

# FOCUS WTO

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TRADE FACILITATION

JULY-AUGUST 2005



INDIAN INSTITUTE OF FOREIGN TRADE

## FOCUS WTO

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## From the Director's Desk



**Prabir Sengupta**

IN the wake of proliferation of trade in goods and services, the issue of trade facilitation has assumed critical importance. Emerging as one of the four Singapore Issues in 1996, it drew significant attention only at Doha and later formed an integral part of July Framework 2004 to activate and identify the modalities for negotiations on the issue. As world trade today demands faster movement, release and clearance of goods, simplification and harmonization of the international trade procedures established through a multilateral agreement on trade facilitation becomes crucial.

All member countries feel that a multilateral agreement on trade facilitation will be beneficial to them as it reduces transaction costs and increases revenue. Yet, the activities, practices and formalities that follow in implementing such a system require huge financial resources, large technical assistance and capacity building (TACB), for which many member countries especially developing and LDCs are either not ready or not at all equipped. As a result, these countries are reluctant to undertake any legal obligations under the WTO. At the same time, these countries irrespective of their level of development are equally convinced the role that trade facilitation plays in one's economic development and that is why many of them were keen to pursue it as a part of unilateral trade reform agenda.

So the key issue is how to carry forward the negotiations on trade facilitation at WTO. As TACB holds paramount importance in implementation of trade facilitation agreement, the July Framework has already extended special & differential treatment (S&DTs) to developing and LDCs to address this specific issue.

Developing and LDCs feel, just granting S&DTs is not so important as it is the nature and their operationalization. It appears that the onus of identifying such measures lies with these countries and which require huge human resources and technical skills. Not only have they to calculate investments that are required to implement the various dimensions of trade facilitation, but also the recurring costs of sustaining the system. In a group of countries where SMEs form the backbone of the economy, a simple cost benefit analysis may not be appropriate, given the dynamics of the issue where social costs of investment and rates of return hold enormous significance.

The challenge before WTO is to recognize, understand and manifest these developmental dimensions of trade facilitation.

# Trade Facilitation: Issues and Challenges

*Bipul Chatterjee\**

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*The decade of 1990s witnessed two significant developments in the international trading system, namely establishment of WTO and rapid advancement of technology resulting in tremendous growth of goods and services in the world. While tariff barriers (to trade) came down significantly following the Uruguay Round of negotiations, the advent of information technology helped faster movement of goods and services across border. The importance of "Trade Facilitation" should be looked at by keeping these in mind. According to the WTO, Trade Facilitation means "simplification and harmonization of international trade procedures". It is felt that measures addressing "simplification" and "harmonization" would help countries to trade in a more effective manner. However, the issues are not that simple, especially when one looks at them from the point of view of developing/least developed countries. Besides "revenue" issues, costs and benefits of Trade Facilitation are to be understood in a holistic manner. Only then the poor countries can articulate the development dimensions in the ongoing negotiations on Trade Facilitation at the WTO.*

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\* Director, CUTS Centre for International Trade, Economics & Environment, Jaipur.

THE decade of 1990s witnessed two significant developments in the international trading system. *First*, following the successful completion of the Uruguay Round of GATT (General Agreement on Tariffs and Trade) negotiations and establishment of the WTO, tariff barriers on cross-border exchange of goods and services came down significantly. *Secondly*, with the advancement of information technology and other faster means of communication, cross-border movement of goods and services became much speedier than before. Between 1992 and 2002, global trade in goods and services had increased from US\$5tn to US\$8tn. At the same time, trade is increasingly subjected to non-tariff barriers. Issues relating to trade facilitation and their implications for developing countries need to be analyzed in this context.

According to the WTO, trade facilitation means "simplification and harmonization of international trade procedures" and these procedures are "activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade".

Trade facilitation is not new to the WTO agenda. The first WTO Ministerial held in Singapore in 1996 mandated the WTO Council

for Trade in Goods (CTG) to "undertake exploratory and analytical work...on the simplification of trade procedures in order to assess the scope for WTO rules in this area." During the exploratory process, while many countries urged for a set of binding rules, concerns regarding implementation capacities (of binding obligations) were also raised.

After considerable discussions at the WTO CTG at Doha, member countries agreed to review, clarify and improve the relevant GATT and also to identify the trade facilitation needs and priorities of members, in particular the developing and least developed countries.<sup>1</sup>

Finally, in July 2004, WTO members agreed to identify the modalities for negotiations on trade facilitation. Annex D of the Framework Agreement states: "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."

From the point of view (and concerns) of developing and least developed countries (LDCs), the Framework Agreement on trade facilitation has two major issues. *First*, it has been recognized that the principle of special and differential treatment should

extend beyond the granting of traditional transition periods for implementing commitments. "In particular, the extent and timing of entering into commitments shall be related to the implementation capacities of the 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."

Secondly, for the first time in the history of GATT/WTO negotiations there is an explicit mention of cost implications. "Members shall seek to identify their trade facilitation needs and priorities, particularly those of the developing and least developed countries, and shall also address the concerns of the developing and least developed countries related to cost implications of proposed measures."

## Implications

Generally speaking, it appears that a multilateral agreement (at the WTO) on trade facilitation will be beneficial to all members. The understanding is that trade facilitation will reduce transaction costs and increase revenue collection. For example, after introducing an electronic declaration system for traders, Singapore generated savings estimated at one per cent of gross domestic product with an expectation that it would cover its costs in three years. Bolivia, after spending US\$38.5mn in customs reform programme, found that revenue collection rose by 25 per cent (in efficiency terms, i.e. after taking into account reduction in tariff rates). However, the experience of the Philippines was

different. It was reported that its new trade facilitation system led to an increase in revenue collection by two per cent, while the cost of sustaining the system led to an immediate budget crisis and a cessation of funding for the system.<sup>2</sup>

It is quite evident that given the domestic nature of trade facilitation (particularly implementation aspects) and concomitant systemic and governance issues, country experiences are bound to differ. This nature is evident from GATT provisions,

which deal with transparency, public information, formalities associated with importing and exporting, and goods in transit. The main indicators of trade facilitation are:<sup>3</sup>

- Port logistics
- Customs procedures
- Standards harmonization
- Business mobility
- Trade information and e-business facilities
- Administrative transparency and professionalism

### BOX 1

#### WTO AGREEMENTS, INITIATIVES AND ORGANIZATIONS THAT COMPLEMENT ARTICLES V, VIII AND X

- Agreement on Import Licensing Procedures
- GATT Article IX of Marks of Origin
- Agreement on Customs Valuation
- General Agreement on Trade in Services
- Agreement on Pre-Shipment Inspection
- Agreement on Trade-Related Aspects of Intellectual Property Rights
- Agreement on the Application of Sanitary and Phyto-sanitary Measures
- Agreement on Technical Barriers to Trade
- Agreement on Rules of Origin
- World Customs Organization, the Kyoto Convention and other WCO instruments and conventions including the International Convention on the Harmonized Commodity Description and Coding System (HS Code in short)
- UNECE's (United Nations Economic Commission for Europe) Centre for Trade Facilitation and Electronic Business (CEFACT)
- International Chamber of Commerce (initiatives such as the ICC International Customs Guidelines and Security Code)
- International Express Carriers Conference
- International Chamber of Shipping
- International Marine Conference
- International Air Transportation Association
- International Road Transport Union
- International Federation of Freight Forwarders Association
- International Federation of Customs Brokers Association
- Global Facilitation Partnership for Transportation and Trade

**Source:** Brian Rankin Staples and Eduardo Bianchi, "Trade Facilitation – Reducing the Barriers," in *Trade Facilitation – Reducing the Transaction Costs or Burdening the Poor!* Research Report 0431, CUTS Centre for International Trade, Economics & Environment (CUTS-CITEE), Jaipur, India.

Do the developing and least developed countries have the necessary resources for implementing all these measures? The answer is NO, especially when in many of these countries there is a competition for resources, in particular for human development needs. This is one of the reasons why most of developing and least developed countries have been reluctant to undertake legal obligations under the WTO. At the same time, countries irrespective of their level of development are convinced about the importance of trade facilitation in economic development. This is why many of these countries wanted to pursue it as a part of unilateral trade reform agenda, based on available resources.

It is true that the modalities for negotiations on trade facilitation have recognized special and differential treatment for the developing and least developed countries. The question is about the nature of S&DTs and their operationalization. It appears that the onus of identifying such measures rests on these countries. This requires considerable skills and human resources and is of particular concern to the least developed countries. Not only do they have to calculate the one-time cost of a particular measure, but also the recurring costs of sustaining the system. A simple (only in economic terms) cost-benefit analysis is not sufficient because, given the nature of the issue, social costs of investment (opportunity costs) and social rates of return (in the sense of a better, corruption-free society) are important variables to holistically understand the implications of trade facilitation measures.

This leads us to the all-important issue of technical assistance and capacity building (TACB). The July Framework has dealt extensively with this issue, including recognizing that multi-lateral and inter-governmental agencies such as the World Bank, and World Customs Organization need to work in a harmonized manner. However, TACB programmes for trade facilitation should take into account three crucial factors.

*First*, there should be an institutional approach to TACB. Donor agencies should undertake efforts to improve the existing institutions in the developing and least developed countries, rather than introduce new institutions. *Secondly*, the developing and least developed countries should learn from each other, rather than borrow the concepts from advanced industrialized countries. The nature and contours of problems faced by these countries are quite similar. In other words, donor agencies should follow a triangular approach to TACB: Northern donors-Southern recipients-Southern providers. This requires a high level of coordination between and among donors, recipients and providers (of know-how and do-how).<sup>4</sup> *Thirdly*, and before undertaking TACB activities, there should be a comprehensive audit (economic and social) of existing trade facilitation instruments/institutions and associated systemic and governance issues.<sup>5</sup>

## Conclusion

Nobody can deny that unnecessary transaction costs cause

difficulties in cross-border movement of goods. This is particularly true for small and medium enterprises, as they do not have the means and resources for facilitating quicker movement of their produce. The challenge before the WTO members is to recognize, understand and manifest these development dimensions of trade facilitation during the Doha Round of negotiations.

According to an UNCTAD report, direct and indirect transaction costs are adding up to ten per cent of total value of global trade, which is equivalent to approximately US\$400bn.<sup>6</sup> Trade facilitation can significantly reduce these costs. But the question is who will benefit the most. It appears that big businesses will be the major beneficiaries, as they are in a better position to take advantage of such measures.

The challenge is how to channelize the benefits of trade facilitation to small and medium enterprises, particularly in the developing and least developed countries. There should also be a mechanism to transfer resources generated (either through savings or through revenue generation) from trade facilitation measures at the domestic level to infrastructure and social development for the benefit of the poor. This will happen if countries can take care of the systemic and governance issues at the domestic level.

Trade facilitation does not mean improvement in customs administration only. This is a small part of a much larger problem relating to border

(Contd on page 25)

management and domestic tax and revenue enforcement issues. Therefore, the other challenge is to maintain the balance between the costs and benefits of trade facilitation. This is essential because particularly when the public sector is expected to bear significant cost burden and these benefits will largely accrue to the private sector.<sup>7</sup>

### NOTES

<sup>1</sup> For an analysis of Articles V, VIII and X, proposals of WTO members and their implications for India, see Taneja, Nisha: "Trade Facilitation: Issues and Concerns," *Economic & Political Weekly*,

10 January 2004.

<sup>2</sup> These data are taken from Malhotra, Kamal (ed.): "Making Global Trade Work for People," UNDP 2003. See Chapter 16 (Trade Facilitation).

<sup>3</sup> For description of these indicators and resource needs, see Roy, Jayanta: "Trade Facilitation: An Urgent Issue," *The Economic Times*, New Delhi, 24 June 2004.

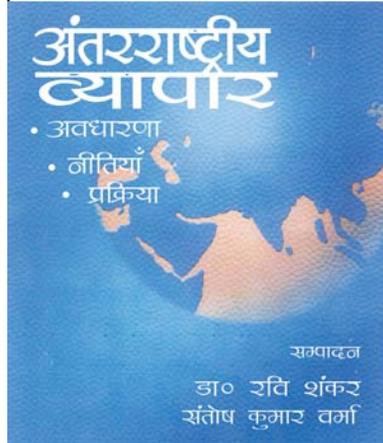
<sup>4</sup> Pradeep S. Mehta and Nitya Nanda, "Trilateral Development Cooperation: An Emerging Trend," Briefing Paper No. 1/2005, CUTS Centre for International Trade, Economics & Environment (CUTS-CITEE), Jaipur, India.

<sup>5</sup> This analysis is based on country papers prepared as part of the CUTS programme titled "International Working Group on Doha Development Agenda" (IWOGDA, Phase II), which has been implemented with the support of the Ministry of Foreign Affairs, Sweden.

<sup>6</sup> Roy, Jayanta: "Trade Facilitation: An Urgent Issue," *The Economic Times*, New Delhi, 24 June 2004.

<sup>7</sup> Julius Sen, "Trade Facilitation and South Asia: The Need for Some Serious Scenario Planning," Research Report No. 0425, CUTS Centre for International Trade, Economics & Environment (CUTS-CITEE), Jaipur, India. •

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## **India Inc for Faster Regulatory Clearances to Boost Exports**

CORPORATE India has pitched for a regulatory framework that would ensure time-bound clearances besides allowing self-certification for various statutory obligations concerning exports.

Industry captains told the first meeting of the reconstituted Board of Trade that such an approach would encourage foreign direct investments into the country and thereby help boost exports.

"Vigorous promotion of exports requires substantially higher inflows of FDI. To make India a more attractive destination for investment, we need regulatory reforms to mitigate problem of delays in clearances," Onkar Kanwar, President, Federation of Indian Chambers of Commerce and industry (FICCI), said.

He suggested that the Government should create a single agency or a special purpose vehicle that can get all necessary clearances and approvals for a particular project from both Central and State Governments and then put the project for open competitive bidding. Investors are not forthcoming for infrastructure projects on account of delays of procuring multi-agency clearances and approvals.

Shri Kanwar highlighted that over half of global trade is intra-firm trade and that India has inherent advantages to become the leading hub for outsourcing of manufactured goods and services.

*(The Hindu Business Line, 21 June 2005)*

## **EU Ready to Assist Third World Nations of WTO**

THE European Union (EU) has expressed its willingness to offer technical assistance to the developing-country members of the World Trade Organization (WTO) for implementing measures related to trade facilitation.

Trade facilitation and transparency in government procurement are two of the four Singapore issues still being discussed at WTO for possible inclusion in the negotiations. The two other issues of investment and competition policy have been given a burial of sorts.

In its first contribution to the negotiating group on trade facilitation, the EU proposed a number of "clarifications and improvements" to existing WTO regulations for achieving "transparency and better administration of regulations affecting border crossing trade".

The EU proposed there should be a provision for members to publish and make easily available all relevant laws, administrative guidelines, information on customs and other border-related agency processes, appeal procedures and all fees and charges applicable to import, export and transit procedures and requirements.

For ready availability of information, the EU proposed there should be an officially designated medium, and where possible, access to the information on-line. It suggested setting up of trade desks providing information on all the above measures.

For imports, exports and goods in transit, the EU paper said there should be an obligation to provide a non-discriminatory, legal right of appeal against customs and other agency rulings and decisions, initially within the same agency or other body, and subsequently to a separate judicial or administrative body. A standard time should be set for the resolution of minor appeals at administrative level.

Admitting that the above proposals would involve modest start-up costs, the EU said it was prepared to consider favourably requests for technical assistance in these areas made by developing-country partners, in the framework of the EU's development help.

The EU also said time should be provided to developing countries for implementing such proposals as a means to make special and differential treatment precise, effective and operational.

India wants the clarification process on the desirability of a multilateral pact on trade facilitation to continue before it comes to a decision on whether it would back or oppose it.

*(The Financial Express, 1 February 2005)*

## WTO-APEC Roundtable on Trade Facilitation

REQUIREMENTS and procedures applied to the cross-border movement and transit of goods have long been recognized as a potentially significant source of trade restriction, said WTO Director General Dr. Supachai Panitchpakdi at WTO-APEC Roundtable on Trade Facilitation on 10 February 2005, Geneva. He said that multilateral rules have existed in this area since the inception of the GATT. As tariffs and non-tariff barriers have fallen through successive Rounds of negotiations, it has become apparent that improved trade facilitation practices have the potential to contribute to increasing the volume of world trade.

Dr. Panitchpakdi said that faster processing of imports and exports, using streamlined procedures, can bring efficiency gains to the whole economy, revenue gains to the government, and commercial gains to private business. Trade facilitation is a vital part of the market access package that is being negotiated in the Doha Round.

He said, negotiations on trade facilitation are aiming for a judicious mix of results. Improved multilateral rules are designed to expedite the movement, clearance and release of traded goods. Special and differential treatment for developing countries is a key component of the negotiations. The mandate calls for an innovative approach that links the implementation capacities of developing and least developed countries to the extent and timing of them entering into new commitments in this area.

This is an approach that was endorsed recently by the Consultative Board established to consider how the WTO could be reinforced and equipped to meet the institutional challenges that face the WTO.

In this, and possibly other respects too, the trade facilitation negotiations will be breaking new ground that will have an important bearing on the future of the multilateral trading system.

This Roundtable on Trade Facilitation can contribute importantly to the task that negotiators in the WTO are facing on trade facilitation. APEC has considerable experience on the benefits trade facilitation can produce in terms of an improved trading environment. APEC has also gained experience on the challenges that have to be faced at the national level to implement improved trade facilitation practices. WTO negotiators can benefit from learning more about APEC's experience on what has worked and what has not, how the reform of trade facilitation procedures should be sequenced and what has been found to be the best recommendations in this area.

