VOLUME 16 NUMBER 1 JANUARY-MARCH 2014

FOCUS WTO

TRADE FACILITATION

INDIAN INSTITUTE OF FOREIGN TRADE

FOCUS WTO

VOL. 16 NO. 1 • JAN.-MAR. 2014

Editorial Advisor

Dr. Rakesh Mohan Joshi

Editor

Dr. Anil K. Kanungo

The Institute brings out the Quarterly Journal, *FOCUS WTO* exclusively dealing with WTO and WTO-related issues. Each issue is dedicated to a particular theme. A distinct feature of the Journal is its section, "Lead Articles" focusing on the theme. As the next issue is devoted to the theme "Trade in Services", we at *FOCUS WTO* invite highly analytical articles focusing on the theme for publication in the Journal with a word limit between 3000 and 3500.

Potential contributors may directly get in touch with Editor (Phone: 011-26853952, 26965124; Fax: 91-11-26867841, 26853956. Email: akanungo@iift.ac.in)

Visit our website: ***www.iift.edu***

SUBSCRIPTION RATES

Single Copy	₹300 $20 (Air Mail)
One Year	₹1,000 $100 (Air Mail)

For copies/subscription, please send DD/Pay Order drawn in favour of "Indian Institute of Foreign Trade" payable at New Delhi.

From the Director's Desk

One of the outcomes of the Bali Ministerial conference in December 2013 is the signing of a Trade Facilitation Agreement (TFA) that aims at a faster movement of goods and services across the border. The agreement focuses at reducing all forms of transaction costs, thus promising optimal trade gains in a globalized world.

Member countries feel that a multilateral agreement on trade facilitation in current scenario is a welcome step, as it promises to reduce time and costs, cut red tapism, improve transparency, besides simplifying and streamlining the customs and port procedures and finally increasing the revenue. But what they are apprehensive of, are the modalities and operational mechanisms that need to be in place to realize such gains.

Many of the developing and LDCs contest that the activities, practices and formalities that follow in implementing such a system require huge financial resources, large technical assistance and immense capacity building, to which many of them are either not ready or equipped. As a result, these countries are reluctant to undertake any legal obligations under the WTO.

With the signing of the agreement at Bali, there is a transparency and predictability in the system where each member would be required to promptly publish information regarding issues like importation, exportation and transit procedures in a non-discriminatory and easily accessible manner in order to enable governments, traders and other interested parties to become acquainted with them.

It is expected that this would build up trust and confidence in the system and urge developing and LDCs to activate and comply with the operational procedure and mechanism through financial and technical assistance which certain donor countries are willing to extend. The July Framework of 2004 Doha negotiations has already extended special & differential treatment (S&DT) to developing and LDCs to address this specific issue, whereby they need a lead time to implement such measures gradually. In recent years, India has undertaken reforms to simplify and modernize its trade procedures. As a developing country, India will be entitled to adequate transition time for implementing such a trade facilitation agreement.

For these countries where MSMEs 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 the WTO is to recognize, understand and manifest these developmental dimensions of trade facilitation.

(Dr. Surajit Mitra)

Bali Ministerial: Significance of Trade Facilitation for SMEs and Consumer Welfare

Pradeep S. Mehta and ***Ms. Krista Joosep***

THE article looks at the significance of the WTO Trade Facilitation Agreement (TFA) politically and economically, particularly from the perspective of the least developed and developing country consumers and small and medium-size enterprises (SMEs). The significance of the TFA after the 9th WTO Ministerial Conference at Bali is its real potential to create economic gains by providing an enabling environment for the SMEs and cutting prices for consumers. The article deals with the issue in detail and provides an in-depth analysis of the significance of the agreement at Bali.

* The authors are with Consumer Unity & Trust Society (CUTS), International.

Background to Trade Facilitation Agreement

A politically and economically significant change was brought about at the WTO's 9th Ministerial Conference at Bali with regard to the stalemate situation that has enveloped multilateral negotiations for almost two decades. The Agreement on Trade Facilitation (TFA) was approved by the WTO Members at the December 2013 Bali Conference, which, if it comes into force, will engender impressive GDP and cost cutting benefits for the whole world. It is particularly important for smaller business dispro-portionally affected by customs and border costs and procedures, and will bring about important cost-cutting benefits for the consumers everywhere. In this light, the article will review the significance of the TFA for the WTO negotiations and for SMEs and consumers in developed, developing and least developed countries (LDCs).

The concept of Trade Facilitation (TF) means reducing the costs that are associated with moving, clearing, and releasing import and export goods through simplification and harmonization of international trade procedures with respect to activities, practices, and formalities involved in collecting, presenting, communicating and processing data, and other requirements for cross-border movement of goods.

The significance of the TFA for the WTO Doha Development Round negotiations lays in it being the first Doha Round topic that has been approved by the WTO Membership. It was first brought to the table at the 1st WTO Ministerial Conference held in Singapore in 1996. The actual negotiations started in July 2004 under the modalities for negotiations on Trade Facilitation contained in the "July Package", mandating members to clarify and improve GATT 1994 Article V (Freedom of Transit), Article VIII (Fees & Formalities with respect to Importation and Exportation) and Article X (Publication and Administration of Trade Regulations). The Agreement has been finally approved at the 9th Ministerial Conference in Bali and is expected to come to force by 31 July 2015 if two-thirds of the Members ratify it by that time.

As the trade facilitation topic is part of the Doha Development Agenda (DDA) governed by a "single undertaking," all the negotiated topics of the DDA would need to be agreed as one package. But due to the lack of agreement on other issues of the

DDA, for the TFA to become legally effective on its own, it needs to be adopted through an amendment to the WTO Agreement. According to Article 47 of the Doha Ministerial Declaration (2001), it is possible for "agreements reached at an early stage […] to be implemented on a provisional or a definitive basis" (whether or not other items under negotiation are agreed) if a clear consensus already exists on that agreement. As TF has always been seen as a developed countries' issue, the ensuing discussion of the DDA issues in the Post-Bali agenda are significant to ensure that a balanced outcome of the Doha mandate issues is achieved.

Technical Assistance and Capacity Building Aspects of TF Agreement

In the WTO negotiations, TF has not been seen as a developmental issue, since it does not address the most pertinent problems of the developing countries and the only reason the TFA has been agreed on was that the Agreement in its Section II includes flexibilities for the developing and LDCs to be able to undertake the implementation of the costly provisions of the Agreement. These flexibilities are expressed through provisions of technical assistance and capacity building by donor countries.

This is a significant development in multilateral trade instruments. As the former WTO Director General Pascal Lamy has said, "for the first time a WTO agreement recognizes the explicit link between adopting WTO commitments and technical assistance needed to implement them. This is a huge step forward in the traditional construct of WTO agreements."[1] For the less developed countries that will ratify the TFA, the requirement to implement costly provisions follow the principles outlined in paragraph 1.2 (Section II) highlighting that "[t]he extent and timing of implementation of the provisions of this Agreement shall be related to the implementation capacity of developing and least developed countries," and "assistance and support for capacity building should be provided to help developing and least developed country Members implement the provisions of the agreement," and when the Member "continues to lack the necessary capacity, implementation of the provision(s) will not be required until implementation capacity has been acquired."[2]

However, for some of the developing country members, the Agreement did not go far enough with regard to technical capacity building as the Agreement only contains "best endeavour" rather than binding language. With this Agreement, donor Members did not actually commit to providing technical assistance and capacity building, but solely "agree[d] to facilitate the provision of support for capacity building to developing countries and least developed country Members, on mutually agreed terms and either bilaterally or through the appropriate international organizations" (measure 9.1 of Section II); and the Committee on Trade Facilitation "shall, as appropriate, take actions that will facilitate the acquisition of sustainable implementation capacity" (para. 6.4 of the Section II).

In order to be able to understand the significance of the different provisions, the structure of the Agreement is explained. Section I of the Agreement deals with substantive and procedural obligations that increase predictability of rules, regulations, and procedures. The different articles outline rules on availability and publication of information (Article 1); opportunity to comment on laws before they enter into force (Article 2); advance ruling (Article 3); disciplines on fees and charges (Article 6); release and clearance of goods (Article 7); formalities (Article 10); customs cooperation (Article 11), etc. As mentioned above, Section II, on the other hand, deals with the flexibilities that have been granted to the developing and LDCs.

What make the Agreement particularly interesting is that the LDCs and developing countries can categorize the 12 substantive articles and their sub-provisions into Categories A, B, and C, which will further define according to which timeframe and condition the different provisions shall be implemented. Category A provisions "are to be implemented upon entry into force;" Category B "after a transitional period;" and, Category C "after a transition period […] and [upon] acquisition of implementation capacity through the provision of assistance and support for capacity building." More specific details on the categories are

outlined in the ensuing paragraph, since the timelines are significant for the developing and LDCs because they will help to define when certain measures of the TFA can start yielding the expected economic benefits.

Upon entering into force of the TFA, "each developing country Member shall implement its Category A commitments" and the least developed country Members "may notify the TF Committee provisions it has designated in Category A for up to one year after entry into force of this Agreement." Implementation of Category B and C provisions can be delayed and re-delayed by the developing[3] and least developed countries[4] if they have not acquired the capacity to implement these provisions. However, UNCTAD has estimated that the time for the implementation of the majority of the measures, should take place in three years and no longer than five years for the rest of the reforms after the coming into force of the TFA. There are significant timeline and capacity flexibilities included in the Agreement, which are reassuring to the developing countries but may delay accruing the benefits from the TFA.[5]

In order to concretize what the needs but also the available assistance are, according to the European Commission (2013) estimates, developing countries' implementation assistance need is about euro 1.2 billion, and the per country average needs for implementation of the TFA would be about euro 11.6 million over a 3-5 year period.[6] There are differences with regard to capital costs and recurring costs. Capital cost being introduction of automated systems, single windows, purchasing of equipment, and initial training. Recurring cost would be salaries, maintenance of equipment, and regular training. According to an OECD study on four developing and least developed countries (Burkina Faso, Mongolia, Kenya, and Dominican Republic) in 2012, the total trade facilitation costs in these countries ranged between euro 3.5 and euro 19 million and the annual operating costs about euro 2.5 million. The most expensive measures are related to information technologies, particularly the single window mechanism of Article 10.4, which in Mongolia cost euro 17 million and in Burkina Faso euro 3 million, recognizing however that the subsequent operating costs of these would be much lower, e.g. about euro 33,000 per year in Mongolia.[7]

It is clear, that the provision of financial, technical, and capacity building assistance is paramount. For example, in Kenya, out of the WTO TFA 12 Articles and their sub-paragraphs, in their internal assessment of their TF needs they have categorized only 8 issues into category A, meaning that they have the capacity to implement these measures now; only 3 in category B, meaning that they will be able to implement these but with a delay; and 34 measures into category C, meaning that they would need technical, financial, capacity building, and other assistance with regard to their implementation. Out of these provisions and sub-provisions, those that are particularly relevant for SMEs and consumers, only 2 are in categories other than C.[8] Kenya is not a unique case among the developing countries and in the coming years there will be important work needed in training, regulatory, policy, and institution building in order that the trade facilitation agreement can rise to its full potential with regard to providing the promised benefits.

As an encouraging development, already by the end of the Bali Ministerial Conference, donors had expressed their willingness to provide support to developing and LDC Members towards the implementation of trade facilitation measures through the WTO trust fund or directly to countries. In December 2013, the European Commission started a five-year programme worth •400 million towards this goal.[9] The government of Sweden also announced in December 2013 the launch of a trade facilitation training facility in Arusha, Tanzania worth US$1.6 million for the period of 2014-2015.[10]

Economic Significance of TF

As determined already, if the developing and LDCs do not accept the ratification of the WTO TFA in their countries, their countries will much less likely benefit from the economic prospects that the TFA holds. Therefore, for their consumers and SMEs to benefit from the TFA, the prerequisite is that their

governments are part of those that accept the ratification mechanism and start implementing the WTO TFA. In order to appreciate the scale of cost-cutting potential the TFA holds if it came into force, here are some UNCTAD, WTO, OECD, and other figures.

UNCTAD has estimated that "the average customs transaction involves 20-30 different parties, 40 documents, 200 data elements (30 of which are repeated at least 30 times) and the re-keying of 60-70 per cent of all data at least once."[11] For example, in Bangladesh on average it takes 12 days to clear a cargo load and it can take up to 30 days for imported goods to be released through customs. The estimates are that hidden cost can be up to US$1,000. In India, for example 258 signatures, 118 copies of documents, and long waiting hours are required for exporting goods. In Nepal, traders have to fill 83 types of documents for customs clearance, with 102 copies and 113 signatures. "The human resource requirements for completing these customs procedures are estimated to be 22 days."[12]

When we further consider landlocked developing countries (LLDCs), documentation and customs procedures and costs at each customs are cumulative, and hence cutting these costs for LLDCs is even more significant. There are 33 LLDCs in the world of which about half in Africa and the other half in Asia. According to the World Bank (1999), LLDCs are paying on average around 50 per cent more in transport costs than coastal countries, and have up to 60 per cent lower volumes of trade.[13] These cases can be even more extreme. For example, it has been estimated by UN-OHRLLS that "the shipping cost for a standard container from Baltimore (United States) to the Ivory Coast amounts to around US$3,000. Sending the same container to the landlocked Central African Republic will cost up to US$13,000".[14]

Helping to remove such trade barriers through the implementation of the TFA, would stimulate the US$22 trillion world economy by more than $1 trillion.[15] According to WTO estimates, the TFA could reduce business costs by between $350 billion and $1 trillion (WTO, 2013) and could increase world trade by between $33 billion and $100 billion in global exports per year and $67 billion in global GDP. For developing countries, "the estimated $1 trillion increase in two-way trade delivers GDP increases of $520 billion. Overall, the potential trade expansion from a far-reaching trade facilitation agreement could translate to world GDP increases of $960 billion annually."[16] The OECD has further assessed that the TFA would reduce total trade costs by 10 per cent in developed countries and by 13-15.5 per cent in less developed countries.[17] As the Agreement has been signed and is to be ratified, these benefits are closer than ever to be accrued.

In the past years, world trade has increasingly been inhibited by non-tariff measures (NTMs) rather than tariffs. These NTMs form a significant part of what the TFA deals with. By removing the TF "red tape" by just half would give an economic effect of removing all tariffs. Cost of cross-border trading amounts to about 15 per cent of the costs of the goods of which 5 per cent is caused by tariffs while 10 per cent by border and customs procedures.[18]

When considering specifically the articles that would bring about the greatest cost cutting opportunities of the TFA, the OECD estimates, that these would be from advance ruling, information availability, streamlined fees and charges, harmonization and simplification of documentation and other administrative procedures.[19] More specifically, these concern *inter alia* Articles 1, 3, 6, 7, and 10 of the TFA. OECD has equally highlighted that these measures are particularly important for manufactured goods. For agricultural goods, particularly beneficial are TFA measures highlighted in parts of Article 7 and Article 10.

Particular Significance of the TFA Measures the SMEs

What is the significance of the TFA measures to the SMEs? The WTO TFA holds great potential for all economies and their small and medium-size enterprises (SMEs), which are the backbone of both developed and developing economies. A World Bank survey, which consisted of a sample size of 47,745 firms and was carried out during 2006-2010 found that "[i]n the median country, [...] SMEs with 250 employees or fewer generate 86.01 per cent of the jobs."[20] In the

emerging economies, the Micro, Small and Medium Enterprises (MSME) contribute 45 per cent of the employment and 33 per cent of GDP, and these numbers are much higher when informal sector is also taken into account.[21] Furthermore, across the globe, when informal and SME sectors are put together, they contribute 65-70 per cent of the GDP.[22]

Hence, the importance of individual traders and SMEs for the economies cannot be underestimated. As seen, SMEs usually represent a largest share of employers in developing countries. Also, most intra-regional trade of food commodities, textiles and other consumer goods is done through individual traders and SMEs in Sub-Saharan Africa,[23] as well as along certain borders in Asia and Latin America. However, SMEs, due to the scale and volume of their trade are often disproportionally affected by their lesser ability to comply with customs rules, procedures, fees, and NTMs, i.e. the "red tape."[24] For example, in Sub-Saharan Africa, the tariff equivalence of "red tape" for imports corresponds to an additional tariff of 25.6 per cent.[25]

Cutting the "red tape" through TF can have a strong impact on SMEs' competitiveness and integration into regional and global value chains. A survey conducted from 2002-2006 in ten East and Southeast Asian countries and four South Asian countries involving 14,862 firms and SMEs operating in fourteen manufacturing sectors indicated that SMEs appear to be less responsive to improvement in transportation infrastructure than large enterprises. On the other hand, increasing regulatory predictability affects SMEs more. In order to expand the benefits of trade to SMEs, countries need to make more substantial investment in the "soft"[26] part of trade facilitation.[27] Therefore, a rule-based trading system and specific enabling environment is of particular interest to the smaller enterprises, which in part, can be provided by the implementation of the TFA.

Four areas in which the global trading system particularly affects SME competitiveness is services, which play a major supportive role for exporters, particularly in their home countries; access to trade finance; non-tariff measures (NTMs), which represent the biggest obstacles to trade; and trade facilitation, which can act to counter NTMs and other obstacles that companies face when trading.[28] In addition, studies that seek to identify the main barriers SMEs faced in international trade, draw attention to the following problems: limited information on foreign markets, shortage of working capital or finance, existence of different regulations in other countries, cultural barriers, and administrative red tape,[29] of which at least a few are addressed through the TFA.

Specifically with regard to the private sector TF needs, what the TFA can address are: fast tracking customs services, customs consulting the private sector on customs and administrative changes, automation of customs procedures for faster processing, removal of post clearance audits, valuation duplication, bureaucracy[30] and overall increasing predictability of rules, regulations, procedures, and availability of information as well as simplification of documentations requirements.[31] Some of these needs and corresponding TFA articles are non-exhaustively discussed below to understand better what is their significance for the SMEs.

Advance ruling of TFA Article 3 would help to eliminate inconsistent classification and origin decisions on the borders. This helps to better predict the duties to be paid and the price of the final product, which further creates an enabling environment for supply chains to be attracted to the reforming country.The growing importance of value chains in the world gives developing country SMEs opportunities to participate in value chains and acquire expertise in certain aspects of production, which is often more attainable to developing countries. The pre-requisite for value chains is faster movement of inputs across borders that need to cross borders multiple times during production process. Therefore, the bottom line is that inputs for imports and exports have to be able to move with ease across the borders. Implementing Article 3 of the TFA would provide benefits to the developing countries' SMEs by helping them to attract value chains.[32] For example, high value-added products, like transport and electrical equipment are considerably affected by longer

transaction time, since they are often part of production processes and used as inputs and some of these products need a lot of documentation to guarantee conformity to international standards, which adds additional time and costs.[33] A World Economic Forum study in 2013 concluded that reducing barriers to trade in supply chains could increase world GDP by six times more than just eliminating tariffs.[34]

Article 7 paragraph 7 provisions on *authorized traders* is of particular importance to advancing the SMEs competitiveness because of additional trade facilitation measures for import, export, and transit shall be established by WTO Members for operators, such as SMEs. These measures shall include "low documentation and data requirements", use of reduced guarantees,' "single customs declarations", etc., which can greatly enhance the participation and competitiveness of SMEs. These provisions should be prioritized by the developing country WTO Members in implementing the TFA. There are other important provisions for the SMEs under Article 7, such as *pre-arrival processing* (allowing documents to be dealt with prior to arrival of goods), *electronic payment* (allowing for payment of duties, charges and fees electronically), *release before final determination of duties* (faster release of low-risk consignment), etc.

As burdensome documentation are challenging to SMEs, Article 10 requires from TFA implementing country to review documents and formalities making sure that they allow for rapid release and clearance of goods. It also outlines measures on simplification of documentation requirements, acceptance of copies for documentation, and uniform documentation and data requirements for import, export, and transit.

Furthermore, administrative *charges and fees* apply per procedure and are not connected to the value traded,[35] therefore, other important articles for SMEs are Article 6 with regards to reforming provisions on "export and import fees and charges" as well as Article 1 on "availability of information", which can often be a challenge, as SMEs do not have extensive resources to search for information. Also, according to the TFA Article 2, each WTO Member (that has ratified the TFA) shall provide opportunities for traders to comment on changes to laws and regulations with regards to release and clearance of goods and provide opportunities for consultations with other stakeholders, which is significant with regards to making more holistic policies that take into account the viewpoints, needs and realities of those that the agreement affects.

Particular Significance of TFA Measures to Consumers

The WTO TFA holds great potential for consumers, as border and customs transaction costs are directly or indirectly passed onto consumers. In the ten benefits of the WTO, one simply highlights that all of us are consumers and the prices we pay for our food, clothing, necessities or luxuries are affected by trade policies.[36] "Consumers want access to goods, maintenance of supply, post-purchase services and quality, as well as the flow of essential goods such as food, drugs and seeds," said David Vivas Eugui, Senior Advisor, CUTS International, Geneva during the 2013 WTO Public Forum.[37]

The TFA, if implemented, will have a significant impact on prices, and provision, diversity, quality and availability of essential products, such as food and medicines. On average, trade transaction costs amount to 10 per cent of the value of the goods traded,[38] which gets further passed onto the consumers. Trade transaction costs incurred due to border procedures hamper business and economic growth, particularly in developing countries. TF can lead to lower prices, which increases consumers' purchasing power and access to essential goods. Consumers will gain as they do not need to pay for the extensive border delays. Faster border procedures will enhance delivery of goods to the consumers and increase trade flows, and lower costs, which in the end boosts development. ICC claims that increase trade efficiency through trade facilitation would triple the benefits for consumers.[39]

Consumer associations can and have lobbied for supporting import inflows in order to ensure supply of essential goods at affordable prices. Consumers would care about the fast implementation of the WTO TFA

provisions in their countries that specifically link with their increased access to essential goods. Implementation of the Article 7 paragraphs 8 and 9 of the TFA on "expedited shipment" and "perishable goods", respectively, would be of interest to them. "Expedited shipment" would allow goods delivered by air cargo be released faster, which is important for the "just-in-time" goods; and the provision on "perishable goods" requires each WTO Member to provide for a quick release of perishable goods. According to UNCTAD, as of right now the TFA Article 7 on release and clearance of goods, under which "perishable goods" are listed, is fully implemented only in about 42 per cent of the countries (based on a sample of 26 countries in the world), but often the LDCs have implementation levels even lower than 40 per cent.[40] Thus, it would be important to implement these measures for accruing cost-cutting benefits in the sectors of perishable consumer goods.

