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WTO TRADE FACILITATION NEGOTIATIONS SUPPORT GUIDE

As agreed at the Group's meeting of 13-14 June 2005, reproduced herewith is a Trade Facilitation Negotiations Support Guide prepared for and on behalf of the World Bank to assist developing and least-developed WTO Members to effectively participate in the WTO Trade Facilitation negotiations.



THE WORLD BANK

**WTO TRADE FACILITATION
NEGOTIATIONS SUPPORT GUIDE**

A Guidebook to assist developing and least-developed
WTO Members to effectively participate in the WTO
Trade Facilitation Negotiations

March 2005

Prepared by the Centre for Customs & Excise Studies, University of Canberra, for and on behalf of the World Bank

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GLOSSARY

Annex D	An Annex to the WTO July Package that explains how the negotiations on trade facilitation will take place
Article V	GATT Article dealing with freedom of transit for goods
Article VIII	GATT Article dealing with fees and formalities connected with importation and exportation
Article X	GATT Article requiring all trade regulations to be clearly published and fairly administered
Contracting Party	Countries that are party to a convention through signature, ratification or accession
Doha Round	The current multilateral trade negotiations that were launched at the 4 th WTO Ministerial Conference held in Doha, Qatar in November 2001
Gap Analysis	A technique that may be used to determine whether a country is compliant with a proposal or agreement
July Package	The agreed work program for achieving a negotiated outcome on the Doha Round
Member	A member of the WTO
Situation analysis	A technique that may be used to determine what national legislation is relevant to a proposal or agreement
WCO	World Customs Organization
WTO	World Trade Organization

INTRODUCTION

This Procedural Guide is intended to assist developing and least-developed WTO Members to establish practical and cost effective mechanisms to ensure they are able to actively participate in the current WTO negotiations on trade facilitation.

Many of the issues on the trade facilitation agenda are complex and highly technical in nature and often require detailed guidance and advice from capital-based experts. Practical communication and coordination mechanisms are needed to facilitate this process.

This Facilitation Guide is designed to provide WTO Members with a range of options for establishing effective communication and coordination mechanisms to support the trade facilitation negotiation process. The practical suggestions contained in the Guide are not prescriptive and will assist Members to develop and introduce effective procedures that are designed to meet their individual circumstances.

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CHAPTER 1 OVERVIEW

1.1 Background to the Doha Trade Facilitation Work Program

In November 2001, Ministers of WTO Members met in Doha, Qatar to launch a new 'round' or series of trade negotiations in international trade. This conference resulted in a mandate to undertake multilateral trade negotiations in accordance with the work program specified in the Ministerial Declaration. This is the *Doha Declaration*, also called the *Development Round* for the emphasis it places on rights and concessions for developing countries.

The Doha Declaration includes the following decision relating to trade facilitation:

Recognizing the case for further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations. In the period until the Fifth Session, the Council for Trade in Goods shall review and as appropriate, clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 and identify the trade facilitation needs and priorities of members, in particular developing and least-developed countries. We commit ourselves to ensuring adequate technical assistance and support for capacity building in this area.¹

KEY POINT

The Articles referred to in the Declaration relate to Freedom of Transit (Article V), Fees and Formalities connected with Importation and Exportation (Article VIII) and Publication and Administration of Trade Regulations (Article X).

1.1.1 *Annex D of the July package: the basis for negotiations*

Following discussions in July 2004 the General Council agreed to adopt the *July Package* that will now guide the next phase of the WTO Doha Round negotiations. It includes the following reference to trade facilitation:

Trade Facilitation: taking note of the work done on trade facilitation by the Council for Trade in Goods under the mandate in paragraph 27 of the Doha Ministerial Declaration and the work carried out under the auspices of the General Council both prior to the Fifth Ministerial Conference and after its conclusion, the General Council decides by explicit consensus to commence negotiations on the basis of the modalities set out in Annex D to this document.²

Through this agreement, the General Council of the WTO has reaffirmed the Ministerial Declarations and Decisions adopted at Doha and the full commitment of Members to giving effect to them.

Annex D (reproduced at Appendix 1) establishes the modalities for negotiations on trade facilitation, clarifies issues contained in paragraph 27 of the Doha Declaration and takes into account some of the major concerns of developing countries. In this respect it recognises the need for "special and

¹ Paragraph 27 of the Doha Ministerial Declaration, adopted on 14 November 2001

² Paragraph (g) of the decision adopted by the General Council of the WTO on 1 August 2004

differential treatment” beyond the granting of transition periods, taking into account countries’ implementation capacities.

A Negotiating Group on Trade Facilitation was subsequently established and meets regularly according to a negotiating timetable established by them. The clarification and improvement of Articles V, VIII and X of the GATT 1994 is the first issue to be addressed under the negotiations.

1.1.2 What is ‘trade facilitation’?

Trade facilitation potentially covers a multitude of issues that are relevant to the smooth and efficient flow of trade. The term has been used in the context of a broad range of potential non-tariff barriers such as import licensing, product testing and overly-complex customs clearance procedures.

Essentially, increased facilitation of trade should result in improved economic growth for countries and improved competitiveness for their industries, by reducing unnecessary bureaucratic requirements and harmonising relevant process, while at the same time ensuring that each country has the right to protect itself from unlawful trade practices.

For individual Members, the priority issues relating to trade facilitation are heavily influenced by the perspective of the country concerned. For example, if a country is land-locked, the focus of trade facilitation is likely to be on the need for an efficient and effective transport mechanism that services its trade, regardless of distance and the number of borders to be crossed.

The various considerations that come into play with trade facilitation have been rationalised for the purposes of the current round of WTO negotiations, with discussions aiming 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”.³ This relates primarily to Customs activities, including those activities performed by Customs on behalf of, or in cooperation with, other Government agencies.

The WTO focus on Articles V, VIII and X therefore includes both the underlying principles of the Articles and areas where the provisions might be improved. In addition, it includes the needs and requirements of developing and least developed Members. This aspect of the negotiations is discussed later.

³ Annex D of the July Package

1.1.3 Significance of this Guide

As noted above, Annex D of the WTO July Package introduces the modalities for negotiations on trade facilitation. In particular it highlights the need for “effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues”. This reference includes appropriate national administrative authorities and therefore means that each Member’s individual circumstances and governmental structures should be taken into account when framing responses to trade facilitation issues.

Given this context, a diverse range of stakeholders will have a keen interest in the outcome of the trade facilitation negotiations. The diversity of those stakeholders and the fact that input may be required from both Government and the business community requires an effective mechanism for seeking relevant input, consolidating that input and communicating it to negotiators in a timely manner.