Our approaches may differ, Dr. Panitchpakdi said, with APEC building on voluntary undertakings and focusing naturally on the particular needs of the Asia-Pacific region. But there are also many similarities. Both the WTO and APEC have a mixed developed/developing-country membership with a wide spectrum of views and capacities that have to be taken into account. And we share the same goals. We wish to improve our international trading environment for the mutual benefit of all our Members.

[www.sccp.org/sccplib/meetings](http://www.sccp.org/sccplib/meetings)

## Fast Track Clearance Norms for EOUs Revised

THE fast track clearance procedure for export oriented units (EOUs) with status holder certificate has been overhauled by the Department of Commerce in the Commerce and Industry Ministry.

The revised procedures are being seen as somewhat restrictive, with many in the exporting community contending that the new procedures may even defeat the objective for which the fast track clearance procedures were initially evolved.

Under the revised fast track clearance procedures, EOUs having physical export turnover of Rs 15 crore and above in the preceding financial year would alone be allowed to import goods without payment of duty.

This would be done on the basis of the pre-authenticated procurement certificate issued by jurisdictional customs/excise authority.

As regards temporary removal of capital goods, the new dispensation provides that the eligible EOUs could remove their capital goods or parts thereof for repairs under prior intimation to the Jurisdictional Assistant/Deputy Commissioner of Customs or Central Excise. Hitherto, temporary removal of capital goods was allowed on self-certification basis.

Further, clearance of rejects in domestic tariff area (DTA) would now require permission of the jurisdictional excise authority, who would be required to consider the request on priority basis.

*(The Hindu Business Line, 31 January 2005)*

## India Gained at WTO, Insists Nath

COMMERCE and Industry Minister Kamal Nath has reiterated his claim of India making significant gains at the WTO negotiations held in Geneva, where members agreed on a framework to put the stalled multilateral negotiations back on track.

Commenting on the inclusion of trade facilitation in the draft, Shri Kamal Nath said that it would lead to improvement in customs procedures in India and other countries.

"We believe that trade facilitation would ensure a greater participation in international trade by small and medium enterprises, reduce transaction costs and generally improve the prospects of developing countries in multilateral trade," he said.

*(The Financial Express, 11 August 2004)*

## Task Force Set Up to Cut Trade Transaction Costs

COMMERCE & Industry Minister Kamal Nath said that five monitoring committees have been set up to boost export from thrust sectors and a task force has been set up to suggest measures to reduce transaction costs of exporters.

Identified in the National Foreign Trade Policy announced in August 2004, the thrust sectors include agriculture, handicrafts, handlooms, gems & jewellery and leather & footwear.

The monitoring committees will have representatives of trade and industry as well as experts and senior officials from concerned ministries, he said at the Economic Editors' Conference in New Delhi. Shri Kamal Nath said the committees would meet every month to monitor the progress and identify the bottlenecks in each sector.

He also announced the setting up of a task force for reduction of transaction costs and procedural simplification with a view to boost the country's exports. The task force will be convened by the Director General of Foreign Trade and include representatives from Department of Revenue, CII, FICCI, ASSOCHAM and other trade representative organizations.

*(The Economic Times, 18 November 2004)*

## Singapore Issues Die a Slow Death at WTO

THE WTO has put the controversial Singapore issues, which include investment, competition policy, government procurement and trade facilitation, on the back-burner by not appointing new chairpersons for three working groups dealing with the issues.

Trade experts said, although the mandate for the working groups had expired at the fifth WTO ministerial meet in Cancun in September 2004, the fact that new chairpersons had not been appointed till now indicated that the issues would now not feature prominently in the negotiating agenda.

Interestingly, new chairpersons for all other working groups had already been appointed at the WTO General Council (GC) meeting.

According to Research and Information System (RIS) for Non-aligned and Other Developing Countries Director General Nagesh Kumar, since new chairpersons had not been appointed for the working groups, it was a clear signal that the WTO was not expecting much in the area. "Although, officially, nothing has been said to the effect, it is clear that not much discussions are going to take place in the absence of chairpersons," Dr Kumar said.

Agreeing with Dr Kumar, senior policy adviser to the Confederation of Indian Industry (CII) T.K. Bhaumik said the Singapore issues had almost been pushed out of the WTO agenda.

Shri Bhaumik added that this development was not unexpected, since most members had totally rejected the idea of having a multilateral agreement on investment, competition policy and government procurement. "While members are more tolerant on the issue of trade facilitation, most want the clarification exercise on how the final agreement on trade facilitation would look like, to continue," he said.

A group of developed countries including the European Union, Canada, Japan and Korea, have been pushing for negotiations of the Singapore issues.

It was India, which had raised objection to negotiations for a multilateral agreement on the four issues at the fourth ministerial meet in Qatar in November 2001.

The group of least developed countries (LDCs) and the African countries at the WTO continued the fight in Cancun by insisting that these issues be kept out of the agenda since they were not prepared for the same.

*(The Financial Express, 18 March 2004)*

## Trade Facilitation : The Role of WTO

TRADE facilitation is the name given to measures to simplify and reduce the impact of import, export and customs procedures.

Problems in this field faced by traders include unnecessary and excessive data and documentation requirements, lack of transparency, lack of rapid legal redress, excessive release and clearance times, absence of coordination between customs and other inspection agencies, the absence of modern customs techniques and inadequate transit regimes. The European Commission (EC) is working to address these problems through multilateral, regional and bilateral initiatives.

On the multilateral front, the WTO, as the main organization for international trade, has a natural role in setting rules on trade facilitation. It already contains some limited and out-dated provisions on trade facilitation. The EC supports the development of a more binding rules-based approach. This would help guarantee transparency, predictability and reduced costs for traders; reinforce political commitment to reform; and benefit governments and taxpayers through more effective controls and

security, higher revenue intakes and a better investment climate.

Gains would be particularly high for developing countries and small and medium sized enterprises, for which costs of compliance with import, export and customs procedures are proportionately high. Moreover, a WTO framework would also provide confidence to the private sector and international donors to invest in necessary capacity building in developing countries.

### Benefits of Trade Facilitation in Figures

Studies show that the cost of trade procedures may range from 2 to 15 per cent of the value of traded goods. Halving the cost of bureaucratic trade procedures may mean saving around •300 billion a year

### WTO Trade Facilitation Negotiations

As part of the WTO Doha Development Agenda, WTO Members agreed on 31 July 2004 to launch negotiations on trade facilitation. This offers a golden opportunity to negotiate stronger rules in this area. The EC will work for an ambitious and specific set of commitments.

The negotiations shall aim to clarify and improve the existing WTO provisions, encompassing the following three elements:

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

Addressing developing country concerns will be an essential element of the negotiations, including with regard to the issues of capacity building, special and differential treatment, and cooperation between relevant international organizations. The negotiations shall also aim at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues.

### Regional and Bilateral Initiatives

In parallel to the WTO work, the EC is also pursuing trade facilitation in regional and bilateral

initiatives, including with the US, South Africa, China, Asean, Mercosur and ACP countries. Where appropriate, these initiatives incorporate technical assistance initiatives.

([www.europa.eu.int/comm/trade/issues/sectoral](http://www.europa.eu.int/comm/trade/issues/sectoral))

## ICC Recommendations for a WTO Agreement on Trade Facilitation

ICC is actively addressing a wide range of international issues with the aim of improving processes associated with cross-border trade. The 1996 WTO Singapore Ministerial Conference recognized the benefit of addressing "trade facilitation" within the WTO, and the 2001 Doha Ministerial Conference agreed that this topic should be considered for a WTO rules-based agreement with particular reference to the modernization of Articles V, VIII and X of the GATT 1994.

### Trade Facilitation

ICC's preferred definition of "trade facilitation" focuses on improvements in the efficiency of the processes associated with trading in goods across national borders. This requires the adoption of a comprehensive and integrated approach to simplifying and reducing the cost of international trade transactions, and ensuring that all relevant activities take place in an efficient, transparent, and predictable manner, based on internationally accepted norms, standards and best practices. Trade facilitation is not just a matter of improving customs procedures but should also target the growing range of controls being implemented at national borders by other authorities. Procedures associated with agricultural products and security are just two areas where many new controls are being implemented and where it is imperative that a rational, transparent and standardized approach be adopted.

ICC's aim is to encourage the establishment of a trade facilitation agreement that benefits all WTO Members through the establishment of mutually agreed rules covering trade procedures that improve the management process of traded goods as they cross national borders.

International transactions sometimes span a series of countries, some not necessarily directly concerned with the manufacture or use of the goods.

Specific issues may arise through the goods' physical transit of intervening territories and the availability or not of arrangements linking initial export and final import. Facilitation of trade therefore concerns not only the countries directly involved in a transaction but also others indirectly linked to the transaction.

An important role for an International Trade Facilitation Agreement (ITFA) will be to define the responsibilities of governments involved in complex transactions covering export, transit, and final import of the goods.

### Benefits

ICC is convinced that an ITFA will deliver very significant benefits to all Members -- especially those that suffer from commercially damaging delay or lack of predictability due to inefficient border or transit procedures. The more specific benefits will be:

- more gross revenue collection,
- more cost effective revenue collection,
- more effective detection of non-compliance,
- improved security of international transactions through improved control of high risk transactions,
- more efficient and correct application of regulations, thereby ensuring that any differential treatment of traders is based on objective criteria,
- more predictable and faster movement of goods,
- more efficient transit procedures, - increased trade, increased revenue, and improved economic performance, and
- more efficient and predictable border procedures encouraging increased foreign direct investment.

The largest potential for improvement in trade facilitation exists in, and therefore the main potential beneficiaries are generally likely to be, developing countries. An ITFA will augment the capacity of developing countries to handle and grow their share of international trade, not least in trade with other developing countries. Increased efficiency will enable higher volumes of both imports and exports to be managed with the same level of resources, resulting in higher compliance and lower costs for both governments and business.

## Scope of an Agreement

The WTO ministerial conference in Cancun in September 2003 offers the opportunity to make a key change in the effective border management of international trade. Not only is there huge scope for improving the efficiency of the current international trade process but there is also a compelling need to improve customs efficiency to deal with disciplines covering emerging and potentially costly new areas of control, such as security issues and agricultural goods. For example, modern customs administrations are an operational necessity to ensure that security and trade facilitation objectives are integrated in ways that maintain both objectives.

Binding commitments are essential because only the WTO can ensure the political support required for durable improvements in global trade facilitation.

ICC believes that a WTO agreement covering trade facilitation should encompass the following principles:

- rules should have sufficient impact to cause a measurable improvement in trade facilitation;
- measurement of the improvement in trade facilitation, for example through the measurement of release times, is in the interest of all WTO members as it will quantify improvement and help ensure the sustainability of improved border procedures;
- rules should set global standards in facilitation, encourage sustainable progress, and assist in the progressive adoption of those standards;
- rules should be non-discriminatory, and must be based on objective criteria;
- rules should not undermine the efficiency and reliability of traders and transport or impose unnecessary costs;
- implementation of a rules-based trade facilitation agreement must be linked to increased overall economic benefits and capacity building to help fund and enable sustainable improvements in those countries with the greatest need; and
- implementation of the rules should be capable of objective assessment and enforcement through the WTO dispute settlement process and policy review mechanism.

In particular, ICC recommends that the WTO seek to improve efficiency and facilitation with reference to the trade facilitation objectives outlined in the attached Annex.

## Securing Commitment

For agreement to be secured on an approach that is sufficiently ambitious and comprehensive to deliver the benefits described, it is essential to take account of the needs and capabilities of all WTO Members. All Members should sign up to a significant set of core commitments that will bring about progressive improvements in international trade. There should be a commitment to assess facilitation through the measurement of release times and to reduce them over a period of time. This approach allows improvements to be made within the structure of the existing processes and legal systems.

ICC recognizes that an ITFA should acknowledge the state of development and ability of some WTO member countries to implement the agreement. In such cases it may be necessary to make appropriate accommodation both in transition time and support to ensure that all member countries are capable of implementing and benefiting fully from the agreement.

## Capacity Building

In line with the commitment made in Doha to establish this round as the "development round," capacity building for those countries unable to finance improved border management is vital.

Capacity building should not just consist of a package of training. It must be a project that takes due regard of the infrastructure development of countries and builds both capability and competence in a way that will lead to sustainable improvement. ICC urges that the agreement includes commitments to capacity building based on member needs, with designated funding and WTO coordination of donor activity to ensure efficiency and common standards.

Business very much supports the process of capacity building and will work energetically together with international organizations and local administrations to help manage the process of change and contribute expertise where required. To ensure

that capacity really produces the benefits on a sustainable basis, a system of measuring the benefits achieved through this process should be implemented.

### Conclusions

A trade facilitation agreement is fundamental to the establishment of an improved and more efficient management process for international trade in goods on a global basis. All WTO member countries will benefit from it - especially those burdened with the least efficient trading processes, either through infrastructure or managerial limitations or because of procedural barriers being imposed by trading partners. ICC is committed to assisting the WTO and its member countries to realize the full benefits of international trade through a trade facilitation agreement that encourages improved border management and discourages both inefficient and artificially complex or burdensome border procedures. To realize these benefits for all parties, WTO negotiations should be launched at the upcoming Cancun Ministerial regardless of the decisions made on the other "Singapore Issues." In view of the high level of mutual benefits for all parties, it will be in their interest to begin implementing eventual results without waiting for the formal conclusion of the Doha Development Round.

### ANNEX

#### GENERAL ICC TRADE FACILITATION OBJECTIVES

- transparent conduct by customs and other government agencies, with easily accessible procedures and regulations, including an open, independent and efficient appeal process of customs decisions open to all importers;
- an authorization for legitimate traders, allowing operators to cross national borders with minimal interference, through the use of pre-arrival declarations and post release audits, enabling Customs to concentrate their resources on the key target of illegitimate trade;
- the measurement of release time at the frontier and, the introduction of targets to encourage governments to reduce release time;
- use of modern customs techniques such as risk assessment and profiling, enabling administrations to make direct resources gains, while reducing the time for legitimate trade to cross borders;

- utilization of commercial systems for customs controls including sophisticated information technologies, the internet and integrated information systems more rapidly adaptable to business and government needs than independent customs information technology systems;
- adoption and implementation of international standards in the trade transaction process such as those of the United Nations, WCO and ICC;
- global automation to create a paperless environment, with data transmitted and processed by Electronic Data Interchange (EDI) or over the internet;
- administration of official frontier controls by a single agency, preferably customs;
- consider where appropriate, a "Seamless Integrated Transaction" where a core set of identification control data can be generated, submitted and processed at any time during the transaction, to avoid duplication of the traditionally separate export and import procedures.

(ICC Commission on Trade and Regulation)  
([www.iccwto.org](http://www.iccwto.org).)

## Symposium on WTO's July Package

### Trade Facilitation : A Report

REPRESENTATIVES of several trade missions, non-government organizations and academics attended the Trade Facilitation (TF) Review meeting, held on 3 November 2004 in Geneva at the Palais des Nations. The meeting was jointly organized by CUTS International, EVIAN Group and UNNGLS.

Michaela Eglin, Trade Consultant in Geneva, introduced the session on trade facilitation by giving a historical background of the trade facilitation negotiations in the WTO. She mentioned that in the first few years after the formation of the WTO, select member countries preferred negotiating the Singapore issues on a plurilateral basis, but due to the realization that plurilateral agreements remain plurilateral for a long time, the Singapore issues were tabled for multilateral negotiations. The debacle in Seattle and the launch of the Doha Development Agenda stalled the possibility of moving forward on

three Singapore issues: Competition, Transparency in Government Procurement and Investment. Trade facilitation was the only Singapore issue, which was put on the table.

Ms. Michaela was articulate in expressing the double standards adopted by a few developed countries on trade facilitation issues. She said that on the one hand developed countries are quite concerned about the additional costs their businesses have to bear on account of the state of trade facilitation activities in developing countries, while on the other they are less concerned about the implications of the heightened security measures that they have adopted since the September 11 attacks, and the cost they impose in the trade of goods and services on the rest of the world. She said that there is very little research available on the costs that developing countries bear because of time delays and additional compliance on account of security measures adopted by developed countries, while a lot of research is available on transaction costs on account of developing country trade facilitation practices.

While concluding, she said that there is an essential need to provide capacity building on trade facilitation issues to developing countries especially the least developed countries, since the experiences of developing countries in improving their trade facilitation infrastructure has been mixed. For example, there are some countries like Argentina and Chile who have provided evidence of the gains of improving trade facilitation, while there are also countries in Africa who think that trade facilitation will impose enormous burden on their government spending, that too at the risk of lesser spending on health and education. According to Ms. Michaela, future developments in trade facilitation negotiations need strong political will, devoid of excessive scepticism, and require concrete capacity building initiatives by developed countries.

Eduardo Bianchi, Chief Economist, Institute for International Trade Policies and Strategies, Argentina, in his presentation expressed that there is a high degree of confusion in the definitional issues concerning trade facilitation and there is need for standardizing the conceptual issues, without which any further progress will be difficult to achieve. He said that there are two divided views on the concept of trade facilitation. On the one hand, there are

countries that want to restrict the scope of trade facilitation to custom formalities, and on the other, there are countries that want negotiations to encompass the complete gamut of activities that are related to facilitating trade between two parties in two countries. Mr. Eduardo was of the opinion that there is clear need for broadening the scope of trade facilitation because merely looking at customs formalities would be quite myopic. Trade facilitation negotiations should encompass banking, transport infrastructure as well as e-commerce since all of these are of importance in ensuring that goods and services are transferred without incurring excessive monetary and time costs.

