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## A Positive Agenda For Africa In Trade Facilitation Negotiations

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## I. INTRODUCTION

Over the last decade the importance of Trade Facilitation has increased dramatically. According to the UN Conference on Trade and Development (UNCTAD), 'the average customs transaction involves 20-30 different parties, 40 documents, 200 data elements (30 of which are repeated at least 30 times) and the re-keying of 60-70% of all data at least once.'<sup>1</sup> It is, therefore, argued that TF measures can reduce transaction costs by up to 15 percent.<sup>2</sup>

Trade facilitation (hereafter TF) is generally defined as: 'the simplification and harmonization of international 'trade procedures', with trade procedures being the 'activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade.'<sup>3</sup> This definition relates to a wide range of activities such as import and export procedures (e.g. customs or licensing procedures); transport formalities; payments, insurance, and other financial requirements. TF can thus range from the logistics of moving goods through borders to much broader concerns such as the harmonization of standards, corrupt regulatory practices, industrial services (i.e. advertising and warehousing), and public services such as reliable electricity and telephones and telecommunication.

As part of the WTO's 'July Package' agreed in July 2004, the WTO General Council decided to commence negotiations on TF with a specific undertaking to clarify and improve existing WTO provisions with a view to further expediting the movement, release and clearance of goods, including goods in transit. The provisions focus on:

- Increasing the transparency of trade regulations (GATT Article X);
- Simplifying, standardizing and modernizing import, export and customs procedures (GATT Article VIII); and
- Improving the conditions for transit (GATT Article V).

Annex D (See Appendix A) of the July Package sets out the modalities for negotiations. The question now is what position should African countries take vis-à-vis these negotiations, given the importance of TF. This paper argues that Africa countries should approach these negotiations not as a stand-alone issue, but rather within the broader context of regional integration and improvement of intra-Africa trade within the continent and the Economic Partnership Agreement (EPA) negotiations with the EU. Consideration should be given to how African countries should approach issues of technical assistance, capacity building and special and differential treatment (SDT) within the WTO negotiations, whilst keeping in mind obligations and existing mechanisms that may result from bilateral and regional agreements. The paper also proposes that negotiators should also bear in mind the particular interests and concerns of LDCs and landlocked countries.

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<sup>1</sup> WTO, A Training Package, available at [http://www.wto.org/english/thewto\\_e/whatis\\_e/eol/e/wto02/wto2\\_69.htm](http://www.wto.org/english/thewto_e/whatis_e/eol/e/wto02/wto2_69.htm) (last visited 24 January 2005).

<sup>2</sup> Id.

<sup>3</sup> WTO, Overview of Trade Facilitation Work, available at [http://www.wto.org/english/tratop\\_e/tradfa\\_e/tradfac2\\_e.htm](http://www.wto.org/english/tratop_e/tradfa_e/tradfac2_e.htm) (last visited 24 January 2005)

## II. TRADE FACILITATION ISSUES IN AFRICA

It is a common view that the main impediments to TF on the continent include lack of infrastructure and lack of human capacity.<sup>4</sup> In fact, the most critical trade issues facing African countries are the TF problems of transport and logistics.<sup>5</sup> A combination of poorly maintained roads and burdensome border and administrative procedures translates into transport costs amounting to approximately 20-30 of the costs of goods.<sup>6</sup>

**Table 1: Transport Costs in Africa, Country Groups**

Grouping	cif/fob ratio	
	1980	1994
<i>Landlocked Countries</i>	1.227	1.249
Regions		
<i>North Africa</i>	1.101	1.096
<i>West Africa</i>	1.196	1.191
<i>Central Africa</i>	1.244	1.224
<i>East Africa</i>	1.161	1.146
<i>Southern Africa</i>	1.137	1.222

**Source: Oliver Morrissey (2005) Report on trade policy & transport costs: How EU aid can promote export growth in East Africa**

Landlocked countries bear a higher burden in this regard and transport costs are on average US\$ 2000 higher in these countries, a difference of approximately 35 percent.<sup>7</sup>

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<sup>4</sup> See for example Cornelius Mwalanda, Economic Commission for Africa 'Trade Facilitation in a Multilateral Framework: Challenges for Africa Second International Forum on Trade Facilitation: Sharing the Gains of Globalization in the New Security Environment' ECA Resources available at [http://www.uneca.org/eca\\_resources/Speeches/2003\\_speeches/051403speech\\_cornelius\\_mwalanda.htm](http://www.uneca.org/eca_resources/Speeches/2003_speeches/051403speech_cornelius_mwalanda.htm) (last visited 5 December 2004).

<sup>5</sup> ITPC 'Market Access to African Countries: Intra-Africa Trade' *NEPAD Working Paper Series*: 03-01 2. (2004).27.

<sup>6</sup> Van Schalkwyk, Gina 'SADC, No Vehicle for Infrastructure Development' *SADC Barometer* Issue 3, October 2003 2. This, according to the author, is in contrast to Brazil where transportation costs only amounts to about 12% of the cost of goods.

<sup>7</sup> 'Trade Facilitation to Promote Intra-Africa Trade' Committee on Regional Cooperation and Integration UNECA, (2005) 4 available at <http://www.uneca.org> (last accessed on 15 March 2005) (hereafter UNECA study)

**Table 1: Transit costs in selected landlocked African countries and world groups, 2001**

Country or country group	Transport and insurance payments (US\$ millions)	Exports of goods and services (US\$ millions)	Transit costs as a share of the value of exports (%)
Botswana	230	3,030	8
Burkina Faso	70	272	26
Burundi	23	96	24
Central African Republic	59	179	33
Chad	99	190	52
Ethiopia	240	979	25
Lesotho	43	283	15
Malawi	214	385	56
Mali	229	644	36
Rwanda	70	144	48
Swaziland	30	1,085	3
Uganda	269	757	36
Zambia	216	1,255	17
Zimbabwe	379	2,344	16
Landlocked countries	3,706	26,314	14
Least developed countries	4,277	24,840	17
Developing countries	109,055	1,268,581	9

*Source: ECA, 2004 (compiled from UNCTAD data)*

These expenses stem inter alia from border delays, dilapidated road systems, inefficient transport systems, variations in technical standards for vehicles, differing licence and visa requirements, numerous roadblocks,<sup>8</sup> diversion of goods in transit away from designated routes, and higher insurance costs. Multiple and arduous customs procedure add to the delays and consequent cost implications of trading across African borders. Delays at many African customs entry points are on average longer than the rest of the world, including in the developing world: 12 days in countries south of the Sahara, compared to 7 in Latin America, 5.5 in Central and East Asia and just over 4 in Central and Eastern Europe.<sup>9</sup> This often has a

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<sup>8</sup> There are approximately 47 roadblocks between Douala and Bertoua in Cameroon, a distance of only 500 kilometres. Economist December 2002 as quoted in UNECA study (n 10 above). Payments at these checkpoints include taxes, transit charges and bribes. Checkpoints result in loss of time and money.

<sup>9</sup> UNECA study (n 7 above.) These delays come at a tremendous cost to traders and each day is the equivalent of a 0.5% tax.

bearing on broader development issues, as traders try to absorb these costs by cutting down on other expenses such as wages, thus directly affecting the living standard of workers.<sup>10</sup>

Most African countries face a lack of basic infrastructure such as adequate office buildings and equipment, well-trained personnel, automated communication and data systems, and time management systems to ensure efficient and prompt processing of transactions. This, together with the continued use of multiple administrative documents (as opposed to the single administrative document favoured by many countries), and the difficulty in obtaining information on trade and customs regulations, are illustrative of customs-related complexities faced by traders. Because customs procedures are largely not harmonized, traders face a multiplicity of assorted rules and regulations, which are often not published and not automated. This lack of transparency and predictability means that traders find themselves navigating borders ignorant of looming administrative impediments. These impediments to TF exist on a continent-wide level, and negotiators should bear this in mind when negotiating TF issues on the multilateral level and within EPA negotiations.

### **Trade Facilitation Initiatives within Africa**

TF is aimed at greater transparency, efficiency and procedural uniformity in the cross border transportation of goods. Thus, there are some clear advantages to improving TF measures. These include lower costs, more transparency and predictability for traders, and better information, improvements in ports and customs efficiency, expanding the inflow of goods, a competitive economy, more investment, better control and higher revenues for governments.<sup>11</sup> TF commitments might provide a platform for action and supply the political booster for much-needed reforms in Africa, while contributing to economic development. Therefore, proactive participation of African countries in the negotiations, design and enforcement of any agreement on TF is critical if the WTO is to arrive at an agreement that favours growth and development in Africa.<sup>12</sup>

Several African countries have already undertaken successful unilateral reforms in customs procedures, such as Botswana, Burkino Faso, Burundi, Cameroon, Chad, the DRC, Madagascar, Malawi, Morocco, Mozambique, Namibia, Rwanda, Tanzania and Tunisia. For instance, imported goods can now be cleared from Tunisian ports in an average of 3 days, compared with 8 days a few years ago.<sup>13</sup> The Tanzania Revenue Authority, for example, has embarked on a modernization plan that is aimed at transforming their Customs division. As part of this process, the UNCTAD sponsored ASYCUDA system is being introduced so as to streamline the operations of customs clearance.<sup>14</sup> Once the system is in place, traders will

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<sup>10</sup> ITPC (n 4 above) 29.