This Guide will assist WTO Members in implementing such a mechanism and facilitates their effective engagement in the negotiation process.

1.2 Key Principles of the Trade Facilitation Agenda

Annex D stipulates that “the results of the negotiations shall take fully into account the principle of special and differential treatment for developing and least-developed countries”, and extends this principle beyond the granting of transition periods for implementing commitments to require consideration of the implementation capacities of these countries. In particular, it states that 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”.

KEY POINT

The success or otherwise of the trade facilitation negotiations will be conditional on the provision and support of technical assistance and capacity-building for developing and least-developed WTO Members. It is therefore essential to ensure that the implementation needs and requirements of such countries are clearly identified within the relevant timeframes of the negotiating timetable.

Annex D asks Members “to identify their trade facilitation needs and priorities, particularly those of developing and least-developed countries” and to “address the concerns of these countries related to cost implications of proposed measures”. It goes on to say that technical assistance and support for capacity-building is “vital to enable them to fully participate in and benefit from the negotiations.”

The Annex also addresses the need to “review the effectiveness of the support and assistance provided and its ability to support the implementation of the results of the negotiations”.

In summary, Annex D makes it very clear that the success or otherwise of the trade facilitation negotiations will be conditional on the provision of technical assistance and capacity-building for developing and least-developed Members.

1.3 Negotiation Timetable

The WTO Trade Negotiations Committee established the Negotiating Group on Trade Facilitation on 12 October 2004. At its first meeting on 15 November 2004, Members of the Negotiating Group agreed on a Work Plan and meeting schedule. The Plan provides for work to proceed as per Members' contributions and input as requested.

The approved agenda of the Negotiating Group comprises:

- Clarification and improvement of relevant aspects of Articles V, VIII and X of the GATT 1994;
- Special and differential treatment for developing and least-developed countries;
- Identification of trade facilitation needs and priorities;
- Concerns related to cost implications of proposed measures;
- Technical assistance and support for capacity-building; and
- Working with and the work of other relevant international organizations.

The Group has since held meetings on 22-23 November 2004 and 7-9 February 2005. While the subsequent schedule of meetings is not precise, meetings are planned to be held approximately every two months. It is necessary to refer to the WTO's website to determine precise dates for the Negotiating Group's meetings as the year progresses.⁴

Developing and least-developed countries have stressed "the need to plan the meetings of the different negotiating bodies in a way that they are not juxtaposed but are fairly planned to enable small delegations to attend and contribute", and further, that there is a need to "establish clear schedule of meetings on technical issues well in advance to allow for adequate time for small delegations to respond and participate effectively." These comments are particularly relevant in terms of the rationale for this Procedural Guide.

1.4 The relevance of individual country circumstances

As previously noted, Annex D of the WTO July Package highlights the need for "effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues" including appropriate national administrative authorities.

In the context of the trade negotiations, what constitutes appropriate internal consultation and communication will differ from country to country. The fact is that each WTO Member has its own governmental and administrative structures and adopts international obligations through domestic legislation in its own way. Similarly, each country is subject to its own particular circumstances, culture and socioeconomic imperatives.

For these reasons it is critical that the individual circumstances of each country be taken into account in designing and implementing an effective consultation and coordination framework. Effective participation in the negotiations requires the implementation of such a framework. If negotiators aren't able to respond to issues raised and as a result don't have the opportunity to influence outcomes

⁴ See www.wto.org/english/news_e/meets.pdf.

at critical points in the process, decisions may be taken on those issues without their input and once settled at WTO level, it is difficult to re-open them in the short to medium term.

This Procedural Guide seeks to assist countries to effectively participate in the negotiating process irrespective of differing circumstances by identifying issues and principles that have relevance to all countries grappling with the trade facilitation agenda. Nevertheless, it remains vitally important to recognise issues that may be unique to particular countries, and to highlight those issues in feedback to negotiators.

KEY POINT

While a successful outcome on trade facilitation will need to be based on globally accepted standards, this does not necessarily imply that every country will adopt exactly the same administrative mechanisms.

CHAPTER 2 COORDINATION AND CONSULTATION

2.1 Coordination Mechanisms

This and subsequent chapters provide guidelines for the establishment of effective mechanisms to coordinate the provision of information and advice to Geneva-based negotiators. Also discussed are options for establishing the necessary mechanisms and procedures for effectively and efficiently obtaining and consolidating information and advice from a broad range of stakeholders.

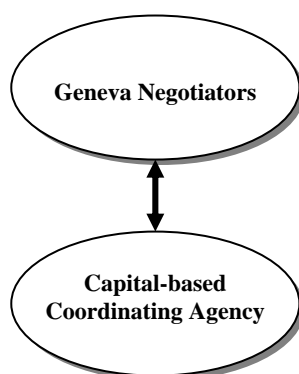
2.1.1 Basic Principles

Negotiations, especially multilateral trade negotiations within the context of the WTO, require timely and effective processes that ensure a country's interests are adequately represented. While it will take time and effort to institute these processes, they are essential for providing governments with an ability to participate fully in the negotiations. The fact is that once negotiations begin they can quickly build momentum on particular issues, and if negotiators aren't in a position to respond promptly and participate at critical points, there is the chance that decisions will be taken on the issues without consideration of a particular country's concerns.

In many countries, multiple government agencies have an interest in the movement of goods, including agencies responsible for health and safety, food inspection, import licensing, tax collection, quality inspection and enforcement. In the absence of an effective coordination mechanism, the negotiators must attempt to interface with each of the agencies individually. The time spent on such a task would impact significantly on their ability to participate effectively in negotiations.

The key objective of any coordination mechanism should be to keep it as simple and streamlined as possible. The more contact points and dependencies that are involved in coordinating a response to a particular negotiating issue, the more time it will take to consolidate the response and get it back to Geneva-based negotiators. There is also a risk that specific input may be missed in the course of consolidation and that quality management of that input may become unduly complex.

Figure 1: Single Contact Point



The simplest coordination mechanism is a single contact point responsible for receiving requests, disseminating those requests to relevant experts for response and then consolidating the responses for communication back to the negotiators. In practice, there is a need to cater for the volume of requests, the frequency of the requests and their timing. In the context of something as complex as multilateral trade facilitation negotiations, a well-organised team needs to be involved in coordination. It will also be necessary to ensure an ability to cater for urgent requests.

2.1.2 *Identifying an Appropriate Coordinating Agency*

The agency or ministry responsible for coordinating input to any negotiations should ideally have policy or administrative responsibilities that are relevant to the subject matter of those negotiations. In most cases this will mean that responsibility for coordinating a Member's input to the current trade negotiations will fall to the agency that has overall responsibility for either trade policy or international and diplomatic relations.

