TRADE FACILITATION BEYOND THE MULTILATERAL TRADE NEGOTIATIONS: REGIONAL PRACTICES, CUSTOMS VALUATION AND OTHER EMERGING ISSUES

A study by the Asia-Pacific Research and Training Network on Trade

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This publication has been issued without formal editing.

Preface

This publication brings together the main research outputs produced by the Asia-Pacific Research and Training Network on Trade (ARTNeT), and its members and partners, between April 2006 and January 2007. ARTNeT is an open network of national-level research institutions in the region launched by ESCAP and the International Development Research Centre (IDRC), Canada in October 2004, and supported by the United Nations Development Programme (UNDP), the United Nations Conference on Trade and Development (UNCTAD), the World Trade Organization (WTO) as core partners. The ESCAP Trade and Investment Division (TID) serves as the Secretariat of the network.

This book includes 10 chapters. The first chapter introduces the concept of trade facilitation beyond the ongoing multilateral trade negotiations, and it serves both as an introduction and a synthesis of the studies presented in the remaining chapters. Chapters II and III provide an analysis of regional trade facilitation initiatives and the link between trade facilitation and preferential trade agreements (PTAs). Chapter IV is dedicated to rules of origin in PTAs, whose complexity and lack of harmonization across a growing number of overlapping agreements in the Asia-Pacific region is seen as an increasingly significant impediment to trade.

Chapters V and VI focus on customs valuation in developing countries, an issue that remains of key concern among importers and exporters but which is not part of the ongoing WTO negotiations on trade facilitation. These chapters are complemented by chapter VII, which provides a comparative analysis of the broader trade facilitation needs of Fiji and a selection of Asian developing countries, building on earlier work of the network.

Chapters VIII and IX provide a broader perspective of trade facilitation. The first of these chapters examines the linkages between trade facilitation and trade logistics services liberalization, as an initial effort to understand the interplay and level of priority that should be accorded to border trade facilitation measures, as opposed to measures that would facilitate the development of trade facilitation-related infrastructure and services. Chapter IX looks at trade facilitation in a trade (transaction) cost framework, and evaluates the impact of transport costs and underdeveloped infrastructure on bilateral trade flows of 10 Asian developing countries. In conclusion, chapter X provides recommendations on arriving at a meaningful multilateral agreement on trade facilitation.

The studies presented here were undertaken as a follow-up to ARTNeT's earlier work on the need, priorities and costs of trade facilitation measures under consideration by the WTO Negotiating Group on Trade Facilitation, as mandated by the ARTNeT Consultative Meeting of Policy Makers and Research Institutions held on 6 and 7 October 2005 in

Macao, China.[1] Implementation of the trade facilitation component of the research programme approved during that meeting was made possible by the close collaboration between the Asia-Pacific Trade and Investment Initiative of the UNDP Regional Centre in Colombo, which provided financial and administrative support, and TID, ESCAP which coordinated and guided the overall research effort. The generous support of IDRC, Canada, without which ARTNeT would not exist, is also gratefully acknowledged.

The research and preparation of this publication was coordinated by Mr. Yann Duval, Economic Affairs Officer, Trade Policy Section, TID, ESCAP under the general guidance of Mr. Xuan Zengpei, Director, TID and Ms. Tiziana Bonapace, Chief, Trade Policy Section, TID, in collaboration with Mr. Manuel Montes and Mr. Swarnim Wagle, both formerly with the UNDP Regional Centre in Colombo. Ms. Mia Mikic, Economic Affairs Officer, Trade Policy Section, TID, assisted in the preparation of Chapter IV. The authors of the individual chapters received valuable guidance and comments from Florian Alburo, Professor of Economics at the University of the Philippines and ARTNeT Advisor on Trade Facilitation. The authors also benefited from comments and suggestions by participants in the UNDP/ESCAP ARTNeT Consultative Meeting on Trade Facilitation and Regional Integration,[2] held on 17 and 18 August 2006 in Bangkok, Thailand, during which preliminary drafts of the studies were presented to policy makers and negotiators.

[1] The research programme endorsed at the meeting is available at http://www.unescap.org/tid/artnet/res/research0506.pdf.

[2] Summary of the meeting and other meeting documents are available at http://www.unescap.org/tid/artnet/mtg/tfri.asp.

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Acronyms and abbreviations

ACP	Accredited Clients Programme
ACS	Australian Customs Service
ACV	Agreement on Customs Valuation
AEC	ASEAN Economic Community
AFTA	ASEAN Free Trade Area
AGOA	African Growth and Opportunity Act
AHTN	ASEAN Harmonized Tariff Nomenclature
AIMS	AQIS Import Management System
APEC	Asia-Pacific Economic Cooperation
APLAC	Asia Pacific Laboratory Accreditation Cooperation
APTIAD	Asia-Pacific Trade and Investment Agreement Database
AQIS	Australian Quarantine and Inspection Service
ARTNeT	Asia-Pacific Research and Training Network on Trade
ASEAN	Association of Southeast Asian Nations
ASEAN 6	Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei Darussalam
ASFTA	Australia-Singapore Free Trade Agreement
ASW	ASEAN Single Window
ASYCUDA	Automated System for Customs Data
ATPDA	Andean Trade Promotion and Drug Eradication Act (also referred to as ANDEAN)
BDV	Brussels Definition of Value
BIMSTEC	Bengal Initiative for Multisectoral Techno-Economic Cooperation
BIST-EC	Bangladesh-India-Sri Lanka-Thailand Economic Co-operation
CAFTA-DR	Central American Free Trade Agreement-Dominican Republic
CBEC	Central Board of Excise and Customs
CBI	Caribbean Basin Initiative
CCC	Customs Cooperation Council
CECA	Comprehensive Economic Cooperation Agreement
CEPT	Common Effective Preferential Tariff
CER	closer economic relationship
CESTAT	Customs, Excise and Service Tax Appellate Tribunal
CHA	Customs Handling Agents
COE	Committee of Experts
CRD	Central Registry Database
CTH or CTSH	change in tariff heading (or sub-heading)
CU	Currency Unit
CVA	Customs Valuation Agreement
DOV	Directorate of Valuation
DRP	Duty Refund Procedure

EDI	Electronic Data Interchange
EMC	electromagnetic compatibility
EPA	Economic Partnership Agreement
ESCAP	Economic and Social Commission for Asia and the Pacific
EXDOC	Export Documentation System
EXIT	Export Integration System
FIRCA	Fiji Islands Revenue and Customs Authority
FTA	free trade agreement
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GSP	Generalized System of Preferences
HPA	Hanoi Plan of Action, 1998
HS	WCO Harmonized Commodity Description and Coding System
IAI	Initiative for ASEAN Integration (2000)
IAP	Individual Action Plan
ICC	International Chamber of Commerce
ICES	Indian Customs EDI System
ICENET	dedicated Indian Customs network
ICON	Import Conditions Database
ICS	Integrated Cargo System
ICT	information and communications technology
IPRs	intellectual property rights
ISO	International Standardization Organization
JEMS	Joint Entry Management System
LCS	land customs stations
LDC	Least Developed Country
MAPA	Manila Action Plan for APEC
MFN	most favoured nation
MRAs	Mutual Recognition Arrangements
NAFTA	North American Free Trade Agreement
NAMA	Non-Agricultural Market Access
NGTF	Negotiating Group on Trade Facilitation
NIDB	National Import Database
NTBs	non-tariff barriers
OECD	Organisation for Economic Co-operation and Development
PACCS	Pakistan Customs Computerized System
PACER	Pacific Agreement on Closer Economic Relations

PCA	post-clearance audit
PICTA	Pacific Island Country Trade Agreement
PSI	pre-shipment inspection
PTA	preferential trade agreement
QIZ	Qualified Industrial Zones
RMS	risk management system
RTA	regional trade agreement
SAARC	South Asian Association for Regional Cooperation
SAEU	South Asian Economic Union
SAFTA	South Asian Free Trade Agreement
SAPTA	SAARC Preferential Trading Arrangement
SDT	special and differential treatment
SEP	Special Economic Partnership
SMC	SAFTA Ministerial Council
SNFPs	Single National Focal Points
SP	specified process
SPARTECA	South Pacific Regional Trade and Economic Cooperation Agreement
SPS	sanitary and phytosanitary measures
SVB	Special Valuation Branch
TBT	technical barriers to trade
TFAP	Trade Facilitation Action Plan
TIFA	Trade and Investment Framework Agreement
TVM	transaction value method
UN/CEFACT	United Nations Centre for Trade Facilitation and Electronic Business
UN/EDIFACT	United Nations/Electronic Data Interchange For Administration, Commerce and Transport
UNCITRAL	United Nations Commission on International Trade Law
UNCTAD	United Nations Conference on Trade and Development
USITC	United States International Trade Commission
VA	value-added
VAP	Vientiane Action Programme
VRAM	Valuation Risk Assessment Module
WCO	World Customs Organization
WTO	World Trade Organization

I. TRADE FACILITATION BEYOND THE DOHA ROUND OF NEGOTIATIONS

*By Yann Duval**

Introduction

The 147 member governments of WTO agreed on 1 August 2004 to commence negotiations on trade facilitation. This decision followed a heated and protracted debate on trade facilitation among WTO member countries that started after the Singapore Ministerial Meeting in 1996 and contributed, together with three other so-called Singapore issues , to the failure of the WTO Ministerial Meeting in Cancun in 2003.

The 1 August 2004 decision of the WTO General Council, often referred to as the July Package , was seen as a significant breakthrough by many as well as a sign of the multilateral trading system s recognition of the importance of trade facilitation issues and its increased readiness to tackle non-tariff barriers. While some developing countries had initially objected to negotiations on trade facilitation, the Negotiating Group on Trade Facilitation was ultimately found to be one of the most productive WTO negotiating groups, resulting in a significant number of joint proposals by developed countries and developing countries, and thus clearly making progress toward a consensus.

That being said, the current WTO trade facilitation negotiations[1] have limited the negotiation agenda to mainly clarifying and improving relevant aspects of Article V (freedom of transit), Article VIII (fees and formalities) and Article X (publication and administration of trade regulations) of GATT 1994.[2] While it seems reasonable that negotiations at the multilateral level on this new and complex issue be kept limited and focused to increase the probability of a timely consensus, at least at first, it is important that trade policy makers keep a broader perspective on trade facilitation, as a significant number of the priority issues raised by those actually involved in trade transactions (i.e., the traders) are not covered by the current multilateral trade negotiations.

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* Yann Duval is Economic Affairs Officer, Trade Policy Section, Trade and Investment Division, ESCAP. The views expressed do not necessarily reflect those of the United Nations. Helpful comments from Peng Bin are gratefully acknowledged. The author may be contacted at duvaly@un.org.

1 The negotiating agenda also included enhancing technical assistance and support for capacity-building as well as effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues. See Annex D of the WTO General Council s decision at: http://www.wto.org/english/tratop_e/dda_e/ddadraft_31jul04_e.pdf.

2 It is currently unclear as to when (or whether) the negotiations on this restricted agenda will come to fruition since they are part of the single undertaking of the Doha Round of negotiations, in which agreements on agriculture and a number of other issues remain elusive.

After defining trade facilitation and highlighting the linkages between trade facilitation and WTO beyond the three GATT Articles under negotiation, this chapter succinctly explores three emerging (in the case of customs valuation, re-emerging) issues, drawing from other chapters in this book as well as other relevant literature: (a) trade facilitation and regional trade agreements and initiatives; (b) trade facilitation and customs valuation; and (c) trade facilitation and services. The chapter then briefly discusses trade facilitation in the broader contexts of business facilitation and trade costs, before concluding with some thoughts on the linkages between trade facilitation, infrastructure and poverty reduction.

A. Trade facilitation: Increasing the efficiency of trading processes

There is no agreed definition of trade facilitation. In fact, trade facilitation has been referred to as the plumbing of international trade as it focuses on the efficient implementation of trade rules and regulations. Indeed, what appears to differentiate trade facilitation from other trade issues is its focus on efficient processes, e.g., how to efficiently implement policies or regulations, or how to efficiently exchange goods and services across national borders, and related documentation. As such, tariff barriers are not covered by trade facilitation, but customs valuation generally is covered.[3]

The International Chamber of Commerce (ICC) also emphasizes process efficiency in its definition of trade facilitation: To improve the efficiency of the processes associated with trading in goods across national borders .[4] This definition is also reminiscent of the concept of trade efficiency as outlined in the Colombus Ministerial Declaration of 1994.[5]

The trade efficiency model presented in figure I suggests that telecommunications infrastructure forms the basis of trade efficiency, as the development of this infrastructure is necessary for efficient business information dissemination and trade facilitation. In turn, the model suggests that trade facilitation involves making customs, transport, and banking and insurance (services and infrastructure) more efficient. In that context, trade facilitation cannot be limited simply to either at-the-border or customs control processes, since these two sets of processes are only two of a number of other processes (e.g., payment and logistics) that affect the efficiency of a trade transaction.

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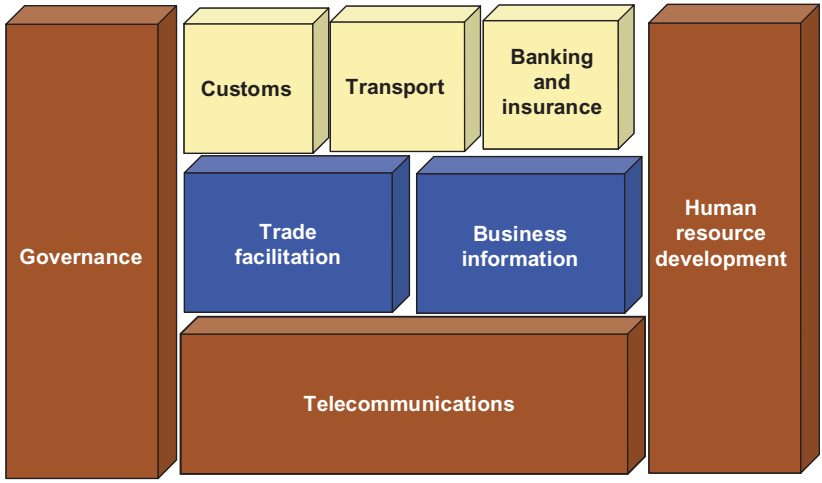
3 As mentioned above, the operational WTO definition of trade facilitation is very restrictive, since it includes only three GATT Articles, indeed leaving out customs valuation processes (GATT Article VII).

4 See the ICC Policy Statement at http://www.wto.org/english/forums_e/ngo_e/icc_tradefacilitation_e.pdf.

5 See UNCTAD, 1994, United Nations International Symposium on Trade Efficiency (available at http://www.un.org/Conferences/trade94/columbus.html).

Figure I. An extended trade efficiency model



The trade efficiency model proposed in figure I extends the 1994 trade efficiency model by adding two new elements - governance and human resource development. Indeed, like telecommunications - and, arguably, even more so than telecommunications - these are necessary conditions to trade facilitation. Good governance is central to trade facilitation, as it is unlikely that even the adoption of best practice rules and regulations and major investment in automated customs systems will yield expected trade facilitation benefits unless issues involving corruption in both the public and private sectors are taken into account and addressed more directly. In that context, increasing transparency[6] and reducing incentives/increasing penalties for non-compliance by any party with rules and regulations seem essential.

Human resource development, on the other hand, is crucial to enabling implementation of trade facilitation measures. The lack of trained human resources is a recurrent issue in implementing a customs reform programme and related trade facilitation measures - as noted in the country studies of India and Nepal that are included in this publication. Its importance has long been recognized by the UNCTAD Commission on Enterprise, Business Facilitation and Development, which added it to the six initial components of the trade efficiency model in 1997 together with transit and legal issues (Sengupta, 2007).

[6] Transparency was also the first of seven trade facilitation principles adopted by the Asia-Pacific Economic Cooperation Ministers of Trade in 2001 (ESCAP, 2002). Helble and others (2007) provide an interesting discussion of the concept of transparency in relation to trade facilitation.

B. Trade facilitation and the WTO

The limited scope of trade facilitation in the ongoing multilateral trade negotiations was noted earlier. However, increasing the efficiency of trade-related processes has long been on the agenda of the multilateral trading system, as shown by the already long list of WTO provisions and agreements that are related to trade facilitation (table 1).

Table 1. List of WTO provisions related to trade facilitation

Article/Agreement	Subject
GATT 1994, Article V	Freedom of transit
GATT 1994, Article VII	Valuation for customs purposes
GATT 1994, Article VIII	Fees and formalities connected with imports and exports
GATT 1994, Article IX	Marks of origin
GATT 1994, Article X	Publications and administration of trade regulations
Agreement on Implementation of Article VII of the GATT 1994	Customs valuation
Agreement on Rules of Origin	Rules of origin
Agreement on Import Licensing Procedures	Import licensing
Agreement on Pre-shipment Inspection	Pre-shipment inspection procedures
Agreement on Technical Barriers to Trade	Rules related to technical standards
Agreement on the Application of Sanitary and Phytosanitary Measures	Rules related to application of SPS measures
General Agreement on Trade in Services	Rules related to facilitation trade in services

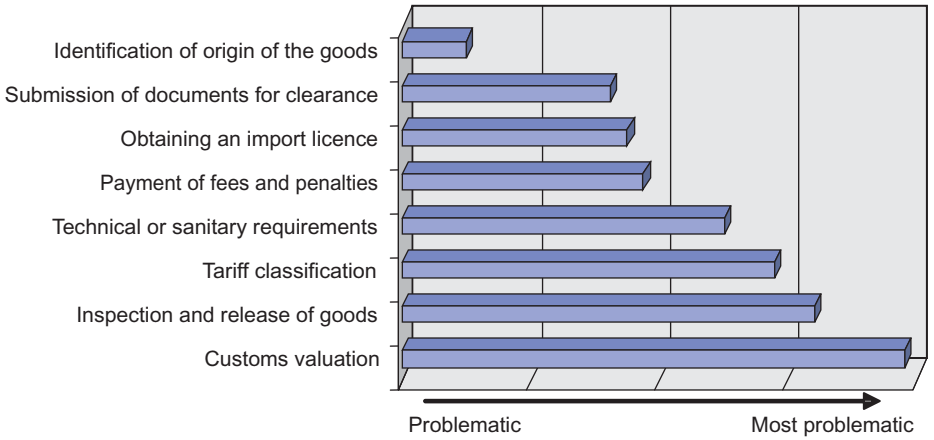
Source: Compiled based on World Trade Organization, G/L/244, 1998.

Negotiating trade facilitation issues at the multilateral level appears most appropriate when the issues are of concern to a large number of participants, and when they involve the development of common standards and procedures. While there are a number of other international organizations involved in trade facilitation, in particular the World Customs Organization (WCO), WTO is the only organization providing a credible framework for binding commitments in trade facilitation. In addition to the technical assistance/capacity-building implications, one important benefit from negotiating trade facilitation at WTO for developing country national governments may also be that it provides them with the external mandate necessary to advance often very sensitive trade facilitation reforms at home.

In chapter VII of this publication, B.C. Prasad builds on ESCAP (2006) in order to present a comparative analysis of the trade facilitation needs of the private sector in Fiji and a number of other developing countries in Asia. The private sector survey conducted

as part of the study puts technical barriers to trade (TBT), SPS measures, and customs valuation at the top of the concerns of the Fijian private sector. This is consistent with the findings in the other five countries covered (see figure II). As such, it may be hoped that trade facilitation negotiations at WTO will expand to these areas in future rounds, and allow for revisiting or expansion of the related WTO agreements.

Figure II. Most problematic areas in conducting trade in selected developing countries in Asia and the Pacific*



Sources: ESCAP, *Studies in Trade and Investment*, No. 57, 2006; and Prasad, 2007.

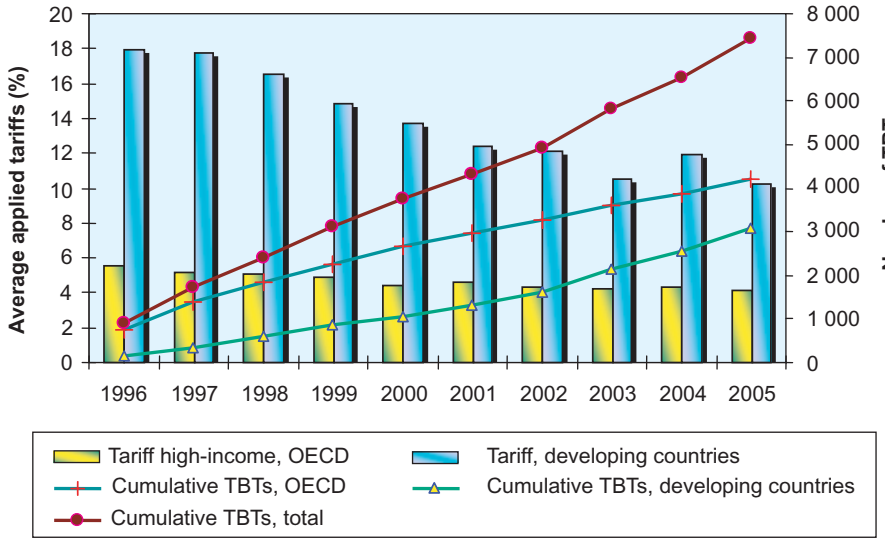
* Based on exploratory private sector surveys in Bangladesh, China, Fiji, India, Indonesia and Nepal conducted in 2005.

In addition to the customs-related issues of valuation, classification and inspection, and release, a number of non-tariff barriers under the purview of WTO continue to have a significant effect on the efficiency of trade processes.[7] As figure III shows, the proliferation of TBT (i.e., technical regulations, product standards and related testing and certification procedures) that make trading a more complex and difficult process may deserve particular attention in future rounds.

From a trade facilitation perspective, this renewed attention may focus on making the implementation of these standards and regulations as simple and efficient as possible. The WTO agreements on TBT and SPS measures are direct contributions to trade facilitation in the sense that they provide standard processes for countries to issue and inform each other of new regulations and standards. However, the fact that importers and exporters in developing countries identify TBT and SPS measures among the most problematic trade issues they face suggests that more efforts are needed at the global and other levels to harmonize, mutually recognize and standardize measures as well as to ensure they are

[7] Non-tariff quantitative restrictions, i.e., quotas, are not generally associated with trade facilitation.

Figure III. Average applied tariffs and number of technical barriers to trade, 1996-2005



Source: Duval, 2007, based on Ng, 2006, and Dhar and Kallumal, 2007.

not unnecessarily restrictive. A very practical approach to the measures would help immensely in this respect, e.g., not setting the authorized level of a particular chemical beyond the capacity of standard testing equipment available at the time the measure is published.[8]

C. Trade facilitation, and regional/bilateral trade initiatives and agreements

The number of bilateral and regional trade agreements and related initiatives has exploded in recent years (figure IV).[9] Of the 133 trade agreements recorded in the Asia-Pacific Trade and Investment Agreement Database (APTIAD), only 35 (26 per cent) cover trade facilitation.[10] However, seven (70 per cent) of the 10 trade agreements that have come into force since 2004 in the ESCAP region include trade facilitation. A closer look at how trade facilitation issues may be addressed through preferential trade agreements and other bilateral and regional initiatives is therefore warranted.

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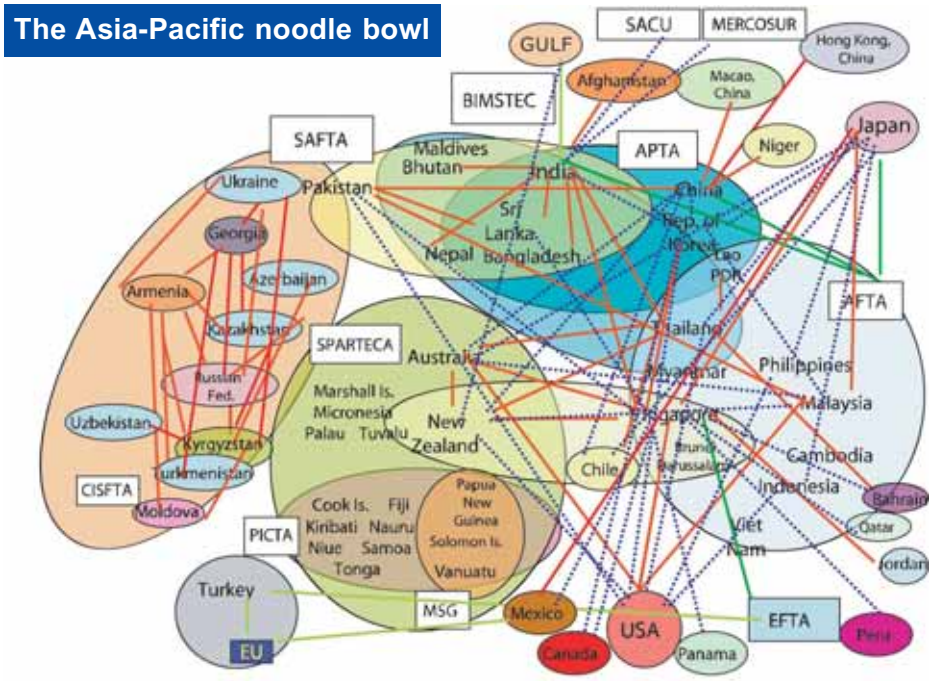
[8] Setting the authorized level of a chemical to zero rather than to a scientifically determined and measurable value will lead to situations where shipments initially accepted may suddenly be rejected as testing facilities or equipment are being upgraded.

[9] See also Mikic, 2007, and Bonapace and Mikic, 2007.

[10] The list of trade agreements that cover trade facilitation is provided in the annex to this chapter.

Figure IV. Asia-Pacific noodle bowl of preferential trade agreements



Source: ESCAP APTIAD, February 2007.

In chapter II of this publication, P. Wille and J. Redden compare the treatment of trade facilitation in four selected regional trade initiatives - the ASEAN free trade area (AFTA), Asia-Pacific Economic Cooperation (APEC), South Asian Free Trade Area (SAFTA) and the Pacific Agreement for Closer Economic Relations (PACER) - as well as in one bilateral free trade agreement, the Australia-Singapore Free Trade Agreement (ASFTA). On the basis of these trade initiatives and ASFTA, they develop model trade facilitation principles and measures that may be instructive for developing country negotiators and policy makers.

Given the varying degrees of progress in trade facilitation reform in the agreements, the comparative analysis provided in chapter II of this publication reinforces the importance of clearly formulated, specific trade facilitation principles and measures if trade facilitation reform is to be successful. The effectiveness of specific measures implemented by parties to APEC, ASFTA and, to a lesser extent, AFTA suggest clearly designed trade facilitation principles and measures that, if not binding, at least require a commitment to quantitative outcomes are more likely to succeed than purely aspirational approaches.

Wille and Redden find that each initiative or agreement appears to have played a positive role in accelerating the reform process and, to some extent, in driving reform at

the multilateral level. However, they note that while some of the costs associated with trade can be reduced by bilateral initiatives, many current trade facilitation initiatives at the bilateral or plurilateral level address essentially multilateral issues. Pressure from a major trading partner, promises of reciprocity or of commitments to trade-related capacity-building, as in PACER, may contribute to the attractiveness of implementing trade facilitation measures. However, as APEC members and others have recognized, it is crucial to coordinate trade facilitation with multilateral trade facilitation negotiations or at least with the major regional trading partners.

While some trade facilitation priorities will undoubtedly be based on cost and ease of implementation, the study stresses the need for each country to assess its particular needs, to harmonize and sequence reforms in cooperation with key trading partners, and to link capacity-building, technical assistance, and special and differential needs with a specific and detailed trade facilitation reform programme.

In chapter III, S. Chaturvedi finds in his analysis of trade facilitation provisions in South Asian free trade areas that coverage of trade facilitation issues is minimal in all but one of the five trade agreements (two regional and three bilateral) reviewed against the list of trade facilitation measures relevant to GATT Articles V, VIII and X, and which are under negotiation at WTO. On the basis of a review of intraregional trade flows and unilateral trade facilitation initiatives by South Asian countries, Chaturvedi finds that transit facilitation measures, including the development of infrastructure at land customs stations (LCS) as well as border agency coordination, are of particular importance to the region and the development of intraregional trade. These issues could be tackled in part through the inclusion of relevant provisions in regional and bilateral trade agreements.

1. The issue of rules of origin

Although an increasing number of preferential trade agreements contain rather general and customs-focused trade facilitation provisions, these agreements may not ultimately contribute to the efficiency of trading processes, mainly due to the rules of origins they contain. Rules of origin are necessary for determining which products will enjoy reduced bilateral tariffs and which will not, and to prevent trans-shipment of goods through the customs territory in a bloc with the lowest tariff.

In chapter IV, W.E. James explains that while many of the emerging FTAs appear to be consistent with Article XXIV of GATT and Article V of GATS in principle, the complex and idiosyncratic rules of origin in these agreements threaten to complicate international commerce and divert trade rather than create it. Preferential trade agreements among developing countries (e.g., AFTA) have vague rules and high administrative costs that (together with small margins of preference) deter business from seeking to take advantage of preferences, thus limiting the amount of trade these agreements create.

His review of newly emerging FTAs involving key Asian hubs (China, Japan, the Republic of Korea, Singapore and Thailand) reveals that rules of origin not only differ between hubs but also within them, suggesting that rules of origin have been framed with

the interests of industrial lobbies in mind rather than with trade facilitation as the goal. As a result, countries that enter into agreements with hubs may find that their exporters will shift purchases of intermediate goods away from the lowest cost suppliers in order to comply with rules of origin in gaining preferential access to the hub. Thus, their products may become less competitive in third country markets, and efficient existing production networks may be displaced by less efficient ones that thrive on tariff discrimination rather than on low production costs. This encourages closed as opposed to open regional blocs, and is of particular concern since less developed and small countries are less able than developed countries to partake of preferential treatment. James concludes that harmonization of preferential rules of origin may be unrealistic, however, and a less ambitious solution may instead be feasible, such as gradually lowering value-added content rules for less developed countries, or allowing averaging over time.

D. Trade facilitation and customs valuation

Customs valuation refers to the process and method(s) used by customs authorities to determine the value of a particular good. Since tariffs are usually calculated as a percentage of the value of the goods (i.e., ad valorem), the particular method used to determine value will directly affect the amount of tariff duties collected on a particular shipment.[11] This is therefore of great concern to traders, as non-transparent valuation mechanisms - typically combined with inefficient or even absent advance ruling mechanisms - lead to uncertainties regarding the profitability of each trade transaction.

The importance of efficient and transparent customs valuation processes has long been recognized and has led WTO members to sign a separate agreement on the implementation of GATT Article VII, commonly referred to as the WTO Customs Valuation Agreement (CVA). The CVA is based primarily on the transaction value method (TVM), i.e., value is assessed based on the value indicated in the invoice provided by the trader.[12] As such, the CVA is clearly aimed at facilitating trade, considering information provided by the trader as the basis for valuation. However, the CVA allows for five other methods to be considered in a hierarchical order, should Customs have doubt about the invoice value provided. It is therefore interesting to see that, at a time when most WTO members are supposed to have fully implemented the CVA, private sector surveys in developing countries (see, for example, ESCAP, 2006) still identify customs valuation as a key issue.

To shed some light on the issue, customs valuation is examined in India, Nepal, and Fiji in chapters V, VI and VII, respectively. In chapter V, Chaturvedi reviews efforts made by India in making customs valuation more efficient and in implementing the CVA.

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[11] This amount is also affected by the tariff rate applicable to the good, which will depend on how a particular good is classified. Tariff classification is one of the measures being negotiated at WTO, although most countries already rely on the WCO HS system for classification purposes. While mis-classification is identified as a problematic issue, the customs valuation procedure appears to be of relatively greater concern to traders (see figure II).

[12] A number of adjustments are, however, authorized as per CVA Article VIII.

Some of the major issues identified by traders in India regarding customs valuation are frequent rejections of transaction value, the lack of transparency, the slow processing of valuation cases by the special valuation branch and the lack of expertise among field officers. The Indian case study reveals that customs revenue declined continuously between 1999 and 2002, but has consistently increased since then. Several measures were introduced to minimize revenue loss and to tackle under-evaluation, resulting in a remarkable increase in additional revenue from the enhancement of declared transaction values. Many private sector companies indicated, however, that the additional measures imposed by the Customs Department are the results of misdeeds of a few traders - accounting for less than 18 per cent of the transactions - and that those traders should therefore be specifically targeted.

In chapter VI, P.R. Rajkarnikar examines the case of Nepal, a country that had yet to fully implement the CVA at the time of the study (June 2006), but that had already adopted TVM as the primary valuation method. He finds that legislative and other improvements being made as part of the implementation of the CVA will have no significant impact on the volume of trade and import prices; changes in valuation practices are expected to slightly increase (2.1 per cent) the cost of imported goods and exert a negative effect on the demand for imports (-1.9 per cent). On the other hand, the improved valuation system may be expected to help reduce under-invoicing and informal trade, thus exerting a positive impact on customs revenue. Importantly, the case study highlights the need for implementing TVM (and, by extension, the CVA) in conjunction with other trade facilitation measures - notably post-clearance audit - to avoid revenue linkage.

All the case studies, including that of Fiji by Prasad in chapter VII, point to the limits of the CVA, which can be abused by both traders and customs officers for their own benefit, depending on the way and the environment in which it is implemented. Together with advance rulings, risk management, post-clearance audit and independent appeal mechanisms, measures to develop trust and cooperation between customs officers and the private sector are the key to resolving potential undervaluation issues while not unnecessarily impeding trade.

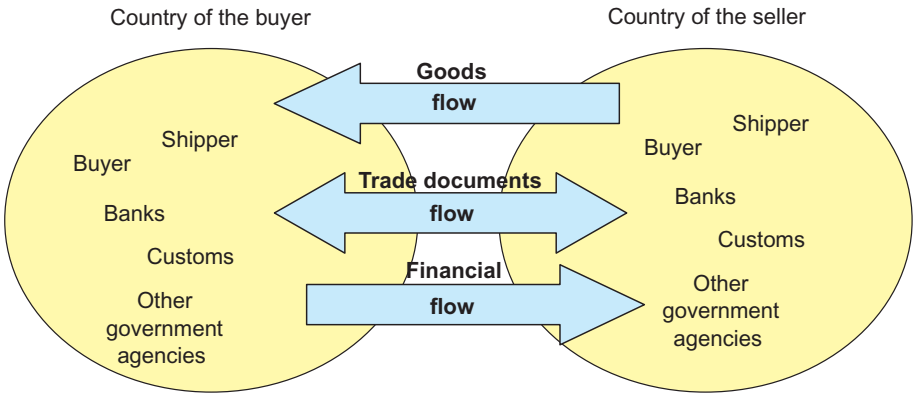
Meaningful commitments by WTO members on trade facilitation in the ongoing round would likely make the CVA more effective, since many of the measures being discussed under Articles VIII and X are linked to the CVA. At the same time, one may question the rationale for recognizing, on the one hand, the need to fully take into account the individual capacity of countries to implement measures under these two articles and, on the other hand, for making CVA implementation mandatory - even after a delay of four years, a period that has expired for most members.[13]

[13] The issue of implementation cost arises here. J.M. Finger (2000) pointed to the unwillingness of WTO to fully take into account the costs involved in the reforms linked to implementation of the WTO agreement. In particular, he noted that a customs reform project alone at that time could easily cost US$ 20 million for buildings, equipment and staff training.

E. Trade facilitation and services

The trade efficiency model presented above highlights the linkages between trade facilitation and key service sectors, i.e., telecommunication, transport and logistics, and the banking and insurance sectors. As shown in figure V, trade transactions involve flows of goods, documents and information as well as financial flows, the efficiency of which depends at least as much on (private sector) service providers as it does on government agencies. Comprehensive trade facilitation frameworks and strategies therefore would need to address the issue of how to develop these key sectors, including through services trade liberalization.

Figure V. The three flows of international trade



Source: Duval, ITC Regional Business Forum on e-Finance, August 2006.

The relationship between liberalization in the logistics sector and trade facilitation is explored in some depth by D. De Sousa and C. Findlay in chapter IX of this publication. Using exports of tuna from South Australia to Japan as an illustrative example, their study demonstrates that the improvement of the performance of logistics services through domestic liberalization may generate a virtuous cycle, whereby international trade is increased, and that this, in turn, may increase the demand for logistics services. Their study further supports the view that benefits of improved performance of logistics services could be enhanced through governmental measures that assist the flow of trade across national borders. The extent and pace of measures taken by governments to liberalize the supply of logistics services as well as facilitate trade will determine whether or not a virtuous cycle will be generated and the extent of the benefits that will accrue from that cycle.

A supply-chain approach to trade facilitation, whereby bottlenecks would be identified along the chain, and relevant private and public entities would take concerted action to remove them, would be most effective. Indeed, improving the customs clearance time for shipments of fresh food products by an additional 20 minutes may ultimately not facilitate

trade as much as the issuance of policies or regulations that would facilitate the construction of cold storage and logistics facilities at airports.

Relatively little research has been conducted so far on how governments in developing countries can support the development of supply-chain efficiency-enhancing services. The sequencing of policy reforms as well as the level at which underlying measures need to be negotiated (global, regional, bilateral and domestic) appear to be particularly relevant.

F. Trade facilitation in a broader context

Globalization has blurred the frontiers between domestic and international issues. Coherence and coordination between policies has become the key to offering domestic firms a national environment in which they can strive - and develop the capacity to compete and benefit from globalization - while at the same time ensuring the sustainable development of the country as a whole. As such, it is important to remember that trade facilitation is one element of a complex set of interrelated issues. Given the often limited resources available in developing countries, it may be desirable to see trade facilitation (and the specific measures commonly associated with it) as a component of broader frameworks aimed at facilitating business development and reducing transaction costs.

1. Trade facilitation and business facilitation

Trade facilitation can be addressed as one important element of a private sector and business development strategy. For example, the World Bank identifies trading across borders as one of 10 regulatory areas that influence the ability of the private sector to develop. Table 2 shows the relative ranking of East Asian, South Asian and Pacific Island Countries in their respective subregions in each of the 10 areas identified.

In table 2, the (+) and (-) signs next to the rankings indicate countries that have implemented positive or negative reforms, respectively, in each of the areas in 2006/07. Within the group of countries considered, trading across borders was the area in which most countries reportedly had made positive reforms, with getting credit coming second. This suggests that countries recognize the importance of trade facilitation and that they are willing to take unilateral initiatives in this area.

Research on the most appropriate method to aggregate the various indicators into an overall doing business indicator suggest that giving the same weight to all 10 areas is appropriate (Djankov, 2005). At the same time, however, working on improving the efficiency of trading across borders may have little impact on trade growth if other regulatory areas (e.g., starting or closing a business) are ignored. As can be seen from table 2, while some countries still rank relatively low in their subregion in terms of trading across borders, the overall ease of doing business in those countries is high (e.g., Thailand). Similarly, countries that rank high in terms of trading across borders remain a relatively difficult environment in which to do business overall (e.g., Indonesia), pointing to the need for increased coordination and coherence across agencies involved in trade and business facilitation.