<sup>11</sup> S Ntamack 'WTO Negotiations On Trade Facilitation: Implications For Africa' Paper on file with the author

<sup>12</sup> Id.

<sup>13</sup> Id. This is still 2.5 days longer than the average 'efficient port.'

<sup>14</sup> The ASYCUDA programme is directed at reforming the customs clearance process. It aims at speeding up customs clearance through the introduction of computerization and simplification of procedures and thus minimizing administrative costs to the business community and the economies of countries. <http://www.asycuda.org/> (Last accessed 9 April 2005)

present entries electronically and payment of assessed duties and taxes will be made through banks with direct connection to the ASYCUDA system. Legitimate declarations will result in almost instantaneous clearance of goods.<sup>15</sup> A further 30 countries have also adopted the ASYCUDA system, with the Ivory Coast being the latest to adopt the system for the computerization of their customs revenue collection and statistics gathering process.<sup>16</sup>

A number of sub-regional groupings have introduced measures to facilitate trade within their regions. ECOWAS, CEMAC and EAC, for instance, have adopted measures such as common vehicle insurance schemes (covering third-party liability and medical expenses)<sup>17</sup> and inter-State transit agreements. Most CEMAC states have also computerized their import-export operations. In the EAC the issue of road transport is being addressed through the development of two major corridors, the Tazara Corridor stretching from Dar es Salaam port in Tanzania to New Kapiri Mposhi in Zambia and the Mtwara corridor, which links up with the Tazara corridor and stretches all the way down to Mozambique.<sup>18</sup> Other EAC initiatives include a restructuring of the East African railways and ports and computerization of the postal counters in Tanzania, Kenya and Uganda.

Extensive efforts in the area of transport and customs procedures have also been made by COMESA and SADC. COMESA measures include harmonized road transit charges; carrier license and transit plates; a vehicle insurance scheme; an advance cargo information system; a customs bond guarantee scheme; an automated system for customs data and management; uniform classification of goods for customs purposes, common statistical rules and regulations; simplification and harmonization of trade documents and procedures (the one document approach); common competition rules and harmonization of technical norms and certification procedures; trade information services (computerized databases, trade directories, trade inquiries); and trade support services. SADC measures include an automated system for customs data and the SADC Transport, Communications and Meteorological Protocol.<sup>19</sup> Transportation time and costs have also been drastically reduced through the creation of the Trans-Kalahari Corridor (completed in 1997), a relatively well-managed system where border posts along the route have adopted common regulatory and administrative systems.<sup>20</sup> Within the range of broader TF measures, SADC has also created the Southern African Power Pool, which provides for regional exchanges of electricity. The power pool will assist countries in the overhaul of infrastructure such as ports and customs offices and in the adoption of new TF related technologies.

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<sup>15</sup> For more information visit <http://www.tra.go.tz/>

<sup>16</sup> <http://www.asycuda.org/> (Last accessed 9 April 2005) These countries are Botswana, Burkino Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Congo, Ethiopia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Ivory Coast Madagascar, Malawi, Mali, Mauritania, Namibia, Niger, Nigeria, Rwanda, Sudan, Tanzania, Togo, Uganda, Zambia and Zimbabwe

<sup>17</sup> ECOWAS <http://www.ecowas.int> (last accessed 4 December 2004).

<sup>18</sup> Mwandosya M, 'Trade Facilitation and Infrastructure Development: Tanzania and the East Africa Region' paper delivered at the Commonwealth – Tanzania Investment conference 28-30 May 2003.

<sup>19</sup> Economic Commission for Africa (ECA) 'Assessing Regional Integration in Africa' (May 2002) 90-92.

<sup>20</sup> Van Schalkwyk (n 5 above) 2

One has to keep in mind, however that the implementation of these initiatives on a state level carries cost obligations: it requires infrastructure development, investment in technology, legal reform and training.

### **III. NEGOTIATIONS IN TRADE FACILITATION AT THE WTO LEVEL**

Trade facilitation was one of the Singapore long resisted by many developing countries but finally agreed to in the July Package. Progress in trade facilitation is already on-going in other international organizations such as the WCO and UNCTAD. The July Framework's Annex D recognizes work undertaken in these organizations, but does not, however, provide for clear parameters on how such work could be taken into account.

The key issue now that negotiations are launched at the WTO level is to avoid new binding disciplines on TF which exceed their implementation capacities and make African countries susceptible to dispute settlement.<sup>21</sup> In case of an agreement on TF, the preferred option would be for non-binding provisions, an option provided for in footnote one of Annex D. This position featured in submissions and Declarations in the run-up to Cancun as well as after the Ministerial Conference<sup>22</sup>. Least Developed Countries (LDCs), including several African countries, were exceptionally vocal on this issue, notably after the Cancun Ministerial Conference.<sup>23</sup> ACP countries have specifically emphasized the need for clarity on the applicability of the Dispute Settlement Mechanism.<sup>24</sup>

### **GATT PROVISIONS ON TRADE FACILITATION**

#### **A). Article V: Freedom of Transit**

##### **1. Main obligations:**

1. That traffic in transit not be subject to unnecessary delays or restrictions and should be exempt from customs duties, transit duties and other charges.
2. That charges such as charges for transportation or administrative expenses be reasonable (transportation charges apply to products being transported on the same route under like conditions).
3. The provision of MFN treatment to products in transit.

#### **Implications for African governments**

Paragraph 2 of article V (see Appendix C) indicates that transit shall be granted "*via the routes most convenient for international transit*". Whilst this means that the duty to grant free transit does not extend to all routes, it also has the implication that governments must designate roads and routes (including railways) over which imported goods or goods intended for export or goods in transit may enter or leave the country, however the submission from the US states that

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<sup>21</sup> Ntamack (n.11 above)

<sup>22</sup> ACP Ministerial Declaration (2004) and the Kigali Declaration on the Doha Work Programme and the Kigali Consensus on the Post-Cancun Work Programme, adopted by the African Union Trade Ministers in Kigali, Rwanda, on 28 May 2004

<sup>23</sup> Dakar Declaration of the Third LDC Trade Ministers' Meeting, adopted in Dakar, Senegal, on 05 May 2004

<sup>24</sup> ACP Ministerial Declaration (2004) para (c)

the operator could decide. Further implications are the need for the establishment of customs and excise warehouses; transit sheds where they can be removed from a ship before due entry; and container terminals where containers may be landed for transit, for carriage or for delivery to a container depot.

The requirement that traffic in transit not be subjected to unnecessary delays indicates that delays must be *reasonable*. Given the poor state of roads, ports and railways current delays go beyond what will be deemed reasonable, even if reasonable is measured within the context of what can be expected from a developing country. The issue of checkpoints has also been identified as an encumbering transit measure, which has been said to cause *excessive* and, therefore, may be deemed *unnecessary* under WTO scrutiny. The obligation to grant MFN treatment as proposed by Members, may be at issue in the context of attempts to deal with smuggling and in the broader context of security and conflict within the region.<sup>25</sup>

Compliance with Article V creates very specific TF needs, including that of infrastructure development and improvement of services, the creation of training centres and the training of personnel. This need is most apparent in LDCs and landlocked countries and there may be a need to tie in S&DT with financial and technical assistance. As pointed out, a number of regions are already addressing the problems related to road and railway transport. Further support and assistance may need to come from a multiplicity of actors which will require coordination between regional groupings, financial institutions, developed countries and private investors. The latter could play an important role in terms of private-public partnerships. Annex D states that with respect to commitments that engender infrastructure development, *developed-country Members will make every effort to ensure support and assistance directly related to the nature and scope of the commitments in order to allow implementation*. The obligation for the support of financial institutions also stems from Annex D.

### Summary of GATT 1994 Article V Proposals on Freedom of Transit

Members should ensure non-discrimination between modes of transport, origin, destination, carriers, route, baggage and goods including fixed pipelines capable of moving goods.	TN/TF/W/28 Bolivia, Mongolia and Paraguay; TN/TF/W/35 EC
Members will grant freedom of transit through the territory of each member e.g. through the route most convenient for international transit e.g., by leaving the choice and means of transport to the driver.	TN/TF/W/35 EC
Transit Members will extend national treatment to landlocked countries.	TN/TF/W/28 Bolivia, Mongolia and Paraguay
Members will use international instruments relating to transit, including acceding to them where applicable.	TN/TF/W/30, Peru; TN/TF/W/35 EC; TN/TF/W/39 Switzerland, Rwanda and Paraguay
<b>PUBLICATION</b>	
To improve transparency, Members will publicise all information pertaining to transit requirements, procedures	TN/TF/W/35 EC

<sup>25</sup> The latter may, however, be covered by security exceptions under Article XXI.