In the specific context of negotiations on trade facilitation however, a viable option may be to delegate such responsibility or a sub-set of these responsibilities, to the agency responsible for customs matters. This is because the trade facilitation agenda places particular emphasis on customs procedures, and most proposals are likely to impact in some way on the customs administration itself and/or other stakeholders involved in customs-related procedures. In any event, it will be important for Customs to play a key role in the coordination process, since some of the more technical issues will inevitably require Customs input.

It should be acknowledged, however, that the identification of an appropriate coordinating agency is as much a question of governance as it is a question of convenience. *Governance* refers to the way in which a particular country manages the business of government and the manner in which the associated administrative arrangements are established. Consequently, while it may be useful to assign the coordination role to the agency responsible for customs matters, there may be broader considerations that dictate the appointment of a different agency such as the Ministry for Trade (or equivalent), which has responsibility for managing the broader agenda of multilateral trade negotiations and relationships with its international trading partners.

KEY POINT

Having identified a single coordinating agency, it is important to ensure that the coordination mechanisms receive full political support.

The primary objective of establishing a coordination mechanism is to promote *effective* participation in the trade negotiations. In seeking to achieve this, it must be recognised that there will be differences in the awareness of, and interest in, trade negotiations by certain government agencies, business and community groups. In addition, resource constraints within particular agencies are likely to influence their degree of involvement in such an initiative.

An effective means of overcoming these difficulties, thereby ensuring that the consultation process receives the priority it requires, is to institute a coordination mechanism that has the full support of the Government, its Prime Minister and Ministers. With this level of political support in place, the coordination mechanisms will be better placed to obtain the required degree of support from government agencies, business and the broader community.

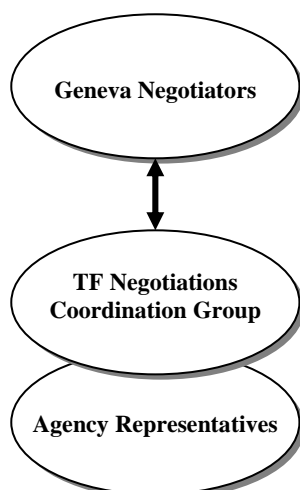
At the end of the day, the decision to assign coordinating responsibility to a particular agency will involve balancing of all these factors. The most important thing is to identify a single coordinating agency that has the capacity to support and drive the process.

2.1.3 *Structure of the Coordination Mechanism*

Having decided on an appropriate coordinating agency, the next step is to establish effective mechanisms for obtaining expert, timely input from all relevant stakeholders. An effective approach is suggested below:

1. Create a group that is chaired by the coordinating agency whose responsibility will be to develop and administer the coordination mechanisms (for the purposes of this Guide, this is referred to as the *Trade Facilitation Negotiations Coordination Group*);
2. The Chair of the Trade Facilitation Negotiations Coordination Group should write to other government agencies notifying them of group's role and responsibilities, the subject matter and agenda of the negotiations and an invitation for the agencies to nominate agency representatives who will be the primary point of reference within the agency for issues that arise from the negotiations. It should be made clear that the nominated contact points should have appropriate time built into their work programs to accommodate any responsibilities that might result from their participation in the group. They should also be available for response on urgent matters out of normal business hours and provide contact details to facilitate that communication. The various agency representatives will therefore form the membership of the Trade Facilitation Negotiations Coordination Group, as depicted in Figure 2.

Figure 2: Agency Representation



3. The coordinating agency should convene an initial meeting of the nominated agency representatives at which it outlines the proposed terms of reference for the coordinating agency and the Trade Facilitation Negotiations Coordination Group itself, the role and responsibilities of the contact points, communication protocols including response timeframes, a schedule for subsequent meetings of the Group and any other administrative matters impacting on the operation of the coordination mechanism.
4. The Trade Facilitation Negotiations Coordination Group will need to establish various administrative procedures to enable it to function effectively. This will include such things as:
 - A dedicated telephone number or telephone roster;
 - Development of a website if practicable;
 - A Contact List in relation to itself and nominated contact points in other agencies for the information of Geneva-based negotiators; and

- Terms of reference.⁵
5. At its initial meeting the Trade Negotiations Coordination Group should examine the trade negotiations agenda with a view to identifying the various issues likely to arise during the course of negotiations, and the probable stakeholders across government, business and the community who may be able to contribute to any analysis of the issues. The outcome of this discussion should be an agreed list of stakeholders and agreement on which agency should have primary responsibility for liaising with particular stakeholders.

KEY POINT

The Trade Facilitation Negotiations Coordination Group provides a single point of contact with Geneva-based negotiators, while individual agencies provide a single point of contact with their respective business and community stakeholders. This approach ensures that subject-matter expertise is obtained from a variety of sources and then consolidated and channelled to Geneva through a single conduit.

The outcome of this approach will be a clear picture of what responsibilities each government agency has in relation to the trade negotiations and the manner in which the consultation and communication mechanisms will operate.

⁵ Suggested Terms of Reference are provided at Appendix 2

SUMMARY OF ROLES

Role of the Coordinating Agency

- Overall responsibility for coordinating input on issues arising from trade negotiations
- Single point of contact for Geneva-based negotiators to request input from home-based experts
- Development of the contact list of government agency experts and creation of the Trade Facilitation Negotiations Coordination Group
- Convenes and chairs meetings of the Trade Facilitation Negotiations Coordination Group as required by the negotiations timetable and/or issues arising.

Role of the Trade Facilitation Negotiations Coordination Group

- Single point of contact for other government agencies in their response to requests originating from Geneva-based negotiators
- Responsible for consolidating the responses from home-based experts and communicating them to Geneva-based negotiators
- Responsible for developing and maintaining communications within government in relation to the progress of the negotiations and issues arising out of those negotiations.

Role of Individual Agencies

- Active participation on the Trade Facilitation Negotiations Coordination Group
- Identification of any issues arising from the negotiations that are relevant to the agency's policies and administrative responsibilities
- Nomination of subject matter experts within the agency for response to the Trade Facilitation Negotiations Coordination Group as required
- Nomination of "on-call officers" and associated contact details for out-of-hours requests
- Coordination of input from within their agency
- Identification of stakeholders within their sphere of expertise and responsibility (for example, the Department of Transport may identify road transport carriers as a key interest group)
- Primary responsibility for obtaining input from identified stakeholders within their sphere of expertise and responsibility and communicating that input back to the Trade Facilitation Negotiations Coordination Group;
- Responsible for developing and maintaining communications with their particular stakeholders in relation to the progress of the negotiations and relevant issues arising from the negotiations.