Table 2. Subregional rankings of selected Asia-Pacific countries in terms of ease of trading and other ease of doing business indicators (fiscal year 2007)

	Ease of doing business ranking	Trading across borders	Starting a business	Dealing with licences	Employing workers	Registering property	Getting credit	Protecting investors	Paying taxes	Enforcing contracts	Closing a business
East and South-East Asian economies											
Singapore	**1 [1]**	**1 [1]**	1	1	1	1	3	1	1	2	1
Hong Kong, China	**2 [4]**	**2 [3]**	2	5	2	7	1	2	2	1	4
Republic of Korea	**5 [30]**	**3 [13]**	9	3	11	9	5	7	9	3	2
Malaysia	**4 [24]**	**4 [21]**	5(+)	10	3	8	2	3	4(+)	8	6
Taiwan Province of China	**6 [50]**	**5 [29]**	8	12	13	4	6	8	8	9	3
Indonesia	**10 [123]**	**6 [41]**	14(-)	8(+)	14	12	9(+)	6(+)	10	13	10
China	**8 [83]**	**7 [42]**	10	14(+)	9	5	10(+)	10	14	4	7(+)
Thailand	**3 [15]**	**8(+) [50]**	3	2	4	3	4	5	6	5	5
Philippines	**11 [133]**	**9 [57]**	12	7	10	10	11	12	12	11	11
Viet Nam	**9 [91]**	**10 [63]**	7	6	7	6	7(+)	13(+)	13	7	9
Timor-Leste	**14 [168]**	**11 [78]**	11(+)	9	6	14	13	11	5	14	13
Cambodia	**12 [145]**	**12(+) [139]**	13	13	12	11	14	9(+)	3 (+)	12	14
Lao PDR	**13 [164]**	**13(+) [158]**	6(+)	11	8	13	12	14	11	10	12
Mongolia	**7 [52]**	**14 [168]**	4	4	5	2	8	4	7(+)	6	8

Table 2. ***(continued)***

	Ease of doing business ranking	Trading across borders	Starting a business	Dealing with licences	Employing workers	Registering property	Getting credit	Protecting investors	Paying taxes	Enforcing contracts	Closing a business
Pacific Island economies											
Tonga	**2 [47]**	**1 [44]**	2	5	2	6	8	7	3	1(+)	3
Marshall Islands	**9 [89]**	**2 [46]**	1	1	1	9	10(+)	8	9	2	7
Solomon Islands	**6 [79]**	**3 [74]**	8	6	9	8	6	5	4	7	5
Papua New Guinea	**8 [84]**	**4 [82]**	7	10	8	4	3	3	10	10	4
Micronesia	**10 [112]**	**5 [85]**	3	2	4	10	2	9	7	8	9
Kiribati	**5 [73]**	**6 [97]**	9	9	7	3	7	4	1	5	10
Samoa	**3 [61]**	**7 [108]**	10	7	5	2	4	1	6	6	8
Fiji	**1 [36]**	**8 [111]**	5	4	6	5	1	2	5	3(+)	6
Palau	**7 [82]**	**9 [121]**	4	8	3	1	9	10	8	9	2
Vanuatu	**4 [62]**	**10 [142]**	6	3	10	7(-)	5	6	2	4	1
South Asian economies											
Sri Lanka	**3 [101]**	**1(+) [60]**	2(+)	8	5	5	4(-)	4	7	4	1
India	**7 [120]**	**2(+) [79]**	8	6	4	4	1(+)	3	8	8	6
Pakistan	**2 [76]**	**3 [94]**	5	2	7(+)	3	3(+)	2	6	5	2
Maldives	**1 [60]**	**4 [110]**	3	1	1	8	6	4	1	2	5
Bangladesh	**4 [107]**	**5 [112]**	7(-)	3	6	7	2	1	4(-)	7	4
Bhutan	**6 [119]**	**6 [149]**	4(+)	4	2(+)	2(+)	7	7	3	1	7
Nepal	**5 [111]**	**7 [151]**	6	5	8	1	4	4	5	3	3
Afghanistan	**8 [159]**	**8 [174]**	1	7	3	6(+)	8	8	2	6	7

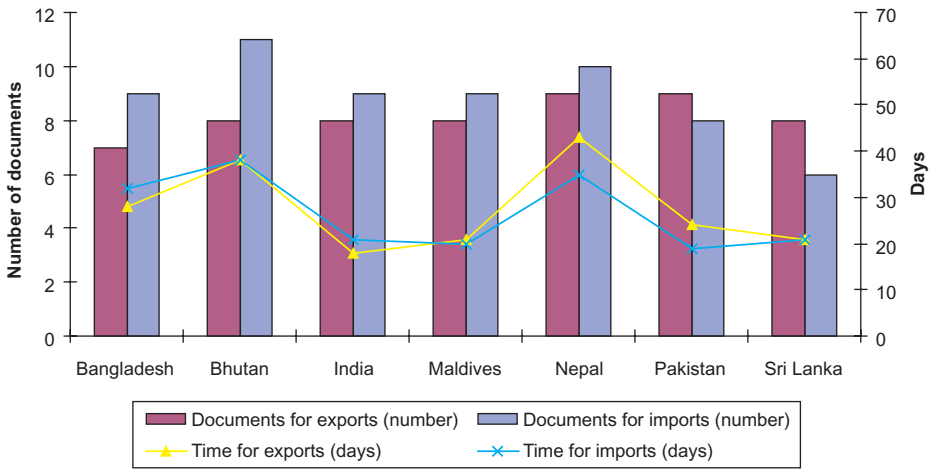
Source: Calculated based on Ease of Doing Business database, at www.doingbusiness.org.

Note: (+) and (-) denotes positive or negative reforms in 2006/07; ranks in [ ] are global rankings out of 178 economies.

Figures VI and VII show, for a selection of South and East Asian countries, the number of documents required for imports and exports as well as the time it takes for a 20-foot container of an identical good to be transported from a factory in the largest business city to a ship in the most accessible port (or vice versa). These are four of the six indicators used in determining the ease of trading across borders rankings. The other two indicators are costs associated with import or export procedures, respectively, which are calculated as the sum of all fees associated with completing the procedures for exporting or importing the goods (including costs for documents, administrative fees for customs clearance and technical control, terminal handling charges and inland transport).[14]

Figures VI and VII reveal that the number of documents for imports - generally higher than those required for exports - range widely across countries in the region, from 4 in Hong Kong, China to 11 in Cambodia and Bhutan. A casual observation of the data reveals that time required for imports and exports is highly correlated with the number of documents required as well as with the costs of import and exports. This is explained by the fact that 75 per cent of the time/delays are attributable to administrative hurdles such as customs and tax procedures, clearances and cargo inspections, and only 25 per cent to poor road and port infrastructure (Djankov and others, 2007).

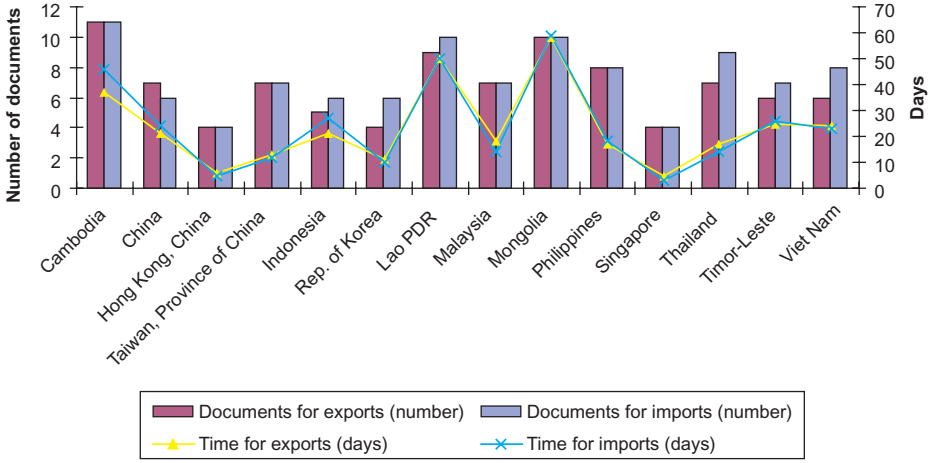
Figure VI. Time and documentary requirements for imports and exports in South Asian countries (fiscal year 2007)



Source: Doing Business Database.

[14] For methodological details, please see http://www.doingbusiness.org/MethodologySurveys/TradingAcrossBorders.aspx.

Figure VII. Time and documentary requirements for imports and exports in East Asian countries (fiscal year 2007)



Source: Doing Business Database.

Looking at the four above-mentioned indicators is particularly useful as it highlights the fact that trade facilitation really begins at home - the indicators are essentially based on domestic regulations and policies, except for landlocked countries. Importers and exporters in many developing countries often point to domestic, rather than foreign, regulations and processes as the main sources of trade in inefficiencies (e.g., Bhattacharya and Hossain, 2006). In that context, global and regional trade facilitation initiatives are important but will only be useful in support of wider ranging domestic initiatives. This support role may include:

(a) Strengthening the mandate for trade facilitation reforms at home to facilitate implementation of measures that will negatively affect the welfare of a small but politically significant group of individuals (e.g., officials in charge of customs and enforcement of related regulations);

(b) The development of harmonized documents, processes and standards to be adopted and implemented in each country, further facilitating cross-border trade (this function has been performed by WCO and UN/CEFACT as well as WTO, among others);

(c) Facilitating the provision of technical assistance and capacity-building for trade facilitation - this function may be served by a future WTO trade facilitation agreement - as well as the sharing of knowledge and experience (including through voluntary peer review mechanisms).

Governments in Asia are aware that enhancing trade-related domestic processes is one way to help their producers and traders gain, or at least maintain, competitiveness

in the global market. Unlike trade liberalization, trade facilitation also has little downside for governments, as it does not result in the loss of customs revenue, even if trade remains the same. Implementation costs of even the more complex trade facilitation measures are also typically dwarfed by long-term savings (Duval, 2006). As a result, significant and continuous unilateral trade facilitation efforts have been made in the region by countries at various stages of development, based on the availability of resources at their disposal. Some of the progress made by South Asian countries in relation to GATT Articles V, VIII and X is reviewed in chapter IV.

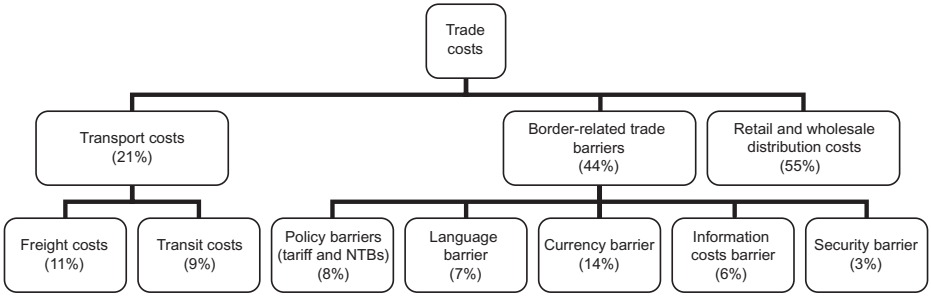
2. Trade facilitation and trade costs

The concept of trade costs is relatively recent but has taken on increasing importance, particularly in the academic literature; yet, in contrast, trade facilitation remains mostly absent from the literature.

Trade costs may be defined as all costs incurred in getting a product to a final user, other than the production costs of the good itself , broken down by Anderson and Wincoop (2004) as transportation (freight and time) costs, (tariff and non-tariff) policy barriers, information costs, contract enforcement costs, legal and regulatory costs, and local (wholesale and retail) distribution costs. In other words, trade costs do include all transaction costs involved in marketing a product, from identifying and negotiating a contract with a buyer to the buying of the product by a consumer in the foreign retail store. A breakdown of these costs for industrialized countries is provided in figure VIII, in percentage of the value of the product traded. Border-related trade barriers, which include barriers generally related to trade facilitation (presumably mainly under policy barriers) as well as many other barriers not always associated with trade facilitation (e.g., language and currency barriers), amount to 44 per cent of the value of goods traded.

Policy barriers, including both tariff and non-tariff barriers, therefore make up less than one fifth of the overall border-related trade barriers estimated in this study. The authors recognize that their breakdown, based on a combination of direct observation and

Figure VIII. Estimated trade costs in industrialized countries



Source: P. De, 2007, drawn from J.E. Anderson and E. van Wincoop, 2004.

inferred costs, is only approximate. Nonetheless, it provides an interesting perspective on trade facilitation and transaction costs, and suggests, in particular, that a large number of alternative measures may assist in the facilitation of trade in its broadest sense, i.e., the reduction of trade transaction costs.

In chapter X of this publication, P. De elaborates on trade costs in Asian countries, focusing particularly on direct transport costs. His analysis shows, *inter alia*, that a reduction in tariffs and transport costs by 10 per cent each would increase bilateral trade by about 2 per cent and 6 per cent, respectively. Therefore, the propensity to increase the trade is likely to be higher with a reduction of transport costs, rather than tariff reduction in the present context. The chapter also discusses freight costs in some detail, indicating that freight costs for imports by developing countries continue to be significantly higher than those of developed countries, with freight costs in developing Asia being on average 116 per cent higher than in developed countries. At the same time, while ocean freight prices have fallen over time for the movement of vessels among some selected Asian countries, auxiliary shipping charges have gone up, thereby offsetting some of the gains arising from technological advancement in shipping and navigation, and trade liberalization.

Although some of the auxiliary shipping charges (e.g., documentation fees, congestion surcharges and electronic data interchange fees) can be linked to core trade facilitation measures and issues, De (2007) and most of the literature on trade costs go well beyond trade facilitation as defined in this publication. At the same time, however, the broad perspective on trade transaction costs that the trade cost concept provides is important for trade policy makers when investing their limited resources in trade cost components that will provide the highest return.

3. Trade facilitation and trade infrastructure

The importance and direct linkage between trade facilitation and telecommunications infrastructure has long been acknowledged (see figure I above). While some have argued that trade facilitation does not cover physical infrastructure, it has become increasingly evident that many trade-related processes involve availability of specialized infrastructure in addition to the basic infrastructure that is often not available in many LDCs.

A number of trade facilitation measures, particularly those related to transparency and publication of trade regulations, do not require significant infrastructure investment. However, increasing port efficiency and e-business usage/service sector infrastructure - two of four indicators used by World Bank economists to measure the potential benefits from trade facilitation and found to be most important in realizing trade facilitation benefits (e.g., Wilson and others, 2003 and 2005)[15] - do involve potentially significant investment in infrastructure.

[15] Interestingly, the most recent World Bank trade facilitation research appears to have focused on transparency issues and does not emphasize trade or transport infrastructure factors (see Helble and others, 2007). This de-emphasizing of infrastructure issues related to trade facilitation is consistent with the scope of the WTO trade facilitation negotiations, which have focused heavily on transparency issues with arguably limited infrastructure investment implications.

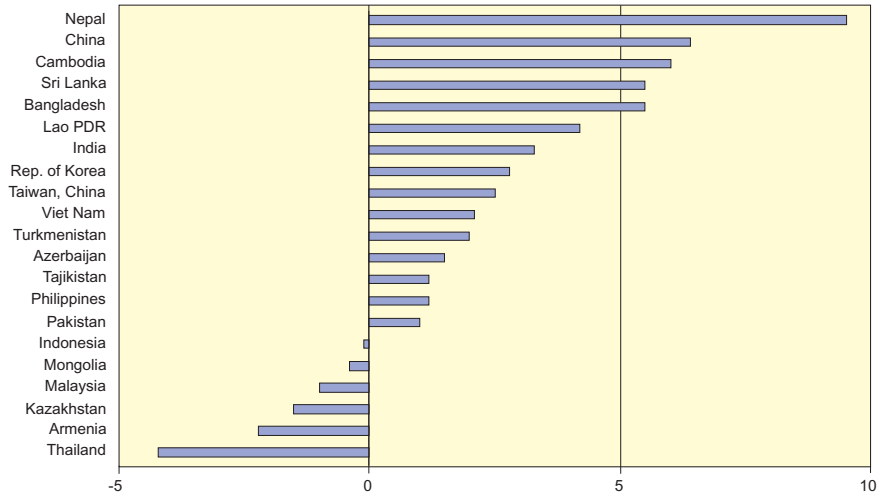
The link between trade facilitation and infrastructure is a sensitive issue, particularly as trade facilitation is now on the negotiating agenda of many trade agreements and is sometimes linked (as in the case of the Doha Development Agenda negotiations) to commitment in terms of technical assistance and capacity-building. Given its implications with regard to the cost of implementing trade facilitation measures as well as the extent, nature and overall effectiveness of aid to be provided to developing member countries under an eventual multilateral agreement on trade facilitation, full acknowledgement of the role of trade infrastructure in trade facilitation is important (see chapter X).

G. Conclusion

The purpose of this chapter has been to introduce some of the issues presented in greater detail in the subsequent chapters of his book as well as to provide a broader perspective on trade facilitation beyond the WTO negotiations. In line with that objective, reference must be made here to the links between trade facilitation and sustainable (inclusive) growth.

While trade has been widely recognized as a key engine of growth, research on the linkages between trade (liberalization) and poverty has not been conclusive, generally showing a marginally positive effect of trade liberalization on poverty reduction. At the same time, while significant progress has been made in terms of poverty reduction in Asian countries that have liberalized trade, inequality within some of those countries also appears to have worsened (figure IX).

Figure IX. Changes in inequality within selected Asian Countries, 1990s-2000s*



Source: Asian Development Bank, 2007.

*Measured as changes in percentage in the Gini Coefficient for expenditure or income distribution. Years over which changes are computed vary across countries depending on data availability.

Increasing inequality is of some concern because it can dampen the effect of growth on poverty reduction and hinder future growth prospects, i.e., sustainable development. The slow growth of agriculture relative to other sectors, and the interactions between market-oriented reforms, global integration and technology, have been identified among the key drivers of inequality (Asian Development Bank, 2007).

In that context, how might trade facilitation contribute to resolving distributional issues? One of the key principles of trade facilitation is transparency. Making trade regulations and related processes more transparent involves simplifying and clarifying them, and making them accessible to the greatest possible number of firms and individuals, thereby increasing their opportunity to trade and take advantage of global market opportunities. While inefficient and complex trade and business procedures can be overcome by large companies, who can more easily allocate time and human resources for that purpose through economies of scale, this is not the case with small and medium-sized enterprises. Trade facilitation can therefore be seen as a way to change the circumstances of trade within a country that give rise to inequalities in opportunities to trade.[16]

Relatively little research has been carried out into how trade facilitation measures that are commonly advocated[17] (for example, risk management systems) affect firms of various sizes, but particularly small and medium-sized firms. Keeping in mind the overriding aim of poverty reduction and inclusive growth, future research into trade facilitation may need to examine this issue more closely.

[16] Trade facilitation may also benefit women, therefore contributing to gender equality. Indeed, countries with higher scores on the ease of doing business have large shares of women in the ranks of both entrepreneurs and workers. The reduction of bribery in connection with trade processes appears to be particularly important in that context, as studies have shown that women are seen as easy targets for this kind of practice (World Bank, 2007).

[17] See United Nations/CEFACT, 2001 for a list of measures.

Annex

LIST OF BILATERAL AND REGIONAL TRADE AGREEMENTS COVERING TRADE FACILITATION

Title of agreement	Type*	Status	Trade facilitation (others)
South Pacific Regional Trade and Economic Co-operation Agreement	PTA	In force since 1981	Yes
Australia-New Zealand Closer Economic Relations Trade Agreement	FTA	In force since 1983	Yes
ASEAN Free Trade Area	FTA	In force since 1993	Yes. separate agreements http://www.aseansec.org/19046.htm
Agreement on Free Trade between the Government of the Republic of Georgia and the Government of the Russian Federation	FTA	In force since 1994	Yes
Agreement between the Government of Republic of Armenia and the Government of Republic of Moldova on Free Trade	FTA	In force since 1995	Yes. Only to the extend of customs-related aspects of the rules of origin
Customs Union between Turkey and the European Community	CU	In force since 1996	Yes
Bay of Bengal Initiative for Multi-Sectorial Technical and Economic Cooperation	FA	In force since 1997	Yes
The European Union and the Republic of Armenia Partnership and Cooperation Agreement	FA	In force since 1999	Yes. Protocol on mutual assistance between administrative authorities in customs matters
Agreement between New Zealand and Singapore on a Closer Economic Partnership	FTA	In force since 2001	Yes
Agreement between Japan and the Republic of Singapore for a New-Age Economic Partnership	FTA	In force since 2002	Yes
Singapore-Australia Free Trade Agreement	FTA	In force since 2003	Yes
ASEAN-Japan Comprehensive Economic Partnership	FA	In force since 2004	Yes
ASEAN-India Framework Agreement on Comprehensive Economic Cooperation	FA	In force since 2004	Yes
Mainland and Hong Kong Closer Economic Partnership Agreement	FTA	In force since 2004	Yes
Mainland and Macao Closer Economic Partnership Agreement	FTA	In force since 2004	Yes

India-Thailand Framework Agreement for Establishing a FTA	FA	In force since 2004	Yes
Free Trade Agreement between the Republic of Korea and Chile	FTA	In force since 2004	Yes
United States-Singapore Free Trade Agreement	FTA	In force since 2004	Yes
United States-Australia Free Trade Agreement	FTA	In force since 2004	Yes
Thailand-Australia Free Trade Agreement	FTA	In force since 2004	Yes
India-Singapore Comprehensive Economic Cooperation Agreement	FTA	In force since 2005	Yes
Agreement between Japan and the United Mexican States for the Strengthening of the Economic Partnership	FTA	In force since 2005	Yes
New Zealand-Thailand Closer Economic Partnership Agreement	FTA	In force since 2005	Yes
The Association Agreement Establishing the Free Trade Area between the Republic of Turkey and the Republic of Tunisia	FTA	In force since 2005	Yes
Free Trade Agreement between the Government of the Republic of Korea and the Government of the Republic of Singapore	FTA	In force since 2006	Yes
Pacific Island Countries Trade Agreement	FTA	In force since 2006	Yes. Article 18 -parties will Endeavour to implement measures which facilitate trade within the FTA; trade facilitation coordinated with wider region
South Asian Free Trade Area	FTA	In force since 2006	Yes
Trans-Pacific Strategic Economic Partnership Agreement (Brunei Darussalam, Singapore, New Zealand and Chile)	FTA	In force since 2006	Yes
India-Mercosur Preferential Trade Agreement	FA	Pending ratification	Yes
Free Trade Agreement between the Government of the People s Republic of China and the Government of the Islamic Republic of Pakistan	FTA	Pending ratification	Yes. Article 10 on border measures
Preferential Trade Agreement between the Republic of India and the Republic of Chile	PTA	Pending ratification	Yes. Article XIV on customs valuation, Article XV on Customs Cooperation

Agreement between Japan and the Republic of the Philippines on an economic partnership	FA	Pending ratification	Yes. Chapter 4 on Customs procedures, Chapter 5 on Paperless trading and Chapter 6 on Mutual recognition
Agreement between Japan and the Kingdom of Thailand on an Economic Partnership	FTA	Pending ratification	Yes. Customs procedures, chapter 4
Republic of Korea-United States Free Trade Agreement	FTA	Pending ratification	Yes. customs procedures
Protocol between the Republic of Peru and the Kingdom of Thailand to Accelerate the Liberalization of Trade in Goods and Trade Facilitation	FA	Pending ratification	Yes. Article 6 of the Protocol on Customs Procedures

Source: ESCAP APTIAD Database, http://www.unescap.org/tid/aptiad/, September 2007.

*Preferential Trade Agreement (PTA); Free Trade Agreement (FTA); Framework Agreement (FA); Customs Union (CU)

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II. A COMPARATIVE ANALYSIS OF TRADE FACILITATION IN SELECTED REGIONAL AND BILATERAL TRADE AGREEMENTS AND INITIATIVES*

By Patrick Wille and Jim Redden

Introduction

Trade facilitation has become a major concern for policy makers wishing to increase the gains from trade. Reduction of trade barriers such as tariffs and quantitative restrictions, which had been achieved in the General Agreement on Tariffs and Trade (GATT) rounds of multilateral trade negotiations, raised the profile of the remaining behind- and at-the-border trade costs. At the same time, technological developments have raised prospects for a paperless customs clearance environment and exchange of trade-related information, often discussed under the rubric of Electronic Data Interchange (EDI), which increases the potential gains from trade facilitation and suggests a need for common standards. The increased attention that has been given to trade facilitation in recent years is evident not only in regional trading arrangements around the world but also in specific Asia-Pacific regional agreements and initiatives.

This chapter provides an analysis of how trade facilitation issues are addressed in some of the principle trade agreements and initiatives in the Asia-Pacific region in order to identify best practices and implications for the World Trade Organization (WTO) negotiations. The Association of Southeast Asian Nations (ASEAN), Asia-Pacific Economic Cooperation (APEC), the South Asian Free Trade Agreement (SAFTA) and the Pacific Agreement on Closer Economic Relations (PACER) were chosen for their geographical spread across the region and for the diverse nature of measures incorporated in them. The comparative analysis also includes the Australia-Singapore Free Trade Agreement for its articulation of specific and effective trade facilitation measures.

A review and comparative analysis of the selected agreements are given in section A. In addition, a template of model measures for trade facilitation negotiators is developed in section B, followed in section C by a discussion of some implications for developing countries.

In terms of relevant literature on this topic to date, several papers have been published that analyse the general implications of major trade agreements in the Asia-Pacific region. For example, Feridhanusetyawan (2005) gives a useful overview on

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the recent proliferation of preferential trade agreements (PTAs) in the Asia-Pacific region, and he discusses key characteristics of some of these PTAs. However his observations regarding trade facilitation remain rather general and do not include PACER or SAFTA.

In the more recent past, a number of papers have been produced that discuss specific aspects of trade facilitation. Most of those papers have dealt with either the economic impact of trade facilitation, such as expected costs and benefits (e.g., Engman 2005; Wilson and others, 2004; and Freud and others, 2006), or were case studies analysing the trade facilitation capacity-building needs and initiatives of particular countries (e.g., ESCAP, 2006).

Mo s (2002) analysed the relationship between regional trade agreements (R TAs) and the multilateral trading system with regard to trade facilitation. The study found that the degree of facilitation in RTAs was influenced by various factors, such as the date of the conclusion of the agreement, the relative level of development of participating countries and the type of agreement reached. The legal framework and the scope of APEC trade facilitation measures are discussed in a number of publications produced by APEC itself and by others.[1] Similarly, several works address some trade facilitation initiatives in South Asia.[2] However, there is scant literature analysing how trade facilitation is addressed in the context of PACER.[3]

Overall, the existing literature is useful and important. However, it does not provide a comprehensive comparison of how trade facilitation is addressed across major RTAs in the Asia-Pacific region.

A. Trade facilitation in selected regional and bilateral trade agreements in the Asia-Pacific region

This section analyses and compares the way in which trade facilitation is addressed in the four regional agreements of ASEAN, APEC, South Asian Association for Regional Cooperation/South Asian Free Trade Agreement (SAARC/SAFTA) and PACER as well as in the Australia-Singapore Free Trade Agreement (ASFTA).

The term trade facilitation has been defined in multiple ways by different organizations and trade agreements. For example, in the context of WTO and the Organisation for Economic Co-operation and Development (OECD), trade facilitation means:

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1 See, for example, APEC, 2002; Assanie, Woo and Brotherston, 2002; Baysan, Panagariya and Pitigala, 2006; and Woo, 2004.

2 See, for example, Wilson and Ostuki, 2004; and Weerakoon and others, 2005.

3 See, for example, Narsey, 2004; and McMaster, 2003.

> The simplification and harmonization of international trade procedures including the activities, practices and formalities involved in collecting, presenting, communicating and processing data and other information required for the movement of goods in international trade. [4]

This definition excludes non-tariff barriers (NTBs) to trade, such as sanitary and phytosanitary measures (SPS), or measures to protect social or environmental standards. According to the negotiation mandate of the July Package ,[5] the current WTO negotiations on trade facilitation are limited to the improvement and clarification of GATT Articles V (Freedom of Transit), VIII (Fees and Formalities Connected with Importation and Exportation) and X (Publication and Administration of Trade Regulations).

In comparison, many bilateral and regional trade agreements have a broader understanding of trade facilitation as including any procedures, processes or policies capable of reducing transaction costs and facilitating the flow of goods in international trade.[6] Trade facilitation in this broader sense can affect a wide range of activities such as import or export procedures, transportation formalities, logistics services, payment, insurance and other financial requirements. However, trade facilitation even in its wider sense, is generally distinguished from tariff negotiations and the development of physical infrastructure for trade (such as ports, roads and railways) that also influence the flow of traded goods.[7]

Table 1 gives a comparative overview of the membership, structure and scope of these agreements.

1. Association of South East Asian Nations

(a) General remarks on ASEAN and AFTA

ASEAN is one of the oldest regional trading arrangements in the Asia-Pacific region. It was formed in 1967 by Indonesia, Malaysia, the Philippines, Singapore and Thailand, and joined by Brunei Darussalam in 1985. ASEAN had little impact on trade policy before the establishment of the ASEAN Free Trade Area (AFTA) in 1992. During the 1990s ASEAN expanded its membership to 10 as Viet Nam acceded in 1995, the Lao People s Democratic Republic and Myanmar in 1997, and Cambodia in 1998. ASEAN has a permanent Secretariat in Indonesia, but this supranational institution has relatively limited capacity at this stage. There is no separate supranational institution for AFTA.

In AFTA, members retain their national trade policies towards non-members and liberalize intra-ASEAN trade by reducing tariffs to 5 per cent or less on goods with at least

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4 OECD, 2005.

5 http://www.wto.org/english/tratop_e/dda_e/ddadraft_31jul04_e.pdf.

6 Impediments to international trade in particular complex and numerous formalities are also referred to as red tape . Trade facilitation aims to cut such red tape (see, for example, Woo and Wilson, 2000).

7 ESCAP, 2002.

Table 1. General comparison of regional trade agreements in the Asia-Pacific region

Organization/ agreement	ASEAN/AFTA	APEC	SAARC/SAFTA	PACER	ASFTA
Members	Member countries: Brunei Darussalam, Cambodia, Indonesia, Lao People s Democratic Republic, Malaysia, Myanmar, Philippines, Singapore, Thailand, Viet Nam.	Member economies: Australia, Brunei Darussalam, Canada, Chile, China, Hong Kong, China, Indonesia, Japan, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Philippines, Russian Federation, Singapore, Republic of Korea, Taiwan Province of China, Thailand, United States, Viet Nam.	Afghanistan, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka.	Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.	Singapore, Australia.
Year of signing, entry into force	1992, 1993	1989	2004, 1 January 2006	2001, 2002	17 February 2003, 28 July 2003.
Type of agreement	Free trade agreement (FTA).	Public sector, multilateral economic forum.	FTA	Framework agreement for the gradual trade and economic integration.	Comprehensive FTA (including goods, services and investment).
Integration	Currently sectoral integration. Long-term goal: integrated single market by 2020.	APEC supports trade and investment liberalization through multilateral and high-quality regional and bilateral trade agreements. Bogor Goals: free and open trade and investments	Currently tariff reductions. Long-term goal: free trade area by 2016. Early harvest programme: non-least developed countries (India, Pakistan, Sri Lanka) phase out tariffs by 2009 while	Currently framework only, various initiatives, e.g., capacity-building, technical assistance and trade facilitation programmes. Long-term goal: eventual full and complete integration of	

Table 1. ***(continued)***

Organization/ agreement	ASEAN/AFTA	APEC	SAARC/SAFTA	PACER	ASFTA
		by 2010 in developed economies and by 2020 in developing economies.	least developed countries will have until 2016 to remove the impediments.[c]	all sectors of [member] economies .	
Legal base for economical integration and trade facilitation measures	Series of declarations, action plans and sectoral agreements (e.g., Bali Concord I+II, Vientiane Action Plan).	Set goals (e.g., Shanghai Goals), APEC trade facilitation principles, Trade Facilitation Action Plan (TFAP), Individual Action Plans (IAPs).	SAFTA and SAFTA Ministerial Council (SMC).	Subsidiary agreements like PICTA; other FTAs have to be negotiated in the future; unilateral concessions.	ASFTA including Annexes.
Structure	Annual meeting of Heads of State and Government ASEAN Summit ; ASEAN Ministerial Meetings; ASEAN Standing Committee; 29 committees of senior officials and 122 technical working groups; ASEAN Secretariat, headed by the Secretary-General of ASEAN.	Annual summits — Leaders Meeting ; two standing committees: Committee for Trade and Investment and Economic Committee; 10 working groups on trade and investment data, trade promotion, investment, industrial science and technology, human resource development, energy, marine resource conservation, telecommunications, fisheries, transportation, and tourism; small APEC Secretariat.	SAFTA Ministerial Council comprising the Ministers of Commerce/Trade; Committee of Experts (COE) on the level of senior economic officials; SAARC Secretariat as secretarial support to SMC and COE.	No formal rules governing operations or the conduct of its meetings. Annual meetings of the Pacific Islands Forum countries heads of government and ministerial level officials; Pacific Islands Forum Secretariat, headed by the Secretary-General.	No institutionalized structure, biennial meetings of the ministers of trade to review the agreement.

Table 1. ***(continued)***

Organization/ agreement	ASEAN/AFTA	APEC	SAARC/SAFTA	PACER	ASFTA
Enforcement	No institutionalized dispute resolution; bilateral dispute resolution procedures, ad hoc panels, appellate body. (Decisions enforceable).	No enforcement by APEC (Agreements are non-binding).	Amicable dispute settlement by bilateral consultations, COE acts as dispute settlement body, appeal against COE recommendations to SMC (SMC recommendation enforceable by [limited] withdrawal of concessions).	No enforcement (framework only requires future negotiations).	Consultations, conciliation or mediation, arbitral tribunal (binding recommendations).
Tariff reduction by:	Negative list approach, Common Effective Preferential Tariff (CEPT).	Unilateral liberalization and tariff reduction according to IAPs.	Tariff schedules, use of Sensitive Lists (exemption from tariff schedules).	No tariff concessions.	Elimination of all tariffs.
Tariff levels	Ninety-three per cent of products included in CEPT list <5% tariff (2005), ASEAN 6 average tariff under CEPT 1.93% (2005).[a]	Average tariff between member economies, 5.5% (2004).[b]	Maximum tariffs by 2008: non-least developed countries (India, Pakistan and Sri Lanka) 20%; least developed countries, 30%.	No tariff concessions	Zero per cent.

[a] ASEAN Annual Report 2004-2005, p. 25.

[b] APEC Report: Mid-term Stocktaking of Progress towards the Bogor Goals.

[c] As agreed by Commerce Ministers of the SAFTA member countries on 19 April 2006.

40 per cent ASEAN content. The original six members (ASEAN 6) committed to full implementation of AFTA by 2002, with exemptions until 2010 only for a small number of sensitive agricultural products, while the four newest members have extended transition periods (until 2006 for Viet Nam, 2008 for the Lao People s Democratic Republic and Myanmar, and 2010 for Cambodia).

There is no institutionalized dispute resolution mechanism, and in practice (despite a 2004 ASEAN Protocol on Enhanced Dispute Settlement Mechanism) the process is bilateral.

Since 2000, the integrity of AFTA has been threatened by the willingness of some members, Singapore and Thailand in particular, to negotiate bilateral trade agreements with non-ASEAN countries, such as Japan, the United States of America and Australia.[8]

The ASEAN framework, like a number of other RTAs in Asia, has developed over a prolonged period. It consists of several layers of agreements and declarations, each building on and reinforcing the trust gained by the previous one. A serious understanding of the current ASEAN trade facilitation efforts therefore requires awareness of the evolution of trade facilitation issues within ASEAN and justifies a brief summary of the background to this agreement.

(b) Trade facilitation within the ASEAN framework

(i) AFTA and CEPT

Initially, AFTA focused on a reduction of tariffs by implementing a Common Effective Preferential Tariff (CEPT). Neither of the 1992 agreements explicitly referred to the issue of trade facilitation. However, some general provisions contain aspects that can be subsumed under a broad definition of trade facilitation. For example, the Framework Agreement on Enhancing ASEAN Economic Cooperation establishing AFTA urges members to reduce or eliminate non-tariff barriers between and among each other on the import and export of products [9] and the CEPT agreement provides that members shall explore further measures on border and non-border areas of cooperation to supplement and complement the liberalization of trade. These may include, among others, the harmonization of standards, reciprocal recognition of tests and certification of products (...) .[10]

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[8] Relations with the United States are especially hierarchical, as the United States has signed Trade and Investment Framework Agreements (TIFAs) with Brunei Darussalam, Indonesia, Malaysia and the Philippines. TIFAs, described by the United States as a prerequisite to a subsequent FTA or bilateral investment treaty, are of lesser standing than the United States-Singapore FTA or the United States agreement with Thailand, but a step ahead of the United States relations with the four newest ASEAN members.

[9] See Article 2(A), Section 3 of the Framework Agreement on Enhancing ASEAN Economic Cooperation, signed in Singapore on 28 January 1992.

[10] Article 5(C) of the Agreement on the Common Effective Preferential Tariff Scheme for AFTA, which was signed in Singapore on 28 January 1992.

Accordingly, most ASEAN countries made some efforts in the early/mid-1990s to simplify and harmonize trade procedures in accordance with the GATT framework,[11] but progress has been slow and limited.

(ii) ASEAN Vision 2020

In Kuala Lumpur, on 15 December 1997, the Heads of State and Governments of the ASEAN countries adopted the ASEAN Vision 2020 pledging a Partnership in Dynamic Development and agreeing on the full integration of AFTA by 2010. It was also resolved, inter alia, to undertake work towards a world-class standards and conformance system that will provide a harmonized system to facilitate the free flow of ASEAN trade while meeting health, safety and environmental needs ... [and] to promote an ASEAN customs partnership for world-class standards and excellence in efficiency, professionalism and service, and uniformity through harmonized procedures, to promote trade and investment, and to protect the health and well-being of the ASEAN community (...) .[12]

(iii) Hanoi Summit, 1998

One year later, at the sixth ASEAN Summit 1998 in Hanoi, it was agreed to accelerate the implementation of AFTA and increased attention was given to the removal of technical barriers to trade.[13] The Summit adopted the Hanoi Plan of Action (HPA) as a first step towards the realization of the goals of the ASEAN Vision 2020. The HPA[14] had a six-year timeframe (1999-2004) and the progress of its implementation was to be reviewed every three years to coincide with the ASEAN Summit Meetings.

The Hanoi Summit also adopted, among other things, a framework for Mutual Recognition Arrangements (MRAs)[15] and a framework on the Facilitation of Goods in Transit.[16] The only ratified MRA has targeted the duplication in testing and certification of products. This has been achieved by allowing any product meeting harmonized standards automatic access to other ASEAN markets; however, at this stage, products are restricted

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[11] Regarding Myanmar, see, for example, Myo Oo, 2005; regarding Cambodia, the Lao People s Democratic Republic, Myanmar and Viet Nam, see ESCAP, 2002, chapter 9, pp. 65-73; regarding Indonesia, Singapore, the Philippines and Thailand, see the corresponding case studies in APEC, 2001.

[12] ASEAN Vision 2020 adopted at the Second Informal ASEAN Summit in Kuala Lumpur, 14-16 December 1997, available at: http://www.aseansec.org/5408.htm.

[13] See Section 11 of the Hanoi Declaration of 16 December 1998 and the Hanoi Plan of Action (in particular, Sections 2.1.2, 2.1.3 and 2.1.4).

[14] The full text of the Hanoi Plan of Action is available at: www.aseansec.org/8754.htm.

[15] As of 23 January 2006, the ASEAN Framework Agreement on Mutual Recognition Arrangements (full text available at: www.aseansec.org/8134.htm) had not entered into force, as the Lao People s Democratic Republic had not yet ratified the agreement.

[16] The ASEAN Framework Agreement on the Facilitation of Goods in Transit entered into force on 2 October 2002; full text is available at: www.aseansec.org/12463.htm; see also ASEAN, 2001.

to electronic[17] and cosmetic products.[18] The e-ASEAN agreement, which provides trade facilitation measures for information and communications technology (ICT) products, has yet to enter into force.[19]

The Framework Agreement on Facilitation of Goods in Transit reflects common international principles such as the Most Favoured Nation (MFN) treatment, and is aimed at simplifying and harmonizing transport, trade and customs regulations for goods in transit by applying principles such as consistency, simplicity, transparency and efficiency. However, out of the nine Protocols[20] detailing the framework agreement, only the ASEAN Scheme of Compulsory Motor Vehicle Third-Party Liability Insurance (Protocol 5) has been ratified and has entered into force.