and charges. To ensure predictability, consultations with interested parties should apply.	
<b>FEES</b>	
Members will publicize transit fees and charges, including legal basis for the charges; periodically review of fees and charges including a permanent review mechanism. Neighbouring Member Authorities will meet periodically to discuss new fees and charges.	TN/TF/W/28 Bolivia, Mongolia and Paraguay; TN/TF/W/35 EC
<b>FORMALITIES</b>	
Members will maintain reasonable, simplified and standardized transit formalities to minimize delays. This may include use of a commercial or transport document as in Kyoto Convention, pre-arrival clearance, single windows and time release measures.	TN/TF/W/28 Bolivia, Mongolia and Paraguay, TN/TF/W/30, Peru; TN/TF/W/34 Korea; TN/TF/W/35 EC;
Accord to goods in transit that do not require transshipment less burdensome treatment than goods in transit that require transshipment.	TN/TF/W/34 Korea
Members will simplify customs formalities and increase use of electronic and interconnection media for the inspection of goods.	TN/TF/W/30, Peru
Members will develop and implement automated procedures for the receipt and submission of advance information on goods, means of transport and persons.	TN/TF/W/30, Peru; TN/TF/W/39 Switzerland, Rwanda and Paraguay
Members will periodically review transit formalities based on comments from the private sector.	TN/TF/W/28 Bolivia, Mongolia and Paraguay
Introduction of a bonded transport regime and management of guarantees to allow transit of goods without payment of customs duties.	TN/TF/W/28 Bolivia, Mongolia and Paraguay; TN/TF/W/35 EC; TN/TF/W/39 Switzerland, Rwanda and Paraguay
Members could provide simplified and preferential clearance treatment for perishable goods in transit.	TN/TF/W/28 Bolivia, Mongolia and Paraguay
<b>DOCUMENTATION</b>	
Members will maintain reasonable, standardized transit documentation requirements and periodically review them. Additionally, they will coordinate documentation requirements among relevant authorities and consider international standards for transit documentation.	TN/TF/W/28 Bolivia, Mongolia and Paraguay; TN/TF/W/39 Switzerland, Rwanda and Paraguay
<b>REGIONAL COOPERATION</b>	
Establishment of cross border and regional transit mechanisms including establishment of common border checkpoints.	TN/TF/W/28 Bolivia, Mongolia and Paraguay; TN/TF/W/35 EC; TN/TF/W/39 Switzerland, Rwanda and Paraguay
Opportunities for the private sector to comment on the transit regime.	TN/TF/W/28 Bolivia, Mongolia and Paraguay
Regional guarantee system and cross-border vehicle regulations.	TN/TF/W/39 Switzerland, Rwanda and Paraguay
<b>TECHNICAL ASSISTANCE</b>	
Measures to ensure impartial implementation of provisions, improve border cooperation, exchange experience amongst	TN/TF/W/28 Bolivia, Mongolia and Paraguay

Members to improve control of bulk cargoes, Studies on transit conditions to minimize costs and Transfer of information and technology	
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## **B). Article VIII: Fees and Formalities for Importation and Exportation**

### ***Main Obligations:***

1. An obligation to limit fees ‘in amount to the approximate cost of services rendered’. (The phrase ‘services rendered’ refers to government regulatory activities performed in connection with the importation and customs entry processes, such as the processing and clearing of documents and goods, and inspections<sup>26</sup>). Services rendered include<sup>27</sup>:
  - (a) consular transactions, such as consular invoices and certificates;
  - (b) quantitative restrictions;
  - (c) licensing;
  - (d) exchange control;
  - (e) statistical services;
  - (f) documents, documentation and certification;
  - (g) analysis and inspection; and
  - (h) quarantine, sanitation and fumigation
2. A prohibition on indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.
3. A need for a reduction in the number and range of fees and charges, but no legal obligation imposed
4. A need to minimize the incidence and complexity of import and export formalities and to decrease and simplify import and export documentation requirements, but no legal obligation imposed.
5. An obligation to provide for a review mechanism upon request by another contracting party or WTO Body.
6. A prohibition on the imposition of "substantial" penalties for minor breaches of customs regulations or procedures. Specifically, when customs documentation contains mistakes or omissions that are easily rectifiable and were "obviously made without fraudulent intent or gross negligence", then the penalties imposed as a result of such mistakes or omissions may not exceed what is "necessary to serve merely as a warning"

### ***Implications for African governments***

This article deals with fees and formalities pertaining to customs procedures. The obligation to limit fees ‘in amount to the approximate cost of services rendered’, requires a regulatory framework that distinguishes between import, export and excise duties and anti-dumping duties and countervailing duties on the one hand, and customs related ‘service charges’, such as import and export entry transaction fees, inward and outward cargo transaction fees, licensing fees, stamp fees etc on the other. The latter would also include fees related to sanitary and

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<sup>26</sup> See Panel Report, *US – Custom User Fee*, BISD 35S/245, paras. 76 and 77.

<sup>27</sup> Panel Report, *US – Customs User Fee*, BISD 35S/245 , para. 69

phytosanitary measures such as quarantine fees and veterinary and scientific assessments. In this respect, similar obligations would arise under the SPS agreement.

At present administrative fees differ from one country to another within Africa and are for the most part quite high. This is in part due to the use of a multiplicity of documents to complete different transactions including the use of ad valorem values to calculate customs duties. Article VIII places in effect a legal obligation on contracting parties to reduce these charges so that it is not excessive in relation to the administrative services rendered. Administrative fees must thus be ‘reasonable’. This raises the question what a reasonable fee may be, which can only be determined on a case-by-case assessment. Case law indicates that this amounts to a two-step approach and in *US – Customs User Fee*, the Panel not only determined whether charges were approximate to services rendered (reasonable), but firstly whether the services themselves come under the scope of Article VIII.<sup>28</sup> Thus when devising administrative charges countries should make sure that these charges fall under the scope of ‘services’ as set out in paragraph 4 and that they are approximate to the services rendered.

#### **Summary of GATT 1994 Article VIII Proposals Pertaining to Fees**

<b>ISSUE</b>	<b>PROPOSERS</b>	<b>COMMENTS</b>
<b>Fees</b>		
Member should conduct period Review of Fees and specific parameters for fees charged by Members	US TN/TF/W/114; Japan, Mongolia TN/TF/W/17; Hong Kong China TN/TF/W/31; Peru TN/TF/W/30	Revenue concerns, parameters and basis for reviewing fees.
Publication of fees on the internet and commitments to notify the WTO within a specified number of days in advance of implementation.	US TN/TF/W/14; Japan Mongolia TN/TF/W/17	Institutional capacities and availability of ICT technology
Members should prohibit the use of consular fees and charges.	US, Uganda TN/TF/W/22; New Zealand, Norway, Switzerland TN/TF/W/36	General support for removal of such fees.

The submissions on ‘clarification of the parameters of the use and application of fees’ should be considered in the context of administrative costs and technical requirements related to the overhaul of a fee structure system. In addition some countries that rely heavily on the income from customs need to assess what the impact of fee restructuring will be. The EC and Australia argue that fee restructuring can lead to administrative savings. African Countries need to assess individually whether savings will in fact result and whether they can offset the potential loss of customs revenue. The EC is prepared to ‘consider favourably requests for assistance related to the design and implementation of new fee structures’. It should also be kept in mind that as regional trading blocs moves towards deeper integration, the issue of fees will be addressed on a regional level. Periodic review of fees is good from a good governance and administrative point of view, but a legal commitment to do so may create burdensome legal obligations.

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<sup>28</sup> Id paras 98 to 106.

**Summary of GATT 1994 Article VIII Proposals On Formalities Connected with Importation and Exportation**

Provide specific expedited procedures for express Shipments	Taiwan, Penghu, Kinmen and Matsu TN/TF/W/10; US TN/TF/W/15; Peru TN/TF/W/30	
Commitments for pre-arrival clearance procedures.	Taiwan, Penghu, Kinmen and Matsu TN/TF/W/10; Japan, Mongolia TN/TF/W/17; Peru TN/TF/W/30	
Provisions to provide for post audit systems.	Taiwan, Penghu, Kinmen and Matsu TN/TF/W/10; Peru TN/TF/W/30	
Provisions for risk management procedures.	Taiwan, Penghu, Kinmen and Matsu TN/TF/W/10; Japan, Mongolia TN/TF/W/17; Peru TN/TF/W/30	
Procedures for one-time submissions or single window agency for import and export.	Japan, Mongolia TN/TF/W/17; Korea TN/TF/W718; Peru TN/TF/W/30	
Use of international standards to reduce complexity of formalities.	Japan, Mongolia TN/TF/W/17; New Zealand, Norway, Switzerland TN/TF/W/36	
Members should use least trade restrictive formalities and periodic review of formalities.	Japan, Mongolia TN/TF/W/17; New Zealand, Norway, Switzerland TN/TF/W/36	Definition of least trade restrictive could require clarification.
Members should consider acceptance of photocopies and commercially available information in import & export.	Japan, Mongolia TN/TF/W/17; Korea TN/TF/W718	Which documents would be replaced by photocopies? How do Members still ensure integrity of the transactions.
Single documentary submission.	Japan, Mongolia TN/TF/W/17	Costs, timeframes for implementation and standards
Members should consider minimizing excessive documentation and possible automation of customs procedures.	New Zealand TN/TF/W/24; Peru TN/TF/W/30	Criteria for doing so, process, costs of amending customs procedures
Members to consider Harmonization and standardization of document standards.	Korea TN/TF/W718	Costs and clarification of which standards. Could be beyond the mandate.
Members to adopt WCO Harmonized Commodity Description and Coding System.	New Zealand TN/TF/W/24; Peru TN/TF/W/30	Timeframes
Members should provide reasons	Japan, Mongolia TN/TF/W/17	Institutional capacities

for rejection of documentation.		
Integrity and codes of conduct for staff at border agencies.	Japan, Mongolia, Taiwan, Penghu, Kinmen and Matsu TN/TF/W/8.	

