

Progressive Regional Action and Cooperation on Trade (PROACT)

A Multilateral Approach to Trade Facilitation in South Asia

Discussion Paper



A Multilateral Approach to Trade Facilitation in South Asia

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List of acronyms

AAR	Authority for Advance Rulings
ACIS	Advance Cargo Information System
ADB	Asian Development Bank
APEC	Asia Pacific Economic Cooperation
ASEAN	Association of South East Asian Nations
ASEM	Asia Europe Meeting
ASYCUDA	Automated System for Customs Data
BoP	Balance of Payment
CAC	Codex Alimentarius Commission
CBEC	Central Board of Excise and Customs
CBR	Central Board of Revenue
CCIE	Cisco Certified Internetwork Expert
CEGAT	Customs Excise and Gold Control (Appellate) Tribunal
CGE	Computable General Equilibrium
CTD	Customs Transit Declaration
CTG	Committee on Trade in Goods
DGFT	Director General of Foreign Trade
EASY	Electronic Assessment System
EC	European Commission
EDB	Export Development Board
EDI	Electronic Data Interchange
EDIFACT	Directories for Electronic Data Interchange for Administration, Commerce and Transport
EPB	Export Promotion Bureau
ESCAP	Economic and Social Commission for Asia and the Pacific
EU	European Union
FAL	Facilitation of International Traffic
FAO	Food and Agriculture Organisation
FBCCI	Federation of Bangladesh Chamber of Commerce and Industry
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
G-7	Group of Seven
GAN	Garment Association of Nepal
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GC	General Council
GCC	Group on Customs Cooperation
GDP	Gross Domestic Product
GNP	Gross National Product
GSP	Generalised System of Preferences
HACCP	Hazard Analysis Critical Control Point
HS	Harmonised System
HST	Harmonised Tariff Schedule
ICAO	International Civil Aviation Organisation
ICTs	Information and Communications Technologies
IDB	Inter-American Development Bank
IDS	Infrastructure Development Surcharge
IEC	Importer-Exporter Code

IEC	International Electro-technical Commission
IMF	International Monetary Fund
IMO	International Maritime Organisation
IP	Import Permit
IPA	Integrated Programme of Action
IPRs	Intellectual Property Rights
IRTU	International Road Transport Union
ISO	International Organisation for Standardisation
IT	Information Technology
ITCC	Import Trade Control Committee
ITU	International Telecommunications Union
L/C	Letter of Credit
LCA	Letter of Credit Authorisation
MERCOSUR	Southern Common Market
MNCs	Multinational Companies
NAFTA	North American Free Trade Area
NBR	National Board of Revenue
NBSM	Nepal Bureau of Standards and Metrology
NC	Nomenclature Committee
NCC	Nepalese Chamber of Commerce
NGOs	Non-governmental Organisations
NTBs	Non-tariff Barriers
OECD	Organisation for Economic Cooperation and Development
PBT	German National Meteorology Institute
RBI	Reserve Bank of India
RKC	Revised Kyoto Convention
RTAs	Regional Trading Arrangements
S&DT	Special and Differential Treatment
SAARC	South Asian Association for Regional Cooperation
SAFTA	South Asian Free Trade Agreement
SAPTA	South Asia Preferential Trading Arrangement
SLACCS	Sri Lanka Automated Cargo Clearance Systems
SLSI	Sri Lanka Standards Institution
SMEs	Small and Medium Enterprises
SPS	Sanitary and Phytosanitary
SROs	Statutory Regulatory Orders
TBT	Technical Barriers to Trade
TPC	Trade Promotion Centre
TRIPS	Trade Related Aspects of Intellectual Property Rights
UN	United Nations
UNCEFACT	United Nations Centre for Trade Facilitation and Electronic Business
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
UNECE	United Nations Economic Commission for Europe
UNLK	United Nations Layout Key
UNO	United Nations Organisation
UR	Uruguay Round
US	United States
VAT	Value Added Tax
WCO	World Customs Organisation
WHO	World Health Organisation
WTO	World Trade Organisation

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1 US \$ = Bangladeshi Taka 60.63

1 US \$ = Bhutan Ngultrum 45.25

1 US \$ = Maldive Rufiyaa 12.85

1 US \$ = Nepalese Rupee 74.02

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Executive summary

The progressive trade liberalisation under the General Agreement on Tariffs and Trade (GATT) and now the World Trade Organisation (WTO), and the subsequent reduction in trade barriers have now brought the attention to reducing “other” costs of doing business. It is now understood that cumbersome, complex and often opaque import and export requirements could vastly increase the time required for business transaction resulting in cost escalation.

Realising this, developed countries have made efforts to reduce such impediments to trade by improved trade facilitation measures such as doing away with duplicative documentation requirement through mechanisation and computerisation of trade related procedures and by streamlining regulatory apparatus.

However, developing countries, despite their willingness, still lag far behind in the area of trade facilitation. While there could be several political economy factors that have contributed to this state of affairs, one major reason for their inability to provide stimulus for improved trade facilitation measures is the lack of resources. Though studies have indicated that one time investment in such measures could help country save tremendous amount of recurring expenses and even provide streams of benefits to the traders, it is difficult for the developing country governments to mobilise the resource required for upfront investment.

Though some provisions of the WTO do relate to trade facilitation, the proposal to initiate negotiations on trade facilitation within the multilateral discipline of the WTO has remained contentious. Trade facilitation was included in the WTO work programme by the Singapore Ministerial Conference held in December 1996, and

is part of the Singapore Issues (other issues being competition, investment and transparency in government procurement). However, the inclusion of this issue for negotiations, subject to explicit consensus on the modalities of negotiations, as agreed during the Doha Ministerial Conference of the WTO, has created a sharp division between the North and the South. Arguably, Singapore Issues could be considered a major cause for the failure of the Cancun Ministerial Conference.

However, the 'July Package' agreed by the WTO General Council (GC) on 1 August 2004 has laid all the speculations to rest on whether or not negotiations will begin on this issue. Though the decision on other three Singapore Issues have been put on hold for the time being, negotiations on trade facilitation are going to be completed as a part of 'Single Undertaking' and will be concluded when the Doha Round concludes.

Rather than remaining aloof, it is advisable for the developing countries to take active part in the negotiations with a view to protecting their interests and using this platform to secure as much concessions as possible from the developed countries – including on technical assistance.

South Asian countries, which are at the lowest ebb in terms of trade facilitation, should not only take a proactive negotiating agenda but also make use of negotiations under the WTO to further their domestic reform agenda. In the process, it may be necessary for these countries to conduct cost-benefit analyses of implementing trade facilitation measures keeping in mind their stages of development, trade and finance needs. Such analyses are likely to take the mystery out of trade facilitation puzzle so that South Asia will be ready for the negotiations on trade facilitation with much confidence.

Introduction

Trade facilitation is universally accepted as a means of improving the efficiency of international trade and economic development. Many policymakers often claim that doing business in developing countries is difficult because the bureaucratic requirements that should be completed to import or export goods and services are so cumbersome and complex, often requiring hundreds of signatures of officials from many institutions located in different locations. The formalities on imports and exports include, among others, vastly duplicative official documentation or regulatory requirements that lack transparency; difficulties in making payments or transfers; logistical problems at ports and airports; arbitrariness in making decisions; red tape; and difficulties to obtain information on markets and marketing practices. In many instances, ports are inefficient in handling cargo. All these delays substantially increase cost of goods and services being exported or imported, constraining their movements across international borders. High transaction costs make exports less competitive in international markets and raise import prices, substantially altering consumer welfare.

International organisations dealing with trade often urge developing countries to simplify trade related documentation requirements and procedures and improve customs clearance with a view to reducing transaction costs of trading activities. The basic theoretical argument of trade facilitation runs something like this: trade facilitation reduces transaction costs; reduced transaction costs increase potential for the movement of goods and services across national borders; increased trade leads to economic growth and develop-

ment, which, in turn, increases incomes of people that raise human well-being. The first relationship – trade facilitation lowers trade related transaction costs – has been well established (Wilson et al. 2003). Although there is a rich set of theoretical models attempting to explain the other causality effects, the empirical evidence is scanty and country specificities seem to have an important role to play in determining how economic growth translates into human development. This paper deals with the first causality relationship only.

Trade facilitation is an issue that is linked to a number of critical areas with far-reaching implications: competitiveness, economic efficiency, government regulations and controls, issues of governance, institutional arrangements, legal structure, and political and social implications. This also has implications for trade in both goods and services, while the requirements of these two sectors can be very much different from one another. For example, customs procedures may affect the competitiveness of merchandise trade, and immigration and certificate requirements may be the main reasons for low international trade in professional services. Therefore, the selection of trade facilitation measures would very much depend on the level of comparative advantage of the particular products under consideration.

The renewed interest on issues of trade facilitation can be attributed to the inclusion of the issue of trade facilitation in the agenda of the WTO. Many developing countries consider this to be something far from what they had expected, as they perceive trade facilitation to be a

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The obligatory nature of rules under the WTO was the main reason for developing countries to oppose the inclusion of trade facilitation in the WTO agenda

technical issue. In any case, developing countries had received technical assistance from international organisations for implementing certain measures where they had problems on a voluntary basis, without being supervised and scrutinised by trading partners or by a supra-national body. They were free to implement the policies on a pace they preferred to with the own resources available to them, after carefully evaluating the pros and cons of such measures. The obligatory nature of rules under the WTO was the main reason for developing countries to oppose the inclusion of trade facilitation in the WTO agenda. Since there is only a thin margin between the WTO and many of the so-called international organisations when it comes to the treatment as well as opportunities for them to participate in designing policies, the request by developing countries for trade facilitation to continue to be in the domains of international organisations such as the World

Customs Organisation (WCO) can only be viewed with suspicion as a camouflaged attempt to hide behind the weight of these organisations to delay the implementation of trade facilitation measures.

This paper reviews the current issues in the area of trade facilitation with a view to understanding the potential implications and benefits of implementing trade facilitation, particularly under the WTO ambit in South Asia. This would, hopefully, lead to a dialogue between the political leadership, officials, academia, the business community and the civil society. Such a dialogue would be of help in developing some consensus on the issue and prepare for the next round of WTO negotiations. These issues need serious consideration because the consensus reached among WTO members to continue negotiations on trade facilitation through the 'July Package' holds significance for the South Asian countries as well.

Issues for comments

- What can developing and least developed countries in general and South Asian countries in particular do to improve trade efficiency?
- What extent of economic gains could South Asian countries make by implementing trade facilitation measures?
- What position should South Asia have with regards to the issue of trade facilitation at the multilateral level?

Chapter 2

Basics of trade facilitation

2.1 Defining trade facilitation

Trade facilitation does not have a commonly accepted standard definition and the institutions working on the area/issue have evolved their own definitions depending on their mandate and objectives. Sometimes, the definitions being used within the same organisation also vary according to the subject area under consideration. Puri (2003) identified four main ideals of trade facilitation: rationalisation, simplification, harmonisation and automation of trade and customs procedures. This can be seen by examining the definitions adopted by various institutions (See Box 2.1).

This discussion paper looks at trade facilitation from the perspective of transaction costs, which emerge from complex documentation requirements, administrative

procedures, international standards, practices and formalities related to trade. The paper views that the primary objective of trade facilitation is to minimise transaction costs, enabling trading activities to be carried out with minimum efforts and costs. Transaction costs vary from country to country, depending on the level of efficiency of government bureaucracy and infrastructure. Therefore, efforts at minimising transaction costs should take into account these divergences. In addition, such efforts should also take into account the extent of reforms necessary to achieve trade facilitation targets. The use of transaction cost as the basis could also help in devising an objective method for choosing the most cost effective reform programme so as to be able to allocate scarce resources among alternative trade facilitation measures.

Transaction costs vary from country to country, depending on the level of efficiency of government bureaucracy and infrastructure

BOX: 2.1

Definitions of trade facilitation

WTO and United Nations Conference on Trade and Development (UNCTAD): “simplification and harmonisation of international trade procedures, including activities, practices, and formalities involved in collecting, presenting, communicating, and processing data required for the movement of goods in international trade” (www.wto.org and UNCTAD 2001: 180).

Organisation for Economic Cooperation and Development (OECD): “simplification and standardisation of procedures and associated information flows required to move goods internationally from seller to buyer and to pass payments in the other direction” (OECD 2001).

United Nations Economic Commission for Europe (UNECE): “comprehensive and integrated approach to reducing the complexity and cost of

the trade transactions process, and ensuring that all these activities can take place in an efficient, transparent, and predictable manner, based on internationally accepted norms, standards, and best practices” (UNECE 2002).

United Nations Centre for Trade Facilitation and Electronic Business (UNCEFACT): “the systematic rationalisation of procedures and documents for international trade (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)” (UNCEFACT 2001).

Asia Pacific Economic Cooperation (APEC): “the simplification, harmonisation, use of new technologies and other measures to address procedural and administrative impediments to trade” (Wilson et. al. 2002).

2.2 Basic principles

In a contribution to the deliberations on trade facilitation under the WTO (2003a), Canada has identified broad trade facilitation principles. According to the report, the principles are based on categories often mentioned in either international meetings, discussions or in literature on trade facilitation. These principles are summarised below.

2.2.1 Transparency

Ready availability of information on laws, regulations and administrative policies and procedures as well as the accessibility to such information.

2.2.2 Simplification

Simplification of border-related rules and procedures to achieve their legitimate objectives in a practicable and efficient way.

2.2.3 Non-discrimination

Rules and procedures relating to trade not to discriminate between or among goods and/or modes of transport.

2.2.4 Due process

Access to an unbiased administrative appeal process and the ability to seek redress in accordance with the legislation of individual members.

2.2.5 Cooperation

Enhanced cooperation amongst and between government authorities, business and the trading community.

2.2.6 Consistency and predictability

(i) Rules and procedures to be applied in a consistent and predictable manner; and
(ii) to provide clear and precise procedural guidance based upon standard policies and operating procedures and be applied in a non-discretionary and uniform manner.

2.2.7 Communication and consultation

Allowing for stakeholders' inputs when developing, implementing and reviewing trade related rules and procedures.

2.2.8 Protection and compliance

Rules and procedures to provide for an appropriate balance among facilitation,

enforcement, and health, safety and protection against unlawful activities.

2.2.9 Standardisation

To the greatest extent possible, the implementation of procedures and obligations be based upon international trade instruments and rules.

2.3 Historical perspective of trade facilitation

Although trade facilitation is seen as a new agenda within the WTO system, it is not new to the trade negotiations or to other international organisations. For example, United Nations (UN) and its affiliated commissions and institutions as well as other specialised institutions such as the WCO have been working on trade facilitation for over half a century. In addition, regional cooperation arrangements such as APEC, North American Free Trade Area (NAFTA), the European Union (EU), Association of South East Asian Nations (ASEAN), South Asian Association for Regional Cooperation (SAARC), Southern Common Market (MERCOSUR) and bilateral trade arrangements have taken trade facilitation in their work programmes. APEC, for instance, has developed a set of trade facilitation principles in 2001 and at present is in the process of implementing them with the objective of achieving the goal of reducing transaction costs by 5 percent by 2005 (APEC 2001a). The Japan-Singapore bilateral free trade agreement (FTA) announced in 2001 has provisions on a wide range of trade and investment facilitation initiatives in its agreement (Woo 2002), and the Canada-Costa Rica FTA includes a chapter on trade facilitation.

Trade facilitation was very much a part of the GATT since its inception. However, the issue took prominence when this was brought under the mandate of negotiations in the 1996 Singapore Ministerial, which instructed the WTO Goods Council to start exploratory and analytical work, taking into account the work of other relevant organisations in order to assess the scope for WTO rules in this area. Following this direction, the WTO prepared a background note, which re-

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viewed major works on the subject by 15 other international organisations, including non-governmental organisations (NGOs). Other international organisations were also associated with the work.

Since then, the work on trade facilitation in the WTO has passed through several distinct stages (WTO 2003b). In the first phase, a fairly broad and comprehensive view can be discerned in terms of the issues deliberated in the 1998 symposium of which a major part was devoted to understand the major issues and concerns of the international business community. This includes, among other things, (i) excessive documentation requirements; (ii) lack of automation and insignificant use of information technology (IT); (iii) lack of transparency (unclear and unspecified import and export requirements); (iv) inadequate procedures (especially a lack of audit-based controls and risk assessment techniques); (v) lack of modernisation of, and cooperation among, customs and other government agencies, which thwarts the efforts to deal effectively with increased trade flows.

The second phase started with the 2001 symposium, which deliberated on issues of interest to developing countries such as customs and border-crossing procedures, and the technical assistance and capacity building needs in trade facilitation. The conference underlined the importance of technical assistance and capacity building for facilitating trade and identified the following elements as essential for the successful execution of trade facilitation related technical assistance programmes:

- The political will of governments to undertake trade facilitation related reforms;
- Coordination and cooperation among the providers of technical assistance;
- Transparency of reform programmes as well as of the legal system;
- The involvement of all stakeholders (governments, business community,

customs) in the execution of trade facilitation measures;

- The responsiveness of trade facilitation programmes to special needs of recipients; and
- The use of agreed benchmarks in their execution.

In the preparation for the Seattle Ministerial at the end of 1999, several members presented proposals on trade facilitation in the GC¹. Some members called for the launch of negotiations at Seattle to establish a framework of rules and disciplines or to strengthen the existing WTO rules viz. Articles V, VIII and X of the GATT 1994 with the objective of minimising administrative and procedural burdens on traders. It was also proposed to develop and implement a capacity building programme in conjunction with the design of WTO disciplines with the aim of ensuring that all members are able to implement the negotiated rules and disciplines.