(iv) Initiative for ASEAN Integration

In November 2000, at the fourth Informal Summit in Singapore, the ASEAN leaders launched the Initiative for ASEAN Integration (IAI), which gave direction to and sharpened the focus of collective efforts in ASEAN to narrow the development gap among its member countries.[21] The subsequent 2001 Hanoi Declaration on Narrowing the Development Gap called for the conclusion of the remaining protocols necessary to implement the 1998 Agreement on Goods in Transit, in order to facilitate land transport in South-East Asia and lower its cost.[22] It contained other declarations that could be considered as trade facilitation measures, such as the facilitation of trade and investment in the ICT sector.[23] However, once again the 2001 Hanoi Declaration remained largely aspirational.

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17 ASEAN Sectoral MRA for Electrical and Electronic Equipment, adopted in Bangkok, entered into force on 5 April 2002.

18 The Agreement on the ASEAN Harmonized Cosmetic Regulatory Scheme, adopted in Phnom Penh, entered into force on 2 September 2003.

19 See the e-ASEAN Framework Agreement, signed in Singapore on 24 November 2000.

20 According to Article 25, various Working Groups will be established to conclude the following protocols, which form an integral part of the agreement: Protocol 1 — Designation ofTransit Transport Routes and Facilities; Protocol 2 — Designation of Frontier Posts; Protocol 3 —Types and Quantity of Road Vehicles (signed in Hanoi on 15 September 1999); Protocol 4 —Technical Requirements of Vehicles (signed in Hanoi on 15 September 1999); Protocol 5 —ASEAN Scheme of Compulsory Motor Vehicle Third-Party Liability Insurance (signed in Kuala Lumpur on 8 April 2001, entered into force on 16 October 2003); Protocol 6 — Railways Border and Interchange Stations; Protocol 7 — Customs Transit System; Protocol 8 — Sanitary and Phytosanitary Measures (signed in Phnom Penh on 27 October 2000); and Protocol 9 — Dangerous Goods (signed in Jakarta on 20 September 2002).

21 See Hanoi Declaration on Narrowing the Development Gap for Closer ASEAN Integration, 23 July 2001.

22 *Ibid*, para. 20.

23 *Ibid*, para. 16.

In 2002, ASEAN further acknowledged the importance of trade facilitation[24] and placed a high priority on an ASEAN Customs Partnership, based on the principles of the Revised Kyoto Convention on customs processes, procedures and practices.[25]

(v) Bali Concord II, 2003

At the ninth ASEAN Summit in Bali, 7-8 October 2003, the ASEAN leaders agreed on the Declaration of ASEAN Concord II (also called Bali Concord II)[26] establishing the ASEAN Economic Community (AEC). To realize AEC, it was decided to implement the recommendations of the High-Level Task Force on ASEAN Economic Integration, which included facilitation measures for the trade of goods, in particular with regard to non-tariff barriers, customs and standards.[27] The customs facilitation matters include:

(a) The adoption of the green lane system for CEPT products;

(b) The adoption of the WTO/GATT Agreement on Customs Valuation and developing implementation guidelines appropriate for ASEAN;

(c) Service commitment (client charter) by ASEAN customs authorities;

(d) A single window approach including the electronic processing of trade documents at the national and regional levels.

To further facilitate trade, the Protocol Governing the Implementation of the ASEAN Harmonized Tariff Nomenclature (AHTN) was signed by the ASEAN Finance Ministers in Manila on 7 August 2003. It is aimed at increasing consistency and transparency in tariff application, uniformity and simplicity in the classification of goods in ASEAN,[28] and at creating a nomenclature that conforms to international standards.

(vi) Vientiane Action Programme

At the tenth ASEAN Summit in Vientiane on 29 November 2004, the Heads of State and Governments adopted the Vientiane Action Programme (VAP) to be implemented in 2004-2010. Integrating towards a single market is the strategic goal of AEC, and consistent with that goal VAP aims to remove barriers to the free flow of goods, services and skilled labour, and freer flow of capital by 2010.[29] To achieve these objectives, VAP

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[24] The Final Report of the East Asia Study Group, presented during the eighth ASEAN Summit in Phnom Penh in November 2002, recommended moving quickly beyond AFTA and the acceleration of implementation by, among other actions, adopting common trade facilitation standards and practices.

[25] See the ASEAN Annual Report, 2002-2003, p. 21.

[26] The full test can be found at www.aseansec.org/15160.htm.

[27] The recommendations are available at www.aseansec.org/hltf.htm.

[28] See also the Understanding on the Criteria for Classification in AHTN, signed by the ASEAN Customs Directors-General on 20 December 2003.

[29] The removal of barriers is limited to the extent feasible and agreeable to all member countries ; the full text of VAP is available at www.aseansec.org/VAP-10th%20ASEAN%20Summit.pdf.

demands the implementation of measures such as improving trade and business facilitation and reducing trade transaction costs and the accelerated integration of 11 priority sectors such as automotive, electronics, rubber or wood-based products.

The framework agreement for the integration of these priority sectors contains, in Part III, several provisions regarding trade facilitation and should have entered into force by 31 August 2005. However, it was - like the protocols regarding the priority sectors - only ratified by Thailand.[30]

At the eleventh ASEAN Summit in Kuala Lumpur in December 2005, the leaders agreed to implement an ASEAN Single Window (ASW) by December 2006, which enables a single submission of data and information, the single and synchronous processing of data and information, and single decision-making for customs release and clearance.[31] The initial implementation is, however, on a bilateral basis. Thailand and the Philippines are establishing a pilot ASW programme while Thailand and Malaysia are negotiating specific measures to reduce customs clearance times.

(c) How trade facilitation is addressed in ASEAN

ASEAN has a fairly wide and sometimes inconsistent understanding of trade facilitation that includes issues such as customs valuation and aspects of non-tariff barriers to trade, which would not normally fall under the WTO definition of trade facilitation. Nevertheless, ASEAN trade facilitation initiatives are designed to comply with WTO/GATT rules.

The ASEAN approach is based on a framework of declarations and action plans that are aimed at creating a single market in the long term; however, currently only a limited number of priority sectors are integrated. Accordingly, trade facilitation measures within ASEAN are based on a variety of agreements and remain sectoral, and implementation is largely dependent on progress at the national level. When it comes to trade facilitation, the ASEAN framework agreements and declarations tend to be more general or aspirational.

However, it should be acknowledged that ASEAN countries have made significant progress in recent years, particularly with regard to customs procedures, namely the standardization of information for customs purposes adopting best practices and provisions as set forth in the Revised Kyoto Convention[32] as well as the harmonization of practices

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[30] The ASEAN Framework Agreement for the Integration of Priority Sectors, signed in Vientiane on 29 November 2004, is available at: www.aseansec.org/16659.htm.

[31] The Agreement to establish and Implement the ASEAN Single Window, signed in Kuala Lumpur on 9 December 2005, is available at www.aseansec.org/18005.htm. This agreement followed seven years of ad hoc initiatives sponsored by the ASEAN Secretariat but implemented unilaterally (e.g., the Gold Card Programme in Indonesia, the Super Green Lane in the Philippines, and the Single Window in Singapore), which reduced customs clearance times from several days to several hours.

[32] The majority of the ASEAN members adopted the ASEAN Customs Declaration Document, which contains 48 information parameters and which was developed on the basis of the Single Administrative Document recommended by the World Customs Organization.

related to customs valuation, which in most ASEAN countries are now in accordance with the WTO/GATT Agreement on Customs Valuation.[33] Most ASEAN countries have implemented AHTN and procedures for post-clearance audit (PCA).[34]

From an initial analysis, it appears that a number of the VAP initiatives and measures are being processed or implemented. Further research is necessary, however, to determine the exact implementation status of trade facilitation implementation in each of the ASEAN members.

2. Asia-Pacific Economic Cooperation

(a) General remarks on APEC

The APEC Agreement was constituted in 1989 in Canberra. The current APEC membership consists of Australia, Brunei Darussalam, Canada, Chile, China, Hong Kong, China, Indonesia, Japan, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, the Philippines, the Russian Federation, Singapore, Republic of Korea, Taiwan Province of China, Thailand, the United States and Viet Nam.

The distinguishing feature of APEC is its commitment to open regionalism, rather than the reciprocal exclusive arrangements characteristic of most RTAs. As such, APEC is not a typical trade agreement. In fact, APEC is the only intergovernmental grouping in the world operating on the basis of non-binding commitments.

It operates as a cooperative, multilateral economic and trade forum without requiring its members to enter into legally binding obligations. Decisions made within APEC are reached by consensus and commitments are undertaken on a voluntary basis. APEC does not aim to establish a free trade area or customs union, but aims in a coordinated regional manner to liberalize trade on an MFN basis.

APEC member economies take individual and collective actions to open their markets and promote economic growth. APEC maintains a small Secretariat in Singapore that essentially provides coordination and information services and has a project management role in overseeing some APEC projects. However, there are no supranational institutions or structures in APEC and there is no institutionalised dispute settlement mechanism.

APEC members strongly support WTO multilateral negotiations and the successful conclusion to the Doha Development Agenda. Accordingly, APEC initiatives always seek compatibility with multilateral approaches.

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[33] ASEAN has published its own ASEAN Customs Valuation Implementation Guide to provide uniform understanding and interpretation of the WTO Agreement on Customs Valuation for operational application by frontline customs officers

[34] See *ASEAN Annual Report, 2004-2005*, p. 29

(b) Trade facilitation within the APEC framework

Trade facilitation has been explicitly on the APEC agenda since the mid-1990s. The APEC Committee on Trade and Investment was established in 1993 and the 1995 Osaka Action Agenda expanded its scope. The Committee s four priority areas are: support for the multilateral trade system, trade facilitation, transparency and anti-corruption, as well as digital economy and intellectual property rights (IPRs).

In 1994, APEC economic leaders committed in Bogor, Indonesia, to strengthening the open multilateral trading system and set the Bogor Goals of free and open trade and investment in the Asia-Pacific by 2010 for developed economies and 2020 for developing economies. [35] The ultimate nature of free and open trade and investment , however, was not fully defined either in the Bogor Declaration or the Osaka Agenda.[36]

Two years later, the Manila Action Plan for APEC (MAPA) was adopted, outlining the trade and investment liberalization and facilitation measures to reach the Bogor Goals. In 1997, APEC leaders supported a proposal for early voluntary sectoral liberalization in 15 sectors.

In 2001, APEC adopted the Shanghai Accord, which focuses on broadening the APEC Vision, clarifying the roadmap to Bogor and strengthening implementation. The Shanghai Accord stresses the significance of trade facilitation and endorses a (voluntary) set of principles on trade facilitation as part of the Collective Action Plan (APEC Principles on Trade Facilitation).[37] The APEC leaders agreed to reduce cross-border trade transaction costs by 5 per cent by 2006. In addition, an APEC Business Travel Card scheme and an MRA on electrical equipment were approved.

In Mexico in 2002, APEC adopted a Trade Facilitation Action Plan (TFAP), which should identify suitable trade facilitation measures, estimate the cost of implementing such measures and provide capacity-building programmes. Starting in 2002, each APEC member was expected to submit annual IAPs, which would achieve the 5 per cent target and report on their progress. By 2004, around 1,300 items had been selected in IAPs, mainly in the subcategory of customs procedures; more than 50 per cent of these had been completed and a further 25 per cent were in progress.[38]

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[35] See the APEC Economic Leaders Declaration of Common Resolve, adopted in Bogor, Indonesia on 15 November 1994. The full text is available at www.apec.org/apec/leaders_declarations/1994.html.

[36] In his 2005 paper, The mid-term review of the Bogor Goal — strategic issues and options ,A. Elek called this lack of definition a constructive ambiguity and suggested that APEC leaders should clarify this term.

[37] See Section 18 of the Joint Statement of the thirteenth Ministerial Meeting in Shanghai on 17 and 18 October 2001, Section 21 and Annex B (containing the APEC Principles on Trade Facilitation) of the Chair s Statement of the Meeting of APEC Ministers Responsible for Trade, 6-7 June 2001.

[38] This is the Overall Quantitative Assessment given by Y.P. Woo in his 2004 report, APEC s Trade Facilitation Action Plan: A mid-term assessment , prepared for the APEC Committee on Trade and Investment. However, Woo advised great caution in interpreting such data, because the quality and effectiveness of these initiatives is not clear from the national reports (p. 17). He devoted the vast majority of the report to qualitative assessments.

(c) How trade facilitation is addressed in APEC

The APEC trade facilitation principles are similar to those of ASEAN. There is a common emphasis on simplifying customs procedures, promoting transparency as well as on alignment with international standards, but there is a distinctive emphasis in APEC on paperless trading, e-commerce, and on facilitating and promoting business people s mobility.[39]

At their 2001 Shanghai meeting, the APEC Trade Ministers adopted the following nine trade facilitation principles that are applicable to the trading of goods and services:[40]

(a) Transparency

(b) Communication and consultation

(c) Simplification, practicability and efficiency

(d) Non-discrimination

(e) Consistency and predictability

(f) Harmonization, standardization and recognition

(g) Modernization and the use of new technology

(h) Due process

(i) Cooperation.

The transparency principle targets the availability and accessibility of information relevant to the trading of goods and services. This comprises laws and regulations as well as information on licensing, certification, qualification and registration requirements, technical standards, guidelines and procedures. According to APEC, these rules and procedures related to trade should be made available to all interested parties, consistently and in a timely manner, through a widely available medium at no, or at least reasonable, cost (e.g., by publishing information on the Internet).[41]

The communication and consultations principle embraces mechanisms for exchanges between authorities and stakeholders, especially between a government, businesses and the trading community.

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[39] Seventeen of APEC s 21 members participate in, or have announced their intention of participating in, the APEC Business Travel Card scheme. Qualified businesspeople can obtain the Travel Card in their home countries, which facilitates the issue of multiple short-term entry visits from other APEC member countries and provides entitlement to fast-track procedures for entry and exit at participating international airports.

[40] The full text of the APEC Trade Facilitation Principles (Annex B) is available at www.apec.org/apec/ministerial_statements/sectoral_ministerial/trade/2001_trade/annex_b.html.

[41] See the Leader s Statement to Implement APEC Transparency Standards, Los Cabos, Mexico, 27 October 2002.

The simplification of rules and procedures seeks to ensure that the rules are no more trade burdensome or restrictive than necessary in achieving their legitimate objectives. APEC principles also state that rules and procedures related to trade should be applied in a consistent, predictable, uniform and non-discretionary manner to minimize uncertainty (e.g., by establishing codes of conduct).

The APEC harmonization and standardization principle is aimed at the acceptance of international standards such as the revised International Convention on the Simplification and Harmonization of Customs Procedures (revised Kyoto Convention of the WCO), the WTO Customs Valuation Agreement or International Standardization Organization (ISO) norms. The recognition of standards is fostered by sectoral MRAs (e.g., the MRA for electrical and electronic equipment).

APEC is open to new business practices and new technology. Member economies are urged to implement the use of Internet technology, electronic data interchange and e-commerce, not only for the publication of information (e.g., the APEC Electronic Individual Action Plan) but also for submitting documents for payment. APEC recommends the implementation of risk management techniques as well as pre-arrival and post clearance audits.

The cooperation principle acknowledges that trade facilitation measures are best implemented through a working partnership between government authorities and business communities, and that trade facilitation requires technical assistance, capacity-building and the sharing of best practices between governments.

(d) Implementation of APEC trade facilitation principles

The development and implementation of trade facilitation measures compliant with the rather general APEC trade facilitation principles are left to the member economies although, as stated above, APEC has set a goal of reducing transaction costs by 5 per cent by 2006 and plans to reduce those costs by a further 5 per cent by 2010. Accordingly, there is a variety of trade facilitation measures that are at different stages of implementation. There is no uniform set of measures that has to be implemented within a specific time frame.[42]

It should also be noted that there is considerable overlap of membership between APEC and other RTAs such as AFTA, the North American Free Trade Agreement (NAFTA) or the Australia New Zealand Closer Economic Relations Trade Agreement (ANZCERTA or CER). The issue of diverse commitments has become more acute in the past few years, with most APEC members having negotiated bilateral and plurilateral

[42] For the status of implementation, fore example, see the case studies of Indonesia, Singapore, the Philippines and Thailand in APEC, 2001 and APEC, 2006, which state that 62 per cent of the TFAP initiatives have been completed and 24 per cent are in progress.

preferential trading arrangements, which increases the potential for the spaghetti bowl effect, including conflicting trade facilitation arrangements.[43]

However, APEC and its member economies have contributed significantly to WTO trade facilitation negotiations by establishing an inventory of trade facilitation measures[44] and by developing some useful examples of best practice.[45]

3. South Asian Association for Regional Cooperation

(a) General remarks on SAARC

In 1985, Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka established SAARC. This was followed by the signing and introduction of the SAARC Preferential Trading Arrangement (SAPTA) in 1993 and 1995, respectively. However, in the four rounds of trade negotiations already held, progress in product-by-product agreements has been slow.

In 1995, the SAARC Council of Ministers agreed on the need to establish a South Asian Free Trade Area. In January 2004, during the twelfth SAARC Summit in Islamabad, it was agreed to move towards a more integrated South Asian Economic Union (SAEU); subsequently, SAFTA[46] was signed and entered into force on 1 January 2006. The first round of tariff reductions was scheduled for July and August 2006, with establishment of the Free Trade Area by January 2016.

(b) Trade facilitation within the SAARC framework

In SAPTA, the contracting parties agreed under Article 6 (Additional Measures) to consider trade facilitation measures to complement SAPTA s Article 4 on reducing tariffs and para-tariffs, and liberalization of trade generally.

In 1996, a Group on Customs Cooperation was established with a mandate to harmonize customs rules and regulations, simplify documentation and procedural requirements, upgrade infrastructure and provide training. In 1998, a Standing Group on Standards, Quality Control and Measurements was established. The Standing Group agreed on the Key Elements of a Regional Action Plan on standards, quality control and measurement.

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[43] Scollay and Gilbert (2001) highlighted the cost-increasing potential of the spaghetti bowl phenomenon , which was popularized by Bhagwati in the 1990s (see, for example, Bhagwati, 1995 and Bhagwati, Greenaway and Panagariya, 1998). Spaghetti bowl diagrams of the regional and bilateral trade agreements in the Asia-Pacific region can be found in Feridhanusetyawan, 2005, pp. 10-11.

[44] See contributions in TN/TF/W/6-15, 17-26, 28, 30-34, 36, 38, 42, 44, 47, 49, 62, 67, 70, 80, 83-94.

[45] See national experience papers TN/TF/W/50, 53, 55, 58, 61, 66.

[46] The SAFTA text is available at www.saarc-sec.org/data/agenda/economic/safta/safta%20agreement.pdf.

A draft Regional Agreement on Promotion and Protection of Investment within the SAARC region is under the consideration of member States and is meant to create conditions favourable for promoting and protecting investments in each member State by investors from other member States. In 2004, an Intergovernmental Expert Group was constituted to consider the Agreement on Promotion and Protection of Investment, the establishment of a SAARC Arbitration Council, and a multilateral tax treaty with a scope limited to avoidance of double taxation. The SAARC Secretariat lists all these initiatives on its website under the heading Trade Facilitation Measures ,[47] which indicates that SAARC has a very broad understanding of trade facilitation.

One of the main objectives of SAFTA is the elimination of barriers to trade and the facilitation of cross-border movement of goods; to achieve this objective, SAFTA has indicated its commitment to adopting trade facilitation and related measures.[48] However, despite some institutional developments in trade facilitation areas within the SAARC framework, it is still early days in terms of implementing specific measures.

(c) How trade facilitation is addressed in SAARC

As explained above, SAFTA only suggests possible trade facilitation measures. These suggestions touch on a variety of issues without being specific. Unlike APEC, there are no consistent trade facilitation principles or action plans that would help to clarify and implement the SAFTA trade facilitation measures.

However, even if trade facilitation is not yet addressed in a binding form, the focus on trade facilitation clearly signals the intention of SAFTA with regard to the simplification and harmonization of customs procedures and product standards in accordance with international standardization and, as in APEC, on the simplification of procedures for business visas.

4. Pacific Agreement for Closer Economic Relations

(a) PACER in general

The Pacific Island Forum countries have had duty-free access to the markets of Australia and New Zealand since the 1981 non-reciprocal South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA).

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47 See SAARC website at www.saarc-sec.org.

48 See SAFTA Articles 3.1.a, 3.2.e and 8. Article 8 lists as possible trade facilitation measures the harmonization of standards, reciprocal recognition of tests and product certification, simplification and harmonization of customs clearance procedures, harmonization of customs classification, customs cooperation, simplification and harmonization of import licensing, simplification of banking procedures, transit facilities, removal of barriers to intra-SAARC investments, macroeconomic consultations, rules on fair competition, development of communication systems and transport infrastructure, exceptions to foreign exchange restrictions and simplification of procedures for business visas.

PACER, which was signed in Nauru on 18 August 2001 and which entered into force on 3 October 2002, is a trade and economic cooperation umbrella agreement that applies to all 16 Forum members.[49] Its overall objective is to establish a framework for the gradual trade and economic integration of its members in a way that is supportive of sustainable development among the Pacific island countries. The framework allows the establishment of subsidiary agreements for the creation of free trade areas between members, such as the Pacific Island Country Trade Agreement (PICTA). However, the initial and primary focus of PACER is on development, cooperation and trade facilitation, with a current work programme in the areas of customs, quarantine, standards and conformance.

A significant proportion of the PACER document (Part 3 of the Agreement and Annex 1) relates to trade facilitation. For the Pacific small island countries, a distinctive element beyond the usual trade facilitation goals is the issue of technical assistance and capacity-building. Australia and New Zealand agreed to partially fund a trade facilitation programme, and all signatories agreed that their national programmes should be consistent with other regional and international agreements.

(b) How trade facilitation is addressed in PACER

PACER Article 9 requests all parties to establish detailed programmes for the development, establishment and implementation of trade facilitation measures, which must be consistent with other regional and international agreements and must account for the special needs and resource constraints of the LDCs and small island countries.

PACER Article 10 obliges parties that are WTO members to apply at least the same favourable treatment to all other parties that they are required to provide to WTO members in relation to customs procedures, standards and conformance.[50]

PACER Article 11 deals with financial and technical assistance for developing and implementing - among others - trade facilitation measures. The Pacific Islands Forum Secretariat, which is based in Suva, Fiji, administers the work programme. Australia and New Zealand pledged to support technical assistance with an adequate level of funding to ensure that the Secretariat does not have to divert resources from its other programmes.[51]

PACER also requires that each trade facilitation programme contains objectives, a detailed action plan, a time frame and a sufficient annual budget. To avoid unnecessary

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[49] Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Islands, Tonga, Tuvalu and Vanuatu.

[50] PACER Article 10 includes the same provision regarding sanitary and phytosanitary matters, which, together with some provisions in Annex 1, suggests that PACER has a broader understanding of trade facilitation than WTO.

[51] The amount actually contributed by Australia and New Zealand has been criticized as insufficient by some observers, such as J. Kelsey, 2005, *A People s Guide to the Pacific s Economic Partnership Agreement*, World Council of Churches — Office in the Pacific, Suva, Fiji.

duplication of work, the trade facilitation programmes must be coordinated and integrated with the work of other regional and international organizations, and must use the expertise and standards of such organizations and their members.[52] The Pacific Islands Forum Secretariat has to review the trade facilitation programmes and prepare reports to identify the most beneficial areas for trade facilitation and to ensure consistency.[53] The trade facilitation programmes have to be revised at periodical meetings, which should lead to a formalization of trade facilitation programmes and the conclusion of Memoranda of Understanding between parties.[54] However, the Pacific Islands Forum member countries have the option of not participating in particular trade facilitation programmes or certain aspects of such programmes if they would be unduly onerous or potentially disadvantageous to them.[55]

There is a consultation process for parties that feel that an obligation of a trade facilitation programme has not been, or is not being, fulfilled.[56] However, further dispute resolution procedures are only applicable in so far as they are contained in a formal Memorandum of Understanding between parties.

To sum up, PACER emphasizes the interrelationship between trade facilitation and the need for technical assistance and capacity-building. To what extent national trade facilitation measures and programmes have been implemented is difficult to assess at this stage, because the PACER Secretariat has not yet electronically published reviews of such trade facilitation programmes. PACER also has members with very different levels of economic development. Therefore, it is understandable that PACER follows a flexible approach to trade facilitation, which includes special and differential treatment (SDT) for LDC members as well as technical assistance and capacity-building. Time will tell how successful this flexible, capacity-building approach to trade facilitation reform is.

5. Singapore-Australia Free Trade Agreement

The RTAs discussed so far address a number of trade facilitation measures in a somewhat general or non-binding manner. All of the RTAs face the challenge of bridging significant differences regarding the economic development of their members. In order to gain additional insights into how trade facilitation could be addressed, it is also useful to compare the more flexible approach of regional trade agreements with a more binding and comprehensive bilateral agreement between two countries in the Asia-Pacific region.

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52 PACER Annex 1, Article 1.

53 PACER Annex 1, Article 2.1. The website of the Pacific Islands Forum Secretariat (www.forumsec.org) currently does not show any such report or other documents on trade facilitation.

54 PACER Annex 1, Article 2 in conjunction with PACER Article 16.

55 PACER Annex 1, Article 3.

56 PACER Annex 1, Article 4.

Negotiations for an FTA between Singapore and Australia were launched in November 2000. After 10 formal rounds of negotiations, in November 2002 Singapore and Australia successfully finalized an FTA (ASFTA)[57] that came into force on 28 July 2003.[58]

ASFTA is a comprehensive agreement covering areas such as trade in goods, trade in services, investment, telecommunications, financial services, movement of business persons, government procurement, intellectual property rights, competition policy, e-commerce and education cooperation.

Although ASFTA does not mention the term trade facilitation , it contains a series of detailed provisions that fall under either the WTO definition of trade facilitation and/or the wider understanding as previously discussed. Due to the nature of a bilateral agreement, the implementation of the trade facilitation measures contained in ASFTA is binding and (at least theoretically) enforceable by the dispute settlement mechanism of the agreement.

Chapter 4 of ASFTA deals with customs procedures and aims at their simplification by embracing the practices of the World Customs Organization (WCO) including the Revised Kyoto Convention, and adopting measures such as paperless trading, risk management and sharing of best practices. Chapter 5 on technical regulations and SPS measures aims at the harmonization of technical regulations, taking into account relevant international standards and guidelines by using mutual recognition agreements and sectoral annexes for the implementation of harmonization arrangements.

ASFTA promotes transparency regarding applicable laws and government regulations not only in the context of tariffs and customs but also in most other fields such as telecommunication, competition law, government procurement, trade in services, and investment. Chapter 11 of ASFTA contains measures facilitating the movement of business people and chapter 14 (Electronic Commerce) promotes paperless trading, for example by requiring the parties to make available by 2005 electronic versions of all existing versions of trade administration documents.

Generally speaking, the trade facilitation measures of ASFTA are implemented in the different parts of the agreement (customs, trade in goods and trade of services). Wherever possible, trade facilitation measures refer to multilateral agreements and recognized international standards. The underlying principles are transparency, simplification, harmonization, cooperation and consultation. The trade facilitation measures themselves are formulated concisely, are binding and have a time frame for implementation. As both parties were well-developed economies there was no need for provisions regarding technical assistance or capacity-building. However, cooperation between governments and their agencies is highlighted in several parts of the FTA.

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[57] Australia and Singapore normally use the abbreviation SAFTA for their FTA. However, to avoid any confusion with the South Asia Free Trade Agreement, this chapter uses the abbreviation ASFTA for the Singapore-Australia FTA in accordance with the ESCAP APTIAD online PTA database.

[58] The full text of ASFTA is available at www.fta.gov.sg/fta/pdf/FTA_SAFTA_Agreement.pdf.

6. Comparative analysis of trade facilitation measures covered

Table 2 gives a comparative overview of specific trade facilitation measures addressed in the agreements analysed above. To allow ease of comparison, trade facilitation measures have been categorized here according to GATT Articles V, VIII and X. ASFTA is the only agreement of a binding nature; its trade facilitation measures are clearly stated and have been implemented.

APEC sets quantitative goals for trade facilitation (lower trade transaction costs by 5 per cent between 2001 and 2006, and a further 5 per cent by 2010), and addresses trade facilitation in the form of the (non-binding) APEC principles on trade facilitation as well as in action plans (for example, the 2002 TFAP, CAP and IACs). Although APEC members have, by and large, achieved the first quantitative goal for the 2001-2006 period, the reasons for the success cannot necessarily be ascribed to this particular regional agreement or even be attributed to specific trade facilitation measures, as the implementation of trade facilitation remains at the discretion of the member economies and can be inconsistent and/or limited to specific sectors (e.g., electrical and electronic equipment).

In ASEAN, trade facilitation efforts have remained limited to specific sectors and in general are aspirational. The implementation of framework agreements (for example, the ratification of sectoral protocols) and various trade facilitation measures are not regionally coordinated and depend on the specific efforts of each member country. SAFTA is even less binding and only suggests possible trade facilitation measures without being specific. In PACER, trade facilitation is also addressed in a flexible manner leaving it to the contracting parties to develop specific trade facilitation programmes. The formalized and binding Memoranda of Understanding on Trade Facilitation have not yet been finalized. However, PACER s emphasis on linking trade facilitation reform with specific technical assistance and capacity-building programmes may be instructive for other developing economies.

The successes of ASFTA (a significant increase both in trade between Australia and Singapore and in more harmonized trade facilitation procedures) and APEC (reaching its 5 per cent goal) suggest that clearly formulated trade facilitation principles and measures that are binding, or which at least require a commitment to quantitative outcomes, are more effective than the more aspirational approaches of other agreements such as ASEAN, SAFTA and PACER. However, this assertion needs to be complemented by further research that examines the spaghetti bowl effects of other agreements on members in the ASFTA and APEC agreements, and which seeks to take account of an individual nation s own trade reform agenda regardless of various trade agreements.

B. A template for trade facilitation in future agreements

Based on the comparative analysis of trade facilitation in RTAs, a template for trade facilitation in future agreements (best practice) should encompass two parts: (a) a definition of the underlying trade facilitation principles, and (b) a set of specific, binding and enforceable trade facilitation measures.

Table 2. Comparison of trade facilitation measures[59]

Main areas covered	Trade facilitation measures (or groups of measures)	ASEAN/ AFTA	APEC	SAARC/SAFTA	PACER	ASFTA
Publication and availability of information	Publication of trade regulations	No	Publish customs and other trade-related laws, regulations and guidelines in paper form and electronically	No	No	- Incorporation of GATT Article X - Prompt publication of laws and regulation
	Internet publication	No	Yes	No	No	No explicit provision
	Notification of trade regulations	Notification to ASEAN Secretariat of regulation that affect the facilitation of transit transport of goods	No	No	- Notification to Forum Secretariat of new trade arrangements between parties and of trade negotiations with third parties - Notification to Forum Secretariat of any substantive changes affecting trade among parties	Notification of any changes to mandatory requirements

[59] Table 2 lists trade facilitation measures and principles contained in the compared agreements. The structure of the table (Main areas covered) follows the system used by WTO in its Compilation of Members Trade Facilitation Proposals (TN/TF/W/43/). Although some agreements go beyond the scope of WTO trade facilitation, the authors decided not to list all trade facilitation initiatives in order to ease comparability. The table gives no indication to what extent the measures are implemented by the parties to the agreements, except for the Singapore-Australia FTA, which has been successfully implemented.

Table 2. ***(continued)***

Main areas covered	Trade facilitation measures (or groups of measures)	ASEAN/ AFTA	APEC	SAARC/SAFTA	PACER	ASFTA
Publication and availability of information	Establishment of enquiry points/ Single National Focal Points (SNFP) Other measures to enhance availability and exchange of information	No No	Establish inquiry points for customs and other trade procedures - Develop APEC trade facilitation database - Compile information on non-tariff measures - Voluntary peer review - Reports on members trade facilitation efforts - National websites accessible through common web portals such as APEC website	No No	No Annual review of implementation efforts	Contact points to exchange information on mandatory requirements Request for consultation
Time between publication and implementation	Interval between publication and entry into force	No	No	No	No	Publication before or by entry into force of measures with regard to trade in services

Table 2. ***(continued)***

Main areas covered	Trade facilitation measures (or groups of measures)	ASEAN/ AFTA	APEC	SAARC/SAFTA	PACER	ASFTA
Consultation	Prior consultation and comments on new and amended rules	No	Provide opportunities for consultation with stakeholders	No	No	Consultation regarding rules of origin
Advance rulings	Provision of advance rulings	No	Advanced rulings for classification of goods, determination of value, marking and labelling, quotas and any other admissibility requirement	No	No	No
Appeal procedures	Right of appeal	Right of appeal in customs and transit matters	Establish appeal system	No	No	Right of appeal for matters related to eligibility for preferential tariff treatment
	- Release of goods in the event of appeal	No	No	No	No	No
	- Appeal mechanism	Ensure an effective mechanism for the review of decisions (regarding transit only)	- Transparent review and/or judicial process - Publish appeal rulings	No	No	No

Table 2. ***(continued)***

Main areas covered	Trade facilitation measures (or groups of measures)	ASEAN/ AFTA	APEC	SAARC/SAFTA	PACER	ASFTA
Other measures to enhance impartiality, non-discrimination and transparency	Uniform administration of trade regulations	Parties shall ensure the consistent application	- Implement customs and other trade rules in consistent and uniform manner - Avoid discretion by customs and other administration officers	No	No	No
	Maintenance/ reinforcement of integrity and ethical conduct among officials	No	- Draw from the Arusha Declaration of WCO - Implement codes of conduct	No	No	No
Fees and charges connected with importing and exporting	General discipline on fees and charges	No	No	No	Indirectly by urging parties to simplify and liberalize trade	Limitation to approximate cost of services rendered
	Reduction of number and diversity of fees and charges	No	No	No	No	No explicit provision
	Publication/ notification of fees and charges	No	Publication of all trade related rules	No	No	Publication of all trade-related rules

Table 2. ***(continued)***

Main areas covered	Trade facilitation measures (or groups of measures)	ASEAN/ AFTA	APEC	SAARC/SAFTA	PACER	ASFTA
Fees and charges connected with importing and exporting	Prohibition of collection of unpublished fees and charges	No	No	No	No	No
	Periodic review of fees and charges	General review of implementation of liberalization regarding transit transport	No	No	Indirectly by periodic reviews of work programmes	Periodic review of customs procedures
	Other measures	No	No	No	No	- No indirect protection by or fiscal purposes of fees and charges - Abolition of export duties for specific goods
Formalities connected with importing and exporting	Discipline regarding formalities/ procedures and data/documentation requirements	Simplification of customs procedures and requirements	Simplify procedures	Agreement to consider simplification and harmonization of customs clearance procedure	No	Principle of simplification, no explicit measures

Table 2. ***(continued)***

Main areas covered	Trade facilitation measures (or groups of measures)	ASEAN/ AFTA	APEC	SAARC/SAFTA	PACER	ASFTA
Formalities connected with importing and exporting	Reduction of formalities and documentation requirements	Simplification of customs procedures and requirements	Reduce requirements for paper documentation in customs	Use standard forms for customs declarations	No	Principle of simplification, no explicit measures
	Use of international/ regional standards	- ASEAN Customs Declaration Document complies with international standards - Kyoto Convention	Revised Kyoto Convention	Progressive implementation of revised Kyoto Convention	- ...Use their best endeavours to follow international best practice... - Cooperation with regional and international organizations in the development and implementation of agreements on harmonized procedures	- WCO practices and standards including revised Kyoto Convention
	Acceptance of copies and commercially available information	No	No	No	No	No

Table 2. ***(continued)***

Main areas covered	Trade facilitation measures (or groups of measures)	ASEAN/ AFTA	APEC	SAARC/SAFTA	PACER	ASFTA
Formalities connected with importing and exporting	Automation	- Use of ICT - ASEAN e-customs	- Use of common data elements - Paperless trading - Electronic certificates	Implement automated customs clearance procedures and electronic data interchange	No	- Use of paperless trading, taking into account methodologies agreed in APEC and WCO - Electronic means for all reporting requirements
	Single window (one-time submission)	Yes	Establish single-window and web-based electronic access to trade-related documentation and data transmission	No	No	No (Singapore has single-window facilities)
	Other measures	Client Charter	No	No	No	No
Consularization	Prohibition of consular transaction requirements	No	Eliminate consularization and/ or certification by chambers of commerce	No	No	No
Border agency cooperation	Coordination of border activities	Physically adjacent frontier posts to check requirements	No	Arrangements for juxtaposed customs offices	No	No

Table 2. ***(continued)***

Main areas covered	Trade facilitation measures (or groups of measures)	ASEAN/ AFTA	APEC	SAARC/SAFTA	PACER	ASFTA
Release and clearance of goods	Pre-arrival clearance	Yes (Vision 2020)	Not explicitly mentioned	No	No	Not explicitly mentioned
	Expedited procedures for express shipments	No	Yes	No	No	Not explicitly mentioned
	Application of risk management techniques	To apply risk management techniques and check smaller percentage of consignments (Vision 2020)	- Green Channel - swift customs procedures for low-risk cargo - Cargo profiling and/or computerized risk management	No	No	- Low-risk/high-risk goods - Develop further risk management techniques - Sharing of best practices
	Post-clearance audit	ASEAN customs PCA guidelines and best practices	Yes	No	No	Not explicitly mentioned
	Separating release from clearance procedures	Yes (Vision 2020)	No	No	No	No
	Publication of average release and clearance times	Establish accounting and statistical reporting to expedite customs clearance (Vision 2020)	Clearance time studies	No	No	No

Table 2. ***(continued)***

Main areas covered	Trade facilitation measures (or groups of measures)	ASEAN/ AFTA	APEC	SAARC/SAFTA	PACER	ASFTA
Release and clearance of goods	Other measures	No	Establish a surety bond system (similar to ATA Carnet of ICC but for all goods)	Agreement to consider simplification and harmonization of customs clearance procedure	No	No
Tariffs and tariff classification	Schedules	CEPT	Voluntary concessions according to IAP	Yes	- Voluntary tariff liberalization - Periodical review of tariff schedules	Elimination of tariffs/ customs duties
	Objective criteria for tariff classification	ASEAN Harmonized Tariff Nomenclature (AHTN) complies with international standards	Harmonized System (HS) Convention	Agreement to consider harmonization of national customs classification based on HS Convention	No	Application of HS Convention
	Other measures	No	Make available precedent-based rulings in electronic format	No	No	No export duties on certain goods

Table 2. ***(continued)***

Main areas covered	Trade facilitation measures (or groups of measures)	ASEAN/ AFTA	APEC	SAARC/SAFTA	PACER	ASFTA
Matters related to goods in transit	Non-discrimination	Yes (for goods on CEPT list)	No	No	No	No
	Discipline on fees and charges	No	No	No	No	No
	Discipline on transit formalities and documentation requirements	Parties shall endeavour to ensure the simplification of all transit transport procedures and requirements	No	- Introduction of simplified procedures for transit movement of exempted or perishable goods or other goods requiring such clearance	No	No
	Coordination and cooperation	- Parties shall ensure efficient and effective administration of transit transport - Adjacent frontier posts with coordinated working hours - Coordinate examination to avoid repeated unloading and reloading	No	- Agreement to consider the development of transport infrastructure	No	Provisions regarding consignment

Table 2. ***(continued)***

Main areas covered	Trade facilitation measures (or groups of measures)	ASEAN/ AFTA	APEC	SAARC/SAFTA	PACER	ASFTA
Exchange and handling of information	Mechanism for the exchange and handling of information	Use of state-of-the-art information technology compliant with UN/EDIFACT (Vision 2020)	- Use ICT to facilitate movement of goods and people - Remove barriers to, and promote use of e-commerce	- Exchange information - Implement automated customs clearance procedures and electronic data interchange	No	Exchange of information between customs administrations to assist investigation and prevention of infringements of customs law
Customs valuation	Use of international standards	- WTO Customs Valuation Agreement - ASEAN Customs Valuation Implementation Guide	Implement WTO Customs Valuation Agreement	- WTO Customs Valuation Agreement - Exchange information on, and assist with the implementation of WTO CV	No	Customs value determined according to GATT Article VII and WTO Customs Valuation Agreement
Harmonization and standardization	Harmonization of technical standards	- Sectoral harmonization. So far, only standards on safety and electromagnetic compatibility (EMC) have been implemented	- Adopt United Nations/EDIFACT or other standard electronic formats - Align regulation, rules and procedures affecting acceptance of	- Agreement to consider the harmonization of standards based on international standards - Encouragement to accede to the HS Convention	Cooperation with regional and international organizations in the development and implementation of agreements on harmonized standards	- Harmonization of mandatory requirements, taking into account international standards and guidelines - Harmonized

Table 2. ***(continued)***

Main areas covered	Trade facilitation measures (or groups of measures)	ASEAN/ AFTA	APEC	SAARC/SAFTA	PACER	ASFTA
Harmonization and standardization	Harmonization of technical standards	- Technical requirements for vehicles used in transit transport - Use UN/EDIFACT standard	goods on the basis of international standards (e.g., ISO standards)			requirements for certificates of origin
	Mutual recognition of test facilities and certifications	- Sectoral recognition. So far, only the ASEAN Sectoral Mutual Recognition Arrangement for Electrical and Electronic Equipment (ASEAN EEMRA) has been implemented - Mutual recognition of vehicle inspection certificates and driving licences	- Sign on to global MRA on measurement by the International Bureau of Weights and Measures (BIPM) - Implement APEC Electrical and Electronic Mutual Recognition Arrangement (APEC EEMRA)	Agreement to consider the reciprocal recognition of tests and accreditation of testing laboratories	Yes	- Mutual recognition of electronic signatures and digital certificates - Accept equivalence of mandatory requirements, conformity assessments and approval procedures in certain sectors

Table 2. ***(continued)***

Main areas covered	Trade facilitation measures (or groups of measures)	ASEAN/ AFTA	APEC	SAARC/SAFTA	PACER	ASFTA
	Other measures	Harmonization of road traffic regulations in accordance with the Vienna Conventions on Road Traffic, and Road Signs and Signals	- Participate in Asia-Pacific Laboratory Accreditation Cooperation (APLAC) and Pacific Accreditation Cooperation - Participate in global MRA on metrology	Exchange information on the promotion of good classification work infrastructure	- Integrate trade facilitation programmes to make them ... to the extent practicable ... consistent with other regional and international trade facilitation agreements and initiatives ...	Adoption of UNCITRAL Model Law on Electronic Commerce
Cooperation and assistance	Training and human resources development	Training to promote regional uniformity, coordinated action, equivalent treatment and homogeneity (Vision 2020)	Workshops on customs-related issues	Identify national training institutions and training instructors to undertake training programmes in customs administration	No	No
	Technical assistance	Technical assistance to promote equal levels of development among customs administration in order to enhance	Technical assistance, e.g., regarding: - Evaluation and implementation of trade facilitation measures,	(Implicit) technical assistance, e.g., regarding: - Kyoto Convention - Customs valuation - Customs administration	- Develop a programme of work for financial and technical assistance in areas such as trade facilitation	Cooperative activities, technical assistance and capacity-building to address SPS matters

Table 2. ***(continued)***

Main areas covered	Trade facilitation measures (or groups of measures)	ASEAN/ AFTA	APEC	SAARC/SAFTA	PACER	ASFTA
Cooperation and assistance	Technical assistance	regional efficiency, effectiveness and uniformity (Vision 2020)	assessment of trade facilitation costs - WTO customs valuation	- Tariff classification	- Mutual assistance in international forums	
	Capacity-building	No specific details	Capacity-building, e.g., regarding: - Document examination - Development and implementation of standards - Legal infrastructure	(Implicit) capacity-building, e.g., regarding: - Kyoto Convention - Customs valuation - Tariff classification - Training	Development of capacity-building programmes	Cooperative activities, technical assistance and capacity-building to address SPS matters
	Cooperation	Mutual assistance to enhance the effectiveness of customs compliance and to control and reduce smuggling (Vision 2020)	Cooperative initiative on regulatory reform	Promotion of bilateral or plurilateral agreements on customs cooperation to prevent and investigate customs offences	Cooperation deemed appropriate	- Cooperative activities, technical assistance and capacity-building to address SPS matters - Consultation and cooperation regarding rules of origin

Table 2. ***(continued)***

Main areas covered	Trade facilitation measures (or groups of measures)	ASEAN/ AFTA	APEC	SAARC/SAFTA	PACER	ASFTA
Relationship between government and business	Customs/business partnership	- Encourage cooperation and consultation with the private sector - Establish a close relationship with the business community for the mutual benefit of customs control and trade	- Build open, transparent and cooperative partnerships with stakeholders (e.g., customs brokers, shippers, warehouses) - Surveys on customs transparency	No	No	Not explicitly
	Improve business mobility	No	- Streamlining temporary entry (APEC business travel card) - Internet publication of visa information and forms	Agreement to consider the simplification of procedures for business visas	No	- Short-term business visitor visa (single immigration formality) - Long-term visa for intra-corporate transferees

1. Trade facilitation principles

(a) Integration and application

As discussed above, trade facilitation principles can either be listed in a catalogue such as APEC or be integrated in an agreement as in ASFTA. If there are several parties to an agreement with different levels of economic development and different cultural backgrounds, it is advisable to define the underlying trade facilitation principles separately. Either way, the principles should be limited in number, and should comprise general understandings and intentions.