Conclusions

To sum up, the WTO Trade Facilitation Agreement, as an international trade law instrument, is undeniably a landmark Agreement for the WTO negotiations. It can have a very significant economic impact, particularly on consumers and SMEs all over the world, by cutting costs for the former and by creating enabling environment for the latter. Signing the Agreement at the Bali Ministerial was important politically, but in order to capture all its potential economic benefits, it is paramount that the Agreement enters into force in full splendour. Each country would have to evaluate its own pros and cons with regards to ratifying the TFA, but it is hard to engender too many faults to the Agreement's potential impact.

ENDNOTES

[1] Lamy, Pascal (2012), *Lamy Cites ACP's "Instrumental Role" in Moving the Trade Debate Forward*, Bruxelles, October.

[2] WTO (2013), *Agreement on Trade Facilitation: Draft Ministerial Decision*, WT/MIN(13)/W/8, December.

[3] One year after the entry into force of the Agreement, the developing country members have to notify the WTO TF Committee of the definitive dates of implementation for Category B provisions, and for Category C, notify their indicative dates for implementation and submit the notification together with information on "the assistance and support for capacity building that the Member requires in order to implement."

[4] For LDCs, Category B provisions are to be notified to the Committee no later than three years after the entry into force of the TFA or a request for additional time needs to be made to the Committee. Provisions designated as Category C are to be notified to the Committee one year after the entry into force of the TFA in order to "facilitate arrangement with donors." One year after that date, the requesting Member is to notify the Committee of the "assistance and support" needed for implementation and two years after that date an update is to be provided to the Committee on arrangement maintained or entered into for implementation.

[5] UNCTAD (2013), *Review of Maritime Transport,* New York and Geneva

[6] European Commission (2013), *EU pledges new financial support to help developing countries implement WTO Trade Facilitation Agreement*, Brussels, Decemberhttp://bit.ly/1dd36Dw

[7] Moïsé, Evdokia (2012), *The Costs and Challenges of Trade Facilitation Measures*, OECD, Paris http://bit.ly/1b7F7WL

[8] Official data from Kenyan Ministry of Foreign Affairs, "Needs Assessment Carried out for Kenya before the WTO Bali Ministerial Conference".

[9] European Commission (2013), *EU pledges new financial support to help developing countries implement WTO Trade Facilitation Agreement*, Press Release, Brussels, December.

[10] WTO (2013), *Sweden launches new trade facilitation training facility in Africa*, Press Release, December.

[11] WTO (2005), *Cutting red-tape at the border, Hong-Kong WTO ministerial 2005: Briefing Notes.*

[12] Jayanetti, Sanath (2006), *WTO Doha Round & South Asia: Linking Civil Society with Trade Negotiations*, Institute of Policy Studies.

[13] GFPTT (2011), *The Problems of Landlocked Countries*, The Global Facilitation Partnership for Transportation and Trade website http://www.gfptt.org/node/44.

[14] UN-OHRLLS (2007), *Trade, Trade Facilitation and Transit Transport*

Issues for Landlocked Developing Countries.

[15] Lamy, Pascal (2013*), A trade facilitation deal could give a $ trillion boost to the world economy*, Bangladesh, February, http://www.wto.org/english/news_e/sppl_e/sppl265_e.htm

[16] ITC (2013), *World Trade Facilitation Agreement: A Business Guide for Developing Countries*, Geneva, Technical Paper, Doc. No. BTP-13-239.E

[17] OECD (2013), *Trade facilitation agreement would add billions to global economy*, says OECD.

[18] Lamy, Pascal (2013*), Op.cit.*

[19] Moïsé, Evdokia, Thomas Orliac and Peter Minor (2011), *Trade Facilitation Indicators: The Impact on Trade Costs*, OECD Trade Policy Working Paper No. 118. Paris: Organization for Economic Cooperation and Development.

[20] Demirg-Kunt, Asli (2011), *Generating Jobs in Developing Countries: A Big Role for Small Firms*, world bank blog.

[21] Saleem, Quamar (2013), *Overcoming Constraints to SMEs Development in MENA Countries and Enhancing Access to Finance*; IFC.

[22] Meghana Ayyagari, Thorsten Beck, and Asli Demirg-Kunt (2003), *Small and Medium Enterprises Across the Globe: A New Database.*

[23] Caroline Lesser and Evdokia Moisé-Leeman (2009), *Informal cross-border trade and trade facilitation reform in sub-Saharan Africa*. OECD Trade Policy Working Paper No. 86.

[24] ICC (2013), *Payoff from the World Trade Agenda 2013*, Peterson Institute for International Economics.

[25] Nathan Associates Inc (2007), *Calculating Tariff Equivalence for Time in Trade.*

[26] "Soft" meaning here the set of rules and procedures the trade facilitation encompasses. It is in opposition with the "hard" part being the set of physical infrastructures (roads, customs offices, etc.) needed for international trade.

[27] Yue Li and John S. Wilson (2009), *Trade Facilitation and Expediting the Benefits of Trade: Evidence from Firm Level Data*, Asia-Pacific Research and Training Network on Trade, Working Paper Series, No. 71, June.

[28] ITC (2013*), Business leaders debate how to engage with WTO,* ITC Communications, December.

[29] WTO (2012), *SMEs in Services Trade - A GATS Perspective*, WTO Economic Research and Statistics Division, April; http://www.wto.org/english/res_e/reser_e/ersd201209_e.pdf

[30] ITC (2013), *Op.cit.*

[31] Conzalez, Arancha(2013), "Boosting SME Competitiveness through Trade Facilitation", ICTSD, *Bridges Africa Review*, Vol 2, No. 8, November.

[32] *Ibid.*

[33] Zaki, Chachir (2010), *Does Trade Facilitation Matter in Bilateral Trade?*, Paris School of Economics, July. http://www.parisschoolofeconomics.eu/IMG/pdf/JobMarket-1paper-ZAKI-PSE.pdf

[34] Lamy, Pascal (2013*), Op.cit.*

[35] MargaretaDrzeniek-Hanouz (2013), "Trade Facilitation, International Supply Chains and SME Competitiveness", ITC, *International Trade Forum Magazine*, December. http://bit.ly/1hxxAFJ

[36] WTO, *The 10 Benefits*; http://www. wto.org/english/thewto_e/whatis_e/10ben_e/10b04_e.htm

[37] David Vivas Eugui (2013), *Consumers, SMEs stand to gain from Bali deal on trade facilitation,* Panelists at WTO Public Forum on benefits of trade facilitation for consumers, SMEs in developing countries, ITC Communications, October http://www.intracen.org/news/consumers-smes-stand-to-gain-from-bali-deal-on-trade-facilitation/

[38] Moïsé, Evdokia, Thomas Orliac and Peter Minor (2011), *Op.cit.*

[39] ICC (2013), *Op.cit.*

[40] UNCTAD (2013), *Review of Maritime Transport,* New York and Geneva.

Trade Facilitation at Bali Ministerial: The Potential Implications

Nitya Nanda*

WTO members finally signed an agreement on trade facilitation at the Ministerial Meeting at Bali in December 2013. This got included in the small part of the Doha Agenda on which members agreed, as trade facilitation is believed to be beneficial to all countries. However, such optimism is based on exaggeration of expected benefits from trade facilitation as they are estimated on the basis of highly questionable methodology. Moreover, only the developing countries will be required to take measures to improve their trade facilitation standards. This means they will have to incur substantial costs, yet their exports might not get benefitted. The only saving grace for them is that there is some flexibility in identifying trade facilitation measures that can be adopted immediately, or after some time, or after improvement in capacity. They must use such flexibility as much as possible.

TRADE Facilitation is the only item among the four "Singapore Issues" in the original Doha Agenda, that could finally came to the negotiating force at Bali. After the debacle in the Cancun Ministerial at Cancun in 2003, while other three issues of Competition, Investment, and transparency in Government Procurement were thrown out of the window, trade facilitation was taken up in the so-called 2004 July Package of the Doha Work Programme.[1] Trade facilitation appeared more or less acceptable to many developing countries, as it is believed to bring benefits to all. Yet, as far as trade facilitation is concerned, the important question remains: Is it only about benefits? Are the expected benefits good enough for developing countries in relation to the expected costs, especially considering their financial constraints and development priorities? Has there been any Study that decisively shows that the expected benefits would outweigh the expected costs, both direct and indirect?[2]

While these questions are still not answered beyond doubt, an agreement was reached in the recently held Ministerial Conference of the WTO at Bali. According to the Bali Ministerial Decision of 7 December 2013 *vis-a-vis* the Agreement on Trade Facilitation, the Ministerial Conference decided to establish the Preparatory Committee on Trade Facilitation under the General Council, "to perform such functions as may be necessary to ensure the expeditious entry into force of the Agreement and to prepare for the efficient operation of the Agreement upon its entry into force."

In particular, the Preparatory Committee shall conduct the legal review of the Agreement, receive notifications of Category A commitments, and draw up a Protocol of Amendment. Category A contains provisions that a developing country Member or a least developed country (LDC) Member designates for implementation upon entry into force of this Agreement, or in the case of a least developed country Member within one year after entry into force. According to the Ministerial Decision, "The General Council shall meet no later than 31 July 2014 to annex to the Agreement notifications of Category A commitments, to adopt the Protocol drawn up by the Preparatory Committee, and to open the Protocol for acceptance until 31 July 2015. The Protocol shall enter into force in accordance with Article X: 3 of the WTO Agreement."

It is, however, generally agreed that every country should engage in trade facilitation to the

* The author is with The Energy and Resources Institute (TERI), New Delhi.

best of its "ability" and "needs". The issues here are the ability of a country and the efficiency of resource deployment. On one hand the resources deployed on trade facilitation must offer adequate return; on the other the return from investment in trade facilitation must be commensurate with other competing social and economic needs. Further, investment in trade facilitation would not bring adequate returns if there are other supply side constraints. Hence, investment in trade facilitation must follow a priority and sequencing pattern *vis-a-vis* investment in other types of infrastructure and capacity development. Whether an international agreement especially at the WTO is the best way to ensure this, is an open question.

Defining Trade Facilitation

There is no standard definition of trade facilitation. It has been defined both narrowly and broadly. In a narrow sense, trade facilitation efforts simply address the logistics of moving goods through ports or moving documentation associated with cross-border trade more efficiently. The WTO, UNCTAD and the OECD have restricted the scope of their definitions to a relatively free movement of goods, and more specifically, to customs procedures and technical regulations that can impair or delay trade.[3]

According to the WTO, trade facilitation is defined as "the simplification and harmoni-zation of international trade procedures", with trade procedures being the "activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade". This definition relates to a wide range of activities such as import and export procedures (such as customs or licensing procedures), transport formalities and payments, insurance, and other financial requirements that are quite cumbersome and place enormous burden on traders.

The scope of the discussions on trade facilitation is clear from the definition given by the WTO. Some activities covered by the WTO's definition include transport, payments and electronic facilities as well as, and most importantly, issues related to customs and border-crossing. These include:

(1) documentation requirements;
(2) official procedures;
(3) automation and use of information technology;
(4) transparency, predictability, and consistency; and
(5) modernization of border-crossing administration.

In recent years, the definition has been broadened to include the environment in which trade transactions take place, transparency and professionalism of customs and regulatory environments, as well as harmonization of standards and conformance to international or regional regulations. The World Bank, for example, takes a broader approach to its trade facilitation work programme, which primarily covers reforms in customs, regu-latory frameworks, and standards.[4]

In the prevailing WTO arrangement, trade facilitation is covered in various ways by the following Articles and Agreements: (1) GATT Articles V, VII, VIII, X; and (2) Agreements on Customs Valuation, Import Licensing, Preshipment Inspection, Rules of Origin, Technical Barriers to Trade, and the Agreement on the Application of Sanitary and Phytosanitary Measures. However, the Singapore and Doha Ministerials as well as the July Package have mandated that only GATT Articles V, VIII, and X be considered for future multilateral negotiations. (Box 1) Annex D of the July Package states that negotiations "shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit".

Article V of GATT relates to "freedom of transit" for goods from another Member, and states that all charges imposed on goods in transit must be "reasonable". Article VIII of GATT covers the fees and formalities connected with the importation and exportation of goods and says that those must be about equal to the cost of the services rendered, so that they do not constitute a form of indirect protection, and calls for reducing the number and diversity of such fees. Article X relates to the publication and administration of trade regulations, that is, measures to ensure transparency and requires all trade regulations to be clearly published and fairly administered. Though the articles will be addressed independently, they are closely related and intertwined. Common features of

the existing legal framework include:

(1) Fair and equitable administration of procedures – import licensing, pre-shipment inspection, rules of origin;

(2) Publication of laws and regulations prior to application – all agreements; and

(3) Right to appeal administrative decisions – customs valuation, import licensing, pre-shipment inspection.

In recent years, the new security requirements being imposed by the US Customs Services, and adopted by the European countries as well are a matter of major concern to exporters from most developing countries. Moreover, since trade requires businesspersons to travel between trading countries, handling of business visas has important implications for trade facilitation.[5]

Thus, in a narrow sense trade facilitation can only be the customs issues; but in a broad sense trade facilitation can address SPS and TBT issues and addressing supply constraints and several others issues. The WTO has adopted a narrow definition and includes the following issues:

- ***Article 1:*** Publication and Availability of Information.
- ***Article 2:*** Prior Publication and Consultation.
- ***Article 3:*** Advance Rulings: Prior statements by the administration to requesting traders concerning the classification, origin, valuation method, etc.
- ***Article 4:*** Appeal Procedures – The possibility and modalities to appeal administrative decisions by border agencies.
- ***Article 5:*** Other Measures to Enhance Impartiality, Non-Discrimination and Transparency.
- ***Article 6:*** Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation.
- ***Article 7:*** Release and Clearance of Goods (including pre-arrival processing; separation of release from final determination and payment of customs duties, taxes, fees and

BOX 1

TRADE FACILITATION –WTO GATT COMMITMENTS

Article V sets out the basic requirement of freedom of transit through the most convenient route and further requires that no discrimination be made on the basis of the flag of the vessel, place of origin, departure, entry, exit or destination. It also requires Members not to discriminate on the basis of ownership of goods or means of transport. Further, it stipulates the obligation not to impose any unnecessary delays or restrictions on transit. It also requires Members to impose reasonable fees and charges that would be non-discriminatory and limited to the cost of service provided.

Article VIII dealing with administrative aspects of trade requires Members to impose fees and charges in relation to import and export in a manner that it is limited to the cost of service provided. It also requires its Members to recognize the need for reducing the number and diversity of fees and charges and the incidence and complexity of import and export formalities. In addition, it requires members to review its operations, upon request by others, not to impose substantial penalties for minor breaches of customs regulations or procedural requirements. Article VIII also provides an illustrative list of the types of fees and charges, formalities and requirements relating to consular transactions, statistical services, analysis and inspection, and licensing which are imposed by governmental authorities beyond Customs.

Article X requires Members to publish all laws, regulations, judicial decisions and administrative rulings relevant to importing and exporting in a manner as to enable governments and traders to become acquainted with them. It further elaborates what the laws, regulations, judicial decisions and administrative rulings could pertain to. These include classification or valuation of products, rates of duty, taxes or other charges; requirements, restrictions or prohibitions on import or export; on transfer of payments related to imports or exports and on sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing and others related to export or import. Article X also requires Members to publish all trade agreements affecting international trade policy. Article X requires Members to maintain or institute judicial, arbitral or administrative tribunals or procedures for review and correction of administrative action relating to customs matters.

Source: WTO, "*The Legal Texts: The Results of the Uruguay Round of Multilateral Negotiations*", (Geneva: WTO 2002).

charges; risk management; post clearance audits; average release times; authorized operators; and expedited shipments).

- ***Article 8:*** Consularization – procedure of obtaining from a consul of the importing Member in the territory of the exporting Member, or in the territory of a third party, a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shippers' export declaration, or any other customs documentation in connection with the importation of the good.
- ***Article 9:*** Border Agency Cooperation.
- ***Article 10:*** Formalities Connected with Importation and Exportation (covering their periodic review; reduction; and harmonization with international standards; the acceptance of commercially available information; use of single windows; disciplines on pre-shipment inspection and customs brokers; and temporary admission of goods).
- ***Article 11:*** Freedom of Transit.
- ***Article 12:*** Customs Cooperation.

Key Issues for Developing Countries

Costs and Benefits

The OECD Trade Facilitation Indicators estimate that "comprehensive implementation of all measures currently being negotiated in the World Trade Organization's Doha Development Round would reduce total trade costs by 10 per cent in advanced economies and by 13-15.5 per cent in developing countries. Reducing global trade costs by 1 per cent would increase worldwide income by more than US$40 billion, most of which would accrue in developing countries".[6]

However, the trade costs referred to here are not any costs that are incurred by the traders. These are essentially hypothetical costs. These are estimated based on theoretical model. The model assumes that anything produced anywhere in the world would partly be consumed and partly exported to other countries. To what extent it will be consumed domestically and in other countries would depend on the domestic GDP, GDPs of other countries and distance of other countries. If this does not happen then the model assumes that this does not happen because of some "trade costs". In OECD estimate, trade costs measured as:

$$\theta_{ij}^{k}=\left(\frac{t_{ij}^{k}\,t_{ji}^{k}}{t_{ii}^{k}\,t_{jj}^{k}}\right)^{\frac{1}{2}}=\left(\frac{x_{ii}^{k}\,X_{jj}^{k}}{x_{ij}^{k}t_{ji}^{k}}\right)^{\frac{1}{2(\sigma_{k}-1)}}$$

where x_{ii}^{k} denotes the production sold domestically for country i (i.e. domestic output minus exports) and sector k, x_{ij}^{k} the exports from i to j, for sector k, and σ_k the elasticity of substitution across goods.

This essentially means that if a country is producing something and selling it in domestic market, it must also sell a part of it in all markets, and if it is not doing so, it is because of the presence of trade costs. Contrast to this with trade theories: Comparative advantage trade theory assumes no trade costs and suggests that trade is guided by comparative advantage. It is estimated with gravity model, meaning thereby trade is guided by GDP, distance and some other factors. So if Bhutan is not exporting its ginger to the US or even Papua New Guinea, it is because of high trade costs. The estimated trade costs will include such trade costs as well. The OECD study also found some link of trade costs estimated with that of trade facilitation indicators. However, estimation of trade facilitation indicators is even more problematic as it involves subjective assessment and perceptions. Hence, the estimated trade costs that TFA is expected to reduce include imaginary trade and imaginary trade costs as well.

It is widely felt that trade facilitation would place substantial financial burden on developing countries much beyond the perceived benefits. Even if the benefits outweigh costs, it is widely believed that the development payoff might be greater if those resources were spent elsewhere. For example, to create a customs clearance infrastructure that will be as efficient as that of Singapore, even in small developing countries, the amount of money required may well be in excess of $100mn. This does not account for the wherewithal that would be required to run the system over time. In many small countries, this figure is much higher than the money that governments spend on education. Obviously, such massive investments on trade facilitation would not be socially acceptable, even if the money were borrowed from an outside agency.[7]

Productivity and Efficiency

Quite unfairly, developed countries expect customs clearance systems in developing countries to be as efficient as their own. Output per worker in the US is more than 30 times that of per worker in an average developing country. In just over 12 days, the average worker in the US produces as much as an average worker in an average developing country produces in an entire year. If we assume that customs clearance mechanisms in the US and developing countries maintain productivity proportion with national average productivity, then, if average clearance time in the US is three days, it will be about three months in an average developing country.

Surely, developing countries cannot afford to maintain such a high efficiency gap in its customs administration *vis-à-vis* the US, as, in that case. However, it would not be an exaggeration to say that if an average developing country has to maintain the efficiency of its customs administration on par with the US, its relative costs of doing so would be about 35 times higher than in the US. One may question if that is sustainable or socially desirable!

Efficiency is often linked to scale as well. It will be difficult in small and developing countries to achieve efficiency level that has been achieved by developed countries. Let us take the following illustrative example to understand this (Table 1). In Singapore, about 120 ships arrive in a day while at Kolkata (previously Calcutta) only 10-12 ships arrive a day. These are real figures. But let us assume that there are 50 customs clearance desks at Singapore, whereas only five such desks at Kolkata. Let us also assume that, on average, there are 100 consignments in a ship. So once a ship arrives, the 100 consignments can be distributed over 50 desks in Singapore and five desks in Kolkata as illustrated in Scenario A column for Kolkata. Hence each desk at Singapore will have only two consignments to clear whereas in Kolkata each desk will have to clear as many as 20 consignments.

Now if we assume both the ports are equally efficient in clearing one consignment and it takes about six minutes to clear a consignment on average, then the customs officials at Singapore will clear all the consignments in 12 minutes and will be ready for the arrival of the next ship. In Kolkata, the customs officials will take 120 minutes to clear all the consignments and in order to be ready for the next ship. This kind of arrangement will ensure that all the customs clearance desks will work in full capacity as all the desks will be actually working round the clock. But this will mean that consignments will be cleared at Singapore very fast and there will not be much variation from consignment to consignment. In contrast, in Kolkata, the luckier ones can get cleared in six minutes, while the unlucky ones may have to wait for 120 minutes and hence there will be huge variation in clearance times. If Kolkata has to ensure similar clearance time as in Singapore then it will also have to maintain 50 clearance desks.

In the illustrative example, maintaining the same level of "efficiency" will mean 10 times higher costs in Kolkata compared to Singapore. In reality, in smaller countries and smaller ports, consignment sizes are likely to be smaller in volume and value. But customs clearance time is very often dependent on number of consignments rather than their size – meaning that in smaller countries customs clearance cost could be higher as a proportion of the value of the consignment.