Between the summers of 1998 and 1999, the WTO held four more meetings to conduct further exploratory and analytical work in order to focus on more specific issues of trade facilitation: import and export procedures and requirements, including customs and border-crossing problems; physical movement of consignments (transport and transit), including payments, insurance, and other financial requirements, which affect the cross-border movement of goods in international trade; electronic facilities and their importance for facilitating international trade, including technical cooperation and development issues; evaluation of the exploratory and analytical work to assess the scope for WTO rules in the area of trade facilitation. During these meetings, many WTO members and international organisations presented their own experience dealing with trade facilitation and suggested ways and means of strengthening the work on trade facilitation.

The Seattle Ministerial was a total disaster, particularly so for trade facilitation as it was overshadowed by other issues such as anti-dumping. Nevertheless, the Com-

In the preparation for the Seattle Ministerial at the end of 1999, several members presented proposals on trade facilitation in the General Council

mittee on Trade in Goods (CTG) continued its analytical and exploratory work in 2000 and 2001 on trade facilitation. Some delegations drew linkages between national experience and WTO principles. They showed that problems faced by traders are practically identical in every country regardless of their stage of development. Likewise, trade facilitation measures applied by governments all over the world were essentially based on the same principles. Some delegates proposed to further elaborate GATT 1994 rules on trade facilitation in order to address customs and border-crossing problems 'in an efficient and coherent manner'.

Other delegations expressed caution against expanding the WTO legal framework so as to include trade facilitation rules. The Chairman of the CTG in December 2000, in a progress report submitted to the GC on the status of work on trade facilitation, raised several points. First, the report underlined the significance of IT in raising the efficiency of customs procedures. However, the application of IT requires the simplification of official requirements and documents. Second, it showed the need for government and industry to work more closely and cooperatively on customs issues. Third, it highlighted the fact that small and medium scale enterprises have much to gain from simplification of requirements and greater transparency.

The Doha Ministerial in November 2001 was the next major milestone in the WTO's involvement in trade facilitation, which established that negotiations on trade facilitation would take place after the Fifth Session of the Ministerial Conference in 2003 in Mexico. The Doha Declaration², after several failed texts, finally agreed on the following:

"Recognising the case for further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations. In the period un-

til the Fifth Session, the Council for Trade in Goods shall review and as appropriate, clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 and identify the trade facilitation needs and priorities of members, in particular developing and least developed countries. We commit ourselves to ensuring adequate technical assistance and support for capacity building in this area."

The text legitimised the work being carried out by the CTG in the area of trade facilitation and clearly specified the need to review, clarify and improve Articles V, VIII and X of the GATT 1994. It also mandated to identify trade facilitation needs of developing and least developed countries, while making a commitment to ensure adequate technical assistance and support for capacity building.

In 2003, WTO continued its work on trade facilitation under the Doha mandate and on the three core agenda items: (i) GATT Articles V, VIII and X; (ii) trade facilitation needs and priorities of members, especially of developing and least developed countries; and (iii) technical assistance and capacity building. The final Cancun Ministerial statement noted that, while "considerable progress" was made, "more work needs to be done in some key areas to enable us to proceed towards the conclusion of the negotiations in fulfilment of the commitments we took at Doha". Ministers instructed their officials to continue working on outstanding issues with a renewed sense of urgency and purpose and taking fully into account all the views they have expressed in the Conference.

Following this, the so called 'July Package' adopted by the GC on 1 August 2004, calls for negotiations on trade facilitation, while other Singapore Issues (competition, investment and transparency in government procurement) have been dropped from the Doha mandate.

Annex D of the July Package, which elaborates on the modalities for negotiations on trade facilitation, 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

The Doha Ministerial in November 2001 was the next major milestone in the WTO's involvement in trade facilitation

further expediting the movement, release and clearance of goods, including goods in transit.”³ Besides, providing the core modalities, trade facilitation text also contains relatively strong ‘development language’, which provides the leeway to the developing countries not to implement their part of the commitments absent technical assistance.

2.4 Major elements of trade facilitation

Trade facilitation is often identified with the points of engagement from the perspectives of the importers and exporters. These points of engagements are:

- collection of information and market intelligence;
- negotiating terms and conditions with the exporter or importer (buyer–seller negotiations);
- processing of the documentation necessary for undertaking the agreed commercial activities;
- obtaining the certificates of health, safety, environment and other regulatory bodies, rules of origin and standards institutions;
- completing the required customs procedures (when crossing the border);
- insurance;
- transporting the goods from the sellers’ to the buyers’ premises;
- meeting the buyers’ requirements; and
- paying for the goods and receiving payments from abroad

It is useful to classify these points of engagement on the basis of functions. Three functional points for classification have been identified by the WTO⁴: (i) export, import and customs procedures; (ii) physical movement of goods and delivery of services; and (iii) financial requirements of cross-border trade. The following section clarifies the issues and potential solutions pertaining to each of these areas.

2.4.1 Export, import and customs procedures

In many developing countries, export and

import procedures and requirements are very cumbersome. The documentation requirements often lead to extensive data entry requirements and high probability of data re-entry and duplicity of effort. UNCTAD estimates that an 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 percent of all data at least once. Therefore, simplification and greater transparency in official documentation can offer steep reductions of transaction cost associated with exports and imports.

What are the different ways that can reduce transaction costs? Several methods have already been identified. The most important methods are: streamlining of procedures, concentration of controls in one authority, effective communications systems, and easier means for payment of duties. These methods help reduce the burden on the customs authorities, banks, and traders, diminishing the chance for corrupt practices. It has been identified that a lot of administrative changes are required to facilitate work in this area. First, personnel working with documentation and regulations need re-training with a focus on their efficiency and giving access to and confidence in the use of new technology. Second, there is a need to change the ethos of the governmental and business community. Although this makes lot of sense, implementation can be quite difficult given the vested interest of the people in these institutions. The Kyoto Convention can provide the basis for discussion and negotiations.

With regard to export, import and custom procedures, five major problems have been identified:

- Lack of transparency of methods and procedures;
- Delays in border crossings;
- High corruption at border crossing;
- Packaging and labelling requirements; and
- Differing national standards.

Transparency of information and lack of transparency, predictability and consistency

In many developing countries, an 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 percent of all data at least once

of regulations are cross-cutting issues that affect all these specific problems, and they deserve special attention.

Transparency of information is a major problem that many developing countries face. They lack access to the Internet and other forms of communication technology. Developing countries lack basic physical and human infrastructure for optimum utilisation of IT. They also lack regulatory environment necessary for the use of electronic media for trade activities. The human resources requirements in this area are known to be immense. In particular, developing countries do not have the necessary critical mass of computer literate workforce with sufficient knowledge in using computers. Physical access to computer hardware and software is limited because telecommunications networks may not be functioning well and the supply of electricity may not be reliable. In order to improve the capacity in this area and ensure broad-based development, these problems will have to be addressed upfront. This requires financial, training and other types of assistance. Programmes like the Automated System for Customs Data (ASYCUDA) and the Advance Cargo Information System (ACIS), established by UNCTAD in some countries, could help in this area.

The regulatory regimes in developing countries are often marred by lack of transparency, predictability and consistency. In theory, publication of all the legal provisions and changes in government gazettes is a statutory requirement. This may not necessarily be the case when it comes to implementation where certain rules and regulations may even be applied before they are actually published. The uniform and consistent application of customs laws, regulations, guidelines and procedures towards all those, who engage in imports and exports related activities, is a requirement accepted in theory but often violated in practice. This is partly because the complexity of laws and regulations leaves room for the officials to use their discretionary powers to interpret laws, procedures and documentation require-

ments. Penalisation of officers in advertent or inadvertent mistakes is rare and often small-scale businesses or individuals suffer the most, as they lack political support or do not have the monetary muscle to handle such cases. The political commitment to make progressive reform is not forthcoming as there is little incentive to change because politicians themselves derive benefits from the existing system where there is ample opportunity for corruption. Some suggest that the application of the Arusha Declaration on Customs Integrity is one of the first things that developing countries should do in order to arrest some of the fundamental misalignments in the system. The 1993 WCO initiative also called for progressive reform in this area rather than an attempt to overhaul the system.

2.4.2 Physical movement of consignments (transport and transit)

There is a complex set of problems associated with the physical movement of consignments across borders. They range from information, rules and regulations, technical requirements and ways and means of dealing with hazardous materials. In an unfacilitated environment, finding information on border crossing requirements may not be all that straightforward. Border-crossing also involves the movement of vessels in and out of ports, technical requirements for road transport vehicles, legislation concerning the movement of crews and passengers, fiscal charges, restrictions, visa requirements for drivers, and rules regarding the carriage of hazardous goods. These issues are much more relevant for landlocked countries that depend entirely on land routes and seaports owned by other countries.

The solution to this problem often lies in the implementation of uniform international rules. While some issues fall within the ambit of the General Agreement on Trade in Services (GATS), the possibility of sorting out these problems within the WTO is limited as many issues such as port regulations and reporting requirements, air transport, or harmonisation of technical and fiscal measures placed on

The regulatory regimes in developing countries are often marred by lack of transparency, predictability and consistency

vehicles or of existing rules for the carriage of hazardous goods are outside its jurisdiction.

2.4.3 Financial requirements related to cross-border movement of goods

The commercial practices of banks and other financial institutions affect the cross-border movement of goods, and inefficiencies of financial institutions could become a major hindrance for trade. Therefore, the creation of more efficient payment and credit arrangements, for example, through an internationally agreed method for ensuring the legal validity and security of electronically exchanged payment messages from or to non-banks (such as the so-called BOLERO system, parallel to the SWIFT system among banks), would pave the way for facilitating trade. Similarly, restrictive government policies such as the prescription of specific payment methods and very high gestation periods between the time of delivery and receipt of payments can have deleterious effect.

The solutions can vary from a simple legislative act to major reforms including privatisation of financial institutions to that of creation of industry-financial sector conglomerates such as that existed in Japan or in South Korea. Financial liberalisation is multifaceted, which requires simultaneous reforms in several areas to produce the best outcome. The liberalisation of exchange control and relaxation of stringent requirements on formalities on payments, insurance and other financial requirements are essential for smooth functioning of the financial system. The establishment of a well functioning, secure payment system and the strengthening of insurance mechanism related to exports and imports are required for efficiency. These reforms, if correctly implemented, would enhance the availability of credits and lower cost of funds. In instances where such reductions are not forthcoming, there can be other rigidities that need to be identified. Cost effective payment systems can benefit small developing countries more than developed countries. The WTO could identify technical assistance requirements in this area.

2.5 Potential benefits and consequences

Trade facilitation entails a number of benefits to all regardless of the stage of development. Countries with very high transaction costs are likely to be the biggest beneficiary of trade facilitation. The benefits of trade facilitation are likely to be far greater than any further reduction of tariffs, particularly in the current environment where tariff rates are very low. Trade facilitation can substantially increase competitiveness for a country's trade regime.

These benefits of trade facilitation stem from a number of interrelated causes:

- Reduced compliance costs (producing and transmitting required documents);
- Reduced service charges (banking, insurance, cargo handling, transport, etc) and lower time-costs (processing time, procedural time);
- Reduction of hassles in dealing with a complex and time-consuming trade process;
- Reduced personal opportunity cost (time lost in waiting at customs, taking documents from one agency to another, etc);
- Reduced costs owing to predictability and low or no corruption; and
- Increased business opportunities owing to an efficient trading environment.

There is general empirical support to the hypothesis that trade facilitation reduces transaction costs. For example, a recent study carried out by the OECD finds that transaction costs contribute to 2 percent to 15 percent of trade transaction value, and trade facilitation measures could result in saving of between 2 percent and 3 percent of total trade value. The potential for such savings will vary from country to country, depending on the existing costs and levels of inefficiency. Electronic documentation is estimated to yield cost savings of some 1.5 percent to 15 percent of the landed cost of an imported

Countries with very high transaction costs are likely to be the biggest beneficiary of trade facilitation

Trade facilitation and electronic business is not only about cost savings but equally is the business development aspect of trade facilitation techniques

item in APEC. Applying a simple average of a 3 percent reduction in landed costs to intra-APEC merchandise trade, it has been estimated that the gross savings from electronic documentation alone could be US\$ 60 billion (APEC 2001b). As the report argues "trade facilitation and electronic business is not only about cost savings but equally, and perhaps more importantly, is the business development aspect of trade facilitation techniques. Increasing revenues through electronic business and through the use of the Internet

and associated standards like ebXML will bring new business opportunities and revenue streams that are linked to modern business and transport solutions." APEC Business Advisory Council (1999) emphasised that three kinds of trade facilitation measures, namely customs facilitation, standards and regulatory conformance, and business mobility, were important for APEC as a whole. However, this report does not distinguish among APEC members in terms of their levels of trade facilitation and their im-

BOX: 2.2

Measuring the effectiveness of trade facilitation

Broadly, there are three approaches to measuring benefits of trade facilitation: (i) direct estimation of benefits by evaluating reduction of transaction costs or potential benefits; (ii) CGE model; and (iii) gravity model.

Wilson, Mann and Otsuki (2003) derived indicators of trade facilitation that measure four different categories of trade facilitation efforts: port efficiency, customs environment, regulatory environment and e-business usage. These four categories reflect the key areas of trade facilitation. Each category is represented by relevant indicators as given below:

Port efficiency:

- Port Efficiency Index
- Port facilities and inland waterways
- Air transport

Customs environment:

- Irregular payments
- Low import fees
- Hidden import barriers
- Bribery and corruption
- Corruption perception index

Regulatory environment:

- Transparency and stability of environmental regulations
- Stringency of regulatory standards
- Compliance with international environmental agreements
- Enforcement of environmental regulation

E-business:

- Percentage of companies that use the internet for e-commerce

It is concluded that these indicators "help policymakers judge where their economy stands relative to their peers in regard to each of these measures...this multiple indicator approach and decomposing the impact of the various indicators on trade may enable more targeted decision making by policymakers" (Wilson, Mann and Otsuki 2003: 19). Combined with the simulation approach to estimating the impact of trade facilitation such as the gravity model, these measures provide valuable input to considering alternative pilot projects and capacity building projects on a priority basis.

CGE models have been popular as a technique for quantifying the benefits of improved trade facilitation. These models use reductions in the costs or improvements in the productivity of the international transportation sector to represent an improvement in trade facilitation. Since the transportation sector is already included in the CGE model, the effect of improved trade facilitation comes from "shocking" the sector by an appropriate amount.

The gravity model of international trade flows is a common approach to modelling bilateral trade flows, which explain bilateral trade flows by 34 trading partners' gross national product (GNP), geographical distance between countries population, gross domestic product (GDP) per capita (to account for intra-industry trade effects that may be associated with countries of similar incomes but varied tastes), regional trading arrangements (RTAs), and language/ethnic similarities. Recent theoretical and empirical works supporting this modelling approach include Evenett and Keller (1998), Feenstra, Markusen and Rose (1998), and Frankel, Stein and Wei (1997).

impact on intra-regional trade (OECD 2001).

Countrywide models, based on Computable General Equilibrium (CGE) models, have yielded almost the same results. UNCTAD (2001) using a CGE model, has estimated that welfare gains to Asian countries from trade facilitation amount to US\$ 3.6 billion. This has resulted from a 1 percent increase in the productivity of wholesale and retail trade services. In addition, it estimates that an additional US\$ 3.3 billion will be resulted from a 1 percent improvement in the productivity of maritime and air transport services. APEC (1999) also used a CGE model to quantify the impact of trade facilitation on trade and found that the impact of trade facilitation on trade differs by members of the group: “1 percent of import prices ... for the industrial countries and the newly industrialising countries of Korea, Chinese Taipei and Singapore, and 2 percent for the other developing countries.” The report estimates that trade facilitation efforts in APEC merchandise exports would increase by 3.3 percent. The completion of the Uruguay Round (UR) commitments is estimated to increase APEC’s merchandise trade by 7.9 percent. In another CGE model, harmonisation of standards and automating customs procedures between Japan and Singapore have been found to increase their trade flows bilaterally as well as with the rest of the world (Hertel, Walmsley and Itakura 2001).

In a gravity model, e-commerce has been found to promote bilateral trade among nations (Freund and Weinhold 2000 as cited in Wilson et al. 2003). The implementation of the trade facilitation network in Singapore that allows traders to make an electronic declaration of imports and exports direct from their own computer is estimated to have increased approximately 1 percent of Singapore’s GDP and 0.4 percent of total external trade. An electronic data exchange in Chile is estimated to have resulted in business savings of over US\$ 1 million per month, for a system cost of US\$ 5 million. Many others have used gravity model specifi-

cations to study the impact of such factors as communication costs, facilitation of standards, food safety standards on the impact of intra-regional or bilateral trade. Many of these studies find positive association between these specific aspects of trade facilitation and actual trade in a number of countries. Some argue that by lowering local transaction costs, developing countries can offset cost disadvantages elsewhere such as transport costs. Shipping costs contribute to a greater loss to developing countries.⁵

The old modes of productions and delivery are no longer applicable in many instances. This has necessitated developing countries to pay careful attention to trade facilitation. The current global business environment is characterised by four main elements:

- Rapid change of consumer behaviour;
- Increased role of multinational companies (MNCs) in exports from developing countries;
- Change in the system of production and delivery; and
- Formation of bilateral and regional agreements in trade and investment.

Consumers, particularly the rich, are no longer constrained by geography and location. This has made the marketing of goods and services much more competitive than what it used to be a couple of years ago. We observe that markets for goods and services are horizontally integrated as far as the rich people from all the countries are concerned. The rich from both developed and developing countries consume the same kinds of goods and services, and their markets are almost the same. This has made it necessary for goods and services exporters to be able to meet the changing requirements of the various market segments in order to be competitive in the global market place. This challenge can be met only through strengthening the capacity of our exporters.