2.2 Consulting with Stakeholders

The trade facilitation negotiations in effect represent one of the first stages in a significant reform process, the success of which is dependent on a sense of ownership among the various stakeholders. Effective consultation with both public and private sector stakeholders is fundamental to achieving such ownership, and the approach adopted in this Guide has been developed on that basis.

Effective consultation with relevant stakeholders serves to ensure that Geneva-based negotiators have the best and most complete information and advice upon which to participate in the negotiations. It also encourages the sharing of information, expertise and perspectives by those who are likely to be affected by the outcomes of negotiations. This in turn assists governments in undertaking relevant cost/benefit analysis by assessing the potential impact of particular proposals, providing an awareness of alternative approaches and specific implementation difficulties. In this sense it also enables

governments to identify particular areas where technical assistance may be required to meet new international obligations.

2.2.1 Stakeholder identification

Stakeholders are those people, groups and institutions that might contribute to or influence the outcome of the negotiations and for which communication strategies will need to be devised.

Trade facilitation involves more than just customs facilitation; it encompasses all elements of the international supply chain, and it is important to recognise that fact when identifying potential stakeholders. Consequently, stakeholders will generally include those government and business entities that are involved in the administration or conduct of international trade. UNCTAD, for example, has observed that in most countries, trade facilitation involves the ministries of trade, transport and finance as well as the private sector.

To facilitate the process of stakeholder identification in the current context, it is useful to envisage the entire international supply chain and consider those who may be involved at any point in dealing with the goods and the associated documentation, either from a regulatory or commercial perspective.

2.2.2 The Business Community

To achieve a successful outcome on trade facilitation, four elements must be present:

- i) A strong political will;
- ii) A clear strategic plan for implementation;
- iii) Close cooperation with the business community; and
- iv) Effective and sustainable technical assistance where relevant.

It has been said that “business trades, not governments”. A critical aspect of any effective participation in multilateral trade facilitation negotiations is therefore an acknowledgement on the part of negotiators that they are acting at least in part, on behalf of their country’s private sector. As such, it is important that they have a good understanding of the interests of their private sector and communicate regularly with those elements of the private sector that may be impacted by particular aspects of the negotiations.

The significance of engagement with the business community can be demonstrated by reference to trade agreements where negotiators have secured access to export markets and subsequently discovered that their private sector had no capacity to supply those markets. Conversely, a potentially adverse impact on the domestic industry may emerge that was neither highlighted nor anticipated during the course of negotiations.

It is also important to bear in mind that WTO negotiations can be very technical, and that is certainly the case in relation to trade facilitation, with its emphasis on customs and related trade processes. There is therefore a need to engage experts in the consideration and analysis of the various issues that flow from the negotiations, including those from the private sector.

Responsibility for the identification of stakeholders and subsequent liaison with them should fall to the agency that is normally responsible for policy and administration of the subject matter in question. For example, in relation to a specific customs matter such as import declarations, the customs agency would be responsible for identifying the various business interests and for ensuring that the views of those interests are sought.

If a particular agency is experiencing difficulties in either identifying relevant stakeholders or obtaining input from them, the Trade Facilitation Negotiations Coordination Group provides a forum for discussing and addressing such matters. This forum also provides an opportunity for the primary contact point with Geneva-based negotiators (who chairs the group) to be made aware of possible difficulties as early as possible, and to ensure that such issues are addressed before they impact on the negotiations.

2.2.3 Stakeholder Issues Analysis

A simple means of undertaking a stakeholder issues analysis is to develop a *Stakeholder Issues Matrix*, which helps to identify the types of issues that may impact on different stakeholders, the type of input that the stakeholders could provide and the potential impact of their contribution on the negotiation process. An outline of a simple stakeholder issues matrix which may be used as a template in the trade facilitation negotiation process is shown in Figure 4.

Figure 3: Simple Stakeholder Issues Matrix

STAKEHOLDER	ISSUE	TIMEFRAME	RESPONSE
Chamber of Commerce	Advance rulings: what areas should be included and how should they be promulgated?	20 May 2005	Valuation Tariff Classification Origin

The following steps should be followed when undertaking a stakeholder issues analysis in the context of trade facilitation negotiations:

- Identify the stakeholders
- Describe the particular matter or type of issue for which input is being sought
- Describe the nature of the input sought, that is, are you seeking advice on a technical issue or are you seeking agreement/disagreement to a particular option?
- Specify any deadlines for the response
- Summarise the response received
- Identify the implications of the response
- Communicate the outcome to the primary contact point in the Trade Facilitation Negotiations Coordination Group.

2.3 Information Requirements

Effective stakeholder issues analysis requires that the stakeholders in question are sufficiently informed of the nature of the negotiations taking place and the issue for which input is being sought, so they can respond meaningfully and promptly.

For information of a general nature, an effective communication mechanism is required that will allow potential stakeholders to inform themselves about the current progress of negotiations and avail themselves of an opportunity to become engaged on issues that are of interest to them, even where a

specific request for input is not forthcoming. Assuming that a *stakeholder network* has been developed from the processes outlined previously, it is a relatively easy task to construct a mail-out list that can be used for the purposes of distributing a newsletter. Alternatively, a website could be used for this purpose, which could simply form part of an agency's existing website.

Initially, information should be provided on the background to the negotiations, and an outline of the consultation approach that will be used to obtain input from stakeholders together with contact details. Regular updates on progress with the negotiations should then be provided.

In respect of issues of a very specific nature, it may not be appropriate to publicise the information as broadly. For example, in some instances where information is being sought in direct response to a request from Geneva-based negotiators, input may be sought by a specific agency from a specific stakeholder or stakeholders. In this case the communication should be tracked – who is actioning the request, when is a response required and who within the stakeholder organisation is responding to that request. With such requests the information required by the stakeholder will be quite specific.

Similarly, depending upon the nature of the issue it may be appropriate to limit circulation of the information to a restricted audience. For example, some information may be considered to be politically or commercially sensitive.

2.4 Consultation Requirements and Suggested Approach

2.4.1 Purpose

In essence, the purpose of the exercise is to develop and implement procedures which results in feedback to the Geneva-based negotiators that:

- Responds to the timeframes they are reacting to;
- Is clear and unambiguous; and
- Allows a negotiating position to be stated succinctly.

The negotiators in Geneva are not only physically removed from the consultation that is taking place in-country, but also have limited influence over the quality of the input they receive from those consultations. If the input is provided in an *ad hoc* fashion such that it is disjointed and unclear, it will have a negative impact on the negotiator's ability to participate effectively in negotiations. On the other hand, if the input has been appropriately consolidated and a negotiating position effectively summarised, the negotiator's job is made much easier.