Article VIII is silent on the matter of clearance of express shipments and including it will expand the scope of Article VIII. This raises issues of regulation and capacity and governments may rather want to become compliant with basic obligations, and not expand on them. Issues such as pre-arrival clearance, post audit systems, risk management and single administration document (SAD), are contained in the 1999 Revised Kyoto Convention of the WCO, but only 8 African countries have ratified it. As noted above 31 African countries have adopted the ASYCUDA system to upgrade their customs administration. The system incorporates some of these features, i.e. the SAD. Additionally regional groupings such as COMESA, have adopted similar measures within the region. COMESA countries, that have implemented the Revised Kyoto Convention and adopted the ASYCUDA system should, therefore, have no problems in making these commitments. African countries may request technical assistance specifically related to the adoption of this system. Commitments could be made provisional to such assistance. A commitment to base import and export formalities on international standards may not be sound at this point, given that only a limited number of African countries have ratified international instruments such as the Revised Kyoto Convention.

***Example: Resources required to implement Pre-arrival Clearance***

This requires a system, in which customs formalities can be settled before the transmissions/goods arrive. An assessment is made of the duty, which is paid several hours before the arrival of the physical transmission at the place of destination. The customs authorities accept a check through a linkage to the bank of the trader.

Technical requirements include:

- Installation of new hardware and software
- Training of customs officials

The Africa Group could consider a positive position on such a proposal if it is directly tied to technical assistance that would include the funding of installing new systems and the training of personnel. In addition, this could be tied to Customs Cooperation. One consideration could be the creation of twinning agreements between the Custom Offices of developed countries and African countries.

**C). ARTICLE X: Publication and Administration of Trade Regulations**

***Main obligations:***

- The obligation to promptly publish laws, regulations, judicial decisions and administrative rulings *of general application* that affect imports and exports. This includes agreements affecting international trade policy. It excludes, however, confidential information, which would impede law enforcement or otherwise be contrary to the public interest or that would prejudice the legitimate commercial interests of particular enterprises, public or private
- The obligation to publish the above in a way, which would enable governments and traders to become acquainted with them.
- The obligation not to enforce certain measures prior to their official publication. This involves measures:
  - i effecting an advance in a duty rate or other charge on imports under an established and uniform practice, or

- ii Imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefore.
- The obligation to administer laws, regulations, decisions and rulings related to imports and exports in a uniform, impartial and reasonable manner.
- The obligation to maintain or institute independent judicial, arbitral or administrative tribunals or procedures for review and correction of administrative action relating to custom matters. Decisions of such tribunals or procedures must be implemented by administrative agencies and must govern their practices, unless an appeal is lodged against it.

### **Implications for African governments**

To a large extent one can categorize Article X as ‘just administrative action’ provisions that attempts to ensure basic ‘rule of law’ and administrative justice procedures in the regulation of trade. These procedures ensure legal certainty and faith in legal and administrative proceedings. Current obligations therefore require administrative justice commitments to transparency, inclusivity, independent judicial review and the right to appeal against administrative actions. Most of these principles are already part of the legal administrative systems of most governments as the rule of law requires that the law must be accessible to its citizenry and must not be kept in a drawer somewhere.

The WTO agreement now binds signatories to extend this rule of law principle to non-citizens. It should be noted that the obligation to publish promptly is limited to laws, regulations, judicial decisions and administrative rulings *of general application*. The concept ‘general application’ refers first of all to laws, regulations etc that applies to everyone. In other words it excludes laws, which are designed for specific individuals, companies etc or easily ascertainable members of a group. The concept ‘general application may also, however, impose a secondary requirement, namely that that these laws, regulations etc. should not be arbitrary or discriminatory. They should therefore be precise enough so that traders know exactly what is expected. They should be based on identifiable legal standards and should not grant poorly delineated discretionary powers to government officials. They should further not differentiate unfairly amongst traders, in other words there should be parity of treatment.

The obligation to administer laws, regulations, decisions and rulings related to imports and exports in a uniform, impartial and reasonable manner refers to procedural fairness. Procedural fairness is a flexible concept and would depend on the nature of the administrative action. At a minimum it would include the right to be heard and the exclusion of bias in decision-making processes. The administration of these laws must furthermore be reasonable in the sense that it should not hinder the activities of traders any further than it needs to in order to achieve their stated purpose.

The obligation to maintain or institute independent judicial, arbitral or administrative tribunals or procedures for review and correction of administrative action relating to custom matters applies the principle of ‘judicial review’. This requires that administrative actions and procedures must be subject to scrutiny by an independent judicial body that should be able to enquire into the validity of a particular administrative action. It also includes the obligation to create an institutional framework for such review, which would incorporate the possibility to first exhaust internal remedies. Article X(3)(b) specifically requires agencies tasked with administrative enforcement must implement the decisions that result from judicial review. This

once again implies that administrative agencies cannot be granted wide discretionary powers, as that would effectively exclude judicial review.

**Summary of GATT 1994 Article X Proposals Related to Publication and Administration of Trade Regulations**

<b>ISSUE</b>	<b>PROPOSERS</b>	<b>COMMENTS</b>
Publication of all relevant laws, regulations, administrative guidelines, decisions and rulings of general application including publication of border-related agency processes including publication before implementation and publication of legislative purpose of prospective laws.	EC TN/TF/W/6; China TN/TF/W/26; Peru TN/TF/W/30; Hong Kong China TN/TF/W32	Some publications (rulings, casebooks etc) are not in government domain but rather private and commercially available.
Media of publication should include gazettes and internet, with translation in more than one WTO official language.	EC TN/TF/W/6; Japan, Mongolia TN/TF/W/17; US TN/TF/W/13, China TN/TF/W/26; Hong Kong China TN/TF/W32	Costs of translation
Publications under article X should include applied tariff rates, service contracts between PSI activities, export inspection for safety standards, standard processing time, reasons for delay, documents and forms, objective in imposing trade-related restrictions.	Japan, Mongolia, Taiwan, Penghu, Kinmen and Matsu TN/TF/W/8;	Scope possibly too wide.
Members should consider publicising all fees.	EC TN/TF/W/6.	Concerns regarding being bound on fees charged
Publication of appeals procedures, systems of lodging objections, providing the MFN right of appeal. Adoption of an appeals desk by Members.	EC TN/TF/W/6; Japan, Mongolia, Taiwan, Penghu, Kinmen and Matsu TN/TF/W/8.	
Members to consider publicising penalty provisions.	Japan, Mongolia TN/TF/W/17	
Notify WTO Secretariat for dissemination to Members, the media of publication of the above and possible publication of the notification on the WTO website.	Korea TN/TF/W/7, Japan, Mongolia, Taiwan, Penghu, Kinmen and Matsu TN/TF/W/8; Hong Kong China TN/TF/W32	Capacity of WTO secretariat to handle the notifications.
National legislation should set out the requirements for goods declarations	New Zealand, Norway, Switzerland TN/TF/W/36	

African countries may already have capacity related challenges in conforming to current commitments and due consideration should be given to going beyond the current scope of

Article X. Most of the proposals refer to the publication of elements that are already present in the Article X requirements. However some go beyond what is presently required such as ‘decisions and examples of customs classification, details of service contracts between PSI entities and governments, details of export inspection for safety standards and standard processing period for major trade procedures. The measurement should be whether these are laws or regulations of general application. To the extent they are not they fall outside of the current requirement.

**Summary of GATT 1994 of other Article X Proposals on Publication and Administrations of Trade Regulations**

Uniform administration of trade regulations within Member territories through establishment of a central function in government to interpret trade regulations.	Japan, Mongolia, Taiwan, Penghu, Kinmen and Matsu TN/TF/W/8	Resources, costs of interpreting laws, no indication of what uniformity will be based on
Release of goods subject to an appeal and possibility for duty payment in obedience.	EC TN/TF/W/6	
Consultations with WTO Members and interested parties on proposed rules and procedures applied to import and export administration and goods in transit.	EC TN/TF/W/6; Hong Kong China TN/TF/W32	Concerns pertaining to the scope of the mandate
Members to consider commitments giving the right to comment by traders with defined comment period for proposed rules by WTO Members. There should be adequate period between publication of rules and their implementation.	EC TN/TF/W/6; Korea TN/TF/W/6; Japan, Mongolia, Taiwan, Penghu, Kinmen and Matsu TN/TF/W/8; China TN/TF/W/26, New Zealand TN/TF/W/24; Peru TN/TF/W/30; Hong Kong China TN/TF/W32	Concerns regarding national sovereignty.
Administration of a single inquiry point providing all the relevant trade-related information.	EC TN/TF/W/6; Korea TN/TF/W/7; Japan, Mongolia, Taiwan, Penghu, Kinmen and Matsu TN/TF/W/8, China TN/TF/W/26; Peru TN/TF/W/30	Some relevant actors are not governmental agencies.
Establishment and publication of advance rulings to provide a binding ruling prior to importation in writing for a defined timeframe on specific subjects such as tariff classification, customs valuation, duty referral.	Korea TN/TF/W/7; Japan, Mongolia, Taiwan, Penghu, Kinmen and Matsu TN/TF/W/8; Canada TN/TF/W/9; US TN/TF/W/12; Singapore TN/TF/W/38	Beyond the scope of article X.