The role played by MNCs in developing countries has increased manifold within

The old modes of productions and delivery are no longer applicable in many instances necessitating developing countries to pay careful attention to trade facilitation

the last few years with globalisation. Information and communications technologies (ICTs) are advancing at a rapid rate making communication costs cheaper. Innovative methods of communication are introduced to the market almost every year. In response to technological advances, production and processing technologies also change rapidly together with the change of management techniques. This has resulted in intensified global competition. The entry of former communist block countries such as China, Vietnam and East Europe into the world trading system and the trade liberalisation policies implemented by countries such as India, which hitherto followed import-substitution policies, have exemplified already severe competition. Since much of the technological advances are made within multinational firms located in advanced countries, and the technology transfer is taking place at a very slow speed, export companies from developing countries are in a disadvantaged position vis-à-vis MNCs. Under increased competition, disadvantages in technology and better management techniques of MNCs, companies from developing countries find it almost impossible to penetrate markets for goods and services dominated by major players. As a result, MNCs have started to play increasingly critical roles in exports from developing countries whether it is production of goods and services, consumer research, design technology, sourcing materials, transporting, marketing, or wholesale and retail trade. All these changes require speedier changes within national economies and the development of faster delivery mechanisms.

Systems of production and delivery have also changed and developing countries cannot operate in isolation from the rest of the world. The “slicing up” production processes and locating each slice in a location where the best conditions exist is the current global trend. The old type of production processes where all the parts of any given product are produced in one country, or in one location, no longer applies. Firms make use of the new

production processes and communication technology to slice up international production processes and produce only the components that a given country is most efficient in production. In this apparatus, the reliability of supply and their efficiency determine whether developing countries attract foreign direct investment (FDI). One way of achieving such efficiency is to implement an effective trade facilitation programme.

The bilateral trade and investment agreements and regional trading blocks play increasingly important roles in the present international environment and countries form such organisations through trade and investment agreements with a view to promoting trade as against global integration under multilateral negotiations or unilateral liberalisation. The countries that championed free trade under multilateral trading arrangements such as the United States (US) also formed regional trading blocks in the 1990s and are still interested in forming bilateral and regional trading blocks with other major trading nations such as Singapore and Australia. In response to these changes and the inability to negotiate trade agreements under RTAs such as SAARC and the failure of the multilateral negotiations under the WTO to sort out differences over trading arrangements, many countries in South Asia are attempting to enter into bilateral trading arrangements. These bilateral agreements can fulfil their objectives only if goods can be freely transported and services are delivered efficiently within the region. Trade facilitation programmes can be beneficial for developing and least developed countries, which have signed preferential access arrangements with other countries and regions.

The competitiveness of a country can be substantially improved through trade facilitation. This is particularly important under the present global trading environment for speedy delivery of goods and services without violating legal, administrative and customs regulations imposed by countries. The increased use of modern inventory techniques such as just-in-

Systems of production and delivery have changed and developing countries cannot operate in isolation from the rest of the world

time production and delivery methods would require much higher levels of efficiency and speedy actions at all levels of export activities, particularly at customs, airports and ports. The development of such a system is not an easy task; it requires the involvement and dedication of all the stakeholders, both from the private and the public sectors. Government officials will have to recognise the need to deliver goods faster while the exporters will have to understand the need to fulfil regulatory and statutory requirements. Trade facilitation can minimise these requirements so that systems can be made speedier and transparent. Similarly, there is a need to change the attitudes of all stakeholders towards information sharing, acceptance of digital signatures and certificates. Since the world no longer operates on the premise of producing all the components at one place and that the delay in producing and delivering even a single small component can jeopardise the whole operation, corporations as well as the government should take collective responsibility for the entire supply chain within the country as against the responsibility towards only the component one produces.

E-commerce contributes to a large share of global trade at present. Developing countries also have great potential for using e-commerce for their advantage. However, attempts to show that e-commerce can be a way out at this stage of development for developing countries to reap benefits of globalisation are too far-fetched. There are many other structural bottlenecks – dilapidated and congested road networks, poor port facilities, poor quality of energy, poor communication systems – that need to be removed before e-commerce can provide further improvement. Therefore, trade facilitation programmes need to be properly sequenced so that full benefits of more sophisticated instruments can be implemented once the basic instruments are properly implemented. The development of well-integrated trade facilitation package is, therefore, needed.

An efficient trading environment condu-

cive for faster delivery and production is more likely to attract greater flows of FDI, particularly when it is combined with regional free trade and investment arrangements. Trade facilitation can increase the participation of small and medium enterprises (SMEs) in international trade, which otherwise may not have the resources to deal with complex trade procedures and processors including testing requirements. SMEs, by definition, export smaller quantities or do not export on a regular basis. The cost of such operations may be too high for them to engage in foreign trade activities.

Trade facilitation can add substantial benefits to consumers due to lower prices resulting from the removal of trade barriers. It is not only the consumers but also a whole lot of other industries that can also benefit from trade facilitation because many modern industries, particularly in developing countries, depend on imported raw materials.

The work undertaken by the GATT and other global institutions during the past half-century has resulted in so much of tariff reductions that the present average tariff rates are often below 10 percent. The actual transportation costs have also come down due to containerisation and other modern transport techniques including electronic data interchange. Because these costs are already low, trade facilitation is an area where there is greater potential for achieving cost reductions and efficiency improvements. In countries where operational costs are higher, firms are likely to pay lower wages and seek ways and means for paying lower domestic taxes to maintain the same levels of returns to capital being paid in other countries. In such circumstances, trade facilitation can make an impact on the levels of FDI flows by streamlining complex trade procedures and removing 'red tape' so that overall costs are maintained at a low level.

Effective trade facilitation measures often succeed in attracting FDI into a country than granting investor incentives. Moreover, effective trade facilitation measures reduce transaction costs and make the

Effective trade facilitation measures often succeed in attracting FDI into a country than granting investor incentives

One of the first priorities in the area of trade facilitation would be to devise a system of measurement and carry out estimates across countries

goods sector more competitive. SMEs are more important to developing country economies than in developed ones and can benefit from trade facilitation measures, as obstacles to transactions may constitute a larger share of their costs than for large companies. Facilitated procedures in developing countries would benefit importers and exporters alike. They may help increase possibilities for intra-developing country trade as well as increase the attractiveness for FDI.

Obviously, implementing trade facilitation programmes are not without challenges. Many countries find it difficult to sort out

where to begin with the process of trade facilitation as there is no ready system of measurement. One of the first priorities in the area of trade facilitation would be to devise a system of measurement and carry out estimates across countries. Global competitiveness ranking may offer some solace but these estimates are limited to advanced countries with the exception of a few small developing countries. As for developing countries, the effort had always been on measuring and ranking poverty rather than a system like the removal of bottlenecks to trade that would contribute so much to poverty reduction.

Issues for comments

- What are the major problems related to export, import and custom procedures faced by the South Asian countries?
- What role can trade facilitation play in the growth of the large number of SMEs that operate in the South Asian countries?
- What impact can e-commerce have on the trade facilitation initiatives of the South Asian governments?
- Do the benefits from implementing trade facilitation measures justify the costs involved?
- How could the South Asian countries utilise the trade facilitation text of the "July Package" (Annex D) to their advantage?

Chapter 3

International architecture of trade facilitation

3.1 Pillars of international architecture

Japan, in one of the communications submitted to the WTO (2003b) (WTO/Council for Trade in Goods/GCW/465), has categorised trade facilitation programmes into three pillars: the action programme; capacity building; and rule setting.

The action programme can have various forms such as unilateral or regional trade facilitation. Universal trade facilitation activities are carried out by national governments on their own to minimise transaction costs, while regional bodies such as APEC and the EU undertake trade facilitation among their members in order to increase economic integration. These arrangements do not have binding obligations on the part of the participants, who can withdraw at any time. The second important pillar is capacity building, which often includes technical assistance to improve their trade procedures and expand their capacity to engage in international trade. As the Japanese document points out, “the efficiency of capacity building might, however, be low if there is no motivation or any benchmark”. The third pillar is rule setting, which aims at providing the legal framework at the multilateral level. The rules and procedures agreed upon at the multilateral level become binding constraints on WTO members. While the first two pillars, viz. the action programmes and capacity building, had been used during the last 3-4 decades under the ambit of United Nations Organisation (UNO), the third pillar of trade facilitation took the centre stage only after trade facilitation became an agenda item of the WTO. There is

synergy among these three pillars such that each supports the other in an important way. Actions in any one pillar provide impetus for other pillars, and in the process each gets strengthened. For example, capacity building is important for understanding and analysing trade facilitation, while it positively impacts unilateral or bilateral trade facilitation programmes. Rule setting, on the other hand, can help to implement trade facilitation measures at a faster pace.

3.2 Capacity building and trade facilitation at the national level

The UN philosophy on trade facilitation is that trade facilitation helps and improves a country’s capacity to engage in international trade. Since international trade positively affects economic growth and human development, there is a reason for the UN to engage in trade facilitation. The UN Charter provides a ready reference to trade facilitation, which states that “trade is essentially seen as a tool of peace and economic development for the eradication of poverty and enhancement of freedom, equality and dignity of mankind.” Since the focus is not on the development of international trade for its own sake but rather on the development of international trade in the context of its potential to promote economic growth and development, and hence the alleviation of poverty, (UNESCE 2002: 6) it has a legitimate reason to engage in trade facilitation. The case for technical assistance to developing countries has to do primarily with strengthening the capacity of officials to participate in WTO negotiations and to implement commitments. However, technical assistance in customs reform and modernisation involves pro-

Technical assistance in customs reform and modernisation involves provision of physical infrastructure and institutional know-how and thus requires large commitments of time and money

vision of physical infrastructure and institutional know-how and thus requires large commitments of time and money. The earlier impasse on trade facilitation seems to stem from the discrepancy of expectations from the part of developed countries and lack of commitments commensurate with the expectations in terms of resources.

The UN has undertaken substantial work on trade facilitation. One of the finest examples of UN involvement is the preparation of the Compendium of Trade Facilitation Recommendations, which summarises 40 years of trade facilitation work under the UN and other international agencies. This has identified over 30 trade facilitation recommendations. Another example is the establishment of the UNCEFACT. The premise of the CEFACT is the observed interdependence between trade facilitation and electronic business in the current global business environment, and the realisation that developing countries may even fall out further without some action to facilitate electronic commerce.

The UN has undertaken substantial work on trade facilitation such as the preparation of the Compendium of Trade Facilitation Recommendations, which summarises 40 years of trade facilitation work under the UN and other international agencies

3.3 Trade facilitation at the regional level

Almost all the regional financial institutions [(for e.g., Asian Development Bank (ADB), Asia Europe Meeting (ASEM), Inter-American Development Bank (IDB)], regional associations [(for e.g., ASEAN, MERCOSUR, Group of Seven or G-7, SAARC)] and UN regional organisations [(for e.g., UNECE, APEC, United Nations Economic and Social Commission for Asia and the Pacific (ESCAP)] have some level of engagement related to trade facilitation.

Within the Asia-Pacific region, UNESCAP plays a major role to facilitate trade. Its engagement has particularly been in the area of technical assistance to regional associations like ASEAN, greater Mekong sub-region and SAARC to building awareness; promotion and creation of trade facilitation institutions; development of effective trade financing instruments and institutions; capacity building for establishing e-commerce

including work on legal and regulatory issues on trade facilitation; and transport facilitation activities focused on transit transport and landlocked countries. In case of South Asia, UNESCAP has made an attempt to bring some countries to cooperate on alignment of trade documents based on the widely accepted United Nations Layout Key (UNLK).

Initiatives by UNESCAP in transport facilitation include: harmonisation of legal regimes relating to land transport; facilitation of faster turn-around time in port through simplification of documents and other measures; assisting governments with development of freight forwarding and multimodal transport, including the establishment and strengthening of national freight forwarders associations; and capacity building in freights forwarding, multimodal transport and logistics, including the training of trainers.

UNESCAP has indicated that its future work programme would focus mainly on transit and transport facilitation within the region to identify procedural, institutional and regulatory bottlenecks on specific trade and transport corridors and to assess and monitor the status and progress of trade and transport facilitation.

3.4 Global rule setting

The debate on trade facilitation is centred still on the question of the applicability and desirability of global rule making for developing countries. Many countries as well as international organisations such as the WCO have indicated that many developing countries have not acceded to the Kyoto Convention not because of difficulties related to physical infrastructure problems but because of legislative processes and the lack of technical and linguistic expertise.

Several international organisations are working with a particular interest in global rule making. The premier institutions in this category are the WCO, the WTO, United Nations Commission on International Trade Law (UNCITRAL), International Civil Aviation Organisation (ICAO), International Maritime Organisation (IMO), and OECD.

A number of international agreements and conventions are in force at present. The UN Compendium summarises these agreements (UNCEFACT 2001), which categorises these measures under nine categories: general provisions to facilitate trade; official procedures and controls; transport and transport equipment; movement of persons; management of dangerous goods and harmful substances; payment procedures; use of ICT; commercial practices and the use of international standards; and legal aspects for trade facilitation. The jurisdiction of these conventions is vested with a number of institutions such as the WTO, IMO, ICAO, etc.

The 1998 WTO Symposium on Trade Facilitation identified a long list of issues that, in essence, called for the implementation of various procedural measures related to transport, procedures, customs, trade documents, integrity, and the use of ICTs. Well over half of these issues relate to existing trade facilitation instruments, such as the Kyoto Convention, the Montreal Protocol IV, the IMO Convention on the Facilitation of International Traffic (FAL), the United Nations Layout Key for Trade Documents, United Nations Directories for Electronic Data Interchange for Administration, Commerce and Transport (EDIFACT), the Arusha Declaration on Customs Integrity, the G7 Data initiative and UNCEFACT Recommendation.

Members at varying levels of economic development have accepted binding obligations under these conventions. Several governments, including those in less developed countries, have either acceded to the Kyoto Convention or are considering how to progress through the accession process by implementing national legislative and political processes. The WCO reports that many other members have indicated that their internal ratification processes are being implemented. Under the Kyoto Convention, governments commit themselves to the implementation of international standards for the border management of trade and to the modernisation of customs procedures. The composition of accession countries thus far reveals that the level of development is not an impediment to the implementation of trade facilitation activities.

3.5 Trade facilitation under the WTO

The agreements that constituted the WTO already have a number of provisions related to trade facilitation.⁶

3.5.1 Existing binding rules and proposals

Specific elements connected with the simplification and harmonisation of trade procedures are already contained in the WTO legal framework, e.g., in Articles V, VII, VIII, X of the GATT 1994 as well as in other WTO agreements (*See Box 3.1*).

Specific elements connected with the simplification and harmonisation of trade procedures are already contained in the WTO legal framework, e.g., in Articles V, VII, VIII, X of the GATT 1994

BOX: 3.1

WTO agreements dealing with trade facilitation

- The GATT 1994: tariff concessions negotiated during the UR, as well as the whole of the legal decisions taken by the contracting parties since the inception of the GATT in 1947;
 - Articles V (freedom of transit);
 - Article VII (valuation for customs purposes);
 - Article VIII (fees and formalities connected with importation and exportation);
 - Article IX (marks of origin); and
 - Article X (publication and administration of trade regulations).
- Other WTO agreements directly related to trade facilitation:
- Agreement on Customs Valuation;
 - Agreement on Import Licensing Procedures;
 - Agreement on Preshipment Inspection;
 - Agreement on Rules of Origin;
 - Agreement on Technical Barriers to Trade (TBT); and
 - Agreement on the Application of Sanitary and Phytosanitary (SPS) Measures.

The GATS, with its annexed schedules, provides for liberalisation in a number of service industries, which are vital for the facilitation of trade, e.g. transport, financing, telecommunications. In addition, the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) contains a section on border measures, which allows members to take specific measures to prevent the inflow of counterfeit and pirated goods.

The rule-setting attempts at the WTO on trade facilitation are centred on the revision of GATT 1994 Articles, namely Article V (freedom of transit), Article VIII (fees and formalities connected with importation and exportation), and Article X (publication and administration of trade regulations). These are known as 'track one' proposals. The rule making process calls for members to negotiate additional commitments on principles such as transparency, due process, simplification, efficiency and non-discrimination. Track two proposals concentrate on two areas. The first set of proposals provides for the development and implementation of a comprehensive technical assistance programme in parallel to negotiations. The second set calls for cooperation and coordination for such assistance amongst donors and recipients and includes needs assessment as well as long-term monitoring and follow-up.

The rule-setting attempts at the WTO on trade facilitation are centred on the revision of GATT 1994 Articles, namely Article V, Article VIII, and Article X

3.5.2 Core agenda of the WTO

The core WTO agenda is concentrated on the following areas:

- Article V, Article VIII and Article X of the GATT 1994;
- Trade facilitation needs and priorities of members, particularly developing and least developed countries; and
- Technical assistance and capacity building.

3.5.2.1 Article V: Freedom of transit

Article V of the GATT 1994 sets out the basic requirements that countries should fulfil in order to ensure that a country can have the freedom of transit through the

most convenient route. It calls on members not to discriminate on the basis of: flag of vessel, place of origin, departure, entry, exit or destination, and ownership of goods or means of transport; and not to impose any unnecessary delays or restrictions on transit. It also calls on members to impose reasonable fees and charges that would be non-discriminatory and limited to the cost of service provided.

During 2002, a number of WTO members put forward proposals for the review, clarification and improvement of GATT Articles V, VIII and X under CTG's programme of work on trade facilitation.⁷ The proposals relate to simplification of procedures for transit, exceptions to the principle of non-discrimination for sensitive items, RTAs and use of international standards. These proposals are summarised under each category as follows.

