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## From the Director's Desk



K.T. Chacko

In the wake of expansion of trade in goods and services, the issue of Trade Facilitation is fast assuming critical dimension. 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 as it reduces transaction costs and increases efficiency. 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 are 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 of the crucial role Trade Facilitation plays and hence are keen to pursue it as a part of unilateral trade reform agenda.

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&DT) to developing and LDCs to address this specific issue. Granting S&DT is not enough as it is the nature and their operationalization that is crucial. It appears that the onus of identifying such measures lie with these countries and which require huge human resources and technical skills. In 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.

# The Issue of Trade Facilitation in the WTO

**Shashank Priya\***

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*Trade Facilitation occupies a critical place in the WTO negotiations. Developed countries are keen to arrive at a trade facilitation agreement which would significantly bring down the transaction costs for the world economy. On the other hand, developing economies argue that they do not have necessary manpower, resources and wherewithal to implement such highly technical and complex agreement immediately. Though some movement has taken place in this regard, various economies are still analyzing the gains and constraints that are involved. This paper makes an attempt to bring the entire perspective in a simplified manner and analyze the complex issues involved. It thrashes out different proposals put forth by many developing countries so far and suggests the ways and means to develop a trade facilitative environment.*

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## Introduction

FREE flow of international trade requires least barriers at the borders of the countries. This is sought to be achieved by reducing the tariff and procedural regulations governing import of goods. The customs tariff has undergone significant decline since the formation of General Agreement on Tariffs and Trade (GATT) in 1948 and the successive rounds of tariff negotiations held under its aegis. After the conclusion of the last major round of tariff negotiations under the Uruguay Round, the developed countries cut their tariffs by 38 per cent (the present average applied tariff in developed countries being 3.9%) and the developing countries cut it by an average of 20 per cent.

In order to ensure that gains for international trade through tariff cuts are not neutralized by non-tariff barriers, several disciplines have been developed in the WTO to address specific concerns like regulation of imports for sanitary and phytosanitary purposes, technical regulations, procedures for issuing import licenses, etc. As customs related procedures can also be potentially an important barrier to trade, there are existing disciplines in WTO as to how to determine value of goods for charging customs duty (called

Agreement on Customs Valuation) and how to determine rules of origin (under Agreement on Rules of Origin). However, presently there are no well specified disciplines on what kind of procedures, documentation requirements, legal appeal systems and transit procedures will be maintained by the WTO Members at their borders. In the ongoing Doha Round, there is an effort to plug this gap by negotiating a new agreement on Trade Facilitation (TF).

## Meaning of Trade Facilitation

Studies indicate that broadly there can be four major areas to improve Trade Facilitation<sup>1</sup>; port infrastructure, customs environment, regulatory environment and e-business infrastructures, namely service sectors of telecommunication and financial intermediation which are key for all types of trades. The study indicates that an improvement in these four sectors can lead to an increase of trade by about 10 per cent.<sup>2</sup> However, in the WTO, the scope of negotiations on Trade Facilitation is narrow and limited to subjects covered under the three existing Articles of GATT, namely Articles V (relates to transit), VIII (relates to fees and formalities) and X (relates to publication and administration of trade regulations).

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## Evolution of Trade Facilitation in WTO

The subject of Trade Facilitation was first mooted in the WTO during the Singapore Ministerial Conference in 1996. The Declaration directed the Council for Trade in Goods "to undertake exploratory and analytical work, drawing on the work of other relevant international organizations, dealing with the simplification of trade procedures in order to assess the scope for WTO rules in this area". This subject formed a part of a quartet called "Singapore Issues". The other three issues of the quartet were Trade and Investment, Trade and Competition Policy, and Transparency in Government Procurement.

From Singapore to Cancun (in Mexico) Ministerial Conference in 2003, these four subjects were treated equally in the WTO. The Doha Ministerial Declaration of 14 November 2001<sup>3</sup> in fact provided for commencement of negotiation on these four subjects and the only outstanding issue to be resolved for commencing negotiation was to arrive at an 'explicit consensus' on modalities for negotiation which was to be worked out in the Cancun Ministerial Conference. However, the Cancun Ministerial Conference failed to arrive at any consensus on the Singapore Issues and in fact lack of an agreement on the treatment of the subject of Trade Facilitation led to collapse of the Conference.

The positive spin off from Cancun failure was a realization by the developed countries, particularly the EC that it was

premature to push for rule making in the WTO on all the four Singapore Issues. Amongst these, there was greatest convergence for starting negotiation on Trade Facilitation. This position was formalized in the Geneva Framework Agreement of 1 August 2004 where there was an explicit consensus to start negotiation on Trade Facilitation and to drop the other three Singapore Issues from the agenda of the Doha Round. It can therefore be said that Trade Facilitation formally came to be accepted as a subject of rule making in the WTO in 2004, i.e. eight years after it was first agreed in the WTO to start a work programme on the subject. The progress since then has been, however, quite fast.

### Negotiating Mandate on Trade Facilitation

The broad contours of the negotiation are governed by the modality of negotiation on Trade Facilitation as agreed under Annex D of the July Framework Agreement of 2004.<sup>4</sup> As per this, the three objectives of the negotiation are to:

- (a) clarify and improve aspects of Articles V, VIII and X of GATT 1994 with a view to further expediting the movement, release and clearance of goods including in transit;
- (b) enhance technical assistance and support for capacity building in Trade Facilitation; and
- (c) aim at provision for effective cooperation on Trade Facilitation and custom compliance issues.

Trade Facilitation negotiation is being conducted in a specialized body in the WTO called the "Negotiating Group on Trade Facilitation". All the WTO Members are represented in this negotiating group. Steady work has been done in the group since the commencement of negotiation. In the initial stage of the work, proposals were made explaining the rationale of the proposed commitments. Members made proposals on all the three negotiating objectives, but the maximum focus has been on the first objective of improving the existing three GATT Articles. However, there were not many concrete proposals on the second aim of the negotiation, namely enhancement of technical assistance and support for capacity building for which developing countries expressed their disappointment. On the third aim, namely effective cooperation on custom compliance issues, India was the main demandeur and it tabled proposals which were later co-sponsored by some other developing countries like Sri Lanka, South Africa and Brazil. The negotiations have been on the whole far less contentious and more collaborative than seen in other areas of Doha Round negotiation. It is perhaps symptomatic of a realization by the Members as a whole of the positive impact of Trade Facilitation on international trade.

By the time the 6th WTO Ministerial Conference took place in Hong Kong in December 2005, a great deal of progress had been achieved in the negotiation. The Hong Kong Declaration<sup>5</sup>

reaffirmed the mandate and modalities for negotiations on Trade Facilitation contained in Annex 'D' of the Framework Agreement of 1st August, 2004, and went on to note "with appreciation the report of the Negotiation Group" attached to the declaration as Annex 'E'. This Report of the Negotiating Group on Trade Facilitation noted that 60 written proposals had been sponsored by more than 100 delegations and that good progress had been made in all areas covered by the mandate. It also gave a listing of the proposed commitments under Trade Facilitation.

Since 2006, countries started making textual proposals covering areas of their interest. The textual proposals have subsequently undergone refinements on the basis of comments and observations made by other WTO Members.

The WTO Secretariat compiled these textual proposals in one document. This constituted the base document for negotiation and the Member countries expressed their views on these proposals. Many of the proposals were revised several times to take into account the concerns raised by other Members. The WTO Secretariat revised this compilation periodically to incorporate fresh textual proposals or revisions of the earlier proposals. The last such WTO compilation is of June 2009.<sup>6</sup> After substantial discussion on these texts, the WTO Secretariat has now come out with the first consolidated draft text<sup>7</sup> of proposed new Trade Facilitation Agreement.

## Subjects Under the GATT Article VIII

The existing disciplines under GATT Article VIII are:

- (i) All fees and charges in connection with imports or exports (other than import and export duties) shall be limited in amount to the approximate cost of the services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes;
- (ii) WTO Members recognize the need for reducing the number and diversity of fees and charges;
- (iii) The Members recognize the need for minimizing the incidence and complexities of import and export formalities and for decreasing and simplifying import and export documentation requirements;
- (iv) WTO Members shall not impose substantial penalties for minor breaches of customs regulations or procedural requirements; and
- (v) The provisions of Article VIII shall apply to fees, charges, formalities and requirements imposed by governmental authorities in connection with importation and exportation. Some specifically identified areas in this regard are consular transactions such as consular invoices and certificates; quantitative restrictions; licensing; exchange control; statistical services; documents, documentation and

certification; analysis and inspection; quarantine; sanitation and fumigation.

Proposals under Article VIII are aimed to improve disciplines on fees and charges connected with import and export, simplify border procedures and documentation requirements relating to international trade and carry out some systemic reforms.

## Disciplines on Fees and Charges

Fees and charges relating to import and export have at times been used as a method of indirect protection. The existing disciplines on fees and charges are that they be related to the cost of services rendered. This requirement is at times not observed, particularly when fees and charges are fixed as a percentage of the value of consignments (*ad valorem* charges). In order to make fees and charges more transparent and to prevent its misuse as a tool of protection for domestic industries or as a tool for raising revenue, European Communities, Korea and Switzerland have proposed certain specific parameters for levying fees and charges. These parameters include:

- (i) Fees and charges shall only be imposed for services provided in direct connection with the specific importation or exportation in question;
- (ii) Fees and charges shall not exceed the approximate cost of the services provided;
- (iii) Fees and charges shall not be calculated on an *ad valorem* basis;

- (iv) Fees and charges shall not be imposed with respect to consular services and equivalent measures;
- (v) An adequate time period shall be agreed between the publication of information on new or amended fees and charges and their entry into force; and
- (vi) Each Member shall periodically review its fees and charges to ensure that they are in line with the WTO commitments.

### Proposals on Trade Related Procedures

Cumbersome export and import procedures are recognized as a major barrier to trade. This subject is covered very broadly under existing GATT Article VIII. Several proposals have been made to tighten Article VIII disciplines to reduce the dwell time of cargo in the port area. Some such proposals include introducing a system of pre arrival processing (clearance of documentation before arrival of goods at the customs station), separation of release of goods from final determination and payment of customs duties where they are not determined at or prior to arrival; introduction of a system of risk assessment to target high risk goods for examination at the border and allowing low risk goods to be cleared without physical inspection.

Linked to the risk management system is a proposal to introduce post clearance audit on account books, vouchers, commercial documents, customs

declaration forms and other trade related information maintained by enterprises.

In order to encourage better compliance with laws and regulations, it is proposed to reward more compliant traders with more trade facilitative procedures under a system of "Authorized Traders". Companies that can be given the status of authorized traders are those which have an appropriate track record of compliance and have a good system of managing records. Importers who qualify as authorized trader can have additional benefits like filing periodic declarations and paying duties periodically, reduced physical inspection and reduced documentary and data requirements.

The time taken for goods clearance at the borders of a country is a barometer of its trade facilitation environment. It is proposed to institutionalize publication of dwell time data by each WTO Member by establishing and publishing its own average time for release of goods on a periodic basis. The World Customs Organization (WCO) has developed tools to publish Time Release Study and it is expected that Members would use this tool.