Mr. Eduardo also stressed that if trade facilitation was broadened in scope, it will be more useful for least developed countries. Poor state of trade facilitation imposes higher costs on small companies compared to big companies. Due to small scale of operations, SMEs in least developed countries face the most costs on facilitating movement of their goods, while multinational corporations are able to minimize costs per unit due to their large scale of operations. Least developed countries will also attract more foreign direct investment if they actively reduce infrastructural and procedural barriers in trade.

Mr. Eduardo clarified that though trade facilitation may render gains to LDCs, it requires certain prerequisites, which may not be available in LDCs since there are enormous capacity constraints to implement trade facilitation. Capacity constraints are not only infrastructural or financial but also human capacity constraints. Many customs officials in Africa are not even educated beyond high school. There is corruption and excessive political intervention. Thus trade facilitation may require governments to change several domestic practices and wrong conventions.

He emphasized that this current state of capacity constraints in trade facilitation, especially in least developed countries, will require stronger recognition of special and differential treatment in trade facilitation negotiations. Such S&D treatment will not only require special treatment in capacity building, financial transfers and additional time, but also in terms of special treatment in the dispute settlement mechanism.

Ambassador Kweronda-Ruhemba from the Uganda Mission to the WTO presented the ground realities that confronted developing countries on trade facilitation negotiations. He emphasized on the need to restrict the scope of trade facilitation to enable the negotiations to be more focussed and ensure domestic policy space. He also stressed the need for developed countries to provide technical and infrastructural assistance, unlike the broad language used in the July draft, by also encompassing clear evidence of benefits by including cost sharing measures.

Ambassador Ruhemba also raised important questions on the major challenges that confront trade facilitation negotiations. How should developing countries create the capacity to implement trade facilitation requirements, who will bear the costs, what implementation periods are we talking about, what are the legal consequences for failure to implement and who is the competent legal authority to oversee implementation, were few of the pertinent questions that he raised.

Ambassador Ruhemba expressed particular concern for land-locked countries. He said that land-locked countries are worse off since they are dependent on the trade facilitation improvements of neighbouring countries to gain from the agreement. He gave concrete examples to enumerate his point. It costs US\$1,400 for a container to travel from Amsterdam to Darussalam by air, while it costs US\$2,800 for the same container to travel from Darussalam to Kigali by road. Similarly, in Mombasa a container needs eight stamps, signifying eight different inspections to travel out of the customs.

In conclusion Ambassador Ruhemba said that unless there are adequate mechanisms to ensure that everybody is gaining from the agreement, we should adopt a cautious approach and first try to turn these challenges into achievable objectives.

Brian Staples, from Trade Facilitation Services, Canada in a short intervention emphasized on the need to ensure that the trade facilitation definition cover all activities that occur between legitimate traders. He said that the term "legitimate traders" will ensure that trade facilitation will not conflict with security concerns and also take into account corruption and illegal trading activities. He said that by taking this position on trade facilitation trade

would be favourable for good traders, while it will also build transparency to tackle wrong acts. Mr. Brian emphasized on the need for an open dialogue on the trade facilitation subject and the need for all concerned parties to move ahead with an open mind.

Several interesting comments also emerged at the meeting. A representative of the Canadian Mission presented the Canadian position at the meeting. He said that Canada was a demandeur in the trade facilitation negotiations and was actively involved in bilateral trade facilitation assistance. The Canadian Customs regularly assisted developing countries in increasing transparency and automation and actively participated in the "Customs Evaluation Assistance" in the World Customs Organization. He also pointed out that Canada thinks that the risk of being taken to the Dispute Settlement Mechanism would be low in the trade facilitation agreement.

Vinod Rege, Advisor, Commonwealth Secretariat explained that the trade facilitation negotiations should provide adequate space for flexibility and customization since there is a limit to which international trade facilitation rules can be harmonized.

In a question on what research is required in trade facilitation, Brian Staples pointed out the need to investigate research questions such as "How does timely delivery influence industry location?", "How does trade facilitation increase trade?" and "How to practically measure transactions costs?" He also stressed on the need to study the relationship between trade facilitation and the SPS and TBT agreements.

([www.cuts-international.org](http://www.cuts-international.org))

## Importance of Trade Facilitation in International Trade

TRADE can be a driving force of economic growth leading to poverty reduction and development. Increasing international trade has brought to the fore the "invisible" costs of trade. This appears to be paradoxical, since traditional trade barriers, such as quantitative restrictions, tariff rate quotas and high tariffs are gradually disappearing. "Invisible" costs are often a result of inefficient administration, and protracted and non-transparent bureaucratic procedures. Estimates of these costs vary. However,

it is evident that in many cases they exceed the actual level of duties paid on the products concerned. It is therefore fundamental to improve this situation by developing systems that simplify and facilitate trade.

Trade facilitation is about the simplification and harmonization of international trade procedures with respect to activities, practices and formalities involved in collecting, presenting, communicating and processing data and other requirements for cross-border movement of commodities. This relates to a wide range of activities such as import and export procedures, transport formalities, payments, insurance, and other financial requirements.

Many developing countries, which "opened up" in the early 1990s, are looking forward to more trade for achieving higher economic growth. Enhancing trade facilitation is expected to benefit all actors: importers and exporters through savings of time and money, producers through cheaper availability of intermediate products, consumers through greater choice and lower prices, and administrations through increased availability of better statistics.

This growing realization and the imperative to overcome the above-stated invisible costs has brought trade facilitation to the WTO. The Singapore Ministerial Declaration of 1996 directed the WTO Council for Trade in Goods "to undertake exploratory and analytical work, drawing on the work of other relevant organizations, on the simplification of trade procedures in order to assess the scope for WTO rules in this area."

### Study Plan

The study of trade facilitation will cover five issues: (a) Scope and definition of trade facilitation, (b) WTO core principles and trade facilitation, (c) Specific GATT 1994 provisions (Articles V, VIII and X) and trade facilitation, (d) elements of technical assistance and capacity building, and (e) dispute settlement aspects. In addition, country-specific case studies will be undertaken to understand how trade facilitation measures could reduce transaction costs in doing cross-border business. A brief likely content of each of the five issues is given below.

### Scope and Definition

Definition will include an analysis of both a broad and a narrow approach of defining Trade

Facilitation. The WTO, UNCTAD and OECD have restricted the scope of their definitions to the movement of goods, and more specifically to customs procedures and technical regulations that can impair or delay cross-border trade. However, in recent years the term trade facilitation is being applied to an ever-growing number of activities. The World Bank takes a broader approach in its trade facilitation work programme, which primarily covers reforms in customs, regulatory frameworks, and standards.

This issue paper will cover the scope and definition of elements of a possible multilateral agreement on trade facilitation, taking into consideration the issues mentioned in the Doha Ministerial Declaration of the WTO.

### WTO Core Principles and Trade Facilitation

In this issue paper, trade facilitation *vis-a-vis* the two WTO core principles, namely non-discrimination between countries (Most-Favoured Nation-Treatment) and non-discrimination within a country (National Treatment) will be examined. The successful implementation of the Doha Mandate on trade facilitation will arguably not conflict with the WTO's core principles.

For this reason, this paper may discuss the appropriateness of a possible multilateral agreement on trade facilitation by considering the relevant issues in the light of the Preamble of the WTO Agreement. In so doing, it will look into the development dimensions of trade facilitation and also suggest special and differential (S&D) provisions that developing and least developed countries may require in order to implement a possible multilateral agreement. In this context, therefore, S&D treatment could be taken as a central principle.

### Specific GATT 1994 Provisions and Trade Facilitation

Specific elements connected with the simplification and harmonization of trade procedures are already contained in GATT 1994, specifically in Articles V, VIII and X. As per the Doha Mandate, the WTO Council for Trade in Goods has been instructed to "review and as appropriate, clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 and identify the trade facilitation

needs and priorities of Members, in particular developing and least developed countries".

This issue paper will analyze these GATT 1994 articles and elucidate what clarification and improvements are required *vis-a-vis* a possible multilateral agreement on trade facilitation. Moreover, it will look at their implications for developing and least developed countries.

### *Technical Assistance and Capacity Building*

Technical assistance and capacity building of developing countries, especially the least developed countries, are essential for trade facilitation. The following are some important issues to be examined: (a) How can commitments on trade facilitation be complemented with appropriate technical assistance and its implementation? (b) Is the WTO in a position to provide the technical assistance required to developing countries? Since many inter-governmental organizations such as UNCTAD, World Customs Organization, and the World Bank are also providing technical assistance in this area, what elements could a programme on technical assistance and capacity building given a possible multilateral agreement on trade facilitation include?

### *Dispute Settlement*

This issue paper will look at possible ways of approaching dispute settlement in the eventuality of a multilateral agreement of trade facilitation. Two important issues which need to be examined are: (a) If a party finds that his/her consignment took three days to get customs clearance in a country instead of two, will the country concerned be subject to a trade dispute? and (b) It has been proposed that there will be a cut-off clause (for the size of consignment) in relation to the dispute settlement on trade facilitation matters. What criteria need to be considered in order to set up this cut-off point, taking into account the needs and ground realities of developing countries?

### *Country Case Studies*

The case studies will test the following hypothesis: "Trade facilitation will reduce transaction costs of doing cross-border business". In other words, the case studies will endeavour a cost-benefit analysis of trade facilitation. This will build on the contention

that the fulfilment of obligations of a possible multilateral agreement on trade facilitation may impose a significant burden on developing countries. Furthermore, it would be useful to find out the opportunity cost of resources spent on trade facilitation measures.

### *Researchers*

The trade facilitation research group comprises 13 international trade experts. Some of the issues covered by the experts are as follows:

- Research Study on Trade Facilitation in Pakistan
- Issue paper on Trade Facilitation - Scope & Definition, WTO Core Principles and Trade Facilitation and Technical Assistance and Capacity Building.
- Trade Facilitation - Scope and Definition
- Argentina's National Experience with Trade Facilitation
- Research paper on Trade Facilitation - Article V, VII and X
- Cost of Doing Business in Nepal and Trade Facilitation
- WTO Discussion on Trade Facilitations: Bangladesh's Perspective
- What could be the possible elements for a programme on technical assistance and capacity building with reference to a possible multilateral agreement on trade facilitation
- The Real Costs of Implementing Trade Facilitation and the Attendant Lowering of Transaction Costs: A Cost-Benefit Analysis - India Case Study

([www.cuts-international.org](http://www.cuts-international.org))

## **ICC Recommendations to WTO Members on Trade Facilitation**

THE International Chamber of Commerce (ICC) has a long history of promoting the benefits of trade facilitation - often referred to as the simplification and harmonization of international trade procedures and customs modernization - on behalf of the global business community. ICC has brought this issue to the attention of governments with its International Customs Guidelines and was a strong supporter of including customs facilitation on the agenda of the

World Trade Organization (WTO) at the 1996 WTO Singapore Ministerial Conference. ICC is encouraged by the progress made to date by the WTO on trade facilitation. To continue the work accomplished so far and address the realities of global trade today, ICC recommends that the WTO focus on the key objectives outlined in this statement and adopt binding multilateral rules on trade facilitation.

### Global Trade Today

The reduction of tariff and other trade barriers during successive GATT rounds has increased the focus of commercial attention on the serious practical constraints that still delay transactions at many national frontiers. The demand for, and ability to supply, rapid trade movements has been greatly increased by multimodal through-transport, and electronic commerce, and is reflected in globally integrated, just-in-time supply, production and distribution systems. For these developments to have maximum benefit, they must be accompanied by the rigorous and efficient application of simple, predictable and uniform controls by customs, and the other official bodies that operate at the border.

### WTO Rules on Trade Facilitation and Customs Modernization Benefit Customs and Trade

Customs procedures have been covered by the disciplines of General Agreement on Tariffs and Trade (GATT) from their inception. But the need for further GATT/WTO rules in this area is acute today because of the developments outlined above. Modernization of a country's customs administration benefits trade, investment and economic growth, while modernization of a trading partners' customs is necessary to ensure full realization of trade benefits. As the world moves towards further trade liberalization, customs modernization is more and more important to each country's interest in attracting foreign direct investment. In particular, customs modernization will greatly assist developing countries in their export promotion efforts to integrate their small and medium sized companies into the most prized and competitive global markets.

### WTO Rules are Necessary for Consistent Reform

Political commitment to multilaterally binding rules on trade facilitation, administered by the WTO, would steer reform in a consistent direction and

benefit all parties in international transactions. Such rules would build upon the WTO principles of non-discrimination, transparency and least-trade restrictiveness and would strengthen disciplines already contained in existing WTO agreements. Such rules would draw upon relevant facilitation work undertaken by other organizations such as the World Customs Organization (WCO), the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), the International Maritime Organization (IMO), the International Civil Aviation Organization (ICAO) and ICC. The adoption of the WCO's revised Kyoto Convention should be promoted, as it contains many of the key elements of trade facilitation that could be drawn upon as a key source of material for a WTO agreement on trade facilitation.

In particular, ICC recommends that the WTO analyze the impact of customs related controls on trade and reduce them where appropriate, by focusing on the following key trade facilitation objectives:

- transparent conduct by customs, with easily accessible procedures and regulations, including an open, independent and economic appeal process of customs decisions open to all importers;
- an authorization for legitimate traders, allowing operators to cross national borders with minimal interference, and the use of pre-arrival declarations and post-release audits, enabling customs to concentrate their resources on the key target of illegitimate trade at the border;
- the measurement of clearance time at the frontier, and the introduction of targets to encourage governments to reduce clearance time;
- use of modern customs techniques such as risk assessment and profiling, enabling administrations to make direct resource gains whilst reducing the time for legitimate trade to cross borders;
- utilization of commercial systems for customs controls including sophisticated information technologies, the internet and integrated information systems more rapidly adaptable to business needs than independent customs information technologies systems;

- adoption and implementation of international standards in the trade transaction process such as those of the United Nations, WCO and ICC;
- global automation to create a paperless environment, with data transmitted by Electronic Data Interchange (EDI) or the internet;
- administration of official frontier controls by a single agency, preferably customs;
- consider, where appropriate, a "Seamless Integrated Transaction" where a core set of identification control data can be generated, submitted and processed at any time during the transaction, to avoid the duplication of traditionally separate export and import procedures.

The realization of these objectives would benefit both developing and developed countries by encouraging inward investment and trade growth.

#### **Assistance for Developing Countries**

The WTO could provide further assistance for developing economies by creating a framework for intergovernmental organizations such as the International Monetary Fund (IMF), World Bank, WCO and United Nations Conference on Trade and Development (UNCTAD) to make an active contribution to capacity building for trade facilitation. Public authorities and the business community in less developed countries should work together with their counterparts in industrialized countries to achieve effective reform through appropriately monitored transition periods under WTO rules. It is imperative to the realization of the most basic trade facilitation measures that developing countries have the assistance they need to implement their Uruguay Round commitments; to build their human, institutional and physical capacity to trade, and to train trade officials to efficiently and effectively carry out their responsibilities.

#### **Binding Rules to Simplify Global Trade**

Binding WTO rules that build on existing WTO agreements and principles, recommendations in the revised Kyoto Convention, and other facilitation instruments, such as those of the UN and its specialized agencies, will secure many of the key

elements of trade facilitation; simplify trade procedures; promote internationally agreed standards; and benefit government and business in all WTO member countries. To this end, it is critical that the WTO and organizations like the WCO and UN work together to establish the WTO framework and fulfill the objectives of time and cost savings for traders; cheaper goods for producers; lower prices for consumers; a more cost-effective recovery of revenue, and better surveillance of high risk consignments for customs.

([www.iccwbo.org/home](http://www.iccwbo.org/home))

## **WTO Trade Facilitation Summary**

### **Doha Development Round**

ALTHOUGH member nations were scheduled to begin negotiating commitments on trade facilitation for the first time ever at the Cancun Ministerial Conference, the talks ended prematurely in part due to a stalemate over whether to initiate negotiations on trade facilitation and the other three Singapore issues. Should members agree to begin talks on trade facilitation at another point in the Doha round, they will focus on the simplification and transparency of cross-border transportation of goods. Members have suggested a two-track approach to negotiations in which nations will work towards implementing current standards and requirements while creating the next generation of facilitation measures applicable to e-commerce and global corporations.

#### **Background of Trade Facilitation Agenda**

Trade facilitation came rushing to the foreground of WTO issues as the international business community increasingly expressed concern for greater transparency, efficiency, and procedural uniformity of cross-border transportation of goods. According to an APEC study, clearing the red tape at country borders would generate approximately twice as much gain to GDP than tariff liberalization would.<sup>1</sup> Trade facilitation measures would particularly benefit developing countries, where the inefficiencies are sometimes more costly to industries than are tariff barriers. In response, WTO members added trade facilitation to the agenda at the Singapore Ministerial Meeting in 1996. The Singapore Ministerial Declaration calls upon the Council for

Trade in Goods (CTG) to conduct exploratory research into cross-border barriers, and analyze the effects of those barriers on traders and consumers.

The CTG research draws from the work of over fifteen intergovernmental organizations and the responses of the international business community at the WTO Trade Facilitation Symposium in March 1998. Based on the discussion at the Symposium, the WTO Secretariat circulated a Checklist of Issues that summarizes central issues and prescribes possible solutions to prevalent problems. The points of concern can be categorized into five broad areas: documentation requirements; official procedures; automation and use of information technology; transparency and consistency; and modernization of border-crossing administration.