Simplification of procedures for transit facilitation: Proposals call for the simplification of documentary requirements and procedures for transit; preparation of specific guidelines on how unnecessary procedures can be reduced; simpler and less onerous requirements and procedures for transit compared to importation; and a mechanism that would institutionalise cooperation among members, harmonise transit policies between them and ensure sharing of information among custom authorities.

Exceptions to the principle of non-discrimination for sensitive items and goods requiring trans-shipment: Proposals call for (i) the publication of 'sensitive items' that may be subject to special provisions where exception to the rule of non-discrimination applies; and (ii) the implementation of more sophisticated risk management techniques in cases where there is a possibility of illegal release of transit goods (as in the case of landlocked countries). It calls on members to have additional inspection of goods in transit that require trans-shipment (in relation to those that do not require trans-shipment) to prevent the smuggling of goods in transit into the transit country.

Regional transit arrangements: The EU has pointed out that the existing Article V requires members to operate national transit schemes but does not recognise the issue of transit at a regional level. Therefore, the EU proposed to establish regional transit regimes under Article V on similar lines of the TIR Convention, the European Convention on Common Transit, the ASEAN Framework Agreement on the Facilitation of Goods in Transit and UN instruments relating to transit. Thus, members could consider the establishment of regional transit regimes within the framework of Article V.

Use of international standards for providing transit facilities: The EU and Canada have suggested the use of international standards for providing transit facilities. They pointed out that members could consider the possibility of accession to various instruments relating to transit such as the Customs Convention on the International Transport of Goods under cover of TIR Carnets (TIR Convention), Geneva, 14 November 1975; the Customs Convention on the ATA Carnet for the Temporary Admission of Goods (ATA Con-

vention), Brussels, 6 December 1961 and the Convention on Temporary Admission (signed at Istanbul in 26 June 1990). The WCO, in its submission (WTO/G/C/W/426), has recommended the use of practices mentioned in the revised Kyoto Convention (RKC) to facilitate transit trade. The principles of the customs transit procedures of the RKC provide for a safe, secure and standard transit procedure. The WCO encourages its members to accede to international conventions relating to transit such as the TIR Convention and instruments provided by the WCO on customs transit that facilitate transit procedures for temporary admission of goods. According to the WCO, if members are not in a position to accede to these conventions, they should take into account customs transit, standards and recommended practices mentioned in the RKC while drawing up multilateral/bilateral agreements.

3.5.2.2 Article VIII: Fees and formalities connected with importation and exportation

Article VIII deals with administrative aspects of trade and it provides an illustra-

Article VIII of the GATT deals with administrative aspects of trade and 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

BOX: 3.2

TIR carnet (TIR convention)

The TIR Carnet is a road transport document, which allows containerised and in some cases bulk cargo to move through simplified and harmonised administrative formalities under some basic requirements: (i) goods should travel in secure vehicles or containers; (ii) duties and taxes 'at risk' during the journey should be covered by an internationally valid guarantee; (iii) goods should be accompanied by an internationally accepted carnet taken into use in the country of departure serving as a control document in the countries of departure, transit, and destination; and (iv) customs control measures taken in the country of departure should be accepted by the countries of transit and destination.

The TIR Carnet simplifies transit considerably. The TIR Carnets are issued by the International Road Transport Union (IRTU) of Geneva to associations in participating countries who act as guarantors for

the duties and taxes 'at risk' during the journey. Each association issues TIR Carnets to approved national carriers provided they meet the requirements set by the IRTU – for instance, every road vehicle as regards to its construction, equipment and customs sealing device has to conform to the specifications laid out in the Convention. The association also notifies the IRTU with names of approved TIR carriers and provides a TIR plate, which is placed on each authorised vehicle. Because the TIR Carnet provides customs with a means to collect charges not paid by the consignee, TIR Carnet cargo is subject to fewer delays.

ATA carnet

The ATA Carnet is designed to facilitate the importation, irrespective of the means of transport, of goods, which are granted temporary duty-free admission (including transit, importation for home use and temporary admission).

Source: Taneja. 2004.

tive 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 government authorities beyond customs. The Article requires contracting parties to impose fees and charges in relation to import and export in a manner that it is limited to the cost of service provided; recognise the need for reducing the number and diversity of fees and charges and the incidence and complexity of import and export formalities; review its operations, upon request by others; and not to impose substantial penalties for minor breaches of customs regulations or procedural requirements.

Developed members have made the following key proposals⁸ with respect to Article VIII:

Levy of fees and charges: Charging fees on the basis of *ad valorem* is found to be incompatible with the text or with the objective of the GATT (Panel Report US-Customer User Fee) and that the EU has interpreted Article VIII:I (a) to imply that fees and charges levied must refer to the approximate cost of service rendered.

Injecting the GATT principles: The European Commission (EC), Hong Kong and Korea have pointed out that in Article VIII, members simply ‘recognise’ but undertake no explicit obligations with respect to the need to reduce the number and diversity of the fees and charges and the need to minimise the incidence and complexity of import and export formalities. Therefore, they call on members to impose the GATT principles of non-discrimination, transparency and predictability in the design, application and effect of export and import procedures and formalities, which according to them should make Article VIII more operational.

They also called for reviewing import and export requirements, including documentation, and ensure that the GATT principle of ‘least trade restrictiveness’ is adhered to. The EC has suggested that members should specify such requirements and

review the principle of ‘necessity/least trade restrictiveness’, which essentially means that members should not maintain measures if the circumstance or the objective giving rise to its adoption no longer exists.

Provisions to reduce documentation requirements:

The EC made suggestions to reduce documentation requirements, which included the use of a single administrative data set for export and import; and the introduction of a single one-time presentation to one agency and the adoption of a uniform domestic customs code. The EC and Korea have suggested that countries should use risk assessment methods based on international standards and practices. This calls for classifying traders on the basis of risk assessment and grants these *authorised traders* simplified process of customs clearance or other premium procedures for their import and export activities. The EC, Hong Kong, Japan and Korea suggested the automation of customs and other agency procedures for simplifying export and import.

Standard processing time: The proposals of the EC with regard to this include the establishment of standard time for processing documentation and notifying within a reasonable time framework, and making attempt to progressively reduce the standard processing time.

Use of international standards: The EC, Hong Kong, and Japan proposed members to use the agreed international standards and instruments for simplifying and reducing documentation and data requirements and streamlining import and export procedures. In the latter case, they have added a qualifier to suggest that international standards should be used for import and export procedures only if they are effective or appropriate means to fulfil the legitimate objectives sought. Hong Kong proposed members to “adopt formalities and documentation requirements with reference to international standards, or follow guidelines, and recommendations in their import and export formalities and re-

The EC, Hong Kong and Korea have called on members to impose the GATT principles of non-discrimination, transparency and predictability in the design, application and effect of export and import procedures and formalities

BOX: 3.3**Relevance of RKC to Article VIII**

One of the criticisms of the involvement of the WTO on global rule making is that there are other specialised international organisations or conventions to deal with many of the issues related to trade facilitation. On the issue of customs, the relevance of the RKC should be carefully appraised. It is important to mention at the outset that the RKC or other WCO instruments do not specifically define that fees and charges should approximately cover the cost of service rendered because no single standard could be agreed upon by the parties to the Convention (Taneja 2004).

The requirements of GATT Article VIII:I (c) are addressed through principles laid out in the General Annex. The Kyoto Convention has laid out standards for simplification of procedures for border crossings, goods declaration and supporting documents, release of goods, authorised persons, and coordination of customs inspections with other competent authorities. It recognises the importance of the use of risk management techniques by setting out the standards for the application of risk management and the use of IT. It sets out the standards for the application of ICT in customs, and specifies that IT should be used where it is cost effective and efficient for the customs and trade. In addition, it specifies that members should use relevant internationally accepted standards; and it should also contain the legal provisions relating to security.

Other notable WCO initiatives include the development of the WCO Customs Data model, which establishes a standard, international harmonised data

set that would meet governments' requirements for international trade. This model would also be used to develop the concept of a 'Single Window'.

Relevance of TBT/SPS to Article VIII

A parallel can be established between the proposals made by members to improve Article VIII. A casual reading of the proposals and the text of the TBT Agreement and the SPS Agreement would reveal that most of the proposals have emanated from these agreements. For example, the TBT Agreement contains the principles that have been proposed to be included in Article VIII, namely non-discrimination, least trade restrictiveness, review of procedures and the use of international standards as a basis for technical regulations. Articles 2.1, 2.2, 2.3, and 2.4 of the TBT Agreement contain the same principles.

Similarly, the SPS Agreement contains much of the requirements for standards. For example, Article 3.1 of SPS requires members to base their SPS measures on international standards. The only difference is that the SPS Agreement uses the word 'shall' in place of less strong language in the GATT Articles. The SPS Agreement also allows countries to maintain a higher level of SPS protection than an internationally agreed standard if there is scientific justification or when a country determines that a higher level of protection would be appropriate. In other words, the difference between GATT Article VIII and these two agreements lies in the fact that TBT and SPS agreements require higher level of obligation than Article VIII of the GATT. In fact, the EC and Hong Kong have suggested that it is important to consider the applicability of these agreements to import and export documentation requirements.

requirements where they exist and as appropriate." Japan called for the adoption of internationally accepted standards and instruments, if any, as a basis for setting and implementing trade procedures for simplifying them.

2.5.2.3 Article X: Publication and administration of trade regulations

Article X calls for the publication of all laws, regulations, judicial decisions and administrative rulings relevant to importing and exporting in a manner so as to enable governments and traders to become acquainted with them. These regulations include the classification or valua-

tion of products, rates of duty, taxes or other charges; and requirements, restrictions or prohibitions on imports or exports; on transfer of payments related to imports or exports and on sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing and others related to imports or exports. In addition, the Article calls for the publication of trade agreements and other measures that impose a new or more burdensome requirement, restriction, or prohibition on imports, or on the transfer of payments before the enforcement is required. On 'appeal procedures', members need to maintain or institute

judicial, arbitral or administrative tribunals or procedures for review and correction of administrative action relating to customs matters.

The key issues in the proposals are as follows:

Advance rulings: Canada, the EC, Japan and Korea proposed to include binding advance rulings, enabling traders to get advance information on tariff classification and applicable duties.

Use of electronic media: The EC, Canada and Korea recommended the use of electronic media for import and export activities on non-binding basis.

Enquiry points: The EC and Korea proposed the establishment of enquiry points/trade desks for providing trade related information. South Korea proposed the establishment of a 'single national focal point' by members to respond to the inquiries related to information directly related to the customs procedures, importation and exportation.

Consultative mechanism: The EC, Canada and South Korea proposed that all stakeholders/interested parties (i.e., government and private sector bodies, including importers/exporters, carriers, chambers of commerce, etc.) should have an opportunity to comment on prospective rules

and procedures through a consultative mechanism before they are implemented. Such a mechanism allows the regulatory party to have inputs on how a regulation is formed to reduce the costs to the regulated party while increasing the efficiency of implementation.

Appeal: Canada and the EC proposed to include provisions to an appeal by a separate judicial or administrative body to ensure fairness to cases where the initial appeal is not satisfactory.

3.5.3 North-South division on trade facilitation

While there is a broad agreement on the benefits of trade facilitation, rule setting on trade facilitation under the ambit of the WTO is contentious and its members are divided between North and South, not only on the need to implement trade facilitation measure but also on the suitability of the binding obligations under the WTO. Within the WTO, the advocates of formal trade facilitation rules are known as the Friends of Trade Facilitation or the "Colorado Group".⁹ They support additional commitments and rules on trade facilitation on the basis that a rules-based system in this area can be of great benefit to global trade (WTO 2003c). Their main arguments are based on the following arguments.

First, as they argue, without binding commitments, the implementation of trade facilitation measures will not take place and will be relegated to the back burner; strengthened rules and monitoring mechanisms would guarantee transparency and predictability of the trading system. Second, strengthened rules on trade facilitation would provide "political impetus to guide national efforts to simply and modernise trade procedures and carry out domestic reforms that otherwise might not take place." Third, the implementation of rules under the WTO would be faster than under the Kyoto Convention, which has been slow. They use the Kyoto Convention as a good example to illustrate the failure of voluntary accession even when commitments are binding once acceded. Fourth, trade facilitation covers several aspects of border management

The EC and Korea have proposed the establishment of enquiry points/trade desks for providing trade related information

BOX: 3.4

Relevance of RKC to Article X

As before, it is important to compare the provisions under the RKC to GATT Article X. The WCO, in its submission to the WTO, pointed out that Chapter 9 of the General Annex to the Kyoto Convention, which relates to information, decisions and rulings supplied by the customs, contains all the requirements of Article X and the proposals made by members, including binding rulings. The guidelines to Chapter 9 provide: detailed information to set up procedure for publication of information; information on provision of information through electronic media (where possible); and provisions for a consultative mechanism between traders and customs, binding advance rulings and enquiry points. The only missing element is the Single National Focal Point of Enquiry, which was proposed by Korea. In addition, the WCO points out, Chapter 10 of the General Annex sets out the principles for appeals in customs matters, which is a transparent and multistage appeal process with the availability of an independent judicial review as a final avenue of appeal.

and involves many agencies associated with border controls, such as those responsible for customs, transport, health, quarantine, veterinary, agriculture, finance, defence and justice. To be fully beneficial, trade facilitation measures should apply to the maximum extent possible across the entire border management process. The WTO is the only international organisation with a sufficiently broad mandate to cover all aspects of border management bearing on international trade. As such, they argue that national, bilateral and regional initiatives can lead to fragmented or piecemeal trade facilitation efforts, which cannot deliver the comprehensive reforms necessary to ensure all members benefit from trade facilitation.

The 'Friends of Trade Facilitation' are not without divergent ideas, however. For example, the US stressed in its submission that the needs of members at lower levels of development will be given proper consideration for special and differential treatment (S&DT) and to ensure adequate technical assistance and support for capacity building. Japan, as elaborated earlier, suggested a three-pillar approach, tying together an action programme (setting non-binding and long-term objectives for trade facilitation), capacity building activities and rule setting. The EC is flexible in its approach to the implementation part where it has recognised the need for capacity building measures and the need to recognise the non-prescriptive nature of rules as a commitment to a process of modernisation of trade facilitation procedures. It, nevertheless, noted the importance of binding rules in the WTO on a sequential manner. Australia maintains that appropriate technical assistance and capacity building measures are needed to address the issue of S&DT for developing countries. Australia also believes that an impartial dispute settlement mechanism would be necessary to provide security for developing as well as developed countries.

A group of developing countries known as the 'Like Minded Group' (Group 73) believes that trade facilitation is something

desirable but did not want to commit to a new set of legal obligations. As per them, technical cooperation efforts should be intensified to help developing countries to increase trade, and technical assistance to trade facilitation should not be contingent upon the reform process. Some members of Group 73 indicated their preference for trade facilitation at the national, bilateral or regional level. Many of them strongly believe that additional and binding requirements may exceed the capacity of developing countries to implement them, which is a view shared even by the WCO. Some have indicated their fear of encountering dispute settlement cases over trade facilitation. The experience of these countries on the dispute settlement mechanism under the WTO is not anything pleasant. As many point out, the main problem is the weak capacity for implementation, not lack of commitment. It is not a secret that the commitments made by countries with regard to capacity building and actual funding so far have not been encouraging. A progress in this area hinges on an agreement on what and how to negotiate trade facilitation rules. One positive development is that the inclusion of the issue in the Doha Ministerial Declaration has brought the subject into sharper political focus, and this has resulted in some developing countries to implement trade facilitation measures.

3.6 Challenges for the multilateral system

Implementation of trade facilitation is complex and initial costs can be substantial. Introduction of trade facilitation measures requires the deployment, or redeployment of scarce financial, physical and human resources, and their costs are a significant burden for many developing countries. In particular, governments may be reluctant to implement some measures, for example, customs reforms, because of fear of losing revenue at the initial stages.

A main challenge for the WTO is how to deal with the issue of technical assistance and capacity building for developing countries in order to further their inte-

Introduction of trade facilitation measures requires the deployment, or redeployment of scarce financial, physical and human resources, and their costs are a significant burden for many developing countries

gration into the multilateral trading system. Trade facilitation often requires difficult changes in procedures and practices. At what level trade facilitation programmes should be implemented is an open question. Facilitated procedures may lead to staff reductions or deployment and hence opposition from the officials previously did serve in administering cumbersome administrative procedures. In addition, facilitated procedures require fewer staff, and as a result, they normally require more equipment, especially in the form of modern IT, and thus staff with higher education and new skills. Modern IT equipment also requires large initial investment for setting-up. Often maintenance costs can also be substantially high for developing countries. The governments may feel that these short-term costs are a waste. Convincing the governments in developing countries about the need to facilitate trade in the short run with huge initial costs can be quite difficult because there are many other priorities.

Convincing the governments in developing countries about the need to facilitate trade in the short run with huge initial costs can be quite difficult

The inadequacy of technical assistance is particularly serious in new areas like technical standards and intellectual property rights (IPRs). Developing countries do not have the capacity to meet the commitments they have already made. It remains to be seen how much technical assistance would be given to the area of trade facilitation.

3.7 Future prospects for the multilateral system

The already high pressure to implement trade facilitation measures is likely to rise further, mainly because that is going to be one of the key areas where competitiveness will be determined in the years to come. Since tariff and to a greater extent, at least among the developed countries, non-tariff barriers (NTBs) are becoming less, any additional gain could come from reducing inefficiencies in the area of customs procedures, administrative regulations and further enhancing customs efficiency. As businesses will pressurise their governments to bring trade related transaction costs down, there is likely to be a very high pressure on the

world community to implement trade facilitation programmes.