To be effective, the principles have to be translated into concrete measures. In disputes regarding such measures, the principles should be the accepted guidelines in interpreting or applying specific trade facilitation measures.

(b) Model trade facilitation principles

The following trade facilitation principles recur in most modern RTAs and are therefore potentially instructive as model trade facilitation principles for future trade agreement negotiations.

(i) Compliance with multilateral agreements

As a general rule, any trade facilitation action should be designed to comply with existing and future multilateral agreements. The WTO framework already addresses various aspects of trade facilitation in the wider sense.[60] A WTO agreement on trade facilitation[61] is still under negotiation and depends on a successful conclusion of the negotiations on the Doha Development Agenda. However, RTAs can achieve compliance by making reference to WTO. Other important multilateral agreements such as the revised Kyoto Convention of WCO[62] should be considered in order to avoid a multitude of contradictory standards.

Initiatives to comply with multilateral agreements can be found in AFTA (e.g., Bali Concord II and VAP) and APEC. SAFTA aims at harmonizing standards in accordance with international standards without explicitly referring to multilateral agreements and PACER request programmes for trade facilitation measures that are consistent with other international agreements.

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[60] For example, WTO Agreements on Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Customs Valuation, Pre-shipment Inspection, Rules of Origin and Import Licensing Procedures.

[61] To clarify and further develop GATT Articles V, VIII and X.

[62] The International Convention on the Simplification and Harmonization of Customs Procedures (revised Kyoto Convention) was signed in 1999, entered into force on 3 February 2006 and is currently ratified by 46 Contracting Parties.

(ii) Transparency

The principle of transparency is probably one of the most essential tools for building trust and facilitating trade.[63] It calls not only for the publication and accessibility of laws, regulations and decisions affecting international trade (trade regulations),[64] but also for a uniform, consistent and impartial application of such trade regulations and a judicial, arbitral or administrative mechanism to review their application.

Transparency is one of the 2001 APEC trade facilitation principles. Although it is not mentioned explicitly in the other agreements, ASFTA refers to GATT Articles X, and AFTA and PACER require that new or changed trade regulations are notified to the respective secretariats.

(iii) Simplification

Simplification of trade regulations and procedures is not limited to the clearance of goods. The principle of simplification aims in general to reduce the number and diversity of laws, regulations and guidelines related to trade, and to make trade rules and their administration simpler, more practicable, consistent and efficient. It is a common understanding that trade regulations and procedures should not be more restrictive than necessary.[65]

Simplification is another APEC trade facilitation principle, but it also emerges clearly from trade facilitation measures of AFTA, SAFTA and ASFTA (generally in the context with customs formalities, fees and charges). PACER does not mention simplification, but one could argue that the intention to follow international best practices implies some degree of simplification.

(iv) Harmonization and standardization

Most crucial for international trade is the harmonization of regulations and procedures, which should go hand in hand with overall simplification. Again, to achieve the full benefits, harmonization should not be limited to customs.[66] The implementation of uniform classifications,[67] the harmonization of trade regulations in general, and the harmonization and recognition of standards all allow a higher level of automation and use of computer technology, which therefore reduces transaction costs.

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63 See Azhari, 2004.

64 See, for example, GATT 1994 Article X.

65 The APEC Trade Facilitation Principles use the phrase no more burdensome or restrictive than necessary to achieve their legitimate objectives to clarify that trade rules or their complexity should not be used as covert protectionist measures.

66 For example, the WTO Customs Valuation Agreement and the WCO revised Kyoto Convention.

67 For example, ASEAN Harmonized Tariff Nomenclature, WCO Harmonized System Nomenclature (HS 2002, HS 2007).

Harmonization and standardization is a trade facilitation principle of APEC and emanates from AFTA, SAFTA and ASFTA trade facilitation measures concerning customs (e.g., the revised Kyoto Convention) and sectoral harmonization of technical standards. In the case of PACER, standardization and harmonization are again only being implied indirectly (i.e., ... follow international best practice ...).

(v) Cooperation, technical assistance and capacity-building

Cooperation between governments and between a government and the trade community are essential to the design and implementation of efficient trade facilitation measures. Cooperation includes consultation about plans for new or amended trade regulations, the identification of international best practices regarding regulations and their implementation, and communication of information and data relevant to trade.

There are often significant discrepancies regarding the economic development of member States of an RTA and the resources available through an RTA for technical assistance. There is a need in many developing countries and small economies to build capacities by training government officials and members of the trade community to administer and take advantage of new trade facilitation measures.

Setting up appropriate computer systems and databases for exchanges of customs data, or the publication of trade regulations, are essential but costly commitments to assist developing countries and LDCs on such matters. This needs to be clearly established in the principles of any agreement.

PACER emphasizes the general importance of capacity-building and technical assistance. The other agreements also promote cooperation and technical assistance in the context of customs control. APEC, SAFTA and ASFTA also provide for capacity-building measures.

2. Trade facilitation measures

(a) Trade facilitation measures in general

In the RTAs examined, a large number of trade facilitation measures have been proposed. Most of those measures and proposals are quite general and leave - where necessary - the details to separate (lower ranking) agreements or specialist bodies. For example, in SAFTA, a senior official level Committee of Experts (COE) monitors, reviews and facilitates the implementation of the provisions of the agreement. This is reasonable as it ensures the flexibility required to adopt new technologies or improved practices.

(b) Model trade facilitation measures

Table 1 shows a general comparative analysis of the treatment of trade facilitation in the agreements discussed above, whereas table 2 provides a more detailed comparison of specific trade facilitation measures identified. Table 3 provides an overview of the proposed model measures based on key principles, relative cost, level of prioritization and the current likely outcome of multilateral negotiations on these measures.

Table 3. Overview of proposed trade facilitation model measures[a]

Trade facilitation principle	Trade facilitation model measure[b]	Cost[c]	Priority[d]	Main GATT Articles concerned	Expected outcome, WTO
Transparency	Publish trade regulations	Low (if translation, medium-high)	1	Art. X (Publication and Administration of Trade Regulation)	Internet publication
	Ensure dissemination of information relevant to trade	Low	1	Art. X (Publication and Administration of Trade Regulation)	Internet publication, notification to WTO secretariat
	Provide advance rulings in customs matters	Medium	2	Art. X (Publication and Administration of Trade Regulation)	Advance rulings regarding tariff classification and customs valuation
	Establish a mechanism to review decisions	High	2	Art. X (Publication and Administration of Trade Regulation)	Right of appeal
	Apply trade regulations consistently and in a non-discriminatory manner, and guarantee due process	Medium	2	Art. X (Publication and Administration of Trade Regulation)	Right of appeal, code of conduct
Simplification	Minimize/reduce fees and charges in connection with imports or exports	Medium	1	Art. VIII (Fees and Formalities)	Urge discipline regarding fees and charges
	Establish a single window/one-time submission procedure	Medium-high	2	Art. VIII (Fees and Formalities)	Single window
	Implement pre-arrival examination	Medium	1	Art. VIII (Fees and Formalities)	Provision of pre-arrival examination
	Implement PCA	Medium	2	Art. VIII (Fees and Formalities)	Provision of PCA
	Application of risk management techniques	Low	1	Art. VIII (Fees and Formalities)	Trusted trader, green line etc.
	Elimination of pre-shipment inspections and use of customs brokers	Low	1	Art. VIII (Fees and Formalities)	No customs brokers and pre-shipment inspections
	Simplify and reduce customs procedures and documentary requirements	Medium	2	Art. VIII (Fees and Formalities)	Standard customs document, e-customs

Table 3. ***(continued)***

Trade facilitation principle	Trade facilitation model measure[b]	Cost[c]	Priority[d]	Main GATT Articles concerned	Expected outcome, WTO
	Simplify procedures for goods in transit	Medium	1	Art. V (Freedom of Transit)	Non-discriminatory access for landlocked countries
Harmonization	Harmonize customs procedures, documents and customs valuation methods	Medium	1	Art. VIII (Fees and Formalities) Art. VII (Customs Valuation)	Application of WCO standards
	Adopt international standards	Low-medium	3	Art. VIII (Fees and Formalities)	WCO
	Use harmonized tariff classifications	Low	1	Art. VIII (Fees and Formalities)	HS 2002 or HS 2007
	Align national standards with, or adapt to international standards	Medium-high	2	Art. VIII (Fees and Formalities)	No result
	Recognize standards of other countries	Medium	3	Art. VIII (Fees and Formalities)	No result
	Recognize certification and testing facilities of other countries or international organizations	Medium	3	Art. VIII (Fees and Formalities)	No result
Cooperation	Prior consultation on new and amended rules	Low	3	Art. X (Publication and Administration of Trade Regulation) Art. XXII (Consultation)	Consultation recommended (non-binding)
	Ensure cooperation and effective exchanges of information between customs authorities of each country	Medium	2	Art. X (Publication and Administration of Trade Regulation)	Electronic data exchange
	Improve relationships between customs authorities and trading community	Medium	3	-	No result
	Improve mobility of business people	Medium-high	2	-	No result (outside mandate)

Table 3. ***(continued)***

Trade facilitation principle	Trade facilitation model measure[b]	Cost[c]	Priority[d]	Main GATT Articles concerned	Expected outcome, WTO
Use of modern technology	Use of automation and automated systems for customs cargo processing	High	1	Art. VIII (Fees and Formalities)	Use of automated systems
	Use of electronic communication systems	High	1	Art. VIII (Fees and Formalities)	Use of electronic communication
Technical assistance and capacity-building	Provide technical assistance to LDCs	Medium	1[e]	Doha Development Agenda	Technical assistance for LDCs
	Establish international training programmes	Medium	2	—	Not explicit, included in technical assistance and capacity-building
	Build capacity within LDCs	Low	1	Doha Development Agenda	Capacity-building for LDCs

Notes: [a] All statements regarding cost, priorities and expected WTO outcome represent estimations by the author based on the analysis performed in context with this paper. The actual cost and priorities will vary from country to country. Similarly the WTO outcomes depend on the ongoing negotiations. (The authors and the IIBE&L are not responsible for the accuracy of these estimates and refuse any liability for action taken based on these estimates.)

[b] Trade facilitation model measures are described in detail above in the text.

[c] Estimated cost for implementation, assuming there is no pre-existing measure of that type (scale: low-medium-high); see also cost estimates in Duval, 2006, p. 15 and Mo s , 2004.

[d] Suggested priority based on cost/effect considerations (scale: 1 to 3, 1 being the highest priority); see also priority of trade facilitation measures in Duval (2006), p. 20.

[e] Developing countries should request the necessary technical assistance and capacity-building as early as possible.

As part of the analysis of the RTAs in the Asia-Pacific region and the proposals submitted in WTO trade facilitation negotiations,[68] considerable effort has been made to identify best practice measures. Some of the model measures suggested below can be subsumed under more than one trade facilitation principle. To avoid double counting, the authors have used cross-referencing.

The cost and time required to implement the suggested measures depends on the relevant pre-existing conditions in each country. Accordingly, it is very difficult to provide general recommendations on how to prioritize and time the implementation of specific measures. However, table 3 makes some attempt to do so.

Publication and information dissemination via the Internet can normally be achieved quickly and at a limited cost (although it might be that not all documents are available in an official WTO language). The implementation of international standards and procedures (foremost customs standards and procedures) are more costly, and require some technical assistance and capacity-building. Probably the most expensive and time-consuming measures to implement concern the implementation of due process, right of appeal, advance ruling, consultation prior to regulation, code of conduct, and cooperation between government agencies and private sector, The reason is that these measures not only require technical assistance and extensive capacity-building and training programmes, but may often involve value and cultural changes within government authorities.

(c) Proposed key model trade facilitation measures

Prioritization and timing aside, the authors propose the following key model trade facilitation measures, which should be examined in conjunction with tables 1 to 3 of this chapter. The wording proposed by the authors in the suggested model measures is drawn from several proposals made by WTO members (World Trade Organization, 2006) and proposed APEC model measures.[69]

(i) Transparency

- Publish trade regulations. Suggested model measure:

  Publish in at least one of the official WTO languages[70] all relevant laws, regulations, administrative guidelines, rulings and decisions affecting

[68] As a guide to the proposed WTO trade facilitation measures, refer to the latest compilation by the WTO Secretariat TN/TF/W/43/Rev. 12 (July 25, 2007).

[69] See APEC, 2005. In the context of the Busan Roadmap towards the Bogor Goals (the promotion of high-quality RTAs and FTAs), APEC leaders committed to developing model measures for RTAs/FTAs for as many commonly accepted chapters as possible by 2008. Although the development of APEC model measures on RTAs/FTAs has not been finalized, detailed proposals for trade facilitation model measures have been submitted.

[70] The official WTO languages are English, French and Spanish. For some developing countries and LDCs, translation and/or publication of all trade regulations could be too demanding. Special and differential treatment could therefore allow for the publication of only summaries of relevant regulations. See Turkey s contribution to the WTO trade facilitation negotiation (TN/TF/W/45).

international trade, including customs procedures, fees and charges to cross-border trade. Make this information widely available and easily accessible (and, where possible, on-line) in a non-discriminatory fashion to any interested party at no cost or at a minimal charge commensurate with the cost of the services rendered.

- Ensure dissemination of information relevant to trade. Suggested model measures:

  (a) Notify other countries and the WTO Secretariat in one of the official WTO languages the introduction of new or the amendment of existing trade regulations that may have a significant impact on trade at the earliest[71] possible stage;

  (b) Allow an adequate period between the publication and the implementation or entry into force of new or amended regulations, except in cases where advance notice is precluded or not practical due to extraordinary circumstances such as imminent threats to national security;

  (c) Establish a national enquiry point responsible for providing all relevant trade-related information or documents to the trading community on a non-discriminatory basis and within an adequate time period.

- Provide advance rulings in customs matters. Suggested model measure:

  Issue upon written request by an applicant with justifiable cause (e.g., importer, exporter or producer) a binding advance ruling on the main elements of importation, such as tariff classification, customs valuation, applicable duties and taxes, together with all relevant facts and supporting documents.[72]

- Establish a mechanism to review decisions. Suggested model measure:

  Establish non-discriminatory procedures for administrative and legal appeal against customs and other agency decisions at reasonable cost. The appellant should have the right to be represented at all stages of the appeal procedure by an agent or a lawyer, and goods subject to an appeal should normally be released provided an adequate guarantee for duty payment, such as a deposit, is provided by the appellant.

- Apply trade regulations consistently and in a non-discriminatory manner, and guarantee due process. Suggested model measures:

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[71] This would imply that changes are notified whenever possible before they enter into force. The advance notice should be long enough in order for the trade community to adapt to the changes; see also next suggested model measure.

[72] The WTO proposal by Singapore regarding advance rulings is very detailed and elaborates how long a ruling should be valid and under what conditions it can be revoked (TN/TF/W/38).

(a) Establish a mechanism for reviewing decisions (see previous proposed measure);

(b) Develop, implement and enforce a code of conduct for customs officials and staff based on international best practice;

(c) Establish a centralized government body in charge of interpreting and providing training in the application of customs regulations (e.g., customs classification and valuation);

(d) Introduce computerized systems to reduce the discretion exercised by customs officials and staff with regard to basic customs decisions.

(ii) Simplification

- Minimize/reduce fees and charges in connection with import or export. Suggested model measures:

  (a) Consolidate, reduce and minimize the number, diversity and amount of fees and charges imposed in connection with importation and exportation;

  (b) Ensure that fees and charges are only imposed on services provided in direct connection with the specific importation or exportation in question;

  (c) Ensure that fees and charges do not exceed the approximate costs of the services provided and are not calculated on an ad valorem basis.

- Establish a single window/one-time submission procedure. Suggested model measure:

  Establish a single window allowing the one-time electronic or paper-based submission of import or export data and documentation requirements.

- Implement pre-arrival examination. Suggested model measure:

  Introduce procedures for filing and examining documents prior to the arrival of goods, enabling importers to claim their goods immediately after importation unless the goods are subject to a physical examination[73] or the submitted documents have to be reviewed.

[73] A risk assessment should determine whether incoming goods are subject to an examination and how thorough the examination will be. (See also the suggested measure, Application of risk management techniques and the proposal by Chile, TN/TF/ W/70).

- Implement PCA. Suggested model measure:

  Introduce procedures that allow customs authorities to first release all or most of the imported goods, and then conduct a thorough review of the documents regarding selected goods.[74]

- Application of risk management techniques. Suggested model measure:

  Conduct examinations and inspections of goods by using established risk assessment and risk management procedures,[75] in particular by classifying importers/exporters into different risk levels, based on their compliance record and by simplifying formalities for authorized traders.

- Elimination of pre-shipment inspections (PSI) and use of customs brokers. Suggested model measures:

  (a) Eliminate any requirement for the mandatory use of PSI;

  (b) Eliminate any requirement for the mandatory use of customs brokers.

- Simplify and reduce customs procedures and documentary requirements. Suggested model measures:

  (a) Simplify and reduce the incidence and complexity of import and export formalities and data requirements to the necessary minimum for enforcing legitimate policy objectives,[76] by applying international standards[77] to the extent possible.

  (b) Attempt to reach agreement on a minimum number of documents required for imports and exports.

- Simplify procedures for goods in transit. Suggested model measure:

  Simplify and reduce formalities, documentation requirements, fees and charges,[78] and controls on goods in transit to the minimum necessary to ensuring national security and health, by applying international standards,[79] and by promoting bilateral and regional transit agreements.

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[74] The selection of goods to be thoroughly examined depends on the risk assessment. (See suggested measure, Application of risk management techniques).

[75] For example, as defined in the WCO Revised Kyoto Convention Guidelines.

[76] For example, assessment and collection of duties and taxes, compilation of statistics, ensuring conformity with sanitary and phytosanitary or technical barriers to trade requirements (see: proposal of New Zealand, Norway and Switzerland, TN/TF/W/36).

[77] For example, WTO Customs Valuation Agreement, HS Conventions (2002 and 2007), UN Layout Key Guidelines, WCO Revised Kyoto Convention, and UN/CEFACT Recommendations.

[78] The majority of proposals in the WTO negotiations aim to eliminate all fees and charges for goods in transport (see documents TN/TF/W/39, TN/TF/W/70 and TN/TF/W/79).

[79] For example, Annex E of the WCO Revised Kyoto Convention, the TIR (Transports Internationaux Routiers) Convention, the ATA Convention, the Istanbul Convention.

(iii) Harmonization

- Harmonize customs procedures, documents and customs valuation methods. Suggested model measure:

  See the above measure, Simplify and reduce customs procedures and documentary requirements .

- Adopt international standards. See suggested measure below, Align national standards with or adapt to international standards .

- Use harmonized tariff classification. Suggested model measure:

  Apply objective criteria for tariff classification of goods by adopting the WCO Harmonized Commodity Description and Coding System (HS Convention 2002/2007).[80]

(iv) Standardization

- Align national standards with, or adapt to international standards. Suggested model measure:

  Align national standards with, or adapt to internationally established standards for quality management and product safety[81] to the extent practicable.

- Recognize standards of other countries. Suggested model measure:

  Recognize, based on mutual recognition agreements, product standards and/or classifications of other countries.

- Recognize certification and testing facilities of other countries or international organizations. Suggested model measure:

  Recognize, based on mutual recognition agreements, the certification bodies and test facilities of other countries and/or international organizations and recognize goods approved by such bodies as being compliant with safety and quality requirements without further testing.

(v) Cooperation

- Prior consultation on new and amended rules. Suggested model measure:

  Provide interested parties, including the private sector, with an opportunity to comment on prospective new or amended trade-related laws and regulations prior to implementation or entry into force of the changes.

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[80] This measure intersects with the principle of transparency (see the measure, Apply trade regulations consistently and in a non-discriminatory manner, and guarantee due process) and the measures to simplify customs procedures (see the measure, Simplify and reduce customs procedures and documentary requirements).

[81] For example, ISO standards.

- Ensure cooperation and effective exchange of information between customs authorities. Suggested model measures:

  (a) Provide for compatible import/export data requirements and data processing systems.

  (b) Integrate official controls into a one-stop shop to the extent possible, for example, by the alignment of working hours and the development of common customs facilities.

- Improve relationships between customs authorities and trading community. Suggested model measures:

  (a) Ensure dissemination of information relevant to trade - establish a national enquiry point responsible for providing all relevant trade-related information or documents to the trading community on a non-discriminatory basis and within an adequate time period (see *(i) Transparency* above);

  (b) Provide advance rulings in customs matters (see *(i) Transparency* above);

  (c) Prior consultation on new and amended rules (see *(v) Cooperation* above).

- Improve the mobility of business people. Suggested model measure:

  Enhance the mobility of business people engaged in conducting trade by facilitating temporary business entry and establishing streamlined immigration clearance procedures for highly-qualified business people.

(vi) Use of modern technology

- Use of automation and automated systems for customs cargo processing. Suggested model measure:

  Establish a mechanism[82] and, to the extent possible, an automated system that facilitates cooperation between customs authorities by exchanging specific information such as customs valuation, tariff classification, accurate description, quantity and origin of goods etc., and where appropriate, supporting documentation such as commercial invoices, packing lists, certificates of origin etc.

- Use of electronic communication (e-customs, submission of documents and payment of duties). Suggested model measure:

  Establish an electronic communication system that allows importers and exporters to submit required data and documentation in standardized

[82] For example, based on the WCO customs data model.

form, pay duties and fees, communicate with customs authorities, and receive documents and decisions from customs authorities.

(vii) Technical assistance and capacity-building

- Provide technical assistance to LDCs and other countries with special needs by:
  - (a) Offering assistance to develop and maintain of official websites;
  - (b) Providing translation services to LDCs that face difficulties in publicizing their trade regulations in an official WTO language;
  - (c) Providing information on previous experiences regarding trade facilitations (best practice, lessons learnt);
  - (d) Offering support for building computerized databases for national trade regulations;
  - (e) Offering assistance in establishing advance ruling regimes;
  - (f) Offering assistance in reviewing current customs procedures and documentation requirements and in implementing international standards;
  - (g) Providing resources and assistance for implementing and maintaining a single window;
  - (h) Offering assistance in implementing risk management systems;
  - (i) Establishing international training programmes for training customs officers (e.g., regarding applying harmonized customs procedures or drafting advance rulings), and exchanges of customs staff for training purposes and for gaining (international) experience.
- Capacity-building within LDCs and other countries with special needs by:
  - (a) Training government officials in developing and maintaining official websites and databases for national trade regulations;
  - (b) Training customs officials in operating a single window;
  - (c) Training customs officials in assessing and managing risks;
  - (d) Organizing courses and seminars to train and enable government officials to implement trade facilitation measures.

While there are undoubtedly other specific measures of merit, the above are put forward as a substantive guide to developing country negotiators for their consideration. As noted above, table 3 attempts to prioritize the above suggested measures. Some further generic implications for developing countries are highlighted in the next section.

C. Some implications for developing countries

1. Harmonization of trade facilitation measures

Trade facilitation can involve national, bilateral and multilateral action. A significant part of trade transaction costs are imposed directly or indirectly by national governments that desire to control trade, in some cases so strictly that traders are strangled by red tape and the associated costs. In such cases, trade facilitation requires national actions and often a change in political attitudes.[83]

Some of the costs associated with trade can be reduced by bilateral initiatives (e.g., coordination of opening times of border crossings), but many current trade facilitation initiatives at the bilateral or plurilateral levels are addressing essentially multilateral issues. Pressure from a major trading partner, promises of reciprocity or of cost underwriting (as in PACER) may contribute to the attractiveness of implementing trade facilitation measures. However, as APEC members and others have recognized that it is crucial to coordinate trade facilitation with multilateral trade facilitation negotiations or at least with the major regional trading partners.

2. Importance of capacity-building and technical assistance

Trade facilitation is beneficial to countries at any level of development insofar as it reduces the costs of trading. There are, however, the costs of introducing some trade facilitation measures, whether in terms of assessing and changing national legislation and regulation, training officials who will implement the measures, hiring new staff or buying equipment.

Ideally, cost considerations should not deter any country from implementing trade facilitation measures, as there is broad consensus among many economists that trade is beneficial for development and for poverty alleviation in developing countries.[84] For the same reason, there is a strong case for developed countries, multilateral institutions and aid donors to fund and staff technical assistance and capacity-building in this area.

A successful assistance programme, however, requires a very careful assessment of the specific capacities, limitations and needs of each country,[85] as that allows it to better estimate the costs of trade facilitation and to tailor the necessary technical assistance. PACER is seen as a model in this regard as it demonstrates the importance of aligning capacity-building needs with trade facilitation reform programmes.

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[83] Positive examples for such changes in the recent past are China and India, whereas countries such as Myanmar, Uzbekistan or the Democratic People s Republic of Korea still have to make internal adjustments to reap the benefits from international trade facilitation.

[84] Duval, 2006, Engman, 2005 and Mo s , 2006.

[85] Mo s , 2006, p. 4.

3. Prioritization and sequencing of trade facilitation measures

Cost and time considerations as well as limited technical and human resources justify prioritizing trade facilitation measures. Duval (2006) found that experts ranked the adoption and use of international standards, the establishment of enquiry points, trade facilitation committees, online publication of trade regulations and procedures, and the establishment of risk management systems as the five top priority measures.

Developing countries have and should use the flexibility during (extended) transition periods to assess what the most appropriate measures are for their economies. However, this should not mean postponing the implementation of measures. Developing countries should commence their efforts by quickly implementing those trade facilitation measures that require little time and other resources.

As stated above, developing countries should try to identify the resources and assistance required for the implementation of more complex or costly measures, and then draft a national roadmap for implementation including a self-binding time frame. If the assessment or the national roadmap indicates the need for technical assistance or support in capacity-building, developing countries should request such assistance from international organizations or more advanced economies as early as possible in the process. Politically, it may be worthwhile to prioritize the implementation of those measures that will provide some immediate benefits to business and the economy.

Estimating the time and cost involved in the implementation of trade facilitation measures depends on how the measures are sequenced.[86] Accordingly, each country should assess not only its priorities regarding measure implementation, but also analyse whether particular sequencing offers greater efficiencies.[87]

4. Special and differential treatment

Special and differential treatment (SDT) has been advocated for less developed countries, and especially for some landlocked or island economies.[88] These types of economies have much to gain from trade facilitation, so it is important that any special treatment should not allow any obstacles to trade facilitation to block desirable measures. Accordingly, such economies should be permitted extended, but finite, transition periods to implement trade facilitation measures rather than being granted exemptions from compliance.

Extended transition periods should not be used as a reason to postpone implementation to the last possible minute. The sooner trade facilitation measures are implemented, the sooner the benefits can be harvested. Implementing trade facilitation

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[86] Duval, 2006, p. 21.

[87] However, experts are still arguing how to best sequence different types trade facilitation measures, see Duval, 2006, pp. 21.

[88] See Annex D of the July Package indicating that SDT should allow linking the extent and timing of commitments to the implementation capacities of developing and least developed countries.

measures as negotiated under WTO is a complex task that affects all levels of government and often requires cultural changes. Such changes are normally easier to introduce gradually.

Mo s (2006) proposed a more sophisticated approach to SDT , which takes into account the individual needs and priorities of each country by making reference to specific terms for each trade facilitation measure, taking into consideration the relative complexity of implementation. Categorizing each trade facilitation measure for each country, according to Mo s , requires a great analytical ef fort before concluding a multilateral agreement; however, it would certainly create more efficient SDT provisions than a one size fits all solution. It would also promote tailored and therefore more cost-effective capacity-building and technical assistance programmes.

5. Implications for multilateral negotiations

A large number of WTO members are actively committed to negotiations on trade facilitation and have proposed a variety of measures.[89] Trade facilitation initiatives in RTAs in the Asia-Pacific region set instructive examples for multilateral negotiations and have arguably been responsible for driving members commitment to multilateral trade facilitation negotiations in WTO.

The analysis of Asia-Pacific region RTAs in this chapter shows that there are several ways to address trade facilitation issues in plurilateral and multilateral treaties. Whether trade facilitation is addressed by general non-binding principles or in specific binding measures depends on a multitude of considerations such as trust, cultural background, level of economic development, available resources or the number of participating parties.

To make trade facilitation successful in general, it appears to be important to set clear and specific targets that are ambitious but achievable, well understood by business and able to significantly reduce the cost of international trade.[90] Furthermore, too much flexibility regarding trade facilitation measures in a multilateral environment can undermine the objectives of simplification and harmonization. This is particularly the case for customs procedures, which are most efficient when intensely supported by modern ICT. Purely aspirational provisions or measures that cannot be enforced are likely to remain paper measures, and actual practice at the border will continue to inhibit trade.[91]

On the other hand, very specific and detailed binding rules in some other areas could be interpreted - in particular in some Asian countries - as a lack of trust and disregard for national sovereignty, or too costly and complicated to implement for developing countries. It is the difficult task of the negotiators to balance these diverging approaches.

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[89] See the latest WTO negotiations on trade facilitation — compilation of members proposals , TN/TF/W/43/Rev. 12 (July 25, 2007).

[90] See Elek, 2005, Annex 1, p. 17.

[91] Such an assessment largely applies to SAARC s trade facilitation efforts. The trade facilitation efforts of PACER still remain at the proposal stage.

Multilateral trade facilitation negotiations should, to the extent possible, take advantage of the pre-existing work and experiences of organizations such as WCO, the United Nations Economic Commission for Europe or UNCTAD, and should refer to internationally established standards such as ISO standards or consider - where appropriate and feasible - established regional standards. These standards are widely accepted and represent established best practices.

Trade facilitation is likely to be non-preferential, as reductions in transaction costs or increases in customs clearance efficiency generally benefit all trade. In practice, however, governments should avoid possible discrimination for technical reasons. For example, the introduction of electronic customs clearance facilities in a country may only benefit exporters to that country who have access to computers. Accordingly, trade facilitation measures have to provide for traders of small volumes or with limited resources (for example, limited or no access to the Internet) by implementing simplified paper-based procedures.

Overall, the key implications highlighted here for developing countries seeking to drive successful trade facilitation reform is to ensure consistency with multilateral negotiations by setting clear, achievable and, where possible, enforceable objectives whether they are set in a bilateral or regional context. While some trade facilitation priorities will undoubtedly be based on cost and ease of implementation, it is important for each country to assess its particular needs, to harmonize and sequence reforms in cooperation with the business sector and key trading partners, and to link capacity-building, technical assistance, and special and differential needs with a specific and detailed trade facilitation reform programme.

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III. TRADE FACILITATION MEASURES IN SOUTH ASIAN FTAs: AN OVERVIEW OF INITIATIVES AND POLICY APPROACHES

*By Sachin Chaturvedi**

Introduction

During recent years, there has been a sudden surge in FTAs among developing countries. This process has provided a new dynamics to global trade flows and has assumed additional significance in light of the suspension of the Doha Round. According to Lamy (2006), more than 50 per cent of global trade is conducted through FTAs. However, not all FTAs can be placed in the same group, as they tend to be very different in terms of contents, focus and coverage. This is especially true of the South-South FTAs (i.e., FTAs among developing countries). Unlike North-South or North-North FTAs, the South-South FTAs (as is evident from those in South Asia) focus on a very limited set of issues, with few exceptions.

The South Asian region has attempted to intensify regional economic integration over the past decade through regional, subregional and bilateral arrangements. At this point, there are at least 23 signed or proposed FTAs in the region; one is a subregional trade grouping, the Bengal Initiative for Multisectoral Techno-Economic Cooperation (BIMSTEC), and one is a regional trade agreement (SAFTA) while the other 21 are bilateral trade agreements.[1]

Unlike many RTAs in different parts of the world, the regional arrangement in South Asia has made little headway in expanding trade within the region. The region has maintained a high growth rate in its external sector performance during the past decade, but growth in intraregional trade is a relatively recent phenomenon. There are various reasons for the slow growth in regional trade in South Asia including a positive list-based approach on the exchange of tariff preferences, small product coverage, narrow margins of preferences and inability to address non-tariff barriers, among many other problems.[2] However, it is very important for adequate attention to be paid to issues such as trade facilitation in the South Asian FTAs, as a lack of infrastructure and access to advanced

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1 See ESCAP Asia-Pacific Trade and Investment Agreements Database (APTIAD).

2 Kumar, 2005.

technology have emerged as the key barriers to the expansion of intraregional trade (Robertson, 2005).

An overview of intraregional trade is given in section A while the status of trade facilitation in the context of the WTO negotiations in South Asia is reviewed in section B. Section C considers the trade facilitation-related provisions in selected South Asian FTAs. Section D comprises the conclusion and policy recommendations.

A. Intraregional trade in South Asia

Intraregional (IR) trade in South Asia[3] as a percentage share of the region s world trade expanded from 3.3 per cent during 1980-1984 to 4.4 per cent during 2000-2004 (table 1). During the same period, IR exports as a share of world exports expanded from 4.4 per cent to 5 per cent while imports expanded from 2.1 per cent to 3.9 per cent. Total exports in absolute terms rose from US$ 556 million during 1980-1984 to US$ 3,872 million during 2000-2004. The growth rate of exports in that period increased from 1.6 per cent to 21.7 per cent. It is clear that growth increased from 2000 to 2004, indicating a growing integration of regional economies. Imports during the same periods also expanded from US$ 523 million to US$ 3,864 million, with the growth rate rising from 5.5 per to more than 18 per cent.

Table 1. Intraregional trade in South Asia, 1980-2004

Intraregional (IR) trade	1980-1984	1985-1989	1990-1994	1995-1999	2000-2004
Exports (US$ million)	556.0	684.0	1 148.0	2 198.0	3 872.0
Imports (US$ million)	523.0	555.0	1 134.0	2 648.0	3 864.0
Growth of exports (%)	1.6	7.7	11.2	10.1	21.7
Growth of imports (%)	5.5	0.1	23.4	14.4	18.1
Share of IR exports in region s exports to world (%)	4.4	3.8	3.6	4.3	5.0
Share of IR imports in region s imports from world (%)	2.1	1.9	2.9	4.0	3.9
IR trade as percentage of region s world trade	3.3	2.9	3.2	4.2	4.4

Source: Mohanty, 2006.

At the individual country level the trend becomes much clearer. Trade transactions between the two major economies, i.e., India and Pakistan, have expanded enormously. From 2003 to 2005, exports by Pakistan to India expanded by 58 per cent while those by

[3] South Asia is defined here using membership of the South Asian Association for Regional Cooperation (SAARC) as of 2006, i.e., Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. Afghanistan joined SAARC in April 2007.

India to Pakistan grew by 47 per cent (table 2). Similarly, imports by Pakistan from India during 2004-2005 expanded by 65 per cent while imports by India from Pakistan in the same period increased by 40 per cent (table 3). The growth rate of exports by Bangladesh to regional members was also very impressive, viz. Bhutan (19 per cent), India (57 per cent), Pakistan (10 per cent) and Sri Lanka (26 per cent) (table 2). Pakistan s exports to Sri Lanka also grew by 42 per cent. The comprehensive economic cooperation agreement between India and Sri Lanka resulted in exports by Sri Lanka to India expanded by more than 41 per cent while exports by India to Sri Lanka grew by 13 per cent. In the case of Maldives, imports from Nepal expanded by almost by 60 per cent while imports by Pakistan from Nepal grew by more than 58 per cent (table 3).