### Proposals Possibly Beyond the 3 Articles

ISSUE	PROPOSERS	COMMENTS
Collateral and Monetary Security (See Article 13 Customs Valuation)	Australia and Canada TN/TF/W/19, US TN/TF/W/21; Peru TN/TF/W/30	
Border Agency Coordination	Canada TN/TF/W/20; Peru TN/TF/W/30	
Integrity and codes of conduct for staff at border agencies	Japan, Mongolia, Taiwan, Penghu, Kinmen and Matsu TN/TF/W/8.	
Establishment and Publication of Advance Rulings to provide a binding ruling prior to importation in writing for a defined timeframe on specific subjects such as tariff classification, customs valuation, duty referral.	Korea TN/TF/W/7; Japan, Mongolia, Taiwan, Penghu, Kinmen and Matsu TN/TF/W/8; Canada TN/TF/W/9; US TN/TF/W/12; Singapore TN/TF/W/38	

#### IV. REGIONAL INTEGRATION AND EPA NEGOTIATIONS

The current spaghetti-bowl of regional trading blocs has created a myriad of conflicting legal obligations. This creates legal uncertainty for traders and investors and the resulting overlapping membership means that custom officials have to deal with different tariff reduction rates, rules of origin, trade documentation and statistical nomenclature. Moreover, traders face these different requirements if they want to move from intra-regional trade to intra-Africa trade.

Whilst committing to multilateral commitments at the WTO level, may place a financial and administrative burden on countries, liberalizing TF may also mean boosting trade on a inter continental level. It is important to note however, that within the context of regional integration a number of TF issues currently addressed at the WTO level are already part of regional and sub-regional agreements and protocols. African countries committed to these obligations on a regional basis, but lag behind when it comes to implementation of these provisions.

African countries must address some of the WTO obligations from a regional perspective. Article V on freedom of transit, for example is extremely important from the perspective of land-locked African countries that have much to gain compliance with this provision. Given that no proposals have been made under Article V thus far, it provides an opportunity to deal with it in under EPA negotiations and negotiating capital could specifically be directed towards securing more region-based investments on roads/ transport networks and port facilities based as much as possible on existing regional and national programmes.

Similarly, from an intra-Africa trade perspective, high administrative fees place a burden on traders. This is particularly cumbersome and may have a chilling effect on SMEs. In addition, real impacts of such high costs will most likely fall on consumers or workers as wages may be reduced so as to off-set high administrative costs or increase the cost of imported goods. Integrating the various documentation requirements may lower fees and the COMESA Customs Declaration Document (COMESA-CD) provides a good model in this regard. In

some member states it replaced up to 32 documents with one goods declaration document, which caters for imports, exports, transit and warehousing.<sup>29</sup>

In terms of EPA negotiations it is prudent to look at measures included in other EU free trade agreements. For the most part these TF provisions cater for broad arrangements, suggesting customs cooperation to ensure 'fair trade and compliance with trade rules'.<sup>30</sup> These agreements generally provide for:

- Simplification of procedures for the customs clearance of goods. The agreement with Israel specifically includes the 'computerisation' of customs procedures (Article 49 (2)), a word missing in other MED agreements. This particular provision may be connected with Israel's relatively advanced technical capacity.
- The introduction of a single administrative document (SAD) similar to the EU's, though this provision is not included in the agreements with Israel and Lebanon. It should be noted that the countries who have adopted ASYCUDA will soon implement this facility.
- The possibility of interconnection between the transit systems of the EU and of the other Contracting Party (this is a provision included in all the MED agreements except that with Israel).
- The exchange of information among experts and vocational training, as well as technical assistance, 'where appropriate'.<sup>31</sup>

Existing bilateral trade agreement between the EU and African include the Trade, Development and Cooperation Agreement (TDCA) with South Africa and with Egypt as part of the Euro-Mediterranean Partnership Agreement, which includes Algeria, Egypt, Morocco, and Tunisia. The TDCA contains a provision that states: 'The Parties shall promote and facilitate cooperation between their customs services in order to ensure that the provisions on trade are observed and to guarantee fair trade'<sup>32</sup> and requires the administrative authorities of the EU and South Africa to provide 'mutual administrative assistance in customs matters'.<sup>33</sup> The Agreement with Egypt provides for cooperation in the area of transport and specifically the improvement, restructuring, upgrading and modernisation of road and rail transport and port facilities. It also includes a provision to undertake customs cooperation in the area of:

- Simplification on controls and procedures concerning the clearance of goods, and
- The introduction of a SAD and a system to link up the transit arrangements between Egypt and the EC.

The agreement with Chile, however, contains the most detailed TF provisions of all EU FTAs including:<sup>34</sup>

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<sup>29</sup> See generally <http://www.comesa.int>

<sup>30</sup> O Fasan 'Comparing EU Free Trade Agreements: Trade Facilitation' *ECDPM Inbrief 6F* Maastricht ECDPM (2004) available at <http://www.ecdpm.org> (last accessed on 23 February 2005)

<sup>31</sup> Id.

<sup>32</sup> Article 48.1

<sup>33</sup> Article 48.2

<sup>34</sup> Fasan (n 27 above)

- The obligation to simplify requirements and formalities in respect of the release and clearance of goods
- Collaboration on the development of procedures enabling the submission of import or export data to a single agency
- Coordination between customs and other control agencies so as to enable official controls upon import or export to be carried out, as far as possible, by a single agency
- Computerisation of customs procedures and the possible establishment of common standards
- The application of modern customs techniques, including risk assessment, simplified procedures for entry and release of goods, post release controls, and company audit methods
- The provision of effective and prompt procedures with respect to judicial or administrative measures, including the right of appeal against customs and other agency administrative actions, rulings and decisions affecting imports and exports of goods
- That trade and customs provisions and procedures will be based upon, among other things, rules that ensure that any penalties imposed for minor breaches of customs regulations or procedural requirements are proportionate and, in their application, do not give rise to undue delays in customs clearance
- The undertaking to make publicly available general information of interest to economic operators, such as the hours of operation for customs offices, including those at ports and border crossing points, and the points of contact for information enquiries
- The undertaking that new legislation and general procedures related to customs, as well as any modifications, are to be published and publicised 'no later than the entry into force of such legislation and procedures'

The over-all trend seems to be that the EU negotiates deeper and detailed commitments with those developing countries that have more advanced trade related institutions and that also have the capacity to implement sophisticated TF measures. An important consideration for African countries would be whether they are willing to accept detailed commitments on TF, given their level of development, which is quite varied. It would certainly not be wise to go deeper than commitments negotiated at the WTO level and countries should ensure that commitments coupled directly with financial and technical assistance provisions.

## **V). A REGIONAL POSITIVE AGENDA IN TRADE FACILITATION**

The next steps for adequate preparation of African countries in all these negotiations would be to harmonize relevant trade facilitation efforts undertaken in regional bodies together with WTO and EPA commitments. The preparation needs to document attempts at such harmonization, and the capacity programs include. A positive agenda for Africa should aim at improving the efficiency and competitiveness of transport corridors in order to reduce transport costs and transit time, and speed the creation of regional markets. This requires actions related to streamlining and harmonizing transit and customs regulations, improving coordination of corridor operations, monitoring performance, and fighting corruption. The program requires good coordination of regional, national authorities, donors and other stakeholders. Such a program would be consistent with the New Partnership for Africa's Development (NEPAD) objective to enhance regional development and economic integration on the continent. The main elements are reduction of delays in cross-border movement of people, goods and services; reduction of waiting times in ports; improved land transport

linkages; and increase in air passenger and freight linkages across Africa's sub-regions. These in turn requires a harmonization of border crossing and visa procedures; harmonization of transport modal standards and regulation, and the increased use of multimodal transport facilities; and development of transport corridors. The program therefore requires three parts (i) an efficient regional regulatory framework; (ii) efficient customs operations; (iii) efficient infrastructure, and a proper coordination between stakeholders, donors and RECs.

The regulatory framework needs to distinguish customs and transport aspects, as well as the enforcement capabilities of regional economic communities. On the customs aspects, efficient regulatory framework requires reduced number of customs documents which is possible through regional conventions for transit of goods. An aspect of such conventions is a bond guarantee system preventing smuggling of transit goods and ensuring payment of duties and other levies. On the transport side there is a need for harmonized regional international transport, on a model similar to the European TIR convention of 1975. Lack of harmonization implies that transit vehicles can comply with transport regulation in one country and not comply in another country, which in turn triggers additional controls of vehicles and hinders the flows of goods and vehicles. Enforcement capacity result from lack of commitment to apply decisions adopt at the regional level and the absence of functioning regional Court of Justice with the authority of defining penalties for countries which do not apply regional decisions. In the event that such an enforcement mechanism is created there would be an additional challenge of adequate number and quality of staff.