In order to provide a window to the trading community to clear goods expeditiously, it has been proposed to have a system of expedited shipments through which goods are to be cleared within three hours after submission of necessary customs documents. It also proposes to apply the expedited shipment procedures without any

restrictions with regard to weight or customs value.

As there are multiple agencies at the border dealing with clearance of goods, their intervention at different points of time for checking the same consignment causes delay in the clearance of goods. It has been proposed that activities of all authorities and agencies involved in border control measures at the point of import or export should be coordinated in order to prevent multiple inspections.

### Documentation Requirements

Another potential barrier to international trade is documentation connected with import and export, in case they are too long and complicated and take time and resources to fill up. Accordingly, there are proposals to review and limit the documentation requirements and to align documents with internationally agreed documentation format like UN Layout Key or its future updated electronic counterpart; National Data Element in Trade Document with the UN Trade Data Element Directory (UNTDDED) and its future updated version and use of internationally accepted standard for Electronic Information Exchange and Interchange and inter-operability of electronic messages between custom administration and with other trade operators.

In order to reduce paper work, there is also a proposal to accept commercially available information and copies of documents instead of insisting on

the original documents like invoices, bills, etc. and particularly where one government agency already holds the original and multiple government authorities need the same document.

In order to make the import and export formalities more in tune with the current reality, there is also a proposal for periodic review of formalities and requirements at reasonable and regular intervals, taking into account relevant new information and business practices.

An ambitious proposal is to set up a single window for submitting documentation and/or data for export/import or transit one time only. The single window agency has to undertake onward distribution of the data and documentation to all other relevant authorities or agencies where clearance is required from multiple government agencies. This has been proposed by Korea, Singapore and Thailand.

### Systemic Reforms

Some existing practices and systems which add to the transaction cost are proposed to be eliminated. Proposals in this category are to eliminate the system of pre shipment inspection (proposed by EC and Chinese Taipei); the compulsory use of custom brokers (proposed by EC, Mongolia, China and Switzerland); and abolition of consularization of documents (US and Uganda). In order to improve trade facilitation with respect to Customs Union, India has made certain proposals like adoption of same border procedure within a Custom Union

including same standard, certification, terminology and definitions, sampling and test methods. India has also proposed that there should be uniform documentation requirements for import clearance within a Custom Union.

### Subjects under GATT Article X

Article X of the GATT 1994 deals with publication and administration of trade regulations. The existing obligations of the WTO Members under Article X are as follows:

- (i) Laws, regulations, judicial decisions and administrative rulings of general application relating to various aspects of international trade like classification or valuation of products for customs purposes, rates of duty, requirements, restrictions or prohibitions on imports or exports or on the transfer of payments thereof, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use, shall be published promptly, so as to enable governments and traders to become acquainted with them;
- (ii) agreements affecting international trade policy which are in force between two governments or governmental agencies shall be published;
- (iii) no measure of general application taken by a WTO Member which leads to

increase in rate of duty or which imposes a new or more burdensome regulation, restriction and prohibition on imports or transfer of payments thereof shall be enforced before such measure has been officially published;

- (iv) each WTO Member shall administer in a uniform, impartial and reasonable manner, all its laws, regulations, decisions and rulings on subjects as mentioned at points (i) to (iii) above.
- (v) each WTO Member shall maintain a judicial, arbitral or administrative tribunal for permitting review and correction of administrative action relating to customs matters. Such tribunals shall be independent of the agencies entrusted with administrative enforcement and the decisions of the tribunal shall be implemented by such agencies unless an appeal to a superior court is filed within the prescribed time limit.

The proposed improvements are with regard to publication and easier availability of trade related rules and regulations, more collaborative system of rule making to take into account the concerns of the stakeholders, improved appeal mechanisms and certain new institutions to improve information availability and certainty to trade.

On transparency, the proposed commitment is that each WTO Member has to make available and to keep current on a website, full description of its

customs procedures and forms and documents for importation and exportation. The aim of this proposal is to make relevant information on import and export more easily accessible, which would be a boon for small traders. However, value of this commitment can be potentially higher if notifications are made compulsorily in one of the three official languages of the WTO, i.e., English, French or Spanish. Information available on the internet in Chinese or Japanese language would be of little value to the traders of other countries.

The present commitment under GATT Article X on publication of laws, rules, regulations, etc. before their enforcement is proposed to be widened to incorporate a requirement of a time interval between publication and entry into force of laws, regulations, etc. The aim of this commitment is to allow traders to become acquainted with new laws in order to better comply with them. In order to make law-making more dynamic and collaborative with stakeholders, there is also a proposal on the table that Members shall offer appropriate opportunity to interested parties within their territories to comment on proposed introduction or amendment of trade-related laws, regulations and administrative rulings of general application. Another proposal of similar kind is that Members shall hold regular consultations between border agencies and traders within their territories.

The existing commitment under Article X to provide an

appeal mechanism against administrative decisions is proposed to be further refined. Proposed additional requirements in this regard are that appeal procedures should be non-discriminatory; traders be allowed to represent at all stages of appeal procedures by independent legal counsel and that customs and other relevant border agencies shall adopt set time period for decisions under appeal procedures.

Certain other transparency related proposals are in respect to Customs Union made by India. One such proposal is that appeals against findings of inspection authorities at the level of a Member State of the Customs Union shall be heard and decided at the Customs Union level and such appellate decisions shall be binding on the inspection authorities of all Member States of the Customs Union. Another proposal relates to disciplines on import alerts/rapid alerts maintained by some countries as a means of maintaining and ensuring quality of imported food products. The proposal is that import/rapid alerts be applied by a Customs Union only where it applies uniform standards and it shall not be maintained if circumstances giving rise to it no longer exists, or if changed circumstances can be addressed in a less restrictive manner. A proposed test of less trade restrictiveness is that six successive consignments of the subject country/exporter be found to be contamination free.

There are also proposals made by India to improve transparency regarding status of

uncleared goods by proposing that where goods are detained for examination, information to this effect be provided to importer or his authorized agent. India has also proposed greater transparency for test procedures by providing for a right to second confirmatory test, setting a clear procedure for such confirmatory test, and providing a list of accredited laboratories which are authorized to carry out such confirmatory tests, and such confirmatory test shall be valid in all Members States of a customs union.

To improve transparency, there are also proposals to create new institutions, namely an enquiry point to answer all reasonable enquiries relating to import and export and of an advance ruling authority to give binding ruling on treatment of import with respect to tariff classification, application of customs valuation criteria, application of duty drawback and of quotas.

## Subjects under GATT Article V

Article V of the GATT 1994 has obligations to ensure freedom of transit. It defines transit for goods and the means of transport of such goods as passage across a WTO Member's territory with or without transshipment, warehousing, etc., where such passage is only a portion of a complete journey beginning and terminating beyond the frontier of the WTO Member across whose territory the traffic passes. Certain disciplines are prescribed for transit of goods and means of transport in Article V. An

important exception is that these disciplines do not apply to operation of aircraft in transit, but apply to air transit of goods. The present disciplines under this Article are:

- (i) freedom of transit through the territory of a WTO Member via the routes most convenient for international transit;
- (ii) no distinction is to be made for transit based on the flag of vessels, the place of origin, departure, entry, exit or destination; or upon any circumstances relating to the ownership of goods, of vessels or of other means of transport;
- (iii) a WTO Member country may require that the traffic in transit through its territory be entered at the proper custom house;
- (iv) the transit traffic shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duty and from all transit duties or other transit charges. The only exception provided in this regard is charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered;
- (v) all charges and regulations imposed by the WTO Members on transit traffic shall be reasonable; and
- (vi) all charges, regulations and formalities relating to transit shall apply equally to all the WTO Members with respect to like products.

Several proposals have been

put on the table to improve and clarify Article V of the GATT. An important proposal is to expand the definition of traffic in transit to include movement of goods via fixed infrastructure such as pipelines and electricity grids. Another new proposed addition in the definition is that baggage and the personal belongings of a person operating the means of transport will also be covered under the definition of traffic in transit. A third new addition to proposed new definition is a clarification that movement of goods will continue to be regarded as "traffic in transit" even if:

- (i) goods undergo certain processes like trans-shipment, warehouse, short-term storage, breaking bulk or change in mode of transport;
- (ii) whether the goods or means of transport, after passing across a territory of a Member, return to the territory of a Member in which they originate.

A fourth new addition to the definition is a clause that means of transport shall be deemed to be traffic in transit if they carry exclusively goods in transit even if the means of transport are not themselves in transit.

In order to improve the regime of non-discrimination and transparency, there are proposals that traffic in transit shall not be subject to any restriction unless a Member takes a measure in pursuance of objectives laid down in Articles XX and XXI of the GATT 1994. Another proposal is that each WTO Member shall accord to traffic in transit a

treatment no less favourable than that accorded to its own export and import traffic.

The disciplines proposed on fees and charges on transit formalities and documentation requirements are largely similar to those proposed under the GATT Article VIII such as prior publication and periodic review of transit formalities, use of risk assessment methods, establishment of single window and authorized trader schemes. However, some proposals are specific to transit, such as to provide, to the extent practicable, physically separate transit infrastructure such as lanes, berths, etc. Reasonable security be permitted to prevent diversion of goods in transit and there should be prompt release of such security on completion of transit operation.

There are also proposals to encourage regional transit agreements to reduce trade barriers. This can in particular take the form of adoption of common simplified documents, or electronic messages, or allow the same set of documents or electronic messages to accompany the consignment from the country of departure to country of destination and to mutually recognize authorized trader schemes.

## Customs Cooperation

India has been in the forefront in arguing that customs cooperation for enforcement of violation of laws is another facet of trade facilitation. India along with South Africa, Sri Lanka and Brazil have made a proposal as to how such a cooperation

mechanism will be put in practice. It is proposed that information and documentation will be exchanged on matters such as HS classification, description, quantity, country of origin and valuation of goods in identified cases of import and export where there is reason to doubt the truth or accuracy of a declaration supplied by the importer or exporter. In order to ensure that the request is not made in a casual manner, it is proposed that all appropriate internal verifications would be carried out before making the request. In order to address the concern that the cooperation mechanism should not be very burdensome, it has been proposed that the Members from whom information has been requested shall provide such information only to the extent it is available in the import and export declaration; provide documents in the form in which these have been filed with the authority; the format of export and import declaration and procedures related to import and export is not modified; the period of retention of information or document is not modified and the request for information or document shall not be made later than two years after the importation or exportation of goods. The request shall be made either in one of the three official languages of the WTO or in a language mutually acceptable to the two Members. In order to make the mechanism efficient and predicable, it is proposed that information, to the extent possible, shall be provided within a period of 90 days from the date of receipt of request. It has also been proposed that any

information or document exchanged shall be treated as confidential and shall not be disclosed to any third party except to the extent required in judicial proceedings. It has further been proposed that such information or document shall not be used in criminal proceedings unless specifically authorized by the Member from whom information has been received. Number of requests for information made by a Member in a calendar year is also proposed to be capped.

### Special and Differential Treatment

Discussions are also under way regarding how the agreement on Trade Facilitation will be eventually implemented. The most animated discussion has been with respect to Special and Differential Treatment. On this, there are rival proposals on the table. One set of countries propose that after signing the Trade Facilitation Agreement, the developing countries shall carry out capacity self assessment in relation to the provisions contained in the Trade Facilitation Agreement. On this basis, each developing country shall notify to other members regarding those obligations on which it needs technical assistance and capacity building and also additional time period, beyond the prescribed period, to implement the commitments. These are to be made available on the WTO website. Members shall also notify to other members the measures they are ready to implement from the date of

entering into force of the agreement and the measures they have already implemented.