Table 2. Percentage of growth in intraregional flow of exports, 2003-2005

Country	Bangladesh	Bhutan	India	Maldives	Nepal	Pakistan	Sri Lanka
Bangladesh	°	19.4	57.4	°	8.4	10.9	25.9
Bhutan							
India	5.4	13.5	°	11.2	19.2	46.6	13.0
Maldives	°	°	25.1	°	°	°	6.3
Nepal	-19.7	°	15.5	59.8	°	58.5	°
Pakistan	-10.7	-15.2	57.9	-6.6	-13.9	°	41.8
Sri Lanka	-9.1	°	41.3	13.3	-40.2	11.4	

Source: *Direction of Trade 2006*, International Monetary Fund.

Table 3. Percentage of growth in intraregional flow of imports, 2004-2005

Country	Bangladesh	Bhutan	India	Maldives	Nepal	Pakistan	Sri Lanka
Bangladesh	°	86.1	15.3	-50.0	-19.7	25.3	4.3
Bhutan							
India	38.7	11.2	°	32.8	15.5	40.1	59.0
Maldives	-50.0	°	28.8	°	59.8	22.5	10.4
Nepal	8.4	°	19.2	°	°	-13.9	-40.2
Pakistan	16.6	-19.6	64.9	-33.5	58.5	°	10.8
Sri Lanka	35.9	°	26.4	0.0	°	36.9°	

Source: *Direction of Trade 2006*, International Monetary Fund.

The dynamics of regional cooperation is supported by the rapid economic expansion which is creating complementarities for trade expansion. The economic expansion in South Asia has shown divergence in performance. The aggregate GDP expanded by 6.4 per cent in 2004 while in 2003 it was 7.8 per cent (Asian Development Outlook, ADO, 2005). In the following year India and Pakistan had high economic growth which boosted

South Asia s GDP growth back to 7.8 per cent in 2005 (ADO, 2006). India accounts for nearly 80 per cent of the subregion s output. India has been able to maintain its high growth momentum with an 8.1 per cent expansion of GDP in 2005. The Pakistan economy also registered an impressive economic growth of 8.4 per cent in the same year (ADO, 2006).

Another way of looking at trade expansion is by counting trucks. This is particularly relevant in South Asia, since there has been concern about the lack of containerized trade in that region. The number of trucks travelling from Bangladesh to Nepal via India increased from 160 in 2003-04 to 290 in 2004-05. At the same time, the number of trucks travelling from Nepal to Bangladesh via India declined from 251 in 2003-04 to 174 in 2005-06 (table 4). The number of trucks from Bhutan to Bangladesh via India amounted to 7,240 during 2004-05 while from Bangladesh to Bhutan the figure was 378 in the same period. The number of containers being imported/exported to/from Nepal to/from third countries via Haldia has increased tenfold, of which 70 per cent comprised exports and 50 per cent comprised imports (ESCAP, 2003). In this situation, several measures have to be taken to ensure compliance with various provisions of GATT Article V. Indeed, the scope and issues covered under Article V on Freedom of Transit have become extremely important as regional trade in South Asia has expanded.

Table 4. Number of truck movements

Route	2003-2004	2004-2005
Bangladesh-India-Bhutan (via Changrabandha and Jaigaon/Chamurchi LCS)	161	378
Bhutan-India-Bangladesh	6 948	7 240
Nepal-India-Bangladesh (via Panitanki-Phulbari LCS)	251	174
Bangladesh-India-Nepal	160	290

Source: Chaturvedi, 2006.

Another interesting feature in South Asian trade is its informal (or unofficial) nature, which according to the latest available data is estimated to be approximately US$ 3 billion.[4] As table 5 shows, informal trade amounts to almost US$ 2,770 million, which is considerably higher than the formal trade figure of US$ 2,246 million. Formal trade is just 10 per cent of the estimated informal trade in Pakistan.[5] Informal trade takes place through different countries such as Singapore, Sri Lanka and Dubai. In brief, intraregional trade is rapidly picking up in the new millennium, and the large untapped trade potential of the region can be harnessed effectively, depending upon the success of the SAFTA process.

4 Taneja, 2004.

5 *Ibid.*

Table 5. India s formal and informal trade with South Asia

(US $ million)

Country	Export		Import		Total trade
	Official	Unofficial	Official	Unofficial	Unofficial
Bangladesh	1 063	299.00	54	14.00	313.00
Bhutan	9	31.35	11	1.23	32.58
Nepal	342	n.a.	156	n.a.	2 160.00
Sri Lanka	564	142.80	47	121.00	263.80
Total SAARC	1 978	473.15	268	136.23	2 769.38

Source: RIS, 2004.

Note: Unofficial trade figures pertain to different years during the 1990s for different countries. Official figures are from 1999.

B. Status of WTO-related trade facilitation measures in South Asia

The current mandate of the Negotiating Group on Trade Facilitation at WTO is to clarify and improve Article V (Freedom of Transit), Article VIII (Fees and Formalities) and Article X (Publication and Administration of Trade Negotiations) of GATT 1994. In the context of intraregional trade in South Asia, infrastructural constraints are a major issue, hence Article V assumes greater significance as most LCS require better infrastructure. In the context of South Asian countries, the evidence regarding the status of trade facilitation measures introduced vis- -vis those that may feature in a future trade facilitation agreement at WTO has been pooled and summarized in this section. The implementation status of trade facilitation measures related to GATT Articles V, VIII and X, following a WTO/WCO self-assessment checklist (for details, see ESCAP, 2006), is given in the annex to this chapter.

1. Bangladesh

In Bangladesh, the Ministry of Finance has the Internal Resources Division, under which the National Board of Revenue works. The National Board of Revenue is the key agency in the formulation of policies and appraisals of tax administration in Bangladesh and is also responsible for international negotiations and interministerial deliberations.[6] With the expansion of trade, Bangladesh has implemented several measures for ensuring trade facilitation. The specific measures as per the WTO/WCO checklist are summarized in the annex to this chapter.

[6] See the website at www.nbr-bd.org.

(a) Article V

Article V has limited relevance in the case of Bangladesh, as it is not bordered by any landlocked country. Although Nepal and Bhutan, which are South Asian landlocked countries, have shown keenness to use two seaports in Bangladesh (Chittagong and Mongla), it is not clear what specific measures have been taken by Bangladesh as part of the proposed Article V, such as those related to documentation, securities and guarantees, seals and identification, and charges on transit goods (Bhattacharya and Hossain, 2006). The role of the private sector in supplementing the efforts at implementing Article V is also unclear. However, Bangladesh has established an extensive network of institutions for border agency coordination.

(b) Article VIII

Fee and charges connected with imports and exports are clearly defined and placed on the Internet. The trading community has to pay to access the information. The charges are in the form of flat rates and the payments are through the automated system for which the World Bank has provided monetary assistance. It is not clear whether Bangladesh has opted for consularization (Bhattacharya and Hossain, 2006). Bangladesh uses ASYCUDA++, which ensures enhanced risk management for selectivity, profiling and intelligence. Also, as part of the customs administration modernization project, which is led by the National Board of Revenue Reforms, the EDI system has been introduced in Bangladesh as per the customs modernization plan.

(c) Article X

In Bangladesh, the customs authority charges a flat rate for supplying information related to trade, which does not reflect the cost of services rendered.[7] However, the Government makes all possible effort to ensure that the information is available to all stakeholders. Information is provided on rules, regulations and, sometimes, changes in them. However, this information is frequently available only in Bengali. The amount of duty is published on the Internet together with details of procedures, the entity accessing the duty and time taken. The Chittagong port authority has initiated a one-stop service to reduce the time taken in documentation and the clearance of goods. Advance ruling and submission of data has yet to be introduced. Bangladesh has made extensive efforts to establish appeal measures at the level of Commissioners (Appeals) and Customs Tribunal.

2. India

India has initiated several measures as part of the Trade Facilitation programme (Chaturvedi, 2006 and Subramaniam, 2005). While most of the measures have already been put in place in the context of Articles VIII and X, the remainder involve significant costs and require careful planning before implementation. In the case of Article V, there are major gaps. In India, the Central Board of Excise and Customs (CBEC), under the

7 *Ibid.*

Ministry of Finance, is the key agency for implementing various trade facilitation-related measures.

(a) Article V

The customs authorities of India require the declaration of all transit goods on the standard declaration form that is available online as well as at the relevant offices. The customs authorities are making an effort to enhance the level of coordination between the various border agencies. As varying degrees of security control are imposed at different points in the country, there is limited use of a simplified transit declaration. Work has also been started on simplifying procedures established for authorized consignors involved in transit procedures. No duty or tax is charged by India on transit goods. Cash deposits are not required for goods in transit, and securities and guarantees are discharged as soon as the necessary requirements have been met.

Transit of goods through India from or to adjacent countries is regulated in accordance with the bilateral trade and transit treaties, and is subject to such restrictions as may be specified by the Directorate-General of Foreign Trade in accordance with international conventions. In order to tackle abuse of the customs transit corridors, the Government of India issues a list of sensitive commodities at periodic intervals, keeping domestic market requirements up as criteria. At present, nine such commodities are identified as sensitive. In the recent past, the Directorate of Revenue Intelligence seized several consignments of such goods worth millions of rupees, which were being channelled towards domestic consumption in India. This has become a major issue, especially with Nepal.

India has signed a formal treaty with Nepal on trade and transit. A treaty signed with Bhutan in 1995 is only a trade treaty that has just been revised to accommodate transit concerns. Efforts are also being made to sign a similar treaty with Afghanistan.[8]

(b) Article VIII

The customs duties that may be levied on imported goods (and export items in certain cases) are either specific or on an ad valorem basis, or at times specific-cum-ad valorem. Regarding formalities connected with importing and exporting, over the years the number of documents and copies required has been reduced. Several initiatives have been implemented in the past year or so aimed at avoiding the duplicate collection of information by the Customs Department. India does not require consularization of documents. An extensive institutional network has been established to ensure border agency coordination. In November 2005, India introduced a system of publishing release and clearance data for different quarters in a particular year; currently, data are being released four times per year. The Ministry of Commerce and Industry has made efforts to harmonize HS codes for facilitating trade.

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8 *Hindustan Times*, 2005.

(c) Article X

A website containing all information related to the customs rules and regulations, as published by the Government, has been launched by CBEC. However, in some cases, there is a time lag between publication on the website and its implementation. In addition, CBEC has introduced institutional mechanisms to ensure consultation at various customs points. The authority for advance ruling was established in 2004 together with the Customs, Excise and Services Tax Appellate Tribunal (CESTAT). A risk management system (RMS) has been introduced at all customs points.

3. Nepal

Nepal introduced major processing reforms in 1985, leading to a wider liberalization of the trade and investment regime. This also led to the introduction of the Automated System for Customs Data (ASYCUDA) in selected customs offices as part of a three-year programme (2003-2006) (Rajkarnikar and others, 2006). Nepal is also making efforts to establish Inland Clearance Depots at various points.

(a) Article V

Many features of this article are not applicable to Nepal, as it is a land-locked country. However, several measures have been launched to facilitate Nepal as a transit trade destination. It has signed a trade transit treaty with India for easy access to Haldia and other ports. A standardized customs transit declaration document has also been introduced, which is in operation with India. With bilateral and multilateral help, efforts are being made to improve the infrastructure and automation of LCS.

(b) Article VIII

In Nepal, no charges are levied on traders who seek information. All fee-related information is widely published by Nepal and is available on the official website of the Customs Department. However, information related to changes in the regulations is not published online. Court judgments are also not available on the website, but are published by law journals.

(c) Article X

The Customs Department has launched a website containing details of laws, regulations, documentary requirement, standing operating practices and tariff classification. Details regarding valuation, duty and tax rates, and fees and charges are also available. However, not all the information is available in English. The information is also unavailable at embassies, consulates and trade missions. In addition, information regarding management plans and rulings is unavailable (see annex to this chapter). Supreme Court decisions are published in the *Nepal Law Journal*. The Customs Department does not publish proposed changes and related information. Extensive measures, including the establishment of help desks, call centres and trade counters, to help customers have been taken by Nepal. A

system for rulings and appeals is in place together with a system for monitoring and evaluation of practices.

4. Pakistan

In Pakistan, the Ministry of Commerce and the Central Board of Revenue launched a National Trade and Transport Facilitation Project in 2001 (Qureshi, 2006) in order to improve the country s commercial and industrial efficiency and competitiveness in trade facilitation. The project was implemented in February 2002. The Central Board of Revenue oversees the reform process of the Pakistan Customs Department, as part of the Customs Administrative Reforms project. Since its inception, the Customs Administrative Reforms project has carried out research and development on enhancing the efficiency of the department through the Pakistan Customs Computerized System (PACCS) while the software applications for the system have been developed by a consortium of three software companies, i.e., Microsoft, PWC Logistics and AOS.[9] The key achievements and the proposed strategies for the relevant GATT Articles are being summarized (Qureshi, 2006).

(a) Article V

As per the National Trade and Transport Facilitation Project, the private sector is being engaged in improving the quicker clearance of goods in transit without any discrimination. A World Bank supported project is being explored for introducing risk assessment and PCA. The existing system outside PACCS requires owners of cargo destined for an upcountry Customs port to file a declaration to Customs at the port of entry. This declaration, called a TP request, is processed by Customs and the cargo is then allowed to move up country.

(b) Article VIII

The goods declaration form as a single administrative document for both export and import is introduced by the Customs Collectorates under the guidance from Central Board of Revenue. Similarly, standardization of documents for port clearance of ships is being attempted through the FAL Convention of the International Maritime Organization.[10] In this regard, training of manpower is also being carried out. Increased attention is being given to automation under the framework of the United Nations Layout Key. Customs procedures are being improved for faster clearance of goods.

In 2002, the Central Board of Revenue introduced customs administrative reforms that set the stage for launching the fully automated PACCS.[11] All declarations are processed by highly advanced and automated processing and risk management systems. All information regarding receipt of requests, cargo clearance etc. is presented online to the trading

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9 World Trade Organization, 2006.

10 *Ibid*.

11 http://www.paccs.gov.pk.

community. Should clarification regarding declarations be deemed necessary, information assistance centres are established. PACCS treats the goods declaration (shipping bill) as a request for a rebate. Forms are not required to be presented to the Customs Department; instead, a Form-E number is entered as a part of the goods declaration. Bank credit advice is not a prerequisite for sanctioning rebate claims.

(c) Article X

Increasingly, all rules and regulations are being provided on the Internet to allow wider access. Tracking through electronic seal and electronic application numbers is also being implemented. PACCS will ensure paperless trade transactions with round-the-clock operations and achieving single-window clearance is envisaged. The implementation of a risk management system through PACCS is also planned.

5. Sri Lanka

In Sri Lanka, several measures addressing trade facilitation-related requirements have been launched by the Department of Commerce, which comes under the Ministry of Trade, Commerce, Consumer Affairs and Marketing Development. The prevailing Sri Lankan position on GATT Articles V, VIII and X is summarized below.[12]

(a) Article V

The Government of Sri Lanka has decided to support the rapid clearance of goods in transit. In this context, a policy of non-discrimination against transit goods is in place, which also ensures simplified clearance procedures. Provisions have also been made for the acceptance of guarantees against the clearance of goods in transit. On a selective basis, risk assessment is launched while pre-arrival clearance is extended only to courier cargo with additional measures for quicker clearance of perishable goods. A PCA scheme has also been introduced.

(b) Article VIII

Efforts are being made to ensure greater transparency and non-discrimination in fees and charges, with provisions for online payments, and to reduce the duty bias prevalent between imports and exports. With the partial operation of single-window clearance, the documentation and declaration requirements have been made simple. With regard to declarations, the United Nations Layout Key is being followed with a system that is fully automated. The role of customs handling agents (CHAs) and customs brokers is being streamlined, and it is now possible to collect shipments without the help of brokers. In addition, several other provisions such as pre-shipment inspection (PSI) and consular transactions are being done away with together with licensing, now currently is required for only a few items.

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[12] See Department of Commerce, 2006.

(c) Article X

The mammoth task of publishing trade regulations is being achieved with the help of several stakeholders. A large proportion of this is being done through the Internet. Apart from rules and regulations, penalty provisions as published in the Government Gazette, customs appeals, judgments etc. are being made available. There is a move to eventually establish a single-window enquiry point. However, at this stage, different agencies are maintaining their own enquiry points.

C. Trade facilitation in South Asian FTAs

In addition to their active participation in the multilateral trading system, South Asian countries have increasingly become engaged in preferential trade initiatives at the bilateral or/and regional level (table 6). This section provides a brief review of trade facilitation in BIMSTEC, SAFTA as well as in key bilateral trade agreements, i.e., India-Sri Lanka, Sri Lanka-Pakistan and India-Singapore. An overview of the preferential trade agreements reviewed as well as a comparison of trade facilitation measures and provisions they contain in the context of the WTO negotiations are provided in tables 7-9.

1. South Asian Free Trade Agreement

In the context of rapid economic growth in South Asia, the launch of SAFTA assumes additional importance. South Asia s GDP growth is estimated to have reached 7.8 per cent in 2005, which is much higher than the subregion s actual growth of 7.2 per cent in 2004 (Asian Development Bank, 2006). Empirical studies have shown that despite faster economic growth in the member countries, the potential for regional growth has not been tapped fully (Mohanty, 2006).

The South Asia Free Trade Agreement basically replaced SAPTA, which was over with the completion of three rounds.[13] Actually, during 1995-2003, four SAPTA rounds were launched but only three were successful. SAFTA came into effect on 1 January 2006, with the aim of reducing tariffs for intraregional trade among the seven SAARC members. Pakistan and India are to complete implementation by 2012, Sri Lanka by 2013 and Bangladesh, Bhutan, Maldives and Nepal by 2015.

As summarized in tables 7-9, while SAFTA has some important provision for ensuring trade facilitation in the region, it also misses out on many vital provisions. It calls for prompt publication of rules and regulations, and the identification of enquiry points for exchange of information on mandatory requirements. There are also provisions related to consultation on rules of origin, with emphasis on the simplification of formalities connected with exporting and importing. The agreement also suggests paperless trading, electronic means of reporting and identification of low-risk and high-risk goods.

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[13] http://www.saarc-sec.org/data/summit12/saftaagreement.pdf.

Table 6. Preferential Trade Arrangements in South Asia

Agreements	Status	Notes
BIMSTEC	In force since 1997	Framework Agreement — Regional
SAFTA	In force since 2006	FTA-Regional
SAPTA	In force since 1995	PTA-Regional
ASEAN-India	In force since 2004	Framework Agreement — Country-Bloc
Bhutan-India	In force since 1995	FTA-Bilateral
India-Afghanistan	In force since 2003	PTA-Bilateral
India-Bangladesh	In force since 2006	Framework Agreement — Bilateral
India-Chile	Pending country ratification	PTA-Cross-Continental Bilateral
India-Gulf Cooperation Council (GCC) Framework Agreement	In force since 2006	Framework Agreement - Country-Bloc
India-Japan	Under negotiation since 2007	FTA-Bilateral
India-MERCOSUR	Pending country ratification	Framework Agreement — Country-Bloc
India-Nepal	In force since 1991	PTA-Bilateral
India-Republic of Korea	Under negotiation since 2006	Framework Agreement — Bilateral
India-South African Customs Union (SACU) Trade Agreement	Under negotiation since 2002	PTA-Country-Bloc
India-Singapore	In force since 2005	Framework Agreement — Bilateral
India-Sri Lanka	In force since 2001	FTA-Bilateral
India-Thailand	In force since 2004	Framework Agreement — Bilateral
Pakistan-China	Pending country ratification	FTA-Bilateral
Pakistan-Malaysia	In force since 2006	FTA-Bilateral
Pakistan-Singapore	Under negotiation since 2005	FTA-Bilateral
Pakistan-Sri Lanka	In force since 2005	FTA-Bilateral
APTA	In force since 1976	PTA-Regional
ECOTA	In force since 2003	PTA-Regional
Sri Lanka-Singapore	Under negotiation since 2003	Framework Agreement — Bilateral

Source: APTIAD, http://www.unescap.org/tid/aptiad/, 2007.

Table 7. Overview of selected South Asian FTAs

	SAFTA	BIMSTEC	India-Sri Lanka	Pakistan-Sri Lanka	India-Singapore
Members	Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka.	Bangladesh, Bhutan, India, Myanmar, Nepal, Sri Lanka, Thailand.	India and Sri Lanka.	Pakistan and Sri Lanka.	India and Singapore.
Year of signing, entry into force	2004, (1 January) 2006. Before this, four rounds of SAPTA were completed since 1995.	8 February 2004 while Bangladesh joined in June 2004.	28 December 1998; entered into force on 1 March 2000.	2002, 12 June 2005.	29 June 2005.
Type of agreement	FTA	FTA	FTA	FTA	CECA
Integration	Currently, tariff reductions. Long-term goal: free trade area by 2016. Early harvest programme: non-LDCs (India, Pakistan, Sri Lanka) phase out tariffs for least developed states by 2009 while the LDCs will have until 2016 to remove the impediments.	To strengthen and enhance economic, trade and investment cooperation among the members; progressively liberalize and promote trade in goods and services, create a transparent, liberal and facilitative investment regime; explore new areas and develop appropriate measures for closer cooperation among the members; facilitate	Provides duty-free concessions for a wide range of products under the agreement; grants margin of preferences on the applied rate of general (MFN) tariffs for selected product lines.	Aimed at expanding the scope of the current FTA and is moving towards a comprehensive economic partnership agreement covering trade in services and investment cooperation.	Liberalize trade in goods as per Article XXIV of the GATT and in services as per Article V; establish a transparent, predictable and facilitative investment regime; build upon their commitments at WTO and for Indo-ASEAN linkages.

Table 7. ***(continued)***

	SAFTA	BIMSTEC	India-Sri Lanka	Pakistan-Sri Lanka	India-Singapore
		more effective economic integration of the LDCs in the region; and bridge the development gap between the members.			
Legal base for economic integration and trade facilitation measures	SAFTA agreement, SMC agreements.	As per Article 24, GATT 1994.	Relevant provisions of GATT 1994.	As per Article 24, GATT 1994.	As per Article 24, GATT 1994.
Structure	SMC, comprising the Ministers of Commerce/ Trade; COE on the level of senior economic officials; SAARC Secretariat as secretarial support to SMC and COE.	BIMSTEC Trade Negotiating Committee to establish the programme of negotiations.	Government of India and Government of Sri Lanka.	Pakistan-SL Framework Agreement.	India and Singapore.
Enforcement	Amicable dispute settlement by bilateral consultations, COE acts as Dispute Settlement Body, and appeal against COE recommendations to	Appropriate formal dispute settlement procedures to be established by the members.	Mutually agreed institutional arrangements for effective and smooth implementation of the agreement.	The Department of Commerce of the Ministry of Trade, Commerce and Consumer Affairs is the authority responsible for all	To develop adequate mechanisms to address enforcement-related issues.

Table 7. ***(continued)***

	SAFTA	BIMSTEC	India-Sri Lanka	Pakistan-Sri Lanka	India-Singapore
	SMC (SMC recommendation enforceable by [limited] withdrawal of concessions).			matters related to the implementation of the agreement, including the issuance of Certificates of Origin for products exported under the agreement.	
Tariff reduction	Tariff schedules, use of Sensitive Lists (exemption from tariff schedules).	Fast track and normal track are identified for developing countries and LDC members for reduction of tariffs.	Tariff reduction is discussed in eight Annexes to the Agreement (Annex A, B, C, D-1, D-2, E, F-1 and F-2).	The Negative List of Pakistan comprises 540 HS tariff lines (products) at the six-digit level. Being on the Negative List, these products are not entitled to any tariff concessions when imported from Sri Lanka. The Immediate Concession List contains 206 HS tariff lines (products) at the six-digit level. Sri Lanka will receive 100 per cent duty-free access for these products in	As per India s lists identified in CECA, a list of products under the early harvest programme has been in place since 1 August 2005. There are lists of products for which phased elimination in duties is planned by 1 April 2009; a few other goods on concessional duties with the margin of preference offered by India are given in the list. There is another

Table 7. ***(continued)***

	SAFTA	BIMSTEC	India-Sri Lanka	Pakistan-Sri Lanka	India-Singapore
Tariff reduction				the Pakistan market. The Negative List of Sri Lanka comprises 697 HS tariff lines (products) at the six-digit level; these products will not be entitled to any tariff concessions when exported to Sri Lanka Sri Lanka has listed 102 HS tariff lines at the six-digit level, on which Pakistan will receive 100 per cent duty-free access.	list of products that would work on applied MFN duties, thereby attracting no concession in duty. In the case of Singapore, there would be complete withdrawal of all tariffs with the enforcement of CECA.
Tariff levels	Maximum tariffs by 2008: non-LDCs (India, Pakistan, Sri Lanka), 20 per cent; LDCs, 30 per cent.	Products except those included in the Negative List will be subject to tariff reduction or elimination as per fast track and normal track. In the fast track, each party on its own accord will have the respective applied MFN tariffs	Establish a Free Trade Area for the purpose of free movement of goods between their countries, through elimination of tariffs on the movement of goods.	The products listed in Attachment IV are entitled to receive a preferential duty margin of 20 per cent on the applied MFN duty rate with no quantitative restrictions Sri Lanka has granted Pakistan a Tariff Rate	Convergence to be achieved as per the schedules given in different annexes.

Table 7. ***(continued)***

	SAFTA	BIMSTEC	India-Sri Lanka	Pakistan-Sri Lanka	India-Singapore
		rates gradually reduced. In the normal track, each party will reduce the tariff rates in accordance with mutually agreed rates.		Quota for 6,000 mt of Basmati rice and 1,000 mt of potatoes per calendar year (January-December) on a duty-free basis. However, imports of potatoes are permitted only during Sri Lanka s off-season. (Two thirds to be imported during June-July and one third during October-November each year).	

Table 8. Provisions related to publication and availability of information in South Asian FTAs

Main areas covered	Trade facilitation measures or groups of trade facilitation measures	SAFTA	BIMSTEC	India-Sri Lanka	Pakistan-Sri Lanka	India-Singapore
Publication and availability of information.	Publication of trade regulations.	- Incorporation of GATT Article X - Prompt publication of laws and regulations.	Proposes measures for facilitating trade but makes no explicit mention of measures.	n.a.	n.a.	Prompt publication of laws and regulations.
	Internet publication.	n.a.	n.a.	n.a.	n.a.	Transfer of trade related information in electronic format only. Proposes paperless trading.
	Notification of trade regulation.	Notification of any changes to mandatory requirements.	n.a.	n.a.	n.a.	n.a.
	Establishment of enquiry points/ Single National Focal Points (SNFP).	Contact points to exchange information on mandatory requirements.	n.a.	n.a.	n.a.	No provision.
	Other measures to enhance availability and exchange of information.	Request for consultation.	n.a.	n.a.	n.a.	Specifically suggests that CECA do not require any

Table 8. ***(continued)***

Main areas covered	Trade facilitation measures or groups of trade facilitation measures	SAFTA	BIMSTEC	India-Sri Lanka	Pakistan-Sri Lanka	India-Singapore
						party to publish law enforcement procedures and internal operational guidelines including those related to conducting risk analysis and targeting methodologies.
Time between publication and implementation.	Interval between publication and entry into force.	- Publication before or by entry into force of measures with affect to trade in services.	n.a.	n.a.	n.a.	Not mentioned.
Consultation.	Prior consultation and commenting on new and amended rules.	Consultation regarding rules of origin.	Proposes to develop mechanisms for rules of origin.	- Consultation regarding rules of origin. - Consultation on protecting mutual trade interest. (Article VIII).	- Consultation regarding rules of origin. - Consultation on protecting mutual trade interest (Article VIII)	Mutual verification of certificate of origin (Article 16.7).

Table 8. ***(continued)***

Main areas covered	Trade facilitation measures or groups of trade facilitation measures	SAFTA	BIMSTEC	India-Sri Lanka	Pakistan-Sri Lanka	India-Singapore
Advance rulings.	Provision of advance rulings.	n.a.	n.a.	n.a.	n.a.	Issuance of written advance rulings prior to the importation of goods with due exit clause.
Appeal procedures.	Right of appeal.	Right of appeal for matters relating to eligibility for preferential tariff treatment.	n.a.	Two parties to establish Arbitral Tribunal for binding decision.	Joint committee to be established.	n.a.
	Release of goods in the event of appeal	n.a.	n.a.	n.a.	n.a.	n.a.
	Appeal mechanism.	n.a.	n.a.	n.a.	n.a.	n.a.
Other measures to enhance impartiality, non-discrimination and transparency.	Uniform administration of trade regulations.	n.a.	n.a.	n.a.	n.a.	n.a.
	Maintenance/ reinforcement of integrity and ethical conduct among officials.	n.a.	n.a.	n.a.	n.a.	Sharing of best practices for enhancing each other capacities.

Table 9. Provisions related to imports and exports fees, formalities and procedures in South Asian FTAs

Main areas covered	Trade facilitation measures or groups of trade facilitation measures	SAFTA	BIMSTEC	India-Sri Lanka	Pakistan-Sri Lanka	India-Singapore
Fees and charges connected with importing and exporting.	General discipline on fees and charges.	Limitation to approximate cost of services rendered.	n.a.	n.a.	n.a.	Should cover approximate cost of services rendered.
	Reduction in number and diversity of fees and charges.	n.a.	n.a.	n.a.	n.a.	No mention, but suggests countervailing and antidumping duties be consistent with WTO.
	Publication/ notification of fees and charges.	Publication of all trade related rules.	n.a.	n.a.	n.a.	Publication of all provisions.
	Prohibition of collection of unpublished fees and charges.	n.a.	n.a.	n.a.	n.a.	n.a.
	Periodic review of fees and charges.	Periodic review of customs procedures.	n.a.	n.a.	n.a.	n.a.
	Other measures.	- No indirect protection by or fiscal purposes of fees and charges.	n.a.	n.a.	n.a.	Electronic transmission and digital products to be exempted.

Table 9. ***(continued)***

Main areas covered	Trade facilitation measures or groups of trade facilitation measures	SAFTA	BIMSTEC	India-Sri Lanka	Pakistan-Sri Lanka	India-Singapore
		- Abolition of export duties for specific goods.				
Formalities connected with importing and exporting.	Discipline on formalities/ procedures and data/documentation requirements.	Principle of simplification, no explicit measures.	Principle of simplification, no explicit measures.	n.a.	n.a.	Explicit provisions specifically related to certificate of origin and manpower movement.
	Reduction of formalities and documentation requirements.	Principle of simplification, no explicit measures.	Principle of simplification, no explicit measures	n.a.	n.a.	Proposes electronic transactions.
	Use of international/ regional standards.	WCO practices and standards including revised Kyoto Convention.	Emphasizes on harmonization.	n.a.	n.a.	n.a.
	Acceptance of copies and commercially available information.	n.a.	n.a.	n.a.	n.a.	n.a.

Table 9. ***(continued)***

Main areas covered	Trade facilitation measures or groups of trade facilitation measures	SAFTA	BIMSTEC	India-Sri Lanka	Pakistan-Sri Lanka	India-Singapore
	Automation.	- Use of paperless trading, taking into account methodologies agreed in APEC and WCO. - Electronic means for all reporting requirements.	Proposes faster automation.	n.a.	n.a.	Fully electronic trade transactions.
	Single window (one-time submission).	n.a.	n.a.	n.a.	n.a.	No (Singapore has single-window facilities).
	Other measures.	n.a.	n.a.	n.a.	n.a.	n.a.
Consularization	Prohibition of consular transaction requirements.	n.a.	n.a.	n.a.	n.a.	n.a.
Border agency cooperation.	Coordination of border activities.	n.a.	n.a.	n.a.	n.a.	n.a.
Release and clearance of goods.	Pre-arrival clearance.	n.a.	n.a.	n.a.	n.a.	No provision but reflects on the need in the first paragraph.

Table 9. ***(continued)***

Main areas covered	Trade facilitation measures or groups of trade facilitation measures	SAFTA	BIMSTEC	India-Sri Lanka	Pakistan-Sri Lanka	India-Singapore
	Expedited procedures for express shipments.	n.a.	n.a.	n.a.	n.a.	n.a.
	Application of risk management techniques.	- Low-risk/high-risk goods. - Develop further risk management techniques. - Sharing of best practices.	n.a.	n.a.	n.a.	Identification of low-risk/high-risk goods. Customs compliance at the time of entry will not exceed 5 per cent of total customs transactions.
	Post-clearance audit.	n.a.	n.a.	n.a.	n.a.	n.a.
	Separating release from clearance procedures.	n.a.	n.a.	n.a.	n.a.	n.a.
	Publication of average release and clearance times.	n.a.	n.a.	n.a.	n.a.	Provisions for exchange of information.
	Other measures.	n.a.	n.a.	n.a.	n.a.	Develop risk management techniques.

Table 9. ***(continued)***

Main areas covered	Trade facilitation measures or groups of trade facilitation measures	SAFTA	BIMSTEC	India-Sri Lanka	Pakistan-Sri Lanka	India-Singapore
Tariffs and tariff classification.	Schedules.	Elimination of tariffs/customs duties.		n.a.	n.a.	
	Objective criteria for tariff classification.	Application of HS Convention.		n.a.	n.a.	HS Convention.
	Other measures.	No export duties on certain goods.		n.a.	n.a.	
Matters related to goods in transit.	Non-discrimination.	n.a.		n.a.	n.a.	No discrimination against transit goods.
	Discipline on fees and charges.	n.a.		n.a.	n.a.	No additional fees charged.
	Discipline on transit formalities and documentation requirements.	n.a.		n.a.	n.a.	No additional documentation required. (Article 3.14).
	Coordination and cooperation.	Provisions regarding consignment.		n.a.	n.a.	Mechanism in place.
Exchange and handling of information.	Mechanism for the exchange and handling of information.	Exchange of information between customs administrations to		n.a.	n.a.	- Electronic exchange of information - Confidentiality

Table 9. ***(continued)***

Main areas covered	Trade facilitation measures or groups of trade facilitation measures	SAFTA	BIMSTEC	India-Sri Lanka	Pakistan-Sri Lanka	India-Singapore
		assist in investigation and prevention of customs law infringements.				of information if it adversely affects business interests.
Customs valuation.	Use of international standards.	Customs value determined according to GATT Art. VII and WTO Customs Valuation Agreement.	Broad statement to improve cooperation in this area.	n.a.	n.a.	Article VII of GATT to form the basis.
Harmonization/ standardization.	Harmonization of technical standards.	- Harmonization of mandatory requirements taking into account international standards and guidelines - Harmonised requirements for certificates of origin.	Harmonized requirements for certificates of origin.	n.a.	n.a.	Work towards harmonization of respective mandatory requirements. (Article 5.3).

Table 9. ***(continued)***

Main areas covered	Trade facilitation measures or groups of trade facilitation measures	SAFTA	BIMSTEC	India-Sri Lanka	Pakistan-Sri Lanka	India-Singapore
	Mutual recognition of test facilities/ certification.	- Mutual recognition of electronic signatures and digital certificates - Accept equivalence of mandatory requirements, conformity assessments and approval procedures in certain sectors.	Proposes harmonization	n.a.	n.a.	Explicit provisions mentioned (Article 5.5).
	Other measures.	Adoption of UNCITRAL Model Law on Electronic Commerce.	Refers to promotion of e-commerce.	n.a.	n.a.	WTO Information Technology Agreement to form the basis.
Cooperation/ assistance.	Training and human resources development.	n.a.	n.a.	n.a.	n.a.	Specific provisions for capacity development
	Technical assistance.	Cooperative activities, technical	Proposes measures	n.a.	n.a.	Mutual support.

Table 9. ***(continued)***

Main areas covered	Trade facilitation measures or groups of trade facilitation measures	SAFTA	BIMSTEC	India-Sri Lanka	Pakistan-Sri Lanka	India-Singapore
		assistance and capacity-building to address sanitary and phytosanitary matters.	especially for LDCs in the group.			
	Capacity-building.	Cooperative activities, technical assistance and capacity-building to address sanitary and phytosanitary matters.	Proposes measures especially for LDCs in the group.	n.a.	n.a.	Specific provisions for capacity development.
	Cooperation.	- Cooperative activities, technical assistance and capacity-building to address sanitary and phytosanitary matters. - Consultation and cooperation	- Cooperative activities, technical assistance and capacity-building to address standard-related issues. - Consultation and cooperation	n.a.	n.a.	Consultation and cooperation on rules of origin.

Table 9. ***(continued)***

Main areas covered	Trade facilitation measures or groups of trade facilitation measures	SAFTA	BIMSTEC	India-Sri Lanka	Pakistan-Sri Lanka	India-Singapore
		regarding rules of origin.	regarding rules of origin.			
Relationship, government-business	Customs/business partnership. Improve business mobility.	Not explicitly. - Short-term business visitor visa (single immigration formality). - Long-term visa for intra-corporate transferees.	Improve customs cooperation. Improve business visa-granting process.	n.a. n.a.	n.a. n.a.	Explicit provisions. Mobility of business at sectoral level is defined.

Provisions related to harmonization of standards, technical assistance for LDCs and customs cooperation at the SAARC level are also included. SAARC already has a Group on Customs Cooperation which was set up in 1996 and mandated to harmonize customs rules and regulations, simplify documentation and procedural requirements, improve infrastructure facilities and provide training for human resource development. Four meetings of the Group have been held. A Customs Action Plan has been agreed upon. The 4th Meeting of the Group on Customs Cooperation, held at Faridabad, India on 12 and 13 August 2004, considered the report of the customs consultant engaged to study and make recommendations on measures for simplifying procedures as well as standardizing customs documents and declarations.[14]

2. Bay of Bengal Initiative for Multisectoral Techno-Economic Cooperation

The idea of this regional cooperation agreement was first mooted by Bangladesh, India, Sri Lanka and Thailand at a meeting in Bangkok in June 1997. The Bangkok Declaration of 6 June 1997 on the establishment of Bangladesh-India-Sri Lanka-Thailand Economic Co-operation (BIST-EC) was adopted. Later, in 2004, Nepal and Bhutan also joined and the grouping was then renamed as the Bay of Bengal Initiative for Multisectoral Techno-Economic Cooperation (BIMSTEC),[15] combining some geographically contiguous South Asian and ASEAN countries in the Bay of Bengal.

The 6th BIMSTEC Ministerial Meeting held in Phuket, Thailand in February 2004 provided a major impetus to the grouping with the signing of a Framework Agreement for a BIMSTEC FTA in addition to the entry of Bhutan and Nepal as members. The first BIMSTEC summit, held at Bangkok in July, was another landmark in the evolution of the grouping. The combined size of the BIMSTEC member populations and economies is 1.3 billion and US$ 750 billion. The members are at different levels of economic and industrial development, and they have different natural resource endowments. The potential of intraregional trade remains untapped because of tariff and non-tariff barriers, poor communications and transport links and the lack of information about supply capabilities, among other barriers.

Although BIMSTEC has identified many specific areas for cooperation, the FTA agreement does not contain specific provisions on trade facilitation.[16] It suggests facilitating trade without any explicit elaboration of instruments except for the suggestion of establishing mechanisms for rules of origin and the simplification of formalities connected with importing and exporting. There are some suggestions for harmonization of standards, the introduction of e-commerce, the improvement of customs cooperation as well as technical assistance for LDCs in the group.

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14 www.saarc-sec.org.

