities of Members and technical assistance and capacity-building, each of these elements being interrelated while at the same time being linked to special and differential treatment. The links and conditions concerned are the following:

- (a) “The *scope of the commitments* must be commensurate with the *capacity for implementation* of developing and least developed countries (paragraph 2 of Annex D).
- (b) The *capacity for implementation* of the new commitments, particularly in the case of developing and least developed countries, shall be determined in accordance with their *trade facilitation needs and priorities* (paragraph 4 of Annex D).
- (c) *Technical assistance and capacity-building* should help developing and least developed countries to *implement the commitments* resulting from the negotiations (paragraphs 5 and 6 of Annex D).”

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<sup>13</sup> “Links between the elements of Annex D”, WTO document TN/TF/41, 2 June 2005.

61. The document furthermore stresses that “special and differential treatment should be made subject to longer time-frames than the customary transition periods, so as to ensure a cross-cutting interrelationship with the elements referred to above.”

62. Although this document may be interpreted as a reminder of the modalities established in Annex D, it highlights the fact that Annex D offers Members an unprecedented opportunity to deal with the “links, relationships and synergies” between the elements mentioned above in parallel with the process of clarification and improvement of Articles V, VIII and X of the GATT 1994, an opportunity “that could make a significant contribution to the progress of the negotiations” on trade facilitation.

### **E. The way forward**

63. The need for trade and transport facilitation has increased over the years as a consequence of trends in globalized production, changed trade patterns, logistics developments, and the spread of new technologies. The initiation of negotiations on trade facilitation at the WTO, too, has pushed the issue to the forefront of the development agenda of most developing countries.

64. To be fully effective and to contribute to a country’s development process, trade and transport facilitation initiatives should be commensurate, in terms of implementation time and scope, with the achievement of national trade objectives. Human, technical and financial resources should be planned, and as far as possible secured, for long-term and broad activities designed to ensure effective implementation of the initiatives.

65. Prior to programming the implementation of specific trade and transport facilitation measures, developing countries and their development partners need to identify particular trade and transport facilitation needs and priorities. What is needed is a clear perception of which among the possible facilitation tools are relevant under given circumstances, along with a clear understanding of the costs and benefits and the time line of their implementation. Needs and priorities assessment will help in identifying problems and appropriate remedial actions, as well as specific projects to put the remedies in place. This assessment will also define the calendar and the type and quantity of resources required for the implementation process. Planning a facilitation programme, and detailing its pace and all its individual stages, is important to ensure that trade and transport facilitation becomes an engine for development.

66. As regards the implementation of future commitments under GATT Articles V, VIII and X, the modalities established in Annex D of the July Package also provide a unique chance for developing and least developed countries to implement current and most advanced administrative procedures without being under any obligation until they reach full compliance capacity. In this context, they should have access to assistance from more advanced countries. Trade and transport facilitation programmes can be fed by and benefit from future WTO rules. This is an opportunity to be seized.