From the inception of trade facilitation as a separate issue, the WTO has engaged in extensive preparatory work on relevant issues. In 1999, the CTG held four informal meetings to discuss specific topics that had not been covered in the more formal forums held in 1998. The CTG focused on import and export procedures, insurance and financial requirements, electronic facilities, and evaluation of applicable WTO rules. At the Seattle Ministerial Meeting in 2000, the WTO created a capacity building programme and discussed the dual need to implement current standards as well as develop new methods of facilitating trade.

### Developing Countries

While there is across-the-board agreement on the necessity for trade facilitation, developing countries are not enthusiastic to negotiate a multilateral agreement of trade facilitation commitments.<sup>2</sup> They argue that they do not have the resources necessary to update their customs procedures to more modern technological standards. They are also reluctant to take on additional legal obligations that may increase their exposure to disputes. If members insist on creating standards through the WTO, developing countries such as Brazil, Jamaica, and Zimbabwe ask that the agreement be a list of voluntary guidelines, or an agreement focused on capacity building, rather than a legally-binding, rules-based agreement.<sup>3</sup> Some developing countries such as India even suggest that trade facilitation remain a national, bilateral, or regional concern.

Taking into consideration the qualms of developing countries, the WTO will offer significant technical assistance and capacity building in conjunction with negotiations. A Workshop on Technical Assistance and Capacity Building on Trade Facilitation held in May 2001 specifically discussed the needs of developing countries, the existing programmes of support, and the efficacy of capacity building methods. The workshop brought together intergovernmental organizations, donor and recipient countries in a dialogue that will continue throughout the Doha Round. Judging from comments made by then USTR Robert Zoellick, the US and other developed countries will continue to push hard to include trade facilitation on the agenda.<sup>4</sup> However, if developing countries continue to oppose negotiations, developed nations may need to shelve the issue in order to keep the Doha Round on track.

<sup>1</sup> Asia Pacific Foundation of Canada Publications Listing.

<sup>2</sup> WTO, "Trade Facilitation and Sustainable Development," *IISD Trade and Development Brief*, No. 3, Spring 2003.

<sup>3</sup> Martin Kohr, *Developing Countries against Binding Trade Facilitation Rules*, June 2003.

<sup>4</sup> "Reviving the WTO Talks," *The Straits* (Singapore), 16 January 2004.

([www.ppl.n/huge/WTObibliography/trade](http://www.ppl.n/huge/WTObibliography/trade))

## Trade Facilitation Enhanced through the WTO

IN September 2003 there is a unique opportunity to initiate negotiations on a WTO agreement on trade facilitation. An agreement within the WTO will improve the efficiency of border management procedures worldwide and this will reduce barriers, reduce costs and increase trade. It will start a process that will initiate a progressive improvement in the international trade process. A recent IMF study indicated that a 50 per cent reduction in border inefficiency would save international trade in the region of \$325 billion, which is disproportionately loaded on the shoulders of developing countries.

It is vital to improve the understanding of the opportunity that a WTO agreement gives developing countries and this has to be achieved at the very latest by June 2003. In pursuit of this objective SITPRO has been actively promoting its vision of the way

forward, said David Wakeford, Chief Executive of SITPRO.

At the end of January we were asked to present our views on a WTO Agreement on Trade Facilitation to the All Africa Customs Conference 2003. The primary focus for this Conference was the New Partnership for Africa's Development (NEPAD).

Despite the desperate economic problems a large proportion of these countries face, most participants addressed trade facilitation very positively. They were clearly sceptical about the commitment of the European Union and the US to the WTO and the plight of the developing countries within it. Surprisingly in this environment the SITPRO ideas on a trade facilitation agreement appeared to be accepted without any direct opposition by the African delegates. Only the World Customs Organization (WCO) took a very negative position primarily because they see a WTO agreement undermining their strength in this area. In fact it should do the opposite and establish the WCO as the primary organization to ensure the technical coherence of the agreement and its effective implementation.

([www.sitpro.org.uk/news](http://www.sitpro.org.uk/news))

## WTO Council for Trade in Goods Meeting on Trade Facilitation

WTO or GATT Articles set out high principles for trade facilitation, while the World Customs Organization (WCO) instruments provide standards to help customs implement those high principles. The WCO assist its Members in properly applying WTO rules and WCO standards through technical assistance and capacity building. The enhanced coordination among intergovernmental organizations, based on complementarity, will result in a more coherent approach to trade facilitation, including technical assistance and capacity building.

In relation to trade facilitation, some Members have expressed their concerns on implementing WTO Customs Valuation Agreement at WTO CTG Meeting on Trade Facilitation, held on 12-13 March 2003.

The WCO Dy. Secretary General Kunio Mikuriya informed the meeting that upon the request of the WTO Committee of Customs Valuation, the WCO

Technical Committee is now considering the implementation issue of valuation, including information exchange, from the technical point of view. This is another example of complementary nature between the two organizations and that would remain available in providing further clarification on the customs-related technical aspect of trade facilitation.

Turning to the second agenda item - Trade Facilitation Needs and Priorities of Members, as the delegate of South Africa pointed out, the WCO High-Level Working Group has been developing a Customs Capacity Building Strategy. As a part of this effort, the WCO has conducted a survey with our Members, 161 customs administrations, to establish an inventory of key capacity building needs, barriers and challenges. Preliminary findings for effective capacity building in customs reveal that capacity building is a comprehensive process addressing all aspects of customs administration. It can't be addressed effectively on an issue by issue basis. It includes but is not limited to training and technical assistance. Quick fix approaches or "one size fits all" solutions often do not work, said Dy. Secretary General of WCO. As a prerequisite of sustainable capacity building, he said, high level political will and stakeholder support is essential. We need to focus on practical and sustainable outcomes. In this connection, it is important to learn lessons from previous capacity building efforts, especially from those that did not meet initial expectations.

Concerning expected key players' roles, we found that sustained political will and commitment, ownership and participation of customs personnel, as well as stakeholder support and participation are vital. Coherent approach among donors and international organizations is also indispensable in this respect. Another essential element is adequate resources both in human and in financial terms. Regarding infrastructure, we learned that information technology and automation is helpful, but it does not necessarily play a major role in capacity building. We need step-by-step introduction of automation that will gradually replacing manual systems, but simplification of manual systems is a precondition and most important. Turning to planning and management, collection of data and management information will provide a basis for sound planning and change in management.

Moving on to the last agenda item on trade facilitation - Technical Assistance and Capacity Building, as the delegate of Australia has plainly explained, we have been analyzing the lessons learned from previous experiences and the inventory of capacity building needs, for which WCO has made a brief progress report. Based on this on-going research and the urgent necessity to address capacity building issue in mind, we are currently developing a comprehensive and standardized methodology for the diagnosis of needs, design and development of capacity building programmes. The WCO Dy. Secretary General said that this methodology, called Customs Capacity Building Diagnostic Framework, is designed to be a practical aid or tool for practitioners to promote WCO instruments and best practice approaches, which will assist our Members in implementing customs-related WTO Agreements. While WTO Agreements and WCO standards exist, customs may have problems in applying these rules and standards. The new Framework is designed to help Members analyze this gap in identifying what their difficulties are, where they find the gap, and why this gap exists. The difficulties may derive from management culture, resources, staff capabilities or other root causes. Based on this gap analysis, the Framework will offer situational solution, avoiding "one size fits all" approach. With the development of this new tool and WCO's expertise in customs arena, we intend to actively participate in and contribute to a coordinated capacity building with key players. In this connection, we are currently discussing how best to build a new mechanism with the World Bank and other lending institutions, embracing relevant intergovernmental organizations, donors, recipients and the private sector.

([www.woomd.org](http://www.woomd.org))

## Export Development and Trade Facilitation

MANY countries in the Middle East & North Africa (MNA) region are not well integrated with the world economy. In fact, trade as a share of output has declined over the last 30 years, with oil and other fuel exports constituting 80 per cent of total exports of the region. Given projected population growth, the related need for job creation, and limited

domestic demand, which will further constrain governments' capacity for investment and social protection, exports of non-oil goods and services are key to economic growth and job creation.

### Key Issues

While a number of MNA countries have demonstrated success in lowering tariffs, non-tariff barriers remain significant. Specific barriers include inefficient and duplicative administrative procedures such as customs control, product standards, conformity assessments, etc. At the same time, prospective exporters often have a very difficult time entering the export market due to: (1) lack of knowledge of export markets; (2) difficulty in meeting quality standards of potential markets; (3) difficulty in raising financing for capital investments and for pre-shipment and working capital needs; (4) barriers to acquisition of land and capital equipment (which hits small and medium enterprises particularly hard); and (5) technical, procedural, or physical constraints in customs and ports.

A number of MNA countries have established export processing zones to take advantage of increasing international integration. This is an important step towards attracting foreign investment and building up potential export capacity. However, because enterprises in these zones have few linkages to and take virtually no tradable inputs from the domestic economy, the domestic manufacturing sector has not had the competitive stimulus which normally results from external trade and competition.

### Assistance Strategy

The MNA Private and Financial Sector Development Department works with countries in the region to identify constraints to trade and exports and to prepare technical assistance and financing programmes to assist in trade facilitation and the development of domestic capacity in exporting. World Bank operations and non-lending services focus on: (1) developing capacity for production and marketing assistance to firms; (2) improving the availability of export financing; (3) simplifying exporting and importing procedures; and (4) helping to develop e-commerce to develop links between MNA exporters and buyers and collaborators in key markets.

([www.worldbank.org/mna/mena.nsf](http://www.worldbank.org/mna/mena.nsf))

## Trade Facilitation: A Paramount Need

SIGNALLING the shift to a new paradigm of export-optimism, the annual supplement to the five-year foreign trade policy hiked the export target from \$80 to \$92 billion for 2005-06.

One paramount responsibility that rests with the government is to facilitate trade by creating a congenial environment, convenient procedures, and infrastructure support.

Exporting demands international norms of efficiency, productivity and cost. The cost of moving goods across borders is a critical determinant of a country's competitiveness. According to a recent study by the Organization for Economic Cooperation and Development (OECD), the cost of poor border procedures could vary between 2 and 15 per cent of the total transaction value.

The Singapore Ministerial Declaration, 1996, defined trade facilitation as the "simplification and harmonization of trade procedures", procedures being further defined as "activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade".

Trade facilitation essentially relates to a variety of activities, such as import and export procedures, including administrative procedures, transportation and shipping; insurance, payment mechanisms and other financial requirements.

As the former World Bank President, Mr James Wolfensohn, said: "Reducing port and customs transit times by one day has nearly the same value as reducing tariffs by 1 per cent."

The two crucial elements of competitiveness are price and time. The comparative efficiency of a country's trade logistics chain is of vital importance in attracting investments and enhancing competitiveness of its industry and commerce. The reliability of delivery schedules permits companies to reduce substantial inventory carrying costs. Inefficient and unreliable transport and logistics have made India's exports less competitive. Good governance is essential for trade facilitation. Greater the scope for interpretation of regulations, more the chances for corruption.

The Asia-Pacific Economic Cooperation (APEC) forum has sought to leverage trade for economic growth and it tabled, at the Shanghai Ministerial in October 2001, a proposal for a 5 per cent reduction in transaction costs of trade by 2006.

A recent study by the World Bank (John S. Wilson, Catherine Mann and Tsunehiro Otsuki) examined the relationship between trade facilitation and trade flows in the 19-member APEC. It is estimated that a programme to raise capacity, half way to the APEC average, in all areas among those below average, would yield an increase in intra-APEC trade of about \$254 billion, a \$117-billion gain from improvement in port efficiency, \$139 billion from improvements at the border in port efficiency and customs environment, and an additional \$116 billion from improvements in regulatory harmonization and e-business usage.

At the centre of trade facilitation is the role of customs and other controlling government bodies. The study put forth three APEC case studies of trade facilitation: Taiwan, Peru, and the Republic of Korea.

The Taiwanese customs created three task forces to raise efficiency, one each for manifest review, cargo selectivity, and post-import/export audit. The average clearance time for air cargo was reduced to 21 minutes; over three-fourths of entries bypassed customs; while average time for sea cargo clearance declined to 1 hour and 52 minutes, with over 51 per cent of entries bypassed.

In the case of Peru, antiquated customs procedures, followed in the beginning of 1990s, resulted in clearance times ranging from 15-30 days. Lack of conformance among officers working in the 19 ports, absence of transparent guidelines, and extensive individual discretion of staff, created ample opportunity for corruption.

Customs inducted new skills and knowledge through external recruitment of mid-professionals; introduced information-based pre-processing and post-audit techniques. Staffing was reduced by about 30 per cent, from 3,800 to 2,600 persons; release times went down from 15-30 days to a range of two days to two hours; import value increased nearly 100 per cent, from \$4 billion in 1990 to \$7.5 billion in 1996; customs revenue increased four times from \$626 million to \$2,723 million. Starting in August 1999, the Korean Customs Service offered the option of

e-mail notice of cargo arrival to all importers, which reduced the time from the submission of a declaration to acceptance by relevant authorities from almost three hours to just 45 minutes.

Korean customs abolished verification requirements at the clearance stage, and developed software and distributed it free of charge.

In terms of concepts, Indian customs administration is in sync with the world's best practices and postulates: it has propounded the Citizens' Charter, Vision 2000, Fast Track, Green Channel, and ICE Gate (Indian Customs and Excise Gateway). The reality on the ground leaves much to be desired. The Central Board of Excise and Customs (CBEC) lays down standard processing times in its Citizens' Charter, and likewise the Director-General of Foreign Trade in the Exim Policy lays down a time schedule to be followed to dispose off applications regarding Import-Export Code number, advance licence, etc.

India introduced automation, Electronic Data Interchange as early as 1995, and considerable changes have taken place since then. The Customs Gateway Project will, on completion, enable connectivity between all customs locations and will link customs with all partners and stakeholders. However, there is a lot that needs to be done - and really fast - for appropriate EDI structure to permeate to all relevant players and participants.

Trade facilitation is a relatively new issue at the multilateral trade negotiations, added to the WTO agenda in December 1996 at the Singapore Ministerial. Within the WTO, the advocates of formal trade facilitation rules are known as the Friends of Trade Facilitation or the "Colorado Group".

Other members, collectively known as India and the like-minded group in developing countries, are reluctant to negotiate a multilateral agreement of trade facilitation commitments. They maintain that they do not have the resources necessary to update and upgrade their customs procedures. Additional legal obligations may increase their exposure to disputes.

India, among other countries, even suggested that trade facilitation remain a national, bilateral, or regional concern. In fact, viewed in a larger perspective, trade facilitation negotiations at the

multilateral level will be conducive to the pace of reforms.

A common misconception that all trade facilitatory reforms are dependent on advanced technology, vast monetary inputs, or major infrastructural changes persists.

World Bank's "Doing Business 2004" describes India's Centre and State bureaucracy as wreaking havoc on enterprises. Its database shows that India's manufacturing companies face fewer tax and regulatory inspections than firms in China and Brazil, that it takes fewer days in India to clear customs.

On the contrary, the average time taken in China to secure the necessary clearances for a start up, or to complete a bankruptcy procedure is much shorter than in India.

Energy prices for industry are considerably higher in India. Inefficient land markets have driven up business costs in India - more than they do elsewhere in East Asia. Finance has also been a significant growth bottleneck for the Indian industry. India continues to spend nearly 13 per cent of its GDP on logistics, in comparison to an average of 10 per cent for the global developing economies.

India has high cost of transaction, transportation, real estate and business infrastructure, power, and high costs because of delays, bottlenecks and corruption.

Improvement of port facilities and throughputs must come up faster than the two-way trade growth. The persistent congestion at the Jawaharlal Nehru Port, with import as well as export cargoes stranded, is a nightmare; it has exposed wide chinks in the basic support system, inimical to smooth and rapid rise in India's external trade. It is a potent dampener for those who otherwise would like to source supplies in larger volumes.

Adequate landside facilities need to be duly complemented with connectivity by rail and road for speedy and efficient evacuation of inland traffic. All short-term projects for enhancing capacity at terminals and on corridors for rail, roads, ports and customs need to be executed on a war-footing, simultaneously with improvisations in place by way of immediate palliatives.

Simple and ingenious mechanisms, if devised and sincerely executed, can help. The CBEC may

revise its manual and supplementary instructions and notifications on an annual basis; they may issue a new master circular, which eliminates the need to refer to previous circulars on the same subject for uniform and transparent follow-up at different locations.

The suggestion of a single, one-time presentation to one agency for clearance of goods, using a single administrative data set for export and import, and the adoption of a uniform domestic customs code are some other important suggestions.

In the modern business environment of JIT (just-in-time) production and delivery, traders need fast and predictable release of goods. Very often, countries land in a trap - engaging additional manpower on the mistaken belief that the more the persons, the better it would be for trade.

There are numerous vital aspects to help improve matters through low-cost investments and no-cost essential innovations and ingenuities.

([www.acdo-cida.gc.ca/coda\\_omd.nst](http://www.acdo-cida.gc.ca/coda_omd.nst))

## Financing for Development and Trade Facilitation

IN his statement at the ministerial plenary of the International Conference on Financing for Development (FfD), on UNIDO's contribution to Financing for Development, Director-General Carlos Magarinos said: "In my view, the Financing for Development process is about connecting (or re-connecting) developing countries to globalized trade and investment flows. This can only be done by helping developing countries to increase productivity".