A successful outcome in trade facilitation talks will depend on several factors. First, it depends on whether the two groups of members – developed and developing countries – with quite different positions can narrow their differences. Second, discussions in specific areas such as “the movement, release and clearance of goods, including goods in transit” may be useful for a start up but both groups will have to quickly move from mundane matters to more serious issues, where differences of opinion may become quite significant. Third, the future of negotiations depends on the extent of cooperation with other organisations such as the WCO, UNCTAD, the World Bank and APEC that have been working on the issue of trade facilitation. If some consensus can be reached in the areas where developing countries are working at the moment, perhaps there could be possibility to find common ground. Some developing countries have expressed concerns about coordination between existing programmes and the possible future work of the WTO. They argue that the new work of the WTO should not cut across the existing works of other organisations. Discussions on donor coordination will be particularly important as talks proceed.

APEC has much bigger prospects to play a leading role in trade facilitation, both within the organisation as well as at the global stage. APEC, with a vast experience in this area, could play a positive role in facilitating dialogue among members and building up consensus on key issues. It could help negotiations in a number of ways. As one of the most experienced regional organisations in the area of trade facilitation, it could share its experience in resolving differences between developed and developing countries. APEC’s experience could be particularly useful for other developing countries to understand how they have dealt with trade facilitation with countries having vastly different levels of economic development. Perhaps, this is reflected in the APEC’s

definition of trade facilitation, which is broad enough to accommodate the concerns of smaller, not so developed members. This definition seems to have helped them in evaluating work across different facilitation measures; prioritising development assistance among members through its committee structures; quantifying the consequences; and considering different approaches to improving, modalities for negotiation and implementation.

APEC is poised to be more active in coordinating with the WTO on designing and refining the principles and codes of the multilateral trade facilitation, partly because of its advantages in influencing a large part of global trade and the num-

ber of members in it. Their experience is likely to produce ready material for the WTO as well to handle very sensitive issues that have emerged within the WTO. It is also likely to work closely with other organisations such as the World Bank, the EU, MERCOSUR, or NAFTA. APEC is likely to launch a programme aimed at facilitating maritime and air transport system. It is going to be a major thrust area given the long coastlines and heavy air traffic of the APEC. South Asia, also with a vast coastline and air traffic, could benefit from a joint programme with APEC although maritime and air traffic related trade facilitation issues are not explicitly included in APEC yet.

South Asia could benefit from a joint programme with APEC although maritime and air traffic related trade facilitation issues are not explicitly included in APEC yet

Issues for comments

- Do the developing countries' proposals on trade facilitation adequately address the concerns of South Asian countries?
- Why the successes of the efforts made by various international organisation on trade facilitation have been limited?
- What are the core elements of Article V, Article VIII and Article X of the GATT 1994 that are of relevance to South Asia?
- What are the lessons to be learned by the multilateral trading system from the various regional models of trade facilitation?

Trade facilitation in South Asia

4.1 National experience

This section summarises the trade facilitation work that has been carried out in the South Asian region. The discussion is organised along GATT Articles V, VIII and X.

4.1.1 Bangladesh¹⁰

4.1.1.1 Article V: Freedom of transit

The issue of transit facilities is important for Bangladesh due to its trade relations with India. However, Bangladesh has not given the green light on the issue so far. There is quite a similarity in the Indian position on giving transit facilities to Nepal and the Bangladeshi position on giving transit facilities to India.

4.1.1.2 Article VIII: Fees and formalities connected with importation and exportation

According to a survey, in Bangladesh, it takes on an average 12 days to clear a cargo load but can take up to 30 days for imported goods to be released through customs at the ports (WTO 2000). Such delays lead to congestion of ports, paralysing an important part of the economy's infrastructure. The clearance procedure is characterised by excessive checking and paperwork, undue and complicated procedural steps, partial computerisation, and limited opening hours (WTO 2000). One example of the complexity of the customs procedure is that the manual customs entry form requires upto 40 signatures before a consignment is released (World Bank 1999). According to one survey, the hidden costs paid by importers per consignment range from Tk 4,700 to Tk 86,800 (WTO 2000). Customs delays have often been cited by businesses

as an impediment to conducting business in Bangladesh, as the delays add to their costs and therefore impair their competitiveness.

The import and export procedures in Bangladesh are quite cumbersome by any standard. There are a large number of trade policies and procedures that have made international trade quite complex. As a result, transaction costs of trade have become quite high. Like in other South Asian countries, various exemptions and conditions have made policies opaque. This has resulted in official discretion and rampant corruption. The final outcome has been a thriving illegal and informal international trade between India and Bangladesh. Several schemes have been introduced to simplify the formalities associated with exports and imports. The key programmes are:

- Introduction of a self-assessment and the rapid clearance procedure (in the first instance to the public sector);
- Simplification of the tariff structure;
- Customs modernisation with the objective of increasing efficiency of customs clearance; and
- Simplification of documentation procedures.

The programme to simplify documentation procedures has made some headway. During 1997-2002, traders were expected to offer a simplified export procedure by allowing export without letter of credit (L/C), but on the basis of a purchase contract, agreement, and purchase order or advance payment. Exporters have to submit only the EXP form and the shipping bill. To qualify for

Several schemes have been introduced in Bangladesh to simplify the formalities associated with exports and imports

such status, exporters must export their goods for a minimum period of one year on the basis of the contract, purchase order or advance payment, and on the basis of L/C.

Levy of fees and charges: Three types of border charges are being levied – an infrastructure development surcharge (IDS), a letter of credit authorisation (LCA) and import permit (IP) fee. All of them are charged at the rate of 2.5 percent. In addition, advance income tax, value added tax (VAT) and in some instances, supplementary duties are applicable. The IDS is calculated on an *ad valorem* basis (2.5 percent of c.i.f value), which is applicable to over 98 percent of the total tariff lines. Certain exemptions apply for all these charges, where in certain cases the levies and charges are exempted totally. According to the authorities, exports are at present not subject to any taxes, charges or levies. However, the Export Policy Order 1997-2002 stipulates: "tax at source will be deducted at the rate of 0.25 percent".

VAT is normally levied at a rate of 15 percent on imports and domestically produced goods alike (unless they are exempted). In the case of imports, it is levied on the c.i.f. value plus import duty, and in some cases, supplementary duty. Although VAT is trade neutral, in the case of textiles, domestically produced substitutes are exempted from VAT. Instead, an excise tax of 2.5 percent is applicable for domestic textiles. In addition, goods such as liquor, tobacco products, petroleum products, make-up materials, perfume, ceramic tiles, air-conditioners, refrigerators, televisions, and motor vehicles have a supplementary levy ranging from 5 percent to 270 percent.

Injecting GATT principles: Since Bangladesh has shown high willingness to promote TBT and SPS agreements, extending GATT principles to formalities of trade should not be a problem.

Provisions to reduce documentation requirements: No progress reported.

Standard processing times: No progress reported.

Use of international standards: No progress reported.

4.1.1.3 Article X: Publication and administration of trade regulations

Advance rulings: No progress reported.

Use of electronic media: Computerisation of customs has been going on for some time with the introduction of the SPEED system for customs assessment and ASYCUDA for customs document processing. There is a plan to introduce risk management system on customs inspection with the objective of inspecting only 10 percent of the total consignments

Enquiry points: No known enquiry points.

Consultative mechanism: Import Trade Control Committee (ITCC) works as the adjudication body in case of a dispute between an importer and customs officials. The committee consists of local representatives of the Cisco Certified Internetwork Expert (CCIE), chamber of commerce and industry, and the Customs Authority, and takes a decision within 15 days of receiving the importer's request. If the importer is not satisfied with that decision, an appeal can be filed with the central ITCC, comprising the CCIE, the National Board of Revenue (NBR), the concerned sponsoring agency, and the Federation of Bangladesh Chamber of Commerce and Industry (FBCCI).

Appeal: No record of an appeal process.

4.1.2 India¹¹

4.1.2.1 Article V: Freedom of transit

India requires transit facilities from Bangladesh for transporting goods to its north-eastern region while Nepal, being a landlocked country, requires transit facilities from India for trading with the rest of the world. It is important to note that goods to the north-eastern region are transported along the circuitous route around Bangladesh. Movement of cargo through Bangladesh is likely to reduce the distance significantly, but cost advantage will not be forthcoming without substantial improvements in customs clearance at border crossing points to and from Bangladesh. India has so far preferred to

In Bangladesh, VAT is normally levied at a rate of 15 percent on imports and domestically produced goods alike unless they are exempted

deal with transit issues at a bilateral level, and not much headway has been made on this issue with Bangladesh. With Nepal, the issue of transit has always been a key feature of the bilateral protocols and agreements (Subramanian and Arnold 2001). The Indo-Nepal Transit Treaty has several provisions to facilitate transit trade:

Simplification of procedures: The revised Indo-Nepal Treaty of Trade and Transit and Agreement for Cooperation to Control Unauthorised Trade, signed in 1996, provides simplified procedures where new procedures have been agreed upon to provide clearance to Nepalese containerised traffic in transit to and from Nepal. Further simplification can be carried out as India is already adopting measures under Article VIII to simplify procedures for trade.

Exceptions to the principle of non-discrimination for sensitive items and goods requiring transshipment: The issue is relevant in the context of transit facilities that have been provided to Nepal, where there is a claim that third country goods enter India through Nepal and goods are smuggled to Nepal from India by using transit facilities. India does not publish the list of sensitive items although a list is circulated within the Indian customs. Additional inspection of goods in transit could minimise these activities, and therefore, India is likely to accept the provision for additional inspection and publish the list of sensitive goods.

Regional transit arrangements: There is a possibility for a sub-regional transit arrangement between India, Nepal and Bangladesh. However, Bangladesh is reluctant to provide transit facilities to India as it fears that Indian goods might enter Bangladesh.

Use of international standards: India, Bangladesh and Nepal have so far not acceded to the international transit conventions like the TIR Convention or the ATA Convention. India uses the ATA Carnet for a very limited purpose, mostly for duty free temporary admission of imports. Under the current state of development in South Asia, it is difficult to

envisage effective implementation of rigorous conditions laid out by IRU Convention on vehicle specifications etc., which are essential to implement the Convention. At this stage, India could agree to international standards on transit arrangement on a 'best endeavour basis'.

4.1.2.2 Article VIII: fees and formalities connected with importation and exportation

Indian export and import procedures continue to be quite cumbersome. In order to export, an exporter needs to obtain 258 signatures, make 118 copies of the required documents, and wait for long hours to complete all procedures and requirements. Some of them are summarised below:

- Application for the 10-digit Importer-Exporter Code (IEC) Number, issued by the Director General of Foreign Trade (DGFT);
- Registration requirement with the departments of income tax and sales tax;
- The bill of entry and bill of export or shipping bill system to regulate imports and exports, as administered by the Customs and Central Excise Department, and multiple copies of the bill of entry and supporting documents are usually required;
- Licence from the Licensing Authority to import items in the negative list, restricted or canalised goods;
- Inspection certificate for import of second hand capital goods; and
- Pre-shipment inspection certificate for the export of about 1000 items.

Transaction costs related to imports are quite high. The use of licensed customs agents to handle customs clearance is a good example. Traders use these services as long as customs clearance is cumbersome and costly.

Even though there has been a reduction in the number of tariff lines since India began its economic reforms, there continues to be a multiplicity of tariff rates

In order to export to India, an exporter needs to obtain 258 signatures, make 118 copies of the required documents, and wait for long hours to complete all procedures and requirements

giving rise to ambiguous classification and valuation. The existence of multiple export promotion schemes, which require additional procedures, makes the process of imports and exports unnecessarily complicated. There is duplication of work between the Customs and the Ministry of Commerce, which needs to be addressed.

Levy of fees and charges: Some fees and charges seem to reflect the cost of service, while others are calculated on *ad valorem* basis. For example, the cost of obtaining an importer-exporter code number costs Rs. 1000. The amount of fees payable in case of an application for obtaining an import license is based on the c.i.f. value of goods at the rate of Rs. 2 per thousand subject to a minimum of Rs. 200 and a maximum of Rs. 150,000 (Taneja 2004; and Ministry of Commerce 2002). This clearly violates GATT Article VIII.

Injecting GATT principles: India is making arrangements to operationalise the TBT and SPS agreements, and, therefore, the extension of such principles in the context of GATT Article VIII will not be difficult (Taneja 2004; and Mukhopadhyaya 2002)

Provisions to reduce documentation requirements: At present, India does not have a single administrative data set for export and import or a single agency that are authorised to handle the documents. Since February 2003, India has embarked on a project aimed at harmonising the customs classification codes at the 8-digit level.

To date, the Indian Electronic Data Interchange (EDI) council has implemented for the application of bills of entry and the shipping bills at New Delhi. The system is available for certain airports and seaports only.

The automation of customs through the use of EDI and the use of risk assessment methods have been introduced to simplify procedures and reduce time. EDI, which was initially introduced in 1996, has now been introduced in 23 locations, but only in 11 of them EDI declarations are more than 80 percent of the

total declarations (Taneja 2004). A large proportion of declarations are still done manually and only a part of the data, in some locations, has been computerised. The EDI system is in operation only at few locations, leaving out other ports.

Standard processing times: Both the Central Board of Excise and Customs (CBEC) and the DGFT have laid out the intended standard processing times in their mission statements, which are not binding obligations on the part of agencies. Given the fact that India has several customs stations and the level of infrastructure varies considerably between them, it is difficult to establish uniform standard processing times for all customs stations at this stage of development.

Use of international standards: The Indian Customs is committed to the modernisation of customs on the basis of the RKC. The exact progress on each element is not known.

4.1.2.3 Article X: Publication and administration of trade regulations

All trade related three key institutions publish information: the CBEC, the DGFT under the Ministry of Commerce, and the Reserve Bank of India (RBI). They include relevant acts, tariffs, rules, regulations, forms, notifications and circulars relating to customs, central excise and service tax. All regulations and rules come into effect through a notification, which is published in the official Gazette of India under tariff and non-tariff related measures. All requirements, restrictions or prohibitions on import and export are regulated through the Foreign Trade Development and Regulation Act, 1992, which falls under the purview of DGFT. The RBI publishes all regulations related to payments. Decisions passed by the Tribunal, Supreme Court and High Court are public documents and can be obtained at a nominal fee.

Information is made available both in print and through the electronic media. The private sector is playing an important role in making information more accessible to traders both through published material and through hosting of

India is making arrangements to operationalise the TBT and SPS agreements, and, therefore, the extension of such principles in the context of GATT Article VIII will not be difficult

websites, which are popular among traders as they disseminate information faster (Taneja 2004).

Advance rulings: The Authority for Advance Rulings (AAR), established under the Finance Act, 1999, the Customs Act, 1962 and the Central Excise Act, 1944, performs the role of advance rulings required under the GATT. The scheme of advance ruling became fully operational from February 2004. The ruling by the AAR can be on classification, valuation and applicability of duty exemption in respect of export, import, production and manufacture. However, the scope of the AAR is quite limited as such a provision is not made available to a solely Indian owned company. Only foreign firms, which want to invest in India through joint ventures or wholly owned subsidiaries or Indians, who are getting into joint ventures with foreign firms, can ask for advance ruling.

Use of electronic media: The CBEC, the DGFT and the RBI are using electronic media very widely for dissemination of information. Electronic media is also being used by several private companies/individuals.

Enquiry point: There is no officially designated inquiry point for traders.

Consultative mechanism: At present, there is no provision for consultation between interested groups. There had been a proposal to establish a Standing Committee on Procedures chaired by Chairman CBEC and including trade and industry representatives to fulfil this requirement.

Appeal: India has an elaborate appeal procedure established under the Customs Act, 1962 and the Foreign Trade Development and Regulation Act, 1992. Appeals on trade related matters could be made to any superior officer than the adjudicating officer, and the highest body being the Customs Excise and Gold Control (Appellate) Tribunal (CEGAT), which is constituted of judicial and technical members.

4.1.3 The Maldives¹²

4.1.3.1 Article V: Freedom of transit

Article V has no application in case of the Maldives.

4.1.3.2 Article VIII: Fees and formalities connected with importation and exportation

The tariff structure of the Maldives is simple and all tariffs lines are *ad valorem*, levied on the c.i.f value of imports. However, extensive use of duty concessions largely aimed at attracting foreign investments has undermined transparency. The customs has yet to fully implement WTO commitments in this regard. The Maldives acceded to the Harmonised Convention in July 2000.

The Maldives has implemented an EDI system, enabling registered users to submit import and export documents electronically. This has worked well and reduced the application processing times considerably as well as improved data analysis. It is estimated that some 85 percent of declarations from importers are submitted electronically. The documentation procedure is simple and the required number of documents is limited to the original commercial invoice, the bill of lading or airway bill, the packing list, and bank and insurance documents, where L/C and insured shipments are involved.

The customs clearance procedure is also straightforward and the Maldives uses risk assessment method to release certain consignment without inspection (all single-item consignment goods and direct-delivery cargo, such as river sand and cement), and only about 25 percent to 30 percent of consignments of reliable parties, judged on past importing history, are physically inspected.

The Maldives does not have pre-shipment inspection requirements (WTO 2002).

Levy of fees and charges: The Maldives does not seem to have specific levies and charges.

Injecting GATT principles: The Maldives seems to have no difficulty in adhering to the basic GATT principles such as transparency, predictability and non-discrimination, as trade related laws and regulations are straightforward. It will be just a matter of making the necessary legislative enactment to inject GATT principles on export and import procedures.