For obligations which are identified by the Members to be requiring technical assistance and capacity building, the developing countries shall enter into discussions with the donors and will prepare a plan accordingly. The capacity building plan so prepared shall indicate the implementation period and the identified donors, and this would be notified to the WTO. At the end of each implementation period related to the provision of capacity building, the implementing developing country shall assess whether capacity building and technical assistance has been effectively provided. If the Members come to the conclusion that the capacity has not been entirely acquired, then the developing country Member and the donor Members involved shall so report and make recommendations to the WTO. On the other hand, if the Members have successfully acquired capacity, it shall notify this at the latest six months after the capacity acquisition and the obligation shall apply after this notification. This proposal has the support of 24 countries including EC, Canada, China, Sri Lanka, Switzerland and Pakistan.

On the other hand, the Core Group of developing countries<sup>8</sup> have proposed that while all obligations shall be immediately implemented by developed countries at the time of entering into force of the agreement, the developing countries will be obliged to implement only those commitments which are covered

under a Core List of commitments. All other commitments not covered under the Core List shall be deemed to require capacity acquisition by developing countries and these provisions will be implemented only after they have received necessary technical assistance and capacity building support.

Developing countries are to prepare their capacity building plan and to submit their request for technical assistance. The developed country Members and donors shall extend assistance and developing countries shall commence the implementation of the capacity building plan within a defined time frame. The verification of capacity acquisition shall be done by the concerned developing country and where it concludes that the capacity has not been satisfactorily acquired, it will notify the same to the WTO. Concerned WTO Committee shall then assist the Members in taking necessary steps to satisfactorily acquire the capacity as soon as possible. If the developing countries thereafter also feel that it has not acquired the capacity, the matter will be referred to the concerned WTO Committee which will decide the issue on a case by case basis.

### **Evaluation of Trade Facilitation Work Programme in WTO**

In the preceding sections, the evolution of the subject of Trade Facilitation in the WTO and its coverage under a proposed new Agreement in the WTO has been discussed in detail. The question that arises is whether the Trade

Facilitation Agreement is likely to meet the needs and aspirations of all sections of the WTO membership.

### **Balanced Commitments**

The subject of Trade Facilitation has been brought into the WTO primarily on account of the push given by the European Communities supported by few other developed and developing countries. However, it cannot be denied that Trade Facilitation is by now a global agenda and no WTO Member can afford to be disconnected with this subject. There is an ever increasing global integration of international trade. This integration is also fuelled by increasing number of global supply chains, growth of electronic communication and increased movement of capital in the form of Foreign Direct Investment. All this requires a facilitative environment at the borders. At the same time, border control measures also have to meet important policy goals like preventing smuggling, improving revenue collection through better compliance, and to meet newer challenges like addressing security related concerns, ensuring safety of human, animal and plant life and health, preventing entry of hazardous goods, enforcement of intellectual property rights, etc. The Trade Facilitation negotiations have to strike a fine balance in order to enable the countries to meet these competing goals.

On the whole it can be said that proposals on the table are

such that they enable the governments to create an enabling environment for efficient border clearance of goods without compromising their concerns on aspects like adequate control for compliance, security, health, etc. on case to case basis.

However, it needs to be kept in mind that from the point of view of developing countries there are still some potential problematic areas in taking commitments under Trade Facilitation. For instance, a prescriptive time line is proposed by the US (within 3 hours of filing goods declaration) for allowing clearance of goods through express shipment mode and that too for all categories of goods. Express shipment is a mode of clearance normally permitted for low risk goods or goods of urgent nature like life saving drugs. Clearance procedures under express shipment mode are more liberal. It is a concern for many countries, including India, that extending such a procedure for clearance of all types of goods can compromise control and compliance mechanisms and a time line of 3 hours would be difficult to adhere to.

### **Technical Assistance and Capacity Building**

Another major concern in the negotiations in the WTO is with respect to resource implications for developing countries in taking new commitments. Larger developing countries like India, Brazil and China are better placed to take commitments which largely revolve around use of modern information technology

like setting up of website, establishment of risk management systems, establishing a scheme for authorized traders, publication of release time for goods, etc. However, this will be a challenge for several other developing and the least developed countries. Some proposals like establishment of a single window system to lodge goods declaration will be difficult to undertake even for larger developing countries.

It is, therefore, important that provisions for capacity building and technical assistance should be built in a substantial manner in the commitments. The mechanism, post-negotiation, to evaluate a country's readiness to take on commitments needs to have sufficient flexibility to meet its concerns. The mechanism should also be such that it enables the WTO to truly act as a coordinator to assist the country concerned in getting full support in terms of finance, infrastructure building, and acquiring sufficient ground level expertise and experience to be able to fulfill the new procedural commitments.

## Conclusion

Trade Facilitation has a wide meaning. Bringing this subject under the WTO has brought more focus and clarity regarding common steps that the WTO Members need to take to provide a more trade facilitative environment at their borders. The proposed new commitments stem from the subjects already covered under

the GATT Articles V, VIII, and X, namely transparency of trade related laws, trade related procedures and documentation, and transit. The existing commitments on these subjects are quite generalized and in the ongoing negotiations, effort is to impart much more specificity and breadth of coverage to these commitments.

An analysis of the proposals on trade facilitation in the WTO indicates that a large number of them require application of information technology. They will require resources but their implementation will reduce the dwell time of the goods at the borders, make compliance systems less obtrusive and more efficient, improve transparency of rules and regulations and create modern institutions. It will thus provide a level playing field for trade operators based in different countries, which is necessary to improve competitiveness and provide efficient interlinkages in a globalized economy where supply chains are fragmented to derive maximum benefit of comparative advantages. However, it is important to ensure that the zeal for modernization should not be at the cost of putting unsustainable resource burden on developing countries. The developed countries will also need to live up to their commitment of providing effective support for building capacities to put in place necessary infrastructure and resources to enable all the countries to take commitments on Trade Facilitation.

## NOTES

<sup>1</sup> World Bank Research Paper (March 2003): Trade Facilitation and Economic Development by John S. Wilson, Catherine L. Mann and Tsunehiro Ostuski.

<sup>2</sup> The study has developed a gravity model that accounts for bilateral trade flows in manufactured goods in 2000-01 between 75 countries, using traditional factors (such as GDP, distance and trade areas), and evaluating their impact on trade. The study indicates that an improvement in these four sectors in 75 countries will lead to an increase of trade by about 10 per cent (US\$377 billion). Out of this about US\$107 billion of the total gain will come from improvement in port efficiency and about US\$33 billion will come from improvement in customs environment. The gain from improvement in regulatory environment is projected to be US\$83 billion and gains from improvement in Service Sector Infrastructure are projected at US\$154 billion.

<sup>3</sup> WT/MIN(01)/DEC/1.

<sup>4</sup> WT/L/579.

<sup>5</sup> WT/Min(05)/DEC dated 25th December 2005.

<sup>6</sup> TN/TF/W/43/Rev.19 of 30th June 2009.

<sup>7</sup> TN/TF/W/165 dated 14th December 2009.

<sup>8</sup> The Core Group members include Bangladesh, Botswana, Cuba, Egypt, India, Indonesia, Jamaica, Kenya, Malaysia, Nigeria, Philippines, Tanzania, Zambia, Zimbabwe, Uganda and Venezuela.

# Importance of Trade Facilitation in International Trade

*Pritam Banerjee\**

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*Trade Facilitation (TF) is increasingly gaining significance in the context of international trade. Considered as an important tool to spur trade growth, countries are currently contemplating to negotiate among themselves in the forum of the WTO how to maximize the trade gains without adding much cost to the entire process of transaction. This paper makes an attempt to understand and analyze the issues related to trade facilitation and suggests mechanism to expedite the process so as to benefit from the ever expanding international business. It highlights the relevance it holds for faster growth and economic development especially for emerging economies.*

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## Introduction

TRADE Facilitation broadly includes a vast array of topics related to the exchange of goods and services across the border. Such widely defined Trade Facilitation issues would cover quality domestic logistics used for transporting goods from the factory to port (or port to producer/consumer in the case of imports), and the regulatory and legal framework such domestic transport of tradable goods would have to interface with. It would include critical elements of the transaction process at the port (or airport and overland border entry points) such as customs, warehousing, and port facilities. This process further would encompass regulatory and transactional issues that are directly related to production process for example the cost and difficulty of procuring certifications related to health and safety standards of inputs used in the production process. However, in the context of the WTO, Trade Facilitation succinctly covers three specific elements as defined by GATT Article V (Freedom of Transit), Article VIII (Fees and Formalities connected with Importation and Exportation) and Article X (Publication and Administration of Trade Regulations).

Trade Facilitation was widely perceived to be the one Singapore

Issue<sup>1</sup> that was most likely to be acceptable to the entire membership of the WTO since it was first tabled in 1996. The logic of such wide acceptability lay in the fact that the Trade Facilitation agenda was essentially about enhancing the capacity of countries to trade. Despite such wide acceptability there were concerns about the exact scope and nature of such formal negotiations on Trade Facilitation and the obligations that might arise from a WTO agreement. The key concerns were related to legal and regulatory obligations, the cost of compliance to WTO mandated governance reforms, and the cost of implementation of physical infrastructure arising out of a WTO agreement. Emerging economies were also concerned that the scope of negotiations might exceed the brief of Trade Facilitation as defined by WTO negotiating rules and include items from the broader definition of Trade Facilitation discussed above.

The negotiation on Trade Facilitation has been ongoing at the WTO since 2004, and a breakthrough was achieved in December 2009 when the Negotiating Group on Trade Facilitation (the committee responsible for Trade Facilitation related negotiation) announced that they have agreed on a consolidated text that will serve

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as the framework for negotiations in 2010.<sup>2</sup> In this context, the purpose of this article would be to flesh out the key issues of Trade Facilitation related negotiations at the WTO and highlight their relevance for trade and economic development. However, before proceeding to the WTO negotiations on Trade Facilitation it is appropriate to provide a brief summary of the benefits available in the literature with a special focus on the benefits for emerging economies in Section I. Section II will provide a discussion on the WTO negotiating background, while Section III will refer to India's compliance with the issues being discussed at the WTO and the general environment of Trade Facilitation in the Indian context. Section IV will provide a brief conclusion including some policy recommendations.

## I. Trade Facilitation: Benefits and Constraints

Trade Facilitation assumes even greater importance now in the arena of international trade given the recent trends in the structure of goods and services traded and the sophistication of such products. Modern supply chain management techniques and the rapid spread of information technologies and e-commerce have progressively increased the use of just-in-time techniques by manufacturing industry and encouraged the growth of integrated global supply, production and distribution systems. In this environment, where manufacturers rely on the uninterrupted reception of the

necessary components to meet production contingencies, business cannot afford to have imported or exported goods tied up for long periods because of unnecessary or over-complicated trade procedures and requirements. There is very little ambiguity in the literature about the benefits of Trade Facilitation. Table 1 below summarizes the findings of some of the major research done in this area.