Any communication or consultation mechanism that is developed must therefore be *timely* and *effective*. It is worthwhile dealing with each of these characteristics separately to ensure that the chosen consultation mechanisms meet the required aim.

2.4.2 Achieving Effectiveness

It is important to look at the question of effectiveness from several perspectives - from the perspective of Geneva-based negotiators, the Government in the country concerned, and the industry stakeholders.

The negotiators are looking for a response that clearly describes the issue and articulates a position. The best way to achieve this is to consolidate the various responses from different stakeholders into a single position paper which provides a clear negotiating position. To achieve this, individual position papers should be analysed and their content allocated according to common subject headings. This

can then be summarised into a common negotiating text under each subject area with any differences of view highlighted as appropriate.

The ultimate responsibility for analysing and consolidating the responses, and formulating a negotiating position rests with the coordinating agency. Since the coordinating agency may not be subject matter experts, they are likely to rely on the individual agencies to both identify stakeholders and liaise with them to provide the necessary advice. The coordinating agency will, however, be experts in trade and the politics of trade, and will therefore be the appropriate agency to consolidate the various inputs into a common response for Geneva.

From the Government's perspective, there is a need to obtain an overall picture of the potential impacts on the country of specific trade proposals and have some confidence that their views are being taken into account in the negotiations. A coordination mechanism that provides a single point of contact allows for a consolidated brief to be provided to Government which explains the issues and their likely consequences for the country. It also provides an early opportunity for the Government to define policy areas that may require reform, and highlight those sectors of the economy that may need particular attention in terms of readjustment.

The business community is also keen to have its views heard and taken into account in the negotiations. From industry's perspective, a formal consultation mechanism provides an opportunity that might not otherwise be available.

In the absence of a formal consultation mechanism, the business community may not even be able to identify an issue until it is too late. A formal consultation mechanism that acknowledges the day-to-day working relationship of particular agencies with particular industry sectors reduces the risk of industry not being appraised of trade issues that may affect them. It provides industry with the opportunity to outline for government the practical advantages or disadvantages of a trade proposal or negotiating position and gives them time to plan for implementation if necessary.

Finally, since the industry response forms part of consolidated feedback to Geneva, industry may also benefit from the synergies of a number of elements of the business community being involved in the consultation process and the increased influence that may flow from that.

2.4.3 Achieving timeliness

To be effective, any response must also be timely. If a response arrives too late to be taken into account in the negotiations, the fact that it may be well constructed and researched is irrelevant. Requests from Geneva must therefore be promptly:

- Acknowledged;
- Distributed for appropriate action;
- Subjected to expert analysis by relevant stakeholders; and
- Resolved by way of appropriate advice;

The advice or comment must then be:

- Consolidated;
- Summarised into a clear and concise position; and

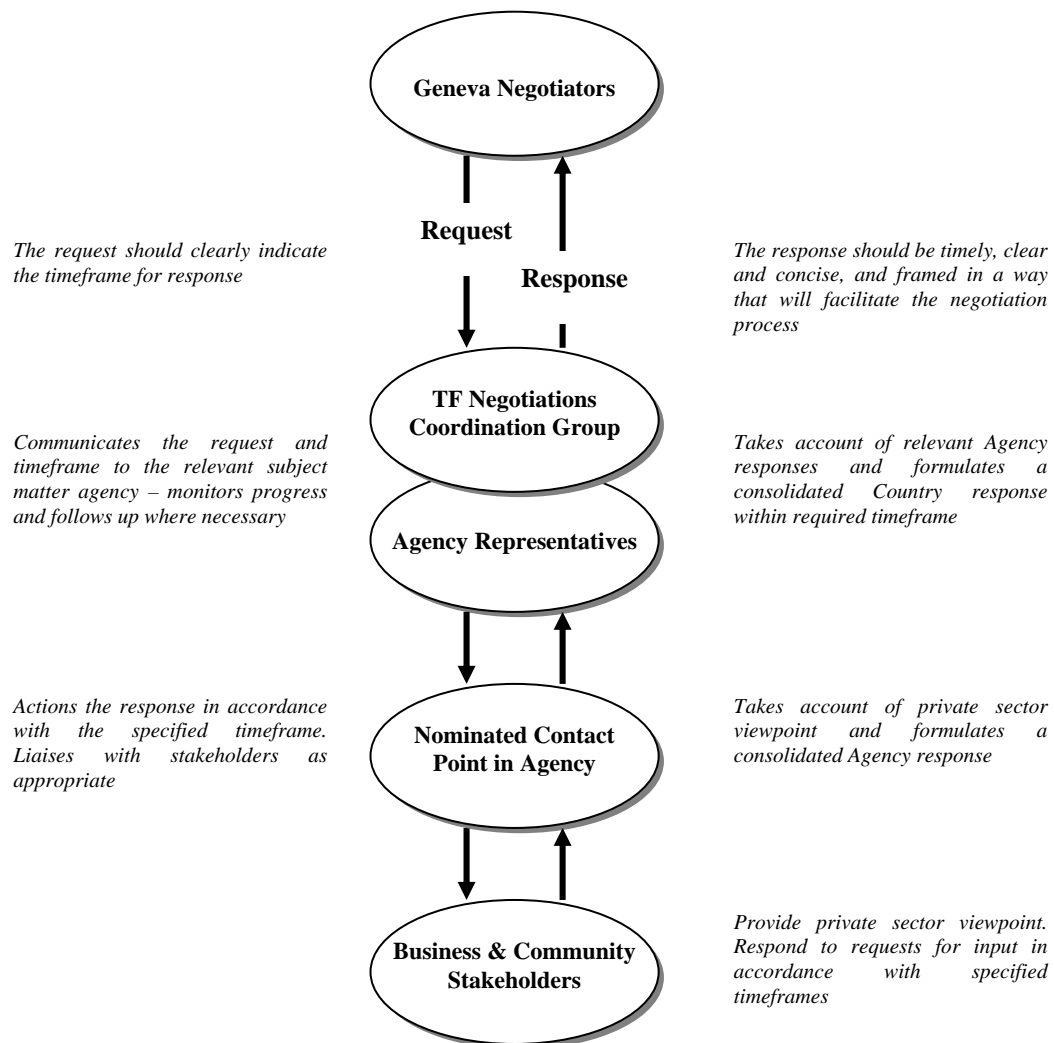
- Communicated back to Geneva within the required timeframe.