The Director-General pointed out that while "mobilizing domestic resources and developing an enabling environment at the domestic level are obviously of central importance". In UNIDO's view, "the international community's external contribution ... has to centre on facilitating trade and promoting private sector investment as well as technology flows. Our contribution to Financing for Development has therefore focused on developing the institutional infrastructure required for full participation in international trade and on promoting private sector equity capital flows into developing economies".

Trade, and the contribution it can make to poverty alleviation in developing economies, figures prominently on the international development agenda. Trade related capacity building is frequently mentioned as a priority. The final Declaration of the WTO Doha Ministerial Meeting (which was warned by the G77 countries about the lack of technical assistance in recent years) in paragraph 41 reiterates the importance of technical assistance, reaffirming "the important role of sustainably financed technical assistance and capacity-building programmes".

Unfortunately, the focus of the international dialogue on trade related capacity building is still almost exclusively on building capacities in negotiating and in trade information aspects. This approach, even in conjunction with the total absence of tariffs and quotas, will not facilitate trade or enable market access for developing countries in a meaningful way. In reaction to the European Union "everything but arms" initiative, the UN Secretary General noted: "... the LDCs (least developed countries) have neither the surplus of exportable products nor the production capacity to take immediate advantage of new trade opportunities. They will need substantial investment and technical assistance in order to expand their production" (*Financial Times*, 5 March 2001). If these conditions are not met, most targeted countries simply will not be able to reap the opportunities stemming from developed country market opening and will therefore miss out on the resulting benefits.

The New Partnership for African Development (NEPAD), in contrast to the mainstream dialogue, does acknowledge that insufficient attention is paid to the technical infrastructure and capacity building required in developing countries in standards bodies and the productive sector, to comply with international standards and technical regulations. The NEPAD document elaborates a "Market Access Initiative" which includes diversification and increase of production, competitiveness, quality improvement, standards, technical regulatory frameworks, metrology, testing, accreditation and related capacities.

The thrust of the UNIDO Monterrey proposals is to fill the gaps noted by NEPAD and Secretary General Annan. When the Secretary General refers to the need for products to be "exportable" and for the country to have the "production capacity", he is

referring to the need for developing country products to respond to market demand and be able to comply with international standards and regulations, which in turn requires the developing country to have an internationally recognized quality and conformity assessment infrastructure and industry with competitive production lines. Given the volume and diversity of action required, the UNIDO proposal includes a funding strategy, part of which is a Trust Fund to which UNIDO has invited contributions and so far itself committed US\$1 million.

The idea that developing countries would need assistance to avoid technical regulations and standards becoming obstacles to trade, is nothing new. The Technical Barriers to Trade (TBT) Agreement and the Agreement on the Application of Sanitary and Phyto-sanitary Measures (SPS), both negotiated as part of the Uruguay Round, address the matter directly. Article 12.7 of the TBT Agreement specifically states: Members shall ... provide technical assistance to developing country Members to ensure that the preparation and application of technical regulations, standards and conformity assessment procedures do not create unnecessary obstacles to the expansion and diversification of exports from developing country Members. A special reference to the LDCs even strengthens this point. Similarly, Article 9 of the SPS Agreement states that Members agree to facilitate the provision of technical assistance to other members, especially developing country Members, either bilaterally or through the appropriate international organizations. Such assistance may be, *inter alia*, in the areas of processing technologies, research and infrastructure, including in the establishment of national regulatory bodies, and may take the form of advice, credits, donations and grants, including for the purpose of seeking technical expertise, training and equipment to allow such countries to adjust to, and comply with, sanitary or phyto-sanitary measures necessary to achieve the appropriate level of sanitary or phyto-sanitary protection in their export market. However, so far only limited assistance has been provided.

The strategy UNIDO presented at Monterrey to assist developing countries achieve the technical infrastructure and capacity required in standards bodies and the productive sector draws on UNIDO's experience in the areas of standards, quality and quality improvement, accreditation, metrology and

certification since it was set up in 1966. The main focus of UNIDO has always been on the establishment and development of national capacities in these areas, as well as on specific applications such as food safety and targeted quality improvement activities. In recent years the interest has increased considerably, and most UNIDO integrated programmes developed in 1999-2001 include, at the request of governments and industry, components of the required infrastructure and strengthening of productive capacities and competitiveness. A major programme with the Union Economique et Monetaire Ouest Africaine (UEMOA) funded by the European Commission, is under implementation. Similar programmes are under development in cooperation with SADC, ECOWAS and CEMAC. Other preparatory work is being done for the Central American region, the Arab region and the countries of ASEAN. Similarly, UNIDO has extensive experience in working at the sector level, providing various types of technical assistance to export oriented enterprises. Specially relevant are focused upgrading programmes that have been implemented in recent years, assisting sectors with upgrading products and productivity, continuous improvement programmes, application of special software tools, etc.

### ***Building up the Standards, Quality and Conformity Assessment Infrastructure***

The first prong of the UNIDO strategy is to enable developing countries to rapidly establish the essentials of a quality and conformity assessment infrastructure. These comprise: a national/regional standards/standardization body; a national/regional metrology system; a certification/conformity assessment system; an accreditation system; technical support and information services; and a national capacity to implement the WTO agreements. Currently, although some developing countries have part of the requirements in place, in most cases, notably in the LDCs, major parts are missing, and even if services exist, they are usually not recognized internationally, and can therefore not fully assist potential exporters. Furthermore, because of these missing domestic capabilities, developing countries are not able to technically analyze and challenge importing countries claims in relation to exported products. Neither can they identify possible technical solutions to the problem. The approach and

phasing of this process will vary considerably between countries where conformity assessment support services exist and have been operational on the one hand, and countries where these activities are still to be initiated. However, close cooperation at regional level between countries may facilitate early effective availability of services. One important goal here is to assist developing countries in meeting the requirements to be in a position to reach Mutual Recognition Agreements (MRAs) with other developing countries.

### *Developing Productive Capacities and Competitiveness*

The second prong of the UNIDO strategy is to assist selected productive sectors with high export potential to upgrade product and production quality and comply with applicable standards and regulations so that they can export their products successfully. Intensive technical and managerial upgrading and other export related assistance to sectors and companies that have the ability and intention to export successfully, is explicitly combined with, and builds on the establishment of the quality and conformity assessment infrastructure. This approach is expected to ensure effective demand for the quality and export related services, the best stimulus to ensure their effectiveness. An effective combination of the two would evidently also have the highest impact in the short term in terms of increased exports. Sectors most likely included are food products, leather and textiles, all with good (export) potential in LDCs. Technical support will include assistance to selected enterprises in meeting ISO 9000, ISO 14000, HACCP and other relevant international standards, and in improving productivity and competitiveness.

### *Analyze and Solve Technical Export Problems*

The third prong is a trouble shooting and advisory service. This component would establish a facility under which, at the request of an exporter and/or the government of an exporting country, UNIDO would provide a technical analysis of products and production processes in cases where exports actually encounter a technical barrier. Based on this analysis advice, and if needed further assistance could be provided to find and implement a technical solution to the problem.

Using this three pronged approach, a programme identifying country/regional requirements would be drawn up in close cooperation with the countries, (sub)-regional organizations, donors and other international organizations. Wherever possible, the coordination of national level activities and close cooperation and pooling of country capacities at the sub-regional level would be promoted. Such an inter-country approach would enable major economies of scale, reducing overall financial requirements.

The overall approach proposed by UNIDO requires the cooperation with and involvement of two groups of international actors. On the one hand a number of specialist organizations operate at the global level in areas immediately relevant to the programmes like standards, metrology, etc. On the other hand, different international organizations, (including UNCTAD, ITC, WTO, FAO, WHO) have mandates and expertise closely related to the programme and complementary to UNIDO. Close cooperation already exists in many cases, and these networks will be developed and formalized further. The then WTO Director-General Mike Moore, in his first progress report to the General Council on the implementation of the Doha Development Agenda on 13 February 2002, stressed the need for swift action on technical assistance and suggested UNIDO as a strategic partner for WTO on trade facilitation.

To continue the momentum established at the Monterrey conference, UNIDO elaborated further on its proposals at the Conference on the Financing of NEPAD held in Dakar, Senegal, April 15-17, 2002. Five African Heads of State (Presidents Bouteflika, Konare, Mbeki, Obasanjo and Wade) were invited by the G8 leaders during the Genoa Summit in Italy to introduce NEPAD and discuss its opportunities. The G8 leaders mandated follow-up work on NEPAD and appointed high-level personal representatives (France: Michael Camdessus; UK: Baroness Amos; Italy: Alberto Michellini; Japan: Shotaro Oshima; USA: Walter Kannsteiner; Germany: Uschi Eid; EU: Giorgio Bonacci (Chair is with Robert Fowler of Canada) to work with African counterparts and international partners on an action plan. "Building a new partnership for Africa's development" is one of the three themes of the G8 meeting.

The UNIDO Approach to Trade Facilitation can be summarized as follows:

- In close consultation with the member countries and regional organizations, UNIDO identifies country by country, or for regional groups of countries cooperating on these issues, what is needed to overcome the above mentioned challenges and develops appropriate programmes.
- The programmes are implemented to rapidly establish the essential capacities and infrastructure requirements in the countries, as much as possible at the sub-regional level so that countries can pool capacities.
- UNIDO designs and implements complementary programmes at the country level to develop productive capacities in sectors with high export potential. This includes assistance with promoting investment, upgrading products and production quality and promoting exports. This would ensure early impact on actual trade flows as well as productive use of services being established.
- If requested, UNIDO provides a technical analysis of problems related to standards and technical regulations encountered by exporters, as well as advice to overcoming these problems.
- UNIDO contributes to strengthening the involvement of developing countries in international organizations active in, for

instance, standards, metrology, accreditation, etc.

(www.unido.org)

## Trade Facilitation Solutions

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(Contd. from page 3)

management and domestic tax and revenue enforcement issues. Therefore, the other challenge is to maintain the balance between the costs and benefits of trade facilitation. This is essential because particularly when the public sector is expected to bear significant cost burden and these benefits will largely accrue to the private sector.<sup>7</sup>

### NOTES

<sup>1</sup> For an analysis of Articles V, VIII and X, proposals of WTO members and their implications for India, see Taneja, Nisha: "Trade Facilitation: Issues and

Concerns," *Economic & Political Weekly*, 10 January 2004.

<sup>2</sup> These data are taken from Malhotra, Kamal (ed.): "Making Global Trade Work for People," UNDP 2003. See Chapter 16 (Trade Facilitation).

<sup>3</sup> For description of these indicators and resource needs, see Roy, Jayanta: "Trade Facilitation: An Urgent Issue," *The Economic Times*, New Delhi, 24 June 2004.

<sup>4</sup> Pradeep S. Mehta and Nitya Nanda, "Trilateral Development Cooperation: An Emerging Trend," Briefing Paper No. 1/2005, CUTS Centre for International Trade, Economics & Environment (CUTS-CITEE), Jaipur, India.

<sup>5</sup> This analysis is based on country papers prepared as part of the CUTS programme titled "International Working Group on Doha Development Agenda" (IWOOGDA, Phase II), which has been implemented with the support of the Ministry of Foreign Affairs, Sweden.

<sup>6</sup> Roy, Jayanta: "Trade Facilitation: An Urgent Issue," *The Economic Times*, New Delhi, 24 June 2004.

<sup>7</sup> Julius Sen, "Trade Facilitation and South Asia: The Need for Some Serious Scenario Planning," Research Report No. 0425, CUTS Centre for International Trade, Economics & Environment (CUTS-CITEE), Jaipur, India. ●



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## BOOKS/ARTICLES NOTES

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### BOOKS

**Sharing the Gains of Globalization in the New Security Environment: The Challenges to Trade Facilitation**, United Nations Economic Commission for Europe, United Nations, Geneva, 2003.

THIS book contains a set of background policy papers which were prepared for the International Forum on Trade Facilitation Programme held on 14-15 May 2002. The programme was organized by the United Nations Commission for Europe at Geneva. The papers focus on the point that policy dialogue is important for the establishment of a system of international trade facilitation which would contribute to equitable development worldwide. Further, it says that trade facilitation addresses the problem arising from inefficient trade procedures which incur high transaction costs and thereby hinder trade and economic growth. The United Nations Economic Commission for Europe (UNECE) has developed and promoted trade facilitation standards and measures for more than 40 years, and tries to build on this pioneering experience to foster dialogue for the construction of a fair, predictable and secure international trading system. In 2002 and 2003, it organized two international forums on trade facilitation.

The purpose of this book is to bring into the public domain the debate on the outlook of a global system for delivering the benefits of trade facilitation.

The book provides information on the positions of small and big players, on whether WTO's binding rules should be the centrepiece of an international system of trade facilitation.

Finally, the publication recognizes three main areas where short-term progress should be possible

on the road to full implementation of trade facilitation measures. These include:

(i) All efforts should be made to ratify the WCO revised Kyoto Convention, with a sense of urgency; (ii) Trade facilitation should have high priority and all efforts should be made to arrive at an explicit consensus that the WTO is enabled to play a constructive role in the substance, in capacity building and in technical assistance related to trade facilitation; and (iii) Efforts must be made for bringing better coherence among the numerous actors involved in trade facilitation.

**Trade Facilitation: The Challenges for Growth and Development**, United Nations Economic Commission for Europe, edited by Carol Cosgrove Sacks and Mario Apostolov, United Nations, Geneva, 2003.

THE publication says that information and goods have the potential to flow more easily than ever from one country to another. Trade facilitation measures, it says, help realize this potential by speeding up the movement of goods and the flow of trade information across borders. It also helps improve the global competitiveness of those involved in international trade, promotes the development of a more reliable trading environment, and contributes to global economic growth and poverty reduction. Efficient, simple and transparent international trade procedures, functioning in an open and inclusive trading system, and interoperability of international trade standards will improve the overall climate for trade and investment. The full benefits of trade facilitation cannot be achieved without the political will for implementation.

The book has been presented in six parts. Part I introduces the main issues set forth. The first one, "The Policy Debate on Trade Facilitation", discusses the importance of policy in trade facilitation. This

chapter also illustrates that trade facilitation should be regarded as a multifaceted concept involving a large variety of activities and actors.

Part II includes conceptual papers which focus on the definition and various issues of trade facilitation. It also contains policy papers identifying the problems of trade facilitation in transition and landlocked countries. Part III touches upon the policy dimension of trade facilitation. Part IV addresses the ways in which business may contribute to trade facilitation. Part V deals with role of the various international organizations to trade facilitation. The concluding part reflects the views of developing and transition economies.

#### **Doha Development Agenda: A Global View**

edited by T.K. Bhaumik, Penguin Enterprise, Confederation of Indian Industry, New Delhi, 2003.

THE publication presents viewpoints of different experts on the issues of trade and development.

The book contains two articles on "Trade Facilitation". The first entitled "Negotiation on Trade Facilitation under the Doha Development Round" says that trade facilitation is not a traditional WTO activity. Trade facilitation, it points out, aims at the processes by which public policy measures are enacted and enforced, while tariff rounds address the outcomes of those processes.

Trade facilitation, it further says, offers all WTO members to enter into negotiations in the right frame of mind, ready to make commitments – particularly on capacity-building that will enable a balanced, flexible and effective agreement to emerge.

The second article entitled "An Approach to the Trade Facilitation Agreement" outlines a possible approach that matches the commitments to such an agreement, with the capacity of the WTO members to implement it. Trade facilitation aims to improve the overall efficiency of the international trade process through a WTO agreement and over the period increase the wealth of all trading countries.

In its concluding remarks, it says that an agreement on trade facilitation would be a basic building block for the efficient movement of goods. Without a WTO agreement, the benefits of facilitation of international trade would be very limited, especially for developing countries and SMEs.

**Trade Facilitation**, Indian Institute of Foreign Trade, New Delhi, 2002.

THE publication is a backgrounder which was prepared for a WTO/WCO National Seminar on Trade Facilitation held on 31 Oct.-1 Nov., 2002. The Seminar was organized by the Indian Institute of Foreign Trade in collaboration with Department of Commerce, Ministry of Commerce and Industry, Government of India, New Delhi.

The backgrounder contains a set of documents relating to trade facilitation.

**Facilitation Measures Related to International Trade Procedures**, United Nations Economic Commission for Europe, United Nations, Geneva, 2001.

THE publication which is a document highlights main features of international practices and standards for the facilitation and harmonization of trade transactions. The document reflects recent changes in the trade practices, and the ongoing changes brought about by the adoption of e-business tools and related business models. The specific recommendations relating to electronic business partners trading electronically are encouraged to implement these measures to reduce or avoid any unnecessary delay in the delivery of their consignments.

In order to understand the complexity of international trade, including the key elements of a trade transaction, UN/CEFACT developed a model of the international supply chain. Based on this model, specific measures were developed to cover the key elements of the trade transaction process under four major categories: commercial measures, international payment measures, official control measures, and transport related measures.

"Recommendation 18" is targeted both at companies involved in the business of trade, and at national Governments and national and international organizations related to trade. The Recommendation is relevant to transition and developing countries which can significantly improve their economic performance by streamlining international trade procedures.

The "Recommendation" document is one of a series of 30 trade facilitation recommendations

developed by the United Nations Economic Commission for Europe to help establish simple, effective and integrated trade procedures and systems.