While the gains documented in Table 1 are substantial, there is reason to believe that this is the tip of the iceberg and the real benefits from Trade Facilitation are even greater. One important reason for this is that a large number of transaction costs in global trade cannot be quantified effectively, despite best efforts in the literature. While there are case studies that present anecdotal evidence on a whole gamut of logistical challenges faced by global traders, the rigorous quantification of this information is only just beginning.<sup>3</sup>

One key area where substantial gains from Trade Facilitation can be expected is the benefit to Small and Medium Enterprises (SME). The internationalization of SMEs can only happen if they can fully participate in a range of cross border activities, including trade, international investment, engaging in strategic alliances and partnerships (i.e. integration in global supply chains), and networking arrangements affecting a variety of business functions ranging from research and product development to distribution. High transaction costs keep SME stakeholders from taking full advantage of global opportunities. Evidence suggests that relative to the contribution they make to local and national economies, SMEs remain overall under-represented in the international economy. While SMEs typically contribute around 50 per cent of GDP, and 60 per cent of employment in national or local economies, they contribute only about 30 per cent of exports, and

**TABLE 1**  
**GAINS FROM TRADE FACILITATION: SUMMARY OF CONCLUSIONS FROM TRADE FACILITATION LITERATURE**

<i>Author</i>	<i>Trade Facilitation issues considered</i>	<i>Gains in US\$ from Trade Facilitation reform</i>
UNCTAD (2001)	Banking and insurance, customs, business information, transport and logistics (that add up to 10% of the total value of world trade).	400 billion
Wilson, Mann and Otsuki (2003)	Improving the performance of below average countries (i.e. countries with trade facilitation parameters below global average) in terms of port efficiency.	107 billion
Hummels (2001)	Reduction of 1 day in delivery times by developing countries by targeting delays associated with customs and cargo handling.	240 billion
Walkenhorst and Yasui (2003)	Improvement in logistical efficiency and reduction in transaction costs of trading.	40 billion

**Source:** Roy and Banerjee (2007).

even less of international investment.<sup>4</sup> Since a large majority of emerging economy stakeholders tends to be SMEs, and many firms that are considered large in emerging economy context might be considered an SME in developed economy scales, internationalization of SME sector is of special interest for emerging countries.

Trade Facilitation issues are more important for emerging economies. Tables 2, 3, and 4 illustrate this point quite clearly when an average rate of physical inspection, possibility of review process in case of disputes, and the number of documents required to export are taken into account.

Table 2 shows that on an average higher income and middle income countries require less physical income of cargo, and among emerging countries the ones that are more outward looking and trade oriented such

**TABLE 2**  
**AVERAGE RATE OF PHYSICAL INSPECTION OF CARGO**

High income (income average)	0.09
Upper middle income (income average)	0.13
Lower middle income (income average)	0.29
Low income (income average)	0.49
United States	0.03
Thailand	0.09
South Africa	0.02
Singapore	0.03
Netherlands	0.03
Indonesia	0.12
India	0.25
France	0.07
China	0.07
Brazil	0.13

**Source:** Logistics Performance Index, World Bank.

as Thailand and Singapore have less requirement for such physical inspection compared to countries like India and Indonesia.

Like Table 2, Table 3 also indicates that the possibility of a review procedure in case of disputes with authorities is on average lower for emerging economies relative to high income and middle-income economies.

Table 4 confirms the general trends indicated by Tables 2 & 3. Relatively inward looking emerging economies like India

**TABLE 3**  
**POSSIBILITY OF A REVIEW PROCEDURE**

High income: all (income average)	0.65
Upper middle income (income average)	0.47
Lower middle income (income average)	0.30
Low income (income average)	0.36
United States	0.64
Singapore	0.67
Netherlands	0.80
Indonesia	0.38
India	0.39
China	0.36

**Source:** Logistics Performance Index, World Bank

**TABLE 4**  
**NUMBER OF DOCUMENTS REQUIRED FOR EXPORTS**

East Asia & Pacific	6.7
Eastern Europe & Central Asia	6.5
Latin America & Caribbean	6.8
Middle East & North Africa	6.4
OECD	4.3
South Asia	8.5
Sub-Saharan Africa	7.8
India	8
Indonesia	5
Pakistan	9
Thailand	4

**Source:** Trading Across Borders, Doing Business Indicators, World Bank.

and Pakistan in general add to transaction costs by requiring a very large number of documents for the transaction process while industrialized economies such as OECD and outward looking regions like East Asia and economies like Thailand and Singapore tend to have less cumbersome documentation requirements.

Apart from regulatory issues that lead to high transaction costs for trading, emerging economies also face substantive barriers in terms of lack of physical connectivity and high transport costs. Table 5 below presents a relative picture of transportation costs for trade.

**TABLE 5**  
**COST TO EXPORT (US\$ Per Container)**

East Asia & Pacific	909.3
Middle East & North Africa	1,034.80
OECD	1,089.70
Latin America & Caribbean	1,243.60
South Asia	1,364.10
Eastern Europe & Central Asia	1,581.80
Sub-Saharan Africa	1,941.80

**Source:** Trading Across Borders, Doing Business Indicators, World Bank

As indicated in Table 5, with the exception of East Asia and the Middle East, other emerging regions have about 20 to 90 per cent higher costs of transportation compared to the OECD average. Thus, the benefits of Trade Facilitation will be most felt by emerging economies. The next section will analyze the history of the Trade Facilitation negotiations at the WTO and some of the reasons why emerging economies have been cautious about the agenda for Trade Facilitation at the

multilateral level despite the obvious benefits from Trade Facilitation for them as illustrated in this section.

## II. WTO Negotiations on Trade Facilitation: Agenda, Action and Caution

Trade Facilitation became the subject of the WTO discussions in 1997, following the 1996 Singapore ministerial meeting in which four issues - foreign investment, competition policy, trade facilitation and transparency in government procurement have been made a part of the WTO study programme, hence known as Singapore Issues. At the Doha ministerial meeting in 2001, these became a part of the Doha Work Programme under Ministerial Declaration. But since several developing countries led by India opposed it, it was decided to launch negotiations only in 2003, after the fifth Ministerial Meeting, subject to consensus on the modalities of negotiations. 147 member governments of the WTO finally agreed in August 2004 to commence negotiations on only one of the Singapore Issues, i.e. Trade Facilitation based on the modalities commonly referred to as the July Package.

Members agreed that the negotiating agenda would focus on clarifying and improving relevant aspects of Articles V (freedom of transit), VIII (fees and formalities) and X (publication and administration of trade regulations) of the GATT 1994. In addition, two other areas were identified as being a part of

the WTO Trade Facilitation agenda:

- Effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues.
- Enhancing technical assistance and support for capacity building.

As a part of the technical assistance and capacity building, it was also agreed that negotiations shall put emphasis on the concerns of emerging economy countries related to cost implications of proposed measures.

The negotiations are based on a bottom-up process driven by delegations' proposals submitted to the Negotiating Group on Trade Facilitation (NGTF). By the end of 2006, more than 70 trade facilitation measures had been put forward for consideration. These measures were grouped into 14 categories, ranging from the publication of trade-related regulation to the clearance and movement of goods and the cross-border exchange of customs information. During 2007-2008, these provisions were further consolidated, so that in early 2009 42 measures grouped into 12 categories were formulated. In December 2009, the Chair of the NGTF issued a draft consolidated negotiating text based on the review of Members' proposals undertaken in the October and November meetings of the NGTF.<sup>5</sup> The members are currently deliberating to finalize a Trade Facilitation agreement based on this negotiating text and such an

agreement can be expected to be in place by end of 2010.

Right from the beginning emerging economies have expressed their concern on the scope and ambition of the Trade Facilitation agenda at the WTO. Developing countries believe such obligations will be respected when a new agreement will come into effect.<sup>6</sup> The cost of implementing a Trade Facilitation agenda, even within the modest scope defined by the WTO proposals, will involve significant upfront costs, the key elements of such costs being

- *Infrastructure and facility costs:* Upfront investment in new facilities and equipments and the cost of publication on the internet (data processing, digitizing, data maintenance and server costs).
- *Human resources capacity building:* Enhancement of administrative capacity, and training on new ways of doing things. The cost of additional staff in cases there is greater need for providing services or greater stress laid on service orientation.
- *Regulatory costs:* The cost of putting together and implementing new legislation.
- *Loss of revenue:* Transparency and reduction/simplification of fees as suggested in some Trade Facilitation proposals might lead to loss of revenue for the government.

A study done by Asia-Pacific Research and Training Network on Trade<sup>7</sup> identified the main costs and long-term savings associated with the specific

aspects of Trade Facilitation reform with the help of a survey of experts and officials. The paper found that most stakeholders in the survey agree that long-term savings from such Trade Facilitation reform exceeded the costs. Upfront costs were seen as the main concern except for three areas, online publication, single national focal points, and setting up of national trade facilitation committees, where recurring operating costs were seen as the main concern. The most important cost drivers were identified in projects related to establishment of (electronic) single window system, the implementation of a risk management system, and the establishment and wider use of audit-based customs. These three measures also take maximum time to implement, with experts indicating that least developed and low-income developing countries would need at least three to five years for implementing them provided they had adequate resources to do so.

Given substantial costs of implementation, one of the key emerging country demands has been developed country assistance in capacity building for Trade Facilitation, along with special and differential treatment (SDT) in terms of any reference periods for implementation. Since 2004 there has been a huge proliferation of projects aimed at Trade Facilitation related issues. These projects in emerging economies have often been fully or partially funded by the multilateral agencies like the World Bank, Asian Development Bank, Inter-American Bank for

Development, etc., or by bilateral development agencies like DFID, USAID, etc. However, the costs for implementing an ambitious Trade Facilitation agenda remain high, and many emerging economies, especially smaller countries in Africa and Asia need greater infusion of capital to undertake such reforms.

As mentioned earlier, another critical concern for emerging economies was the scope of ambition of a multilateral Trade Facilitation agenda. Specifically the WTO itself includes other agreements that have a direct bearing on Trade Facilitation. These are:

- Customs Valuation Agreement
- Agreement on Rules of Origin
- Agreement on Pre-shipment Inspection (PSI)
- Agreement on Import Licensing Procedures
- Agreement on Technical Barriers to Trade (TBT)
- Agreement on the Application of Sanitary and Phytosanitary (SPS) measures

The burden on implementing reforms on almost all of the above agreements has been modest given the mostly modest ambition of these agreements. The concern is that Trade Facilitation being a reform centric agenda might create a significant set of obligations with reference to several of the above-mentioned agreements. In fact the December 2009 consolidated negotiating text also includes elements of Trade Facilitation that can be considered to be beyond the brief defined by Articles V, VIII, and X of the GATT. For example,

issues related to the elimination of pre-shipment inspection, coordination of activities and requirements of all border agencies, and administration of test procedures can be considered to be beyond the narrow brief of Trade Facilitation as defined by the WTO. The negotiating team would have to balance country-specific concerns on such an expanded scope for Trade Facilitation in the WTO with legitimate linking of Trade Facilitation agenda with issues that are central to the cross-border flows of goods.