These steps must occur in accordance with any stated deadlines for a response. Sometimes the deadlines will allow the steps to be undertaken over several weeks or even longer depending on the negotiations schedule. There will be occasions, however, when an immediate response is required, and the consultation mechanism must be able to cater for such real-time requirements.

The critical aspect of this process is to *ensure that any deadlines specified in the request are reflected in the communications seeking a response*. A key role of agency representatives is to track the communications and if necessary chase them up to ensure that the deadlines are met. In particular, the Trade Facilitation Coordination Group has the crucial role of firstly *logging* the request when it is made, including the required timeframe for response, and secondly ensuring that the response(s) are communicated back to Geneva within that timeframe.

The overall consultation process is summarised in Figure 5.

Figure 4: Overview of Consultation Process



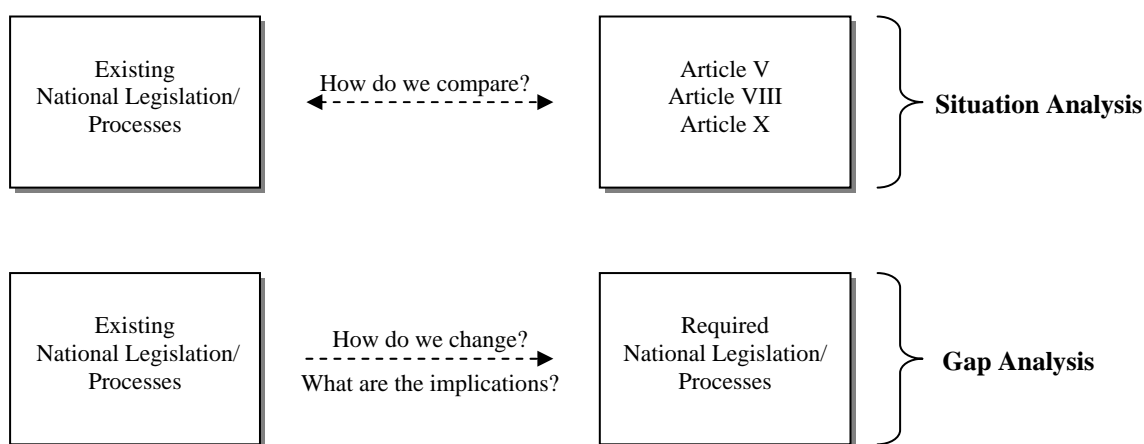
CHAPTER 3 ANALYSING THE ISSUES

3.1 Introduction

The overview of the consultation process (Figure 4) identifies the need for agencies to take account of the private sector viewpoint, and to formulate a consolidated agency response. Similarly, the Trade Facilitation Negotiations Coordination Group is required to take account of the various agency responses and to formulate a consolidated country response.

Part of this process involves a comparison between the Member's current legislative and administrative environment and what is being proposed in the negotiations. This allows an assessment to be made regarding the potential difficulties associated with implementation of specific proposals and the actions necessary to achieve compliance with the proposals. This comparison involves two techniques: *situation analysis* and *gap analysis* (see Figure 5). This Chapter describes a step-by-step approach to these analyses, including a checklist (*issues matrix*) of matters to be considered when responding to requests from Geneva-based negotiators.

Figure 5: Situation and Gap Analyses



3.2 Issue Identification

As previously noted, Annex D of the July Package states that the negotiations “shall aim to clarify and improve relevant aspects of three Articles of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit”. As such, the issue identification process is simplified to the extent that its focus is essentially limited to those issues that may arise from Articles V, VIII and X. Similarly, when undertaking a gap analysis, countries are able to focus their assessment on the implications of achieving compliance with the provisions of those particular Articles.

Issues identification is also assisted by the fact that the WTO Council for Trade in Goods has already undertaken some significant research in relation to trade facilitation matters. The research draws on the work and views of many other intergovernmental organizations and the international business community.

As well as identifying some of the more generic issues, it is also important to identify any specific matters that may be of concern from the country's perspective. This reinforces the point that every country is unique, and each country's particular circumstances should be taken into account in the negotiations. As previously observed, a significant feature of the trade facilitation negotiations is the

emphasis on technical assistance and capacity-building. It is important to note, however, that such assistance should be based on the clearly identified needs and current circumstances of each particular country. It is therefore imperative that such issues are highlighted for the negotiators.

3.3 Situation Analysis

The purpose of the situation analysis is to compare a country's current legal framework and administrative processes (whether administered by Customs or another government agency) with the provisions of the relevant GATT Articles and any proposals that may flow from the negotiations.

This process will assist in identifying those elements of the Articles with which a Member already conforms, or for which the Member has already made a commitment. For example, the WTO Valuation Agreement already requires countries to implement appropriate appeal mechanisms. The situation analysis will also serve to highlight areas where action will be required in order to conform to certain provisions or proposals.

The analysis may also highlight some areas where further clarification is required. In such cases, the feedback to the Geneva-based negotiators would be the need to explore other participants' understanding of the term or phrase and to put forward the country's views on the interpretation to be adopted.

When undertaking this analysis, it is important to bear in mind that the legal framework and administrative business processes are not required to exactly *mirror* the Articles and proposals, but should give effect to the relevant principles and requirements. In this regard, each country is likely to adopt a slightly different approach to its regulatory framework.

3.4 Gap Analysis

Following completion of the situation analysis, the next step is to determine what needs to be done to close any *gaps* that may have been identified. To facilitate this process the *Issues Checklist* at see Appendix 3 suggests a number of areas for consideration. For example, in situations where the current legislation does not allow for a particular proposal, *closing the gap* is likely to entail the drafting of new legislation and the introduction of regulatory practices that reflect the new legislative provisions.

When undertaking the gap analysis, it is particularly important for individual countries to determine what the financial and other resource requirements might be to give effect to a specific proposal and what the corresponding benefits to government and business might be, so that a cost/benefit decision can be made in the context of the negotiations. Potential implementation issues may include legislation, information management, information and communications technology, human resources, organisational and institutional structures, business transaction costs, transport efficiency and so on.

This aspect of gap analysis will also enable individual countries to identify any training, technical assistance and capacity-building needs, which can then be highlighted by negotiators in a manner consistent with the development theme of the trade facilitation negotiations.

3.5 Responsibility for conducting the analysis

The agency with subject matter responsibility for a particular issue should undertake the situation and gap analysis. This same agency will also be responsible for liaising with relevant business stakeholders. In this way, those who are most technically proficient in particular matters will be able to analyse the issues from the perspective of their particular areas of expertise and drawing comparisons with current practice and procedure.