**WTO in the New Millennium** edited by Arun Goyal, World Trade Centre and Academy of Business Studies, January 2000.

THIS publication contains a chapter on "Trade Facilitation". Trade facilitation, it says, is generally defined as "the simplification and harmonization of international trade procedures" required for the movement of goods in international trade. This definition relates to a wide range of activities such as import and export procedures, transport formalities, payments, insurance, and other financial requirement. Work in this area over the years has been carried out by various organizations such as UNCTAD, UN ECE and the WCO. Steadily growing volumes of trade, it says, have created a strong interest from international business in the improvement of the infrastructure for international trade.

In its concluding remarks, it says that there is a real need to facilitate international trade transactions. The existing instruments developed by the WTO and other international agencies are already a first step. Multilateral trade facilitation rules would improve market access for goods and promoting trade in services.

## ARTICLES

**Facilitating Development in the World Trading System—A Proposal for Development Facilitation Tariff and Development: Facilitating Subsidy** by Lee Shike Yonk, *Journal of World Trade*, December 2004, 38(6), pp. 935-954.

THE article observes that the international trading system, particularly its legal framework, should allow developing countries to promote their exports as seen in the case of the East Asian economies. Facilitation of development is an important objective in the current trading system represented by the World Trade Organization (WTO).

The article says that some of the current WTO provisions are not consistent with the development interests of developing countries. It is particularly the case in respect to areas such as tariff bindings and subsidies.

It further examines the development facilitation provisions in the WTO and proposes reforms in the areas of tariff bindings and subsidies to better serve the development needs of developing countries. While the Uruguay Round expanded the GATT provisions in many areas and settled a number of agreements and understanding, it did not do much in the area of development facilitation. The provisions of Article XVIII were not expanded and no separate agreements or understandings were made to facilitate development.

The current preferential treatments in the WTO provisions for developing countries, it says, are not sufficient to meet the development needs of the majority of developing countries. The preferential treatment for development should continue to apply until the relevant developing country achieves economic development.

Finally, the article emphasizes that economic development needs to be facilitated through trade, and the multilateral legal framework for international trade should allow developing countries to adopt effective development policies and not prevent it. The successful development of developing countries will not only serve the interest of developing countries but also those of developed countries since it will provide developed countries with new affluent markets for their export industries and therefore new sources for their wealth. As such, the WTO rules in the areas of binding tariffs and subsidies need to be changed to better facilitate development.

### **Trade Facilitation: Issues and Concerns**

by Nisha Taneja, *Economic and Political Weekly*, 10 January 2004, 39(2), pp. 126-128.

THE article states that following the Doha Ministerial Conference, countries from the European Union, Japan, Korea, the US, Hong Kong and Colombia have sought clarifications and made suggestions in the issue.

Trade facilitation, it says, has become an issue of significant importance in the non-tariff barriers agenda, as tariff rates of protection have fallen after the Uruguay Round, along with availability of advanced information technology and means of communication that can speed goods transfer across borders. While both developed and developing countries agree that focusing on trade facilitation would indeed reduce transaction costs of exports and imports, remove uncertainties in trade and lead to increased trade and investment, developing countries have been of the view that there are limits on the extent to which trade procedures can be harmonized particularly when the differences are considered to be legitimate taking into account various factors such as stage of economic and social development of a country, availability of technology, administrative traditions and capacities, etc.

Trade facilitation was first included in the WTO as one of the Singapore issues at the 1996 WTO Ministerial Conference following which the Council for Trade in Goods was directed to carry out exploratory and analytical work on the simplification of trade procedures. In November 2001, the Doha Ministerial Declaration instructed the Council for Trade in Goods to "review and as appropriate, clarify and improve relevant aspects of Article V (freedom of transit), Article VIII (fees and formalities connected with importation and exportation) and Article X (publication and administration of trade regulations) of the GATT 1994 and identify the trade facilitation needs and priorities of members, in particular developing and least developed countries.

As a possible multilateral agreement on trade facilitation is likely to take into account the contents of the proposals made by members, the article focuses on two key questions: (i) What clarifications do these proposals seek and what improvements have been proposed? (ii) If such proposals are eventually accepted, would it indeed pose a burden on India?

In its concluding remarks, the article lists a host of steps taken by India in this respect. These include reduction of documentation requirements and simplification of procedures. Perhaps the most significant step that has been taken is on the harmonization of the customs code. To simplify and

reduce procedures, two notable changes have been introduced in the automation of customs through the use of electronic data interchange (EDI) and the use of risk assessment methods.

**Efficient Transport and Trade Facilitation to Improve Participation by Developing Countries in International Trade**, UNCTAD TD/B/COM.3/60, October 2003, p. 16, Geneva.

THE article examines the importance of transport in promoting trade and economic developments. It highlights the factors affecting transport costs and the fact that high-quality services are increasingly important for trade and production patterns. Low trade volumes, it says, may lead to situations where the supply of transport services becomes uneconomical, leading to a downward demand and supply. The challenge for policy-makers is to reverse such vicious cycle and promote trade through better and less costly transport services.

Further, the article reviews impact of the latest developments on international transport and trade facilitation. These *inter alia* include development of multimodal transport and logistics services, laws and regulations governing multimodal transport adopted at the regional and subregional levels as well as ongoing legislative work at the international level, security initiatives adopted by the United States, the International Maritime Organization's ISPS (International Ship and Port Facility Security) Code, the International Labour Organization's Seafarers' Identity Documents Convention and the proposal by the European Commission and information and communication technologies. The note pinpoints by stating that although these developments present considerable trading opportunities and provide access to global markets, their adaptation poses significant challenges for most developing countries. Therefore, there is a need for developing countries to formulate appropriate policies and strategies for the development of efficient transport services.

The article further states that compliance with the new security measures will clearly provide a major challenge for most developing countries, particularly the LDCs. While it is generally agreed that there is a need to enhance maritime and port security, the position of developing countries needs

to be considered in the process. The implementation of the proposed measures clearly entails significant cost implications. This will create a heavy burden for some developing countries. Failure to comply with the required measures could prevent them from participating in international trade.

**Theory and Practice of Harmonization of Rules on Regional and Multilateral Base: Its Relevance for World Trade Organization Work on Trade Facilitation** by Vinod Rege, *Journal of World Trade*, 36(4), August 2002, pp. 699-720.

THE article says that the subject of trade facilitation was included in the WTO work programme for study and analysis at the Singapore Ministerial Meeting held in 1996.

The article makes an attempt to examine how far taking into account the theory and practice of harmonization of the rules at regional and multilateral level, it would be possible to adopt binding rules which countries must apply to the movement and clearance of goods through customs.

The article has been presented in four sections. Section I describes the proposals for adopting harmonized rules in order to facilitate trade that were made during the preparatory phase of work for the Doha Conference and in the earlier years. Section II provides an overview of the economic rationale that is advanced for the elimination through harmonization of rules among countries in domestic regulations and their limitations. Section III explains that both theory and practice of harmonization suggest that the differences that exist in the procedures adopted by majority of the developing countries for the movement and clearance of goods through customs and those adopted by developed countries, are legitimate and justifiable. The concluding section explains the extent and degree to which the procedural rules are applied for the movement and clearance of goods through customs.

**WTO and Trade Facilitation** by Nitya Nanda, *Economic and Political Weekly*, 28 June-4 July 2003, 38(26), pp. 2622-2625.

IN its opening remarks, the article says that developing countries' opposition to an agreement on

trade facilitation is based primarily on their inability to shoulder more obligations on the one hand and the strong likelihood of the WTO getting overburdened on the other. This article opines by stating that there are other possible implications and the case for further trade facilitation in developing countries is not well established, against the backdrop of great differences in their levels of development.

Trade facilitation, it says, has been defined both narrowly and broadly. The WTO, the United Nations Conference on Trade and Development (UNCTAD) and the Organization for Economic Cooperation and Development (OECD) have restricted the scope of their definitions to a relatively free movement of goods, and more specifically, to customs procedures and technical regulations. The World Bank, however, takes a broader approach to its trade facilitation work programme, which primarily covers reforms in customs, regulatory frameworks and standards.

According to the WTO, trade facilitation is 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". This definition relates to a wide range of activities such as import and export procedures (such as customs or licensing procedures), transport formalities, and payments, insurance, and other financial requirements that are quite cumbersome and place enormous burden on traders.

Some activities covered by the WTO's definition include transport, payments and electronic facilities as well as, and most importantly, issues related to customs and border-crossing. These include: (1) documentation requirements; (2) official procedures; (3) automation and use of information technology; (4) transparency, predictability, and consistency; and (5) modernization of border-crossing administration.

The costs of doing business in developing countries, it says, are much higher largely because of the functioning of their inefficient institutions. Mostly, it is incumbent on governments to make investments in these institutions. However, most developing countries operate on tight budget constraints, and a

binding commitment on trade facilitation could lead to a disproportionate diversion of limited resources from other vital institutions to customs administration. This could create a situation where domestic business would incur the costs of compliance that would arguably be much higher than their foreign counterparts would bear in similar situations.

Some developing countries argue that there is no need for additional WTO obligations, especially as they are still struggling to implement Uruguay Round (UR) rules on trade facilitation. They also argue that when there is a huge backlog of UR issues waiting to be resolved, new issues for negotiation are uncalled for.

In its concluding remarks, the article says that developing countries' opposition to an agreement on trade facilitation is based primarily on their inability to shoulder more obligations and the strong likelihood of the WTO getting overburdened.

**Trade Facilitation: A Singapore Issue Knocking at WTO's Door** by C. Satapathy, *Economic and Political Weekly*, 27 April 2002, pp. 1587-1590.

THE article says that trade facilitation is a Singapore issue that has been knocking at WTO's door for quite some time now. It is also an issue that has very wide ramifications and involves numerous stakeholders, its implications are not being limited to any particular trade or industry. Trade facilitation on its own needs the attention of all stakeholders irrespective of what stance we ultimately adopt at the WTO negotiations. Therefore, indepth examination of the issue, which will involve considerable time and detailed study, should be initiated urgently.

The article highlights different aspects of the issue that need to be examined. Trade facilitation was one of the four new disciplines along with investment, competition policy and transparency in government procurement that were added to the WTO work programme at the 1996 Singapore Ministerial Conference. These have since been conveniently labelled as the Singapore issues.

At the Doha Ministerial Conference, these issues were taken up at the instance of the developed countries and particularly the EC, for inclusion in the ensuing negotiations.

In its concluding remarks, it says that it is significant that the Indian proposal found acceptance only in the post-September 11 scenario. It is now realized that manipulation in import/export values can be used to launder money for terrorist activities.

**Trade Facilitation: Time to Put Our House in Order?** Pradeep S. Mehta, *The Financial Express*, 11 December 2001, p. 7.

IN its opening remarks, the article states that trade facilitation is an issue, which has not been given the attention it deserves. In the international trade context, it says, trade facilitation is hardly a new issue. The Doha Declaration recognized the case for further expediting the movement, and the need for enhanced technical assistance and capacity-building in this area.

Further, it says that for a country like India, there is not much to worry. On the other hand, this is bound to improve efficiency of the existing system and benefit the economy as a whole. At another level, and from the point of view of making Indian products export competitive in the international market, it is necessary to analyze customs and other procedures in major economies, which are acting as non-tariff barriers. Thus, the need of the hour is to grab this opportunity, study import-export procedures of different countries and place a proactive agenda before the WTO Council for Trade in Goods rather than merely reacting to issues raised by others.

However, while India has to consider domestic priorities and constraints, it is for its own benefit in the long term to go ahead and ask for a framework of rules to bring transparency, predictability and non-discrimination in customs procedures worldwide. India will also have to point out that for most of the developing countries, implementation of trade facilitation measures could be a big challenge and would require substantial technical assistance to build capacity.

In its concluding remarks, it says that while it seems to be generally beneficial for developing countries to phase out their use of expensive pre-shipment inspection regimes, they should push hard for technical and financial help to replace them by sophisticated customs administration systems. Countries like India will have to take a lead to highlight

the benefits and other implications of trade facilitation: in particular, the strong development dimension before any consensus on this issue is arrived at.

**Trade Facilitation and WTO** by S. Sundar, *The Economic Times*, 18 August 2001, p. 4.

THE article points out that developing countries' dependence on customs revenue is still substantial. The kind of risk assessment procedures that a developed country with an average tariff rate of 3 per cent can afford to put in place can be very different from a developing country that has an average tariff rate of 20 per cent and on whose revenue it is crucially dependent. Therefore, there are dangers in putting their systems of customs clearance in a time straitjacket. It may lend assistance not only to the unscrupulous importers but even unscrupulous customs officers who can conveniently shift the blame of not correctly assigning the goods to the WTO's time schedule.

In its concluding remarks, it says that trade facilitation needs to be pursued and kept under constant focus. But much more can be done on our own initiative within our own resources. Then, there is an International Convention on the Simplification and Harmonization of Customs Procedures, more popularly known as the Kyoto Convention. This is definitely another road to trade facilitation worth exploring before rushing the subject to the WTO.

**New Round and Trade Facilitation: Proposing a Tentative Draft Agreement on Trade Facilitation Measures** by Harry Yukyun Shin, *Journal of World Trade*, April 2001, 35(2), pp. 229-252.

THE article states that tariffs and non-tariff measures have been sharply reduced for both developed and less developed countries as a result of Uruguay Round. Attention has now been focused on invisible costs on account of documentary requirements, procedural delays in the application of government rules and regulations.

Further, it says that administrative barriers for imports and exports are certainly not effective instruments of restrictive trade policy. Excessive documentary requirements and outdated procedures hinder trade and create an overall negative trading environment.

Unlike customs duties, which benefit the government budget, the invisible costs of administrative barriers are genuine deadweight losses, benefiting nobody and achieving no meaningful policy objective.

The article mainly highlights the main points emerged at the "International Symposium on Trade Facilitation" held in March 1998 by WTO. These are listed below.

- Reform and improvement of customs and trade administration were not contingent upon discipline, and that technical co-operation efforts should be stepped up to help developing countries in the improvement of their infrastructure for trade transaction.
- Preparation of a framework for existing WTO rules and disciplines (e.g. Articles VII and X of GATT 1994) to alleviate administrative and procedural burdens on traders. This will maximize transparency, expedite release of goods and harmonize border-crossing requirements, procedures and formalities.
- Implementing a capacity building programme thereby ensuring that all WTO Members implement the negotiated rules and disciplines.

**Trade Facilitation: Technical Regulations and Customs Procedures** by Patrick A. Messerlin and Jamel Zarrouk, *World Economy*, April 2000, 23(4), pp. 577-593.

THE article examines technical regulations (TRs) and customs regulations together, under title "Trade Facilitation". Both subjects raise the same challenge: how to minimize the unnecessary burden for trading partners and domestic consumers of the application and enforcement of national laws and regulations. Such national measures reflect each WTO Member's right to regulate its own economy as it wishes. In both areas, symmetrical demands are triggered from industrial and developing countries, suggesting beneficial trade offs in future WTO negotiations.

The article asks what can be done at the multilateral level during the coming decade in the vast trade facilitation area. It is organized in three sections. Section 1 provides some quantitative estimates of the importance of trade facilitation

issues. Section 2 looks at the possibility for multi-lateral actions for addressing the issues raised by the trade facilitation-related regulations. The concluding section highlights main conclusions and findings.

The article also says that enforcement issues related to trade facilitation should be included in the global framework of service liberalization. Increased competition would flow from domestic regulatory reforms that accompany trade liberalization process that is driving the WTO negotiations on services.

**Mutual Recognition and Its Role in Trade Facilitation** by Sherry M. Stephenson, *Journal of World Trade*, 33(2), April 1999, pp. 141-176.

IN its introductory remarks, the article states that as tariff levels have come down following the successive rounds of multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT), non-tariff measures have emerged as serious impediments to trade. Standards and technical regulations are continuously cited by exporters as one of the most important factors impeding their ability to take advantage of the global marketplace.

The article provides an overview of the mutual recognition agreements (MRAs) and their potential contribution to trade facilitation. It also examines the concept of an MRA, as well as the benefits to be drawn from MRAs.

In its concluding remarks, the article says that a great deal remains to be accomplished with respect to the development of MRAs in order to facilitate trade and to remove the constraint of multiple testing requirements represented by layers of conformity assessment procedures in various markets.

Great transparency, it says, is the first step towards promotion of MRAs. The provision of more information on the conformity assessment activities and the certification and accreditation bodies in various countries, their status, scope of activity, and other relevant data would help to facilitate contact between such entities.

Examples of multilateral MRAs, it says, are very rare. At the bilateral level, a few MRAs have been concluded since the early 1990s; however, most of these have been signed between testing laboratories

for non-regulated products. The one major exception is the MRA finalized in 1997 between the Government of the United States and the European Community for a series of regulated products. The extent to which this will prove to be successful in actual operation has yet to be determined. At the regional level, the APEC has concluded a model framework MRA and two model agreements for conformity assessment equivalency in the testing of toy safety and food and food products, as well as on technical requirements for vehicles, equipment and parts. Finally, the article sets out confidence-building steps towards the development of MRAs, and possible elements which might form a part of a model MRA.

**Trade Facilitation and WTO Rules for a Better Harmonized Customs System** by Yukyun Harry Shin, *Journal of World Trade*, 33 (4), August 1999, pp. 131-142.

THE article highlights that since September 1998, the Council for Trade in Goods (CTG) has informally discussed the matter of trade facilitation with a view to simplifying, modernizing and harmonizing the customs administration among the member countries of the WTO. A number of opinions, suggestions and recommendations have been put forward in the informal CTG discussions on trade facilitation. In this connection, on 20 April 1999, the Chairman of the CTG asked Members to address the scope and coverage of the rules which will assist in facilitating the international trade.