Customs operations on the continent focus primarily on revenue collection and as such give low priority to other themes such as the facilitation of trade and the movement of people across national borders, the enforcement of policies to promote industry and trade, and collection of trade statistics. Lack of trust among national authorities implies redundant inspections and poor facilitation of transit cargo clearance leading to long port clearance process, costly escort system to prevent excessive controls or smuggling, border crossing delays. This practice generates undue delays, unnecessary controls along the transit road; thus reinforcing the possibility of corrupted practices. Corruption is a major hurdle in the ports, for transit at the borders or during the trip. A few road blocks can be felt necessary for security issues or to verify compliance with regulations. Once or twice on an entire corridor they can be used for customs control purposes. They should never be considered as a source for revenue collection.

Infrastructure in good condition is a prerequisite for stimulating trade and sustaining competitiveness, especially for landlocked countries. Improved coordination of stakeholders is needed at several levels: between regional institutions, between regional institutions and countries, at corridor level and among donors. In most sub-regions coordination at corridor level relies mainly on incomplete bilateral agreements. There are usually no forums to discuss operational issues, and no specific mechanisms to solve them. Other regions have tried to solve this issue by defining corridor management concepts, based on public or mixed public and private participation.

## Elements of a positive agenda

### ***Road transport, customs interface and transit regulation***<sup>35</sup>

- (a) Harmonization of road transport regulation.
- (b) Streamlining of transit procedures including the implementation of a regional bond guarantee system, the single custom document, and the creation of one-stop windows for customs and other formalities for transit to landlocked countries.
- (c) Capacity building to implement the program, and the establishment of national and regional facilitation committees.
- (d) Modernization of the computerized custom information systems, focusing on the provision of interfaces between the different systems existing in the region.

### ***Corridor efficiency***

- a. Coordination mechanism for corridors;
- b. Monitoring mechanisms for obstacles to transit along corridors and corridor performance;
- c. Securitization of transit through electronic monitoring of truck movements and sealing of trucks used for international transit;
- d. Improvement of facilities at borders and of juxtaposed border posts.
- e. Monitoring of regional ports efficiency.

### ***Improvement of regional infrastructure and coordination***

- a. Rehabilitation of road sections in poor condition;
- b. Efficient monitoring of regional roads condition;
- c. Measures to reduce road accidents;
- d. Measures to mitigate the impact of civil works on the environment;
- e. Strengthening of RECs role and capacity in policy implementation, including setting up of sanction mechanisms,
- f. Improvement of cooperation between public and private stakeholders interested in efficient international transit by creating regional and national facilitation committees or corridor-based coordination bodies; and

## **VI. POSITIVE TF AGENDA IN THE WTO FOR AFRICA**

. Based on the proposal received so far, several elements to be negotiated are cross-cutting issues across the three articles. It might be useful to consolidate these broad concerns in order to condense the scope of the discussions and address the fundamentals. This approach could be used to address all the elements pertaining to each element such as fees, documentation, publication etc. Following are some ideas for Members to consider when negotiating a TF framework in the WTO.

### **Identification of TF Needs and Priorities Prior to Commitments<sup>36</sup>**

As provided for in paragraph 4 of Annex D, the negotiations should be based on the needs and priorities of Members to ensure that the TF effort is in their best interest. Following are some ideas for consideration include:

- For some countries, especially LDCs, conducting a needs assessment and identifying priorities may already require technical assistance. Technical assistance to support the process of identifying needs and priorities has partially been addressed by WCO in their document “WCO Self-Assessment Checklist for GATT articles V, VIII and X”. Needs assessment should also include elements of special and differential treatment, capacity building, costs implications, financial assistance and should encompass an analysis of regional mechanisms.
- Additionally, Annex D provides for a commitment from developed countries to support the negotiations. African countries should ensure such support and assistance is provided even in the needs identification phase. Such support could include travel support for capital-based officials from African countries to Geneva both for participation in the negotiations and for interactive workshops with African Geneva officials.
- Needs would furthermore vary between developing and least developed countries, landlocked countries and those that are not and therefore the identification process denotes the non-applicability of a “one size fits all” approach. To facilitate the information gathering process, the submission by China and Pakistan (TN/TF/W/29) on “Identifying trade facilitation needs and priorities” may provide some initial ideas on how this process can be managed.
- UNCTAD can assist its Members develop capacity to assess needs and priorities through integrated regional and country-specific projects such as the establishment of National Trade Facilitation Bodies and National Trade and Transport Committees, which allow public and private sector to analyze issues and develop common interests and positions.
- In addition, the WTO secretariat organizes a programme of technical assistance activities which include both regional and national participation of capital-based officials. The Secretariat is expected to assist with the identification of needs and priorities within these workshops and endeavour to collect information from participants on the practical problems that they feel their governments encounter in TF. It is expected that the Secretariat will report to the rest of the negotiating group on this basis.
- Using improved coordination with other international organizations, this information can also be gathered through the Integrated Framework (IF) and the Joint Integrated Technical Assistance Programme (JITAP).
- The Needs and priorities assessment must also be conducted in the context of the regional framework and the appraisal should capture divergences arising from multiplicity in levels of regional economic development amongst individual Members including effectiveness and weaknesses of transit mechanisms.
- The Secretariat could be requested to conduct a study on the sequencing and inter-linkages of TF proposals. For instance, some elements can only be implemented after other initial stages have been put in place. A possible input by the Secretariat could

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<sup>36</sup> W/L/579, Annex D, para 4

illustrate the staged phases of implementation of all proposals and the necessary sequencing that would correspond to the diverse levels of development in the Membership and attract financing for a specific stage of implementation.

### **Special and Differential Treatment: Extent and Timing of Commitments**

The Kigali Consensus reiterated concerns expressed by African countries regarding the economic implications of negotiating new WTO agreements, especially considering that existing commitments already tax their capacities. Annex D follows the line drawn by several African countries' submissions that it is vital to address the resource and capacity constraints of developing countries, the costs of implementing the new rules and determining how and who will meet the costs.<sup>37</sup> In devising S&D provisions, the following could be considered:

- It is important to note that LDCs will only be required to undertake commitments 'to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities'.
- Annex D refers to the need for special and differential treatment (hereafter S&DT) to 'extend beyond the granting of traditional transition periods for implementing commitments'.
- The Africa Group should expect that S&DT provisions on TF should be strengthened from a legal perspective (made precise, effective and operational). Vague language such as for example contained in Article XXXVII of GATT 1994, which provides that "[t]he developed...[Members] shall to the fullest extent possible...accord high priority to the reduction and elimination of barriers to products currently or potentially of particular export interest to...developing countries]" provides very little legal certainty and is difficult to enforce.
- Provisions providing for pre-commitments that would be based on the quality and effectiveness of technical assistance.
- Provisions allowing for commitments to ensue as levels of development rise while allowing sufficient flexibility and policy space to pursue other national objectives.
- Provisions that provide flexible commitments, and variable implementation procedures.
- Provisions that provide African countries with the mandate to request technical assistance from developed country members in order to implement new commitments undertaken in this negotiating group.
- Provisions that allow African countries to transition through certain commitments in order to preserve certain sensitivities such as revenue concerns.

### **Implementation: Effective Provision of Technical, Financial Assistance and Capacity Building<sup>38</sup>**

In order to allow developing and least-developed countries to take advantage of the benefits accruing from trade facilitation, the needs of these countries and their ability to implement whatever may be agreed upon in the future must be ensured.

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<sup>37</sup> ACP Declaration (2004) para (d)

<sup>38</sup> W/L/579, Annex D, para 5-6

- African countries should identify their specific technical assistance needs as a precondition for implementation of commitments. Annex D provides for coherence and collaboration with international organizations, such as the IMF, OECD, UNCTAD, WCO and the World Bank to ensure effective and operational technical assistance and capacity building. A number of capacity building initiatives spearheaded by institutions such as the WCO, UNCTAD and the World Bank already exists (see Appendix B).
- The outcome of the negotiations could lead to certain commitments whose implementation would require support for infrastructure development on the part of some Members'. In the case of commitments requiring infrastructure development, implementation should be made conditional on the provision of such support and assistance.
- Annex D furthermore refers to the need for provisions that cater to 'effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues'. African countries could propose that technical assistance be linked to such cooperation.
- It is important that any support and technical assistance be of real value to developing countries and LDCs; Annex D provides for the review of such measures to test whether they effectively support the implementation of commitments.
- A number of common inter-linkages can be identified in the TF proposals by Members. These broad principles are useful to keep in view when discussing implementation approaches. These include transparency, consistency, predictability, non-discrimination, simplification, non-restrictiveness and due process
- Implementation should take a cross-cutting approach since several proposals on the three articles address similar issues of fees, formalities, documentation, customs procedures etc.