The Maldives uses risk assessment method to release certain consignment without inspection, and only about 25 percent to 30 percent of consignments of reliable parties, judged on past importing history, are physically inspected

Provisions to reduce documentation requirements: The Maldives has been a member of the WCO since 1995. While it is not a member of the ATA Carnet System, similar procedures and privileges are, nonetheless, being followed. Simplification of customs procedures and practices figures prominently in actions taken by the government. The Maldives is a party to the SAARC Customs Action Plan aimed at harmonising the application and simplification of customs procedures and practices (WTO 2002)

Standard processing times: It is estimated that it takes less than two hours on an average to clear imports.

Use of international standards: The government is committed to adopt international standards but no information is available on exact progress.

4.1.3.3 Article X: Publication and administration of trade regulations

Advance rulings: The Maldives does not seem to have a mechanism by which prior information on tariff classification and applicable duties could be obtained.

Use of electronic media: The Maldives has commenced computerising customs operations and ASYCUDA has been implemented with some modifications.

Enquiry points: The Maldives customs operate in many cases as the only agency that should be approached for matters related to imports and exports.

Consultative mechanism: No known mechanism.

Appeal: Importers may appeal valuation and classification disputes to the customs. Such appeals are heard by an internal committee, which also consists of representatives from the private sector and other government agencies. If still dissatisfied, the importer may appeal to the courts.

4.1.4 Nepal¹³

4.1.4.1 Article V: Freedom of transit

Article V is quite relevant for Nepal and the procedures described in case of India are readily applicable to Nepal as well. The treaties of trade and transit between

Nepal and India govern the rules and regulations pertaining to transit.

4.1.4.2 Article VIII: Fees and formalities connected with importation and exportation

In Nepal, importers and exporters have to submit import and export declaration forms to the Department of Customs for processing and approval. For goods imported or exported by sea, they will require an additional Customs Transit Declaration (CTD) for endorsement by the Calcutta customs. For containerised cargoes, Calcutta customs does not normally inspect transit containers when the seals are intact. But they reserve the right to carry out inspection of the goods. Licensed customs brokers may prepare the declarations for the importers and exporters. The Department of Customs requires certificates of origin for all preferential exports from Nepal. The Nepalese Chamber of Commerce (NCC) issues the certificates. But it has delegated powers to issue the certificates to its 17 affiliated chambers. The chambers charge a fee of 0.12 percent on the value of the consignment for each certificate.

The Trade Promotion Centre (TPC) sells the forms for Generalised System of Preferences (GSP). After the exporters have completed the forms, the Department of Customs processes and approves them together with customs export declarations. However, for Nepalese hand-knotted woollen carpets, the Carpet and Wool Development Board is authorised to issue the GSP forms to the exporters at a fee of Nepalese Rs. 2 per square metre.

Nepal has 8 customs tariff bands – 0, 5, 10, 15, 25, 40, 80 and 130 percent – with a majority of tariff lines falling in the customs duty range of 10 percent to 20 percent. The unweighted average customs duty rate for imports was approximately 11 percent since 1996/97. For customs clearance in Nepal, it is estimated that 83 types of documents have to be filled, with 102 copies and 113 signatures. The human resource requirement for completing the customs procedure is estimated

The Maldives does not seem to have a mechanism by which prior information on tariff classification and applicable duties could be obtained

to be 22 days. For goods imported or exported by sea, an additional CTD for endorsement by the Calcutta customs is required (ESCAP 2000).

Levy of fees and charges: The Nepalese government charges a large number of fees and levies and other designated bodies with respect to issuing licenses and documents related to imports and exports. Some of the key fees and levies are as follows:

Individual associations decision

- A fee of 0.12 percent of the value of the consignment for issuing a certificate of origin. The certificate is issued by NCC with its 17 affiliated chambers (ESCAP 2000);
- The visa cell charge of 0.12 percent on the value of each consignment of readymade garments to the US and Canada. It is issued by Garment Association of Nepal (GAN);
- A valuation certificate fee for handicrafts, issued by the Handicraft Association of Nepal, ranging from Rs. 20 to Rs. 4000 per consignment as minimum charge and additional 0.5 percent of the value for handicrafts produced from domestic animal bone, leather and horn up to Rs. 700 for members and Rs. 1000 for non-members.
- Local development fee of 1.5 percent of the value of imports, other duties and charges in the range of 2.5 percent to 11.5 percent on industrial goods, and in the range of 2.5 percent to 14.5 percent on agricultural goods. These non-tariff charges are applied to the c.i.f. value of imported goods. However, these charges are going to be eliminated in a phase wise manner over a period of 10 years (WTO 2003e).
- Nepal has indicated in its Working Party Report that it would charge an import licence fee representing the approximate cost of the services rendered, and that “this and any other fees and charges for services rendered in accordance with WTO

Agreements, in particular with Article VIII of the GATT 1994”. The current charge of 1 percent would transformed into a flat rate.

Injecting GATT principles: Since Nepal has agreed in its Working Party Report to fully implement TBT and SPS agreements by 2007, the extension of the same principles to GATT Article VIII will not be difficult.

Provisions to reduce documentation requirements: Nepal does not use a single administrative document or a single agency for imports and exports. Some work has been carried out under the Nepal Multimodal Transport Project to simplify documentation requirements. For example, the government has attempted to computerise and reduce documentation requirements through the introduction of ASYCUDA with technical assistance from UNCTAD. ASYCUDA has been implemented at Tribhuban International Airport for air cargo and three custom entry/exit points, namely Birgunj, Biratnagar and Bhairahawa, which cover upto 90 percent of import and export trade. Nepal is also working on an IT-based ACIS with technical assistance from the World Bank and UNCTAD.

Nepal has indicated that it would enact legal instruments codifying the substance of the Agreement on Import Licensing Procedures. It has agreed in principle to amend the Export Import (Control) Act 1957 (Amendment) and the Export Import (Control) Regulations 1978 (Amendments). Nepal also has agreed to eliminate quantitative restrictions on imports or other non-tariff measures such as licensing, quotas, bans, permits, prior authorisation requirements, licensing requirements, and other restrictions having equivalent effect, that cannot be justified under the provisions of the WTO Agreement, subject to safeguard measures allowed under balance of payment (BoP) reasons.

Standard processing times: No progress has been made on the standard processing time, and it is difficult to expect much change in the immediate future. With the

The Nepalese government has attempted to computerise and reduce documentation requirements through the introduction of ASYCUDA with technical assistance from UNCTAD

implementation of other WTO commitments, Nepal is likely to be in a better position to reduce documentation processing time.

Use of international standards: Nepal has committed in its Working Party Report to comply with international standards on documentation procedures with a timetable extending to 2007.

4.1.4.3 Article X: Publication and administration of trade regulations

Nepal publishes all trade related measures and laws, regulations, and administrative rulings of general application pertaining to or affecting trade in goods, services or TRIPS, including multilateral agreements or treaties in which Nepal is a party, in the Nepal Gazette. The Supreme Court of Nepal publishes judgements of the Supreme Court in the Nepal Law Journal. Some of the transparency requirements of Article X of the GATT 1994 are contained in the Statute of Interpretation Act of 1953, His Majesty's Government (Allocation of Business) Regulation of 2000, and Nepal Gazette of August of 1955. Nepal has made commitments at the WTO that it would take necessary action to fulfil transparency requirements established in Article X of the GATT 1994, Article III of GATS and other WTO agreements.

Advance rulings: No known mechanism for advance rulings.

Use of electronic media: Nepal intends to establish or designate an official journal or website, published or updated on a regular basis and readily available to WTO members (WTO 2003e).

Enquiry points: Identification of the authority responsible for notifications and publications and other internal procedures to ensure transparency obligations are met on an ongoing basis (e.g., the Nepal Bureau of Standards and Metrology, NBSM in short, for the publication or website where notices of standards, technical regulations and conformity assessment procedures).

Consultative mechanism: There is no consultative mechanism at the moment.

Appeal: As for the refusal to issue licenses and other disputes, complaints can be made to the Ministry of Industry, Commerce and Supplies, within 35 days with copies of the relevant documents along with the complaint for evidence. The Department of Commerce coordinates with the agencies concerned on such issues. The Nepalese legislation provides the right to appeal to the affected party concerning decisions of the authorities on matters related to TBT, SPS, import licensing, copyrights, trademarks, patent and design, as required by the WTO agreements on Import Licensing, Customs Valuation, TBT, SPS and TRIPS.

Article 18 of the Industrial Enterprise Act, 1992 provides an appeal procedure against the decisions taken by Department of Industry to the Industrial Promotion Board. The importer has the right to appeal to the Revenue Tribunal over the decision of customs officials in respect to the determination of customs value under Section 37 of Custom Act, 1962. The possibility of establishing an independent Administrative Tribunal to review the decision of the customs authority regarding customs valuation is under consideration (WTO 2003e). The decisions of the Administrative Tribunal could be appealed to the Revenue Tribunal, which should provide review and correction of administrative action relating to customs matters.

4.1.5 Pakistan¹⁴

Pakistan has made efforts to simplify and enhance the transparency of the relatively complex trade related regulatory framework. The government has realised that long delays in clearance of goods adversely affects the country's economic performance in a number of ways such as increased smuggling, stagnating exports, increase in duty-drawback payments, falling tax to GDP ratio, increased corruption, and heavy transaction costs for business. The country has initiated a number of internationally sponsored projects with the objective of facilitating trade, of which the most known projects are: the World Bank sponsored Task

Nepal has made commitments at the WTO that it would take necessary action to fulfil transparency requirements established in Article X of the GATT 1994, Article III of GATS and other WTO agreements

Force on Tax Administration (June 2000-April 2001) and the International Monetary Fund (IMF) Report on Tax Reforms; ADB Project on Modernisation of Customs Administration (Carried out through Crown Agents); the World Bank Project on Trade and Transport Facilitation (2001-2004); and Customs In-house Reforms.

4.1.5.1 Article V: Freedom of transit

Transit facilitation is not featured in Pakistan's trade facilitation effort as yet.

4.1.5.2 Article VIII: Fees and formalities connected with importation and exportation

Import and export procedures in Pakistan are quite cumbersome. There is a long circuitous road to get a consignment into the country. All importers and exporters must register with the Export Promotion Bureau (EPB) to obtain a registration number before they can import or export. For import and export documentation, they may engage a customs house agent to prepare and submit the documents to the customs on their behalf. An importer has to go through the following individuals to import anything in that order:

For imports, customs house agents will first register the completed bill of entry with the relevant customs appraiser group in charge of different products. The appraiser will check the particulars in the bill of entry against the supporting documents. He will also assign an inspector to examine the goods before sending the agent to the principal appraiser for countersigning. The bill of entry will then be forwarded to the assistant collector of appraisal for endorsement. The particulars in the bill of entry are then keyed into the computer. The agent will pay the duties and all the charges before arranging for the inspection of the goods. After inspection, the bill of entry which contains the inspection report will be handed once again to the principal appraiser for counter-signing before the agent can arrange with the port trust to release the goods (WTO 2001).

Similar to imported goods, all goods to be exported require customs inspection.

In addition to the bill of export, all exporters have to fill out forms necessary for the control of foreign currency repatriation. Since 1996, the agents are allowed on-line filing of bills of entry and bills of export at the customs house at Karachi and the Lahore dry ports. Further developments are taking place to re-engineer and computerise the import and export procedures.

The tariff structure of Pakistan is still relatively complex despite having been simplified considerably in the recent past. It has 26 different rates (49 in 2000/01), 13 of which are *ad valorem*, 11 specific, and 2 compound (WTO 2001). Although the scope has been reduced recently, the complexity of the tariff structure is exacerbated by concessions, which always opens up room for misclassification of imports, and hence interpretations and corruption.

Registration requirements for importers and exports are still relatively complex. Some of the key features of simplification of formalities connected to imports and exports are: faster custom clearance for specific items; introduction of an electronic assessment system; and customs valuation modification.

Levy of fees and charges: Trade in certain sensitive items remained subject to specific or compound duties, state-trading activities, export subsidies or freight costs. Relatively high *ad valorem* tariffs have been kept on motor vehicles and import of certain items (for e.g. textiles) has been prohibited. Local content requirements have been operated for engineering and automotive (including tractors) goods. Certain import restrictions are being removed progressively. Virtually all imports come under a few withholding type taxes and charges in addition to import duties. The withholding tax, in principle, is deductible from income tax, which means that it does not constitute an additional levy on imports as long as the income taxes payable are sufficient to offset the tax. If the importer is in a non-taxpaying position (for e.g. because the importer is operating at a loss for income tax purposes, or enjoying a tax holiday), the levy becomes an import surcharge.

In Nepal, some of the key features of simplification of formalities connected to imports and exports are: faster custom clearance for specific items; introduction of an electronic assessment system; and customs valuation modification

Pakistan's import policy is quite complex. Although Pakistan has no licensing requirement, imports of several products need prior approvals, recommendations or clearance requirements from different ministries/departments in accordance with safety and health requirements, which entail licensing (WTO documents G/LIC/N/1/PAK/1 and G/LIC/N/2/PAK/1, 29 May 1996). Certain banned items and imports by certain entities such as foreign airlines, oil and gas companies, refineries and mining companies, foreign construction companies, and foreign contracting firms engaged in various projects in Pakistan require import authorisation from the Ministry of Commerce. Moreover, there are certain products that can be imported only by the public sector or industrial consumers. In addition, import of 19 product categories are subject to various conditions, such as receipt of certificates by suppliers and payment for imports from the importer's own foreign currency account. Certain chemicals and ozone depleting substances are under quantitative restrictions, determined on a domestic needs basis or by the Central Board of Revenue in consultation with competent government agencies (WTO 2001).

Injecting GATT principles: Since Pakistan is committed to simplifying documentation requirements, extending GATT principles may not be difficult.

Provisions to reduce documentation requirements: Registration and documentation requirements abound and remain unchanged and the list of documents needed can be long: Import General Manifest, bill of entry, invoice, packing lists, copies of L/C, and insurance certificates. In addition, importers need to register with the EPB. Much of the items are under certain conditions, and these goods also require a recommendation/clearance or prior approval from a competent government agency, or certificates from the exporting country. For example, food colouring material requires a certificate from the responsible agency in the exporting country indicating that it is in use in the country of origin at the time of shipment or regis-

tered in that country. In most cases, in order to obtain duty concessions for import of machinery and raw materials granted to various industrial establishments, importers need to furnish an indemnity bond/bank guarantee to the extent of duty exempted. A certificate of origin may be required for items subject to special import (e.g. preferential treatment), depending on the origin.

There are many exemptions and additional conditions. For example, only the government can import certain goods, which are exempted from registration requirements. To further complicate matters, only firms listed in public notices issued by the Ministry of Commerce may apply for import authorisation. For goods subject to conditions, opening L/C and customs clearance can be done only when the importer has the so-called 'Category Pass Book' issued by the EPB.

From February 2000, an Electronic Assessment System (EASY) has been introduced to speed up assessment and customs clearance as well as to reduce contact between taxpayers and the tax collectors. During the first stage, EASY was made available to multinationals and local firms eligible for an 'express-lane facility' (operated since 1998). EASY covers: dutiable imports by public sector entities (i.e. federal/provincial governments, state-owned corporations, local bodies); all items subject to specific rates of customs duty (excluding compound rates); and certain items subject to zero rates of customs duty and sales tax. Again, there are many exemptions that have been introduced to the system. For example, EASY does not apply to second-hand or re-conditioned items, scrap, and items subject to restrictions or bans or duty exemptions. All exporters must be registered with the EPB under similar terms as importers.

Export registration requirements include: pre-shipment registration of export contracts with the EPB in respect of cotton, rice, and urea; registration for purposes of monitoring (e.g., exports of several items to Afghanistan); pre-shipment contract registration with some associations

In Pakistan, food colouring material requires a certificate from the responsible agency in the exporting country indicating that it is in use in the country of origin at the time of shipment or registered in that country

where goods have quota requirements or for quality assurance purposes (e.g., textiles with All-Pakistan Textile Association, the Rice Exporters Association of Pakistan); certificate for the purposes of assuring quality (engineering and electrical goods); and no objection certification or special procedures (e.g., precious and semi-precious stones and gold jewellery).

Standard processing times: No publicised standard processing times.

Use of international standards: Pakistan has committed to implement international standards on documents but exact progress is not known.

4.1.5.3 Article X: Publication and administration of trade regulations

All Pakistani laws, regulations and most administrative guidelines are published in English in the publicly available official gazette, *The Gazette of Pakistan*. At present, some are also available on official web sites. Unified procedure orders have been used as a vehicle for making regulatory orders user-friendly and some Statutory Regulatory Orders (SROs) have been reduced substantially. Customs tariff rates are announced annually through the Finance Act and published in the official gazette (*Gazette of Pakistan Extraordinary Part II*). In addition, at the start of each financial year, the Central Board of Revenue (CBR) publishes the customs tariff along with notifications containing various duty exemptions, rules and changes. The customs tariff and accompanying regulations are also available at the CBR online information.

Advance rulings: No known procedure on advance rulings.

Use of electronic media: Pakistan has established Internet web sites at an increasing number of public sector agencies, institutes, and entities, in English.

4.1.6 Sri Lanka¹⁵

Sri Lanka has recognised the need to introduce measures to facilitate trade, and it has accepted some of the broad trade facilitation principles. Major reforms of Sri Lankan customs towards trade facilitation include: Sri Lanka Automated

Cargo Clearance Systems (SLACCS); Implementation of the WTO/GATT Valuation Agreement; and Simplification and Harmonisation of Customs Procedures.

4.1.6.1 Article V: Freedom of transit

Transit facilitation is not featured in Sri Lanka's trade facilitation effort as yet.