Expected Disadvantages

Both domestic as well as foreign exporters suffer due to hindrances at ports. If trade facilitation measures result from a

TABLE 1

ILLUSTRATIVE EXAMPLE OF EFFICIENCY AND COSTS COMPARISON

	Singapore	Kolkata (Scenario A)	Kolkata (Scenario B)
Total number of ships	120	12	12
Total number of consignments in a day	12000	1200	1200
Total number of customs clearance desks	50	5	50
Ship landing intervals	12 minutes	120 minutes	120 minutes
Consignments per desk at landing	2	20	2
Average time for clearing one consignment by a desk	6 minutes	6 minutes	6 minutes
Time to clear the Q	12 minutes	120 minutes	12 minutes
Duration that a desk remains busy in a day	24 hours	24 hours	144 minutes

binding WTO commitment rather than from a domestic demand, issues of interest to foreign exporters might take precedence over those of interest to domestic exporters.

This is because any inconvenience to foreign exporters could cause dispute and possible bashing at the WTO but the interests of domestic exporters who could not create such problems may be ignored due to resource constraints. Exporters from developing countries are unlikely to see any improvement in their developed country destinations, as their existing trade facilitation standards are likely to be in compliance with the standards agreed at the WTO.

Under the new trade facilitation agreement authorized operators will have special advantages. This will benefit big traders likely to be based in developed countries. It is surprising that the agreement has outlawed existence of customs broker, but the authorized operators will also be customs broker in disguise and only big players will take advantage of it.

Countries have to consult a large number of interested parties on a mandatory basis something totally new at the WTO. This might subject the policy making process in small and developing countries to undue pressure from interest groups and can go against public interest. The agreement also emphasizes on international standards. This would also force developing countries to reach for standards set by rich countries without considering costs and constraints that a developing country might face. The agreement has some special provisions for perishable goods. Under this, customs stations have to be made operational round the clock. This can prove expensive for small countries as the level of import might not warrant this and the customs officials may not have work for more than one or two hours in a day.

There is a provision on "rejected goods" in the agreement. It is not clear how this is a trade facilitation issue. Under this provision the exporting country has the obligation to take back the rejected goods. Once again, developing countries will be disadvantaged. Because of higher non-tariff measures like standards, export consignments from developing countries to developed countries often get rejected but normally there are fewer rejections at developing countries.

The agreement has a provision on temporary admission of goods. The goods that may be brought into the country under this provision are not meant for trading, and hence this is not meant for trade facilitation. In reality, this will assist foreign companies to bring their machines for their construction projects. The domestic competitors are unlikely to benefit from this and hence it will bring unfair competition.

Broken Promises

The 2004 July Package included "clarifying and improving" relevant aspects of the trade facilitation articles of GATT (Articles V, VII and X). However, the agreement goes much beyond "clarifying and improving". The agreement is based on the experience and status of developed countries and goes beyond Kyoto Convention. Developed countries will not require any additional investment. Some trade facilitation experience and example show the costs would be very high, especially for small and LDCs and such costs would be as high as their annual exports!

However, developed countries have not agreed to linking trade facilitation commitments with foreign aid (in the context of Preamble and Section II), instead they have been linked to implementation capacity and nobody knows how this will be determined. This is contrary to the 2004 July Package provision (Box 2), the very basis of TF negotiations and agreement. Commitment to provide finance is voluntary. Even if they get some finance, it is doubtful how much of that will be additional finance or how much will come with cut in development aid in other areas. The way financing is being discussed in global fora is also a cause of concern. For example, in discussion on climate finance, even foreign investment in renewable energy is being accounted as climate finance. If the same goes with trade facilitation finance, the agreement will essentially open these countries for foreign investment in this sector which many countries will not be willing to do otherwise.

Cost Implications

One saving grace in the trade facilitation agreement is that, though the agreement is final,

specific commitments that the countries have to make are not yet final and have to be negotiated in the coming months. As indicated earlier, member countries will have to categorize the commitments. Some provisions (category A) need to be implemented immediately, while for other they will have to make some operational. For category B, some transition period will be available, while category C will be operational only after implementation capacity is achieved. It is, however, not very clear how the implementation capacity for a particular provision will be determined. In the coming months, member countries will be pressurized to put maximum provisions under category A and avoid category C. Developing countries would do well to understand the cost implications before making any commitment on categorization.

As noted before, it is really difficult to arrive at a credible estimate of costs that will be imposed upon developing countries if a binding agreement on trade facilitation is adopted at the WTO. These costs will be required to be incurred only for a one-time upgrading of the system leaving aside the costs to be incurred to run the upgraded system as well as further upgradation. If the costs that will be imposed on the private traders to adjust their own system and procedures to cope up with the new arrangement are also included, the total costs will be much more. An attempt is therefore made to get an approximate idea about such costs, though they are likely to differ from country to country. Different provisions of trade facilitation agreement have been categorized as low, medium, high, and very high depending on the expected costs associated with them (Table 2).

BOX 2

TRADE FACILITATION IN THE 2004 JULY PACKAGE

The provisions on trade facilitation in the July Package contain "development language unprecedented in WTO negotiating history". The modalities for the negotiations contain a series of unprecedented caveats for special and differential treatment (S&D) for developing and least developed countries, such as tying the extent of their obligations under the final agreement to their capacity to implement them. Technical assistance and capacity building provisions are also more binding than they are elsewhere: if developing and least developed countries do not receive the additional support and assistance that they need to develop infrastructure necessary to implement their commitments, they simply will not have to.

Annex D of the July Package states that negotiations "shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit".

Annex D includes provisions on special and differential treatment (S&D) for developing countries and LDCs, as well as technical assistance and capacity building. The commitment on S&D far exceeds that in other agreements in that it links new obligations to the successful delivery of technical assistance and capacity to developing countries. Para. 2 states that the principle of S&D "should extend beyond the granting of traditional transition periods for implementing commitments. In particular, the extent and the timing of entering into commitments shall be related to the implementation capacities of developing and least developed Members."

Annex D is also peppered with references to cost considerations, which may help assuage developing country and LDC concerns about facing dispute settlement proceedings for non-implementation of obligations that were beyond their means to implement. With regard to new infrastructure required to implement obligations, para. 6 says that "where required support and assistance for such infrastructure is not forthcoming, and where a developing or least developed Member continues to lack the necessary capacity, implementation will not be required", backed up by the stipulation that such Members "would not be obliged to undertake investments in infrastructure projects beyond their means".

Source: WTO, "*Doha Work Programme*", 2 August 2004 (WT/L/579); International Centre for Trade and Sustainable Development (ICTSD); and International Institute for Sustainable Development (IISD), "*Trade Facilitation*", *Doha Round Briefing Series*, Vol. 3, No. 6 (Geneva 2004).

Conclusion

Trade facilitation has imposed a new kind of commitment on developing countries, in the sense that so far they had to make commitment on policies and practices but this will involve deployment of substantial resources and open their policy making and implementation to outside pressure on a continuous

basis. Over the last decades, several countries have improved their trade facilitation standards without any binding international agreement, and hence it is not clear why we needed an agreement now. Developed countries always argued that the agreement will benefit developing countries more yet they wanted to thrust this upon developing countries that were not so keen. Some developing countries wanted to avoid further plurilateral agreement as a matter of principle, yet the agreement opens the door for plurilateral agreement on trade facilitation issues. Such agreements undoubted put pressure on non-parties as well.

As discussed above, on trade facilitation people have been talking about benefits that are not only dubious but imaginary as well, but the costs are real. Even if some business groups in the developing world are in favour of this, it does not necessarily mean that they are right as their capacity to understand these issues from a futuristic perspective is limited. Hence, developing countries would be well advised to put maximum provisions under category C. This will give them the time and flexibility to understand the issues and their implications better, and implement them in accordance with their own national priorities. Even if some of them might feel that they are ready for category A commitment for a particular provision, when they actually operationalize it, they may experience something different.

NOTES

[1] WTO, "Doha Work Programme: Decision Adopted by the General Council of the WTO on 1 August 2004" 2 August 2004 (WT/L/579).

[2] Nanda (2008), *Expanding Frontiers of Global Trade Rules: The Political Economy Dynamics of the International Trading System*, Routledge, London & New York.

[3] Nanda (2003), "WTO and Trade Facilitation: Some Implications," in *Economic & Political Weekly*, 38(26), pp. 2622-2625.

[4] Nanda (2008), *op. cit.*

[5] Nanda (2008), *op. cit.*

[6] Moïsé, E. and S. Sorescu (2013), "Trade Facilitation Indicators: The Potential Impact of Trade Facilitation on Developing Countries' Trade", *OECD Trade Policy Papers*, No. 144, OECD Publishing.

[7] Nanda (2008), *op. cit.*

TABLE 2

COST IMPLICATIONS OF DIFFERENT PROVISIONS

Provisions	Expected Costs	Comment
Article 1. Publication and Availability of Information	Medium	Already made significant progress
Article 2. Prior Publication and Consultation	High	Consulting a wide range of stakeholders involves costs
Article 3. Advance Rulings	Low	Already there
Article 4. Appeal Review Procedures	Low	Already there
Article 5. Other Measures to Enhance Impartiality, Non-Discrimination and Transparency	Medium	It is more of publicising what we are doing and puting in a format
Article 6. Disciplines on Fees and Charges	High	Potential revenue loss
Article 7. Release and Clearance of Goods (including average release times)	High	Potential area of dispute, also controversial areas.
Article 8. Consularization	NA	NA
Article 9. Border Agency Cooperation/9BIS movement of goods under customs control	Low	International standards, etc.
Article 10. Formalities Connected with Importation and Exportation	High	Significant automation required
Article 11. Freedom of Transit	High	Will impose high costs on traders as well
Article 12. Customs Cooperation	High	

REFERENCES

1. Moïsé, E. and S. Sorescu (2013), "Trade Facilitation Indicators: The Potential Impact of Trade Facilitation on Developing Countries' Trade", *OECD Trade Policy Papers*, No. 144, OECD Publishing.
2. Nanda (2003), "WTO and Trade Facilitation: Some Implications," in *Economic & Political Weekly*, 38(26), pp. 2622-2625.
3. Nanda (2008, *Expanding Frontiers of Global Trade Rules: The Political Economy Dynamics of the International Trading System*, Routledge, London & New York.
4. International Centre for Trade and Sustainable Development (ICTSD) and the International Institute for Sustainable Development (IISD), (2004) "Trade Facilitation", *Doha Round Briefing Series, Vol. 3, No. 6* Geneva.
5. WTO (2002), *The Legal Texts: The Results of the Uruguay Round of Multilateral Negotiations*, Geneva: WTO 2002.
6. WTO (2004), "Doha Work Programme: Decision Adopted by the General Council of the WTO on 1 August 2004", 2 August 2004 (WT/L/579).

India Might Trip on WTO Trade Facilitation Pact

EVEN as India's demand for exchange of information on customs cooperation has been accepted under the World Trade Organization (WTO)'s Trade Facilitation Agreement (TFA), a number of loopholes remain, and these may provide developed countries escape routes on this front.

According to the final draft of the negotiating texts, there are a few binding commitments in the chapter on TFA, under Article 13, which talks of customs cooperation. Subsequently, however, these commitments get diluted under the same Article, within various provisions such as the provision of information and postponement or refusal of a request.

Article 13 of the TFA stipulates a member country, upon receiving a request, "shall exchange the information" with the importing country "for the purpose of verifying an import or export declaration in identified cases where there are reasonable grounds to doubt the truth or accuracy of the declaration". For example, if India is importing a particular product from another country, it might seek details of the value shown in the document concerned in case of any doubt and verify the value of its production as well as the cost of the product in that country.

However, though Article 13 states the country from which details are sought is liable to provide the information, later, under sub-sections of the Article, the draft text states a country will be able to exchange the desired information "to the extent possible". Under a separate provision on postponement or refusal of a request, it adds, a country may refuse or postpone giving the information if the country's domestic legal system prevents this. "There are several loopholes within the TFA that will give developed countries various escape routes. This could prove to be detrimental for India and result in dumping," said a Delhi-based trade expert.

Roberto Azevêdo, director-general of WTO, has said if the TFA went through, it would lead to jobs and opportunities and result in better integration of developing and least developed countries into global trade flows.

Pradeep S. Mehta, Secretary General, CUTS International and a former member of WTO's high-level panel on the future of trade, said, "On trade facilitation, we certainly need reforms in India to reduce transaction costs and get rid of silly non-tariff barriers, and if a WTO agreement can help us to lock in domestic reforms, on a sliding scale, why hesitate? Overall, the multilateral trading system is in our greater interest, instead of a large number of spaghetti agreements."

(*Business Standard*, 19 February 2014)

India Demands Changes in WTO Trade Facilitation Agreement

EVEN as the government is collating inputs from industry to chalk out its negotiating strategy in a trade ministers' meet during 3-6 December 2013 in Bali, Indonesia, it has demanded some immediate changes to the Trade Facilitation Agreement (TFA) being discussed at the WTO.

India has clearly stated that it will not agree to TFA's conclusion without the changes it suggested. The Commerce and Industry Ministry has the authority to negotiate on behalf of the country. The Ministry wants to make it compulsory for customs authorities globally to allow exporters to take back portions of the rejected consignments at the borders before nullifying the entire shipment, officials in the Commerce Department remarked.

"The draft trade facilitation proposal has substantial cost implications for developing countries. Countries will have to amend their laws. Apart from cost implications, the onerous compliance implications are also a matter of concern," explained a senior Commerce Department Official on condition of anonymity.

However, Indian industry is strongly batting for the deal to go through in its present form for it will reduce industry's cost burden. A comprehensive deal on trade facilitation will reduce transaction costs by 10 per cent in advanced economies and by 13-15.5 per cent in developing countries, says a study by Organization for Economic Cooperation and Development (OECD).

The TFA, which aims to reduce bureaucracy at borders, has the potential to provide a $1-trillion boost to global economy, according to WTO chief Roberto Azevêdo who wants work on the deal to speed up before trade ministers from all 159 member countries meet in Bali. India has also proposed that the customs procedures be made transparent and non-discriminatory to avoid any non-tariff barriers and encourage greater flow of goods from one country to another.

"The benefits of a trade facilitation agreement will accrue largely to the developed countries and those developing countries which are strong manufacturer-exporters. Such an agreement based on the current proposals would aggravate the adverse balance of trade of many developing countries," the official, who is involved in the talks, said.

In FY13, India witnessed an unprecedented level of trade deficit at $191 billion with exports falling by 1.76 per cent to $300.60 billion, while imports stood at $491.6 billion.

The official added that if TFA is accepted in the present form, the "burden of policy change required to implement the deal will lie only on developing countries". The main objective of the deal is to reduce bottlenecks of shipments at borders by smoothening customs procedures through customs streamlining, easing transaction costs and red tape at international borders.

According to a recent World Bank study, most of the gains in trade facilitation will come from improving infrastructure such as ports and roads, which calls for a considerable amount of expenditure and investment.

Developing countries such as India, China, the Philippines and Brazil have also urged agreement on food security along with the TFA as a successful outcome of the Bali meet. TFA is only a minor component of the entire global trade deal, which started in Doha in 2001. However, a major consensus on this is expected to pep up the deadlocked talks for a global trade deal as countries are increasingly diverting their attention to regional trading arrangements.

(*Business Standard*, 19 February 2014)

WTO Members Elect Trade Facilitation Committee Chair

AT the first meeting of the Preparatory Committee on Trade Facilitation on 31 January 2014, WTO members unanimously elected Philippine Ambassador Esteban B. Conejos, Jr. as chairperson. This is the first important step towards implementing the Declaration on Trade Facilitation adopted by Ministers in Bali, Indonesia on 3-6 December 2013.

Thanking WTO members for placing their confidence on him, Ambassador Conejos said, he will make sure to "live up to expectations to this new assignment in line with the mandate agreed on at the Bali Ministerial Conference." "There is no time to waste," he added, calling on WTO members to work collectively.

Ambassador Conejos said the approach to the work of the new committee will be "member-driven, bottom-up, inclusive and transparent". He said he will be consulting with WTO members to hear their views on how to achieve goals that would benefit the whole membership.

The role of the committee will be to ensure the entry into force of the Trade Facilitation Agreement, prepare for its efficient operation, conduct its legal review, and receive notifications of members' commitments. It will also officially amend the Marrakesh Agreement establishing the WTO by inserting the new Trade Facilitation Agreement in Annex 1A.

After more than nine years of negotiations, WTO members finally reached consensus on a Trade Facilitation Agreement at the Bali Ministerial Conference in December 2013, as part of a wider "Bali Package". The final agreement contains provisions for faster and more efficient customs procedures through effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues. It also contains provisions for technical assistance and capacity building in this area.

(www.wto.org/english/ 31 January 2014)

India Seeks Easier Norms in Trade Pact with Developed Nations by Amiti Sen

INDIA has said the trade facilitation agreement proposed by developed members of the WTO for infrastructure upgrade at customs and ports cannot be binding and has to be softer on developing nations.

It also needs to be balanced with pacts in areas that favour poorer countries such as elimination of cotton subsidies and extension of compliance deadline for intellectual property agreement for least developed countries (LDCs).

"It is important for developing countries to be given a longer time frame to implement an agreement on trade facilitation as it would require changes in laws and a complete overhaul of port and customs infrastructure," remarked a Government official.

A trade facilitation agreement could cut down trade costs by 10 per cent, as per estimates made by the WTO.

Since extension of electronic clearance facilities and e-computing would also entail huge investments, poorer countries need to be given monetary and technical support, New Delhi argued.

With the decade old Doha Round of trade talks at the WTO not reaping results, some members are looking at carving out pacts in select areas such as trade facilitation and services during the ministerial meet in Bali in December.

In a recent meeting on the issue at the WTO, India's representative spoke against making the pact mandatory.

"If the agreement becomes binding, developing countries will be taken to dispute if there is a lapse in implementation and be penalized. This is not acceptable," the official said.

While the pact is acceptable to India in parts, a number of proposals like providing for advance ruling or a pre-determination of the import tax burden and allowing bank guarantees in lieu of cash duty payments were difficult to implement.

"We have said that there should be a tiered formula which allows developing countries to implement the agreement in parts," the official said.

As the pact will essentially benefit developed countries as the volumes of their traded goods is much more than the rest of the world, it needs to be balanced off by agreements in areas of interest to developing countries and LDCs.

"We have proposed that a number of other agreements should be signed at the Bali ministerial including one on cotton subsidies, LDC waiver in services and IP extension," the official said.

(The Hindu Business Line, 14 January 2013)

Commitments on the New WTO Trade Deal

TRADE ministers of the member-states of the WTO concluded a Trade Facilitation Agreement at Bali, Indonesia, in December 2013. The agreement aims to streamline customs clearance procedures around the world, by imposing new multilateral disciplines and uniform principles for transparency, due process, and reasonableness in development and implementation of requirements.

The members have committed to publishing all importation, exportation and transit procedures at points of entry, applied rates of duties and taxes, fees and charges by government agencies associated with import and export. Also, all rules for classification and valuation of goods for customs purposes, penalty provisions for breach of customs procedures, procedures for appealing customs decisions, agreements with any countries

relating to importation, exportation and transit and quota administration procedures. Member-states have further committed to make much of this information available online, where possible, in one of official languages of the WTO. And, to provide opportunity for stakeholders to comment on proposed regulations related to the movement, release and clearance of goods prior to implementation of such rules. All WTO members are now committed to issue advance rulings, upon request, regarding the classification and origin of goods to be imported into their territory. And, to make such advance rulings available to the public, taking into account the need to protect commercially confidential information. They are also committed to provide any person to whom an administrative decision has been issued a method of appealing such a decision. And, greater transparency in procedures for inspection, detention and audits of goods crossing their borders. Other commitments include low documentary and data requirements, low rates of inspection and rapid release of goods to authorized operators. Also, fees and charges limited to the cost of carrying out activities associated with import or export, imposing penalties for the breach of customs rules only upon responsible persons, written explanation of the grounds and encouraging voluntary self-disclosure of customs breaches by way of mitigation offers. Also, procedures for pre-processing import documentation, for electronic payment of duties, taxes, fees and charges, for release of goods under bond, beside allowing free transit of goods through their territory, sharing information on best practices in managing customs compliance and for the purpose of verifying declarations. A committee has been formed to coordinate implementation of the agreement by 2015. Most countries, including India that have ratified WTO's Kyoto Protocol on simplification and rationalization of customs procedures, are unlikely to find the new requirements onerous, as they are largely compliant already, at least in theory. Countries that have to make significant adjustments have been assured technical assistance and support for capacity building, to help nudge them go along. As most importers/exporters from India would readily agree, availability of information about customs procedures and existence of these for grievance redressal, etc, help in limited ways when the laws are complex. Too many duties and exemptions litter the tariff and exceptions are not handled in a professional manner. So, expectations of significant cost reductions due to the agreement may not materialize. Even so, the binding agreement is a welcome development, as it keeps the Doha Development Round alive.

(*Business Standard*, 15 December 2013)

Bali Ministerial Strikes A Deal, Keeps WTO Going

IT is welcome that the Bali Ministerial of the WTO has finally reached a deal. The concrete gain is in terms of trade facilitation. But a larger gain is living proof that the multilateral process is yet not dead, and will, at least, coexist with, if not dominate, a growing trend for regional trade agreements.

Every country will publish its customs clearance procedures and comply with them in practice. Standards, inspection and other paperwork can take enough time to become a non-tariff barrier more effective than tariffs, which have reached insignificant levels in most developed countries for most industrial products. It is in the interest of a country like India with a growing share of trade in national income to see transparency and speed in global trade. It is also in India's interest for the world to retain a stake in keeping the multilateral system going, instead of choosing only regional trade arrangements.

As for the temporary respite, India has to comply with caps on agricultural subsidy, the strategy should be to overhaul the subsidy regime. Production subsidy has to be segregated from consumption subsidy — they stand mixed up in the system currently in place. Investment in farm infrastructure, including the likes of a cold chain, to boost productivity, removal of marketing restrictions on the farmer and moving towards globally benchmarked domestic prices, even as the poor get income support — these spell the way to go. Farmers, consumers and the exchequer stand to gain from such a change.