### **Considerations for Article V**

- Freedom of transit does not only concern landlocked countries. Many traders have to rely upon the possibility of transportation through neighbouring countries as the most convenient and cost effective way for exporting or importing their goods. For this reason, regional mechanisms might work best and not multilateral binding provisions on article V.
- Additionally, legitimate policy concerns, related for example to national security, health, safety and the environment, must not be compromised in any way. Members may also have also concerns regarding smuggling, leakages and immigration. In this regard, exceptions provided for in GATT Article XX and XXI are fully applicable, relevant and should be kept in view.
- Even though regional mechanisms might be considered, it may be necessary to clarify the MFN provision in this regard for non-Members of the regional arrangement.
- Article V has never been applied under the dispute settlement mechanism however there have been consultations. It could be argued that the article requires little improvement or clarification and Members could consider the usefulness of expending negotiating energy in the WTO rather at the regional level. In this regard EPAs might be a useful forum to address some of these issues and attract financing for instance in article V there is a need for cargo tracking mechanisms and infrastructure.
- It may present a challenge for African countries to commit to new rules under Article V, as this seems to be the area where they lag behind the most and need to be compliant with existing transit instruments and obligations. New TF needs should therefore be

clearly defined. Additionally, infrastructure needs might best be assessed within a regional context as problems related to roads, railways and harbours tend to affect entire regions and not just specific countries. These should be further tied in with existing donor-funded efforts to build transport, border and trade-related infrastructure.

- Member states should have the flexibility to pursue their own priorities even in a regional context. For instance if the volume of intra-regional trade is low, Members could have the flexibility to pursue other high value commitments in the WTO and not transit.
- Cross-cutting elements such as fees and charges could be addressed in the WTO however a centralised regional approach might prove useful since neighbouring countries can better harmonise, standardise and review transit mechanisms, including fees and charges.
- There is proposal calling for the MFN treatment of all modes of transport. Members should apply caution in this area as some modes of transport are more risky than others when considering security and public policy issues of transit countries.

### **Considerations for Article VIII**

- It should be kept in mind that Article VIII does not impose a legal obligation to reduce the number and diversity of fees and charges or to simplify import and export formalities however Members may consider this desirable to facilitate their private sector import and export activities.
- Members might need to address sensitivities pertaining to revenue given that some proposals call for the reduction of government fees through standardization of disciplines for charging fees. African countries could propose SDT mechanisms to gradually reduce such fees as a flexibility.
- On fees, most African countries have high transaction costs in TF. Some of these charges may not be in governmental control. How then are such fees managed and how much time would be required for the private sector to gradually reduce them? Flexibilities in this regard must provide African countries with the space to pursue policy options that meet individual needs of the Member State and its private sector. Dialogue within a regional framework might be useful in order to incorporate views of regional trading partners and possibly pursue a regional solution.
- Information management is an important part of customs formalities. African countries could coordinate with relevant international institutions to meet modernization and automation needs such as ASYCUDA. Necessary financing however must be provided for by developed countries as committed to in Annex D if new rules requiring data transfers and centralized procedures are to apply.
- Simplification of border procedures and documents, risk assessment and cooperation between border agencies can provide some benefits. For instance, several African countries have adopted the single administration document (SAD) and UNLK as a standard for trade documents.
- The publication of fees on the Internet can arguably reduce formalities for traders and enhance transparency however it would also require government to collect information on fees from private entities and exercise some level of control over it. This has once again regulatory and institutional implications for African governments and would require substantial financial and technical resources. Careful consideration should be accorded to these proposals however African countries could publicise governmental fees only through media that was most convenient for them in an official WTO language.

## Considerations for Article X

- Article X proposals may require long-term reform in institutional practices including judicial and regulatory procedures. Members could carefully consider non-binding provisions in this area as these procedures are beyond the ambit of customs and instead involve other administrative institutions.
- On the other hand, implementation should allow flexibilities for individual countries to pursue an approach that addresses their level of development while meeting the core objectives such as transparency and predictability of trade regulations.
- In addition, proposals by African countries on this article might provide Members with ideas that address divergences between formal trade and informal trade environments which are characteristic in many African countries.
- African countries should also evaluate the maturity levels of law making processes before considering proposals on reviews and consultations with WTO Members and other interested parties.
- Provisions such as the publication of penalties and providing reasons for rejection of documentation are good from a public administration and good governance point of view as they adhere to notions of transparency and administrative justice. However, African countries should keep in mind, though that the obligation to publish penalties will entail amendments to existing import and export regulations and an appropriate timeframe should be agreed upon. Providing reasons for decisions will impose additional administrative burdens on officials. Countries should, therefore assess their institutional capacity in this regard.
- In addition, Internet publication, publication in other WTO languages and publication before implementation could be burdensome for some African countries and beyond the scope of Article X. SDT may be required and in fact these should be best endeavors only and/or made conditional upon technical assistance in line with Annex D 6.
- Administrative justice requirements such as prior notification by way of publication and review mechanisms require some resource expenditure by governments. Training of officials that staff judicial, arbitral or administrative tribunals will be an essential TF need for most governments.
- African countries should also consider addressing non-tariff barriers which hinder the expedited movement of goods in export markets. These include burdensome rules of origin, TBT and SPS requirements which have been increasingly used as commercial policy tools aimed at hindering market access. Furthermore, access to the appropriate information on the applicability, predictability is sometimes lacking. African countries could consider proposals to address these concerns as presently provided for in the International Convention on the Harmonization of Frontier Control of Goods, 1982. The elements of such a proposal could include consultations, periodic reviews and publication before implementation.
- Uniform administration, advance rulings on tariff classifications prior to importation, prior consultation and the establishment of inquiry points, go beyond the scope of Article X. The thorough review of comments received prior to finalization requires capacity and there is a danger that if countries cannot handle the number of comments received, it will only pay lip service to this requirement. Some countries may already allow for prior consultation as part of their legislative process
- Some proposals on Article X could be beyond the mandate as they are not of a general nature. African countries should avoid any commitments in areas beyond their

capabilities and institutional needs but rather extend their negotiating energies on more critical concerns such as risk assessments, smuggling and corruption.

## **Conclusion**

Trade facilitation is definitely a potential source of growth promotion in Africa and African countries need to continue focus on an integrated and coherent approach. Progress achieved in such a broad approach does not, however, necessarily mean multilateral binding. It is important to provide adequate policy flexibility in the rules to enable countries commit according to own priorities and capabilities. Members should be allowed to pre-commit, with the option of linking pre-commitments to effectiveness of capacity building efforts. A multilaterally agreed monitoring framework will be necessary. Such a review needs to monitor and evaluate the commitments made, the implementation capacity and the availability of technical and financial assistance. Experience with ongoing trade facilitation programme suggests that the cost of ambitious multilateral agreement on trade facilitation will be high and certainly beyond the capability of African countries. There is, therefore, a need for trade facilitation fund to cater for necessary adjustment costs arising from the expected new commitments in the final WTO trade facilitation agreements.

The next steps for adequate participation of Africa in these negotiations would be to document the situation in a selected group of countries that have made relatively good progress in these areas and that could provide “best practice” examples. These case could be used to design a comprehensive programme that a typical African country would have to undertake in order to comply to a multilateral agreement on trade facilitation with elements in proposals being tabled are to become binding. Additionally, submissions to the negotiating group on trade facilitation can be made specifically to address concerns of African countries and present possible positions following the needs assessment exercise..

## **APPENDIX A:**

### **Modalities for negotiations as set by Annex D of the July Package:**

1. Negotiations shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit. Negotiations shall also aim at enhancing technical assistance and support for capacity building in this area. The negotiations shall further aim at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues.
2. The results of the negotiations shall take fully into account the principle of special and differential treatment for developing and least-developed countries. Members recognize that this principle should extend beyond the granting of traditional transition periods for implementing commitments. In particular, the extent and the timing of entering into commitments shall be related to the implementation capacities of developing and least-developed Members. It is further agreed that those Members would not be obliged to undertake investments in infrastructure projects beyond their means.
3. Least-developed country Members will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.
4. As an integral part of the negotiations, Members shall seek to identify their trade facilitation needs and priorities, particularly those of developing and least-developed countries, and shall also address the concerns of developing and least-developed countries related to cost implications of proposed measures.
5. It is recognized that the provision of technical assistance and support for capacity building is vital for developing and least-developed countries to enable them to fully participate in and benefit from the negotiations. Members, in particular developed countries, therefore commit themselves to adequately ensure such support and assistance during the negotiations.
6. Support and assistance should also be provided to help developing and least-developed countries implement the commitments resulting from the negotiations, in accordance with their nature and scope. In this context, it is recognized that negotiations could lead to certain commitments whose implementation would require support for infrastructure development on the part of some Members. In these limited cases, developed-country Members will make every effort to ensure support and assistance directly related to the nature and scope of the commitments in order to allow implementation. It is understood, however, that in cases where required support and assistance for such infrastructure is not forthcoming, and where a developing or least-developed Member continues to lack the necessary capacity, implementation will not be required. While every effort will be made to ensure the necessary support and assistance, it is understood that the commitments by developed countries to provide such support are not open-ended.
7. Members agree to review the effectiveness of the support and assistance provided and its ability to support the implementation of the results of the negotiations.
8. In order to make technical assistance and capacity building more effective and operational and to ensure better coherence, Members shall invite relevant international organizations, including the IMF, OECD, UNCTAD, WCO and the World Bank to undertake a collaborative effort in this regard.
9. Due account shall be taken of the relevant work of the WCO and other relevant international organizations in this area.
10. Paragraphs 45-51 of the Doha Ministerial Declaration shall apply to these negotiations. At its first meeting after the July session of the General Council, the Trade Negotiations

Committee shall establish a Negotiating Group on Trade Facilitation and appoint its Chair. The first meeting of the Negotiating Group shall agree on a work plan and schedule of meetings.