Finally, the article lists out various WTO agreements which are directly related to trade facilitation. These include: Agreement on Technical Barriers to Trade; Agreement on the Application of Sanitary and Phytosanitary Measures; Agreement on Import Licensing Procedures; Agreement on Rules of Origin; Agreement on Implementation of Article VII of the GATT 1994 (Customs Valuation Code); Agreement on Preshipment Inspection; Agreement on Trade-Related Aspects of Intellectual Property Rights; General Agreement on Trade in Services; Article VIII of the GATT 1994 (fees and formalities connected with importation and exportation); Article IX of the GATT 1994 (certificate of origin); and Article X of the GATT 1994 (publication and administration of trade regulations). ●



## DOCUMENTS

### Negotiating Group on Trade Facilitation

## Article V of GATT 1994 – Scope and Application

### NOTE BY THE SECRETARIAT

*(This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.)*

#### I. Introduction

1. The following paper updates an earlier Secretariat document on the same topic,<sup>1</sup> as part of an effort to stay abreast of latest developments regarding the regulatory framework under consideration in the current Trade Facilitation negotiations. It maintains the factual approach of its predecessor, limiting the examination to a legal analysis of the Article's provisions with no judgement on possible room for clarification and improvement.
2. Two related publications on the other relevant GATT provisions are also being revised in the course of the same exercise.
3. With there not having been any changes to the Article, and still no jurisprudence being available on its interpretation, the update largely limits itself to modifications on the editing side, while at the same time offering some additional information on a few points.

#### II. Structure of the Paper

4. The paper largely keeps the sequencing of its previous version by first introducing the text of the Article and its negotiating history, before then entering into a legal analysis of the provision's coverage and the basic obligations deriving therefrom. In light of the continued absence of any panel findings in this area, the document still cannot

offer the review of GATT/WTO jurisprudence contained in the other two Secretariat notes. It will, however, briefly mention some of the incidences where violations of Article V have been claimed in the past, to give a flavour of the kind of debates on this subject that emerged in practice.

#### III. Text of the Provision

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<sup>2</sup> 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 customs 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.

#### IV. Negotiating History

5. In negotiating Article V, the contracting parties considered a covenant known as the Barcelona Convention,<sup>3</sup> regulating the conditions a Member could apply to goods of another Member passing through its territory to a third destination. Parts<sup>4</sup> of Article V were effectively drawn from corresponding provisions of that Convention.

6. An even higher degree of correspondence can be found with respect to the draft Havana (or ITO) Charter,<sup>5</sup> whose Article 33 is a nearly verbatim copy

of GATT Article V. The relationship between the two treaties is of particular relevance as the GATT 1947 was (for the most part)<sup>6</sup> originally only meant to be applied until the Havana Charter's entry into force.<sup>7</sup> The Havana text was reviewed and partly modified at the 1948 Conference of the same name, with many GATT provisions being linked to its outcome, on the understanding that, once the ITO treaty would come into force, changes in the GATT would occur automatically.

7. The fact that the Havana Charter never actually entered into force, raises the question as to what extent the 1948 modifications and the ITO preparatory work are of relevance when analyzing the GATT. An answer is complicated by the fact that not all GATT Articles have been drawn from a particular ITO draft and that some alterations of Havana provisions were not carried into the GATT, on the belief that such modifications would automatically override differing GATT provisions, once the Havana Charter entered into force.<sup>8</sup> For many parties, the assumed short life-expectancy of GATT simply did not seem to merit the administrative efforts of a change, particularly if the result was to become binding in the framework of the ITO Charter anyway. Therefore, while the *travaux préparatoires* for the ITO will be relevant for an analysis of the GATT in most cases, one will have to take a look at the respective situation for each and every Article, as there may be some exceptions.

8. In the case of Article V, the original 1947 version was never altered, whereas the corresponding article of the Havana Charter underwent several – partly substantial – modifications. These alterations were not brought into the GATT when Members negotiated the 1948 protocols that amended some of its provisions in order to achieve conformity with the Havana Charter.

9. A comparison of the Havana Charter with the GATT therefore shows several differences. The Havana Charter does not include the interpretative note contained in the GATT, but comprises three different interpretative notes to its Article 33,<sup>9</sup> which were not carried into the General Agreement. Furthermore, the GATT lacks a provision inviting the organization to "...undertake studies, make recommendations and promote international agreement relating to the simplification of customs regulations concerning traffic in transit, the

equitable use of facilities required for such transit and other measures designed to promote the objectives of this Article. Members shall cooperate with each other directly and through the Organization to this end".<sup>10</sup> This provision had been added to the Havana Charter at the Havana Conference "in the view of the great importance of this matter to many countries, particularly those countries which have no access to the sea".<sup>11</sup>

10. Despite those differences, the preparatory work on the Havana Charter is nevertheless of importance, as it appears from the process that the parties expected to see Article V interpreted in the light of the ensuing Havana Conference deliberations.<sup>12</sup>

## V. Coverage

### A. GENERAL

11. Article V addresses traffic in transit. It regulates the conditions a Member may impose on goods transported through its territory by another party to a foreign destination. The basic objective is to allow for freedom of transit through the territory of each Member for transports to or from the territory of other Members. To achieve this freedom, Article V prescribes two main obligations:

- (i) not to hinder traffic in transit by imposing unnecessary delays or restrictions or by imposing unreasonable charges; and
- (ii) to accord Most-Favoured-Nation (MFN) treatment to transiting goods of all Members.

### B. PARAGRAPH 1

12. Paragraph 1 determines traffic in transit. It defines transit as "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". Whether freedom of transit should also extend to goods consigned to a country in bond without a final destination, was the subject of discussion within the Working Group of the Preparatory Committee at its Geneva session. The Group could not come to an agreement and decided not to pursue the matter any further.<sup>13</sup> What was

agreed in the subsequent Havana Conference was that "a movement between two points in the same country passing through another country was clearly 'in transit' through the other country within the meaning of paragraph 1".<sup>14</sup>

13. Only goods (including baggage), vessels and other means of transport are considered to constitute traffic within the meaning of paragraph 1. An initial proposal to include persons as well, was turned down by the Drafting Committee on the grounds that "transit of persons was considered not to be within the scope of the Charter, and since traffic of persons is subject to immigration laws and may properly be the concern of an international agency other than the Organization".<sup>15</sup>

14. On the other hand, the negotiating parties decided to keep paragraph 1's reference to various means of transportation ("other means of transport"), despite an earlier agreement in the preparatory process to generally exclude transportation and shipment from both the GATT and the ITO Charter.<sup>16</sup>

15. The preparatory work further suggests that the coverage of paragraph 1 extends to the assembly and disassembly of vehicles and mobile machinery, if solely undertaken for convenience of transport. The contracting parties' intention in this respect was expressly laid down in an interpretative note added to paragraph 1's corresponding Havana Charter provision at the Havana Conference.<sup>17</sup> This note, although not carried into the General Agreement in the course of its 1948 revision, is nevertheless of relevance for GATT Article V, as the only reason for its non-inclusion was the parties' conviction that such insertion was not necessary, since the Havana Charter text tallied with that of GATT's Article V:1, so that "the CONTRACTING PARTIES, who all signed the Final Act of the conference of Havana, could not interpret these provisions in any way other than laid down in the note Ad Article 33 of the Charter".<sup>18</sup>

16. Finally, the preparatory discussions also suggest that Article V:1 should be read as to exclude grazing livestock.<sup>19</sup>

### C. PARAGRAPH 2

17. Paragraph 2 prescribes freedom of transit. It requires each Member to allow free transition through its territory for traffic in transit to or from

the territory of another Member. Such transit shall be granted "via the routes most convenient for international transit". This is an important restriction, as it means that the duty to grant free transit does not extend to all routes.

18. Parties are required not to make any distinction based on:

- (a) the flag of vessels;
- (b) the place of origin;
- (c) departure;
- (d) entry;
- (e) exit;
- (f) destination; or
- (g) any circumstances relating to the ownership of goods, of vessels or of other means of transport.

19. A proposal to amend the corresponding Article of the Havana Charter so as to allow for special agreements among neighbouring countries to regulate transit arising from mutual trade, was not approved. The Havana reports indicate that the refusal was based on the grounds that "such agreements are clearly permissible under the terms of the Article if they do not prejudice the interests of other Members in violation of the most-favoured-nation provisions of the Charter, and if they do not limit freedom of transit for other Members".<sup>20</sup>

20. Similarly, there was no approval of the suggestion to allow a contracting party to divert traffic in transit from the most convenient route, if a situation such as famine called for the reservation of that route for other operations. The report on the corresponding Havana Charter Article by the Rapporteur of the Preparatory Committee held that "It would seem that Article 32(b) and (e) [identical with GATT Articles XX(b) and XXI(b)(iii)] afford ample protection for cases in which transit must be suspended or diverted for humanitarian or security reasons".<sup>21</sup>

#### D. PARAGRAPHS 3 – 5

21. Paragraph 3 states the right of every Member to require traffic in transit through its territory to enter at the proper customs house. It further determines that, except in cases of failure to comply with applicable customs laws and regulations, such traffic coming from or passing through the territory

of another Member "shall not be subject to any unnecessary delays or restrictions". The text also requires this traffic to be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except for "charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered".

22. According to paragraph 4, all charges and regulations imposed by a Member on traffic in transit to or from the territories of another Member, shall be "reasonable, having regard to the conditions of the traffic". The report of the Technical Sub-Committee states that "...the word 'charges' includes charges for transportation by Government-owned railroads or Government-owned modes of transportation".<sup>22</sup>

23. Paragraph 5 calls for most-favoured-nation treatment of traffic in transit with respect to all charges, regulations and formalities in connection with transit. Interpretative issues arise with respect to the treatment of transportation charges. An interpretative note to this paragraph states that "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".<sup>23</sup> While this clearly implies that transportation charges are covered by this provision, a note to the corresponding Article in the Havana Charter holds that "The word 'charges' as used in the English text of paragraphs 3, 4 and 5 shall not be deemed to include transportation charges".<sup>24</sup> This would mean that transportation charges would not have to be reasonable. And one might question to what extent a Member is required to grant most-favoured-nation treatment with respect to such charges.

24. Additional questions may arise from the fact that the Havana Reports evidence the parties' agreement "that transportation charges on traffic and transit did not come within the purview of Article 32 [Art. V of the GATT], but were subject to the provisions of paragraph 2 of Article 18 [Article III of the GATT]...".<sup>25</sup> Article III, which requires national treatment for internal taxation and regulation, addresses imported products, raising the question of its applicability to goods in transit.

## E. PARAGRAPH 6

25. Paragraph 6 requires each party to treat products, which have been in transit through the territory of another Member, no less favourably than products transported from their place of origin to their destination without going through the territory of such other Member. The text might be read to imply that a country V would have to treat goods transported through its territory from country X with a destination in country Z, after having already been carried through country Y, in the same manner that it would treat goods passing through its territory from X directly to Z, without having passed through Y. It may be open to discussion, however, whether paragraph 6's equal treatment requirement only covers products passing through a party's territory after having already passed through another country, or whether it extends to products, which, having passed through a country, enter another party's territory to remain there as their final destination. In other words, it may be debatable whether paragraph 6 applies only to cases where the goods are shipped from X through Y and V to Z, or whether it also covers goods coming from X through Y to V (without continuing to Z).

26. The report of the Technical Sub-Committee held that while "paragraphs 2 - 5 of this Article cover the treatment to be given by a member country to products in transit through its territory *between any other member country and a third country*, (...) paragraph 6 covers the treatment to be given by a member country to products cleared from customs within its territory *after transit through any other member country*".<sup>26</sup> (emphasis added)

27. An exception is made for certain direct consignment requirements existing "on the date of this Agreement", to the extent that they are a condition for the eligibility for goods to enjoy preferential duty rates or relate to a party's prescribed method of valuation for duty purposes. The inclusion of this provision was considered necessary as several countries required the direct shipment to their territory from the country of origin as a condition for being eligible to enjoy certain preferences. The "date of the Agreement" is 30 October 1947<sup>27</sup> for the original contracting parties,<sup>28</sup> and the date of the accession protocol (or the date of the declaration on provisional accession) for parties who acceded at a later stage.

## F. PARAGRAPH 7

Paragraph 7 exempts the operation of aircraft in transit from the application of Article V. The Preparatory Committee of the Havana Conference reports that "... it was generally felt that air traffic should be exempted as a matter which is being dealt with by the International Civil Air Organization".<sup>29</sup> Air transit of goods (including baggage), on the other hand, does fall within the scope of Article V.

*Interpretative Note*

Annex I contains an interpretative note to paragraph 5. It specifies that, with respect to transportation charges, the MFN principle refers to like products being transported on the same route under like conditions.

**VI. Basic Obligations**

28. Article V calls on parties to allow for freedom of transit by requiring them to comply with a number of specific obligations.

29. Paragraph 2 sets out the basic requirement of freedom of transit and further requires that "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". Paragraph 3 allows parties to require in-transit traffic to enter at the proper customs house, while at the same time stipulating the obligation not to impose "any unnecessary delays or restrictions" on it.

30. Obligations regarding the nature of charges or regulations a Member may legitimately impose, are set out in paragraphs 3-5. As a general rule, traffic in transit shall be exempt from customs duties. Furthermore, such traffic is to be exempted 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". (Paragraph 3)

31. This means that there are only two kinds of charges a Member may legitimately impose on traffic in transit: charges for (i) transportation, and for (ii) administrative expenses caused by transit or services rendered. And even here (as well as in the case of other permitted formalities and regulations),

such charges have to be reasonable<sup>30</sup> (paragraph 4) and non-discriminatory (paragraph 5). The general principle therefore is that transit traffic shall not be a source of fiscal revenue.

32. Finally, Members are required to treat products which have been in transit through the territory of another party no less favourably than they would have treated them had they been transported from their origin to their destination without passing through the territory of such other party (paragraph 6).

## VII. Interpretation and Application

33. Article V has never been applied in dispute settlement proceedings of the GATT or the WTO. Violations of its provisions have been asserted several times, without any of these cases ever leading to the issuing of a panel report. A brief look at some of these disputes may nevertheless be of interest, as they reflect the kind of questions known to arise on occasion.

34. An early incident raising questions related to the interpretation of freedom of transit as granted by paragraph 2, arose in 1989-90. Austria's announcement to limit traffic of certain heavy trucks (of all nationalities) on some of its roads during night hours was followed by the introduction of a German ban of specific Austrian vans, which were forbidden to circulate anywhere in Germany during night hours. Austria considered the German measure to violate Article V due to its exclusive targeting at trucks of Austrian origin, and requested consultations under Article XXII:1.<sup>31</sup> The case was settled by mutual agreement.<sup>32</sup>

35. A violation of Article V was also claimed in 1996, when the European Communities asserted that Article 6005 (b) of the United States' Cuban Democracy Act of 1992 denied goods and vessels of the Communities transit through US ports.<sup>33</sup> It was alleged that the provision in question prohibited<sup>34</sup> (i) vessels carrying goods or passengers to or from Cuba, or carrying goods, in which Cuba or a Cuban national has any interest, from entering any US port, as well as (ii) vessels, which have entered a Cuban port for trade in goods or services, from loading or unloading freight in US ports within 180 days following departure from the Cuban port. A panel was established but

suspended its work following a request by the EC. The panel's authority subsequently lapsed pursuant to Article 12.12 of the DSU.

36. Violations of Article V were also claimed with respect to measures imposed by the Slovak Republic concerning the transit of cattle.<sup>35</sup> Cattle, as well as swine and grain, were also the subject of another dispute, in which Canada alleged that certain measures imposed by the United States, prohibiting entry or transit to Canadian trucks carrying these products, violated Article V (as well as some other provisions).<sup>36</sup>

37. Another dispute, leading to a request for the establishment of a panel, arose in 2000. The European Communities claimed that a Chilean prohibition<sup>37</sup> on unloading swordfish in Chilean ports (either to land them for warehousing or to transship them onto other vessels) violated Article V's paragraphs 1-3 by making transit through its ports impossible for swordfish.<sup>38</sup> By forcing Community vessels to land or transship their catches in the ports of other countries, the Chilean interdiction would cause damage to the Community industry due to the inflicted loss of competitiveness.<sup>39</sup> Following a provisional arrangement between the two parties (circulated in a communication of 6 April 2001), Chile and the European Communities agreed to suspend the process for the constitution of the panel.<sup>40</sup>

38. Finally, in February 2002, Slovenia brought to the attention of the Council for Trade in Goods a ban imposed by Croatia on road transit of oil and oil products through Croatian territory which it argued violated Article V, particularly paragraphs 2, 4 and 6 of that Article.<sup>41</sup> The concern was later expanded to also include additional measures subsequently introduced by Croatia, covering oil and oil products as well as several chemical products (internationally classified as dangerous goods), and referring to road transit and international road carriage. Slovenia asserts that those measures are in direct conflict with Article V (as well as with some other provisions).<sup>42</sup> Croatia held that the road transit ban with respect to oil and oil products had been only temporary and that the subsequently introduced measures referred to by Croatia were in conformity with the requirements of Article V.<sup>43</sup> The matter was finally settled in bilateral consultations.

## NOTES

<sup>1</sup> G/C/W/408, 10 September 2002.

<sup>2</sup> See also the Explanatory Notes 2 (a) and (b) of GATT 1994.

<sup>3</sup> Convention and Statute on Freedom of Transit, Barcelona, 29 April 1921. For some background on specific positions of Members in the preparatory deliberations see UN Doc. E/PC/T/C.II/54/Rev.1.