15 RIS, 2004.

16 See http://bimstec.org.

3. Selected bilateral FTAs

This section considers in detail three bilateral trade agreements, i.e., the India-Sri Lanka, Sri Lanka-Pakistan and India-Singapore FTAs, as described in tables 7, 8 and 9. Although the trade facilitation-related provisions are limited in the India-Sri Lanka and Pakistan-Sri Lanka FTAs, provisions related to consultation regarding rules of origin are included. They also propose institutional mechanisms for appeal procedures. In the case of the India-Sri Lanka FTA, the two parties established an Arbitration Tribunal for binding decisions on origin. The Pakistan-Sri Lanka FTA proposes the establishment of a joint commission.

The most comprehensive bilateral FTA in the region is the India-Singapore Comprehensive Economic Cooperation Agreement (CECA), which has several provisions enumerating the details of measures to be launched for ensuring trade facilitation.[17] It suggests prompt publication of laws and regulations, transfers of trade-related information in electronic format and, eventually, paperless trading. The introduction of risk analysis, and mutual verification and certification (Article 16.7) are suggested. There is also a provision for advance ruling and sharing of best practices related to impartiality, non-discriminatory practices and transparency. Specific provisions are made in CECA for technical assistance, mutual cooperation for streamlining customs procedures and electronic transfer of data.

D. Implications and conclusion

The high growth rate in South Asia, driven by the strong performance of the region s major economies, is acting as catalyst for enhanced intraregional trade. However, as is clear from the above analysis, most FTAs in the South Asian region do not contain any specific trade facilitation measures. Introduction of these measures in FTAs may be pursued regardless of progress on a WTO trade facilitation agreement, and the region should therefore urgently address the incorporation of trade facilitation measures for sustaining growth in regional trade.

As the above analysis reveals, most of the member countries in the subregion have already proposed implementation of many of the measures included in the WTO/WCO checklist of trade facilitation measures related to Articles V, VIII and X. However, steps may be taken at the regional or bilateral level, both through FTAs and other agreements (e.g., bilateral transit treaties and transport agreements), to accelerate and facilitate the implementation of these measures. FTAs in the South Asian region may also not have the desired impact unless trade facilitation measures are tackled jointly by all FTA members.

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[17] http://app.fta.gov.sg/data//fta/file/India-Singapore%20Comprehensive%20Economic%20Cooperation%20Agreement.pdf.

Measures that emerge as particularly important based on the above review of intraregional trade, and which could be tackled through adequate provisions in regional and bilateral trade and other agreements, include:

(a) Measures related to GATT Article V and other transit trade facilitation measures, including the introduction of risk management and authorized traders provisions in bilateral transit treaties as well as recognition and enforcement of bilateral commercial motor vehicle agreements or acts;

(b) A trade facilitation infrastructure, particularly at LCS;

(c) Security of goods in transit, as some routes still require army protection for cargoes. (Chaturvedi (2006) reported that transportation in the 35-kilometre area between Phulbari in Bangladesh and Panitanki in Nepal requires army support for cargo protection purposes). The containerization of regional trade could also help in addressing some of the security concerns that have been holding back trade development;

(d) Border agency coordination.

Annex

Assessment checklist on measures related to GATT Articles V, VIII and X - South Asia

S.N.	Question	India		Bangladesh		Nepal		Sri Lanka	
		Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments
Questions/issues related mainly to Article X (publication and administration of trade regulations)									
	Publication/availability of information								
1	Are any of the following published?								
	Laws	1		1		1		1	
	Regulations	1		1		1		1	
	Documentary requirements	1		1	Changes	1		1	
	Standard operating practices	1		1	Sectoral	1		1	
	Standard processing times	0	No decision to publish it so far.	1	Three days for PSI	1		0	
	Specific customs procedures	1		1		1		1	
	Tariff classification	1		1		1		1	
	Valuation	0	Provided by local customs office	1	GATT valuation	1		0	
	Exemptions, prohibitions, restrictions	1		1	Statutory Regulatory Orders (SROs)	1		1	
	Duty and tax rates	1		1	Tariff classification/ tax schedule	1		1	

Annex *(continued)*

S.N.	Question	India		Bangladesh		Nepal		Sri Lanka	
		Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments
	Fees and charges	1		1		1		1	
	Administrative arrangements and requirements	1		1		1		1	
	Management plans	1		1	Strategic development plan	0		1	
	Rulings	1		1		0		1	By the stakeholders
	Judicial decisions	0	Published by private publisher	1		1	Supreme Court decisions are published in *Nepal Law Journal*. Decisions of lower level court are not published	1	This is done by private operators
	Agreements with other countries	1		1		1			
2	Is relevant customs and trade-related information made available via the Internet?	1		1		1		1	
3	Is relevant customs and trade-related information made available in:							1	

Annex *(continued)*

S.N.	Question	India		Bangladesh		Nepal		Sri Lanka	
		Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments
	Customs offices	1		1		1		1	
	Embassies	1	Through website	1	Occasionally sent to them	0		Limited	
	Consulates	1	Through website	1	Occasionally sent to them	0		Limited	
	Trade missions/offices	1	Through website	1	Occasionally sent to them	0		1	
	Government buildings/ offices	1		1	Occasionally sent to them	0		1	
	Public buildings/offices	1		1	Occasionally sent to them	0		1	
	Other?		Private publishing houses bring out various customs manuals			0		Largely on the Internet	
4	Is relevant information made available in English, French or Spanish?	1	Only in English	0	Only in Bengali	0		Only in English	
5	Does customs charge for information provided?	0		1	Tk 20 for particular information	0		0	

Annex *(continued)*

S.N.	Question	India		Bangladesh		Nepal		Sri Lanka	
		Response	Comments	Response	Comments	Response	Comments	Response	Comments
		(Yes = 1; No = 0)		(Yes = 1; No = 0)		(Yes = 1; No = 0)		(Yes = 1; No = 0)	
6	When charges are made, are costs limited to only the service provided?	0	Not applicable as no changes are imposed	1				0	
7	Is information relevant to any proposed changes or to new requirements made available sufficiently in advance for interested parties to take account of them?	1	Certain legal provisions are not put out for comments	0		0		1	
8	Does customs publish all proposed changes or new requirements in advance of entry into force?	1		0	The customs authority invites proposals for changes from interest groups during December-January period; this provision closes in February	0		0	
9	Do stakeholders have the opportunity to contribute/ develop/influence/question	1	Not in every case	1	The decision whether or not to take	1		1	

Annex *(continued)*

S.N.	Question	India		Bangladesh		Nepal		Sri Lanka	
		Response	Comments	Response	Comments	Response	Comments	Response	Comments
		(Yes = 1; No = 0)		(Yes = 1; No = 0)		(Yes = 1; No = 0)		(Yes = 1; No = 0)	
	all proposed changes of new requirements in advance of entry into force?				any proposal into account is up to the Government				
10	Does customs invite comments from the public and trade on all proposed changes or new requirements in advance of entry into force?	1	Not in every case	0	Not as such, but new proposals are sought from the stakeholder groups. The final decision is up to the Government. All changes are informed during the budget declaration.	1		0	
11	Has customs established information services such as: Client/help desk Enquiry point	 1 1		 0 0		 1		 0 1	 Stakeholders have their own enquiry points

Annex *(continued)*

S.N.	Question	India		Bangladesh		Nepal		Sri Lanka	
		Response	Comments	Response	Comments	Response	Comments	Response	Comments
		(Yes = 1; No = 0)		(Yes = 1; No = 0)		(Yes = 1; No = 0)		(Yes = 1; No = 0)	
	Customer/trader contacts Call centre Other?	1 1	 Help centres and Watchdog Committees	0 0 0		1 1		1 1 0	
	Rulings								
12	Does a system of national legislation exist for establishing appropriate provisions for binding rulings by customs?	1	Tribunal (CESTAT) is in place	1		1		1	
13	Does national legislation provide for customs to furnish rulings within a specified period?	0	Several cases have been pending for a long period	1		0		0	
14	Are filing processes established with specific time limits?	1		1		1	Only for certain activities and only in Department of Commerce, not in customs offices.	0	

Annex *(continued)*

S.N.	Question	India		Bangladesh		Nepal		Sri Lanka	
		Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments
15	Do ruling procedures provide the opportunity for appeal with review and/or judicial process	1		1	Commissioner (Appeal) and the Customs Tribunal are in place.	1		1	
16	Does the administration provide binding rulings for:								
	Valuation	1		1		1		1	
	Classification	1		1		1		1	
	Origin	1		1		1		1	
	Other Customs purposes?	1		1		1		1	
	Appeals and review								
17	Have internal appeal and review mechanisms been established?	1		1		1		1	
18	Are internal appeal and review mechanisms independent?	1		1		1		1	
19	Have provisions been established for an initial appeal to customs?	1		1		1		1	

Annex *(continued)*

S.N.	Question	India		Bangladesh		Nepal		Sri Lanka	
		Response	Comments	Response	Comments	Response	Comments	Response	Comments
		(Yes = 1; No = 0)		(Yes = 1; No = 0)		(Yes = 1; No = 0)		(Yes = 1; No = 0)	
20	Have provisions been established for a further appeal to an authority independent of customs?	1		1		1		1	
21	Have provisions been established for a final right of appeal to a judicial authority?	1	A quasi-judicial authority is in place	1	May go to the Supreme Court	1		1	
22	Do appeal processes have specific time limits?	0		1	Three months to one year	1		1	
23	Are goods released pending the outcome of an appeal?	0	Releasing goods at least in the case of accredited traders is being considered	1		1	If liabilities are discharged as per ruling	1	
24	Is security or other form of guarantee required?	1		1	Bank guarantee of commercial undertaking	1	The dutiable amount has to be deposited as security before appeal.	1	

Annex *(continued)*

S.N.	Question	India		Bangladesh		Nepal		Sri Lanka	
		Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments
Management									
25	Are systems in place for monitoring and evaluating the performance of customs against established standards and/or indicators?	1		1		1		1	
26	Have training programmes been established for customs clearance procedures	1		1	The Customs Training Academy provides such courses together with refresher courses	1	Not adequately	1	
27	Are all customs staff given training on integrity matters?	1		0		1	But not specifically on integrity	1	
28	Has a Code of Conduct/Code of Ethics been developed and implemented by customs?	1	A Citizen s Charter is in place. However, India is not in favour of including it in WTO.	0	Nothing formal; only the Service Rule for the Civil Servants in Bangladesh is followed	1		1	

Annex *(continued)*

S.N.	Question	India		Bangladesh		Nepal		Sri Lanka	
		Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments
Systems and procedures									
29	Is the customs process automated?	1		1	As part of the ASYCUDA++	1	Not fully	1	ASYCUDA++ and now EDI
30	Is electronic filing of entry documents provided for?	1		1	The direct trader input system	0		1	Five thousand per month
31	Do customs and other agencies share information electronically?	1	Only partially	1	In CD format	0		Partially	
32	Are pre-arrival release procedures used?	1		1	Pre-arrival assessment is done; not clearance	0		1	Partially implemented
33	Does the administration grant immediate release/ clearance procedures to any category of goods?	1		1	Petroleum and perishable goods such as rice, sugar, wheat etc.			1	Risk management being considered

Annex *(continued)*

S.N.	Question	India		Bangladesh		Nepal		Sri Lanka	
		Response	Comments	Response	Comments	Response	Comments	Response	Comments
		(Yes = 1; No = 0)		(Yes = 1; No = 0)		(Yes = 1; No = 0)		(Yes = 1; No = 0)	
34	Does the administration specify a minimum value/ minimum amount of duties and taxes below which no duties and taxes will be collected?	0		1	Specific rate of duty	0		0	
35	Do you have separate expedited procedures for express consignment shipments?	0		1	Petroleum, and perishable goods such as rice, sugar, wheat etc.	0		0	
36	Can data be submitted prior to arrival of the goods?	1		1		1		1	
37	Can goods be released prior to completion of all clearance formalities?	0		1	In some cases	0		0	
38	Are weight or value restrictions imposed on express consignment shipments?	1	Weight restrictions	1	Tariff value for petroleum	0		1	

Annex *(continued)*

S.N.	Question	India		Bangladesh		Nepal		Sri Lanka	
		Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments
39	Does the administration use risk analysis to determine which goods should be examined?	0	This is in the implement-ation phase	1	Parameters are there, but only partly implemented	1	Just initiated on a trial basis for selected goods	1	Partially implemented
40	Do Customs control systems include audit based controls?	1	This is in the implement-ation phase	1	Partly done	1	Just initiated on a trial basis for selected goods	1	
41	Does the Customs administration authorize persons with an appropriate compliance record for simplified and special procedures	1	This is in the implement-ation phase	0		0		0	
42	For authorized persons Can goods be released on the provision of minimum information with full clearance being finalized subsequently-can goods be cleared at the declarant s premises Other		0			0		1	

Annex *(continued)*

S.N.	Question	India		Bangladesh		Nepal		Sri Lanka	
		Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments
Questions/issues related mainly to GATT Article VIII (Fee and Formalities connected with Importing/Exporting)									
43	Does the administration charge for the provision of information to the trade?	0	Freely available	1	Tk 20 per request for information	0		0	
44	Do fees for customs processing reflect the cost of services rendered?	0	Does not arise	0			No fees are charged other than duties and taxes	0	
45	Are fees published?	1		1		1	Refers fees charged by different agencies to issue GSP certificate	1	
	The amount?	1		1				1	
	Time due?	1		1				1	
	Entity assessing the fee?	1		1				1	
	How payment can be made?	1		1				1	
46	Are fee amounts published on the Internet?	0		1		0		1	
Questions/issues related mainly to GATT Article V (Freedom of Transit)									
47	Have international transit systems been implemented?	1		0		0		1	

Annex *(continued)*

S.N.	Question	India		Bangladesh		Nepal		Sri Lanka	
		Response	Comments	Response	Comments	Response	Comments	Response	Comments
		(Yes = 1; No = 0)		(Yes = 1; No = 0)		(Yes = 1; No = 0)		(Yes = 1; No = 0)	
48	Have regional transit systems been implemented?	0		0		0		1	
49	Is the customs territory a landlocked country?	0				1		0	
50	Have transit corridors been established within the customs territory?	1				0		0	
51	Are transit routes prescribed?	1				1	India-Nepal transit treaty has prescribed transit route for Nepal	0	
52	Are transit routes agreed in consultation with trade operators?	0	Consultations at the bilateral government level only			0		0	
53	Is abuse of the customs transit system a concern in the customs territory?	1				0		0	
54	Is a strict route stipulated for all high risk goods?	0				0		0	

Annex *(continued)*

S.N.	Question	India		Bangladesh		Nepal		Sri Lanka	
		Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments
55	Is customs escort required for all high-risk goods?	0				0		0	
56	Are time limits imposed for transit goods?	0	There are no roads, so connectivity is poor			0		0	
57	Are current border posts and customs offices suitably located for effective transit operations within the customs territory?	1				0		0	
58	Are operating hours coordinated with other customs administrations?	1						0	
59	Are controls and responsibilities at border posts coordinated with other border agencies?	1	It is largely at the level of the army and BSF					1	
60	Are controls and responsibilities at border posts coordinated with other country s customs administrations?	0	Automation may improve the ground situation					0	

Annex *(continued)*

S.N.	Question	India		Bangladesh		Nepal		Sri Lanka	
		Response	Comments	Response	Comments	Response	Comments	Response	Comments
		(Yes = 1; No = 0)		(Yes = 1; No = 0)		(Yes = 1; No = 0)		(Yes = 1; No = 0)	
	Documentation								
61	Is a goods declaration required for all goods in	1					Not applicable as Nepal is not a transit country	1	
62	Is a standardized customs transit declaration/document in use?	1				1	This document is used for goods being moved, via India, to and from and Nepal	1	
63	Have documentary requirements for transit coordinated with other border agencies?	0					Not applicable as Nepal is not a transit country	0	
64	Are documentary requirements for transit coordinated with other border agencies?	0					Not applicable as Nepal is not a transit country	0	

Annex *(continued)*

S.N.	Question	India		Bangladesh		Nepal		Sri Lanka	
		Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments
65	Are simplified transit declarations in use?	1	So far, only with Bhutan				Not applicable as Nepal is not a transit country	0	
	Securities and guarantees								
66	Are goods in transit relieved of the payment of duties and taxes?	0	In some cases, traders face octroi, imposed by local authorities at State level				Not applicable as Nepal is not a transit country	0	
67	Are any fees and charges levied in connection with customs transit?	0	On holidays, overtime is charged				Not applicable as Nepal is not a transit country	0	
68	Has an international guarantee system been implemented?	0	Mutual guarantees are provided by national governments				Not applicable as Nepal is not a transit country	0	

Annex *(continued)*

S.N.	Question	India		Bangladesh		Nepal		Sri Lanka	
		Response	Comments	Response	Comments	Response	Comments	Response	Comments
		(Yes = 1; No = 0)		(Yes = 1; No = 0)		(Yes = 1; No = 0)		(Yes = 1; No = 0)	
69	Are securities and/or guarantees required for all goods in transit?	1	Only in the case of sensitive commodities as declared by the Government of India. Currently, there are eight such commodities				Not applicable as Nepal is not a transit country	1	
70	Are cash deposits required for goods in transit?	0					Not applicable as Nepal is not a transit country	0	
71	Are securities and/or guarantees discharged as soon as the obligations have been fulfilled?	1					Not applicable as Nepal is not a transit country	1	

Annex *(continued)*

S.N.	Question	India		Bangladesh		Nepal		Sri Lanka	
		Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments	Response (Yes = 1; No = 0)	Comments
	Examination								
72	Are examinations for goods in transit based on the application of risk assessment?	0	Currently, there is no scope for this in the bilateral treaties				Not applicable as Nepal is not a transit country	1	Selectively
	Authorized trades								
73	Are simplified procedures established for authorized consignors involved in the transit procedure?	0	Same for all goods. However, Government is working to implement it.				Not applicable as Nepal is not a transit country	1	Being implemented exper-imentally
	Seals and fastening								
74	Are seals and identification marks affixed by foreign customs accepted for customs transit operations?	1					Not applicable as Nepal is not a transit country	1	

Source: Expanded by the author from ESCAP, 2006, An exploration of the need for, and cost of selected trade facilitation measures in Asia and the Pacific in the context of the WTO negotiations , in *Studies in Trade and Investment,* No. 57.

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IV. RULES OF ORIGIN IN EMERGING ASIA-PACIFIC PREFERENTIAL TRADE AGREEMENTS: WILL PTAs PROMOTE TRADE AND DEVELOPMENT?

*By William E. James**

Introduction

Mapping of FTAs involving at least one Asian or Pacific developing country reveals that 36 such agreements had been notified to WTO as of March 2006. A further 43 agreements had entered into force but were not yet notified by that date while active negotiations had been launched involving another 43 such agreements.[1] In addition, many other bilateral deals are currently under study. The WTO has also reported that globally 197 preferential trade agreements (PTAs) have been formally notified by member countries and that such agreements may well cover about half of the total world merchandise trade.[2]

There is good reason to be concerned about the proliferation of bilateral trade agreements, especially in the absence of progress at WTO. With a global tariff-cutting formula covering manufactures (by far the bulk of global merchandize trade), and with a similar agreement to reduce agricultural tariffs, once the multilateral liberalization kicks in the margins of preference would be sharply eroded in PTAs. In addition, investment flows would remain relatively undistorted as investors would take into account longer-term prospects for more open global trade. However, without a Doha Round of multilateral liberalization, stormy times may lie ahead for world trade. First, the United States and the European Union may push ahead in attempting to sign bilateral deals with major partners (e.g., the Republic of Korea, Malaysia and India); these deals may be less benign than if negotiated with an active Doha Round in progress. Second, developing countries disappointed by the Doha Round s apparent demise may legitimately pursue cases against the United States and the European Union in WTO over illegal farm subsidies and other practices, which may create a less positive atmosphere for restarting negotiations. Third, developed and developing countries may be tempted into using antidumping measures (and other

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1 See Asian Development Bank, 2006, also Asia-Pacific Trade and Investment Agreement Database at www.unescap.org/tid/aptiad.

2 The actual volume and value of trade that utilizes preferential tariffs is not known with any precision, however. This chapter attempts to provide some evidence on this point in the case of United States preference programmes involving developing countries for which accurate data are available (see section E of this chapter). The 197 PTAs referred to include only those notified and still in force, as perhaps 100 other PTAs notified to GATT/WTO are defunct.

contingent forms of protection such as safeguards or countervailing duty measures) should the global economy slow down, thus further burdening the system and creating more animosity among members.

In this chapter, the main concern is with particular aspects of the PTAs, i.e., the rules of origin, which are essential components of PTAs in order to prevent trade deflection and enforce tariff discrimination (James, 2005). In the absence of such rules, individual members of PTAs would lose tariff policy autonomy, as trade would flow through the member with the lower or lowest MFN tariff and would undercut revenue collection in the members with higher MFN tariffs (Panagariya, 1999). It is also important to recognize that governments regard rules of origin as not simply a technical device to enforce PTAs, but as vital commercial policy instruments (Vermulst and Waer, 1990; and James, 2005).

The failure of the contracting members of WTO to complete the negotiations aimed at harmonizing non-preferential rules of origin, as provided for in the Uruguay Round Agreement on Rules of Origin, is an indication not only of the technical complexity of such rules but is also a reflection of the members desire to retain autonomy in setting product-specific rules of origin in order to protect their industries. The refusal of contracting members to agree to even negotiate harmonization of preferential rules of origin confirms the reservation of such rules as commercial policy tools, and indeed as tools of protection of special interests and sensitive products.

Section A examines the requirements of WTO for notification of PTAs and the information this conveys, particularly with regard to the nature of a PTA. Section B provides a review of newer Asia-Pacific PTAs and their rules of origin, including a systematic exploration of differences between rules of origin regimes followed by specific hub countries - China, Japan, the Republic of Korea, Singapore and Thailand. Section C provides some estimates of how PTA tariff discrimination may affect Asian-Pacific developing countries in key industries, using United States trade and tariff data. Section D examines PTA utilization rates in the United States case by groups of developing countries receiving preferential tariff treatment and an attempt is made to correlate these with different rules of origin. Section E concludes the chapter with some proposals for discipline over preferential rules of origin.

A. WTO requirements for preferential trade agreements

The central principle established in Article I of GATT 1947 is that of non-discrimination or what is referred to as MFN treatment. Trebilcock and Howse (1999) that:

> Under Article I of the GATT, with respect to customs duties or charges of any kind imposed by any country on any other member country, any advantage, favour, privilege, or immunity granted by such country to any product originating in any other country shall be accorded immediately and unconditionally to a like product originating in the territories of all other members.

Exceptions to Article I are allowed under:

(a) GATT Article XXIV - territorial application - frontier traffic - Customs Unions and free trade areas;

(b) The Enabling Clause - differential and more favourable treatment reciprocity and fuller participation of developing countries (established by the decision of contracting members on 28 November 1979 during the Tokyo Round); and

(c) The General Agreement on Trade in Services (GATS) Article V - Economic Integration, as part of the Uruguay Round Agreement.[3]

Each of these three routes of escape from Article I of GATT have requirements of varying degrees and it is those requirements that may allow the choice of escape route to convey useful information about the nature of a PTA.

Specifically, Article XXIV requires:

(a) Notification of Customs Unions and free trade areas to WTO;

(b) Such agreements to cover substantially all (merchandise) trade;

(c) Products exempted from such agreements to be phased into the agreement within a reasonable length of time (usually considered to be, at most, 10 years);

(d) such agreements are forbidden from increasing restrictions on the commerce of non-members relative to the barriers existing prior to the formation of a PTA;

(e) Contracting members to take reasonable measures to ensure that subnational levels of government and authorities within its territories observe the terms of any such agreements.

Since 1994, many FTAs have included some coverage of services in addition to goods, and such agreements must include notification under Article V of GATS in addition to Article XXIV of GATT. The requirements of Article V include notification of such agreements to the WTO Council for Trade in Services, substantial coverage of services sectors as well as the elimination of discriminatory measures among the members of the agreement. It also proscribes such agreements from raising the overall level of barriers in services to non-members compared to the pre-existing situation (prior to the conclusion of the PTA).

The Enabling Clause provides for non-reciprocal preferences such as those under the Generalized System of Preferences (GSP) that are granted to developing countries by developed countries as well as providing for special, more favourable treatment for LDCs

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[3] Exceptions to Article I are explained in, for example, Trebilcock and Howse, 1999. The full texts of these articles and agreements can be downloaded from the WTO homepage at http://www.wto.org/

within any agreements. The Enabling Clause is aimed at encouraging developing countries among the contracting members to enter into regional arrangements covering mutual reduction of tariffs or elimination of non-tariff measures on products imported from one another. Requirements are lighter than under GATT Article XXIV - notification of agreements to WTO, including consultations with any contracting member with regard to any difficulty that may arise from such arrangements. The Clause specifies that developed countries will not expect reciprocation by developing countries and that such an arrangement will not create any impediment to the elimination of tariffs or other restrictions on trade on an MFN basis.

The choice of notifying PTAs under the Enabling Clause as opposed to GATT Article XXIV is available to any reciprocal agreement involving two or more developing country partners. Such a notification usually conveys the information that there are substantial product exemptions in the agreement and that sensitive products are likely to be excluded altogether. Furthermore, the rules and institutional arrangements for the implementation of such light agreements may be presumed to be weak or ill-defined. In the area of rules of origin, PTAs are often vague compared with agreements notified under Article XXIV. Margins of preference are also frequently much more limited than under full-blown free trade agreements, implying that such agreements may have far less actual impact on trade flows (whether in terms of trade creation or of trade diversion).

Non-reciprocal agreements between developed and developing countries and between developed countries and LDCs are potentially of greater consequence than reciprocal agreements among developing countries because of the size of the market and improvement in market access implied. However, the ability of developing countries to take advantage of non-reciprocal agreements may also be a function of the degree of generosity implicit in the rules of origin, as will be seen below.

B. Proliferation of PTAs in Asia and the Pacific, and rules of origin

In mid-2003, former WTO Director-General Supachai Panitchpakdi commissioned a study entitled The future of the WTO: Addressing institutional challenges in the new Millennium (World Trade Organization Consultative Board, 2004, hereafter referred to as the Sutherland Report). The study was chaired by Peter Sutherland, who wrote the report together with seven other eminent trade experts.[4] The Sutherland Report makes the following observation in the chapter 2, The erosion of non-discrimination :

> The choice of unconditional MFN as the defining principle of the GATT reflected widespread disillusionment with the growth of protectionism and especially of bilateral arrangements during the inter-war period. ...key political leaders as well as most students of trade concluded that MFN, and its

[4] J. Bhagwati, K. Botchwey, N. FitzGerald, K. Hamada, J. Jackson, C. Lafer and T. de Montbrial.

> attendant non-discrimination, was the best way to organize international trade. ...Yet nearly five decades after the founding of the GATT, MFN is no longer the rule; it is almost the exception. Certainly, much trade between major economies is conducted on an MFN basis. However, what has been termed the spaghetti bowl of Customs Unions, common markets, regional and bilateral free trade areas, preferences and an endless assortment of miscellaneous trade deals has almost reached the point where MFN treatment is exceptional treatment. Certainly the term might now better be defined as LFN, least favoured nation treatment.

The Sutherland Report held out the hope that WTO could eventually reduce MFN tariffs to zero as a means of mitigating the potentially harmful effect of the proliferation of PTAs; however, this hope has been dashed by the collapse of the Doha Round. A second line of defence against the burgeoning PTAs identified in the Sutherland Report is through a clarification of Article XXIV and a better-organized means of administering its provisions. This is a polite way of stating that it is high time to begin serious enforcement of the requirements of Article XXIV (and similarly, Article V of GATS). However, it is less clear whether or not this line of defence could be activated without a successful conclusion to the Doha Round.[5]

Recent advances in modelling PTAs have shown that membership in PTAs makes member countries less willing to liberalize MFN tariffs on the subset of goods that a country imports under a PTA (called PTA goods) than for non-PTA goods. It and empirically verifies this result in the case of the United States membership in NAFTA and other preference programmes including the Andean Trade Promotion and Drug Eradication Act (ATPDA), Caribbean Basin Initiative (CBI) and GSP.[6] The MFN tariffs worldwide on PTA goods may remain higher than otherwise and worldwide PTAs may make countries less willing to engage in multilateral trade liberalization. It is important to recognize that if this effect can be confirmed empirically it implies that PTAs violate the requirement that any PTA (waiving Article I) must not constitute an impediment to lowering tariffs on an MFN basis, as is pointed out in Limao (2006).

As is shown in the quotation above, the Sutherland Report identifies the spaghetti bowl effect of the proliferation of PTAs and even criticizes restrictive rules of origin in PTAs such as the Generalized System of Preferences. However the Sutherland Report stops short of directly commenting on the issue of preferential rules of origin or of suggesting that such rules of origin be brought under WTO/GATT disciplines. One reason is perhaps the difficulties that have been experienced in the long-stalled attempt to harmonize and

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5 Immediately before the collapse of the Doha Round, WTO Director-General Pascal Lamy on 10 July 2006 welcomed a new WTO agreement on RTAs that was aimed at improving transparency and consistency of RTAs with GATT Article XXIV and GATS Article V. The agreement was meant to be part of the rules component of the Doha Round Agreement, arrived at by the Negotiating Group on Rules. See the WTO homepage at http://www.wto.org/english/news_e/rta_july06_e.htm

6 See Limao, 2006.

further discipline non-preferential rules of origin.[7] It is also true that contracting members vetoed previous efforts to compose a working group on preferential rules of origin and were content with a non-binding statement on preferential rules of origin in GATT 1994 (the Uruguay Round Agreement).

Detailed information on recently notified PTAs is provided by WTO on its website homepage. Agreements notified under Article XXIV and Article V (GATS) provide much more detailed information than those notified under the Enabling Clause. Recent agreements involving at least one ESCAP member country were examined and details of agreements, including chapters covering rules of origin and detailed annexes containing product-specific rules of origin, were obtained for FTAs involving Asia-Pacific hub countries (defined to include China, Japan, the Republic of Korea, Singapore and Thailand). At least two agreements involving each hub could be obtained in detail and these serve as the basis for tables 1-5, which summarize rules of origin provisions in each agreement. The focus for the purposes of this study was to examine rules of origin for manufactured products, as they are more important and complex than for agricultural products and raw materials where the wholly obtained criterion is sufficient to confer origin. For manufactured goods, rules of origin may be of three basic types:

(a) A change in tariff heading (CTH) rule defined at the six-digit HS level;

(b) A value-added (VA) rule, usually defined as a minimum percentage of regional value content necessary to confer origin or by a maximum amount of non-originating content allowed in order to confer origin;

(c) A specified process (SP) rule defined as manufacturing operations that must be undertaken in order to confer origin. It is noteworthy that CTH and VA or SP rules are frequently combined in rules of origin in PTAs, despite the general preference for using a CTH rule in the Uruguay Round Agreement on Rules of Origin.[8]

The purpose of examining in detail the rules of origin in recent Asian-Pacific PTAs in this chapter is to determine the internal consistency of rules of origin within each hub as well as between hubs. The internal consistency of rules of origin would simplify matters should spoke countries in a hub (e.g., Hong Kong, China, and Macao, China) wish to form an FTA. Consistency of rules of origin across major trading hubs would simplify the process of establishing a region-wide FTA - an Asian Free Trade Agreement. Each hub country is taken in turn.

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[7] See James, 2005, and Imagawa and Vermulst, 2005 for detailed accounts of the negotiations on non-preferential rules of origin.

[8] A CTH standard was established for non-preferential rules of origin, with the use of a change in tariff sub-heading (CTSH) rule in instances where assembly was sufficient to confer origin where necessary. See James, 2005, and Imagawa and Vermulst, 2005 for a discussion on this issue.

1. Japan s economic partnership agreements with Mexico and Singapore

Value added and CTH rules are typical in Japan s economic partnership (FTA) agreements with Mexico and Singapore (table 1). However, value-added requirements differ - with 50 per cent most often used for Mexico and 60 per cent for the agreement with Singapore. There is also differing sectoral coverage of value-added in the two agreements. For chapters 85 (electrical machinery) and chapter 86 (transportation equipment) the agreement with Mexico specifies VA thresholds of 50 per cent and, in some transport items, of 65 per cent, while the agreement for chapter 85 with Singapore requires either a CTH or CTSH (change in tariff sub-heading) or a VA of 60 per cent. Transport equipment is excluded from the EPA with Singapore. In clothing, both agreements have different rules: a simple CTH rule for Mexico up to the first $200 million in shipments, after which an SP rule (cutting and sewing or otherwise assembling) becomes required, but a yarn-forward requirement for Singapore.

Table 1. Bilateral FTAs of Japan

Chapter	Mexico	Singapore
22 Beverages and spirits	CTH or VA (Regional, 50%)	CTH and VA (Regional, 60%)
24 Tobacco	CTH and VA (National, 70%)	CTH
28-29 Chemicals	CTH or CTSH and VA (Regional, 50%)	CTH or CTSH or VA (Regional, 60%)
30 Pharmaceuticals	CTH and VA (Regional, 50%)	CTH
57 Textiles	CTH	SP Fibre or Yarn-Forward Rule
62 Clothing apparel	CTH up to US$ 200 million, after which SP rule (cut and sew)	SP Yarn-Forward Rule
85 Electrical machinery	CTH or CTSH and VA (Regional, 50%)	CTH or CTSH or VA (60% regional)
86 Transportation	CTH or VA (Regional, 50%, 65%)	Excluded from EPA
90-91 Precision machinery	CTH or CTSH and VA (Regional, 50%)	CTH or CTSH or VA (Regional, 60%)
93 Arms and ammunition	CTH and VA (Regional, 50%)	CTH

Sources: World Trade Organization Regional Portal and author s compilations.

This is a case of rules of origin providing less favourable treatment for an Asian partner compared to a non-regional partner and raises the issue of whether such discrimination might stymie the efficient development of regional production networks within Asia. For tobacco products (chapter 24), the value-added threshold in the agreement with Mexico is 70 per cent and in this case the treatment of Mexico is less favourable than Singapore. Only national content is counted towards meeting the 70 per cent content requirement - perhaps reflecting the lobbying of Japan s tobacco industry.

2. Bilateral FTAs of the Republic of Korea with Chile and Singapore

The Republic of Korea has concluded two bilateral FTAs (table 2) and these tend to specify value-added and CTH rules in tandem. It is also important to note that the Republic of Korea-Singapore FTA includes a 10-year period for tariff reductions by the Republic of Korea in clothing (chapters 61-62) and over a 5-year period for many textile products (chapters 50-60). Value-added percentages vary according to methodology or formula used in calculations (45 per cent minimum for build-down formula versus 30 per cent for build-up formula) in the agreement with Chile. The value-added requirement is higher in the agreement with Singapore, where typically a minimum of 55 per cent is required. Specified processes (cutting and sewing operations) are required for clothing in addition to CTH and VA rules. The stricter rules of origin coupled with the 10-year phase-out of Republic of Korea tariffs implies discrimination against Singapore compared with Chile and again is not a good precedent for establishment of efficient Asian production networks.

3. Bilateral FTAs of China

China has concluded bilateral FTAs with two territories that are part of China but which remain as separate customs territories, i.e., Hong Kong, China, and Macao, China. These Closer Economic Partnership Agreements appear to have limited coverage in that agricultural products are not extensively granted duty-free access in the Chinese market. In addition, coverage is much less in the agreement with Macao, China than in the Hong Kong, China agreement, reflecting the differences in industrial development between the two territories. For most industrial products, a specified process test is used as the main rule of origin without any value-added or content requirement, as in the case of textiles and clothing. For clothing, the process is sewing or otherwise assembling the garment. Where value-added is used as a rule (in some machinery and electronics products), the amount is consistent at 30 per cent.

4. Singapore s FTAs

Singapore has the most extensive network of FTAs of any country in the Asia-Pacific region (table 4). Not only is Singapore a member of the Association of Southeast Asian Nations (ASEAN) and its 10-member AFTA, and with ASEAN plus agreements with China, the Republic of Korea, Japan and India in the process of negotiations, it has also struck out on its own, reaching numerous bilateral free trade agreements

Table 2. Bilateral FTAs of the Republic of Korea

Chapter	Chile	Singapore
28 Inorganic chemicals	CTH VA (National, 45%, 30%)	CTH
29 Organic chemicals	CTH VA (Regional, 30%)	CTH * Detailed rules of origin
30 Pharmaceuticals	CTH	CTH
31 Fertilizers	CTH VA (National, 45%, 30%)	CTH
32 Dyes	CTH VA (Regional, 45%, 30%)	CTH
38 Misc. chemical products	CTH VA (Regional, 45%, 30%)	CTH VA (Regional, 55%)
61-62 Clothing	SP	CTH VA (Regional, 55%) SP
64 Footwear	CTH VA (Regional, 45%, 30%)	CTH
84 Machinery	CTH VA (Regional, 45%, 30%)	CTH VA (Regional 55%) * Detailed rules of origin
85 Electrical equipment	CTH VA (Regional, 45%, 30%)	CTH VA (Regional, 55%)
86 Transportation	CTH	CTH VA (Regional, 55%)
87 Vehicles	CTH VA (Regional, 45%, 30%)	CTH VA (Regional, 55%)
89 Ships and boats	CTH VA (Regional, 45%, 30%)	CTH VA (Regional, 55%)
93 Arms and ammunition	CTH VA (Regional, 45%, 30%)	CTH

Sources: World Trade Organization Regional Portal and author s compilations.

including with Japan and the Republic of Korea (tables 1 and 2 above). Singapore has concluded three additional FTAs that have been notified and are extensively documented on the WTO homepage, including agreements with the United States, the European Free Trade Association (Iceland, Liechtenstein, Norway and Switzerland) and the Trans-Pacific Special Economic Partnership (SEP) linking Singapore with New Zealand, Chile and Brunei Darussalam (also an ASEAN and AFTA member).

Table 3. Bilateral FTAs of China

Product	Hong Kong, China	Macao, China
Textiles	CTH	CTH
Clothing apparel	SP	SP
Machinery	CTH VA (National, 30%) SP	CTH VA (National, 30%) SP
Chemical products	CTH SP	CTH VA (National, 30%)
Electronics	CTH VA (National, 30%) SP	CTH VA (National, 30%) SP
Pharmaceuticals	CTH SP	Not accessed

Sources: World Trade Organization Regional Portal and author s compilations.

Table 4. Singapore s preferential trade agreements

Chapter	United States	Trans-Pacific SEP	EFTA
1-2 Meat and animals	CTH	CTH	CTH WO
3 Fish and crustaceans	CTH SP	CTH	
4-8 Dairy, fruit and vegetables	CTH	CTH	WO SP
28 Inorganic and organic chemicals	CTH SP * Detailed rules of origin	CTH SP	CTH VA 50% SP
30 Pharmaceuticals	CTH	CTH SP	
32-33 Dyes	CTH SP	CTH VA (Regional, 45%)	CTH VA 50% SP
39 Plastics	CTH SP	CTH VA (Regional, 45%) SP	CTH VA 50% SP
61-62 Clothing	CTH SP	CTH VA (Regional, 50%)	CTH VA 50% SP

Table 4. ***(continued)***

Chapter	United States	Trans-Pacific SEP	EFTA
63 Textiles	CTH SP	CTH VA (Regional, 50%)	VA 50% SP
64 Footwear	CTH VA (Regional, 55%)	CTH VA (Regional, 50%)	VA 40%
74-80 Metals	CTH	CTH VA (Regional, 45%)	CTH VA 50%
84 Machinery	CTH VA (Regional, 45%, 35%)	CTH VA (Regional, 45%)	CTH VA 50%
85 Electrical equipment	CTH VA (Regional, 45%, 35%)	CTH VA (Regional, 45%)	CTH VA 50%
86 Vehicles	CTH VA (Regional, 30%)	CTH VA (Regional, 45%)	CTH VA 50%
88 Aircraft	CTH VA (Regional, 45%, 35%)	CTH	CTH
89 Ships	CTH VA (Regional, 45%, 35%)	CTH VA (Regional, 45%)	CTH VA 50%
93 Arms and ammunition	CTH VA (Regional, 45%, 35%)	CTH VA (Regional, 45%)	VA 50%

Sources: World Trade Organization Regional Portal and author s compilations.