(*The Economic Times*, 9 December 2013)

India Inc, Exporters Welcome WTO Pact on Trade

HAILING the trade facilitation agreement reached by the WTO members after hectic parleys, India Inc and exporters said these will help developing countries like India to reduce transaction cost and improve competitiveness of domestic industry. "The WTO Agreement on trade facilitation will make life much easier for Indian exporters since the pact will ensure uniform, transparent and efficient transactions at the customs and port operations across the world," Chairman of engineering exporters' body EEPC India Anupam Shah observed. "Our efficiency and transaction costs will improve by leaps and bounds, once the agreement comes into operation", Shri Shah added. After four days of marathon negotiations at the Indonesian island city of Bali, Trade Ministers from 159 countries agreed on the Bali Ministerial Declaration, which comprises texts on trade facilitation, food security and development, and LDC issues. "While agreement on food security will ensure a fair deal for the subsistence farmers and the vulnerable sections in the developing countries, the deal on trade facilitation will improve efficiency at the international trade borders and reduce the transaction costs, particularly for the Indian exporters," Assocham Secretary General D.S. Rawat remarked. This is the first such agreement since the WTO was set up way back in 1995. "We welcome the declaration on trade facilitation, which will not only boost transparency and predictability but also help in reducing transaction cost for businesses across the globe," observed Deep Kapuria, who led CII's business delegation to the WTO Conference. As per the draft text of the agreement, each member would be required to promptly publish information regarding issues like importation, exportation and transit procedures in a non-discriminatory and easily accessible manner in order to enable governments, traders and other interested parties to become acquainted with them. "We are very happy with the agreement on trade facilitation that would help in reducing transaction costs, cutting red tape, improving transparency besides simplifying and streamlining customs and port procedures," FICCI President Naina Lal Kidwai said. In recent years, India has undertaken reforms to simplify and modernize its trade procedures. As a developing country, India will be entitled to adequate transition time for implementing the Trade Facilitation Agreement. As per the agreement, the member nations will have to set up a clearly defined work programme within the next 12 months on the remaining Doha Development Agenda issues and build on the decisions taken at the Bali conference especially with regard to agriculture, development and least developed countries (LDCs).

(*The Economic Times*, 7 December 2013)

India Rejects WTO Proposals on Food Security, Trade Facilitation

INDIA recently rejected the WTO's proposed deal on food security, saying the interim solution to deal with a breach of the 10 per cent cap cannot be accepted, besides refusing to lend support to the "inconclusive" trade facilitation agreement meant to ease export and import rules at airports and ports.

"For India, food security is non-negotiable. Need of public stockholding of foodgrains to ensure food security must be respected. Dated WTO rules need to be corrected. The G-33 proposal was mooted precisely for this purpose," Commerce and Industry Minister Anand Sharma said in his address, even as most members including the US, China and the European Union spoke in favour of pushing through a deal at Bali.

Shri Sharma's statement was the first official interjection at the ministerial conference with engagements so far restricted to the sidelines.

Brazil, Mexico, China and Indonesia are part of G-33 that is pushing for changes in WTO rules for developing countries for a potential breach in the ceiling on food security currently pegged at 10 per cent of the value of production. For India, it will mean lower procurement or restrictions on the minimum support price at a time when the government has announced the National Food Security Act. While WTO members have agreed on a four-year peace clause that will stop disputes if a country goes past the ceiling, India wants the truce to be in place till a permanent solution is found.

Apart from India, Brazil was the sole dissenter among the first 15 trade ministers who spoke at the plenary session, arguing in favour of a strong package on agriculture, while the developed countries are pushing the trade facilitation agreement, which will be the first since WTO was set up 19 years ago. "We had hoped for more since agriculture is where we find the maximum distortions," Brazilian trade minister Luiz Alberto Figueiredo Machado, while flagging concerns over the trade facilitation package for LDCs and pointing to food security as an important element. Mexico was another country that identified food security as an issue. While several of India's allies have suggested a softer approach, India has not diluted its stand so far. "The due restraint provision, in its current form, cannot be accepted. It must remain in force till we are able to agree on a lasting solution and provide adequate protection from all kind of challenges," Shri Sharma said.

India and Brazil made a case for putting development issues, especially agriculture at the forefront of negotiations. "For over 12 years, we have struggled to bring complex negotiations of the Doha Round to conclusion. The continuing stalemate has led to frustration and cynicism when this was the only round dedicated to development," Shri Sharma said.

(*The Times of India*, 4 December 2013)

At Bali, India must Go for Trade Facilitation

AT the Bali ministerial of the WTO that begins tomorrow, it would be in India's interest to strive for a global deal on trade facilitation. We now have huge stakes in the global trading system, what with trade amounting to over 50 per cent of domestic gross value-added, and we do need to revamp and standardize the multilateral rules to boost gains from trade.

Trade facilitation is about rationalizing and simplifying trade interface between trading partners, and broadly encompasses compliance with government rules, including tax payments, financing, insurance, documentation, legal services, transportation, handling, measurement, storage and assorted standards, some of which are thinly disguised.

And modern trade facilitation is essentially about eliminating costly physical operations, with IT-enabled vetting and oversight systems that are non-intrusive, and designed to reduce costly delays. In tandem, there is much scope to reduce cost duplication for trade operators with harmonization of norms and procedures, including for certification and testing.

Developing nations have been chary of higher standards for trade facilitation, seeing them more as non-tariff barriers. Also, the importance of trade taxes for lower-income economies seem to come in the way of trade facilitation. But trade integration has been more rapid than ever, and there are enormous gains to be reaped by the South from the "hyperglobalization".

We need to adopt forward-looking norms, if need be with a transition period for adaptation. High tariff barriers relative to trading partners do divert trade and distort value addition.

Hence the need to be proactive on trade facilitation and prevent the rise of mega-regionalism and faltering support for globalization in the mature markets.

(*The Economic Times*, 2 December 2013)

WTO Deal Stalled by Trade Facilitation Row

DRAFT text shows lack of consensus was not on section that deals with food stockholding and subsidies.

Contrary to the perception that a dispute over an Indian proposal for food stockholdings and subsidies led to a collapse in talks at the WTO in Geneva for a global trade deal at Bali, it is lack of consensus on the issue of trade facilitation which stalled a final agreement, according to the final draft text for Bali.

The 62-page draft text prepared for the 9th Ministerial meeting of the WTO at Bali, Indonesia, 3-6 December 2013, shows that the section on public stockholding for food security purposes does not contain any square brackets. These brackets are a sign of lack of consensus among member countries. Words, phrases and sentences in square brackets signify that they are still under discussion.

At the same time, the trade facilitation section has many square brackets in the run-up to the Bali meeting, where countries are aiming to agree on the rules of world trade—a process known as the Doha Round of talks that began in 2001 but remains deadlocked.

India has been pressing the WTO to find a permanent solution to a dispute over allowing developing countries the right to provide higher levels of food subsidies for their poor.

The WTO draft text talks about settling the issue within four years or by the 11th ministerial conference, without calling it a peace clause—a term widely used at the negotiations.

These subsidies are linked to food stockholdings meant for the poor, or for food security. Developed nations have offered a peace clause of four years under which if developing countries exceed the public stockholding limit of food, no member-country can drag such a nation to a dispute settlement under the WTO rules.

The draft text also says that developing nations benefiting from this decision must fulfill notification and transparency requirements and that they will not use such stockholdings for exports because these could lead to distortions in global trade.

While India initially opposed this condition, the absence of any square brackets in the text means that it has now agreed to this proposal.

In a statement to the negotiators in November 2013, WTO chairman Roberto Azevedo said the Geneva process managed to get convergence in almost all areas except trade facilitation, which aims to simplify customs procedures. "Even Section II of the Trade Facilitation text—our largest iceberg until a couple of days ago—is now virtually 'clean'. We still need to conclude work on some of the provisions for LDCs (least developed countries), but otherwise we have a stable and finalized text. I'm afraid the same cannot be said of Section I. We cleaned much of the text but some issues remain unresolved. I don't think the challenges in those issues are insurmountable. On the contrary, I believe the landing zones are discernible to us," Mr. Azevedo said.

While section I of the trade facilitation text deals with mandatory commitments to be undertaken by developing countries and LDCs, section II talks about special and differential treatment provisions for developing country members and LDCs.

Opposition parties, non-government organizations and farmer groups in India have been opposing the present proposals for Bali, holding that they are against the interests of the Indian poor.

In trade facilitation, the differences centre around issues regarding authorized operator and expedited shipments, according to Abhijit Das, head and professor at the Centre for WTO Studies at the Indian Institute of Foreign Trade.

Members are required to provide additional trade facilitation measures related to trade and transit formalities to the authorized operators. However, it is yet to be resolved whether such commitments will be mandatory upon developing countries or voluntary. Similarly, under transit facilities, it is yet to be finalized whether members are mandatorily or voluntarily required to adopt procedures allowing for expedited release goods entered through air cargo facilities.

Operationalization of the peace clause is not needed since the existing provisions in the agreement on agriculture are enough to secure India's interests, said Pradeep S. Mehta, secretary-general of the global NGO CUTS International and former member of the WTO's high-level panel on the future of trade.

"On trade facilitation, we certainly need reforms in India to reduce the transaction costs and get rid of silly non-tariff barriers, and if a WTO agreement can help us to lock in the domestic reforms, and on a sliding scale, why hesitate?", he added.

(http://www.livemint.com/ 28 November 2013)

Trade Facilitation: Cutting "Red Tape" at the Border

TRADERS from both developing and developed countries have long pointed to the vast amount of "red tape" that still exists in moving goods across borders. Documentation requirements often lack transparency and are vastly duplicated in many places, a problem often compounded by a lack of

cooperation between traders and official agencies. Despite advances in information technology, automatic data submission is still not commonplace.

The United Nations Conference on Trade and Development (UNCTAD) estimates that the average customs transaction involves 20–30 different parties, 40 documents, 200 data elements (30 of which are repeated at least 30 times) and the re-keying of 60–70 per cent of all data at least once. With the lowering of tariffs across the globe, the cost of complying with customs formalities has been reported to exceed the cost of duties to be paid in many instances. In the modern business environment of just-in-time production and delivery, traders need fast and predictable release of goods.

A study by Asia-Pacific Economic Cooperation (APEC) estimated that trade facilitation programmes would generate gains to APEC of about 0.26 per cent of real GDP, almost double the expected gains from tariff reductions, and that the savings in import prices would be between 1–2 per cent of import prices for developing countries in the region.

Analysts point out that the reason why many small and medium-sized enterprises — which, as a whole, account in many economies for up to 60 per cent of GDP creation — are not active players in international trade has more to do with red tape rather than tariff barriers. The administrative barriers for enterprises that do not regularly ship large quantities are often simply too high to make foreign markets appear attractive.

For developing-country economies, inefficiencies in areas such as customs and transport can be roadblocks to their integration into the global economy and may severely impair export competitiveness or inflow of foreign direct investment. This is one of the reasons why developing-country exporters are increasingly interested in removing administrative barriers, particularly in other developing countries, which today account for 40 per cent of their trade in manufactured goods.

WTO Provisions

The WTO has always dealt with issues related to the facilitation of trade, and WTO rules include a variety of provisions that aim to enhance transparency and set minimum procedural standards. Among them are Articles 5, 8 and 10 of the General Agreement on Tariffs and Trade (GATT) which deal with freedom of transit for goods, fees and formalities connected with importing and exporting, and the publication and administration of trade regulations.

However, the WTO legal framework lacks specific provisions in some areas, particularly on customs procedures and documentation, and on transparency. The spectacular increase in the amount of goods traded worldwide in the last few years and the advances in technology and the computerization of business transactions have added a sense of urgency to the need to make the rules more uniform, user-friendly and efficient.

The Mandate and the Negotiations

As a separate topic, trade facilitation is a relatively new issue for the WTO. It was added to the organization's agenda only when the Singapore Ministerial Conference in December 1996 directed the Goods Council "to undertake exploratory and analytical work … on the simplification of trade procedures in order to assess the scope for WTO rules in this area".

At the Fourth Ministerial Conference in Doha, in November 2001, ministers agreed that negotiations on trade facilitation would take place after the Fifth Ministerial Conference in Cancún in September 2003. This mandate was renewed on 1 August 2004 when the General Council decided by explicit consensus to commence negotiations on the basis of modalities agreed by the WTO members. These modalities established the basis for the work plan adopted at the first meeting of the Negotiating Group on 15 November 2004. Detailed negotiations have taken place regularly since then and the negotiating text has been streamlined, clarified and improved.

According to paragraph 1 of the Modalities, the negotiations have to clarify and improve relevant aspects of Article 5 (Freedom of Transit), Article 8 (Fees and Formalities connected with Importation and Exportation) and Article 10 (Publication and Administration of Trade Regulations) of the GATT 1994, with a view to

further expediting the movement, release and clearance of goods, including goods in transit. Negotiations have to enhance technical assistance and provide support for capacity building in this area. The negotiations also aim at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues.

The Negotiating Group, at its first meeting, agreed to invite the International Monetary Fund (IMF), the Organization for Economic Cooperation and Development (OECD), UNCTAD, the World Customs Organization and the World Bank to attend on an *ad hoc* basis.

Two clear areas have been established in the organization of the negotiations. Section I deals with technical aspects of the deal and explains in detail the necessary improvements for an efficient and effective agreement. Section II provides the basis for special and differential treatment and for technical assistance and capacity building needed for the implementation of the agreement, in some instances with specific deadlines and timetables.

The World Customs Organization and the World Bank have also made written contributions to the negotiations, and identified areas in which assistance can be provided to developing country members.

According to OECD, which is also involved in the negotiations as an observer and which provides technical reports on the current problems and the benefits of a good agreement for all members, the measures that would make the biggest impact in terms of reducing costs are:

- harmonization of documents;
- streamlining of customs procedures (such as pre-arrival clearance); and
- predictability in customs regulations (such as advance rulings on what tariffs apply to specific products or clear rules of procedure and availability of trade-related information).

(http://www.wto.org/english/thewto_e/minist_e/mc9_e/brief_tradfa_e.htm, November 2013)

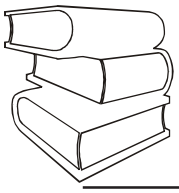
WTO Meet: India Needs to Pitch for Trade Facilitation for Export Diversification

THE Commerce Ministry is reportedly seeking inputs from industry as it firms up strategy for the forthcoming ministerial planned by the World Trade Organization (WTO) in Bali, Indonesia. India needs a proactive stance to purposefully advance world trade talks, taking into account the interests of developing economies and the least developed countries (LDCs).

We need to pitch for a multilateral agreement on trade facilitation, as it would bring down the costs of doing business and boost the gains from cross-border trade. While average world tariffs are 5 per cent *ad valorem*, average trade costs are 10 per cent. And facilitation measures like reduced documentation, time-bound clearances and better infrastructure would all enhance trade, although resource mobilization to improve the facilities must be taken into account. One recent study finds that if countries improved trade facilitation only halfway to the region's top performer, it would lead to export gains of $1 trillion annually. In parallel, India needs to step up the call for greater trade access. It is true that the leading trading nations have committed up to 97 per cent duty-free and quota-free (DFQF) access for LDCs. But for many developed economies, the 3 per cent of excluded tariff lines cover over 90 per cent of their imports from LDCs! Hence the vital need for the rich nations to offer 100 per cent DFQF access for LDCs.

And, in this context, simplified rules of origin should be part of the deal. Now the WTO's Doha Development Round, begun back in 2001, remains to be concluded. But a part-deal on trade facilitation and market access seems very much achievable and needs to be wrapped up at Bali. It would result in global trade gains, for decades. India has much to gain from improved trade facilitation around the world, as developed markets languish and India tries to diversify export destinations.

(*The Economic Times*, 10 August 2013)



BOOKS/ARTICLES NOTES

BOOKS

Trade and Transport Facilitation: An Audit Methodology by John Raven, April 2000, pp. 56. http://dx.doi.org/10.1596/0-8213-4719-5

THE World Bank has participated, along with other financing agencies and many client countries, in notable improvements to basic visible transport infrastructure, through a wide range of road, rail, port, and airport developments. Those investments will never yield their full potential returns in international trade performance, however, without parallel advances in systematically improving information generation and exchange, which underpins and controls every export and import movement. Such an effort has to begin with a clear understanding of the special characteristics of each country, and indeed, of each significant border entry and import point.

This report offers an analytical approach to such a perception and reflects practical experience in a number of Bank missions and inquiries in a range of developing countries. The audit examines and evaluates difficulties and obstacles presented to the cross-frontier movement of a routine consignment and its associated payment. The report is structured in the following manner: it presents an explanatory introduction; a set of questionnaires designed to support and structure personal interviews; and a note on the analysis and interpretation of the results of these interviews and suggestions for organizing practical remedial action.

Trade Facilitation and Country Size by Mohammad Amin and Jamal Ibrahim Haidar, November 2013, pp. 30. http://econ.worldbank.org.

IT is argued that compared with large countries, small countries rely more on trade and therefore they are more likely to adopt liberal trading policies.

The present paper extends this idea beyond the conventional trade openness measures by analyzing the relationship between country size and the number of documents required to export and import, a measure of trade facilitation. Three important results follow. *First*, trade facilitation does improve as country size becomes smaller; that is, small countries perform better than large countries in terms of trade facilitation. *Second*, the relationship between country size and trade facilitation is non-linear, much stronger for the relatively small than the large countries. *Third*, contrary to what existing studies might suggest, the relationship between country size and trade facilitation does not appear to be driven by the fact that small countries trade more as a proportion of their gross domestic product than the large countries.

Deep Trade Policy Options for Armenia: The Importance of Services, Trade Facilitation and Standards Liberalization by Jesper Jensen and David G. Tarr, May 2011, pp. 120. http://elibrary.worldbank.org/doi/pdf/10.1596/1813-9450-5662

THIS paper develops an innovative 21 sector computable general equilibrium model of Armenia to assess the impact on Armenia of a Deep and Comprehensive Free Trade Agreement with the European Union, as well as further regional or multilateral trade policy commitments. The analysis finds that such an agreement with the European Union will likely result in substantial gains to Armenia, but shows that the gains derive from the deep aspects of the agreement. In order of importance, the sources of the gains are: (i) trade facilitation and reduction in border costs; (ii) services liberalization; and (iii) standards harmonization. A shallow agreement with the European Union that focuses only on preferential

tariff liberalization in goods will likely lead to small losses to Armenia primarily due to a loss of productivity from lost varieties of technologies from the rest of all in manufactured products. Additional gains can be expected in the long run from an improvement in the investment climate. The authors estimate only small gains from a services agreement with countries of the Commonwealth of Independent States, but significant gains from expanding services liberalization multilaterally.

Unlocking Bangladesh-India Trade: Emerging Potential and the Way Forward by Prabir De, Selim Raihan and Sanjay Kathuria, August 2012, pp. 54. http://dx.doi.org/10.1596/1813-9450-6155

THE primary objective of this study is to analyze the impact on Bangladesh of increased market access in India, both within a static production structure and also identifying dynamic gains. The study shows that Bangladesh and India both would gain by opening up their markets to each other. Indian investments in Bangladesh will be very important for the latter to ramp up its exports, including products that would broaden trade complementarity and enhance intra-industry trade, and improve its trade standards and trade-handling capacity. A bilateral Free Trade Agreement would lift Bangladesh's exports to India by 182 per cent, and nearly 300 per cent if transaction costs were also reduced through improved connectivity. These numbers, based on existing trade patterns, represent a lower bound of the potential increase in Bangladesh's exports arising from a Free Trade Agreement.

A Free Trade Agreement would also raise India's exports to Bangladesh. India's provision of duty-free access for all Bangladeshi products (already done) could increase the latter's exports to India by 134 per cent. In helping Bangladesh's economy to grow, India would stimulate economic activity in its own eastern and north-eastern states. Challenges exist, however, including non-tariff measures/barriers in both countries, excessive bureaucracy, weak trade facilitation, and customs inefficiencies. Trade in education and health care services offers valuable prospects, but also suffers from market access issues.

To enable larger gains, Bangladesh-India cooperation should go beyond goods trade and include investment, finance, services trade, trade facilitation, and technology transfer, and be placed within the context of regional cooperation.

Implementing A WTO Agreement on Trade Facilitation: What Makes Sense? by J. Michael Finger and John S. Wilson, July 2006, pp. 40. http://dx.doi.org/10.1596/1813-9450-3971

CONTRARY to the prevailing view that the Doha negotiations have achieved little, the authors find that on trade facilitation much progress has been made. This is particularly true in regard to action by development banks and bilateral development agencies to meet client demand for assistance in reform. Active private sector participation has been an important factor driving change. Many agencies have been involved in this work. The authors find that their roles have been consistent with their comparative advantages.

As to how the international community can best support continued progress, the authors conclude in favour of a cautious approach to the imposition of new WTO obligations in the area of trade facilitation. On the whole, this is the approach the WTO has taken, for example, by limiting its negotiations on trade facilitation to several specific provisions of the GATT. The WTO can continue to function as a catalyst for reform. It is perhaps uniquely placed to relate the trade facilitation agenda to the overall trade agenda.

On design and construction of the relevant infrastructures and capacities to spur development, the development institutions, including bilateral agencies, should continue to lead. The authors find little evidence to support the need for a comprehensive new "platform" or mechanism to channel trade-related aid as part of implementation of any new agreement at the WTO on trade facilitation. They recommend, however, that an innovative approach to using the well established, but underutilized Trade Policy Review Mechanism be considered to increase transparency on where new aid is going over time and to expand understanding of where and how country-based progress has been achieved

Moving Forward Faster: Trade Facilitation Reform and Mexican Competitiveness by Alejandro Mejia, Isidro Soloaga and John S. Wilson, June 2006, pp. 31. http://dx.doi.org/10.1596/1813-9450-3953

IMPROVED competitiveness is at the top of the agenda for Mexico as it moves to leverage economic progress made over the past decade.

The authors evaluate the impact of changes in trade facilitation measures on trade for main industrial sectors in Mexico. They use four indicators of trade facilitation: port efficiency, customs environment, regulatory environment, and e-commerce use by business (as a proxy for service sector infrastructure). The authors use gravity model results to consider how much trade among countries might be increased under various scenarios of improved trade facilitation. They follow a simulation strategy that uses a formula to design a unique program of reform for each country in the sample, and apply it to the case of Mexico.