<sup>4</sup> Paragraph 1 as well as the last sentence of paragraph 2 are based on the Barcelona Convention.

<sup>5</sup> The Havana-Charter for an International Trade Organization, designed to set up a forerunner of the WTO, never entered into force.

<sup>6</sup> Article XXIX of the GATT 1947: "*Part II of this Agreement shall be suspended on the day on which the Havana Charter enters into force*".

<sup>7</sup> In expecting a replacement by the (far more comprehensive) Havana Charter in 1948, the contracting parties refrained from ratifying GATT and agreed on its temporary application instead. (See *Protocol of temporary application*).

<sup>8</sup> This led various parties to withdraw proposals for amendments of the GATT as they considered them to be realized in the framework of the Havana treaty.

<sup>9</sup> Those notes were annexed to the Havana Charter.

<sup>10</sup> Article 33 (6) of the Havana Charter. It consequently also lacks the interpretative note related to this Article, which held that "If, as a result of negotiations in accordance with paragraph 6, a Member grants to a country which has no direct access to the sea more ample facilities than those already provided for in other paragraphs to Article 33, such special facilities may be limited to the land-locked country concerned unless the Organization finds, on the complaint of any other Member, that the withholding of the special facilities from the complaining Member contravenes the most-favoured-nation provisions of this Charter."

<sup>11</sup> Havana Reports, UN Doc. ICITO/1/8, p. 3, para. 16.

<sup>12</sup> In the case of one new introduction – the addition of an interpretative note for paragraph 2 of ITO Charter Article 33, it was expressly noted that GATT rules were to be seen in the light of the ensuing Havana Conference decisions (GATT, 2 BISD 44, 1952). It appears from the overall preparatory deliberations that the parties wanted to apply the same principle for all parts of GATT Article V.

<sup>13</sup> UN Doc. E/PC/T/A/SR.20 p. 3; UN Doc. E/PC/T/109.

<sup>14</sup> Havana Reports, UN Doc. ICITO/1/8, p. 71, para. 10.

<sup>15</sup> New York Report, UN Doc. E/PC/T/34, p. 12.

<sup>16</sup> UN Doc. E/PC/T/A/PV.9, p. 25.

<sup>17</sup> "The assembly of vehicles and mobile machinery arriving in a knocked-down condition or the disassembly (or disassembly and subsequent reassembly) of bulky articles shall not be held to render the passage of such goods outside the scope of 'traffic in transit', provided that any such operation is undertaken solely for convenience of transport." Havana Reports, UN Doc. ICITO/1/8, p. 71, para. 9.

<sup>18</sup> GATT/CP.2/22/Rev.1, adopted in September 1948, II/39, p. 44, para. 26.

<sup>19</sup> It is noted in the Minutes of the discussions of the Sub-Committee C of the Third Committee at the Havana Conference that "In the opinion of the Sub-Committee the case of grazing livestock ... was not considered as coming within the ambit of this Article."

<sup>20</sup> Havana Reports, U.N. Doc. ICITO/1/8, p. 72, para. 12.

<sup>21</sup> UN Doc. E/PC/T/C.II/W.11 p. 1.

<sup>22</sup> UN Doc. E/PC/T/C.II/54/Rev.1, p. 10.

<sup>23</sup> Annex I of the GATT, Ad Art. V, para. 5.

<sup>24</sup> Annex P of the Havana Charter, Ad Article 33. paras. 3, 4 and 5.

<sup>25</sup> Havana Reports, U.N. Doc. ICITO/1/8, p. 72.

<sup>26</sup> U.N. Doc. E/PC/T/C.II/54/Rev.1, p. 11.

<sup>27</sup> See Article XXVI:1 GATT.

<sup>28</sup> It also includes the former territories of the original contracting parties which, having gained independence or commercial autonomy, succeeded to contracting party status under Article XXVI:5 (c). Chile is also covered.

<sup>29</sup> Report of the Technical Sub-Committee of the Preparatory Committee of the International Conference on Trade and Employment, E/PC/T/C.II/54/Rev.1, p. 7.

<sup>30</sup> On the interpretative question with respect to transportation charges, see the section on paragraphs 3-5.

<sup>31</sup> "Each contracting party shall accord sympathetic consideration to, and shall afford adequate opportunity for consultation regarding such representations as may be made by another party with respect to any matter affecting the operation of this Agreement."

<sup>32</sup> DS14/1, C/M/241, p. 29.

<sup>33</sup> See WT/DS38/2, 8 October 1996.

<sup>34</sup> An exception from this prohibition is only made in the case of a special license from the US Treasury Department.

<sup>35</sup> WT/DS133.

<sup>36</sup> WT/DS144.

<sup>37</sup> Article 165 of the Chilean Fishery Law (Ley General de Pesca y Acuicultura), as consolidated by Presidential Supreme Decree 430 dated 28 September 1991, and extended by Decree 598 dated 15 October 1999.

<sup>38</sup> WT/DS193/2, 7 November 2000.

<sup>39</sup> ET/DS193/1, G/L/367, 26 April 2000.

<sup>40</sup> See WT/DS193/3 and WT/DS193/3/Add.1.

<sup>41</sup> For details see G/C/W/346, 5 February 2002. The description of this case limits itself to a factual outline of the Article V-related aspects, as the only elements of relevance for this section.

<sup>42</sup> For details see G/C/W/346/Add.1, 1 March 2002.

<sup>43</sup> For details see G/C/W/360, 18 March 2002.

(WTO, TN/TF/W/2, 12 January 2005)

## Negotiating Group on Trade Facilitation

# Technical Assistance and Capacity Building on Trade Facilitation

## NOTE BY THE SECRETARIAT

*(This document has been prepared under the Secretariat's own responsibility and without prejudice to the positions of Members and to their rights and obligations under the WTO.)*

1. One of the aims of the negotiations on Trade Facilitation is "enhancing technical assistance and support for capacity building in this area" (Paragraph 1 of the Group's mandate).

2. At the meeting of the Negotiating Group on 22-23 November 2004, the Chairman requested the Secretariat to prepare a working document that could serve as a basis for further discussions on this issue. The Secretariat was asked to follow up in two areas in particular. One is to help Members clarify how best they can encourage and support the collaborative effort among international organizations that is called for in Paragraph 8 of the Group's mandate. The second is to help Members identify how they can make best use, in a practical way, of the technical assistance and capacity-building activities that are available – in particular, at this stage, to assess their individual needs and priorities on trade facilitation.

### **I. Technical Assistance Activities of the WTO Secretariat**

3. The WTO Secretariat is available at all times to delegations in Geneva to provide technical assistance on matters relating to the work of the Negotiating Group. The Secretariat's aim is to

provide delegations with substantive support to participate effectively in the negotiations.

4. In addition, the Secretariat has organized a programme of technical assistance activities on trade facilitation in 2005. These activities are described in the Technical Assistance and Training Plan 2005 (WT/COMTD/W/133/Rev.2). They consist of:

- Seven three-day regional workshops, in cooperation with the World Customs Organization, UNCTAD, and other relevant regional inter-governmental organizations. The regional workshops may be supplemented by a small number of national workshops, upon written request from individual Members and subject to the availability of Secretariat resources. The aim of the regional and national workshops is to assist delegations to participate in the negotiations by helping capital-based officials keep up-to-date with progress in the Negotiating Group in Geneva and providing them with background information and analysis on relevant WTO provisions that relate to the negotiations, in particular GATT Articles V, VIII and X. Following suggestions made by several delegations at the Group's last meeting, the Secretariat will endeavour to collect information

from participants at these workshops on the practical problems that they feel their governments encounter in the area of trade facilitation, and report on the results to the Group.

- Sessions dedicated to trade facilitation in the nine WTO Trade Policy Courses and two “Geneva Week” courses that are scheduled in 2005.

5. In the “July Package”, the General Council encouraged improved coordination on trade-related technical assistance with other agencies, in particular through the Integrated Framework (IF) and the Joint Integrated Technical Assistance Programme (JITAP). In the context of JITAP, consideration is being given to introducing work on trade facilitation into the programme in 2005, and specifically to the possibility of holding two workshops during the course of the year in conjunction with the WTO’s partner organizations, UNCTAD and ITC. Under the IF, customs reform and trade facilitation more generally have taken an increasingly important place in the preparation of Diagnostic Trade Integration Studies (DTIS) that are prepared to help define trade-related technical assistance and capacity-building needs and priorities in participating least developed countries. Of the 14 DTIS that have been completed and validated to date, 12 contain detailed information on the trade facilitation needs of the countries concerned, and recommendations for policy reforms and trade-related technical assistance to be provided on a medium/high priority basis (relative to the priority given to other areas of policy reform and technical assistance). The 12 least developed countries concerned are Burundi, Cambodia, Djibouti, Ethiopia, Guinea, Malawi, Mali, Mauritania, Mozambique, Nepal, Senegal, and Yemen. DTIS are under preparation for a further fourteen least developed countries.

6. It is further foreseen to take part in technical assistance activities carried out by other relevant international organizations to the extent possible.

## II. Coordination with other Relevant International Organizations

7. An effective programme of technical assistance and capacity building on trade facilitation will require a well-coordinated approach among

implementing agencies, particularly international organizations which each have their own mandates and areas of expertise, and involving the donor community.

8. In cooperation with the OECD Secretariat, the WTO maintains a database that aims to provide comprehensive information on trade-related technical assistance and capacity building. It contains information on technical assistance and capacity building being provided multilaterally, regionally and bilaterally, in the area of trade facilitation. The database can be accessed by WTO Members on <http://tcbdb.wto.org> and used by them to keep track of trade facilitation projects underway in their countries and regions.

9. The WTO Secretariat participates in meetings of three bodies that have been set up to facilitate collaboration and coordination of technical assistance and capacity building on trade facilitation. The start of negotiations on trade facilitation in the WTO has attracted particular interest from implementing agencies and members of the donor community that participate in these bodies, and expressions of willingness on their part to contribute actively to the success of the negotiations.

10. The Global Facilitation Partnership for Transportation and Trade (GFP) groups together interested parties from international organizations, government agencies, and the private sector who want to cooperate to achieve significant improvements in trade and transport facilitation at the multilateral level. The GFP website is a valuable source of background materials and information on trade facilitation (<http://www.gfptt.org>). International organizations that are partners in the GFP are the World Bank, WCO, WTO, UNCTAD, UNECE, UNESCAP, UNECLAC, UNESCWA, UNIDO, IMF, IMO, the Asian and Inter-American Development Banks, and the Commonwealth Secretariat. Government agencies that participate include the US Customs Service, USAID, Agence Française de Développement, the Malaysian Ministry of Finance, the Turkish Ministry of Foreign Affairs, and the Swedish National Board of Trade. The private sector is represented by more than 70 companies, non-governmental organizations, such as the International Chamber of Commerce, and academic institutions such as the World Trade Institute and the China Institute of International Studies.

11. Inter-Agency Meetings on Trade Facilitation are held pursuant to a decision of the UN High-Level Committee on Programmes which governs the work programme of the UN and its related agencies. The meetings bring together all the UN organizations and related agencies with activities in the area of trade facilitation (e.g., WCO, IMF, World Bank, ISO). Donor governments sometimes also participate in these meetings. Meetings are held on a regular basis to coordinate activities, discuss technical assistance and other work, explore possibilities for joint activities, and ensure that there are neither gaps nor overlaps.

12. The International Trade Procedures Working Group aims to identify best practices in public and private sector international trade procedures. It has increasingly focused on trade facilitation issues under consideration in the WTO negotiations. It brings together UN bodies and other international organizations, representatives from interested national administrations, private sector associations and non-governmental organizations.

13. The existence of these bodies dedicated *inter alia* to coordinating technical assistance and capacity building on trade facilitation suggests that there is no need, at least for the time being, for the WTO to seek to establish a separate mechanism to undertake the collaborative effort that is called for in Paragraph 8 of the Group's mandate. As detailed requirements of WTO Members for technical assistance and capacity-building support become clearer, in the context of Paragraphs 4, 5 and 6 of the Group's mandate, the Secretariat will use its participation in the bodies listed above to convey the information to implementing agencies and the donor community, and to try to identify where support can be provided or where there may be gaps that need filling. The Secretariat will keep the Negotiating Group informed in this regard.

### III. Assessing Needs and Priorities

14. In July 2002, the Secretariat prepared a document compiling material available to it on "Trade Facilitation Needs and Priorities of Members" (G/C/W/393). The document contained information from ten delegations that made submissions through national experience papers – Australia, Canada, Chile, Costa Rica, Czech Republic, Guatemala, Hong Kong China, Korea, Maldives,

Norway and Switzerland – and information drawn from the results of the 1998 Trade Facilitation Symposium and the 2001 Technical Assistance Workshop, as well as from relevant submissions by other organizations.

15. At the Group's last meeting, one delegation suggested compiling a database on practical problems encountered by customs officials in their day-to-day activities, to provide information for the Group and help raise awareness of problems at the ground level that require attention. One means of doing this would be to update the document cited above on the basis of further submissions from Members and information gathered by the Secretariat from participants at its technical assistance workshops.

16. Several delegations have stressed the importance that they attach to the negotiating modality of identifying their trade facilitation needs and priorities. They have expressed interest in diagnostic tools that can assist them to carry out such an exercise at the national level, and emphasized that they require a tool that can be applied on a country-specific basis, not a one-size-fits-all approach. Presentations made at the Group's last meeting by the WCO, World Bank and UNCTAD concurred on the importance of accurate diagnosis of capacity-building needs on a case-by-case basis in order to produce effective country-specific responses. They also described the diagnostic tools that are available already, or are under preparation, which can assist Members to identify their needs and priorities.

17. The Customs Capacity Building Diagnostic Framework is a diagnostic tool that has been developed by the WCO covering all customs requirements and procedures, which the WCO uses to design its technical assistance and capacity-building support for customs administrations. It is freely available to all WCO member governments. It is a comprehensive and standardized diagnostic tool and project design/implementation guide, designed for both self-assessment and use by practitioners to diagnose capacity-building needs and priorities. It contains common questions, commonly observed weakness, possible solutions and improvement options and related reference materials, with respect to a wide range of customs issues.

18. The WCO is developing an extract of this Diagnostic Framework to support the WTO negotiations. It will be a self-assessment tool, for use by the country itself or by a consultant. By using it, a customs administration should be able to identify any difficulties, bottlenecks and gaps between its legislation and practices and the WCO instruments pertinent to GATT Articles V, VIII and X. The findings could provide a basis on which a WTO Member can identify its trade facilitation needs and priorities. It should be noted, however, that this diagnostic tool is designed for customs procedures only, and it does not necessarily cover all formalities and procedures related to importation, exportation and transit as described in the GATT Articles. It is expected that a first version of the tool will be available in February 2005. It will be modified and updated to take account of developments in the WTO negotiations.

19. The Time Release Study (TRS), also developed by the WCO, is used to assist a government to measure the average time taken between the arrival of goods at the border and their release into the domestic market. By using the TRS, WTO Members may be able to identify problems and bottlenecks in the cross-border movement of goods, and develop possible remedies. The findings might be used as an additional basis on which a Member can assess its trade facilitation needs and priorities. The TRS can also be used to stimulate efforts to improve the efficiency and effectiveness of customs clearance procedures. According to the WCO, several WTO members have already conducted a TRS (United States, Japan, Philippines and Kenya). The WCO is working closely with the World Bank on the development of a software programme to support the TRS, which will be available shortly.

20. UNCTAD assists its member governments to develop the capacity to assess their needs and priorities in the area of trade and transport facilitation through integrated regional and country-specific projects that it undertakes as part of its long-term technical assistance activities. In this context, it encourages the establishment of National Facilitation Bodies and National Trade and Transport Facilitation Committees, which allow the public and the private sector to analyze issues at stake collectively and develop solutions of common

interest. Typically, the first phase of a project involves UNCTAD support to carry out diagnostic studies and look into institutional, legal, operational and human resources development issues, with seminars for government officials to better understand the issues at stake and to come up with an action plan. UNCTAD is designing new Guidelines to Assess Trade Facilitation Needs and Priorities, which it hopes will be available early in 2005.

21. The World Bank assists governments to assess their needs and priorities in the area of trade facilitation. To that end it uses a number of diagnostic tools, among them the WCO Customs Capacity-Building Diagnostic Framework. The Bank considers this to be a comprehensive diagnostic tool since it covers not only technical issues but also management-related issues, such as human resource management and development, good governance, and supporting issues such as having in place a sound legal framework.

22. The World Bank has published recently its *Customs Modernization Handbook*, which is complementary to the WCO Diagnostic Framework and which covers all issues of customs reform, including valuation, rules of origin, information technology, transit and integrity. The Bank has also published a *Customs Modernization Initiatives Handbook*, consisting of eight case studies of reform processes, highlighting what did and what did not work as well as the related costs and lessons learned.

23. The World Bank also conducts Trade and Transport Facilitation Audits, looking at the whole trade supply chain process and searching for ways of improvement. These audits are based on a Bank publication entitled *Trade and Transport Facilitation – An Audit Methodology*. Audits have been conducted by the Bank in Malawi, Chad, Benin, Zambia, Guinea, Mozambique, Bangladesh, Dominican Republic and Tajikistan.

24. The World Bank has typically taken the lead in the preparation of Diagnostic Trade Integration Studies for least developed countries in the context of the Integrated Framework exercise. Most of these studies have covered trade facilitation in detail, and their findings provide the basis for a country's assessment of its needs and priorities in this area.

(WTO, TN/TF/W/5, 14 January 2005)



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