### III. Trade Facilitation Agenda: India's Response

India has taken a proactive stand at the WTO negotiations on Trade Facilitation. With reference to Article VIII of the GATT that requires contracting parties to impose fees in a manner that minimizes the incidence and complexity of such fees, while also urging members to recognize the need for reducing the number and diversity of fees, India has suggested modifying Article VIII to ensure harmonization of rules, implementation and risk assessment systems within Customs Unions like the EU. India has also suggested harmonization of technical standards especially with reference to food and agriculture products.<sup>8</sup>

With reference to Article X of the GATT which requires the Members to publish all laws, regulations, judicial decisions and administrative rulings in a transparent manner while making it available to all members,

India's suggestions have been to ensure that 'alerts' issued against a certain exporter or exporters are done in a transparent manner and according to established guidelines that are uniform for all points of entry in a country or a Customs Union. India has made a very vital proposal with reference to Customs Union requiring the results established by one member state will have to be accepted by the other members of the union.<sup>9</sup>

It must be noted that when it comes to customs administration, India's laws concerning clearance of goods have been for a long time based on international conventions, e.g. Kyoto Convention 1973, WTO Valuation Agreement (earlier GATT), Harmonized System Convention or are otherwise aligned with international best practices.<sup>10</sup> As of November 2005, India has ratified and aligned its regulations with the Revised Kyoto Convention.

The government has been proactive in trying to address the issue of Trade Facilitation, especially on issues related to customs administration. To this end, the Working Group on Trade Facilitation (WGTF) was set up in 2004 under the Chairmanship of Dr. Jayanta Roy, Principal Adviser, Confederation of Indian Industry (CII), and it was mandated to look primarily at those aspects of Trade Facilitation that concern formalities relating to clearances at Customs stations in the following areas:

- Reduce extensive documentation requirements.

- Ensure full use of information technology.
- Bring about transparency and accountability.
- Introduce audit-based controls.
- Introduce cooperation among all the government agencies involved in clearance of cargo.
- Introduce self-assessment.
- Reduce examination of goods to a minimum.
- Introduction of risk assessment techniques.
- Reduction in the dwell time for clearance of cargo.<sup>11</sup>

However, problems persist in other areas related to Trade Facilitation, some of which are beyond the WTO definition of Trade Facilitation reform. Some of the key issues related to high transaction costs of trading in India are summarized in Table 6.

## Conclusion

As has been discussed in the preceding sections, implementing a comprehensive reform package on Trade Facilitation that addresses the transaction costs of doing trade is in the long-term benefit for emerging countries like India. The incidence of trade related transaction costs are felt much more by SMEs in emerging economies that hinder their full participation in the global economy. Thus, it is important for India to stay engaged in the multilateral process for Trade Facilitation issues and ensure that India's priorities and concerns are addressed. At the same time the Indian government and other stakeholders such as industry need to stay alert that any multilateral obligations arising out of an agreement on Trade Facilitation at the WTO does not impose obligations that would be expensive to implement or make excessive demands with

**TABLE 6**  
**KEY ELEMENTS OF TRANSACTION COSTS FOR EXPORTS IN INDIA –**  
**ISSUES UNRELATED TO CUSTOMS**

<i>Infrastructural Bottlenecks</i>	<i>Administrative Processes</i>
<ul style="list-style-type: none"> <li>• Poor and insufficient rail and road infrastructure</li> <li>• Bad connectivity between port and hinterland</li> <li>• Shortage of Rail wagons/rakes</li> <li>• Inadequate capacity/facility at ports, airports and roads</li> <li>• High equipment downtime at ports</li> <li>• Shortage of storage space</li> </ul>	<ul style="list-style-type: none"> <li>• Delay in getting refunds: 180 to 240 days</li> <li>• Remittance through banks takes 2 to 25 days</li> <li>• Licenses issuance takes 2 to 30 days</li> <li>• Transportation cost: 0.5 to 5 per cent for 45 per cent firms. Maximum of 20 per cent</li> <li>• Multiplicity of rules and regulations</li> <li>• Information constraints: Poor access and information on rules, administrative procedures</li> <li>• Lack of information and proper availability of laboratories for standards assessment</li> </ul>

**Source:** Confederation of Indian Industry (CII), *Report on Export Related Transaction Costs* (2009).

reference to documentation or other Trade Facilitation related measures.

While the multilateral process is important, India on its own also needs to keep making good progress on reform-oriented public policy that reduces transaction costs for India's exporters and importers. A Taskforce on Transaction Costs of Exports has been formed under the leadership of the Minister of State for Commerce, Mr. Jyotiraditya Scindia and the Director-General of Foreign Trade (DGFT). Work done so far indicates that the taskforce will put forward an ambitious reform agenda. Independently, several other stakeholders such as Customs administration, Federation of Indian Export Organizations (FIEO), and other trade related bodies such as the Export Inspection Council (EIC) are all working towards making the export process less cumbersome and more efficient.

If India is to ensure employment for the millions of young men and women who will be of working age in the next decade and a half, it would need to leverage all the opportunities the global economy offers. To effectively do that it would need to ensure that its goods and services, including those produced in small towns and by SMEs are competitive. If transaction costs remain high, it will be a significant drag on India's competitiveness. Thus, Trade Facilitation and reduction of transaction costs remain a public policy priority. The WTO

negotiations are one avenue for such reforms; the other is purely domestic, both need to proceed simultaneously and in conjunction with each other.

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## Introduction to Trade Facilitation

TRADE facilitation looks at how procedures and controls governing the movement of goods across national borders can be improved to reduce associated cost burdens and maximize efficiency while safeguarding legitimate regulatory objectives. Business costs may be a direct function of collecting information and submitting declarations or an indirect consequence of border checks in the form of delays and associated time penalties, forgone business opportunities and reduced competitiveness.

Understanding and use of the term “trade facilitation” varies in the literature and amongst practitioners. “Trade facilitation” is largely used by institutions which seek to improve the regulatory interface between government bodies and traders at national borders. The WTO, in an online training package, once defined trade facilitation as: “The simplification and harmonization of international trade procedures” where trade procedures are the “activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade.”

In defining the term, many trade facilitation proponents will also make reference to trade finance and the procedures applicable for making payments (e.g. via a commercial banks). For example UN/CEFACT defines trade facilitation as “the simplification, standardization and harmonization of procedures and associated information flows required to move goods from seller to buyer and to make payment”.

Occasionally, the term trade facilitation is extended to address a wider agenda in economic development and trade to include: the improvement

of transport infrastructure, the removal of government corruption, the modernization of customs administration, the removal of other non-tariff trade barriers, as well as export marketing and promotion.

Trade facilitation has its intellectual roots in the fields of logistics and supply chain management. Trade facilitation looks at operational improvements at the interface between business and government and associated transaction costs. Trade facilitation has become a key feature in supply chain security and customs modernization programmes. Within the context of economic development it has also come to prominence in the Doha Development Round. However, it is an equally prominent feature in unilateral and bilateral initiatives that seek to improve the trade environment and enhance business competitiveness. Reference to trade facilitation is sometimes also made in the context of “better regulation”. Some organizations promoting trade facilitation will emphasize the cutting of red tape in international trade as their main objective. Propagated ideas and concepts to reforming trade and customs procedures generally resonate around the following themes:

- Simple rules and procedures
- Avoidance of duplication
- Memoranda of Understanding (MoU)
- Alignment of procedures and adherence to international conventions
- Trade consultation
- Transparent and operable rules and procedures
- Accommodation of business practices
- Operational flexibility

- Public-service standards and performance measures
- Mechanisms for corrections and appeals
- Fair and consistent enforcement
- Proportionality of legislation and control to risk
- Time-release measures
- Risk management and trader authorizations
- Standardization of documents and electronic data requirements
- Automation
- International electronic exchange of trade data
- Single Window System.

(www.wto.org)

## Trade Facilitation: 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

Trade facilitation came rushing to the foreground of the 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 the 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> "The 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.cid.harvard.edu)

## Regional Integration in South Asia

HOW can regional integration in South Asia be improved? A recent study by the Asian Development Bank (ADB) shows that trade facilitation can have a large impact on both intra-regional and inter-regional trade. According to the estimates, greater facilitation in the form of better infrastructure, efficiency in custom procedures, reduction in trading costs and improved timeliness will increase intra-regional trade by as much as 75 per cent or \$5.8 billion and the inter-regional trade by 22 per cent or \$30 billion.

A substantial part of the gains in intra-regional trade would be in textiles and clothing where the volumes will rise by \$1,365 billion or 97 per cent. Agriculture trade will also get a substantial boost with intra-regional trade going up by \$767 million or 63 per cent. Gains to the automobile segment will be minimal. But other manufacturing would get a big boost with intra-regional trade going up by 86 per cent or \$3,689 billion.

The biggest gains in inter-regional trade would also be in textiles and clothing where the volumes rise by 30 per cent or \$12,596 million. Automobile segment will gain by \$367 million while the other manufacturing segment will get a \$16,387 million boost as volumes rise by 21 per cent. The gains to agriculture would also be substantial as inter-regional trade picks up by \$1,597 million or 20 per cent.

The biggest gains in intra-regional trade will be for Bangladesh where trade volumes will improve by 103 per cent followed by Pakistan (97%), India (75%) and Sri Lanka (38%). The trends are similar in the case of inter-regional trade where the biggest gains would accrue to Bangladesh (62%), followed by Pakistan (33%), Sri Lanka (17%) and India (14%).

IMPACT OF TRADE FACILITATION REFORMS ON EXPORTS (%)

Sector	Bangladesh	India	Pakistan	Sri Lanka	Rest of South Asia
Agriculture	0	0	0	0	0
Extraction and Mining	0	0	0	0	0
Textiles and Clothing	33	12	31	34	39
Automobiles and Parts	54	19	50	55	64
Other Manufacturing	52	19	48	54	62

Source: Asian Development Bank

The largest gains in intra-regional trade to India through trade facilitation will be in other manufacturing (93%) followed by textiles and clothing (75%), agriculture (66%) and automobiles and parts (30%). The ranking of gains alters in the case of inter-regional trade where the most substantial gains for India would be in other manufacturing (21%), followed by automobiles (10%) and agriculture.

*(The Financial Express, 15 December 2009)*

## Much Work Needed for 2010 Doha Deal: WTO's DG

WTO members still have much work to do if they want to achieve their goal of reaching a new deal on opening up global commerce in 2010, WTO Director General Pascal Lamy said.

Political leaders have set next year as the deadline for completing the Doha Round of negotiations, which began in 2001 aiming to boost prosperity by cutting industrial and agricultural tariffs and farm subsidies, and to help developing countries to trade more.

But the longest-running trade round remains beset by differences between exporters and importers and rich and poor countries after 8 years of on-again off-again negotiations and missed deadlines.

"If we are to conclude this round in 2010 as you have pledged to, we will need to take a hard look at where things stand early in the new year and map the road that would lead us to a successful result," Mr. Lamy told the WTO's general council.

Mr. Lamy said the past year had seen modest progress in the often glacial talks in all the areas under discussion. This is most marked in trade facilitation – helping developing countries to increase their trade by removing red tape, reducing bribery and corruption, and improving infrastructure.

The World Bank has estimated that cutting costs by 50 per cent to increase efficiency at ports and airports could increase global trade in manufacturing by up to \$377 billion a year and triple any benefits for consumers from cutting duties.