The United States-Singapore FTA is the most detailed, with nearly 300 pages of product-specific rules of origin. In the textiles and clothing category, complex rules of origin were adopted despite the fact that Singapore is a very minor producer and exports little of these products. The FTA with the United States provides some flexibility in allowing choice between build-up (45 per cent) and build-down (35 per cent) to calculate regional content. In vehicles (chapter 86), a less stringent 30 per cent build-up content rule is applied. The four-party Trans-Pacific SEP Free Trade Area has less stringent rules of origin than the other two agreements shown in table 4. However, in the clothing chapters, the rules are inclusive of a CTH, VA of 50 per cent minimum, and cutting and sewing operations. The FTA with the EFTA countries (Iceland, Liechtenstein, Norway and Switzerland) provides mainly for a maximum non-originating content rule of 50 per cent (40 per cent for footwear), and is generally less detailed in the clothing chapters than is the case with the other agreements. The value-added rules are different between the three agreements in specifics, even though the amounts do not vary much in principle.

5. Thailand s bilateral FTAs

Apart from Singapore, Thailand has been the most prolific Asian participant in bilateral FTAs even though it is also a charter member of ASEAN and AFTA. However, Thailand s free trade negotiations with the United States and other partners have been bogged down as a result of the country s recent political problems. Disputes over coverage of agriculture with Japan (Thailand is a major rice exporter and Japan has very high rice trade barriers) and the patenting of pharmaceutical products, in which the United States drug industry has strong interest, have slowed the conclusion of these bilateral negotiations.[9] Nonetheless, Thailand has successfully concluded bilateral FTAs with both CER member countries, Australia and New Zealand (table 5). Both these FTAs have been notified to WTO and have entered into force.

The rules of origin are very detailed in the agreements with Australia and New Zealand, particularly with the former (286 pages of product specific rules). Despite the fact that Australia and New Zealand have their own common rules of origin under CER, they have adopted different approaches in their bilateral agreements with Thailand. Australia has made extensive use of a VA rule in many manufacturing sectors and has adopted higher VA rules for textiles and clothing than New Zealand. This indicates that harmonization and consistency in rules of origin are not a practical priority in bilateral trade negotiations. If CER does not follow a common template, then who will?

The review of product-specific rules of origin for manufactured goods in FTAs entered into recently by major Asian hub economies reveals that rules of origin are different across hubs. Rules of origin are highly idiosyncratic even within agreements entered into by a hub country. The range of VA rules (from 30 per cent at the low end to 70 per cent at the high end) masks even more variation when one examines rules of origin on a product-by-product basis. For example, in textiles there are maximum allowances for non-originating yarn and fabric of 10 per cent of weight in some of these agreements in addition to the overall regional content requirements. Rules of origin in these agreements may not be harmonized across hubs, let alone within hubs. Hence, the spaghetti bowl problem appears to be very serious and will make it extremely difficult for businesses to take advantage of these agreements without incurring significant compliance costs.

C. Tariff discrimination resulting from PTAs: Some examples from industries of interest to developing countries

In a world of very low MFN tariff rates, and few or no non-tariff border barriers to trade, rules of origin would become fairly benign. They would be mainly used to determine direction of trade statistics and enforce contingent measures (prevention of circumvention of antidumping measures) as well as a way to regulate practices such as trans-shipment. However, one of the most important features of PTAs is the margin of tariff preference they

[9] An FTA between Japan and Thailand was finally signed in April 2007, however. See APTIAD for details.

Table 5. Thailand s bilateral free trade agreements

Chapter	Australia	New Zealand
1-2 Meat and animals	CTH	CTH
3 Fish and crustaceans	CTH SP	CTH WO
4-8 Dairy, fruit and vegetables	CTH * Detailed rules of origin	CTH
28 Inorganic and organic chemicals	CTH SP	CTH
30 Pharmaceuticals	CTH	CTH
32-33 Dyes	CTH SP	CTH
39-40 Plastics and rubber	CTH SP	CTH WO
58 Textiles	CTH VA (Regional, 55%)	CTH VA (Regional, 50%)
61-62 Clothing	CTH VA (Regional, 55%) SP	CTH VA (Regional, 50%)
64 Footwear	CTH VA (Regional, 55%)	CTH
74-80 Metals	CTH VA (Regional, 45%-50%)	CTH
84 Machinery	CTH VA (Regional, 40%-45%)	CTH
85 Electrical equipment	CTH VA (Regional, 40%-45%)	CTH
86 Transportation	CTH VA (Regional, 45%)	CTH
87 Vehicles	CTH VA (Regional, 45%)	CTH
88 Aircraft	CTH VA (Regional, 45%)	CTH
89 Ships	CTH VA (Regional, 45%)	CTH
93 Arms and ammunition	CTH VA (Regional, 45%)	CTH

Sources: World Trade Organization Regional Portal and author s compilations.

provide to member countries relative to non-members. It is well known that most countries still maintain high peak tariffs in sensitive industries as well as in agriculture, and that industrial lobbies are well-represented in trade negotiations and legislative matters. In addition to peak tariffs on clothing, textiles and footwear, the escalation of tariffs by degree of processing remains a reality in most countries. Thus, PTAs, particularly full-blown free trade agreements, have potentially strong tariff discrimination against non-members, enforced often by highly restrictive and idiosyncratic rules of origin.

One of the objects of the Doha Development Agenda was to substantially reduce peak tariffs and tariff escalation in manufacturing industries through the Non-Agricultural Market Access (NAMA) negotiations that had adopted the Swiss Formula for tariff reductions, and to compensate LDCs that would see an erosion of their margins of preference by providing them duty-free and quota-free access to major industrial country markets. However, with the potential collapse or a significantly reduced level of ambition of the WTO talks, it may be several years before these goals may be achieved, if at all.

In the meantime, with a proliferation of FTAs, tariff discrimination is a persistent and serious problem of market access, particularly for low- and mid-income developing countries in Asia. This problem is illustrated in the largest market for Asian labour-intensive manufactured exports in the world - the United States.

Actual duty collection data on three major import product categories (clothing, textile intermediate products and footwear) can be obtained from the United States International Trade Commission (USITC) homepage. The duties collected are divided by the customs value of imports in each category for 2005. The resulting percentage of effective duty charged indicates the margin of preference realized by preferential trade partners as opposed to non-preferential suppliers, including Asian suppliers, of these products in the United States market. The tables include preferential suppliers in reciprocal trade agreements (FTAs) such as NAFTA and the Central American Free Trade Agreement-Dominican Republic (CAFTA-DR), but also those enjoying enhanced market access through non-reciprocal special preference programmes: CBI, the Andean Trade Promotion and Drug Eradication Act (ATPDA; referred to herein as ANDEAN) and African Growth and Opportunity Act (AGOA).[10]

The difference between MFN tariffs and preferential tariffs is biggest in the clothing sector, as peak United States tariffs on synthetic fibre clothing top 30 per cent; while tariffs on cotton clothing are somewhat lower, they are still quite high relative to the manufacturing average tariff, frequently 15 per cent or more. Thus, the gap between duties collected on shipments of clothing from competitive Asian suppliers and those collected on shipments from preferential suppliers (table 6) is substantial. On average, non-preferential suppliers to the United States market paid nearly 12 per cent more duty per shipment than preferential suppliers (14.32 per cent versus 2.52 per cent). The potential for trade diversion in the post-quota era in the clothing trade is therefore substantial.

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[10] See table 6 of this chapter for the list of member countries in ANDEAN and AGOA.

Table 6. Import duty paid on shipments of clothing to the United States in the post-quota era

(Units: US$ million; percentage of customs value)

Supplier group/country	Duty paid	Customs value	Duty (%)
Competitive Asian suppliers:			
Indonesia	˚531.33	2 972.42	17.88
Philippines	˚314.71	1 851.05	17.00
Viet Nam	˚464.13	2 736.01	16.97
Bangladesh	˚388.58	2 373.25	16.37
Cambodia	˚280.12	1 713.77	16.35
Sri Lanka	˚272.38	1 693.96	16.08
Pakistan	˚206.44	1 340.76	15.40
India	468.71	3 150.22	14.88
Thailand	˚292.15	2 218.81	13.17
China	˚2 253.06	19 888.44	11.33
Malaysia	˚121.60	1 225.99	9.92
Former Asian large quota holders:			
Taiwan Province of China	˚233.61	1 203.23	19.41
Hong Kong, China	˚650.13	3 353.66	18.29
Macao, China	˚210.07	1 199.32	17.52
Republic of Korea	˚219.38	1 253.15	17.51
Small Asian suppliers			
Mongolia	24.63	134.41	18.32
Lao People s Democratic Republic	˚0.50	2.80	16.08
Nepal	˚9.47	61.49	15.41
Maldives	˚0.38	4.72	8.10
Other major non-preferential suppliers			
Turkey	˚153.49	976.15	15.72
European Union	˚342.22	2 573.49	13.29
Subtotal non-preferential suppliers	7 437.09	51 927.10	14.32
Preferential suppliers:˚			
Canada	˚7.51	1 468.26	0.51
Mexico	36.47	6 321.39	0.58
Israel	˚2.76	292.35	0.94
ANDEAN	30.52	2 014.51	1.52
Jordan	2.94	1 082.55	2.71
AGOA	˚6.91	1 463.32	4.72
CAFTA-DR	439.60	9 193.85	4.78
Egypt	˚35.03	443.94	7.89
Subtotal preferential suppliers	561.74	22 280.17	2.52

Sources: United States International Trade Commission Dataweb and author s compilations.

Notes: Data are for calendar year 2005.

Duty paid percentages reported may differ slightly from calculations inferred from tabular data due to rounding off.

ANDEAN (Andean Trade Preference and Drug Eradication Act) includes Bolivia, Colombia, Ecuador and Peru.

AGOA includes Angola, Benin, Botswana, Burkina Faso, Cameroon, Cape Verde, Chad, Democratic Republic of the Congo, Djibouti, Ethiopia, Gabon, Gambia, Ghana, Guinea, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Uganda and Zambia.

CAFTA-DR includes the Dominican Republic, Guatemala, Costa Rica, El Salvador, Honduras and Nicaragua.

Furthermore, some of the Asian suppliers may move into the preferential camp (particularly the Republic of Korea and Malaysia, and possibly Thailand) and this could increase the difficulties facing suppliers without FTA. In particular, Asian suppliers with low-cost labour such as Bangladesh, Cambodia, Indonesia and Viet Nam face severe tariff discrimination in the United States market. Access to the United States market via GSP may be one avenue for reducing the tariff discrimination inherent in bilateral United States trade programmes and special non-reciprocal PTAs. This issue is examined in section E.

For intermediate textile products, United States MFN tariffs are lower than for clothing but are still frequently in double-digits, leading to a substantial margin of preference for members of preferential arrangements. Asian yarns and fabrics directly compete with United States producers of yarn and fabric in the United States market but must overcome a 10 per cent average effective duty rate versus United States producers (table 7). They also compete with large preferential suppliers such as Mexico and Canada, who effectively pay a miniscule duty rate of about one-quarter of 1 per cent and thus have a margin of preference of nearly 10 per cent over non-preferential suppliers.

Moreover, rules of origin particularly target intermediate textile products in order to protect the United States textile sector and provide strong incentives for preferential suppliers to use United States yarns and fabrics. This is particularly the case with smaller preferential suppliers, such as those in Central America, as they lack textile spinning and weaving capacities. United States yarn and fabric can enter these markets duty-free for processing into ready-made garments, which then enter the United States market duty-free. Under CAFTA-DR, Mexican suppliers of fabric also may enter these six markets duty-free for processing, and then can enter the United States market as garments, duty-free. Thus, the United States hub and spoke system doubly discriminates against non-preferential suppliers.

Footwear is an important export product for several Asian countries, particularly China. However, footwear shipments to the United States face severe tariff discrimination, and preferential suppliers enjoy a margin of preference averaging 10 per cent (table 8). This is not enough of a deterrent to prevent China from attaining a dominant share of the market. However, the tariff discrimination requires Chinese suppliers to cut costs to the very bone.[11] Other big Asian suppliers face even worse tariff discrimination than China, with Indonesia and Viet Nam paying 11 per cent more duty per shipment than preferential suppliers.

[11] For example, the producer of a pair of boots that retail for US$ 49.99 in the United States receives only US$ 15.30, including a profit of US$ 0.65 and wage costs of US$ 1.30. The United States retailer earns US$ 3.46 per pair (excluding tax and interest payments). See T. Fuller, Trade imbalance masks a struggle to get by: Boots made in China but money made in US , *International Herald Tribune*, 4 August 2006.

Table 7. Import duty paid on shipments of textiles to the United States in the post-quota era

(Units: US$ million; percentage of customs value)

Supplier group/country	Duty paid	Customs value	Duty (%)
Competitive Asian suppliers:˚			
Indonesia	6.64	54.98	12.07
Malaysia	1.82	15.19	11.98
Thailand	7.42	65.76	11.28
Viet Nam	0.74	6.69	11.05
China	58.99	587.47	10.04
Pakistan	27.91	294.91	9.47
India	10.70	159.42	6.71
Former Asian large quota holders			
Taiwan Province of China	26.95	213.92	12.60
Republic of Korea	33.49	284.60	11.77
Hong Kong, China	2.34	24.92	9.38
Major non-Asian non-preferential suppliers			
Turkey	10.33	110.85	9.32
Italy	23.81	272.78	8.73
Brazil	1.42	19.78	7.17
Subtotal non-preferential suppliers	212.56	2 111.27	10.07
Major preferential suppliers	˚	˚	˚
Mexico	0.05	197.53	0.02
Canada	0.50	255.51	0.20
Israel	0.03	18.43	1.68
CAFTA-DR	˚0.33	7.13	4.56
Subtotal preferential suppliers	0.91	478.60	0.19

Sources: United States International Trade Commission Dataweb and author s compilations.

Notes: Data are for calendar year 2005.

Duty paid percentages reported may differ slightly from calculations inferred from tabular data due to rounding off.

CAFTA-DR includes the Dominican Republic, Guatemala, Costa Rica, El Salvador, Honduras and Nicaragua.

D. Impact of rules of origin on utilization of PTAs by developing countries - the case of the United States

The United States provides preferential access to its market through several routes. The oldest and perhaps best known preference programme is GSP that is open to most low and lower-middle income developing countries and LDCs belonging to WTO, including those in Asia and the Pacific.[12] In addition to GSP, the United States more recently provided preferential access under a series of non-reciprocal preference programmes

[12] The Asian Newly Industrialized Economies — Hong Kong, China, Republic of Korea, Singapore and Taiwan Province of China — have all graduated from GSP China is excluded from GSP under the terms of its WTO Accession Agreement with the United States.

Table 8. Import duty paid on shipments of footwear to the United States

(Units: US$ million; percentage of customs value)

Supplier group/country	Duty paid	Customs value	Duty (%)
Competitive Asian suppliers:			
Indonesia	58.77	510.19	11.52
Viet Nam	82.05	716.21	11.45
Thailand	31.50	291.76	10.80
China	1 289.72	12 654.22	10.19
India	12.14	139.09	8.72
Asian Newly Industrialized Economies°			
Taiwan Province of China	6.42	69.18	9.27
Republic of Korea	4.10	45.33	9.05
Hong Kong, China	5.07	52.49	9.65
Major non-Asian non-preferential suppliers°			
Italy	114.45	1 137.05	10.07
Brazil	98.39	1 019.20	9.65
Subtotal non-preferential suppliers	1 702.61	16 124.53	10.24
Major preferential suppliers°			
Mexico	0.62	247.21	0.25
ANDEAN	0.07	9.64	0.71
Canada	0.12	93.57	0.12
CAFTA-DR	°0.44	151.04	0.29
Subtotal preferential suppliers	1.25	501.46	0.25

Sources: United States International Trade Commission Dataweb and author s compilations.

Notes: Data are for calendar year 2005.

Duty paid percentages reported may differ slightly from calculations inferred from tabular data due to rounding off.

CAFTA-DR includes the Dominican Republic, Guatemala, Costa Rica, El Salvador, Honduras and Nicaragua.

aimed at providing more generous access to small developing and least developed countries. These include CBI that allows the countries of the Caribbean Basin region (excluding Cuba) access to the United States market for ready-made garments. Similarly, the United States has provided access to the countries of sub-Saharan Africa under AGOA. ANDEAN provides similar access to countries in South America cooperating with the United States in efforts to eradicate illegal narcotics trade. For Middle Eastern countries, a special programme called the Qualified Industrial Zones (QIZ) also provides preferential access to the United States market for clothing.

These agreements, like GSP, provide access that is limited (capped at a certain volume of imports) after which MFN tariffs become applicable should shipments exceed the agreed limits. Each of these programmes is enforced by a set of rules of origin or what might also be deemed rules of preference. Participation in the special programmes has evolved into a process whereby the partner countries are eventually encouraged to negotiate a bilateral FTA with the United States that involves reciprocation of preferential tariff treatment and, in theory, more comprehensive access to the United States market.

Under GSP, Asian and Pacific developing countries have very limited access to the United States market because of strict limitations on the volume of imports permitted to enter duty-free, and due to the near exclusion of most sensitive labour-intensive products such as textiles, garments and footwear. The utilization of United States GSP currently is quite low in most beneficiary countries in the Asia-Pacific region. In table 9, utilization ratios are computed for the most recent period possible for Asian and Pacific developing countries, and defined as the percentage of total shipments to the United States market receiving GSP. In most cases, small and isolated developing countries have very low utilization rates. Only two countries have utilization rates of more than 50 per cent (Armenia and Kazakhstan); in both cases, GSP is overwhelmingly accounted for by a few product chapters (precious stones and minerals) that fortuitously are granted United States

Table 9. GSP utilization ratios in developing Asia-Pacific countries (in per cent of total import shipments to the United States market)

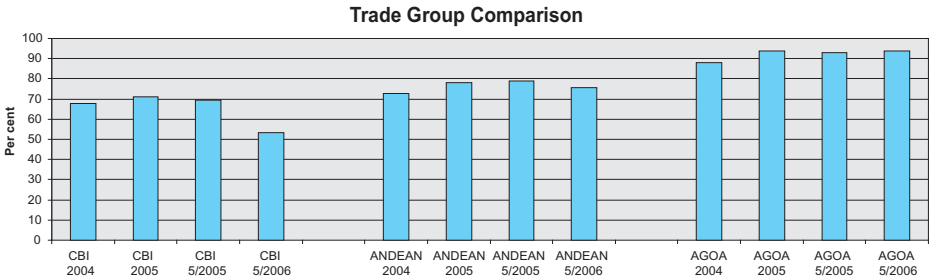
GSP beneficiary	2004	2005	YTD 2005	YTD 2006
Asia				
Afghanistan	0.10	17.07	0.14	0.81
Armenia	58.65	58.65	58.65	58.65
Bangladesh	0.70	0.80	0.77	0.68
Bhutan	0.00	1.79	1.62	0.00
Cambodia	0.31	0.27	0.32	0.29
India	25.84	24.77	22.73	25.39
Indonesia	11.66	13.04	12.31	14.07
Kazakhstan	29.30	19.11	25.67	51.42
Kyrgyzstan	0.45	0.22	0.04	0.33
Maldives	0.00	0.00	0.00	0.00
Mongolia	0.06	0.11	0.09	0.31
Nepal	2.23	2.99	2.63	3.39
Pakistan	3.28	2.97	3.03	3.39
Philippines	10.90	10.92	11.48	11.93
Sri Lanka	5.89	6.63	6.53	6.40
Takjikistan	3.89	12.66	6.08	4.08
Thailland	18.12	18.07	16.90	15.79
Uzbekistan	3.89	12.66	6.08	4.08
Pacific Islands				
Cook Islands	0.20	0.40	0.41	0.00
Kiribati	0.00	0.00	0.00	0.00
Fiji	16.58	35.03	29.40	29.22
Papua New Guinea	4.80	4.94	0.61	0.15
Samoa	10.49	43.08	39.22	44.83
Soloman Island	0.14	0.00	0.00	0.43
Tonga	4.74	3.69	2.55	1.84
Vanuatu	0.78	2.01	6.89	6.87

Sources: Author s compliations and United States International Trade Commission (http://www.usitc.gov).

GSP and which dominate shipments to the United States. Larger developing Asian countries with diversified exports, such as India, Indonesia and Thailand, have relatively high GSP utilization ratios, but in no case do the rates much exceed a quarter of their shipments.[13] Pacific Island countries have low rates of utilization with the exception of Fiji and Samoa (again a case where import shipments of only a few dominant processed agricultural products receive GSP). Restrictive rules of origin and exclusion of products that are of most interest to developing countries explain the relatively low utilization of GSP.[14]

In contrast to GSP, special United States non-reciprocal preference programmes have provided access for textiles and clothing, and they have much higher utilization rates. The percentage of shipments to the United States covered by the CBI, ANDEAN and AGOA special preference programmes reach between 70 and 90 per cent of all shipments to the United States market (see figure I: Percentage of imports covered by United States non-reciprocal PTAs).

Figure I. Percentage of imports covered by United States non-reciprocal PTAs



Note: CBI (Caribbean Basin Initiative) includes Barbados, Costa Rica, the Dominican Republic, El Salvador, Guatemala, Guyana, Honduras, Nicaragua, Panama, St. Lucia, and Trinidad and Tobago.

ANDEAN includes Bolivia, Colombia, Ecuador, and Peru.

AGOA includes Angola, Benin, Botswana, Burkina Faso, Cameroon, Cape Verde, Chad, Democratic Republic of the Congo, Djibouti, Ethiopia, Gabon, Gambia, Ghana, Guinea, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Rwanda, Sao Tome and Principe, Senegal, Seychelles, Sierra Leone, South Africa, Swaziland, Tanzania, Uganda and Zambia.

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[13] Following the suspension of the Doha Round Talks in July 2006, the Bush administration announced it was reviewing GSP preferences for India and 12 other countries that made relatively high use of the programme. The United States GSP expired at the end of 2006 subject to Congressional renewal. (See *Hindustan Times,* 10 August 2006.)

[14] This chapter has focused upon a case study of the United States. However, other studies are being conducted along similar lines for other OECD countries with GSP programmes. (In particular, for a study of the utilization of Australia s GSP see Lippoldt, 2006.)

The relatively high ratio of preferential to total imports in these groups indicates that, without the preferential treatment, shipments to the United States would be much smaller than those realized. However, the United States also sets quantitative limits on shipments in a given United States fiscal year (1 October to 30 September) under the Trade and Development Act of 2002, which covers AGOA, the Caribbean Basin Trade Partnership Act and ANDEAN.[15]

The fill rate of these quantitative limits, which are quantified in square metre equivalents of qualifying fabric, are well below the utilization ratios of preferential imports to total imports. For AGOA, the fill rate in FY 2005 was just 34.4 per cent (370 million m^2 out of a total preference level of 1,077 million m^2). AGOA allows lesser developed sub-Saharan African countries to use third country fabric (most of it from Asia); with that allowance, the fill rate in FY 2005 was 64 per cent (343 million m^2 out of 536 million m^2).[16] In contrast, in the ANDEAN region the fill rate was a miniscule 4 per cent (25 million m^2 out of 710 million m^2). For the Caribbean Basin region the fill rate was 61 per cent (596 million m^2 out of 970 million m^2) with cotton T-shirts achieving a fill rate of 99 per cent (11.9 million dozen pairs out of 12 million dozen pairs allowed). The reason for the low fill rate in ANDEAN appears to be the use of a restrictive yarn-forward rule of origin (similar to that of NAFTA) while for the other two regions simple assembly of garments from qualifying fabric is the rule of origin.

These preference programmes are strictly limited to garments and luggage (made up from textiles) and hence are inherently restrictive. This is one reason why United States partners under these programmes have sought to negotiate free trade agreements that, by definition, offer broad coverage of substantially all trade as required by GATT Article XXIV. The QIZ programmes for Middle Eastern countries (Jordan and Egypt) offer preferences over a wider group of products than under the Trade and Development Act of 2002. QIZ preferences covered almost 85 per cent of shipments from Jordan in 2004 but coverage began to drop in 2005 and 2006 as the United States-Jordan FTA began to gradually cover more trade. In the case of Egypt, QIZ was launched in 2005 and covered 12.8 per cent of shipments to the United States; in 2006 (January-May), the utilization ratio increased to 21.4 per cent of shipments. In the case of Jordan, clothing accounts for 75 per cent of qualifying imports and the high use of the preferences is facilitated by a simple rule of origin - sewing or assembly of qualifying fabric into garments. The QIZ programme was a precursor to the United States-Jordan FTA.

In contrast to non-reciprocal preference programmes, FTAs tend to be more comprehensive in coverage of trade and involve reciprocal exchanges of preferential market access. In general, United States FTAs involve very comprehensive and detailed

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[15] Under the 2002 Act, the Caribbean Basin Trade Partnership Act covers a subset of the CBI countries (Costa Rica, Dominican Republic, Guatemala, Haiti, Honduras, Jamaica, Nicaragua and El Salvador).

[16] Data are from the Office of Textiles and Apparel (OTEXA) of the United States Department of Commerce (see http://www.otexa.gov).

product-specific rules of origin. This is certainly the case in NAFTA, where rules of origin cover several hundred pages. The FTAs that the United States has negotiated and which have entered into force were examined in order to estimate the share of the United States imports from FTA partners that made use of preferential tariff treatment. In the case of NAFTA, preferential imports from Canada were as high as 88 per cent of total shipments in 2005, up from 82 per cent in 2004, whereas for Mexico the ratio was far lower at 62-63 per cent. This may be due to the composition of trade but is also likely to reflect the greater difficulty a developing country has in complying with rules of origin compared with a developed country.

In particular, value-added requirements ranging from 50 per cent to 62.5 per cent may be more difficult for Mexican enterprises to meet than those in Canada. Chile, which has a deal with the United States that is similar to those of Mexico and Canada, achieved a preference ratio of 55-56 per cent in 2005-2006, up from 42 per cent in 2004, the initial year of the agreement. United States FTAs with Israel (1985), Jordan (2001) and Singapore (2004) have much lower preference ratios than those with Canada, Chile and Mexico.[17] Australia is likely to attain a high level of preference coverage in its shipments to the United States over the course of time as the agreement only took effect in 2005 (36 per cent preference ratio) and coverage appeared to be rising sharply in 2006. It is too early to judge how much trade CAFTA-DR will cover, as the agreement only entered into force in March 2006. Similarly, for Morocco it is too early to tell, although the coverage attained already exceeds that of Israel.

The impact of United States-based FTAs is likely to be significant on bilateral trade flows between partners, and between partners and non-partners. The relatively high MFN tariffs on key labour-intensive manufactured goods, coupled with restrictive rules of origin, make it likely that United States-hub FTAs will lead partners to purchase intermediate goods from within the bloc and to reduce purchases from lower-cost sources outside the bloc. Research using a gravity model (International Monetary Fund, 2006) indicates that NAFTA members, on average, trade 33 per cent less with non-members than otherwise. The finding that membership in NAFTA reduces the willingness of the United States to reduce MFN tariffs on goods receiving tariff preferences (Limao, 2006) underscores the threat that reciprocal PTAs pose for multilateral trade liberalization.

In contrast to United States-hub FTAs, research has shown that AFTA has had little impact on intra-bloc trade flows (Baldwin, 2006). Moreover, research indicates that ASEAN members trade more intensively with non-members than do NAFTA members (International Monetary Fund, 2006). However, the recent trend towards expansion of bilateral trade agreements that are centred around large hub countries (Japan, Republic of Korea, China),

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[17] In the case of Jordan, almost all shipments to the United States receive preferential treatment once QIZ and GSP preferences are taken into account. In 2005, 95 per cent of shipments to the United States received preferential treatment (19.5 per cent under the FTA, 74.5 per cent under QIZ and 1.5 per cent under GSP). The reason for low coverage in the case of Singapore needs further examination, but it is likely that much of what Singapore ships to the United States comes in under zero or low tariffs (electronics and information technology products).

or that involve complex rules of origin and significant margins of preference, could weaken the will of Asian countries to continue their support for multilateral trade liberalization and may also slow down or bring a halt to unilateral liberalization efforts that have served Asia well in the recent past. One of the main dangers is that a complex web of bilateral FTAs will conflict with what Baldwin (2006) referred to as the smooth functioning of Factory Asia. In other words, the efficient functioning of production networks based on open multilateral trade may give way to diversion of trade inside the bloc or hub-spoke system, thereby reducing the competitiveness of Asian products in world markets. This threat appears to be very real, given the increasingly complex and differentiated rules of origin in bilateral agreements that Asian hub countries are entering into.

E. Proposals for disciplines and reform in use of rules of origin

Rules of origin related to the granting of preferential tariff treatment are at present not covered by any binding disciplines in the multilateral trading system (James, 2005). The exclusion of preferential rules of origin from the work programme on rules of origin under the Uruguay Round Agreement indicates that contracting member States wished to preserve their freedom to design preferential rules of origin rather than to agree to harmonization as for non-preferential rules of origin. In view of the subsequent exponential rise in the number of PTAs among contracting members since the agreement of 1994, however, it may be high time to review the omission of preferential rules of origin and to include them in the rules component of the Doha Round Agenda.

In the non-binding statement on preferential rules of origin, contracting members were admonished to ensure that rules of origin do not in themselves constitute obstacles to expansion of trade. Coupled with the admonition in Article XXIV of GATT and Article V of GATS that preferential trade arrangements should not be raised as barriers to the commerce of non-members and that they should not constitute an obstacle to the reduction of MFN tariffs, the basis for some discipline over preferential rules of origin may be established. Moreover, a WTO panel decision that upheld India s complaint regarding European Union preferences extended on a discriminatory basis to contracting members who had been a source of contraband but were deemed to have cooperated in anti-narcotics efforts - and not to contracting members that had not been a source of contraband, also appears to set the basis for limits on exceptions to Article I and the rules of origin necessary to enforce such exceptions.[18]

The difficulties encountered by the working group on non-preferential rules of origin in harmonization are a strong indicator that the goal of enhanced disciplines over preferential rules of origin should be realistic. Harmonization of preferential rules of origin may be too much to expect. Rather, some flexibility should be considered, so that such rules do not in

[18] The India-European Union GSP case documents are available at the WTO homepage, http://www.wto.org. Also see *Bridges Weekly Trade News Digest*, 5 November 2003 for a summary of the case.

themselves constitute barriers to commerce. In general, preferential rules of origin should be based upon the same template as non-preferential rules of origin - that is, on a CTH test. Such a test is not appropriate or applicable to all types of goods and services. Hence, they must be supplemented by percentage or specified process rules as is appropriate. The approach should be consistent with that of the work programme on non-preferential rules of origin. Thus, in cases where assembly of a product is a substantial transformation yet involves no CTH, a Change in Tariff Sub-Heading (CTSH) test coupled with a minimum regional content rule should be adopted.

One way to approach the issue of disciplines would be to allow enterprises some leeway in meeting rules of origin by, for example, giving them a choice between a minimum regional content value-added rule or a maximum non-originating content rule on one hand, and a specified manufacturing process rule on the other hand. Standardization of accounting principles and formulae used to implement rules of origin could also simplify the situation for businesses wishing to take advantage of tariff preferences. Firms should also be allowed to average compliance with minimum regional content rules or maximum non-originating content rules over a period of time, rather than having every single shipment in full compliance. Hence, if the value-added rule is 50 per cent regional content and a firm ships US$ 1 million with 45 per cent regional content and another US$ 1 million with 55 per cent regional content, the authorities should allow both shipments to enjoy preferential treatment, perhaps retroactively provided the firm can supply the relevant documentation to customs. In this context, the reform of Canada s GSP rules of origin may provide a useful model. In 2001, Canada revised its regional content rule to allow designated LDCs a maximum of 60 per cent non-originating content (equivalent to 40 per cent regional content) as opposed to the general GSP requirement of a maximum of 40 per cent (equivalent to a 60 per cent regional content rule).[19] In 2003, Canada further liberalized its GSP rules of origin by extending coverage to textile and clothing products (among others); this has proven to be beneficial to a number of least developed Asian countries including Bangladesh and Cambodia.

In addition to efforts to increase flexibility and choice, contracting members may also wish to strengthen the observance of the requirements of Article XXIV and Article V in new FTAs and to set a timeframe for existing agreements under the enabling clause to also gradually comply with those requirements. This is unlikely to be acceptable to many individual contracting members; however, collectively, it is in the interests of the overall efficiency of multilateral trade to enforce such requirements and it could be a component of the new rules under the Doha Development Agenda, should the talks be revived.

A related recommendation to those above is that member countries of either a regional or bilateral PTA/FTA be required to publish statistics on the level of utilization of the preferences by estimating the percentage of imports of each member that are covered by, and make use of the preferential tariffs. Such information is readily available to customs authorities and should be shared through national statistical agencies. The

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[19] See United Nations Conference on Trade and Development 2001 and 2005 for discussion.

information would be very useful to governments in monitoring the performance and compliance of such agreements with GATT/WTO requirements and their impact on private commerce.

Within Asia and the Pacific, caution is now needed as the plethora of bilateral deals centred on large trading hubs is leading to increasing tariff discrimination within the region. Clearly, the desirable way forward is one that minimizes the creation of discriminatory hub-spoke systems around the larger Asian traders. In this context, ASEAN might be considered as the fulcrum for broader regional trading arrangements, and thus connect the spokes as well as the hubs via the ASEAN 3 agreements with Japan, China and the Republic of Korea as well as arrangements involving cooperation with India and the other SAARC member States. In this context, the Asia-Pacific region might opt for a system of Pan-Asian and Pacific Cumulation similar to the Pan-European Cumulation System (PECS) adopted by the European Union in 1997 and which was extended to Turkey in 1999 (*The Economist*, 2006). Such a system would allow member States to cumulate value-added across agreements in order to comply with rules of origin. Such a system would enable Asian production networks to thrive rather than becoming a casualty of restrictive rules of origin.

There are several related concerns that the Doha Round is meant to address but that may now be in limbo. First, the explosion of bilateral deals is usually among the more advanced developing countries and threatens to leave poor, small and isolated countries behind. Second, even if these developing countries could enter into negotiations with more advanced partners, asymmetrical bargaining power would place them in a disadvantageous position. These issues, as well as the issue of erosion of preference margins cannot really be adequately addressed in bilateral trade agreements. Thus, the trend towards increased bilateralism in hub-spoke systems threatens to leave poor, small and isolated countries worse off.

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V. CUSTOMS VALUATION IN INDIA: IDENTIFYING TRADE FACILITATION-RELATED CONCERNS

*By Sachin Chaturvedi**

Introduction

While the Doha Round negotiations on trade facilitation have focused on GATT Articles V, VIII and X, it is being increasingly recognized that implementation of GATT Article VII (Customs Valuation) remains an important subject and that it is difficult to address issues under these four articles separately.

The Agreement on Customs Valuation (ACV) provides a set of valuation rules, expanding and giving greater precision to the existing provisions on customs valuation in the original GATT agreement. The ACV is largely a manifestation of GATT Article VII, which was revised during the Tokyo Round of GATT negotiations. The fundamental approach behind ACV is to reduce trade barriers and transaction costs arising from customs and border control practices, including uniform application of the harmonized system and the valuation agreement, so that they are not slow, unpredictable and non-transparent. This was a substantial advance over the Brussels Definition of Value (BDV) approach, prevalent in most of the European countries in the 1950s and 1960s (Majumder, 2005). In 1950, in an effort to achieve greater harmonization of rules and greater discipline in customs matters, 13 European governments developed BDV, taking into account the broad principles and guidelines prescribed by GATT (Rege, 1999). The responsibility for administering the BDV rules and for promoting the use of BDV on a worldwide basis was given to the Customs Cooperation Council (CCC) which is now WCO.

Although all WTO member countries are supposed to implement GATT Article VII, except for a few new members, in the case of many member countries it is unclear whether the implementation of ACV methods has been successful and provided any benefits.

India accepted the concept of transaction value as a primary method for valuation long before acceding to ACV. It was done as part of the GATT valuation implementation in

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August 1988. As part of this, the Customs Department is bound to accept the value stated by the importer through the invoice unless the department has additional information to substantiate under-invoicing. Some importers take advantage of this legal situation and undervalue their imports with fake invoices knowing that customs authorities may not be able to recognize them. To date, this situation is reported to have resulted in a revenue loss of almost Rs 100 billion.[1] In this context, the related Uruguay Round ministerial decision gives customs administrations the right to request further information in cases where they have reason to doubt the accuracy of the declared value of imported goods.[2] If the administration maintains a reasonable doubt, despite any additional information, it may be deemed that the customs value of the imported goods cannot be determined based on the declared value.

It is often claimed that customs valuation and the way it is carried out may become a trade barrier or, more importantly, a vehicle for domestic protection from imports (Alburo, 2006). Whether the manner of valuing goods is arbitrary or is based on some notional price, customs valuation can be an effective trade instrument in the hands of the authorities.

However, the efforts by the Customs Department to minimize the loss of revenue often lead to situations that make the system slow, unpredictable and non-transparent. This defeats the very raison d etre of ACV and trade facilitation measures. In India, a survey conducted in 2004-2005 as part of an ARTNeT/RIS study on trade facilitation identified customs valuation as the key problem for the trading community.[3]

Section A of this chapter provides an overview of the institutional and policy framework in India, together with an attempt to detail revenue composition and broad experience with ACV. Section B examines private sector perceptions of the implementation of ACV, and analyses undervaluation practices of Indian companies. Section C draws conclusions and policy recommendations.

A. Institutional and policy framework

The Central Board of Excise and Customs is the key government agency in overviewing policy planning and development of the institutional infrastructure. In 1997, CBEC established the Directorate of Valuation (DOV) with the mandate to provide guidance to field staff as well as to develop mechanisms for ensuring the uniform application of rules and regulations for valuation purposes. Headed by a director-general, DOV is based in Mumbai with two zonal offices in Delhi and Bangalore. CBEC has also delegated customs valuation to DOV regarding work being done by India as part of WCO. Thus, DOV is effectively linked with international processes that India is engaged in. As part of its

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1 Based on estimates by C. Satapathy (personal communication).

2 Uruguay Round Ministerial Decisions adopted by the Trade Negotiations Committee on 15 December 1993 and 14 April 1994.

3 Chaturvedi, 2006 and Duval, 2006.

international mandate, DOV has been organizing training courses for customs officials from other developing countries.

The major challenge facing DOV is ensuring monitoring of those goods in which valuation often comes up as an issue. In order to address this challenge effectively, DOV has developed a network for gathering information and feedback on the international price movements of such commodities. DOV issues Valuation Guidelines for the field offices, based on information received from agencies such as Reuters, *Metal Bulletin* and *Platts* as well as other sources. DOV has also developed its own databases.

In India, efforts have been made, as per Article 11 of ACV, to put in place institutional arrangements for ensuring rights of appeal under CESTAT. Initially, the first appeal may be made at the Customs Department itself, followed by the option of the tribunal. Cases may also be submitted to the public judicial system at the appropriate levels.