The formula brings the below-average countries in the group half-way to the average for the entire set of countries. After simulating these improvements in trade facilitation in all four areas, the authors find that the total increase in trade flow in manufacturing goods is estimated to be $348.2 billion (about 7.4% of total world trade). The analysis indicates that Mexico has a large scope for trade promotion from trade facilitation reform: overall increments from domestic reforms are expected to be on the order of $31.8 billion, equivalent to 22.4 per cent of total Mexican manufacturing exports for 2000-03. On the imports side, these figures are $17.1 billion and 11.2 per cent, respectively. In total exports as well as in textiles, increases in exports result from improvements in port efficiency and the regulatory environment (that is, the perception of corruption). In turn, exports of transport equipment are expected to get a greater increment from improvements in port efficiency, whereas exports of food and machinery seem to be more related to improvements in the regulatory environment. On the imports side, Mexican improvements in port efficiency appear to be the most important factor, although for imports of transport equipment improvements in service sector infrastructure are also of relative importance.

The Impact of Regional Trade Agreements and Trade Facilitation in the Middle East and North Africa Region by Allen Dennis, January 2006, pp. 24. http://dx.doi.org/10.1596/1813-9450-3837

THE Middle East and North Africa (MENA) region's trade performance over the past two decades has been disappointing. Efforts to boost trade through a plethora of regional trade agreements (RTAs) are underway. This study examines the potential contribution of regional trade agreements, as well as trade facilitation improvements, in enhancing the development prospects of the region. Using the Global Trade Analysis Project (GTAP) model and database, both intra-regional integration and integration with the European Union are observed to have a favourable impact on welfare in the MENA region. The welfare gains from integrating with the European Union are observed to be at least twice as much as intra-regional integration. Furthermore, these welfare gains are observed to at least triple when the implementation of the RTAs is complemented with trade facilitation improvement.

ARTICLES

Trade Facilitation in the WTO and Implications for Developing Countries by Chan-Hyun Sohn and Junsok Yang http://www.researchgate.net/publication/

WHILE the need for trade facilitation is extensively written and supported, there is no widely agreed upon definition for trade facilitation. WTO defines trade facilitation as "the simplification and harmonization of international trade procedures" where international trade procedures are defined as the "activities, practices, and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade" (ESCAP, 2002). International organizations such as the Economic Commission for Europe (ECE),

UNCTAD and APEC, as well as various authors all use slightly different definitions, which emphasize different aspects of trade facilitation. Sohn (2001) defined trade facilitation as "all activities or policies that reduce transaction costs arising from eliminating or simplifying excessive and complex procedures, practices and processes related to trade, thus increasing efficiency, which results in increased trade" (Sohn and Yoon, 2001). The most intuitive definition may be that given by Staples (2002), who stated that "trade facilitation involves reducing all the transactions cost associated with the enforcement, regulation, and administration of trade policies. It has been referred to as 'plumbing' of international trade". In the end, the objective of trade facilitation is to "reduce the cost of doing business for all parties by eliminating unnecessary administrative burdens associated with bringing goods and services across the borders" (Staples, 2002). These definitions make it clear that trade facilitation refers to a wide variety of activities, such as import and export procedures (e.g., customs or licensing procedures, customs valuation, technical standards, health and safety standards etc.), which include:

(a) administrative procedures, especially paperwork and information submission; and

(b) transportation and shipping; and insurance, payment mechanisms and other financial requirements.

Since many countries are utilizing new information technology and methods of electronic commerce, trade facilitation also deals with information technology issues. Sohn and Yim (1998) made the point that while trade liberalization dealt with increasing market access for goods and services and opening the economy to foreign investment, trade facilitation was a much wider concept. They noted that this was because the latter dealt with eliminating or reducing inefficient administrative, technical, and physical restrictions to trade, while establishing or striving for cooperation and more harmonization between trading partners (Sohn and Yim, 1998). Thus, the concept of trade facilitation includes concepts discussed under trade simplification, trade efficiency, and even electronic data interchange (EDI) and electronic commerce (ESCAP, 2002). Because trade facilitation is such a wide concept, many parties are involved in one or more of its aspects. Because of the wide range of interests and trade facilitation instruments involved, hundreds of organizations – private, public, regional and multilateral – are involved in the discussions on, and implementation of, trade facilitation. Some of the private international organizations that deal with trade facilitation include the International Chamber of Commerce and transport industry associations, which often set formal and informal international shipping standards. Public organizations include all government agencies that deal directly or indirectly with trade. Some countries maintain public or semi-public agencies that seek to facilitate trade such as the PRO organizations in the United Kingdom of Great Britain and Northern Ireland (SITPRO), Sweden (SWEPRO) and Japan (JASTPRO). There are also public or semi-public organizations that focus on trade facilitation through electronic means such as EDI France and Tradegate (Australia). Regional organizations include the Economic Commission for Europe (ECE), which has made major contributions to the development of trade facilitation, and APEC whose major goals include trade and investment liberalization and facilitation (TILF) as well as business facilitation. SECIPRO is a regional organization encompassing eight national PRO organizations in South-East Europe. The most important multilateral public organization that deals with trade facilitation may be the World Customs Organization (WCO), which establishes, maintains and promotes international instruments for the harmonization and uniform application of efficient and effective Customs systems (ESCAP, 2002). However, while WCO oversees a large part of what constitutes trade facilitation, there are still many areas for which it has no responsibilities since trade facilitation includes areas outside the traditional responsibilities of Customs. Other multilateral public organizations that oversee aspects of trade facilitation include the International Monetary Fund, the World Bank, the United Nations Industrial Development Organization (UNIDO), OECD (2002a), UNCTAD, the United Nations

Commission on International Trade Law (UNCITRAL) and WTO. It can be argued that trade facilitation is not a new topic to GATT/ WTO. Several of the Articles in GATT 1947 as well as various WTO Agreements encompass the ideas of trade facilitation.

From Trade Preferences to Trade Facilitation: Taking Stock of the Issues by Maria Persson http://www.economics-ejournal.org/economics/journalarticles/2012-17

THE objective of the paper is to explore and give an overview of two central policy alternatives to improve the integration between the European Union and developing countries by removing barriers to trade: trade preferences and trade facilitation. The author reviews the relevant literatures and discusses the issues which constitute problems or opportunities for practitioners and researchers in both areas. She concludes that while at least some trade preferences actually have been less of a failure than their reputation suggests, trade facilitation is a far more promising policy option for the future.

Trade Policy versus Trade Facilitation: An Application Using "Good Old" OLS by Laura Márquez-Ramos, Inmaculada Martínez-Zarzoso, and Celestino Suárez-Burguet, http://www.economics-ejournal.org.

TRADE policy barriers are only one element of overall trade costs. Among these, and due to decrease in the influence of tariff barriers on trade over time, institutional barriers might increase in relative importance and become a key obstacle to the movements of goods across countries. This paper quantifies and compares the impact that a number of trade facilitation and trade policy barriers have on bilateral trade flows. A theoretically justified gravity model of trade is estimated by using the methodology proposed in Baier and Bergstrand (*Bonus vetus OLS: A simple method for approximating international trade-cost effects using the gravity equation*, 2009) for a cross-section of countries in the year 2000. Results indicate that institutional trade barriers have a greater impact on trade flows than tariff barriers. According to these findings, trade policy negotiation efforts should focus on facilitating trade processes and should be at the forefront of multilateral negotiations.

Trade Facilitation, Transport Costs and Logistics: A New Challenge for European Competitiveness by Inmaculada Martínez-Zarzoso (ed.), University of Göttingen, Germany, http://www.economics-ejournal.org.

ONE of the political priorities of the European Union is to become more competitive *vis-a-vis* other economic areas. The ability to reduce behind-the-border barriers for goods and services, as well as the ability to develop new infrastructures, or even the ability to reap the benefits of the enlarged internal market, have a direct influence on the development of European competitiveness. The special issue aims to provide empirical and theoretical analyses of issues relating to comparative advantage, trade costs, logistics, production networks and bilateral trade flows.

Trade Facilitation: A Conceptual Review by Andrew Grainger, 21 Dec 2012, http://eprints.nottingham.ac.uk/1769/

WITH falling tariff levels, it is probably not surprising that the non-tariff area and trade facilitation, in particular, are receiving growing attention. Apart from the WTO, trade facilitation is a subject of substance within a wide range of international organizations including several United Nations (UN)-type bodies, the World Customs Organization (WCO) as well as those concerned with economic development, supply chain security, and sector-specific issues such as international transport and logistics. The resulting body of international trade facilitation instruments and initiatives, which include conventions as well as detailed technical recommendations, is extensive. This article provides a general review of key elements and topics that are associated with trade facilitation and sets them against underlying challenges and obstacles in practice as well as for research. While much of the current effort in trade facilitation begins with a top-down premise – whereby governments seek to implement international conventions and recommendations nationally – the author argues

that trade facilitation is inherently an operations-focused topic and deserves to be approached from a bottom-up approach, too. Such approach not only provides a strong case for an interdisciplinary research agenda, it also brings into question whether current institutions concerned with trade facilitation have the necessary capabilities to apply themselves to the more operational aspects associated with international trade.

Trade Facilitation in the East African Community: Recent Developments and Potential Benefits by Danilo D. http://www.usitc.gov/publications/332/pub4335.pdf

THE US International Trade Commission (USITC) released a report on trade facilitation in the East African Community (EAC). This report summarizes recent trade facilitation developments in the EAC and describes the potential benefits of trade facilitation to the EAC countries, based on empirical studies and the experiences of other developing countries. The main highlights are: (1) trade is growing rapidly among EAC member countries, resulting in higher volumes of goods crossing their borders; (2) EAC countries vary in their level of development, degree of integration into world markets, and success at establishing effective institutions. EAC members have had varying levels of success at implementing global best practices for trade facilitation with respect to both border procedures and the condition of transportation infrastructure; (3) Efficiency and predictability throughout the trading system reduce time delays and the risks related to uncertainty, thereby lowering costs for both importers and exporters. The benefits are greatest when improvements are made in multiple areas at the same time (e.g., when customs administration reforms go hand in hand with transportation infrastructure upgrading projects); and (4) trade facilitation decreases costs along the shipping chain, increasing the volume of traded goods.

Lower trading costs can result in a host of positive outcomes, including increased trade flows and investment, increases in the share of production for export, more diversified exports, improved tariff collections, and overall economic growth.

Customs Brokerage Services and Trade Facilitation: A Review of Regulatory Coherence by Llanto, Gilberto M. Navarro, Adoracion M. Detros, Keith C. Ortiz, Ma. Kristina P., http://ideas.repec.org/p/phd/dpaper/dp_2013-48.html

THE study looks at the rarely studied customs brokerage activity in the Philippines and its role in facilitating trade given the ongoing push to modernize customs administration. It analyzes how the customs brokerage profession is being regulated and synthesizes insights on opposing views on the importance of customs brokers in trade facilitation. The results of the study clearly point toward a declining relevance of the customs brokers' services in an environment where customs administration is modernizing, computerization is replacing the traditional, direct interaction of brokers with the Bureau of Customs, and a more transparent customs administration is emerging to efficiently process a significantly growing volume of trade transactions. Understandably, a threatened profession such as brokering mounts resistance in the face of changes. Customs brokers take the Customs Brokers Act of 2004 as their shield against any attempt to dilute or minimize their role in the customs administration process. However, their legalistic stand somewhat collides with the policymakers' attempt to modernize customs administration. A more positive outlook on modernization should trigger among customs brokers a paradigm shift, namely that a modernized customs administration and trade facilitation process will necessarily create new opportunities for those adept and flexible enough to adjust to changing market conditions. Moreover, it will be more efficient and consistent with trade facilitation to allow traders to use various and modern options for releasing or shipping their goods.

The Costs and Challenges of Implementing Trade Facilitation Measures by Evdokia Moïsé, http://www.gegafrica.org/news/

THIS study provides data on the costs and challenges of implementing trade facilitation

measures currently under negotiation in the WTO. It updates an earlier study undertaken in 2005. This updated study, based on data and insights from nine additional countries, confirms earlier findings identifying the measures that present the greatest challenges to developing countries in implementing reforms. The study also confirms that the costs of putting in place and maintaining trade facilitation measures are not particularly large and are far smaller than the benefits gained from implementing these measures. Moreover, an increasing amount of technical and financial assistance to implement these measures has been made available to developing countries over the last decade.

Among the three main areas of focus — transparency and predictability; procedural simplification and streamlining; and coordination and cooperation between border agencies — equipment and infrastructure seem to be the most expensive elements of trade facilitation, in particular the introduction and use of information technologies and the establishment of single window mechanisms. However, countries themselves report that the most important area is training, given its fundamental role in bringing about sustained change in the business practices of border agencies.

The study highlights the distinction between measures that are expensive to put in place, thus often requiring financial support, and those that are relatively inexpensive but require sustained political commitment to adopt and maintain over the long term. A further distinction can be made between capital expenditure and recurring costs: measures requiring significant upfront investments are not necessarily costly to operate. The trade facilitation costs reported here are not particularly large in comparison to either the budget and total staff of customs agencies, or against the very significant gains in terms of trade cost reductions that these measures can bring. The OECD Trade Facilitation Indicators suggest that for developing countries, the cost reduction resulting from these measures would be in the order of 14 per cent on average. A cost-benefit evaluation of trade facilitation should be made over a long time frame, as some measures may involve large one-off costs but deliver long-term benefits.

The total capital expenditure to introduce trade facilitation measures in the reviewed countries ranged between EUR 3.5 and EUR 19 million. Annual operating costs directly or indirectly related to trade facilitation did not exceed EUR 2.5 million in any of these countries. In all countries significant modernization and facilitation programs are in place and significant progress has already been made towards implementation of the measures under WTO negotiation.

Furthermore, in addition to the effort to invest domestic resources and energy in implementing trade facilitation, there has been no shortage of donor support, which increased by 365 per cent over a ten-year period, reaching US$381 million in 2011. The largest beneficiary was Africa, which received US$200 million in 2011, a 17-fold increase from the 2002-05 base-line average. In short, the costs of reducing border bottlenecks are modest — even tiny relative to the expected benefits. And ample development aid appears to be available to implement required changes.

The WTO's Agreement on Trade Facilitation: How Will It Affect Southern Africa?
by Brian Glancy, February 2014,
http://www.satradehub.org/trade-facilitation/the-wto-s-agreement-on-trade-facilitation-how-will-it-affect-southern-africa

THE "Agreement on Trade Facilitation" (ATF) was the focus of the WTO's 9th Ministerial Conference held in Bali, Indonesia in December 2013. Trade facilitation has at its core the goal of lowering the transaction costs of doing business in international trade, specifically the cost of clearing goods for import, export and transit and the associated border controls. Trader transaction costs and the administrative burden of trader activities are generally highest in developing and least developed countries, particularly those which are land-locked. The Agreement on Trade Facilitation seeks to compel the WTO member nations to remedy this current situation through the adoption of a rules-based system of trade policies and procedures that incorporates modernized business practices and processes, not only for customs authorities but for all government agencies that have a direct impact on international trade. The agreement was accepted in draft form by the WTO

members on 11 December, and it is expected to be ratified and implemented in July 2014. All of the countries in which the Trade Hub works are the WTO members and will be bound to implement the ATF within the dates prescribed in the agreement.

What's in the Agreement?

The proposed Agreement on Trade Facilitation comprises two sections. The first section deals with trade facilitation measures and obligations. The second section relates to flexibility arrangements that will allow developing and least developed countries to phase in the Agreement's obligations over an extended period of time. During the Bali conference, 12 articles were agreed upon, which are as follows:

1. Publication and availability of information
2. Prior publication and consultation
3. Advance rulings
4. Appeal or review procedures
5. Other measures to ensure impartiality, non-discrimination and transparency
6. Disciplines on fees and charges imposed on or in connection with importation and exportation
7. Release and clearance of goods
8. Border agency coordination
9. Movement of goods under customs control for import
10. Formalities connected with importation, exportation and transit
11. Freedom of transit
12. Customs cooperation

The first group of articles (Articles 1-5) essentially addresses transparency issues and expands on GATT Article X. The second group of articles (Articles 6-12) expands on GATT Articles V and VIII and is mainly concerned with fees, charges and formalities for the import, export and transit of goods. These articles require governments to develop new methodologies and business practices, introduce and expand the use of automation to enhance trade facilitation, and build a modernized border clearance service approach that is primarily based on the acceptance of "risk management" as a cornerstone to a significant reduction of border agency intrusions into the goods facilitation process. The implementation of the agreement fully supports the concept of "time shifting"—a border clearance process that implements both pre-arrival submission of documentation and post-release verification activities as risk-based audit controls—and payment schemes that are supported by security to minimize the impact on traders when goods actually arrive at the border.

What about traders in Africa?

For years, traders have been voicing their concerns regarding the costs and burdens associated with clearing goods through borders. In 2007, a list of common issues emerged from a study of business needs in East, West and Southern Africa. This initiative was carried out by the Business Action for Improving Customs Administration in Africa (BAFICAA) in response to the Commission for Africa Report in 2005. The six key facilitation issues for the African trade community were identified as:

1. The need for fast-track customs services for compliant and low risk taxpayers and traders
2. Regular private sector consultation to ensure support and acceptance for the changes and reforms in border administrations
3. Speeding up the automation of border processes and procedures
4. A service charter between customs and the private sector setting out expectations, service levels, and quality of service delivery
5. Elimination of duplication and bureaucracy in post clearance audit and valuation processes
6. Professional training and standards for the accreditation, certification and licensing of customs clearing agents and professional training for customs services

The Agreement on Trade Facilitation provides remedial action for all six of these issues, all of which have been adequately addressed in the agreement.

How will the Trade Hub support the ATF?

The Trade Hub is well-positioned to support the WTO countries in Southern Africa with technical assistance to allow these countries to meet their obligations to the ATF. For example, Articles 1-5 of the ATF deal with transparency issues. The Trade Hub will assist countries in developing a comprehensive communications strategy and action plan to promote public awareness and provide public consultation on border modernization initiatives like National Single Window, enabling access to government information, legislation, documentation and border obligation through systems such as trade repositories and websites. Articles 6-12 of the ATF focus on border agency formalities and fees. The Trade Hub is working closely with beneficiary countries to introduce modernized border services by giving them a toolkit to manage border process re-engineering efficiently and effectively. Overall, Trade Hub support activities will include training and technical assistance in:

- Communications Strategy and Plan (supports Articles 1&2, ATF)
- Project Management (supports Article 10.3, ATF)
- Change Management (supports Articles 7, 8&10, ATF)
- Business Process Re-engineering (supports Article 9.3, ATF)
- Readiness Assessments for OGAs to connect to Customs as part of a NSW environment (supports Article 10.4.1, ATF)
- Implementation of a National Single Window environment (supports Article 10.4.1, ATF)
- Legislative Reviews (supports Articles 1 – 12, ATF)
- One Stop Border Posts (supports Article 8.1 e, ATF)
- Coordinated Border Management (supports Articles 6&8, ATF)

These technical assistance interventions will improve the countries' ability to implement the ATF successfully and sustainably under prescribed conditions and within acceptable time frames. With cooperative and collaborative effort, WTO member countries in Southern Africa will reap the benefits of the agreement in a "win-win" situation for governments and the trade community.

Hub Digest: Namibia Embarks on Trade Facilitation Reforms by Brian Glancy, 12 September 2012, http://www.satradehub.org/

THE Namibian government is embarking on far-reaching trade facilitation reforms that will position the country as a competitive trading partner: routing imports and exports along the Trans Kalahari Corridor. The reforms will also make Namibia an attractive destination for inward investment in logistics, tourism and services industries.

USAID's Southern Africa Trade Hub is currently engaged with the Namibian government on a number of key modernization projects. These projects support the delivery of trade services that will utilize modernized business processes in tandem with technology solutions. Activities include:

- Developing web-based access to government ministries and their public information holdings via a "Trade Repository." Traders will be able to obtain information on their rights and obligations related to international trade through a single internet portal.
- Modernized Customs and Excise Legislation that will allow Namibia to provide border clearance services through the adoption of international agreements and standards such as the Revised Kyoto Convention.
- Regional information and cooperation through the establishment of a "Connectivity" program through which Namibia and Botswana will share information on trader transactions to reduce the burden on traders by reducing information provision requirements. One country's export becomes another country's import: all performed electronically.

Perhaps the most important project for which the Trade Hub is providing technical assistance and support to the Namibian government is the establishment of a "National Single Window"

(NSW) environment. The NSW concept promotes the use of technology and modernized business practices that allow traders to reduce significantly the time and cost associated with meeting their border obligations in the import, export and transit of goods. Currently, traders have many ministries to which they must report their goods, many forms and documents to complete, and many compliance verification inspections to undergo in order to get their goods to market. NSW changes all of that by allowing traders to meet their obligations through:

- the submission of a single transaction package to satisfy all government requirements,
- a single review inspection to satisfy all government agencies, and
- a single decision process based on simplified, harmonized and standardized data requirements and documentation.

The Trade Hub has been actively advocating that the government of Namibia pro-actively engage the private sector as part of its NSW vision through a public awareness program to stress the importance of a collaborative approach to successful trade reform initiatives.

The Trade Hub attended a private sector workshop in Walvis Bay during 23-28 September 2012, to promote its activities in Namibia. It was sponsored by the Namibian German Center of Logistics (NGCL), and participants included traders, CFA associations, the Walvis Bay Corridor Group, Namport (marine terminal operator) and TransNamib (rail). Aside from crucial government stakeholders, the private sector (trading community) is the ultimate end user of an NSW system.

The Trade Hub made presentations on its respective trade facilitation activities to support the government of Namibia's mandate to enhance trade facilitation through government reforms that offer improved services to traders through automation and business process re-engineering. This mandate has been formally confirmed through the recent approval of a Cabinet Document to commit the government of Namibia to implement a National Single Window environment. With the Cabinet Document now in place, the time is right for government to involve the private sector on the NSW concept and solicit their views and opinions on its potential impacts and benefits.

While government partners now have significant expertise on the concept of NSW and its relevance and requirements, a show of hands during the Trade Hub's presentation highlighted the low level of familiarity within the trading community on NSW. The Trade Hub has offered its assistance to the Namibian government to develop and implement a comprehensive communications strategy and plan to address this issue and offer effective public awareness and consultation events and information services as part of their NSW strategy.

A key consideration in involving the private sector is that in international trade, transport and logistics operators are for the most part already technologically advanced and use automation extensively in delivering services. Their knowledge and experience can be leveraged to support government reforms and introduce new programs and services that will ultimately be introduced to the trade chain.