But in other areas progress has been technical rather than substantive. In one critical but controversial area progress had been only "subliminal," Mr. Lamy said. This is a proposal to end duties in some industrial sectors beyond any general cuts in duties, which the United States is pushing strongly while big emerging countries such as China are resisting. Mr. Lamy expressed mystification at members' lack of interest in drafting new rules to govern regional trade agreements which are increasingly important in global commerce.

*– by Jonathan Lynn*

*(www.abcnews.go.com, 17 November 2009)*

## Shippers Balk at Customs Bureaucracy

THE American Association of Exporters and Importers (AAEI) is complaining that layers of bureaucracy in Customs and Border Protection's Office of International Trade are causing importers unnecessary delays in getting rulings and settlement offers from the Office of Regulations and Rulings (OR&R).

OR&R, which had been an independent Customs division, was absorbed into OIT after Congress authorized its creation in the SAFE Port Act of 2006. In a letter to Acting Commissioner Jayson Ahern, AAEI charged that the organizational change has led to delays, because OR&R determinations are subjected to OIT management review.

Previously importers received ruling letters directly from OR&R. The rulings are Customs' official determinations on the classification of imported goods, which importers use as part of their compliance programmes.

"We do not see how additional layers of administrative review ... serve to improve trade facilitation or enforcement," AAEI said. The organization also pointed out that the legal rulings are being reviewed by managers with no legal background.

AAEI said that the impediments to trade facilitation, compliance and enforcement go against congressional intent when it authorized the creation of OIT, and could invite scrutiny from the Government Accountability Office.

The group also noted that OR&R, which has been part of Customs for 45 years, was downgraded twice before, only to be re-elevated when Customs realized it functions best as an independent authority.

(www.joc.com, 16 November 2009)

## ASEAN-6 to Achieve Zero-tariff in January 2010

SIX ASEAN member states will achieve their zero-tariff target for all merchandises moving across their borders as on 1 January 2010.

"This definitely calls for an ASEAN celebration," said Dr. Surin Pitsuwan, Secretary-General of the Association of Southeast Asian Nations (ASEAN), the ASEAN Secretariat said in its statement in Jakarta.

Dr. Surin also said that it is a demonstration of how ASEAN is moving on track towards tariff liberalization, despite the global struggle against a rising tide of protectionism.

The six older ASEAN member states Brunei Darussalam, Indonesia, Malaysia, The Philippines, Singapore and Thailand have been following the liberalization efforts since the introduction of the ASEAN Free Trade Area (AFTA) in 1992.

On the trade facilitation front, ASEAN is also exerting maximum efforts in developing an ASEAN Trade Repository, which will be a dynamic inventory and a single reference point, providing the most up-to-date information on all tariff and non-tariff measures applied on goods entering, leaving and transitting a country.

To monitor the implementation of the ASEAN Trade in Goods Agreement, the ASEAN Trade Facilitation Joint Consultative Committee (ATF-JCC) has been endorsed. The committee comprises officials in the areas of Trade, Customs, Standards and Conformance, Transport and Sanitary and Phytosanitary (sanitary with regard to pests and pathogens, a point-of-origin phytosanitary certificate) Measures. The committee intends to undertake consultations with the private sector at the operational level to obtain their feedback on trade facilitation initiatives and explore public-private sector partnership.

GDP (Gross Domestic Product) combined ASEAN region to reach US\$1,504 billion in 2008, also showed a two-fold increase from the year 2003 from some US\$718 billion. The region's combined GDP was US\$1,504 billion in 2008, a level almost double that of the 2003 level of US\$718 billion. ASEAN trade was on a similar upward trend: US\$1,710 billion in 2008 compared to US\$824 billion in 2003. Foreign direct investment into ASEAN grew from US\$24 billion in 2003 to US\$60 billion in 2008.

ASEAN's systematic forward movement towards tariff liberalization is an indication of how a regional grouping addresses the concerns of rising protectionism which resonates at various fora of Asia Pacific Economic Cooperation (APEC).

(www.antaranews.com, 15 November 2009)

## EU Provides € billion for Trade Facilitation in Developing Countries

THE European Union presented to the WTO the trade facilitation projects it has financed between 2006 and 2008. The review shows that the EU has spent •1.01 billion on 95 projects related to capacity building and technical assistance. The projects have helped simplify import and export procedures, boosting the ability of developing countries to benefit from trade and open global markets. The projects are part of an overall commitment to Aid for Trade by the EU worth more than •7 billion every year.

EU Trade Commissioner Catherine Ashton said: "Developing countries cannot take full advantage of the benefits of open and fair trade if their exports fall at the first hurdle. Trade facilitation is vital for developing countries' growth prospects."

In addition to the commitments by the European Commission, the submission to the WTO contains examples of trade facilitation related projects around the world supported by fourteen EC Member States (Finland, Germany, Poland, Czech Republic, Latvia, Sweden, Slovenia, Lithuania, UK, Belgium, Netherlands, Spain, Ireland and France). The EU is the only WTO member to submit such a review.

Funds have supported projects in Asia (21%), Africa (18%), Latin America and the Caribbean

(18%), Middle East (4%), Oceania (2%) as well as non-EU Europe (including the Balkans and Commonwealth of Independent States: 37%)

Examples of successful projects are:

The EU provided •50 million for trade facilitation measures in Tunisia, notably by increasing efficiency of services, reducing costs and delays for business through enhancement of logistics and procedures of ports and customs.

The EU supported trade development in Chad by providing •2 million to strengthen institutional capacities and enhancing the trade environment, including a strong trade facilitation and capacity building component.

The EU funded a programme in Paraguay with •6 million to build up the capacity of Paraguayan Customs for putting in place simplified customs procedures in order to promote economic integration at the regional and international level.

## Background

Trade facilitation is the simplification of import, export and customs red tape, in order to cut time and costs for business. Trade facilitation is part of the Doha Round of negotiations and a priority for businesses around the world. Trade facilitation funding is provided as part of a broader commitment to "Aid for Trade" (AFT). Total EU funding for AFT is over •7 billion per year. Within this, the EU has pledged •2 billion per year for targeted "Trade Related Assistance" (TRA) by 2010, with •1.98 billion already being provided in 2007. Trade Related Assistance targets specifically trade policy and regulatory hurdles, while wider Aid for Trade also funds trade related infrastructure, building productive capacity and budget adjustment.

(www.europa.eu, 13 November 2009)

## India to Play a Proactive Role in SAARC and SAFTA

ECONOMIC integration of all the eight South Asian countries poses a challenge to the political leaders of the region. Though South Asia Free Trade Agreement (SAFTA) was operationalized from July 2006 the intra-regional trade increased at a snail space from 3.2 per cent in 1980s to only 5.5 per cent

in 2008, which is far below when compared with 58 per cent in NAFTA, 54 per cent in European Union, 25 per cent in ASEAN and 22 per cent in COMESA.

Several bottlenecks like poor infrastructure and trade facilitation measures, inadequate connectivity, non-tariff barriers and lack of political will have come in the way of faster integration. SAFTA was launched under South Asian Association for Regional Cooperation (SAARC) which is an eight-nation body consisting of Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka.

The Indian Minister for External Affairs, S.M. Krishna addressing a conclave jointly organized by the SAARC Chamber of Commerce and Industry, Asian Development Bank and FICCI in Delhi, said that the region has "become captive to the security situation. Issues such as cross-border terrorism and incidents of anti-India activities from terrorists of our neighbouring countries have impacted on the process of regional economic engagement, connectivity and people-to-people contacts."

He, however, committed that India would fulfill its responsibilities in SAARC in an asymmetric and non-reciprocal manner for the benefit of the countries in the region. "The need of the hour for South Asia is to move beyond security issues that shackle it, into an era of mutual trust and mutually reinforcing growth and development. United, the South Asian countries can swim and smoothly tide over obstacles like global financial crisis," he said.

Shri Krishna disclosed that a draft Agreement for Trade in Services would be finalized for signature in the next SAARC Summit scheduled in Bhutan in 2010. Discussions are also ongoing in SAARC to strengthen financial integration with a view to move towards a regional Customs Union. The SAARC Food Bank is now operationalized with a total stock of 243,000 tonne contributed by all member states. The South Asian University is likely to set up on a 100 acre land in Delhi in July 2010. Also the SAARC Textiles Museum would be set up in Delhi.

Shri Krishna was, however, satisfied that SAARC "brand" was emerging as an indicator of progress, particularly through regional projects funded by SAARC Development Fund. He said that a SAARC Regional Task Force has recently finalized

the Standards Operating Protocol on Trafficking of Women and Children. He said physical connectivity of the region would be strengthened based on the recommendations of the SAARC Transport Ministers Meeting which includes identifying three road corridors from SAARC member states through Pakistan to Afghanistan *via* the Attari-Wagah border with India, early commencement of Colombo-Kochi sea link, running of a demonstration container train from Pakistan to Bangladesh through India and Nepal, early commencement of direct air linkage between Delhi and Male and constitution of an expert group to finalize Motor Vehicles and Railway Agreements.

As a mark of India's commitment to regional integration, regional projects in telemedicine, teleducation, solar rural electrification, seed testing laboratories, rainwater harvesting projects have already been initiated. The SAARC Secretary General, Dr. Sheel Kant Sharma said that SAFTA technically may not be a perfect agreement but it stands for commitment of our leaders to creation of an operational free trade area in South Asia. Regionalism in South Asia has developed as an addendum to a strongly entrenched and historical network of bilateral linkages. Bulk of trade in South Asia is accounted by volumes of trade between India-Bangladesh, India-Sri Lanka, Bangladesh-Pakistan, India-Nepal, India-Pakistan, India-Bhutan, Afghanistan-Pakistan and increasingly between Pakistan and Sri Lanka.

The trade between India and Sri Lanka increased after signing of an FTA. Dr. Sharma said that there was a large volume of informal trade in the region which reflects the potential for increasing formal trade under SAFTA. A study done by the ADB pegs the potential for trade under SAFTA at \$85.1 billion. He said that the intra-SAARC trade suffered heavily from high costs - among highest in the world. This has encouraged informal trade in the region. With every 1 per cent reduction in cost, the stimulus to official trade would be about 5 per cent, he said

Dr. Sharma suggested pruning of Sensitive List for SAFTA trade, removal of non-tariff and para-tariff barriers, improved trade facilitation, development of adequate infrastructure, regional motor vehicles and railway agreements to facilitate trade, creation of regional supply chains and fixing

of export targets. He also suggested harmonization of trade and investment policies in the region. "As part of political commitment to build connectivity, the countries of South Asia may offer, on reciprocal basis, transit facilities to third countries connecting each other, also establishing links with larger Asian neighbourhood, including West, Central and South-East Asia," he said.

The President of SAARC Chamber of Commerce and Industry, Mr. Tariq Sayeed alleged that the SAARC Visa Exemption Scheme had not worked well. It is limited to 100 leading businessmen from each country with restriction on visit to three cities in India and Pakistan, while bilateral visa allows the holder to visit eight cities. Besides the port authorities are not familiar with the SAARC Visa Exemption Scheme. He suggested that the SAARC Visa Exemption stickers should be increased from 100 to 300 and issuance of 500 multiple Business Visa for 5 years.