**APPENDIX B:  
TRADE FACILITATION CAPACITY BUILDING PROGRAMMES  
WORLD BANK**

In the negotiations leading to the July Package, WTO negotiators identified the World Bank, UNCTAD, WCO, OECD and IMF as relevant international institutions, capable of providing technical assistance and capacity building to support the negotiations. The **World Bank's** activities on country financing and policy dialogue are linked to the Banks Trade Logistics Group whose role is to consolidate demand driven trade policy, infrastructure and customs reform. In this regard, the World Bank has prepared a WTO Trade Facilitation Negotiations Support Guidebook to assist developing and least-developed WTO Members, effectively participate in Trade Facilitation Negotiations in the WTO. The guidelines provide for the establishment of an effective mechanism to obtain, consolidate and coordinate the provision of information and advice to Geneva-based negotiators from a broad range of stakeholders within the country. The coordination mechanism requires the establishment of a politically supported, single contact point responsible for receiving requests and disseminating them to various experts for response and subsequently consolidating the responses for communication back to the negotiators in Geneva.

The appropriate coordinating agency will bear the responsibility of creating a group (referred to in the guide as Trade Facilitation Negotiations Coordination Group) whose responsibility will be to develop and administer the coordination mechanisms. The chair of the group is expected to contact the coordinating government agencies with an invitation to nominate agency representatives who will be assigned as focal points within the agency to address issues arising from the negotiations. The guidebook also addresses the process of conducting consultations with both public and private stakeholders and proposes the use of a Stakeholder Issues Analysis Matrix to identify the stakeholders, issues for input, responses, implications and timeline for communicating the outcome of the consultations to the Trade Negotiations Coordination Group. The consultations must respond to the Geneva timeframes, provide clear and unambiguous description of the issue and succinctly state the negotiating position.

To accomplish this, the document provides some guidelines on how to analyze the issues using two techniques, a situation analysis and gap analysis. The situation analysis compares the current legal framework and administrative processes to the provisions of the relevant GATT articles being addressed in the negotiations. The analysis is expected to identify those elements a WTO Member already conforms to and those which they do not. Following this analysis, a gap analysis is expected to determine what resources or activities need to be completed to close any gaps that would be required to implement a given proposal. The analysis would be ideally conducted by the agency dealing with the subject matter pertaining to the issue. Feedback would be channelled through the Trade Facilitations Coordination Group to the Geneva negotiators. The World Bank has selected several pilot countries, like Uganda for the implementation of this approach.

**GFP**

**The Global Facilitation Partnership for Transportation and Trade (GFP)** is a single window for worldwide trade facilitation resources which aims at pulling together all interested parties, public and private, national and international, to help achieve significant improvements in transport and trade facilitation. The Partners have together agreed to design and undertake specific programs towards meeting this objective, making use of their respective comparative advantage in the subject matter in a coordinated fashion.

## **WCO**

The **WCO** is supporting the trade facilitation negotiations in several ways. Firstly, the institution has produced a self-assessment checklist, intended to provide a snapshot of the customs administration relative to the three articles. For each article, the checklist covers issues pertaining to strategic management, resources, legal framework, systems & procedures, ICT, external cooperation, communication, partnership and integrity. The checklists are based on the WCO Diagnostic Framework for customs capacity building and the WCO hopes that the checklist could assist governments to consider undertaking a more comprehensive customs reform modernization programme. Additionally the WCO Time Release Study has been found useful to measure the average time taken between the arrival of goods and their release at each intervening step. By using the TRS, countries can identify problems and bottlenecks in the cross-border movement of goods following which they bring forward solutions in the negotiations to address the issues identified. The WCO has also undertaken regional level capacity building to promote the Revised Kyoto Convention of 1999.

## **UNCTAD**

**UNCTAD** Guidelines to assess Trade Facilitation needs and priorities in LDCs is expected to be available soon. Additionally, UNCTAD has hosted workshops in Geneva for the Core Group of 19 Countries and the African Group on the three articles with a view to finding common positions in the negotiations. This assistance has been made possible by the Swedish Trust Fund. Regionally, the ASYCUDA project to support customs modernisation and automation has been initiated in 31 African countries.

## **OECD**

**OECD** publications on Trade Facilitation, on issues such as customs fees, are an important contribution to these negotiations.

## APPENDIX C

### Article V – Freedom of Transit

1. Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a contracting party when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the contracting party across whose territory the traffic passes. Traffic of this nature is termed in this article "traffic in transit".
2. There shall be freedom of transit through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties. No distinction shall be made which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or of other means of transport.
3. Any contracting party may require that traffic in transit through its territory be entered at the proper custom house, but, except in cases of failure to comply with applicable customs laws and regulations, such traffic coming from or going to the territory of other contracting parties shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.
4. All charges and regulations imposed by contracting parties on traffic in transit to or from the territories of other contracting parties shall be reasonable, having regard to the conditions of the traffic.
5. With respect to all charges, regulations and formalities in connection with transit, each contracting party shall accord to traffic in transit to or from the territory of any other contracting party treatment no less favourable than the treatment accorded to traffic in transit to or from any third country.
6. Each contracting party shall accord to products which have been in transit through the territory of any other contracting party treatment no less favourable than that which would have been accorded to such products had they been transported from their place of origin to their destination without going through the territory of such other contracting party. Any contracting party shall, however, be free to maintain its requirements of direct consignment existing on the date of this Agreement, in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of the goods at preferential rates of duty or has relation to the contracting party's prescribed method of valuation for duty purposes.
7. The provisions of this Article shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage).

\*Interpretative note with respect to paragraph 5:

With regard to transportation charges, the principle laid down in paragraph 5 refers to like products being transported on the same route under like conditions.

## APPENDIX D

### Article VIII – Fees and Formalities Connected with Importation and Exportation

1. (a) All fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.  
(b) The contracting parties recognize the need for reducing the number and diversity of fees and charges referred to in sub-paragraph (a).  
(c) The contracting parties also recognize the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements.\*
2. A contracting party shall, upon request by another contracting party or by the CONTRACTING PARTIES, review the operation of its laws and regulations in the light of the provisions of this Article.
3. No contracting party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.
4. The provisions of this Article shall extend to fees, charges, formalities and requirements imposed by governmental authorities in connection with importation and exportation, including those relating to:
  - (a) consular transactions, such as consular invoices and certificates;
  - (b) quantitative restrictions;
  - (c) licensing;
  - (d) exchange control;
  - (e) statistical services;
  - (f) documents, documentation and certification;
  - (g) analysis and inspection; and
  - (h) quarantine, sanitation and fumigation.

\*Interpretative note to paragraph 1 (c):

1. While Article VIII does not cover the use of multiple rates of exchange as such, paragraphs 1 and 4 condemn the use of exchange taxes or fees as a device for implementing multiple currency practices; if, however, a contracting party is using multiple currency exchange fees for balance-of-payments reasons with the approval of the International Monetary Fund, the provisions of paragraph 9(a) of Article XV fully safeguard its position.
2. It would be consistent with paragraph 1 if, on the importation of products from the territory of a contracting party into the territory of another contracting party, the production of certificates of origin should only be required to the extent that is strictly indispensable

## APPENDIX E

### ARTICLE X Publication and Administration of Trade Regulations

1. Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefore, or affecting their sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. Agreements affecting international trade policy which are in force between the government or a governmental agency of any contracting party and the government or governmental agency of any other contracting party shall also be published. The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.
2. No measure of general application taken by any contracting party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefore, shall be enforced before such measure has been officially published.
- 3.(a) Each contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.
- (b) Each contracting party shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement and their decisions shall be implemented by, and shall govern the practice of, such agencies unless an appeal is lodged with a court or tribunal of superior jurisdiction within the time prescribed for appeals to be lodged by importers; Provided that the central administration of such agency may take steps to obtain a review of the matter in another proceeding if there is good cause to believe that the decision is inconsistent with established principles of law or the actual facts.
- (c) The provisions of sub-paragraph (b) of this paragraph shall not require the elimination or substitution of procedures in force in the territory of a contracting party on the date of this Agreement which in fact provide for an objective and impartial review of administrative action even though such procedures are not fully or formally independent of the agencies entrusted with administrative enforcement. Any contracting party employing such procedures shall, upon request, furnish the CONTRACTING PARTIES with full information thereon in order that they may determine whether such procedures conform to the requirements of this sub-paragraph.

## ILEAP Analytical Support Structure



### International Lawyers and Economists Against Poverty (ILEAP)

1240 Bay Street, Suite 602

Toronto, Ontario

Canada M5R 2A7

T +1 416 946 3107

F +1 416 946 0797

E [ileap@ileap-jeicp.org](mailto:ileap@ileap-jeicp.org)

[www.ileap-jeicp.org](http://www.ileap-jeicp.org)