Overall, the Trade Hub's contribution to the Transport and Logistics Workshop was highly regarded and well-received by the workshop participants, with many attendees requesting follow-up visits to get the message on NSW out to a wider audience. The Trade Hub will continue to offer assistance and support to the Namibian stakeholders where it is needed in implementing NSW and other trade facilitation measures.

•

DOCUMENTS

Ministerial Conference
Ninth Session
Bali, 3-6 December 2013

Agreement on Trade Facilitation

MINISTERIAL DECISION OF 7 DECEMBER 2013

The Ministerial Conference,

Having regard to paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement");

Decides as follows:

1. We hereby conclude the negotiation of an Agreement on Trade Facilitation (the "Agreement"), which is annexed hereto, subject to legal review for rectifications of a purely formal character that do not affect the substance of the Agreement.

2. We hereby establish a Preparatory Committee on Trade Facilitation (the "Preparatory Committee") under the General Council, open to all Members, to perform such functions as may be necessary to ensure the expeditious entry into force of the Agreement and to prepare for the efficient operation of the Agreement upon its entry into force. In particular, the Preparatory Committee shall conduct the legal review of the Agreement referred to in paragraph 1 above, receive notifications of Category A commitments, and draw up a Protocol of Amendment (the "Protocol") to insert the Agreement into Annex 1A of the WTO Agreement.

3. The General Council shall meet no later than 31 July 2014 to annex to the Agreement notifications of Category A commitments, to adopt the Protocol drawn up by the Preparatory Committee, and to open the Protocol for acceptance until 31 July 2015. The Protocol shall enter into force in accordance with Article X:3 of the WTO Agreement.

ANNEX

AGREEMENT ON TRADE FACILITATION

Preamble

Members,

Having regard to the Doha Round of Multilateral Trade Negotiations;

Recalling and reaffirming the mandate and principles contained in paragraph 27 of the Doha Ministerial Declaration and Annex D of the Decision of the Doha Work Programme adopted by the General Council on 1 August 2004, as well as paragraph 33 and Annex E of the Hong Kong Ministerial Declaration;

Desiring to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit;

Recognizing the particular needs of developing and especially least-developed country Members and desiring to enhance assistance and support for capacity building in this area;

Recognizing the need for effective cooperation among Members on trade facilitation and customs compliance issues:

Hereby *agree* as follows:

SECTION I

ARTICLE 1

PUBLICATION AND AVAILABILITY OF INFORMATION

1. Publication

1.1. Each Member shall promptly publish the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders and other interested parties to become acquainted with them:

(a) Importation, exportation and transit procedures (including port, airport, and other entry-point procedures) and required forms and documents;

(b) Applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;

(c) Fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;

(d) Rules for the classification or valuation of products for customs purposes;

(e) Laws, regulations and administrative rulings of general application relating to rules of origin;

(f) Import, export or transit restrictions or prohibitions;

(g) Penalty provisions against breaches of import, export or transit formalities;

(h) Appeal procedures;

(i) Agreements or parts thereof with any country or countries relating to importation, exportation or transit;

(j) Procedures relating to the administration of tariff quotas.

1.2. Nothing in these provisions shall be construed as requiring the publication or provision of information other than in the language of the Member except as stated in paragraph 2.2.

2. Information Available Through Internet

2.1. Each Member shall make available, and update to the extent possible and as appropriate, the following through the internet:

(a) A description[1] of its importation, exportation and transit procedures, including appeal procedures, that informs governments, traders and other interested parties of the practical steps needed to import and export, and for transit;

(b) The forms and documents required for importation into, exportation from, or transit through the territory of that Member;

(c) Contact information on enquiry points.

2.2. Whenever practicable, the description referred to in subparagraph 2.1 a. shall also be made available in one of the official languages of the WTO.

2.3. Members are encouraged to make available further trade related information through the internet, including relevant trade-related legislation and other items referred to in paragraph 1.1.

3. Enquiry Points

3.1. Each Member shall, within its available resources, establish or maintain one or more enquiry points to answer reasonable enquiries of governments, traders and other interested parties on matters covered by paragraph 1.1 as well as to provide the required forms and documents referred to in subparagraph 1.1 (a).

3.2. Members of a customs union or involved in regional integration may establish or maintain common enquiry points at the regional level to satisfy the requirement of paragraph 3.1 for common procedures.

3.3. Members are encouraged not to require the payment of a fee for answering enquiries and providing required forms and documents. If any, Members shall limit the amount of its fees and charges to the approximate cost of services rendered.

3.4. The enquiry points shall answer enquiries and provide the forms and documents within a

reasonable time period set by each Member, which may vary depending on the nature or complexity of the request.

4. Notification

4.1. Each Member shall notify the Committee of:

(a) The official place(s) where the items in subparagraphs 1.1 (a) to(j) have been published; and

(b) The URLs of website(s) referred to in paragraph 2.1, as well as the contact information of the enquiry points referred to in paragraph 3.1.

Article 2

Opportunity to Comment, Information Before Entry Into Force and Consultation

1. Opportunity to Comment and Information before Entry into Force

1.1. Each Member shall, to the extent practicable and in a manner consistent with its domestic law and legal system, provide opportunities and an appropriate time period to traders and other interested parties to comment on the proposed introduction or amendment of laws and regulations of general application related to the movement, release and clearance of goods, including goods in transit.

1.2. Each Member shall, to the extent practicable, and in a manner consistent with its domestic law and legal system, ensure that new or amended laws and regulations of general application related to the movement, release and clearance of goods, including goods in transit are published, or information on them made otherwise publicly available, as early as possible before their entry into force, in order to enable traders and other interested parties to become acquainted with them.

1.3. Changes to duty rates or tariff rates, as well as measures that have a relieving effect or whose effectiveness would be undermined by prior publication, measures applied in urgent circumstances, or minor changes to domestic law and legal system are excluded from paragraphs 1.1 and 1.2 above.

2. Consultations

Each Member shall, as appropriate, provide for regular consultations between border agencies and traders or other stakeholders within its territory.

Article 3

Advance Rulings

1. Each Member shall issue an advance ruling in a reasonable, time bound manner to an applicant that has submitted a written request containing all necessary information. If a Member declines to issue an advance ruling it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

2. A Member may decline to issue an advance ruling to an applicant where the question raised in the application:

(a) is already pending in the applicant's case before any governmental agency, appellate tribunal or court; or

(b) has already been decided by any appellate tribunal or court.

3. The advance ruling shall be valid for a reasonable period of time after its issuance unless the law, facts or circumstances supporting the original advance ruling have changed.

4. Where the Member revokes, modifies or invalidates the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where a Member revokes, modifies or invalidates advance rulings with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false or misleading information.

5. An advance ruling issued by a Member shall be binding on that Member in respect of the applicant that sought it. The Member may provide that the advance ruling be binding on the applicant.

6. Each Member shall publish, at a minimum:

(a) the requirements for the application for an advance ruling, including the information to be provided and the format;

(b) the time period by which it will issue an advance ruling; and

(c) the length of time for which the advance ruling is valid.

7. Each Member shall provide, upon written request of an applicant, a review of the advance ruling or the decision to revoke, modify or invalidate the advance ruling.[2]

8. Each Member shall endeavour to make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.

9. Definitions and scope:

(a) An advance ruling is a written decision provided by a Member to an applicant prior to the importation of a good covered by the application that sets forth the treatment that the Member shall provide to the good at the time of importation with regard to:

  (i) the good's tariff classification, and

  (ii) the origin of the good;[3]

(b) In addition to the advance rulings defined in subparagraph 3.9 (a), Members are encouraged to provide advance rulings on:

  (i) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts;

  (ii) the applicability of the Member's requirements for relief or exemption from customsduties;

  (iii) the application of the Member's requirements for quotas, including tariff quotas; and

  (iv) any additional matters for which a Member considers it appropriate to issue an advance ruling.

(c) An applicant is an exporter, importer or any person with a justifiable cause or a representative thereof.

(d) A Member may require that an applicant have legal representation or registration in its territory. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium sized enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.

Article 4

Appeal or Review Procedures

1. Right to Appeal or Review

1.1. Each Member shall provide that any person to whom customs issues an administrative decision[4] has the right, within its territory to:

(a) administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision; and/or

(b) judicial appeal or review of the decision.

1.2. The legislation of each Member may require administrative appeal or review to be initiated prior to judicial appeal or review.

1.3. Members shall ensure that their appeal or review procedures are carried out in a nondiscriminatory manner.

1.4. Each Member shall ensure that, in a case where the decision on appeal or review under subparagraph 1.1 (a) is not given either (i) within set periods as specified in its laws or regulations or ii. without undue delay, the petitioner has the right to either further appeal to or further review by the administrative authority or the judicial authority or any other recourse to the judicial authority.[5]

1.5. Each Member shall ensure that the person referred to in paragraph 1.1 is provided with the reasons for the administrative decision so as to enable such a person to have recourse to appeal or review procedures where necessary.

1.6. Each Member is encouraged to make the provisions of this Article applicable to an administrative decision issued by a relevant border agency other than customs.

Article 5

Other Measures to Enhance Impartiality, Non-discrimination and Transparency

1. Notifications for Enhanced Controls or Inspections

Where a Member adopts or maintains a system of issuing notifications or guidance to its concerned authorities for enhancing the level of controls or inspections at the border in respect of foods, beverages or feedstuffs covered under the notification or guidance for protecting human, animal, or plant life or health within its territory, the following disciplines shall apply to the manner of their issuance, termination or suspension:

(a) each Member may, as appropriate, issue the notification or guidance based on risk.

(b) each Member may issue the notification or guidance so that it applies uniformly only to those points of entry where the sanitary and phytosanitary conditions on which the notification or guidance are based apply.

(c) each Member shall promptly terminate or suspend the notification or guidance when circumstances giving rise to it no longer exist, or if changed circumstances can be addressed in a less trade restrictive manner.

(d) when a Member decides to terminate or suspend the notification or guidance, it shall, as appropriate, promptly publish the announcement of its termination or suspension in a non-discriminatory and easily accessible manner, or inform the exporting Member or the importer.

2. Detention

A Member shall inform the carrier or importer promptly in case of detention of goods declared for importation, for inspection by Customs or any other competent authority.

3. Test Procedures

3.1. A Member may, upon request, grant an opportunity for a second test in case the first test result of a sample taken upon arrival of goods declared for importation shows an adverse finding.

3.2. A Member shall either publish, in a non-discriminatory and easily accessible manner, the name and address of any laboratory where the test can be carried out or provide this information to the importer when it is granted the opportunity under paragraph 3.1.

3.3. A Member shall consider the result of the second test in the release and clearance of goods, and, if appropriate, may accept the results of such test.

Article 6

Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation

1. General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation

1.1. The provisions of paragraph 6.1 shall apply to all fees and charges other than import and export duties and other than taxes within the purview of Article III of GATT 1994 imposed by Members on or in connection with importation or exportation of goods.

1.2. Information on fees and charges shall be published in accordance with Article 1 of this Agreement. This information shall include the fees and charges that will be applied, the reason for such fees and charges, the responsible authority and when and how payment is to be made.

1.3. An adequate time period shall be accorded between the publication of new or amended fees and charges and their entry into force except in urgent circumstances. Such fees and charges shall not be applied until information on them has been published.

1.4. Each Member shall periodically review its fees and charges with a view to reducing their number and diversity, where practicable.

2. Specific Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation

2.1. Fees and charges for customs processing:

(i) shall be limited in amount to the approximate cost of the services rendered on or in connection with the specific import or export operation in question; and

(ii) are not required to be linked to a specific import or export operation provided they are levied for services that are closely connected to the customs processing of goods.

3. Penalty Disciplines

3.1. For the purpose of Article 6.3, the term "penalties" shall mean those imposed by a Member's customs administration for a breach of the Member's customs law, regulation, or procedural requirement.

3.2. Each Member shall ensure that penalties for a breach of a customs law, regulation, or procedural requirement are imposed only on the person(s) responsible for the breach under its laws.

3.3. The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.

3.4. Each Member shall ensure that it maintains measures to avoid:

(i) conflicts of interest in the assessment and collection of penalties and duties; and

(ii) creating an incentive for the assessment or collection of a penalty that is inconsistent with paragraph 3.3.

3.5. Each Member shall ensure that when a penalty is imposed for a breach of customs laws, regulations, or procedural requirements, an explanation in writing is provided to the person(s) upon whom the penalty is imposed specifying the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed.

3.6. When a person voluntarily discloses to a Member's customs administration the circumstances of a breach of a customs law, regulation, or procedural requirement prior to the discovery of the breach by the customs administration, the Member is encouraged to, where appropriate, consider this fact as a potential mitigating factor when establishing a penalty for that person.

3.7. The provisions of this paragraph shall apply to the penalties on traffic in transit referred to in paragraph 3.1.

Article 7

Release and Clearance of Goods

1. Pre-arrival Processing

1.1. Each Member shall adopt or maintain procedures allowing for the submission of import documentation and other required information, including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.

1.2. Members shall, as appropriate, provide for advance lodging of documents in electronic format for pre-arrival processing of such documents.

2. Electronic Payment

Each Member shall, to the extent practicable, adopt or maintain procedures allowing the option of electronic payment for duties, taxes, fees and charges collected by customs incurred upon importation and exportation.

3. Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges

3.1. Each Member shall adopt or maintain procedures allowing the release of goods prior to the final determination of customs duties, taxes, fees and charges, if such a determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met.

3.2. As a condition for such release, a Member may require:

(a) payment of customs duties, taxes, fees and charges determined prior to or upon arrival of goods and a guarantee for any amount not yet determined in the form of a surety, a deposit or another appropriate instrument provided for in its laws and regulations; or

(b) a guarantee in the form of a surety, a deposit or other appropriate instrument provided for in its laws and regulations.

3.3. Such guarantee shall not be greater than the amount the Member requires to ensure payment of customs duties, taxes, fees and charges ultimately due for the goods covered by the guarantee.

3.4. In cases where an offence requiring imposition of monetary penalties or fines has been detected, a guarantee may be required for the penalties and fines that may be imposed.

3.5. The guarantee as set out in paragraphs 3.2 and 3.4 shall be discharged when it is no longer required.

3.6. Nothing in these provisions shall affect the right of a Member to examine, detain, seize or confiscate or deal with the goods in any manner not otherwise inconsistent with the Member's WTO rights and obligations.

4. Risk Management

4.1. Each Member shall, to the extent possible, adopt or maintain a risk management system for customs control.

4.2. Each Member shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions to international trade.

4.3. Each Member shall concentrate customs control and, to the extent possible other relevant border controls, on high risk consignments and expedite the release of low risk consignments. Each Member may also select, on a random basis, consignments for such controls as part of its risk management.

4.4. Each Member shall base risk management on assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, *inter alia*, HS code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport.

5. Post-clearance Audit

5.1. With a view to expediting the release of goods, each Member shall adopt or maintain post-clearance audit to ensure compliance with customs and other related laws and regulations.

5.2. Each Member shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Member shall conduct postclearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved the Member shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations and the reasons for the results.

5.3. Members acknowledge that the information obtained in post-clearance audit may be used in further administrative or judicial proceedings.

5.4. Members shall, wherever practicable, use the result of post-clearance audit in applying risk management.

6. Establishment and Publication of Average Release Times

6.1. Members are encouraged to measure and publish their average release time of goods periodically and in a consistent manner, using tools such as, *inter alia*, the WCO Time Release Study.[6]

6.2. Members are encouraged to share with the Committee their experiences in measuring average release times, including methodologies used, bottlenecks identified, and any resulting effects on efficiency.

7. Trade Facilitation Measures for Authorized Operators

7.1. Each Member shall provide additional trade facilitation measures related to import, export or transit formalities and procedures, pursuant to paragraph 7.3, to operators who meet specified criteria, hereinafter called authorized operators. Alternatively, a Member may offer such facilitation measures through customs procedures generally available to all operators and not be required to establish a separate scheme.

7.2. The specified criteria shall be related to compliance, or the risk of non-compliance, with requirements specified in a Member's laws, regulations or procedures. The specified criteria, which shall be published, may include:

(a) an appropriate record of compliance with customs and other related laws and regulations;

(b) a system of managing records to allow for necessary internal controls;

(c) financial solvency, including, where appropriate, provision of a sufficient security/ guarantee; and

(d) supply chain security.

The specified criteria to qualify as an operator shall not:

(a) be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail; and

(b) to the extent possible, restrict the participation of small and medium-sized enterprises.

7.3. The trade facilitation measures provided pursuant to paragraph 7.1 shall include at least 3 of the following measures:[7]

(a) low documentary and data requirements as appropriate;

(b) low rate of physical inspections and examinations as appropriate;

(c) rapid release time as appropriate;

(d) deferred payment of duties, taxes, fees and charges;

(e) use of comprehensive guarantees or reduced guarantees;

(f) a single customs declaration for all imports or exports in a given period; and

(g) clearance of goods at the premises of the authorized operator or another place authorized by customs.

7.4. Members are encouraged to develop authorized operator schemes on the basis of international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfillment of the legitimate objectives pursued.

7.5. In order to enhance the facilitation measures provided to operators, Members shall afford to other Members the possibility to negotiate mutual recognition of authorized operator schemes.

7.6. Members shall exchange relevant information within the Committee about authorized operator schemes in force.

8. Expedited Shipments

8.1. Each Member shall adopt or maintain procedures allowing for expedited release of at least those goods entered through air cargo facilities to persons that apply for such treatment, while maintaining customs control.[8] If a Member employs criteria[9] limiting who may apply, the Member may, in published criteria, require that the applicant shall, as conditions for qualifying for the application of the treatment described in paragraphs 8.2 (a) – (d) to its expedited shipments:

(a) provide adequate infrastructure and payment of customs expenses related to processing of expedited shipments, in cases where the applicant fulfills the Member's requirements for such processing to be performed at a dedicated facility;

(b) submit in advance of the arrival of an expedited shipment the information necessary for release;

(c) be assessed fees limited in amount to the approximate cost of services rendered in providing the treatment described in paragraph 8.2 (a) – (d);

(d) maintain a high degree of control over expedited shipments through the use of internal security, logistics, and tracking technology from pick-up to delivery;

(e) provide expedited shipment from pick-up to delivery;

(f) assume liability for payment of all customs duties, taxes, and fees and charges to the customs authority for the goods;

(g) have a good record of compliance with customs and other related laws and regulations;

(h) comply with other conditions directly related to the effective enforcement of the Member's laws, regulations and procedural requirements, that specifically relate to providing the treatment described in paragraph 8.2.

8.2. Subject to paragraphs 8.1 and 8.3, Members shall:

(a) minimize the documentation required for the release of expedited shipments in accordance with Article 10.1, and to the extent possible,

provide for release based on a single submission of information on certain shipments;

(b) provide for expedited shipments to be released under normal circumstances as rapidly as possible after arrival, provided the information required for release has been submitted;

(c) endeavour to apply the treatment in sub-paragraphs 8.2 a. and b. to shipments of any weight or value recognizing that a Member is permitted to require additional entry procedures, including declarations and supporting documentation and payment of duties and taxes, and to limit such treatment based on the type of good, provided the treatment is not limited to low value goods, such as documents; and

(d) provide, to the extent possible, for a *de minimis* shipment value or dutiable amount for which customs duties and taxes will not be collected, aside from certain prescribed goods. Internal taxes, such as value added taxes and excise taxes, applied to imports consistently with Article III of the GATT 1994 are not subject to this provision.

8.3. Nothing in paragraphs 8.1 and 8.2 shall affect the right of a Member to examine, detain, seize, confiscate or refuse entry to goods, or to carry out post-clearance audits, including in connection with the use of risk management systems. Further, nothing in paragraphs 8.1 and 8.2 shall prevent a Member from requiring, as a condition for release, the submission of additional information and the fulfillment of non-automatic licensing requirements.

9. Perishable Goods[10]

9.1. With a view to preventing avoidable loss or deterioration of perishable goods, and provided all regulatory requirements have been met, each Member shall:

(a) provide for the release of perishable goods under normal circumstances within the shortest possible time; and

(b) provide for the release of perishable goods, in exceptional circumstances where it would be appropriate to do so, outside the business hours of customs and other relevant authorities.

9.2. Each Member shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

9.3. Each Member shall either arrange, or allow an importer to arrange, for the proper storage of perishable goods pending their release. The Member may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorizations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. The Member shall, where practicable and consistent with domestic legislation, upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

9.4. In cases of significant delay in the release of perishable goods, and upon written request, the importing Member shall, to the extent practicable, provide a communication on the reasons for the delay.

ARTICLE 8
BORDER AGENCY COOPERATION

1. A Member shall ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade.

2. Members shall, to the extent possible and practicable, cooperate on mutually agreed terms with other Members with whom they share a common border with a view to coordinating procedures at border crossings to facilitate cross-border trade. Such cooperation and coordination may include:

(i) alignment of working days and hours;

(ii) alignment of procedures and formalities;

(iii) development and sharing of common facilities;

(iv) joint controls;

(v) establishment of one stop border post control.

Article 9

Movement of Goods under Customs Control Intended for Import

Each Member shall, to the extent practicable, and provided all regulatory requirements are met, allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where the goods would be released or cleared.

Article 10

Formalities Connected with Importation and Exportation and Transit

1. Formalities and Documentation Requirements

1.1. With a view to minimizing the incidence and complexity of import, export, and transit formalities and of decreasing and simplifying import, export and transit documentation requirements and taking into account the legitimate policy objectives and other factors such as changed circumstances, relevant new information and business practices, availability of techniques and technology, international best practices and inputs from interested parties, each Member shall review such formalities and documentation requirements, and, based on the results of the review, ensure, as appropriate, that such formalities and documentation requirements:

(a) are adopted and/or applied with a view to a rapid release and clearance of goods, particularly perishable goods;

(b) are adopted and/or applied in a manner that aims at reducing the time and cost of compliance for traders and operators;

(c) are the least trade restrictive measure chosen, where two or more alternative measures are reasonably available for fulfilling the policy objective or objectives in question; and

(d) are not maintained, including parts thereof, if no longer required.

1.2. The Committee shall develop procedures for sharing relevant information and best practices as appropriate.

2. Acceptance of Copies

2.1. Each Member shall, where appropriate, endeavour to accept paper or electronic copies of supporting documents required for import, export or transit formalities.