Regarding investment, he said that no investment treaty exists between India and Pakistan. Pakistan as a gesture of goodwill has allowed investment from India on case-to-case basis. He suggested the need for an Investment Treaty for the region. Mr. Sayeed said that due to poor trade facilitation in the region World Bank has estimated that it took 34 days and eight documents for export and 42 days and 13 documents for imports, making South Asia the second least trade-friendly region in the world.

Apart from regional agreements on Motor Vehicles and Railways, construction of inter-city expressways and highways, connecting borders would be needed to flourish long distance trucking operations, he said and added that South Asian Regional Standards Organization should speedily address the issues of standards, particularly sanitary and phytosanitary standards. The Managing Director General of Asian Development Bank (ADB), Rajat M. Nag said that while the industrialized world has had to confront the worst recession in 70 years, the developing Asia, particularly countries with large domestic and consumer demand, were leading the world back to economic expansion.

Monetary and fiscal stimulus appeared to have worked and the region was showing a V-shaped

recovery. "There are 18 concluded FTAs which aim to link the region's economies together and with global markets. The enhanced SAFTA is now also more inclusive with provisions such as sequenced tariff liberalization, flexible rules of origin and greater technical assistance," he said. He added that fostering regional integration in South Asia was one of the three strategic agenda of ADB under long-term strategic plan - Strategy 2020 - the others being inclusive growth and environmentally sustainable growth.

According to Shri Nag, ADB is focusing more on private sector and in the next decade ADB would boost its role as a catalyst for investment that the private sector might not otherwise be willing to make. It would invest in infrastructure and advise governments on the basics of a business-friendly environment, including reliable rules, regulations and policies that attract greater private sector enterprise. ADB's tools include direct financing, credit enhancement, risk mitigation guarantees and new innovative financial instruments. It would increase its share of annual operations by a target of 50 per cent by 2020. ADB would also share its experience in Mekong region, ASEAN and Central Asia.

(www.mynews.in)

## Make DGFT a Centre for Trade Facilitation

TRADE facilitation, or reduction of transaction costs, is the top priority for expanding trade and integrating India more fully in the global economy. Moreover, it is the only Singapore issue of WTO that has survived. Also, India is taking a proactive stance towards trade facilitation in the Doha Round and has begun implementing policies to reduce transaction costs. What India urgently needs to do now is to earmark one agency to take the lead in coordinating with the multitude of agencies involved with trade facilitation.

The massive transaction costs prevailing in India that are associated with the delivery of internationally traded goods and services, paper work and signatures required to undertake trade defy all logic. The cargo dwell time is one of the highest in the world. What takes days at Indian ports and airports takes just a few hours in

successful trading countries. It is clearly the main stumbling block to rapid export expansion and a greater inflow of direct foreign investment into India.

It is good to know that the government is implementing the recommendations of the Working Group on Trade Facilitation (WGTF). The WGTF report had indicated that one requires clearance from 29 different government agencies. There are several other recommendations that are also being implemented. These include, easier payment facilities; streamlining clearances from ministries required to safeguard health, environment, security and safety through reliance on a risk management system; and finally, adoption of a single-window inspection a la Singapore TradeNet.

The pressing problem is that there are too many agencies involved with trade facilitation, with no one with real accountability. The recommendation of the Task Force on Indirect Taxes and WGTF was to set up two inter-ministerial committees, one at the Centre headed by the CBEC Chairman, and the other at the port/airport headed by the Commissioner of Customs. Unfortunately, the first committee has hardly taken its task seriously as yet.

Customs has a leadership role to play in several countries. In a majority of these countries, as in the US, it is not a part of the finance ministry. If revenue generation is a major objective of the customs department, then trade facilitation will, at best, occupy a distant second priority.

A better alternative in the Indian context is to entrust this responsibility to a restructured Director-General of Foreign Trade (DGFT). In fact, DGFT should be transformed into a Centre for Trade Facilitation (CTF), with a small unit looking after the residual export incentives. This is on the assumption that a bulk of the export sops are on their way out. Housing the CTF in the Ministry of Commerce and Industry has another added advantage. Since trade facilitation will be a part of WTO policy, CTF can better coordinate with the trade policy division in the same ministry.

The DGFT is well prepared for this role. It has already put in place a system of benchmarking

DGFT services provided to trade and industry and monitoring these regularly to check their adherence to the time-frame stipulated. This is precisely what he needs to do with trade facilitation indicators. Most important, the key objective of the Commerce Ministry is to promote trade, and not maximize customs revenues.

The functions and staffing of DGFT has to undergo a major change. It needs to have expertise on customs, rules of origin, standards, transport and ports, logistics and of a trade economist. The mindset has to switch from being a provider of incentives to facilitator of trade. This is not going to be easy. But it is surely worth a serious try, since the other alternative of giving the task to customs is not yielding the desired results.

*(The Financial Express, 15 December 2005)*

## India to Gain from Trade Facilitation

INDIA stands to gain from trade facilitation measures, particularly if it is dovetailed to the ongoing domestic reform programmes. This is among the conclusions of a National Seminar on Trade Facilitation, which was organized by the Ministry of Commerce & Industry, the Department of Revenue and UNCTAD, on 18 August 2005, as part of a series of stakeholder consultations on issues in the ongoing WTO negotiations especially in the context of the forthcoming Ministerial Conference of the WTO in Hong Kong in December 2005.

Estimates of gains from trade facilitation suggest magnitudes equivalent to those brought by tariff liberalization, although estimates vary depending on the definition of trade facilitation used (i.e., the extent to which it included broader factors such as transport costs). Such gains are likely to be significant for small and medium enterprises which tend to suffer most from current poor trade facilitation. However, the study carried out by UNCTAD shows that large firms are likely to see higher reduction in costs through improved trade facilitation. Transaction costs of trade tend to be higher for the poorest developing countries, which generally have the worst current trade facilitation practices.

The wide-ranging reforms of customs procedures that are in place were spelt out. These included facilities for advanced filing of manifest before the arrival of means of transport, using the internet for round the clock filing of import declarations through the ICEGATE system, facilitate clearance of goods from port first and complete procedures later, allow clearance of goods in disputed cases after taking adequate security; mechanism for regular consultation with trade and other stakeholders; transparency in clearance through e-tracking of documents under process. At the same time, like other developing countries India also needs to exercise caution that commitments should not be too onerous to implement in terms of human, financial and institutional burdens.

Developing countries, including India, would require technical assistance and financial resources from various sources to develop adequate infrastructure and technical capability to implement some of the commitments that may arise from the negotiations. In meeting the needs for capacity building, technical assistance and financial resources, inter-governmental organizations would have an important role to play during and after the negotiations on trade facilitation.

High transaction costs for border clearance of goods is a significant constraint to exports and imports. The current conditions of trade facilitation in the world suggest strong handicaps for developing countries. For instance, customs clearance for sea cargo takes an average of 2.1 days in developed countries and 4.8 in East Asia and the Pacific. But traders in Latin America and the Caribbean must wait up to 9 days, and those in Africa and South Asia, 10 days.

The issues that need to be attended to are harmonization of standards for clearance of agriculture and food products in a customs union, adopting fair testing methods by taking account of specific product features, improved transparency of rapid alert system and reduce their potential as a trade barrier.

*(www.commerce.nic.in)*

## Trade Facilitation in WTO: Developing Countries Stress Need to Clarify Scope of Negotiations

THE WTO's Negotiating Group on Trade Facilitation held its third meeting on 2-3 May 2005. There were 11 new papers, coming from Bolivia, Mongolia, Paraguay, Korea, the European Communities, Switzerland, again Paraguay, Rwanda, Peru, Hong Kong China, Norway, New Zealand, Singapore, China, Pakistan and the African Group. Several of the papers were joint submissions from some of the above countries. In addition, there was a statement from the LDC Group, and an informal paper by India, Kenya and the Philippines (on behalf of the "Core Group" of developing countries) providing a response to earlier papers that had been presented at the previous meeting of the Group in February.

While some members pressed ahead with proposals for new clarification of the relevant existing GATT rules as well as new obligations,

several developing countries voiced their concern that some proposals that have been put forward exceeded the mandate for the negotiations.

Many countries, especially the LDCs and the African Group, also stressed the importance of giving concrete form to special and differential treatment (SDT) for developing countries, assessment of implementation costs and the method of assisting developing countries to meet these costs, and capacity building needs.

The mandate of the trade facilitation negotiations (as specified in Annex D of the General Council 1 August 2004 decision, widely known as the "July package") is to clarify and improve relevant aspects of Article V (transit of goods), Article VIII (fees and charges) and Article X (transparency in the publication and administration of trade regulations) of GATT 1994, with the aim to further expediting the movement, release and clearance of goods including goods in transit.

(<http://www.twinside.org.sg/title2/twninfo218.htm>)

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## DOCUMENTS

### Negotiating Group on Trade Facilitation

## Cooperation Mechanism for Customs Compliance

### COMMUNICATION FROM INDIA

The following communication, dated 21 October 2005, from the Delegation of India, is being circulated in advance of the Negotiating Group meeting of 24-25 October 2005.

#### I. Introduction

1. The joint proposal by India and the United States in TN/TF/W/57 sets out the basic approach to establish a multilateral mechanism for exchange and handling of information between Members. The present paper deals with exchange of trade transaction information consisting of the data elements and document(s) that are usually collected by customs, at the time of importation or exportation. It proposes a cooperation mechanism for exchange of specific information, in a limited number of cases upon request, when there is reason to doubt the truth or accuracy of the declaration filed by the importer or exporter.

#### II. Proposal

2. Establish a mechanism to facilitate cooperation between customs authorities by:

- (i) Exchanging specific information upon request on matters such as customs valuation, HS classification, full and accurate description, quantity, origin of goods in identified cases where there is reason to doubt the truth or accuracy of the declaration filed by the importer or exporter. The request for information would be limited to the data elements contained in the import or export declaration.
- (ii) In appropriate cases, providing document(s) filed in support of goods declaration to the requesting country for investigative and/or judicial processes.

#### III. Justification

3. The objective of the present negotiations is to simplify and liberalize border controls to ensure expeditious clearance of the legitimate trade without compromising on the controls that have to be exercised. A multilateral cooperation mechanism for exchange of information among customs administrations would be an important step in achieving this aim.

4. There are existing arrangements for exchange of information through negotiating bilateral agreements. However, bilateral agreements are not always easy to enter into, and at times, they are limited in nature. It is also not possible to have bilateral agreements with all countries on account of logistical limitations or due to unwillingness of either party to enter into such an agreement. The bilateral approach also has inherent limitations on account of limited negotiating capacity of some Members. These negotiations present an opportunity to provide a multilateral underpinning to customs cooperation which would complement the existing bilateral cooperation mechanisms.

#### IV. Methodology

5. The form of cooperation envisaged under this proposal would be in a limited number of cases where the requesting administration, after carrying out necessary internal verification, has reasons to doubt the truth or accuracy of any element of the

import or export declaration or supporting document(s). There will be an inbuilt mechanism to ensure that the requests are not made in a routine manner. Further, most of the information that may be required by the requesting administration could be readily obtained from the export or import documentation. In a few cases where the supporting document(s) is requested, the same is usually in the possession of the requested administration as it is submitted by the trader for processing the entry documents. Thus the exchange of requested information may not involve any additional burden in terms of resources to the requested administration. For making such requests, a time limit could be considered to avoid any hardship for retrieving old documents.