4.1.6.2 Article VIII: Fees and formalities connected with importation and exportation

Sri Lanka has one of the most liberal trade regimes in South Asia. Import tariff is Sri Lanka's main trade policy instrument. With the introduction of trade liberalisation, the country moved from a system that had many tariff lines to a simple structure with few tariff bands. Although the government attempted to introduce a two-band tariff system at one point, it has deviated from this policy recently and the tariff structure is now subject to an increasing number of changes. The current tariff structure consists of 6 bands – 2 percent (1663 items), 5 percent (829 items), 20 percent (59 items), 25 percent (1260 items), 75 percent (items such as beer and tobacco), 100 percent (cigarettes) – while there are 31 items that carry an *ad valorem* or specific duty, whichever is higher. There is intermittent use of exemptions and waivers that complicate the tariff structure. In addition, there are specific duties on 46 items, including about 12 agricultural products, which have been introduced to protect domestic producers. However, they remain below Sri Lanka's bound agricultural tariff rate of 50 percent at the WTO.

Levy of fees and charges: A total of 353 items at the 6-digit level of the Harmonised Tariff Schedule (HST) code remain under license control, mostly for health and national security reasons. There is a 0.1 percent fee on import licenses, which is on *ad valorem* basis. Sri Lanka currently maintains a number of charges on imports: a 10 percent import duty surcharge; 1 percent ports and airports development levy on imports; VAT of 15 percent; excise fee on some products such as aerated water, liquor, wines, beer, motor

The Sri Lankan government has taken steps to appoint a "working group to improve existing import and export procedures" with the involvement of both public and private sector

vehicles and cigarettes; export development board fee on all imports where the customs duty is more than 45 percent; and port handling charges. In addition, VAT and excise duties are levied on imports and domestic producers.

Injecting GATT principles: No specific programme as yet. Extending GATT principles in this regard will not be difficult.

Provisions to reduce documentation requirements: The Sri Lankan government has taken steps to appoint a “working group to improve existing import and export procedures” with the involvement of both the public and the private sector. Standardised customs declarations for imports and exports were introduced along with the implementation of the customs computerisation project in January 1994. New standard formats for valuation declaration form (introduced in January 2003) enabled simplified procedure in valuation with the implementation of the Customs Valuation Agreement.

Since 1994, lodging entries with customs and assessing them are done by using ASYCUDA. The customs started using ASYCUDA++ from 1998. Accounting and data collection have become fully computerised with this process. As for other usage like risk management, selectivity module of ASYCUDA is being tested at several divisions of the customs since March 2003. Automation of Bonded Warehouse Stock Control has been initiated with the introduction of a programme developed by Sri Lankan Customs Automated Data Processing Division using ASYCUDA++ called *thineth* (meaning three eyes). This has been in operation for nearly two years now. A valuation database for risk management has been established and it has made steady progress during the last two years.

Standard processing times: The Sri Lankan customs believes that the process of automation will further reduce the processing time substantially, eventually reaching the minimum possible level.

Use of international standards: Sri Lanka has committed to introduce international

standards on documentation.

4.1.6.3 Article X: Publication and administration of trade regulations

Once the EDI project is fully implemented, clearance of goods at Sri Lanka ports could become much faster and with minimum documentation requirements. Both importers and shipping agents could submit their customs declarations electronically through the EDI switch to the customs ASYCUDA system. The electronic custom documents will, thereafter, be assessed by customs using an intelligent based risk management system.

The ASYCUDA system is being used for automatic selectivity of low risk (green), medium risk (yellow) and high risk (red) declarations. Consignments with green cards will be released without calling for documents and cargo inspection; while only the documents will be inspected of consignments with yellow cards; and both documents and cargo will be examined of those with red cards. Advance clearance will be given to consignments with green and yellow cards, i.e., clearance will be given prior to the arrival of the cargo. This would require reporting of the manifest by the shipping agents at least two days prior to the arrival of the vessel. This type of customs clearance would result in “zero time clearance” as far as the customs clearance procedure is concerned.

Simplification and harmonisation of customs procedures: Sri Lanka has attempted to simplify the existing customs procedures and formalities with a view to enhancing the efficiency of the customs. The major elements of this customs modernisation programme include: (i) introduction of an automated cargo clearance system; (ii) new import clearance procedure under EDI environment; and (iii) simplification and harmonisation of custom procedures.

The Ministry of Commerce and Consumer Affairs has carried out a study on cargo clearance system at Sri Lankan ports, and consequently a decision has been taken to implement an EDI project. This has already been granted to a service provider, eService Lanka Limited,

The Sri Lankan customs believes that the process of automation will further reduce the processing time substantially, eventually reaching the minimum possible level

and the project, known as SLACCS, has been implemented.

Sri Lanka is a contracting party to the International Convention on the Simplification and Harmonisation of Customs Procedures (Kyoto Convention) since March 1985. Having realised the importance of acceding to the RKC, Sri Lanka signed the Convention in June 1999 subject to ratification. The Sri Lankan customs or the Central Bank of Sri Lanka publishes regulatory and administrative changes related to international trade. Information is made available both on printed and electronic media. Publication of regulatory changes in printed media through government gazettes is a statutory requirement for regulatory changes to become effective.

Advance rulings: Advance rulings on classification can be obtained from the Sri Lankan customs submitting relevant particulars, including samples where needed. These advance rulings are valid for a period of six months and the period is extendable on request. A standard format is used for this purpose.

Use of electronic media: Sri Lankan customs maintains a website giving information on tariff changes, license requirements and any other significant changes to the customs ordinance and regulations. The customs is in the process of expanding and improving this on the basis of the guidelines prepared by the WCO on this subject. The Central Bank of Sri Lanka publishes these changes in its annual report.

Sri Lankan customs launched a campaign to build awareness on electronic commerce and the usage of electronic media for facilitating trade. A series of seminars were held starting in 1998, covering EDI and e-commerce. The National EDI/EC Committee publishes e-info; a quarterly magazine/newsletter on EDI/EC related issues, which is circulated in Sri Lanka and to all the AFACT Secretariats.

Enquiry points: Sri Lanka still does not have a single window for inquiries on imports and exports; several agencies are involved in any import and export transaction. For

example, the Department of Inland Revenue issues the PIN number required for paying taxes and levies, while the Controller of Exports and Imports deals with issuing the required licenses imports and exports.

Consultative mechanism: A permanent Tariff Advisory Council was set up in 2002 to examine and correct anomalies and distortions in the tariff structure, and to address representations, made by importers and industrialists. With respect to e-commerce and EDI, Sri Lanka has been able to evolve an effective consultative mechanism involving both the government and the private sector. The National EDI/EC Committee comprises representatives from CINTEC, the Sri Lankan Export Development Board (EDB), the Sri Lanka Ports' Authority, Sri Lanka Customs, Sri Lanka Telecom, Sri Lanka Airlines, Sri Lanka Freight Forwarders Association, the Ceylon Association of Ships' Agents, the Sri Lanka Standards Institution (SLSI), the legal profession and the banking sector.

Technical committee: In addition, representation to the technical committees may be made from Nomenclature Committee (NC) with regard to classification disputes and to the newly set up Customs Valuation Committee with regard to valuation disputes. Further, two technical committees have been established to address issues of enforcement and facilitation areas, namely Customs Enforcement Committee and Customs Facilitation Committee.

Appeal procedures: The technical committees assist the Director General of Customs in handling appeals under respective areas.

4.2 Intra and inter-regional trade facilitation in South Asia

Trade facilitation is a major feature of SAARC economic cooperation.

4.2.1 Custom cooperation

As a practical measure to facilitate the process of economic integration, SAARC established a Group on Customs Cooperation (GCC) in 1996 (SAARC 2002). During the third meeting of the SAARC GCC held in Jaipur, India on 24–26 Au-

SAARC members had agreed to: harmonise tariff lines along the internationally accepted HS with the objective of facilitating greater integration within the region; simplifying procedures for intra-regional exports; upgrading infra-structural facilities; and providing training facilities

gust 1998, it was recommended, among others, that there is a need to adopt a common format for customs forms relating to import and export declarations. SAARC members also agreed to: harmonise tariff lines along the internationally accepted Harmonised System (HS) with the objective of facilitating greater integration within the region; simplifying procedures for intra-regional exports; upgrading infra-structural facilities; and providing training facilities (*See Annex on Customs Action Plan*).

4.2.2 Trade facilitation under RTAs

The first trading agreement under SAARC, the South Asia Preferential Trading Arrangement (SAPTA) did not contain any measures to facilitate trade. However, the South Asian Free Trade Agreement (SAFTA), signed in Islamabad in January 2004, has made some provision for trade facilitation under Article 8 (Additional Measures), which is a novel feature compared to the predecessor SAPTA. If implemented, these provisions would indeed make South Asian economic integration much faster.

4.2.3 Transport facilitation

There is a long history in South Asia on initiatives related to transport and transit facilitation. A Technical Committee on Transport was established in 1983 under the then Integrated Programme of Action (IPA). Its mandate covered three major segments: land (roadways and railways); sea (inland waterways and shipping); and air transport. New areas of cooperation were added later including transport safety, rural transport, environmental aspects and energy conservation.

For transport facilitation, SAARC has also undertaken activities such as seminars and workshops, exchange of data and information, preparation of status papers and compilation of database and directories of consultancy centres. The 11th Session of the SAARC Council of Ministers (Colombo, 8-9 July 1992) recognised the need to improve transport infrastructure and facilities in the region. Subsequently, the Committee on Economic Cooperation commissioned a study on then exist-

ing transport infrastructure and transit facilities, including procedural and documental issues in the region.

4.2.4 Standards, quality control and measurements

The SAARC commerce ministers established the Standing Group on Standards, Quality Control and Measurements in May 1998. The first meeting was held in New Delhi in June 1999 to identify the potential for harmonisation of national standards and key elements of the regional action plan on standards, quality control and measurements. The second meeting was held in New Delhi in February 2002 and considered a collaborative arrangement with the German National Meteorology Institute (PBT) on implementing a programme on standards, quality control and measurements. These agreements are laudable but there has not been an initiative to implement them. Unfortunately, these agreements are not binding on any country, and therefore, there is no pressure to implement them at the national level.

4.2.5 Harmonisation of national standards

Harmonisation is defined as the fusion of higher and lower standards into a single composite standard, which leads to conformity in laws, simplification of technical regulation and integration of standards. The basic principle of harmonisation is that the products manufactured in one country should be equally acceptable throughout the region. Out of the seven South Asian countries, four have reasonably developed national standardisation programme with India leading the way. Four are members of the International Organisation for Standardisation (ISO). While Bangladesh maintains a corresponding status, two countries (Bhutan and the Maldives) are not the members of the ISO (SCCI 2001).

The contribution of the harmonisation of national standards to economic integration in South Asia can be substantially higher than many other trade facilitation measures. Standards define the characteristics of a product, process or service, which, in turn,

For transport facilitation, SAARC has undertaken activities such as seminars and workshops, exchange of data and information, preparation of status papers and compilation of database and directories of consultancy centres

BOX: 4.1**SAFTA Article 8 (additional measures)**

Contracting states agree to consider, in addition to the measures set out in Article 7, the adoption of trade facilitation and other measures to support and complement SAFTA for mutual benefit. These may include, among others:

- | | |
|---|---|
| <ul style="list-style-type: none"> a) Harmonisation of standards, reciprocal recognition of tests and accreditation of testing laboratories of contracting states and certification of products; b) Simplification and harmonisation of customs clearance procedure; c) Harmonisation of national customs classification based on HS coding system; d) Customs cooperation to resolve dispute at customs entry points; e) Simplification and harmonisation of import licensing and registration procedures; f) Simplification of banking procedures for import financing; | <ul style="list-style-type: none"> g) Transit facilities for efficient intra-SAARC trade, especially for the landlocked contracting states; h) Removal of barriers to intra-SAARC investments; i) Macroeconomic consultations; j) Rules for fair competition and the promotion of venture capital; k) Development of communication systems and transport infrastructure; l) Making exceptions to their foreign exchange restrictions, if any, relating to payments for products under the SAFTA scheme, as well as repatriation of such payments without prejudice to their rights under Article XVIII of the GATT and the relevant provisions of Articles of Treaty of the International Monetary Fund; and m) Simplification of procedures for business visas. |
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Source: SAARC. 2002.; www.saarc-sec.org

determine the quality feature in the product or process and make the user's life easier. In relation to measurements, standardisation calls for equal units of measurement for various components and defines technical specifications for repeated use.

Standardisation is also a means of communication between buyers and sellers. This is even more important in the context of international trade with other regions, because standards give the signal of quality and the need to bargain becomes less with products and services that have received international standards. Standards also promote transparency and fair competition. They provide better information to customers, and protect the interests of the consumers. With common standards across countries, it becomes easier to trade goods because consumers readily accept the goods exported by other countries. This is not just true for countries within a particular region like South Asia but also globally.

Standardisation schemes lay the foundation for the improvement of domestic

skills and quality, while they help producers to avoid wastage particularly in terms of minimised consignment rejections as standards ensure compatibility of industrial practices. Different standards of goods as well as health, safety and environmental standards work as a trade barrier in many instances. Common standards are a key component to achieving a single market of which SAFTA is a stepping stone.

The private sector can play a positive role in facilitating implementation and harmonisation of standards through active participation in the technical committees set up by the Bureau of Standards and Harmonisation, facilitating the establishment of regional accreditation body (for inspection, testing and certification, auditing, etc.), creating awareness on the benefits of uniform standards, and bringing the governments together for preparing the common position at the WTO.

Other than national programmes, harmonisation of standards at the regional level is quite significant. Ghauri (SCCI 2001) identifies 11 steps to reach regional

SAARC could be relatively straightforward as many of the countries have similarities such as climatic conditions, consumption, culture, technological advancements, human resources, and infrastructure for testing and inspection

harmonisation of standards. An objective evaluation would reveal that SAARC has not reached even the third step of these 11 steps, where it would be necessary to harmonise not only product standards, but also methods of test, sampling techniques, packaging requirements, etc. Achieving regional standards within SAARC could be relatively straightforward as many of the countries have similarities such as climatic conditions, consumption, culture, technological advancements, human resources, and infrastructure for testing and inspection.

Several elements can be identified for developing a common standard. One of the first requirements would be the development of 'benchmarks.' The role of international standardisation bodies in creating international benchmarks as well as in harmonising standards cannot be undermined. The ISO, which comprises national standards bodies of nearly 120 countries, aimed at promoting the use of international standards and facilitating trade. International Electro-technical Commission (IEC) and International Telecommunications Union (ITU) compile and recommend standards for information related to industries. The Council of Economic Priorities Accreditation Agency on social accountability standard SA8000-1997 is another institution that promotes social accountability. Codex Alimentarius Commission (CAC) of the United Nations Food and Agriculture Organisation (FAO) and World Health Organisation (WHO) developed the Hazard Analysis Critical Control Point (HACCP) in 1993.

Achieving these standards is no easy task. In the words of Quasim Ibrahim (SCCI 2001): "those of us involved in export business are in a fire-fighting situation to achieve these standards." This is particularly true for SMEs, which lack information on standards. In addition, consultancy services on

standards are quite expensive, and in many instances, SMEs cannot bear these expenses on their own. Parallel to the harmonisation of standards, there is a need to develop mutually acceptable conformity assessment activities that normally include pre-shipment inspection, import inspections, testing of products, product certification and management systems certification.

4.3 Sub-regional trade and transit facilitation

Sub-regional cooperation for trade and transit facilitation figures prominently in South Asia. The project on Alignment of Trade Documents and Procedures of India, Nepal and Pakistan is an important sub-regional initiative, supported by ESCAP. The purpose of the project is to understand the trade documentation procedures of India, Nepal and Pakistan; identify the trade and customs documents in use and the data elements contained in these documents; simplify, standardise and harmonise trade procedures in the SAFTA context; and recommend, where applicable, alignment of trade and customs documents of the three countries in accordance with the UN Layout Key for Trade Documents.

The project team studied close to 100 documents in the three countries and aligned 55 of them that are relevant to international trade (ESCAP 2000). The team also combined 29 of them into 11 documents to simplify trade procedures. Some of the documents aligned and improved are the bill of entry, bill of export, shipping bill, CTD, phytosanitary certificate, inspection certificate, valuation certificate, registration certificate, commercial invoice and packing list. UNCTAD and ESCAP have, through their studies of documentation procedures, attributed 10 percent of total costs in developing countries to costs of documentation and procedures in international trade. This cost makes trade less competitive in the global markets.

Sub-regional cooperation for trade and transit facilitation figures prominently in South Asia

Issues for comments

- Which country in South Asia can serve as a model for helping other countries implement their trade facilitation measures? What are the key lessons to be learned?
- Given the fact that almost all the countries in South Asia are charging *ad valorem* fee on imports in violation of GATT Article VIII, what should be their strategy in the future?
- What are the possible ways and means to operationalise Article 8 (additional measures) of SAFTA?
- How should landlocked countries in the region shape their negotiating positions so as to ensure that their concerns about border delays and higher transit costs for their goods are addressed?