2.2. Where a government agency of a Member already holds the original of such a document, any other agency of that Member shall accept a paper or electronic copy, where applicable, from the agency holding the original in lieu of the original document.

2.3. A Member shall not require an original or copy of export declarations submitted to the customs authorities of the exporting Member as a requirement for importation.[11]

3. Use of International Standards

3.1. Members are encouraged to use relevant international standards or parts thereof as a basis for their importation, exportation or transit formalities and procedures except as otherwise provided for in this Agreement.

3.2. Members are encouraged to take part, within the limits of their resources, in the preparation and periodic review of relevant international standards by appropriate international organizations.

3.3. The Committee shall develop procedures for the sharing by Members of relevant information, and best practices, on the implementation of international standards, as appropriate. The Committee may also invite relevant international organizations to discuss their work on international standards. As appropriate, the Committee may identify specific standards that are of particular value to Members.

4. Single Window

4.1. Members shall endeavour to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation or transit of goods through a single entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.

4.2. In cases where documentation and/or data requirements have already been received through the single window, the same documentation and/or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances and other limited exceptions which are made public.

4.3. Members shall notify to the Committee the details of operation of the single window.

4.4. Members shall, to the extent possible and practical, use information technology to support the single window.

5. Pre-shipment Inspection

5.1. Members shall not require the use of pre-shipment inspections in relation to tariff classification and customs valuation.

5.2. Without prejudice to the rights of Members to use other types of pre-shipment inspection not covered by paragraph 5.1, Members are encouraged not to introduce or apply new requirements regarding their use.[12]

6. Use of Customs Brokers

6.1. Without prejudice to the important policy concerns of some Members that currently maintain a special role for customs brokers, from the entry into force of this agreement Members shall not introduce the mandatory use of customs brokers.

6.2. Each Member shall notify and publish its measures on the use of customs brokers. Any subsequent modifications thereof shall be notified to the Committee and published promptly.

6.3. With regard to the licensing of customs brokers, Members shall apply rules that are transparent and objective.

7. Common Border Procedures and Uniform Documentation Requirements

7.1. Each Member shall, subject to paragraph 7.2, apply common customs procedures and uniform documentation requirements for release and clearance of goods throughout its territory.

7.2. Nothing in this Article shall prevent a Member from:

(a) differentiating its procedures and documentation requirements based on the nature and type of goods, or their means of transport;

(b) differentiating its procedures and documentation requirements for goods based on risk management;

(c) differentiating its procedures and documentation requirements to provide total or partial exemption from import duties or taxes;

(d) applying electronic filing or processing; or

(e) differentiating its procedures and documentation requirements in a manner consistent with the Agreement on Sanitary and Phytosanitary Measures.

8. Rejected Goods

8.1. Where goods presented for import are rejected by the competent authority of a Member on account of their failure to meet prescribed sanitary or phytosanitary regulations or technical regulations, the Member shall, subject to and consistent with its laws and regulations, allow the importer to re-consign or to return the rejected goods to the exporter or another person designated by the exporter.

8.2. When such an option is given and the importer fails to exercise it within a reasonable period of time, the competent authority may take a different course of action to deal with such non-compliant goods.

9. Temporary Admission of Goods/Inward and Outward Processing

(a) Temporary Admission of Goods

Each Member shall allow, as provided for in its laws and regulations, goods to be brought into a customs territory conditionally relieved, totally or partially, from payment of import duties and taxes if such goods are brought into a customs territory for a specific purpose, are intended for re-exportation within a specific period, and have not undergone any change except normal depreciation and wastage due to the use made of them.

(b) Inward and Outward Processing

(i) Each Member shall allow, as provided for in its laws and regulations, inward and outward processing of goods. Goods allowed for outward processing may be re-imported with total or partial exemption from import duties and taxes in accordance with the Member's laws and regulations in force.

(ii) For the purposes of this Article, the term "inward processing" means the Customs procedure under which certain goods can be brought into a Customs territory conditionally relieved totally or partially from payment of import duties and taxes, or eligible for duty drawback, on the basis that such goods are intended for manufacturing, processing or repair and subsequent exportation.

(iii) For the purposes of this Article, the term "outward processing" means the Customs procedure under which goods which are in free circulation in a Customs territory may be temporarily exported for manufacturing, processing or repair abroad and then reimported.

Article 11

Freedom of Transit

1. Any regulations or formalities in connection with traffic in transit imposed by a Member shall not:

(a) be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a reasonably available less trade restrictive manner,

(b) be applied in a manner that would constitute a disguised restriction on traffic in transit.

2. Traffic in transit shall not be conditioned upon collection of any fees or charges imposed in respect of transit, except the charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.

3. Members shall not seek, take or maintain any voluntary restraints or any other similar measures on traffic in transit. This is without prejudice to existing and future national regulations, bilateral or multilateral arrangements related to regulating transport consistent with WTO rules.

4. Each Member shall accord to products which will be in transit through the territory of any other Member treatment no less favourable than that which would be accorded to such products if they were being transported from their place of origin to their destination without going through the territory of such other Member.

5. Members are encouraged to make available, where practicable, physically separate infrastructure (such as lanes, berths and similar) for traffic in transit.

6. Formalities, documentation requirements and customs controls, in connection with traffic in transit, shall not be more burdensome than necessary to:

(a) identify the goods; and

(b) ensure fulfillment of transit requirements.

7. Once goods have been put under a transit procedure and have been authorized to proceed from the point of origination in a Member's territory, they will not be subject to any customs charges nor unnecessary delays or restrictions until they conclude their transit at the point of destination within the Member's territory.

8. Members shall not apply technical regulations and conformity assessment procedures within the meaning of the Agreement on Technical Barriers to Trade on goods in transit.

9. Members shall allow and provide for advance filing and processing of transit documentation and data prior to the arrival of goods.

10. Once traffic in transit has reached the customs office where it exits the territory of the Member, that office shall promptly terminate the transit operation if transit requirements have been met.

11.1. Where a Member requires a guarantee in the form of a surety, deposit or other appropriate monetary or non-monetary[13] instrument for traffic in transit, such guarantee shall be limited to ensuring that requirements arising from such traffic in transit are fulfilled.

11.2 Once the Member has determined that its transit requirements have been satisfied, the guarantee shall be discharged without delay.

11.3 Each Member shall, in a manner consistent with its laws and regulations, allow comprehensive guarantees which include multiple transactions for same operators or renewal of guarantees without discharge for subsequent consignments.

11.4 Each Member shall make available to the public the relevant information it uses to set the guarantee, including single transaction and, where applicable, multiple transaction guarantee.

11.5 Each Member may require the use of customs convoys or customs escorts for traffic in transit only in circumstances presenting high risks or when compliance with customs laws and regulations cannot be ensured through the use of guarantees. General rules applicable to customs convoys or customs escorts shall be published in accordance with Article 1.

12. Members shall endeavour to cooperate and coordinate with one another with a view to enhance freedom of transit. Such cooperation and coordination may include, but is not limited to an understanding on:

(i) charges;

(ii) formalities and legal requirements; and

(iii) the practical operation of transit regimes.

13. Each Member shall endeavour to appoint a national transit coordinator to which all enquiries and proposals by other Members relating to the good functioning of transit operations can be addressed.

Article 12

Customs Cooperation

1. Measures Promoting Compliance and Cooperation

1.1. Members agree on the importance of ensuring that traders are aware of their compliance obligations, encouraging voluntary compliance to allow importers to self-correct without penalty in appropriate circumstances, and applying compliance measures to initiate stronger measures for non-compliant traders.[14]

1.2. Members are encouraged to share information on best practices in managing customs compliance, including through the Committee on Trade Facilitation. Members are encouraged to cooperate in technical guidance or assistance in building capacity for the purposes of administering compliance measures, and enhancing their effectiveness.

2. Exchange of Information

2.1. Upon request, and subject to the provisions of this Article, Members shall exchange the information set out in paragraph 6 (b) and/or (c) for the purpose of verifying an import or export declaration in identified cases where there are reasonable grounds to doubt the truth or accuracy of the declaration.

2.2. Each Member shall notify to the Committee the details of its contact point for the exchange of this information.

3. Verification

A Member shall make a request for information only after it has conducted appropriate verification procedures of an import or export declaration and after it has inspected the available relevant documentation.

4. Request

4.1. The requesting Member shall provide the requested Member with a written request, through paper or electronic means in a mutually agreed WTO or other language, including:

(a) the matter at issue including, where appropriate and available, the serial number of the export declaration corresponding to the import declaration in question;

(b) the purpose for which the requesting Member is seeking the information or documents, along with the names and contact details of the persons about which the request relates, if known;

(c) where required by the requested Member, provide confirmation[15] of the verification where appropriate.

(d) the specific information or documents requested;

(e) the identity of the originating office making the request;

(f) reference to provisions of the requesting Member's domestic law and legal system that govern the collection, protection, use, disclosure, retention and disposal of confidential information and personal data;

4.2. If the requesting Member is not in a position to comply with any of the sub-paragraphs of 4.1, it shall specify this in the request.

5. Protection and Confidentiality

5.1. The requesting Member shall, subject to paragraph 5.2:

(a) hold all information or documents provided by the requested Member strictly in confidence and grant at least the same level of such protection and confidentiality as that provided under the domestic law and legal system of the requested Member as described by it under paragraphs 6.1 (b) and 6.1 (c);

(b) provide the information or documents only to the customs authorities dealing with the matter at issue and use the information or documents solely for the purpose stated in the request unless the requested Member agrees otherwise in writing;

(c) not disclose the information or documents without the specific written permission of the requested Member;

(d) not use any unverified information or documents from the requested Member as the deciding factor towards alleviating the doubt in any given circumstance;

(e) respect any case-specific conditions set out by the requested Member regarding retention and disposal of confidential information or documents and personal data; and

(f) upon request, inform the requested Member of any decisions and actions taken on the matter as a result of the information or documents provided.

5.2. A requesting Member may be unable under its domestic law and legal system to comply with any of the sub-paragraphs of 5.1. If so, the requesting Member shall specify this in the request.

5.3. The Requested Member shall treat any request, and verification information, received under paragraph 4 with at least the same level of protection and confidentiality accorded by the requested member to its own similar information.

6. Provision of Information

6.1. Subject to the provisions of this article, the requested Member shall promptly:

(a) respond in writing, through paper or electronic means;

(b) provide the specific information as set out in the import or export declaration, or the declaration, to the extent it is available, along with a description of the level of protection and confidentiality required of the requesting Member;

(c) if requested, provide the specific information as set out in the following documents, or the documents, submitted in support of the import or export declaration, to the extent it is available: commercial invoice, packing list, certificate of origin and bill of lading, in the form in which these were filed, whether paper or electronic, along with a description of the level of protection and confidentiality required of the requesting Member;

(d) confirm that the documents provided are true copies;

(e) provide the information or otherwise respond to the request, to the extent possible, within 90 days from the date of the request.

6.2. The requested Member may require, under its domestic law and legal system, an assurance prior to the provision of information that the specific information will not be used as evidence in criminal investigations, judicial proceedings, or in non-customs proceedings without the specific written permission of the requested Member. If the requesting Member is not in a position to comply with this requirement it should specify this to the requested Member.

7. Postponement or Refusal of a Request

7.1. A requested Member may postpone or refuse part or all of a request to provide information, and

shall so inform the requesting Member of the reasons for doing so, where:

(a) it would be contrary to the public interest as reflected in the domestic law and legalsystem of the requested Member.

(b) its domestic law and legal system prevents the release of the information. In such case it shall provide the requesting Member with a copy of the relevant, specific reference.

(c) the provision of the information would impede law enforcement or otherwise interfere with an on-going administrative or judicial investigation, prosecution or proceeding.

(d) the consent of the importer or exporter is required by domestic law and legal system that govern the collection, protection, use, disclosure, retention and disposal of confidential information or personal data and that consent is not given.

(e) the request for information is received after the expiration of the legal requirement of the requested Member for the retention of documents.

7.2. In the circumstances of paragraph 4.2, 5.2 or 6.2 execution of such a request shall be at the discretion of the requested Member.

8. Reciprocity

If the requesting Member is of the opinion that it would be unable to comply with a similar request in case such a request was made by the requested Member, or if it has not yet implemented this Article, it shall state that fact in its request. Execution of such a request shall be at the discretion of the requested Member.

9. Administrative Burden

9.1. The requesting Member shall take into account the associated resource and cost implications for the requested Member's administration in responding to requests for information. The requesting Member shall consider the proportionality between its fiscal interest in pursuing its request and the efforts to be made by the requested Member in providing the information.

9.2. If a requested Member receives an unmanageable number of requests for information, or a request for information of unmanageable scope from one or more requesting Member(s), and is unable to meet such requests within a reasonable time it may request one or more of the requesting Member(s) to prioritize with a view to agreeing on a practical limit within its resource constraints. In the absence of a mutually-agreed approach, the execution of such requests shall be at the discretion of the requested Member based on the results of its own prioritization.

10. Limitations

Requested Members shall not be required to:

(a) modify the format of their import or export declarations or procedures;

(b) call for documents other than those submitted with the import or export declaration as specified in paragraph 6 (c);

(c) initiate enquiries to obtain the information;

(d) modify the period of retention of such information;

(e) introduce paper documentation where electronic format has already been introduced;

(f) translate the information;

(g) verify the accuracy of the information;

(h) provide information that would prejudice the legitimate commercial interests of particular enterprises, public or private.

11. Unauthorized Use or Disclosure

11.1. In the event of any breach of the conditions of use or disclosure of information exchanged under this Article, the requesting Member that received the information shall promptly communicate the details of such unauthorized use or disclosure to the requested Member that provided the information, and:

(a) take necessary measures to remedy the breach;

(b) take necessary measures to prevent any future breach; and

(c) notify the requested Member of the measures taken under sub-paragraphs (a) and (b) above.

11.2. The requested Member may suspend its obligations to the requesting Member under this Article until the measures set out in paragraph 11.1 have been taken.

12. Bilateral and Regional Agreements

12.1. Nothing in this Article shall prevent a Member from entering into or maintaining a bilateral, plurilateral, or regional agreement for sharing or exchange of customs information and data, including on a secure and rapid basis such as on an automatic basis or in advance of the arrival of the consignment.

12.2. Nothing in this Article shall be construed to alter or affect Members' rights or obligations under such bilateral, plurilateral or regional agreements or to govern the exchange of customs information and data under such other agreements.

ARTICLE 13

INSTITUTIONAL ARRANGEMENTS

1. Committee on Trade Facilitation

1.1. A Committee on Trade Facilitation is hereby established.

1.2. The Committee shall be open for participation by all Members and shall elect its own Chairperson. The Committee shall meet as needed and envisaged by the relevant provisions of this Agreement, but no less than once a year, for the purpose of affording Members the opportunity to consult on any matters related to the operation of this Agreement or the furtherance of its objectives. The Committee shall carry out such responsibilities as assigned to it under this Agreement or by the Members. The Committee shall establish its own rules of procedure.

1.3. The Committee may establish such subsidiary bodies as may be required. All such bodies shall report to the Committee.

1.4. The Committee shall develop procedures for sharing by Members of relevant information and best practices as appropriate.

1.5. The Committee shall maintain close contact with other international organizations in the field of trade facilitation, such as the World Customs Organization, with the objective of securing the best available advice for the implementation and administration of this Agreement and in order to ensure that unnecessary duplication of effort is avoided. To this end, the Committee may invite representatives of such organizations or their subsidiary bodies to:

(a) attend meetings of the Committee; and

(b) discuss specific matters related to the implementation of this Agreement.

1.6. The Committee shall review the operation and implementation of this Agreement 4 years from its entry into force, and periodically thereafter.

1.7. Members are encouraged to raise before the Committee questions relating to issues on the implementation and application of this Agreement.

1.8. The Committee shall encourage and facilitate ad hoc discussions among Members on specific issues under this Agreement, with a view to reaching a mutually satisfactory solution promptly.

2. National Committee on Trade Facilitation

Each Member shall establish and/or maintain a national committee on trade facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of provisions of this Agreement.

SECTION II

SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS FOR DEVELOPING COUNTRY MEMBERS AND LEAST DEVELOPED COUNTRY MEMBERS

1. General Principles

1.1. The provisions contained in Articles 1 to 12 of this Agreement shall be implemented by developing and least developed country Members in accordance with this Section, which is based on the modalities agreed in Annex D of the July 2004 Framework Agreement (WT/L/579) and paragraph 33 and Annex E of the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC).

1.2. Assistance and support for capacity building[16] should be provided to help developing and least-developed country Members implement the

provisions of this agreement, in accordance with their nature and scope. The extent and the timing of implementing the provisions of this Agreement shall be related to the implementation capacities of developing and least developed country Members. Where a developing or least developed country Member continues to lack the necessary capacity, implementation of the provision(s) concerned will not be required until implementation capacity has been acquired.

1.3. Least developed country Members will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.

1.4. These principles shall be applied through the provisions set out in Section II.

2. Categories of Provisions

2.1. There are three categories of provisions:

(a) Category A contains provisions that a developing country Member or a least developed country Member designates for implementation upon entry into force of this Agreement, or in the case of a least developed country Member within one year after entry into force, as provided in paragraph 3.

(b) Category B contains provisions that a developing country Member or a least developed country Member designates for implementation on a date after a transitional period of time following the entry into force of this Agreement, as provided in paragraph 4.

(c) Category C contains provisions that a developing country Member or a least developed country Member designates for implementation on a date after a transitional period of time following the entry into force of this Agreement and requiring the acquisition of implementation capacity through the provision of assistance and support for capacity building, as provided for in paragraph 4.

2.2. Each developing country and least developed country Member shall self-designate, on an individual basis, the provisions it is including under each of the Categories A, B and C.

3. Notification and Implementation of Category A

3.1. Upon entry into force of this Agreement, each developing country Member shall implement its Category A commitments. Those commitments designated under Category A will thereby be made an integral part of this Agreement.

3.2. A least developed country Member may notify the Committee of the provisions it has designated in Category A for up to one year after entry into force of this Agreement. Each least developed country Member's commitments designated under Category A will thereby be made an integral part of this Agreement.

4. Notification of Definitive Dates for Implementation of Category B and Category C

4.1. With respect to the provisions that a developing country Member has not designated in Category A, the Member may delay implementation in accordance with the process set out in this paragraph.

Developing Country Member Category B

(a) Upon entry into force of this Agreement, each developing country Member shall notify to the Committee the provisions that it has designated in Category B and corresponding indicative dates for implementation.[17]

(b) No later than one year after entry into force of this Agreement, each developing country Member shall notify to the Committee its definitive dates for implementation of the provisions it has designated in Category B. If a developing country Member, before this deadline, believes it requires additional time to notify its definitive dates, the Member may request that the Committee extend the period sufficient to notify its dates.

Developing Country Member Category C

(c) Upon entry into force of this Agreement, each developing country Member shall notify to the Committee the provisions that it has

designated in Category C and corresponding indicative dates for implementation. For transparency purposes, notifications submitted shall include information on the assistance and support for capacity building that the Member requires in order to implement.[18]

(d) Within one year after entry into force of this Agreement, developing country Members and relevant donor Members, taking into account any existing arrangements already in place, notifications pursuant to paragraph 10.1 and information submitted pursuant to sub-paragraph c. above, shall provide information to the Committee on the arrangements maintained or entered into that are necessary to provide assistance and support for capacity building to enable implementation of Category C.[19] The participating developing country Member shall promptly inform the Committee of such arrangements. The Committee shall also invite non-Member donors to provide information on existing or concluded arrangements.

(e) Within 18 months from the date of the provision of the information stipulated in subparagraph 4.1 (d), donor Members and respective developing country Members shall inform the Committee on progress in the provision of assistance and support. Each developing country Member shall, at the same time, notify its list of definitive dates for implementation.

4.2. With respect to those provisions that a least developed country Member has not designated under Category A, least developed country Members may delay implementation in accordance with the process set forth in this paragraph.

Least Developed Country Member Category B

(a) No later than one year after entry into force of this Agreement, a least developed country Member shall notify the Committee its Category B provisions and may notify corresponding indicative dates for implementation of these provisions, taking into account maximum flexibilities for least developed country Members.

(b) No later than two years after the notification date stipulated under sub-paragraph (a) above, each least developed country Member shall notify the Committee to confirm designations of provisions and notify its dates for implementation. If a least developed country Member, before this deadline, believes it requires additional time to notify its definitive dates, the Member may request that the Committee extend the period sufficiently to notify its dates.

Least Developed Country Member Category C

(c) For transparency purposes and to facilitate arrangements with donors, one year after entry into force of this Agreement each least developed country Member shall notify the Committee of the provisions it has designated in Category C, taking into account maximum flexibilities for least developed country Members.

(d) One year after the date stipulated in sub-paragraph (c) above, least developed country Members shall notify information on assistance and support for capacity building that the Member requires in order to implement.[20]

(e) Within two years after the notification under sub-paragraph (d) above, least developed country Members and relevant donor Members, taking into account information submitted pursuant to sub-paragraph (d) above, shall provide information to the Committee on the arrangements maintained or entered into that are necessary to provide assistance and support for capacity building to enable implementation of Category C.[21] The participating least developed country Member shall promptly inform the Committee of such arrangements. The least developed country Member shall, at the same time, notify indicative dates for implementation of corresponding Category C commitments covered by the assistance arrangements. The Committee shall also invite non-Member donors to provide information on existing and concluded arrangements.

(f) Within 18 months from the date of the provision of the information stipulated in subparagraph 4.2 (e), relevant donor Members

and respective least developed country Members shall inform the Committee on progress in the provision of assistance and support. Each least-developed country Member shall, at the same time, notify its list of definitive dates for implementation.

4.3. Developing country Members and least developed country Members experiencing difficulties in submitting definitive dates for implementation within the deadlines set out in paragraphs 4.1 and 4.2 because of the lack of donor support or lack of progress in the provision of assistance and support should notify the Committee as early as possible prior to the expiration of those deadlines. Members agree to cooperate to assist in addressing such difficulties, taking into account the particular circumstances and special problems facing the Member concerned. The Committee shall, as appropriate, take action to address the difficulties including, where necessary, by extending the deadlines for the Member concerned to notify its definitive dates.