6. The nature of information to be requested would be specific details (e.g., description of goods, grade or specification, HS classification, value, quantity, country of origin, etc.) concerning the transaction. Supporting documents wherever required would include commercial invoice, packing list, certificate of origin, etc. These documents would be mostly certified or authenticated copies. The information sought could also be for confirming authenticity of supporting document(s).

7. The procedure to be followed for the proposed exchange of information could be through a nodal agency to be designated by each customs administration and notified to the WTO. The designated nodal agency would be required to confirm that all necessary internal checks have been carried out within the country of import or export, as the case may be, and that the information sought is necessary to secure compliance with the customs requirements of the requesting country. The request for assistance should be made in one of the three official languages of the WTO. Such requests could be made in writing or electronically. Any request for information should include brief details of the case, nature of doubt and reasons for doubting the truth or accuracy of the declaration, results of internal verification carried out, and the details of information required from the requested administration. It would be desirable to lay down a reasonable time limit for furnishing information so that the requesting country is assured of a response.

8. This proposal envisages that the information exchanged should be subject to a confidentiality

clause, namely that the information supplied should not be disclosed except to the extent required in judicial proceedings. A similar provision exists in Article 10 of the WTO Agreement on Customs Valuation. The information exchanged through this cooperation mechanism can hardly be effective unless it could be used as evidence in judicial proceedings to secure customs compliance. Under various GATT and WTO provisions (Article X of GATT, Article 11 of the Agreement on Customs Valuation), Members are obliged to have strong judicial systems for review of decisions taken by customs authorities. During the present negotiations, too, there are proposals to improve the system of judicial review. All this puts a strict burden of proof on the customs administration to establish a violation. Evidence gathered from other administrations can at times be crucial to discharge this burden of proof. It is therefore essential that information obtained through the proposed cooperation mechanism is allowed to be used as evidence in judicial proceedings without bringing in the cover of confidentiality.

9. A related issue is the concern of some Members to share information on account of domestic confidentiality laws. There is a need for greater clarity on this issue. The declarations presented before the two customs administrations (importing and exporting) ought to be based on identical information relating to the transaction. All the relevant particulars in respect of goods are in any case to be presented to customs administrations in both the countries. In case of a true and accurate declaration, the same information would in any case be available with the requesting customs administration as well. Hence, confidentiality concerns should not be in terms of sharing such information with customs administration of another Member, but should only be in terms of making it public. In this regard, a general principle can be adopted that information obtained under this mechanism shall be afforded the same degree of confidentiality by the receiving Member that it applies to similar information in its custody. We should be mindful that any blanket denial to exchange information on grounds of confidentiality would only help the cause of non-compliant traders. In many cases the information provided supplements the results of investigation and acts as crucial evidence in establishing the offence in

judicial proceedings. In view of the above, it is proposed that Members should claim no immunity under domestic confidentiality laws for providing information and the information provided should be allowed to be disclosed in judicial proceedings.

10. Implementation of the cooperation mechanism for customs compliance should be facilitated by an appropriate body in the WTO. In addition, Members shall have the freedom to raise issues concerning non-compliance of requests for information exchange.

#### V. Technical Assistance

11. As indicated above, the information exchange is required only in a limited number of cases where the truth or accuracy of declaration by importer or

exporter relating to value, HS classification, description, quantity or origin of goods is reasonably suspected after necessary internal verification has been carried out. Retrieval of requested information will be generally from the data and documents already available with the customs. Transaction data and documents may be needed as evidence in certain cases to establish violations of customs law in judicial proceedings. Technical assistance needs in this area are not likely to be significant as such cooperation can be effected through the existing administrative setup of the customs administrations. However, this issue can be considered if such need is projected by any Member.

(www.wto.org TN/TF/W/68 24 October 2005)

### Negotiating Group on Trade Facilitation

## Multilateral Mechanism for the Exchange and Handling of Information

### COMMUNICATION FROM INDIA AND THE UNITED STATES

The following communication, dated 22 July 2005, from the Delegations of India and the United States, is being circulated in advance of the Negotiating Group meeting of 25-26 July.

#### PROPOSAL BY INDIA AND THE UNITED STATES

#### I. Proposal

- Establish a multilateral mechanism for the exchange and handling of information between Members.

#### II. Effective Cooperation

1. An important element of the Trade Facilitation negotiating modalities includes the mandate to "aim at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues." The Trade Facilitation negotiations present an opportunity to achieve an enhanced systemic foundation for cooperation that will be a significant achievement by offering new and enhanced ways for Members to improve border regime efficiency while also enhancing capabilities to ensure compliance with domestic legal requirements.

#### III. Experience

2. Traditionally, cooperative information exchange efforts have been undertaken in a bilateral context, particularly with regard to case-specific matters that have advanced to the level of an actual ongoing investigatory proceeding. Such approaches will continue to be important to address the often unique demands of an advanced individual investigation. The current negotiations provide an opportunity to give a multilateral underpinning to such cooperative efforts. At the same time, the unprecedented growth in global trade provides new challenges to authorities responsible for administering a border regime. Advancements in information technology and logistics techniques – and these negotiations – all present the potential for the establishment of new tools for authorities to meet such challenges.

3. Increasingly, border authorities place a premium on utilizing functions that are “away from the border.” Advancements of this nature are being undertaken by Members at all levels of development, with growing use of measures such as an “advance ruling regime,” submission of “pre-arrival information” and pre- and post-importation audits or verifications. Each is an important tool both for achieving compliance with relevant domestic laws and regulations and for ensuring a trade-facilitative border environment that will foster greater trade and investment.

4. At the core of meeting the challenges presented today to border authorities is information – its rapid transmission, handling, and use. Many of the proposals already submitted to the negotiations have described proposed commitments for certain measures to be undertaken “away from the border” as a “modernization” of what is currently articulated in GATT Articles V, VIII, and X. Such proposals also implicitly underscore the complementarity of trade facilitation measures and compliance efforts. Our work on cooperation and information exchange will help round out the operation of the commitments envisioned by these types of proposals.

#### **IV. A Mechanism for Information Exchange**

5. For purposes of this proposal, information can be broken down into two types: the first is a defined universe of trade transaction information consisting of the “documentation” or data elements that relate to the movement of goods across a border – i.e., the specific information normally collected in association with the importation and exportation of goods (e.g., name of importing or exporting party, origin of goods, description of goods, HS classification, declared value, shipper, etc.). The other type of information is the secondary information that may relate to the trade transaction elements. The secondary information often arises in a context of a more advanced procedural or investigatory stage – generally presenting case-specific needs and sensitivities that require individual handling. Both information categories described can be the subject of various cooperation efforts, and as such are potentially matters that can be addressed as the negotiations proceed. However, this proposal deals with the first category

of trade transaction information and sets out a proposed path to establishing a mechanism for exchange of information between Members. A future submission will set out a proposed path for addressing the second category of information.

6. Members should establish a mechanism that is practical and effective, involving a commitment pertaining to (1) a defined universe of information, (2) a practical basis for exchange that is efficient and not burdensome, and (3) a structure for information exchange that is forward-looking – both with regard to promoting continuous improvement in cooperation and commonality of information requirements.

7. These objectives also point to an information exchange mechanism that is ultimately built upon implementation of World Customs Organization’s Customs Data Model. Developing such an information exchange mechanism based on defined universe of trade transaction information, ultimately linked to the implementation of the WCO Data Model, would serve a dual purpose: enhancing individual Members’ ability to ensure compliance with domestic laws and regulations pertaining to goods crossing their borders, and improving Members’ ability to facilitate trade by moving compliance functions “away from the border.”

8. A critical element of moving this proposal forward would be to address the matter of confidentiality in handling of such information. This is often a complex matter, but at the same time developing an appropriate and effective commitment regarding treatment and handling of information subject to exchange will be a linchpin to success.

9. As part of the ongoing negotiations, this proposal lends itself well to addressing the issues of costs (and cost savings), technical assistance, implementation transitions and other needs of developing-country Members in a very concrete and practical manner. This proposal should be seen as a vehicle toward bringing benefit not only to individual Members at all levels of development, but also to the trading system as a whole – through the emergence of a virtual cooperation and information “network” involving all Members that can be built upon as needed.

10. As this is an initial proposal regarding an important subject area, we would make further submissions, either jointly or individually, to further advance the work and provide necessary further elaboration of the issues highlighted in this paper or other issues related to an effective customs cooperation mechanism.

#### V. Proposed Next Steps

- Develop elements for a mechanism for exchange of defined universe of trade transaction information, establishing an efficient process exploring the potential for use of the WCO

Customs Data Model, and addressing confidentiality matters.

- Assess needs and priorities of developing countries related to implementation of the proposal and develop a path by which every Member can ultimately achieve full implementation of the mechanism.
- Work with relevant international organizations and resource providers to address technical assistance and other issues as appropriate.

(www.wto.org TN/TF/W/57 22 July 2005)

## Trade Facilitation

### India & World Trade Organization (WTO)

1. Trade Facilitation is the only subject from the bundle of four Singapore issues on which negotiation had started pursuant to the WTO's July Framework Agreement of 2004. The modalities for negotiation are set out in Annex D of the July Framework Agreement. There are three identified aims of negotiation under Annex D: (i) To clarify and improve relevant aspects of GATT Articles V (Freedom of Transit), VIII (Fees and Formalities connected with Importation and Exportation) and X (Publication and Administration of Trade Regulations); (ii) To enhance technical assistance and support for capacity building in this area; and (iii) To have provision for effective cooperation between Customs authorities on trade facilitation and Customs compliance issues.

2. India's participation in the negotiations has been positive and constructive. In the ongoing negotiation, Members have already submitted a large number of proposals for clarification of GATT Articles V, VIII & X. India has filed a detailed proposal on how a multilateral cooperation mechanism would operate (W/68) which has been co-sponsored by Sri Lanka. Pursuant to the proposal submitted by India under document W/68 on Cooperation Mechanism for Customs Compliance, another paper (TN/TF/W/103 dated 10 May 2006) has been filed by India containing specific elements for multilateral cooperation mechanism for exchange of information between customs administrations of

Members. Later, India has filed its textual proposal (TN/TF/W/123 dated 4 July 2006) on Cooperation Mechanism for Customs Compliance which has also been co-sponsored by Sri Lanka.

3. India has also presented its own proposals (TN/TF/W/77 dated 10th February 2006 and TN/TF/W/78 dated 13th February 2006) for clarification of the existing provisions of GATT Article VIII and Article X. India has subsequently filed textual proposals - TN/TF/W/121 and TN/TF/W/122, both dated 4th July 2006.

4. Negotiations are also looking at the aspect of technical and financial assistance for capacity building in developing countries. A proposal (TN/TF/W/82 dated 31 March 2006) has been jointly filed by the People's Republic of China, India, Pakistan and Sri Lanka. This paper addresses the concerns of the developing countries such as (i) the arrangement of commitments for developing Members, (ii) the provision of technical assistance and capacity building support; and (iii) the applicability of the dispute settlement mechanism.

5. The Hong Kong Ministerial Declaration on Trade Facilitation is a good basis for further negotiations on this subject.

([http://commerce.nic.in/trade/international\\_trade\\_tf facilitation.asp](http://commerce.nic.in/trade/international_trade_tf facilitation.asp))



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