Issues, priorities and development strategies

5.1 Is trade facilitation a priority issue in South Asia?

Trade facilitation is only one among many of the crucial economic, political and social issues facing South Asia. Although almost all the governments in the region have pronounced trade facilitation to be a key to facilitate trade, the political will to implement such measures seems to be lacking. The benefits of trade facilitation are not well documented in the context of South Asia and the pressure to implement such measures is not forthcoming from the business community. This is partly because the business community is so acquainted with the system that they do not see the need to change. The time cost of the delays in customs or processing documents may not be a major problem for the business community as they can employ even several personnel to carry out the tasks required for getting the documentation requirements completed and consignments cleared. The cost of hiring an agent or a few people is not so high at all given the low wage rates in South Asia. The existence of customs clearance agents is taken in this context as an essential element in the process, which by virtue of working with the customs officials, know how to expedite the process of customs clearance and documents needed to complete trade transactions. Officials in institutions such as the customs and ministries of trade have become accustomed to the existing inefficient systems so much and there is entrenched interest to maintain the status quo for personal gain. Any move to reform customs and other institutions is, therefore, viewed with suspicion and invites opposition. The governments seem to be reluctant to engage in implementing a proper reform pro-

gramme of these institutions. Unless there is external pressure to minimise these transactions costs, it is doubtful whether South Asia will implement credible measures to facilitate trade. Given a myriad of problems that would receive immediate attention of the political leadership, trade facilitation agenda can be easily postponed without much impact on the performance of the government.

5.2 Cost of implementing trade facilitation measures

Trade facilitation aims at reducing transaction costs of trade regardless of their origin. However, this requires substantial upfront investment and higher operational expenses for government and businesses. The magnitude of the implementation costs varies according to the level of reforms needed, the existing infrastructure, the number of sites that need to be serviced, human resources available within the country and the kind of facilitation measures being attempted to implement. If simple economic logic is applied to this question, one needs to evaluate the benefits of implementing a trade facilitation programme against the combined total cost. There is no evidence to suggest that such evaluations have been carried out in developing countries before such programmes were implemented. For example, many developing countries including those in South Asia have implemented automated customs systems. Such automated systems are often inefficient in the context of developing countries where fundamental infrastructure such as a good telecommunication system and reliable supply of electricity are missing. In many instances, the improved systems cost more, not less. These costs are often passed on

The magnitude of the implementation costs of trade facilitation measures varies according to the level of reforms needed, the existing infrastructure, the number of sites that need to be serviced, human resources available within the country and the kind of facilitation measures being attempted to implement

to traders, adding to their already high costs. If the other inefficiencies are not removed, traders will be paying for new 'improved' services more.

5.3 Trade facilitation at the appropriate level

Some developing countries may still not be comfortable with the idea of binding global rules on trade facilitation under the WTO. Some countries such as India, Pakistan and Sri Lanka have already implemented some provisions that have been proposed while many of the other provisions are under consideration for adoption. Where commitments have already been made under more obligatory agreements such as TBT and SPS, only legislative enactment is needed.

There was little merit, if at all, in adamantly refusing to engage in negotiations on trade facilitation at the first place. It seems that developing countries were convinced of the need for improved trade facilitation but they have always had two major concerns. First, given the lack of resources, they would not be able to honour their commitments in the absence of binding commitments from the developed countries or development partners for mobilising technical assistance. Second, should they fail to honour their commitment, there would be a strong possibility of them being dragged to dispute settlement body of the WTO. Paragraph 6 of the Trade Facilitation Text of July Package helps allay both the fears. It states:

Support and assistance should also be provided to help developing and least-developed countries implement the commitments resulting from the negotiations, in accordance with their nature and scope. In this context, it is recognized that negotiations could lead to certain commitments whose implementation would require support for infrastructure development on the part of some Members. In these limited cases, developed-country Members will make every effort to ensure support and assistance directly related to the nature and scope of the commitments in order to allow implementation. It is understood, however, that in cases where required support and assistance for such infrastructure is not forthcoming, and

where a developing or least-developed Member continues to lack the necessary capacity, implementation will not be required. While every effort will be made to ensure the necessary support and assistance, it is understood that the commitments by developed countries to provide such support are not open-ended.

There are other measures that can be negotiated at the regional level. South Asia has not been able to negotiate transit arrangements within the SAARC process due to political differences and potential political fall out of hard decisions. For example, India prefers to negotiate transit arrangements with Nepal and Bangladesh on a bilateral basis. One should ask the question whether this is the most appropriate level to negotiate transit issues. There are many other transit arrangements that are working efficiently among other countries that could provide good lessons for South Asia.

5.4 Technical assistance and domestic research capability

Technical assistance requested by South Asian countries as well as other developing countries from the WTO or other international institutions seems to lack clear understanding of their needs whether such assistance would be practical to implement under the current context and the objectives of developed countries in implementing certain trade facilitation measures. The need for trade facilitation in developing countries is contingent on the level of development, the complexity of the existing rules, regulations and procedures and the extent of integration that the country wishes to achieve and the extent of reforms that a country can implement given the political and economic climate.

These issues have arisen because many countries lack sufficient technical expertise within their borders. In such cases, there is legitimacy to use external consultants. However, there are many instances where 'external consultants' are used even when the country itself has expertise within its own borders because technical assistance programmes themselves have conditions attached in terms of the need

Some developing countries may still not be comfortable with the idea of binding global rules on trade facilitation under the WTO

to hire experts from the donor agency or the country. Such provisions not only negate the possibility of developing expertise within developing countries but also foster dependency. Therefore, technical assistance should be geared towards the development of domestic level research and development capability rather than providing direct technical assistance, which is true for many areas in the developing world. One of the major reasons for the failure of many development projects including trade facilitation is the attempt to transplant foreign technology without any consideration to the needs of these societies. Developing countries should, therefore, ask not so much technical assistance *per se* but assistance to build their in-house research and development capability, at least in the initial stages. Once the research and development capability is in place, they can determine what areas need to be supported by external consultants and external technical assistants.

The challenges of implementing any proposed multilateral rules in this area in the future would also need to be met by technical assistance and capacity building in an integrated manner, taking into account the S&DT to be accorded to developing countries.

5.5 Stages of development

A new realisation has emerged on the implications of the stages of development on economic policies, including trade. Choosing the appropriate level of trade facilitation to suit the stage of development is critical for its success. Arriving at this decision often requires information relating, for example, to the nature of legislative process and the extent of transaction costs, etc. Once such an assessment is made, the country is in a better position to choose the most appropriate level of technical assistance. In some cases, what may be needed is better management of national borders, whereas in another it may just be some training of officials with respect to the system of trade rules and regulations. In most cases, increasing the number of professionals in customs is a necessity.

The basis for the call for S&DT is the stage of development and the capacity to implement the reforms required for implementing trade facilitation. With such differences across countries within South Asia, cross-border trade facilitation to harmonise vastly different legal and administrative systems becomes even more difficult. Institutional and micro-economic reforms needed to make trade facilitation work are vastly different in different countries. Before attempting to implement advanced facilitation measures such as global risk management strategies, these reforms must be undertaken. The launching of trade facilitation most appropriate to the level of development is, therefore, important.

5.6 New international economic order

The extent of competitiveness of a country no longer depends on whether a country can export goods and services, but rather on the speed and efficiency at which goods are exported and services are delivered. As noted above, present day global consumers have many choices and are not restricted by geographical barriers. Various management techniques such as just-in-time delivery, the use of the Internet and customer orientation of production and delivery have evolved with the change and availability of new technology. In such an environment, delays and inefficiencies within the country or at the borders make goods and services from that country highly uncompetitive. This is a challenge particularly for developing countries, landlocked countries and those that are located far away from the major global markets, which find it extremely difficult to improve their competitiveness.

5.7 Emerging consensus

Developing countries opposed the inclusion of trade facilitation under the WTO negotiations because this would lead to binding obligations where developing countries may not have the capacity to implement some of the changes needed in areas of legislative enactments, fulfilling infrastructure requirements and so

The extent of competitiveness of a country no longer depends on whether a country can export goods and services, but rather on the speed and efficiency at which goods are exported and services are delivered

Capacity building to implement the obligations together with the political will and confidence is lacking in South Asia

forth. Whether we like it or not, the issue of trade facilitation has been included for negotiation as a part of Doha Development Agenda. Many developing countries, including those in South Asia, agree that trade facilitation is something desirable for economic integration and development. Moreover, India, Pakistan and Sri Lanka, in particular, have already implemented a large number of trade facilitation measures that have been proposed by the developed countries. Capacity building to implement the remaining obligations together with the political will

and confidence that these measures can be implemented within a reasonable time in South Asia is what is lacking. Perhaps a few studies with a cost-benefit analysis of implementing trade facilitation measures, conducted by developing country experts, government officials or at the level of SAARC, could shed light on the needs of developing countries and help devise a plan of action. Such studies could also take the mystery out of trade facilitation puzzle so that South Asia will be ready for the negotiations on trade facilitation with much confidence.

Issues for comments

- What are the political economy implications of implementing trade facilitation measures in South Asia?
- What are the technical assistance requirements of the South Asian countries in relation to implementing trade facilitation measures?
- Given the history of non-implementation of S&DT provisions in the WTO, what are the chances of the S&DT provisions within the Annex D (Trade Facilitation Text) of the July Package being implemented?
- What are the common agenda the South Asian countries should agree to before forming their negotiating positions during the WTO negotiation on trade facilitation?

Annex: 1

Customs Action Plan on Cooperation, Uniformity and Harmony for Customs Administrations of SAARC Member Countries

Preamble

The Customs Administrations of the Government of the People's Republic of Bangladesh, the Kingdom of Bhutan, the Republic of India, the Republic of Maldives, the Kingdom of Nepal, the Islamic Republic of Pakistan and the Democratic Socialist Republic of Sri Lanka hereinafter referred to as "Member Administrations".

Motivated by the common desire to establish and promote regional preferential trading arrangements for strengthening intra-regional economic cooperation and the development of national economies;

Noting that divergence in Customs procedures of the member administrations can hamper free flow of goods and other exchanges;

Recognising that simplification, harmonisation and uniform application of Customs procedures by the member administrations can effectively contribute to the development of trade and other exchanges in the Region;

Recognising the need for cooperation in matters related to the proper applica-

tion and enforcement of their Customs laws, and thereby helping in the smooth flow of *bona fide* goods and passengers;

Recalling the directions given at the Seventh CEC Meeting held at New Delhi, India in October 1996 that a "Group on Customs Cooperation" be established;

Have agreed to:

- maximise harmonisation, simplification and uniform application of Customs procedures relating to facilitation of movement of goods and passengers;
- ensure proper application of their Customs Laws through maximum mutual cooperation and assistance, in particular, in the sphere of combating commercial frauds, and trafficking in illicit drugs; and
- improve the working methods and human resources of the member administrations through efficient use of training resources and training of Customs Personnel.

And to these ends, have approved the "Customs Action Plan" as follows (*See Annex 2*).

Annex: 2

SAARC Customs Action Plan

The key elements of the Customs Action Plan are:

I. Uniform Application, Harmonisation and Simplification of Customs Procedures and Practices

Uniform application, harmonisation and simplification of Customs procedures and practices not only raises the efficiency and effectiveness of the Administrations, lends transparency to the Customs practices, facilitates freer movement of goods and passengers and reduces delays and costs associated with repetitive declarations, examinations and differing interpretations by the Customs authorities of the concerned Administrations. The following activities are identified for being pursued to achieve this objective:

- (a) Progressive implementation of the provisions of the International Convention on the Simplification and Harmonisation of Customs Procedures (KYOTO Convention), taking cognisance of the review being undertaken by the World Customs Organisation.
- (b) Developing a co-ordinated approach to the development of key Customs procedures and practices with a view to harmonising them across the membership, in particular relating to:
 - i. use of standard forms for Customs declarations relating to import, export, transit and other important formalities;
 - ii. introduction of simplified procedures for Customs clearance or transit movement of exempted

goods, perishable goods and other goods requiring such clearance or movement;

- iii. arrangements for undertaking of Customs formalities at juxtaposed Customs offices in areas connected by land routes or in any other appropriate manner.
- (c) Exchange information and, wherever requested, assist in the implementation of simplified procedures including automated Customs clearance procedures and electronic data interchange.

II. Effective Implementation of the WTO Agreement on Valuation

With the advent of WTO, it has become incumbent on the Contracting Parties to adopt the valuation provisions enshrined in the WTO Agreement on Customs Valuation. The next few years will, therefore, be the preparatory phase for some of the member administrations. The member administrations, who have already implemented the provisions, may act as advisers in the interim by providing assistance in the formulation of legislation, practices and administrative arrangements.

Accordingly, the following programmes and activities would be initiated: (a) Exchanging information on the implementation of the WTO Valuation Agreement covering subjects such as legislation development, problems encountered, successes achieved, areas where assistance offered or required.

- (b) Wherever requested and to the extent possible, assist in the implementation of the WTO Valuation Agreement.

III. Uniform Application, Updating and Promotion of the Harmonised System

As a key international goods classification system, the application of the HS must be uniform and it must be updated at regular intervals to reflect changes in technology and trade patterns and to accommodate other needs of the users. The following activities would be pursued to achieve this objective:

- (a) Encouraging the concerned member administrations to accede to the International Convention on Harmonised Commodity Description and Coding System and/or the amendments made from time to time.
- (b) Exchanging information on the promotion of a good classification work infrastructure.
- (c) Exchanging information on commodities whose classification is ambiguous or contentious in the Administrations of the Region.

IV. Enhancement of the Effectiveness of the Customs Administrations in their Compliance Responsibilities

In order to ensure minimum obstacles to the free flow of legitimate cargo and passengers while appropriately protecting the economic and community interest of the individual countries, it is necessary that timely information about the offenders be freely exchanged by the member administrations. In line with this approach, the following programmes and activities would be pursued:

- (a) Promotion of bilateral or multilateral agreements on Customs cooperation amongst member administrations for mutual administrative assistance for the prevention, investigation and repression of Customs offences.

V. Human Resource Development

The key to the success of any administration lies in the effective marshalling of the human resources available. Building right attitudes and raising the knowledge and skills of the work force are, therefore, necessary concomitants of re-engineering the working of Customs administrations.

To achieve these objectives, the following steps would be desirable:

- (a) Conduct a census of available resources among member administrations, which may include:
 - i. identifying national training institutions under some member administrations to impart such training.
 - ii. identifying training instructors resource persons from among member administrations to undertake such training/orientation programmes.
- (b) Enhancing training awareness, by the effective utilisation of manpower resources and funds, to hold seminars/courses on subjects of interest and more particularly those indicated under the respective key activities.

The member administrations have further agreed to:

- (a) Meet at least twice a year at the expert-level to give effect to the Customs Action Plan and to suggest if any further areas need to be incorporated in the Plan;
- (b) Meet at least once every two years at the Heads of Customs level to review the progress made in the implementation of the Plan and to modify the Plan in any desirable manner. In order to give effect to the Customs Action Plan, the member administrations will voluntarily share overall co-ordination of the key elements and report the progress made at the meetings of the experts or Heads of Customs, as the case may be.

Annex: 3

Key Elements of Regional Action Plan on Standards, Quality Control and Measurement

Recognising the need for the SAARC member countries to intensify cooperation with one another so that the complex issues involved may be addressed urgently, it was agreed that efforts be made to forge a Regional Action Plan. The principle elements of this Plan would be as under:

Identification of products where intra-SAARC trade is being affected due to variation in national standards so that Harmonisation may take place depending upon the process of development of the individual national standards, which could be (i) based on international standards and (ii) based on its own R&D

After the Harmonisation of specific product standards, the process of developing regional standards would be initiated.

Areas to be identified where consultations would enable the Region to take a collective position at international standardisation fora to especially project and protect the Region's requirements.

Access to certification scheme relating to product, systems and services of one country by other countries, including exchange of information on statutory rules and regulations having bearing on certification.

With a view to increasing intra-SAARC trade through exchange of information in regulatory systems, it was agreed that Agricultural & Food Product, Building Material & Household Electrical Appli-

ances would be covered in the first instance.

Promotion of mutual acceptability of the certification process of member countries in relation to safety requirements of products.

Development of a process of accreditation systems in individual member countries based on international guidelines so as to facilitate mutual recognition at a later stage.

Sharing the facility of accreditation bodies to avoid duplication of efforts by individual member countries so as to facilitate getting international approval from organisations such as International Accreditation Forum (IAF).

Identification of testing and calibration facilities in the region and access to these facilities.

Promote mutual acceptability of laboratory accreditation process.

Each country to inform other SAARC countries about various training programmes (annual calendar) through SAARC Secretariat.

List of experts in a given field to be exchanged among SAARC countries.

Exchange of experts for conducting and participating in training programmes.

It was agreed that India would act as the coordinator for the next three years to monitor and facilitate the Regional Action Plan.

Endnotes

- ¹ A summary of proposals can be found in WTO. 2002.
- ² The text is available at www.wto.org/english/thewto_e/min01_e/min01_e.htm
- ³ See for details WTO. 2004a.
- ⁴ See for details WTO. 1999a.
- ⁵ It is important to note that developing countries have no control over shipping costs as cartelised multinational shipping lines determine them.
- ⁶ See for details WTO. 2003c.
- ⁷ The WTO has summarised the proposals in the paper G/C/W/434, available at www.wto.org
- ⁸ These proposals are contained in proposals made by Canada (G/C/W/397), Colombia (G/C/W/425), European Communities (G/C/W/394), Hong Kong, China (G/C/W/398), Japan (G/C/W/401) and Korea (G/C/W/403), available at www.wto.org
- ⁹ The 'Colorado Group' consists of Australia, Canada, Chile, Colombia, Costa Rica, the EU, Hong Kong (China); Hungary, Japan, Korea, Morocco, New Zealand, Norway, Paraguay, Singapore, Switzerland, and the US.
- ¹⁰ Most of the information is from WTO. 2000.
- ¹¹ This section heavily draws from Taneja. 2004.
- ¹² Information is from WTO. 2002.
- ¹³ Information sources are: WTO. 2003d. and Ojha. 2003.
- ¹⁴ Information for this section comes from WTO documents (WT/TPR/S/95) and (WT/TPR/G/95), available at www.wto.org
- ¹⁵ Information on Sri Lanka comes from several sources including WTO. 2004b.

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