4.4. Three months before the deadline stipulated in paragraph 4.1 (b) or 4.1 (e), or in the case of a least developed country Member paragraph 4.2 (b) or 4.2 (f), the Secretariat shall remind a Member if that Member has not notified a definitive date for implementation of provisions that it has designated in Category B or C. If the Member does not invoke paragraph 4.3 or paragraph 4.1 (b) or in the case of a least developed country Member paragraph 4.2 (b), to extend the deadline and still does not notify a definitive date for implementation, the Member shall implement the provisions within one year after the deadline stipulated in paragraph 4.1 (b) or 4.1 (e), or in the case of a least developed country Member paragraph 4.2 (b) or 4.2 (f), or extended by paragraph 4.3.

4.5. No later than 60 days after the dates for notification of definitive dates for implementation of Category B and Category C in accordance with paragraphs 4.1, 4.2 or 4.3, the Committee shall take note of the annexes containing each Member's definitive dates for implementation of Category B and Category C provisions, including any dates set under paragraph 4.4, thereby making these annexes an integral part of this Agreement.

5. Early Warning Mechanism: Extension of Implementation Dates for Provisions in Categories B and C

5.1.

(a) A developing country Member or least developed country Member that considers itself to be experiencing difficulty in implementing a provision that it has designated in Category B or Category C by the definitive date established under paragraph 4.1 (b) or 4.1 (e), or in the case of a least-developed country Member paragraph 4.2 (b) or 4.2 (f), and should notify the Committee. Developing countries shall notify the Committee no later than 120 days before the expiration of the implementation date. Least developed countries shall notify the Committee no later than 90 days before such date.

(b) The notification to the Committee shall indicate the new date by which the developing country Member or least developed country Member expects to be able to implement the provision concerned. The notification shall also indicate the reasons for the expected delay in implementation. Such reasons may include the need for assistance not earlier anticipated or additional assistance to help build capacity.

5.2. Where a developing country Member's request for additional time for implementation does not exceed 18 months or a least developed country Member's request for additional time does not exceed 3 years, the requesting Member is entitled to such additional time without any further action by the Committee.

5.3. Where a developing country or least developed country Member considers that it requires a first extension longer than that provided for in paragraph 5.2 or a second or any subsequent extension, it shall submit to the Committee a request for an extension containing the information described in 5.1 (b) no later than 120 days in respect of a developing country and 90 days in respect of a least developed country before the expiration of the original definitive implementation date or that date as subsequently extended.

5.4. The Committee shall give sympathetic consideration to granting requests for extension taking into account the specific circumstances of the Member submitting the request. These circumstances may include difficulties and delays in obtaining assistance.

6. Implementation of Category B and Category C

6.1. In accordance with paragraph 1.2, if a developing country Member or a least developed country Member, having fulfilled the procedures set forth in sub-paragraph 4.1 or 4.2 and in paragraph 5, and where an extension requested has not been granted or where the developing country Member or least developed country Member otherwise experiences unforeseen circumstances that prevents an extension being granted under paragraph 5, self-assesses that its capacity to implement a provision under Category C continues to be lacking, that Member shall notify the Committee of its inability to implement the relevant provision.

6.2. The Trade Facilitation Committee shall immediately establish an Expert Group, and in any case no later than 60 days after the Committee receives the notification from the relevant developing country Member or least developed country Member. The Expert Group will examine the issue and make a recommendation to the Committee within 120 days of its composition.

6.3. The Expert Group shall be composed of five independent persons, highly qualified in the fields of trade facilitation and assistance and support for capacity building. The composition of the Expert Group shall ensure balance between nationals from developing and developed country Members. Where a least developed country Member is involved, the Expert Group shall include at least one national from a least developed country. If the Committee cannot agree on the composition of the Expert Group within 20 days of its establishment, the Director-General, in consultation with the chair of the Committee, shall determine the composition of the Expert Group in accordance with the terms of this paragraph.

6.4. The Expert Group shall consider the Member's self-assessment of lack of capacity and shall make a recommendation to the Trade Facilitation Committee. When considering the Expert Group's recommendation concerning a least developed country Member, the Committee shall, as appropriate, take action that will facilitate the acquisition of sustainable implementation capacity.

6.5. The Member shall not be subject to proceedings under the Dispute Settlement Understanding on this issue from the time the developing country Member notifies the Committee of its inability to implement the relevant provision until the first meeting of the Committee after it receives the recommendation of the Expert Group. At that meeting, the Committee shall consider the recommendation of the Expert Group. For the least developed country Member, the proceedings under the Dispute Settlement Understanding shall not apply on the respective provision from the date of notification to the Committee of its inability to implement the provision until the Committee makes a decision on the issue, or within 24 months after the first Committee meeting set out above, whichever is the earlier.

6.6. Where a least developed country Member loses its ability to implement a Category C commitment, it may inform the Committee and follow the procedures set out in paragraph 6.

7. Shifting between Categories B and C

7.1. Developing Country Members and least developed country Members who have notified provisions under Categories B and C may shift provisions between such categories through the submission of a notification to the Committee. Where a Member proposes to shift a provision from Category B to C, the Member shall provide information on the assistance and support required to build capacity.

7.2. In the event that additional time is required to implement a provision as a result of it having been shifted from Category B to Category C, the Member may:

(a) use the provisions of paragraph 5, including opportunity for an automatic extension; or

(b) request an examination by the Committee of the Member's request for extra time to implement the provision and, if necessary, for assistance and support for capacity building, including the possibility of a review and recommendation by the Expert Group under paragraph 6; or

(c) in the case of a least developed country Member, any new implementation date of more than four years after the original date notified under Category B shall require approval by the Committee. In addition, a least developed country continues to have recourse to paragraph 5. It is understood that assistance and support for capacity building is required for a least developed country Member so shifting.

8. Grace Period for the Application of the Understanding on Rules and Procedures Governing the Settlement of Disputes

8.1. For a period of 2 years after entry into force of this Agreement, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against a developing country Member concerning any provision that the Member has designated in Category A.

8.2. For a period of 6 years after entry into force of this Agreement, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against a least developed country Member concerning any provision that the Member has designated in Category A.

8.3. For a period of 8 years after implementation of a provision under Category B and C by a least developed country Member, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against that least developed country Member concerning those provisions.

8.4. Notwithstanding the grace period for the application of the Understanding on Rules and Procedures Governing the Settlement of Disputes, before making a request for consultations pursuant to Articles XXII or XXIII, and at all stages of dispute settlement procedures with regard to a measure of a least developed country Member, a Member shall give particular consideration to the special situation of least developed country Members. In this regard, Members shall exercise due restraint in raising matters under the Understanding on Rules and Procedures Governing the Settlement of Disputes involving least developed country Members.

8.5. Each Member shall, upon request, during the grace period allowed under this paragraph, provide adequate opportunity to other Members for discussion with respect to any issue relating to the implementation of this Agreement.

9. Provision of Assistance for Capacity Building

9.1. Donor Members agree to facilitate the provision of assistance and support for capacity building to developing country and least developed country Members, on mutually agreed terms and either bilaterally or through the appropriate international organizations. The objective is to assist developing country and least developed country Members to implement the provisions of Section I of this Agreement.

9.2. Given the special needs of least developed country Members, targeted assistance and support should be provided to the least developed country Members so as to help them build sustainable capacity to implement their commitments. Through the relevant development cooperation mechanisms and in coherence with the principles of technical assistance and capacity building as referred to in paragraph 9.3, development partners shall endeavour to provide assistance and support in this area in a way that does not compromise existing development priorities.

9.3. Members shall endeavour to apply the following principles for providing assistance and support for capacity building with regard to the implementation of this Agreement:

(a) take account of the overall developmental framework of recipient countries and regions and, where relevant and appropriate, ongoing reform and technical assistance programs;

(b) include, where relevant and appropriate, activities to address regional and sub-regional challenges and promote regional and sub-regional integration;

(c) ensure that ongoing trade facilitation reform activities of the private sector are factored into assistance activities;

(d) promote coordination between and among Members and other relevant institutions, including regional economic communities, to ensure maximum effectiveness of and results from this assistance. To this end:

(i) coordination, primarily in the country or region where the assistance is to be provided, between partner Members and donors, and among bilateral and multilateral donors, should aim to avoid overlap and duplication in assistance programs and inconsistencies in reform activities through close coordination of technical assistance and capacity building interventions;

(ii) for least developed country Members, the Enhanced Integrated Framework should be a part of this coordination process; and

(iii) Members should also promote internal coordination between their trade and development officials, both in capitals and Geneva, in the implementation of the Agreement and technical assistance.

(e) encourage use of existing in-country and regional coordination structures such as roundtables and consultative groups to coordinate and monitor implementation activities; and

(f) encourage developing countries Members to provide capacity building to other developing and least developed country and consider supporting such activities, where possible.

9.4. The Committee shall hold at least one dedicated session per year to:

(a) discuss any problems regarding implementation of provisions or sub-parts of provisions;

(b) review progress in the provision of technical assistance and capacity building to support the implementation of the Agreement, including any developing or least developed country Members not receiving adequate technical assistance and capacity building; c. share experiences and information on ongoing assistance and implementation programs, including challenges and successes;

(d) review donor notifications as set forth in paragraph 10; and

(e) review the operation of paragraph 9.2.

10. Information on Assistance to be Submitted to the Committee

10.1. To provide transparency to developing and least developed Members on the provision of assistance and support for implementation of Section I, each donor Member assisting developing country and least developed country Members with the implementation of this Agreement shall submit to the Committee, at entry into force of the Agreement and annually thereafter, the following information on its assistance and support for capacity building that was disbursed in the preceding twelve months and, where available, that is committed in the next twelve months:[22]

(a) a description of the assistance and support for capacity building;

(b) the status and amount committed/disbursed;

(c) procedures for disbursement of the assistance and support;

(d) the beneficiary country, or, where necessary, the region; and

(e) the implementing agency in the Member providing assistance and support. The information shall be provided in the format specified in Annex 1. In the case of OECD members, the information submitted can be

based on relevant information from the OECD Creditor Reporting System. Developing country Members declaring themselves in a position to provide assistance and support are encouraged to provide the information above.

10.2. Donor Members assisting developing country and least developed country Members shall submit to the Committee:

(a) contact points of their agencies responsible for providing assistance and support for capacity building related to the implementation of the provisions of Section I of this Agreement including, where practicable, information on such contact points within the country or region where the assistance and support is to be provided; and

(b) information on the process and mechanisms for requesting assistance and support. Developing country Members declaring themselves in a position to provide assistance and support are encouraged to provide the information above.

10.3. Developing country and least developed country Members intending to avail themselves of trade facilitation-related assistance and support shall submit to the Committee information on contact point(s) of the office(s) responsible for coordinating and prioritizing such assistance and support.

10.4. Members may provide the information in paragraphs 10.2 and 10.3 through internet references and shall update the submitted information as necessary. The Secretariat shall make all such information publicly available.

10.5. The Committee shall invite relevant international and regional organizations (such as the IMF, OECD, UNCTAD, WCO, UN Regional Commissions, the World Bank, or their subsidiary bodies, and regional development banks) and other agencies of cooperation to provide information referred to in paragraphs 10.1, 10.2 and 10.4.

FINAL PROVISIONS

1. For the purpose of this Agreement, the term "Member" is deemed to include the competent authority of that Member.

2. All provisions of this Agreement are binding on all Members.

3. Members shall implement this Agreement from the date of its entry into force. Developing country Members and least developed country Members that choose to use the provisions of Section II shall implement this Agreement in accordance with Section II.

4. A Member which accepts this Agreement after its entry into force shall implement its Category B and C commitments counting the relevant periods from the date this Agreement enters into force.

5. Members of a customs union or a regional economic arrangement may adopt regional approaches to assist in the implementation of their obligations under the Agreement on Trade Facilitation including through the establishment and use of regional bodies.

6. Notwithstanding the General interpretative note to Annex 1A, nothing in this Agreement shall be construed as diminishing the obligations of Members under the GATT 1994. In addition, nothing in this Agreement shall be construed as diminishing the rights and obligations of Members under the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures.

7. All exceptions and exemptions[23] under the General Agreement on Tariffs and Trade 1994 shall apply to the provisions of this Agreement. Waivers applicable to the GATT 1994 or any part thereof, granted according to Article IX:3 and Article IX:4 of the Marrakesh Agreement establishing the WTO and any amendments thereto as of the date of entry into force of this Agreement, shall apply to the provisions of this Agreement.

8. The provisions of Articles XXII and XXIII of the General Agreement on Tariffs and Trade 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of

Disputes shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided for in this Agreement.

9. Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

10. The Category A commitments of developing and least developed country Members annexed to this Agreement in accordance with paragraphs 3.1 and 3.2 of Section II shall constitute an integral part of this Agreement.

11. The Category B and C commitments of developing and least developed country Members taken note of by the Committee and annexed to this Agreement pursuant to paragraph 4.5 of Section II shall constitute an integral part of this Agreement.

NOTES

[1] Each Member has the discretion to state on its website the legal limitations of this description.

[2] Under this paragraph: a) a review may, before or after the ruling has been acted upon, be provided by the official, office or authority that issued the ruling, a higher or independent administrative authority, or a judicial authority; and b) a Member is not required to provide the applicant with recourse to Article 4.1.1 of this Agreement.

[3] It is understood that an advance ruling on the origin of a good may be an assessment of origin for the purposes of the Agreement on Rules of Origin where the ruling meets the requirements of this Agreement and the Agreement on the Rules of Origin. Likewise, an assessment of origin under the Agreement on Rules of Origin may be an advance ruling on the origin of a good for the purposes of this Agreement where the ruling meets the requirements of both agreements. Members are not required to establish separate arrangements under this provision in addition to those established pursuant to the Rules of Origin Agreement in relation to the assessment of origin provided that the requirements of this Article are fulfilled.

[4] An administrative decision in this Article means a decision with a legal effect that affects rights and obligations of a specific person in an individual case. It shall be understood that an administrative decision in this Article covers an administrative action within the meaning of Article X of the GATT 1994 or failure to take an administrative action or decision as provided for in a Member's domestic law and legal system. For addressing such failure, Members may maintain an alternative administrative mechanism or judicial recourse to direct the customs authority to promptly issue an administrative decision in place of the right to appeal or review under sub-paragraph 1.1 (a).

[5] Nothing in this paragraph shall prevent Members from recognizing administrative silence on appeal or review as a decision in favour of the petitioner in accordance with its laws and regulations.

[6] Each Member may determine the scope and methodology of such average release time measurement in accordance with its needs and capacity.

[7] A measure listed in sub-paragraphs (a) - (g) will be deemed to be provided to authorized operators if it is generally available to all operators.

[8] In cases where a Member has an existing procedure that provides the treatment in paragraph 8.2, this provision would not require that Memberto introduce separate expedited release procedures.

[9] Such application criteria, if any, shall be in addition to the Member's requirements for operating with respect to all goods or shipments entered through air cargo facilities.

[10] For the purposes of this provision, perishable goods are goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.

[11] Nothing in this paragraph precludes a Member from requiring documents such as certificates, permits or licenses as a requirement for the importation of controlled or regulated goods.

[12] This sub-paragraph refers to pre-shipment inspections covered by the Pre-shipment Inspection Agreement, and does not preclude pre-shipment inspections for SPS purposes.

[13] Nothing in this provision shall preclude a Member from maintaining existing procedures whereby the mean of transport can be used as a guarantee for traffic in transit.

[14] Such activity has the overall objective of lowering the frequency of non-compliance, and consequently reducing the need for exchange of information in pursuit of enforcement.

[15] This may include pertinent information on the verification conducted under paragraph 12.3. Such information shall be subject to the level of protection and confidentiality specified by the Member conducting the verification.

[16] For the purposes of this Agreement, "assistance and support for capacity building" may take the form of technical, financial, or any other mutually agreed form of assistance provided.

[17] Notifications submitted may also include such further information as the notifying Member deems appropriate. Members are encouraged to provide information on the domestic agency/entity responsible for implementation.

[18] Members may also include information on national trade facilitation implementation plans or projects; the domestic agency/entity responsible for implementation; and the donors with which the Member may have an arrangement in place to provide assistance.

[19] Such arrangements will be on mutually agreed terms, either bilaterally or through appropriate international organizations, consistent with paragraph 9.3.

[20] Members may also include information on national trade facilitation implementation plans and projects and information on the domestic agency/entity responsible for implementation, and the donors with which the Member may have an arrangement in place to provide assistance.

[21] Such arrangements will be on mutually agreed terms, either bilaterally or through appropriate international organizations, consistent with subparagraph 9.3.

[22] The information provided will reflect the demand driven nature of the provision of technical assistance.

[23] This includes Articles V:7 and X:1 of the GATT 1994 and the Ad note to Article VIII of the GATT 1994.

(www.wto.org. WT/MIN(13)/36 WT/L/911 11 December 2013)

FOCUS WTO

IMPORTANT INFORMATION

Dear Subscribers,

Wish you all a Happy and Prosperous 2014.

We would like to put on record the support and recognition extended by you and your organizations in bringing out this Bimonthly journal, *Focus WTO* for a decade and half exclusively dealing with a wide range of WTO issues. Your interests and requirements enabled us to focus sharply on these critical issues to make this journal informative and analytical.

It's our pleasure to inform you that the Institute would like to continue with this journal as a Quarterly from January 2014.

Therefore, you will get 4 issues in a year as below :

1 **January-March 2014 (Vol.16, No.1),**

2 **April-June 2014 (Vol.16, No.2),**

3 **July-Sept. 2014 (Vol.16, No.3),** and

4 **Oct-Dec 2014 (Vol.16, No.4),**

The Annual Subscription Rate will remain the same, i.e. ₹1,000/- and Single Issue will cost ₹ 300/-.

We look forward to your support and cooperation as always have been. Any query in this regard is welcome.

(Anil K. Kanungo)
EDITOR

ISSN 0972-2076

SELECT PUBLICATIONS

PUBLICATIONS

1. **India's Regional Trade Agreements: Impact on Indian Economy,** Vijaya Katti, Sunitha Raju and Rajan Sudesh Ratna, 2010, ₹375
2. **अंतरराष्ट्रीय व्यापार : अवधारणा, नीतियाँ, प्रक्रिया,** डा० रवि शंकर, संतोष कुमार वर्मा (सम्पादक); 2005, ₹125/-

OCCASIONAL PAPERS

1. **Competing for the Indian Market: Local Firms vs. MNCs,** Aneel Karnani, 1996, ₹50 (*out of Stock*)
2. **Foreign Direct Investment in India: Facts and Issues,** B. Bhattacharyya and Satinder Palaha, 1996, ₹50
3. **Regional Trade Enhancement: SAPTA and Beyond,** B. Bhattacharyya and Vijaya Katti, 1996, ₹50
4. **Towards Economic Integration through Regional Trade Blocs,** Satinder Palaha and H.L. Sharma, 1996, ₹50
5. **Duty Free Access to India within SAPTA Framework,** B. Bhattacharyya and Somasri Mukhopadhyay, 1996, ₹50
6. **India's Trade Liberalisation Since 1991: A Statistical Appraisal,** B. Bhattacharyya, Somasri Mukhopadhyay and Bimal K. Panda, 1996, ₹50
7. **Indian Garments Industry in the Post-MFA Period,** Satinder Bhatia, 1997, ₹50
8. **Impact of Economic Reforms on India's Major Exports: Policy Guidelines,** H.A.C. Prasad, 1997, ₹50
9. **Intellectual Property Rights in the Present Indian Context,** Shahid Alikhan, 1997, ₹50
10. **India's Competitiveness in Export of Garments in the MFA Phase-Out and Post-MFA Phase-Out Periods,** H. Ashok Chandra Prasad, 1997, ₹50
11. **Democracy and Human Rights,** Justice P.N. Bhagwati, 1997, ₹50
12. **Currency Turmoil in South East and East Asia: Impact on India's Exports,** B. Bhattacharyya, 1998, ₹50
13. **Chinese Response to Asian Economic Crisis: Implications for India's Trade,** B. Bhattacharyya, 1998, ₹50
14. **Trade and Environment Issue in the WTO: Indian Experience,** B. Bhattacharyya and L.D. Mago, 1998, ₹50
15. **Advent of Euro: Implications for India,** B. Bhattacharyya and Vinayak N. Ghatate, 1998, ₹50
16. **Non-Tariff Measures on India's Exports: An Assessment,** B. Bhattacharyya, 1999, ₹50
17. **Export Product Diversification in the US Market Indian Experience,** B. Bhattacharyya and Prithwis K. De, 2000, ₹50
18. **Export Performance: Increasing Competitiveness through New Sources of Productivity Growth,** B. Bhattacharyya, 2001, ₹50
19. **Dispute Settlement System under World Trade Organisation,** Sumitra Chishti, 2001, ₹50
20. **Impact of WTO on Marketing Cooperatives,** B. Bhattacharyya, 2002, ₹50
21. **Food Trade, Trade Flows and Trade Policies: A Comparative Analysis of World and India,** Sunitha Raju and Tamanna Chaturvedi, 2004, ₹50
22. **Rules of Origin under Generalised System of Preferences as a Market Access Barrier to Indian Textiles and Clothing Exports: With Special Reference to US and EU Markets,** K. Rangarajan, 2004, ₹50
23. **Development of an Enduring Involvement Scale Using Flow Concept in Hypermedia Computer Mediated Environments,** Anshu Saxena and D.P. Kothari, 2005, ₹50
24. **A Review of India-Sri Lanka Trade Cooperation,** Biswajit Nag, 2006, ₹50
25. **ASEAN-India FTA: Emerging Issues for Trade in Agriculture,** Sunitha Raju, 2010, ₹50

Orders for publications may be sent to:

Section Officer (Publications)
Indian Institute of Foreign Trade,
B-21 Qutab Institutional Area, New Delhi-110016
Phones: 26965124, 26965051, 26966563, 26965300
Fax: 91-11-26853956, 26859520, 26867851
E-mail: publications@iift.ac.in

Printed and published by **Prof. Ashok Kapoor,** Registrar, for Indian Institute of Foreign Trade, B-21 Qutab Institutional Area, New Delhi-110016 at I.G. Printers Pvt. Ltd, Okhla Phase-I, New Delhi-110020.