It should be noted, however, that the subject-matter experts should not be required to undertake this task in isolation. They should be guided in the task by both the Trade Facilitation Negotiation Coordination Group and others within their agency, to ensure that the conclusions drawn are relevant to the broader negotiations agenda and the outcomes being sought by the country. Sharing the workload in this way will also help to make the overall task less onerous.

In situations where there is potentially more than one responsible agency, the Trade Facilitation Negotiation Coordination Group could be asked to nominate the most appropriate agency, in order to avoid any potential duplication of effort.

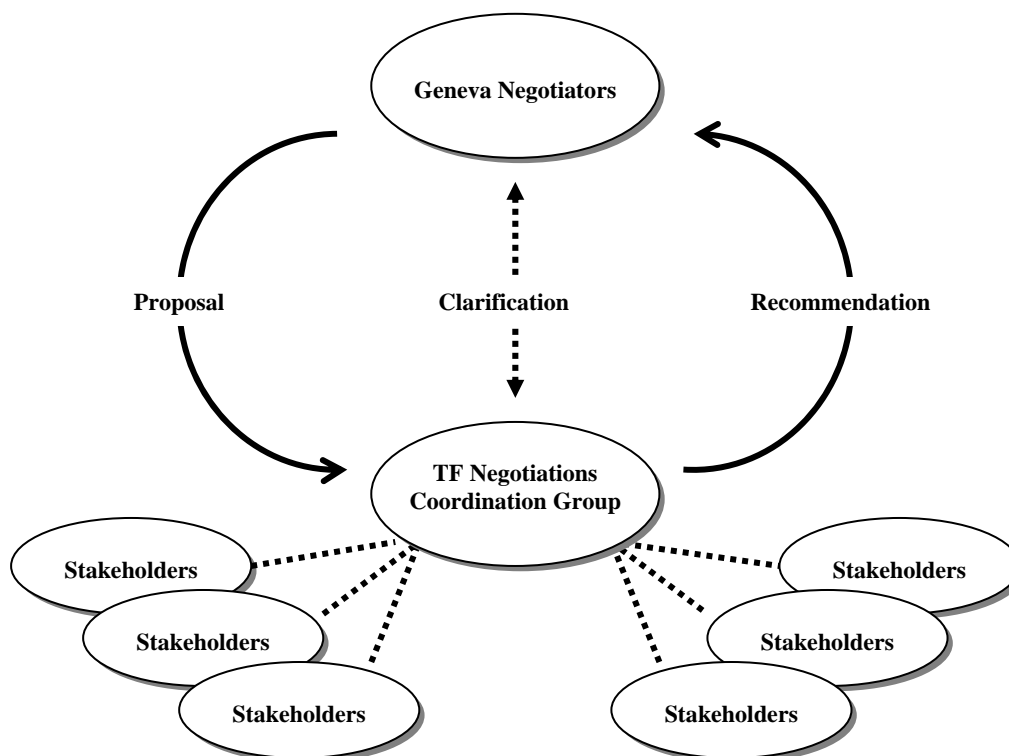
CHAPTER 4 FEEDBACK

Feedback is the communication mechanism that *closes the loop* on the coordination framework for the negotiations:

- The request is received from the Geneva-based negotiators;
- It is referred to relevant agencies for action;
- Agencies consult with relevant stakeholders, identify any issues involved and prepare the necessary advice to the Trade Facilitation Negotiation Coordination Group;
- The Trade Facilitation Negotiation Coordination Group consolidates the advice (particularly important where more than one agency and multiple stakeholders are involved); and
- The contact point within the coordinating agency provides the negotiators with a clear response.

The overall process is depicted in Figure 6.

Figure 6: Overview of Communication, Consultation and Feedback Process



4.1 Consolidating the Results

Once the analysis has been completed, the Trade Facilitation Coordination Group will be in a position to consolidate the results and incorporate them into a *Consolidated Issues Matrix*. This matrix is designed to enable the primary contact point to respond promptly to any issue highlighted in the matrix and to establish a clear negotiating position in relation to the issue for the Geneva-based negotiators. A suggested template for the development of the matrix, including some examples, is included at Appendix 4.

4.2 The Timing of Responses

In the context of the Negotiating Group's agreed Work Plan and meeting schedule, a request from Geneva-based negotiators would normally allow for a response to be provided within a reasonable timeframe. Some issues or proposals, for example, may not require a response for several weeks or months. Provided appropriate coordination mechanisms are in place, the timeframe for response should provide adequate opportunity for appropriate stakeholder analysis, consolidation of the response, and timely feedback.

There may, however, be occasions when the negotiators require an immediate response from in-country experts. For example, a negotiating position on a Member's proposal would generally be sought several weeks prior to the scheduled meeting⁶, and it could therefore be dealt with in accordance with an established consultation framework. However, during the course of the meeting, a specific issue within the proposal may be identified as requiring further clarification. In such circumstances, an urgent request may be sent to the in-country contact point, who in turn would need to contact the relevant agency representative for immediate response.

It should be emphasised that urgent requests of this nature are likely to be the exception rather than the rule. In such circumstances, it is worth noting that best practice in relation to consultation involves a balance between flexibility and responsiveness on the one hand, and consistency and transparency of the consultation process on the other. The appropriate balance will depend on the particular circumstances of the request for advice.

⁶ Proposals may be circulated several weeks prior to their scheduled discussion

Appendices

- Appendix 1: Annex D of the “July Package”
- Appendix 2: Consultation Mechanisms: Draft Terms of Reference
- Appendix 3: Issues Checklist
- Appendix 4: Consolidated Issues Matrix

Appendix 1

Annex D of the "July Package"

MODALITIES FOR NEGOTIATIONS ON TRADE FACILITATION

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.⁷ 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.⁸
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 It is understood that this is without prejudice to the possible format of the final result of the negotiations and would allow consideration of various forms of outcomes.

⁸ In connection with this paragraph, Members note that paragraph 38 of the Doha Ministerial Declaration addresses relevant technical assistance and capacity building concerns of Members.

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 Facilitation 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 2

Consultation Mechanisms: Draft Terms of Reference

Coordinating Agency

The coordinating agency is the single point of contact for Geneva-based negotiators. It is responsible for managing communications with Geneva and developing and managing the mechanisms for consultation with capital-based experts. The coordinating agency will:

- Have overall management responsibility for coordinating input in relation to issues and/or proposals arising from negotiations on trade facilitation
- Liaise with and formally communicate responses to the Geneva-based negotiator(s)
- Develop and maintain a contact list of capital-based experts
- Establish and chair the Trade Facilitation Negotiations Coordination Group, comprising representatives of other government agencies
- Develop and manage communications within government in relation to the progress of negotiations on trade facilitation and any issues or proposals arising out of those negotiations.

Trade Facilitation Negotiations Coordination Group

The Trade Facilitation Negotiations Coordination Group (TNCG) is a group chaired by a representative of the coordinating agency and comprising representatives of government agencies responsible for matters arising from the trade facilitation negotiations that are within their normal policy mandate. The TNCG will:

- Nominate individual points of contact within each of the relevant agencies for inclusion in the contact list administered by TNCG
- Convene as necessary to deal with cross-agency issues arising out of requests from Geneva-based negotiator(s) including allocation of responsibility for actioning requests to specific agencies where more than one agency is capable of responding
- Consolidate responses from capital-based experts to facilitate communication back to the Geneva-based negotiator(s)

Individual Government Agencies

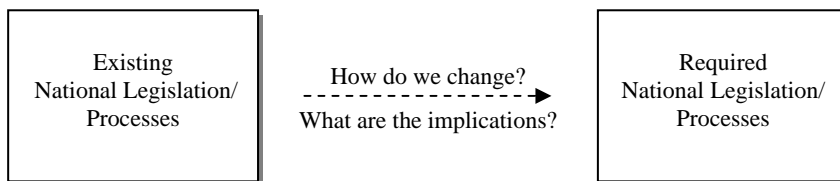
Individual government agencies ('the agencies') are the single liaison points for communication with relevant stakeholders in relation to issues and/or proposals arising from trade facilitation negotiations. The agencies will:

- Participate in the TNCG
- Provide expert advice to the TNCG as required
- Identify any issues arising from the negotiations that are relevant to the individual agency's policy mandate

- Identify stakeholders within their area(s) of administrative responsibility
- Obtain input from the identified stakeholders and communicate that input to TFCG
- Nominate subject-matter experts within the individual agency for response to the TFCG as required
- Develop and maintain communication with relevant stakeholders in relation to the progress of negotiations and relevant issues arising from the negotiations.

Appendix 3

Key Considerations for the Gap and Situation Analysis



Provision or Proposal being Examined:	
Element of Existing National Legislation/Processes	Implementation Issues to be Considered
<i>Benefits</i>	What are the specific benefits for Government and the business community that are likely to result from adoption of this proposal? Do they justify the costs?
<i>Legal framework</i>	What legislative amendments, if any, are required to implement the proposal? What timeframes will be required to make the necessary legislative amendments?
<i>Existing Commitments</i>	Is any work already being undertaken to amend national laws in order to reflect existing international obligations?
<i>Administrative policy and procedure</i>	What amendments to policies and administrative procedures, if any, are required to implement the proposal? What timeframes will be required to introduce the necessary amendments? To what extent are these amendments additional to those already identified in the context of existing reform and modernization programs?
<i>Government Coordination</i>	What changes to coordination arrangements among government ministries and agencies, if any, are required to implement the proposal? To what extent are these changes additional to those already identified in the context of existing reform and modernization programs?
<i>Resource Requirements</i>	What financial and other resource requirements are likely to be needed to implement the proposal? To what extent are these resource requirements additional to those already identified in the context of existing reform and modernization programs?
<i>ICT</i>	What information and communications technology requirements, if any, will be needed to implement the proposal? To what extent are these requirements additional to those already identified in the context of existing reform and modernization programs?
<i>Training, Technical Assistance and Capacity-Building Needs</i>	What training, technical assistance and capacity-building needs, if any, will be required to implement the proposal? Are such needs restricted to the public sector, or do they extend to the business community? To what extent are these requirements additional to those already identified in the context of existing reform and modernization programs?
<i>Timeframe for implementation</i>	What is the likely overall timeframe for implementation, given the various matters that may need to be addressed?

Appendix 4

Example of Consolidated Issues Matrix

NEGOTIATION ISSUE	DEADLINE FOR RESPONSE TO GENEVA	ACTIONING AGENCY	STAKEHOLDERS CONTACTED	STAKEHOLDER RESPONSE	ADVICE TO GENEVA
How many official documents are required for the importation of goods?	Next scheduled trade facilitation negotiation meeting	Trade	Customs Ministry of Trade Ministry of Finance Quarantine	There are a total of 40 documents spread over 5 different government agencies (Customs, Quarantine, Agriculture, Finance and Defence)	Advice remitted to Geneva. Intergovernmental working group established to explore opportunities to reduce the amount of documentation.
Transparency under GATT Article X – a proposal for ‘advance rulings’	Immediate	Trade Customs	Ministry of Foreign Affairs Ministry of Finance Importers & Exporters Assoc. Chamber of Commerce Customs Brokers Federation Freight Forwarders Carriers	Business stakeholders are strongly in support of a system of advance rulings as a means of increasing transparency but it needs to be coupled with better access to published Customs laws and regulations. Areas of preferred application are Valuation, Tariff Classification and Origin	Geneva advised that there shouldn’t be mandatory requirements for advance rulings but the principles are to be supported. Key Gaps – there is currently no legislation allowing for advance rulings nor is there currently a mechanism for publication of customs laws. There is a need to access technical assistance to support the development of a government publications system. Ministry of Trade to follow-up.
GATT Article VIII – a proposal to streamline port information requirements other than related to security	Next scheduled trade facilitation negotiation meeting	Transport	Importers & Exporters Assoc. Freight Forwarders Carriers Port Management Customs	Support rationalisation of current documentary requirements and a stated preference for liberalisation of current port management (argued by shipping lines and freight forwarders but opposed by Port Management)	More information is required, particularly as to the relationship with security. Geneva asked to seek additional information before negotiations can proceed further.

<p>GATT Articles V and VIII – proposal to explore a ‘single window’ concept with Customs as the primary agency responsible for border clearances and revenue collection</p>	<p>5 September to coincide with a ‘Single Window’ working group meeting in Sao Paulo</p>	<p>Trade Finance</p>	<p>Customs Transport Importers & Exporters Assoc. Customs Brokers Federation Freight Forwarders Assoc. Express Carriers Assoc. Carriers All agencies responsible for issuing import and export permits</p>	<p>No clear views established. There is no consensus on what is meant by a ‘single window’. Concerns expressed by some agencies in terms of possible revenue implications. Business is supportive on balance because it could reduce the paperwork involved and could facilitate goods in transit</p>	<p>Additional information required on how it would work and what that might mean for current laws. Additional research required into what laws would be affected – to be undertaken by Trade Ministry. Gap – the technology to facilitate a ‘single window’ approach to communication. Capacity-building needed. Geneva advised that we will send a delegation to the Sao Paulo meeting but cannot commit until more is understood.</p>
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Note: the matrix structure can be modified to suit a particular country’s circumstances or to highlight any specific aspects of implementation