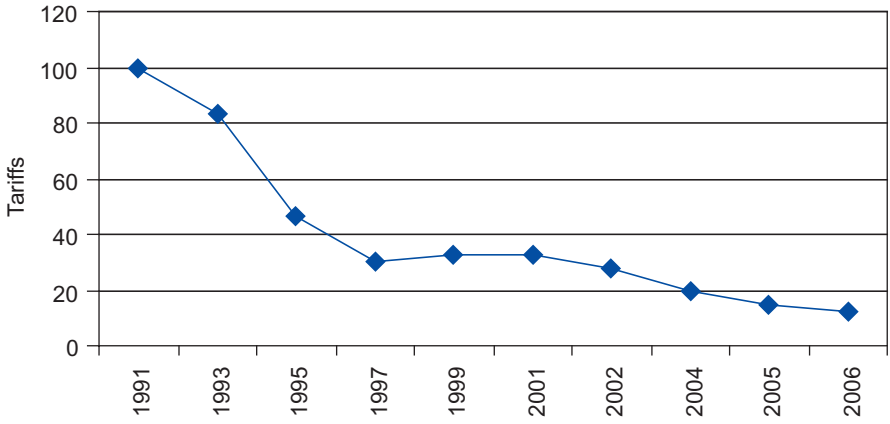
Recently, India officially launched a countrywide Accredited Clients Programme (ACP) and RMS for importers. Under ACP, regular importers with a reputation of prompt compliance would be accredited under the scheme. This accreditation will secure them assured facilitation at major customs ports throughout the country. The trading community will be able to attempt self-assessment and there will be no need for examination by customs. This may help in assuring of quick delivery of imported consignments, and help importers in terms of reduced paperwork and transaction costs. It may also help in minimizing the constraints faced in valuation. The declaration of Bills of Entry and the Import General Manifest filed electronically in the Indian Customs EDI System (ICES), either through the service centre or through the Indian Customs and Excise Gateway, is forwarded to the system. The data in the Bill of Entry and the Import General Manifest is then processed by the RMS, which generates an electronic output for ICES. This output will determine whether the Bill of Entry will be taken up for action (appraisement or examination, or both, by the officers) or such self-assessed bill is given out of charge directly - after duty payment but without assessment and examination. Previously operational only at a limited level, RMS has now been launched by the Finance Minister at the national level.

It is too early to consider the impact of these measures on customs revenue as such. However, section B deals with some of the details placing revenue from customs in a wider context.

1. Revenue composition

Although all WTO member countries are bound to reduce customs duties, as part of their WTO commitments, India has unilaterally been continuously cutting rates of commodities taxes, both customs and excise duties. In recent years, different annual budgets have attempted to bring down customs duties in India with the intention of eventually reaching the levels of the ASEAN countries. The average peak rate declined from 15 per cent in 2005 to 12.5 per cent in 2006 (figure I). In the 2006/07 budget, the peak rate of basic customs duties has been retained at 12.5 per cent. However, additional customs

Figure I. Decline in the average tariff rate in India, 1991-2006



Source: Economic Survey (2006); Mohanty (2004).

duty at the rate of 4 per cent is being imposed under section 3(5) on all goods imported into India in order to compensate for internal taxes such as VAT, sales tax and central sales tax (CST). The additional customs duty is not applicable to goods exempted from basic as well as countervailing duty (CVD) goods imported for servicing export promotions schemes; domestic tariff area (DTA) clearances to Export Oriented Unit (EOU)/Electronic Hardware Technology Park (EHTP)/Software Technology Parks (STP)/Special Economic Zones (SEZ) units provided such goods are not exempt from sales tax/VAT etc. This also includes precious metals like gold, silver and imports by EOUs and units in EHTP/STP or SEZ. In the 2006/07 budget, CVD was imposed on most imports in lieu of VAT on domestic goods.[4]

As is evident from table 1, from 1990/91 to 2004/05 the revenue from direct taxes, particularly corporate income tax, expanded considerably. During that period, the share of indirect taxes declined from 78 to 56 per cent while that of direct taxes went up from 19 to 44 per cent. In the same period, the share of corporate income tax expanded from 9 to 28 per cent.[5]

In the case of indirect taxes, the share of revenue as a percentage of GDP declined from 7.9 per cent in 1990/91 to 5.7 per cent in 2004/05. In the same period, the share of customs duty declined from 3.6 to 1.7 per cent of GDP while its share of gross tax revenue declined from 36 to 17 per cent. In absolute terms, however, customs revenue stood at Rs 206 440 million in 1990/91 and rose to Rs 542 500 million in 2004/05. As table 1 shows, there are fluctuations in the revenue from customs. From 1999/2000 to 2001/02,

4 *Financial Express*, 26 July 2006.

5 *The Hindu Business Line,* 2006.

Table 1. Sources of tax revenue in India

(Unit: Rs million)

Tax source	1990-1991	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004 (RE)	2004-2005
Direct[a]	**110 240**	**579 580**	**683 060**	**691 970**	**830 800**	**1 034 000**	**1 395 100**
PIT	53 710	256 540	317 640	320 040	368 580	402 690	509 290
CIT	53 350	306 920	356 960	366 090	461 720	629 860	884 360
Indirect	**451 580**	**1 124 500**	**1 186 810**	**1 161 250**	**1 312 840**	**1 500 290**	**1 775 990**
Customs	206 440	484 200	475 420	402 680	448 520	493 500	542 500
Excise	245 140	619 020	685 260	725 550	823 100	923 790	1 091 990
Service tax	0	21 280	26 130	33 020	41 220	83 000	141 500
Gross tax revenue[b]	**575 760**	**1 717 520**	**1 886 030**	**1 870 600**	**2 162 660**	**2 549 230**	**3 177 330**
Tax revenue as per cent of gross tax revenue							
Direct[a]	**19.1**	**33.7**	**36.2**	**37.0**	**38.4**	**40.6**	**43.9**
PIT	9.3	14.9	16.8	17.1	17.0	15.8	16.0
CIT	9.3	17.9	18.9	19.6	21.3	24.7	27.8
Indirect	**78.4**	**65.5**	**62.9**	**62.1**	**60.7**	**58.9**	**55.9**
Customs	35.9	28.2	25.2	21.5	20.7	19.4	17.1
Excise	42.6	36.0	36.3	38.8	38.1	36.2	34.4
Service tax	0.0	1.2	1.4	1.8	1.9	3.3	4.5
Tax revenue as per cent of gross domestic product[c]							
Direct[a]	**1.9**	**3.0**	**3.3**	**3.0**	**3.4**	**3.7**	**4.5**
PIT	0.9	1.3	1.5	1.4	1.5	1.5	1.6
CIT	0.9	1.6	1.7	1.6	1.9	2.3	2.8
Indirect	**7.9**	**5.8**	**5.7**	**5.1**	**5.3**	**5.4**	**5.7**
Customs	3.6	2.5	2.3	1.8	1.8	1.8	1.7
Excise	4.3	3.2	3.3	3.2	3.3	3.3	3.5
Service tax	0.0	0.1	0.1	0.1	0.2	0.3	0.5
Gross tax revenue[b]	**10.1**	**8.9**	**9.0**	**8.2**	**8.8**	**9.2**	**10.2**

Source: Economic Survey, 2004-2005, Ministry of Finance.

[a] Direct taxes include taxes pertaining to expenditure, interest, wealth, gift and estate duties.

[b] Includes direct and indirect taxes as well as taxes of Union Territories and other taxes.

[c] Refers to gross domestic product at current market prices.

Notes: PIT: Personal income tax.

CIT: corporate tax.

The ratios to GDP for 2004-2005 (budgetary estimates) are based on CSO advance estimates released in February 2005.

there was a continuous decline in customs revenue. The decline was as high as 17 per cent while in the period 2002/03 to 2004/05 the increase was in the order of 21 per cent. From 2001/02 to 2002/03, revenue expanded by 11 per cent.

The growth in the customs revenue has largely attributed to the policy framework adopted and the surge in trading activities. Merchandise imports grew by almost 40 per cent in 2004/05, which is the highest growth rate in past two and half decades.[6]

Non-oil imports, however, increased by 31 per cent. A significant import boost came from import of precious and semi-precious stones (8.6 per cent), electronic goods (8.9 per cent), metals especially gold and silver (10 per cent) and capital goods (11.5 per cent).

2. Changing policy regime

After independence in 1947, India revised its customs valuation provisions, particularly the Sea Customs Act of 1878, to bring it into conformity with GATT provisions. The Sea Customs Act was based on real value, defined as the wholesale price for which like goods could be sold at the time and place of importation (excluding duties payable). The Sea Customs Act also contained provisions for taking over the imported goods by the Government on payment of an amount equal to declared real value (Section 32). The changes in this Act were made based on recommendations from the Customs Reorganization Committee, 1958-1959, which led to the enactment of the Customs Act, 1962. The provisions of the latter were in accordance with Article VII of GATT, which helped in standardizing various procedures on a par with other countries for determining value, and laid down certain principles to avoid fixing of arbitrary or fictitious values. The system was based on the actual value of imported goods. In this system, even the values of goods of national origin were also ruled out. The provisions enabled acceptance of the invoice price so long as the buyer and the seller were unrelated and the price was the sole consideration for sale.[7] The rules were notified through the Customs Valuation Rule 1963.[8]

As part of India s commitment at the Tokyo Round Agreement on Customs Valuation, the Customs Act 1962 was subsequently amended and the Customs Valuation (Determination of Price of Imported Goods) Rules, 1988 were implemented, which provided scope for basing the valuation exercise on transaction value. The new valuation rules of 1988 largely reflected provisions of GATT Article VII, 1994 (WTO valuation code). The Customs Valuation Rules, 1988, lay down six methods for the valuation of imported goods. The primary basis for valuation is the Transaction Value . However, it is subject to adjustment by certain Valuation Factors (Rule 9). There are also certain conditions for the transaction value method to be applicable (sub-rule 2 of Rule 4). In certain situations, the customs authorities can reject the declared value (transaction value method), if the truth or accuracy

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6 Economic Survey, 2005-2006.

7 Satapathy, 2002.

8 For details see Majumder, 2005.

of the declaration is reasonably suspected (Rule 10A). In all such cases where the transaction value method is not applied, goods will be valued by applying the subsequent methods in a strictly hierarchical order (Rule 3). These methods are summarized in table 2 in the context of the Indian Customs Act (1988).

Table 2. Compatibility in GATT valuation methods and the Indian Customs Act, 1988

Method	Title	Indian Customs Act provisions
Method 1	Transaction value method	Rule 4
Method 2	Transaction value of identical goods	Rule 5
Method 3	Transaction value of similar goods	Rule 6
Method 4	Deductive method	Rule 7
Method 5	Computed value method	Rule 7A
Method 6	Fall-back method	Rule 8

Source: Majumder, 2005.

Following the major changeover from an earlier system of valuation to a new regime in 1988, a few amendments were made to the Act in 1989, 1990 and 1991 in order to bring in measures that provided flexibility in the Customs Department. The 1990 amendment introduced a requirement for a manufacturers invoice to be produced at the time of valuation. This was vehemently opposed by the industry, which led to another amendment in 1991 that made such a requirement conditional depending upon the requirements of the Customs Department.[9]

After India signed the Marrakech Agreement on the establishment of WTO, certain other amendments were made in the Customs Act, 1988. In 1995, the rules were amended to introduce a computed value method. Then, in 1998, an amendment was made to enable the implementation of Decision 6.1 of the Uruguay Round Ministerial Declaration, providing discretionary powers to the customs authorities if they were not convinced by the information provided. The Customs Valuation Rules, 1988 were again amended through a notification in September 2001 that again provided arbitrary and discretionary powers to the Customs Department.[10] The amendment covered the collection of additional duty by customs, based on the maximum retail price for the notified items on which domestic excise duty was levied on a similar basis. The amendment also proposed certain linguistic changes in Article VII of GATT. The private sector views on these changes are discussed in section C3.

9 Sriram, 2001.

10 *Ibid.*

3. Institutional infrastructure

In the light of the increasing global integration of Indian business, several institutional initiatives have been launched to provide policy support as well as facilitate work for customs valuation. The Directorate of Valuation has launched several initiatives such as the establishment of the National Import Database (NIDB) and the Central Registry Database (CRD). DOV has also launched a monthly *Valuation Bulletin* incorporating all value-related information, including international price trends of important commodities and market intelligence reports from various sources. This is published and distributed to all field offices of the Customs Department. The *Valuation Bulletin* is mainly intended to provide an important source of information on valuation questions that officers in the field may have to deal with during their day-to-day assessment work. Apart from this, DOV has also launched specific studies on selected commodities depending upon their sensitivity in the domestic market. Some of these initiatives are discussed below.

(a) National Import Database

The National Import Database was launched to collect and analyse data on goods imported at almost all the customs stations in India. The idea was to provide instant access to the combined data analysed by DOV when checking for undervaluation and valuation fraud.[11] This initiative is made possible by the fact that most of the major customs points are now linked with the EDI system. The required data are retrieved by specialized software and transmitted to a central server in the Valuation Directorate through a dedicated Intranet called ICENET. In the case of non-EDI stations, the required data are sent to the Valuation Directorate via e-mail. The data are analysed on a weekly basis in DOV with the help of intelligent software packages.

The analysed data are then transmitted to all customs stations each week by electronic means, i.e. via ICENET to major customs stations and via e-mail to other stations. Weekly transmissions are consolidated at customs stations and stored in MS access format with easy search and retrieval facilities. The data are made available to assessing officers at customs stations on LAN. When the declared value of goods is found to be below 10 per cent of the weighted average, the consignment is flagged as an outlier.[12]

(b) Special Valuation Branch

The Special Valuation Branch (SVB) was established to deal with specialised investigation of transactions involving special relationships and certain special features. It also looks into technical collaborations and texts of joint venture agreements etc. It has branches located at four major customs stations in Chennai, Calcutta, Delhi and Mumbai. Any decision taken in respect of a particular case at any of these major customs stations

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11 Srivastav, 2003.

12 Standing Committee on Finance, 2005.

is conveyed to all other customs stations by the SVB branches, which have all-India jurisdiction and hence on-line communication with all customs stations.

An order issued by SVB remains in operation for three years. Orders by SVB are based on the replies/documents furnished by importers. Any suppression of facts, or the submission of a false or misdeclaration on the part of an importer, will result in necessary penal action being taken separately in accordance with the provisions of the law. If an importer has continuous imports over a period that extends beyond three years, he/she must file replies and documents at least three months before the completion of the three-year period, in order for the renewal of the case to be taken up. In all cases where an importer is aggrieved by an order passed by SVB, he/she may file an appeal with the Commissioner of Customs (Appeals).

(c) Central Registry Database

DOV established the CRD as part of SVB to assist work on cases related to imports involving complex valuation issues such as related party imports, payment of royalties, licence fees, supply of materials and services by an importer, among others. The CRD is available on the Directorate s website for use by departmental officers during their assessment work.

(d) Valuation Risk Assessment Module

In the context of the development of an RMS for import cargo clearance, the Directorate has joined hands with the national Risk Management Team for devising a strategy for valuation risk assessment and control. Based on their discussions, a Valuation Risk Assessment Module (VRAM) has been designed, comprising three parts. The first part is a Valuation Corridor consisting of a database of highly sensitive commodities,[13] most of which have a defined permissible value band for allowing clearance without intervention. Any consignment with a declared value below the lower limit of value band will be directed for assessment. The second part of the valuation component of RMS is Valuation Alerts, which are issued by DOV. If any imports comprise any of the commodities covered by the Valuation Alerts list, the consignment is sent to an officer for verification. The third part concerns poor data quality. If an importer declares an unusual Unit Quantity Code that is not normally used, the consignment is sent for assessment.

(e) Export Commodity Database

The Directorate has initiated the development of an Export Commodity Database that will focus on the valuation of export goods. This action is primarily aimed at checking the possibility of overvaluation of export goods, a mechanism followed by unscrupulous exporters to claim a high level of export incentives under different schemes based on export value. The export data will be compiled on a daily basis in electronic form from customs stations that are linked by the dedicated Customs Network (ICENET). The data

[13] www.dov.gov.in.

will be extracted in a predetermined format from all ICES locations, transmitted via ICENET and merged at DOV into a single data source. The data will be analysed by special software on a weekly basis to provide unit values, averages, percentage deviations etc., enabling it to be used as a real-time source of information for valuation by field-based assessing officers. The analysed files are transmitted to all field formations through ICENET for building up local databases for utilization by officers.

4. Experience with agreement on customs valuation

The Indian experience with the implementation of ACV is mixed. Although India has largely adopted Article VII of GATT, it has made incorporated certain variations aimed at ensuring smooth implementation of ACV. These variations include, for example, the addition of Method 7 for settlement of disputes in customs valuation under Rule 11 of Indian Customs Valuation Rules. Similarly, Rule 10A of the Customs Valuation Rules was introduced to provide grounds for rejection of the declared value, based on the existence of reason(s) to doubt so that customs authorities could make a fair determination of customs value. This provision came from Decision 6.1 of the Uruguay Round WTO Ministerial Declaration. Accordingly, the burden of proof is shifted to the importer.

However, several judicial pronouncements in India have directed the Customs Department to exercise restrain in applying Rule 10A.[14] In fact, there is a pattern in the promulgation of amendments to the Customs Valuation Rules of 1988 as well as the introduction of new rules and valuation-related rulings by the judicial delivery system. Rule 10A itself was the outcome of a judicial decision. As explained in section B on the private sector perception of customs valuation, several legal judgments have instructed the Customs Department to follow transaction value as the first basis for valuation. The Eicher Tractor Ltd. case in 2000 became a turning point in this regard (see box 1).

Box 1. The case of Eicher Tractor Limited

The Supreme Court of India, in its judgment in 2000 on the Eicher Tractors Limited vs. Commissioner of Customs, Mumbai case, held that unless the price actually paid for a particular transaction falls within the exceptions laid down, customs authorities are bound to charge duty on the transaction value.

The case is an interesting example that demonstrates how the Customs Department may implement provisions that completely overlook fundamental requirements for trade facilitation. In this case, Eicher Tractors Ltd. imported tailor-made bearings from Japan that were manufactured in 1989. Part of the consignment was rejected and later was imported in 1993. Since the Japanese exporter could not sell this product (being tailor-made to specific requirements) to any other firm, the transaction was made at one-third of the 1989 price. The Customs Department rejected the transaction value.

[14] Majumder, 2005.

Eventually, while ordering of acceptance of the transaction value, the Supreme Court directed that the price of imported goods was to be determined in accordance with the time and place of importation and the absence of special circumstances.

Following the judgment, in 2001 the Indian Government amended the Customs Valuation Rule whereby sales at below cost would no longer be specifically excluded from being valued on the basis of the transaction value.

Source: Based on Excise Law Time (ELT [122], 2000).

(a) Impact of enhancement in valuation

In recent years, several measures have been introduced by DOV to minimize revenue losses. As shown in table 3, there has been a remarkable increase in extra revenue realized because of the enhancement of declared transaction value.

Table 3. Extra duty realized from enhancement in valuation

Financial year	Total revenue (Rs million)	Amount realized (Rs million)	Per cent change over previous year
2003/04	486 250	1 930	
2004/05	542 500	3 340	+73.06
2005/06	648 380	4 550	+36.23
2006/07 (up to July 2006)	108 938	660 (Rs 470 million during the corresponding period in the previous year)	+40.42

Source: Standing Committee on Finance, 2005.

During 2003/04, the reported value of this undervaluation was Rs 1,930 million. During 2004/05, the additional revenue realized was Rs 3,340 million, which was 73 per cent higher compared with the previous year. Similarly, during 2005/06, Rs 4,550 million of additional revenue was realized, compared with Rs 3,340 million during the corresponding period in 2004/05, through the enhanced value of imported goods. During April 2006, an additional Rs 281 million was realized due to the enhanced value of imports.

B. Private sector perception and key concerns

An earlier ARTNeT study of trade facilitation in India found that customs valuation was one area that most traders found highly challenging.[15] The private sector survey

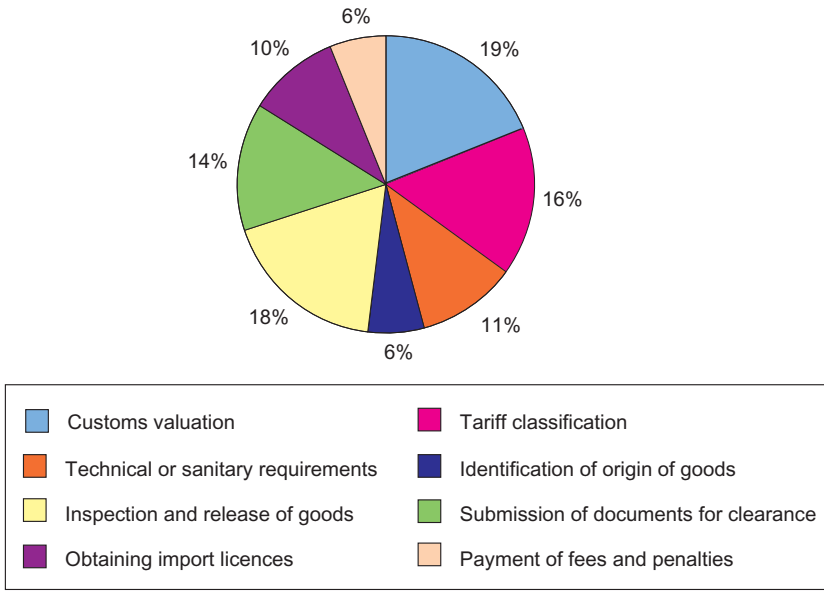
[15] Chaturvedi, 2006.

received a reasonable response to both aspects of the questionnaire, i.e., perception regarding the level of implementation of trade facilitation measures, and ranking of needs and priorities.

The private sector firms helped in identifying the key problem areas in trade facilitation (figure II). The key problem areas identified by the respondents were in the following order: (a) customs valuation (19 per cent); (b) inspection and release of goods (18 per cent); (c) tariff classification (16 per cent); and (d) submission of documents for clearance (14 per cent). In the survey, the method was based on a questionnaire developed with the help of the ARTNeT Secretariat and selected interviews with key industrialists and representatives from leading private sector firms including the major CHAs. The sample size was selected taking into account the relative importance of various sectors in total exports of India.

At the sectoral level, export shares were worked out and a representative target base was identified. In that group, manufacturing goods represented a greater share, hovering at around 76 per cent, while primary products were around 16 per cent and petroleum products approximately 5.2 per cent. The questionnaire was sent to various firms according to the weight assigned to their respective sectors. Of 1,020 firms approached, responses were received from 51 firms. The greatest emphasis was given to the manufacturing sector, of which 620 firms were approached; 41 firms responded excluding three additional firms from the category of others .

Figure II. Problems faced by the private sector in India



Source: Chaturvedi, 2006.

1. Survey instrument and methodology

While interacting with different stakeholders concerning customs valuation in India, a number of issues were revealed that need empirical examination. It was commonly observed by the stakeholders that under-invoicing occurred for a large number of imported products for several reasons. During the interaction with the private sector, several issues were raised that require further empirical analysis: What is the relationship between average firm size in terms of magnitude of under-invoicing and the number of firms associated with such practices? Is there any trade-off between them? How frequently does the Customs Department resort to the fall-back option? The issue of under-invoicing for a selected number of products remains important to the Indian Customs Department and it was therefore decided to conduct a survey of importing firms on customs valuation and under-invoicing.

(a) Data constraints

In undertaking the empirical analysis, an attempt was made to acquire existing primary data but such data were not available from the Customs Department. Even the domestic/international secondary source data available from various sources was too scanty to undertake an empirical analysis. However, the names of the key companies were found against which cases of evasion came up at CESTAT. The decisions by CESTAT and available details were supplemented by undertaking an all-India sample survey on the level of under-invoicing by the importing firms in different sectors; since many of the firms were based in Delhi and Mumbai, the focus remained on those cities. Because of the paucity of time prevented a fully-fledged survey being undertaken, a pilot survey was carried out. Hopefully, the outcome of that exercise may stimulate further work in this area in future.

(b) List of firms and CESTAT decisions

Information concerning the involvement of firms in under-invoicing activities was gathered from the decisions made at CESTAT. As discussed above, India has designated CESTAT to deal specifically with cases related to customs valuation. The tribunal is a quasi-judicial body where disputes related to customs valuation issues between individual firms and the Customs Department are settled within a legal framework. At present, CESTAT has three branches in different locations in India. As a matter of practice, cases brought before the tribunal are notified and are placed in the public domain. Some of these cases were related to under-invoicing and were placed before the tribunal and a list of firms to be covered was prepared for the present survey. In total, 500 firms were identified from several notifications of CESTAT, based on number of criteria.

(c) Criteria for choosing sample

In the absence of a benchmark survey on customs valuation, very little *a priori* knowledge was available about the statistical distribution of under-invoicing in India and its statistical parameters. Therefore, reliance had to be placed on information provided by

stakeholders with regard to the nature of under-invoicing practices in general in India and of activities of firms in this area in particular. The information received indicated that under-invoicing activities occurred for a range of products, but based on the CESTAT information on the nature of reported cases, 50 important products were selected for the pilot survey.

It was reported that a large number of the firms were located in metropolitan cities, and mostly in Delhi and Mumbai, given the locational advantages. Some stakeholders also felt that such activities were highly predominant in machine tools, plastic products and base metals, among others. Adequate attention was given to those suggestions while selecting firms for the pilot survey. The pilot survey was, therefore, all-India in nature, but more focused on certain areas and products.

(d) Survey methods

Taking into consideration time and resource constraints, it was decided to collect firm-related information using the method of tele-interviews as well as the support of local customs station agents. In the process of data collection, special attention was given to acquiring information on the nature of the products imported, HS classification used for such transactions, the value of imports, and the extent of undervaluation settled in the court (both currently and in the past) from individual firms with confidentiality. While interviewing firms, no structured questionnaire was formally circulated among them. Since many of the importing firms were not engaged in manufacturing, and were reluctant to divulge much of their company information, the queries were restricted to satisfying the data requirements for the empirical analysis.

Information was successfully gathered from 320 firms, covering 50 products at the HS 10-digit level in national lines of India. Most of the firms were engaged in such economic offences for multiple products.

2. Survey results and analysis

The survey interviews received good responses and it was possible to collect data on key constraints being faced by the private sector in customs valuation. While presenting the results, the views expressed by the manufacturing companies and the customs station agents were broadly aggregated. Although some of the private sector representatives interviewed were also holding positions in their formal industry organizations, most of them spoke in their individual capacity.

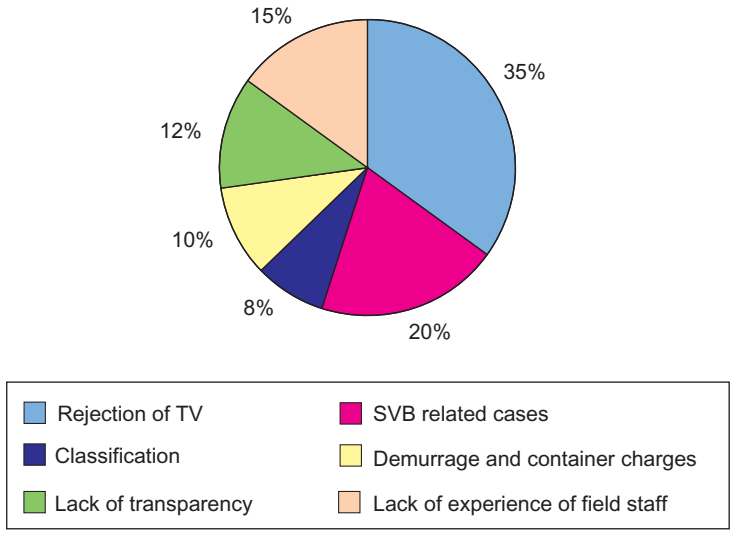
(a) Key private sector concerns

The interviews revealed some key concerns. Most of the private companies interviewed for this study together with CHAs confirmed that customs valuation remained a gray area among all its activities. However, it was also pointed out that importers were not subject to a penalty merely because they decided to appeal against the determination of customs value by the Customs Department. In the discussions, it was explained that

after a rejection of transaction value up until agreed customs duty figures were decided, the importing firm ended up paying huge demurrage charges to the custodian (Port Trust, International Airport Authority of India, IAAI etc.).

As shown in figure III, most of the respondents found the rejection of transaction value to be a key constraint (35 per cent) followed by the frequent reference of cases to SVB (20 per cent), lack of experience of field staff (15 per cent), a lack of transparency (12 per cent), the imposition of demurrage charges and container retention charges (10 per cent), and classification (8 per cent).

Figure III. Major concerns over customs valuation



(b) Frequent rejection of transaction value

According to the interviews, the Customs Department officials did not follow the hierarchy of valuation options as mentioned in the Customs Valuation Rule, 1988 but jumped straight to the fall-back method (Rule 8). Although it was not possible to get data from the Customs Department to substantiate such claims, the growing number of cases with CESTAT may well support this assertion. Under Rule 10A of the Customs Valuation Rules, 1988, the Customs Department may reject the transaction value method in cases of suspected valuation fraud. This actually should apply in instances when there is reason to doubt the truth or accuracy of the value declared by an importer but no evidence for the Customs Department to establish fraud.

Although arrangements for provisional assessment are possible, it requires bonds of a very high order. Moreover, the excess amount paid by private firms is not returned,

being classified as unjust enrichment. However, some of the problems related to classification have been minimized since the harmonization of HS classification. Very few respondents raised this as an issue (8 per cent). Largely, problems arise among those goods that have unfamiliar designs. For example, most computer servers imported into India have similar characteristics and therefore a clearly defined import duty. However, a new type of server was recently imported that included CVD, DVD and other devices/ applications. The Customs Department insisted on imposing duty on each element of the server separately. Thus, classification may emerge as one of the potentially contentious areas as the pace of product innovation accelerates.

(c) Lack of transparency

It was found that frequent rejection of the transaction value resulted in the scope for transparency being greatly reduced. Although most private operators find tools such as NIDB given to officers are extremely useful and important in facilitating customs valuation work. However, the traders interviewed had formed the opinion that in many instances the appraising officers simply enhanced the declared value based on contemporaneous imports without paying attention to the quantity imported. As per Rule 5 (identical goods) and Rule 6 (similar goods), comparable consignments will be charged at the same commercial level. However, the officers do not make adjustments in price by taking into account the different quantity.

(d) Special Valuation Branch

The SVB of the Directorate of Customs Valuation deals with cases related to imports involving complex valuation issues such as related party imports, cases involving payment of royalties, licence fees, supply of materials and services by the importer. Most of the complicated cases are transferred to SVB, which takes a long time to reach a decision as it is poorly manned, many of the survey respondents noted. They suggested that more trained manpower should be provided to SVB in order to improve efficiency and reduce the waiting period.

It appears that the operation of SVB is a major constraint to traders. Some of the respondents produced a CBEC circular (2001) suggesting that, after the submission of all documents by importers, the Customs Department would finalize the case within four months. However, in practice this rarely happened. In many cases, the time taken was as long as two years, during which the affected importer continued to pay a 5 per cent extra duty deposit. No multinational company likes to show the extra duty deposit as pending with customs in their balance sheets. With regard to refunds by the Customs Department, some of the respondents said they are never made while others said the refunds took three to four years.

(e) Transfers of officers from other services

The private sector representatives also pointed out that on several occasions officers from other services had been transferred to important and sensitive positions in the Customs

Department, especially at the field level where quick decisions needed to be taken. Some of these decisions have immense economic implications. It was pointed out that such movements of officers are made without realizing the severity of the situation. The provisions of ACV are very detailed and are supplemented by detailed interpretative notes that require special training and better administrative skills. This problem was also seen as one of the factors contributing to the growing number of orders passed by customs officers being set aside by CESTAT.

(f) Imports of substandard and second-hand goods

Most of the surveyed private companies reported imports of substandard and second-hand goods to be a major constraint as they found it extremely difficult to convince the Customs Department to opt for the transaction value method. Usually, it is difficult to find identical or similar commodities under this category when scrap and other such goods are being imported. In such cases, the customs officers reportedly preferred to use the fall-back method.

The recently amended Foreign Trade Policy and Procedures (2006-2007) allows imports of second-hand capital goods but restricts imports of re-manufactured goods.[16] However, the definition of re-manufacturing is left to the Customs Department. As there has been a surge in demand for reconditioned goods, the lack of specifications and a clear statement on definition may create more confusion. Sometimes, old machines are dismantled and reassembled, with some new components being used to replace old parts. It is left to the discretion of the customs officers to determine whether a machine is re-manufactured.

(g) Narrowing the problem

Most private sector companies are of the opinion that the additional restrictive measures imposed by the Customs Department are generally the result of misdeeds committed by a few traders who may account for, at most, 15 to 18 per cent of total trade transactions. There was a clear opinion that these few traders should be distinguished from the majority. In this context, there might perhaps be room for some choice between pre-clearance control and post-clearance control. It was suggested that manufacturing units might find it easier to deal with post-clearance audit while in case of the traders pre-clearance control should be made more stringent. The recent introduction of RMS is seen as an important step in this direction.

(h) Customs valuation and transfer pricing

Several key industries felt that efforts needed to be made to explore the possibility of convergence between customs valuation procedures and transfer pricing norms, the lack of which is increasing cases of litigation in India. With the fast expansion of intra-firm trade in India, there is a growing need to explore the gap and interplay between customs valuation and other commitments such as direct taxation between related parties. Some

[16] Rajagopalan, 2006.

of the surveyed companies also raised the point that the Government should ensure greater convergence of rules and administrative practices in this area. Transfer pricing is used by multinational enterprises to determine the price and conditions for the transfer of goods, services and assets between their affiliated companies situated in different tax jurisdictions.[17] These multinational enterprises are said to account for 60 per cent of world trade, and transfer pricing has become the number one issue in the international tax arena. While the focus has traditionally been on direct taxation, the customs duties dimension of transfer pricing now increasingly attracts the attention of both government and business.

In India, provisions under the Customs Act, 1988, Sections 14 1(A) and 14 1(B) provide for customs valuation of transactions that are not arms length[18] while Sections 112 and 114 (or Section 167 (8) of the Sea Customs Act), penalize improper trade transactions. Section 111 allows for confiscation. Over-invoicing as well as under-invoicing of imports (Section 112) and exports (Section 114) are recognized as punishable economic offences.

However, in ACV more needs to be attempted to bring in this type of convergence. In the Tokyo Round Agreement in 1979 and subsequently in Article VII of GATT, 1994, there is hardly any reference to transfer pricing, although a case is made for arms-length price for customs valuation.[19]

(i) Undervaluation by firm type and sectors

The under-valuation issue is a pressing problem in India, and such economic offences are often noticed for sizable number of products. Such activities are very closely associated with specific products where the market premium for the product plays an important determining factor. Detection of such offences committed by companies is a complex task because similar economic offences are not committed uniformly across all imported products. The survey data have been utilized in understanding the vulnerability of products susceptible to under-invoicing.

In using the survey data to analyse behaviour at the product level, asymmetry was found in the distribution of firms engaged in under-invoicing activities for different products. It was also found that several firms were engaged in handling different products in several sectors; hence, in this analysis, the focus was on revenue evasion by the firms and with importance being attached to the size of the sample. As discussed above, the sample size was 320 firms, which had all been found guilty by CESTAT. The commodities that each firm was dealing with ranged from one to 10 products. Among the economic offenders,

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17 World Customs Organization, 2006.

18 An arms length transaction is one in which the buyers and sellers of a product act independently and have no relationship to each other. In that context, arms length prices are prices that normally prevail when buyers and sellers have no relationship.

19 Satapathy , 2001.

some are manufacturers while others are traders. In the case of offenders with a manufacturing background, the value of evasion might have been large but the number of products was very small - generally around one product. On the other hand, the traders dealt with a large number of products, but were only involved in a small amount of tax evasion.

However, it is important to understand how different sectors are affected by under-invoicing as well as the consequent implications of such economic offences on the collection of customs revenue. Based on the survey, the effects of under-invoicing in different sectors are presented in table 4. For analytical purposes, the survey results are presented by product, although the survey was conducted on a company basis. The results are presented at the HS Section level (in bold figures) and also at the HS Chapter level under each Section level in order to show variations within subgroups. Although

Table 4. Coverage, distribution and magnitude of undervaluation at the company level

Section/ Chapter	Description	Distribution of under-valuation (%)	Potential rise in revenue (%)	Sectoral distribution of firms (%)	Evaded revenue per firm (Rs million)
V	**Mineral products**	**5.81**	**0.84**	**2.99**	**113 507.00**
25	Salt, sulphur; plastering materials etc.	3.30	24.06	0.63	304 287.40
26	Ores, slag and ash	1.06	21.32	0.31	196 974.60
27	Mineral fuels, mineral oils and products	1.44	0.35	2.04	41 251.65
VI	**Products of chemical/ allied industries**	**2.73**	**6.63**	**1.41**	**113 019.10**
29	Organic chemicals	1.72	4.58	0.21	476 452.00
33	Essential oils and resinoids	1.01	13.22	1.20	49 172.74
VII	**Plastics and rubber and articles**	**3.49**	**4.35**	**28.09**	**7 270.58**
39	Plastics and articles thereof	1.45	1.90	27.42	3 093.06
40	Rubber and articles thereof	2.04	14.46	0.67	176 938.60
IX	**Wood and wooden articles**	**2.01**	**1.15**	**3.31**	**35 573.98**
44	Wood and wooden articles	2.01	1.15	3.31	35 573.98
XI	**Textiles and textile articles**	**17.24**	**11.00**	**8.98**	**112 148.00**
50	Silk	8.06	10.36	2.15	218 390.50
53	Other vegetable textiles, fibres; paper	0.90	53.04	0.08	593 622.40
54	Manmade filaments	0.23	5.13	0.37	36 669.78
59	Impregnated, coated, textile fabrics	4.38	8.63	4.31	59 363.30
63	Other made-up textile articles	3.65	34.71	2.04	104 201.40

Table 4. ***(continued)***

Section/ Chapter	Description	Distribution of under-valuation (%)	Potential rise in revenue (%)	Sectoral distribution of firms (%)	Evaded revenue per firm (Rs million)
XIII	**Articles of stone, plaster, cement**	**0.86**	**5.94**	**0.56**	**90 073.27**
68	Articles of stone, plaster, cement etc.	0.86	5.94	0.56	90 073.27
XV	**Base metals and articles of base metal**	**31.11**	**4.95**	**18.37**	**98 890.45**
72	Iron and steel	13.40	3.83	10.77	72 701.52
74	Cooper and articles	6.17	7.22	1.43	252 032.40
76	Aluminium and articles	7.16	4.77	4.62	90 432.38
79	Zinc and its articles	4.36	11.93	1.54	164 857.80
XVI	**Machinery and mechanical appliances**	**26.34**	**3.25**	**21.65**	**71 052.20**
84	Nuclear reactors, boilers, machinery	21.27	5.28	12.05	103 090.50
85	Electrical machinery/ equipment and parts	5.06	1.59	9.59	30 814.28
XVII	**Vehicles, aircraft and vessels**	**0.15**	**2.89**	**0.13**	**68 478.00**
87	Vehicles other than railways or trams	0.15	2.89	0.13	68 478.00
XVIII	**Optical, photographic, cinematography, etc.**	**5.07**	**5.16**	**7.32**	**40 523.05**
XX	**Miscellaneous manufactured articles**	**5.13**	**12.54**	**7.15**	**41 897.77**

Source: Survey conducted by RIS.

Notes: Figures in bold refer to HS Sections; other figures refer to HS Chapters. In columns 3 and 5, HS section figures are distributed across their corresponding HS Chapters. In column 4 and 6, the weighted average of HS chapters is taken to estimate average for the corresponding HS Section — the number of firms in each HS Chapter is used as weighting to arrive at the average for each HS Section.

under-invoicing is taking place in several sectors, the concentration of such activities is predominant in certain product segments. In order to understand the pattern of under-invoicing in India, some of the indicators at the HS Section level (in bold figures) and HS Chapter level are presented separately, using survey data. The experience indicates that the distribution of reported undervaluation of products is highly skewed across HS Sections, and within each Section some HS Chapters dominate in the under-invoicing products basket.

Some of the large product segments at the HS Section level are base metals, machinery and mechanical appliances, and textiles. Some other important broad product groups are mineral products, plastic articles, optical photography instruments and other manufactured items. Moreover, a high degree of variability in under-invoicing within these broad product groups (i.e., at the HS Section level) was also observed during the survey (i.e., at the HS Chapter level). For example, the detection of under-invoicing was very large in the base metals product segment (Section XV), and a break-down of its subcomponents at the HS Chapter level is also presented. From the total customs undervaluation detected in the base metals segment, nearly 43 per cent is shared by iron and steel (Chapter 72). The case is similar in other broad aggregates at the HS Section level. It is important to note that undervaluation detected in the three sectors including base metals, machinery and textiles constitutes nearly 75 per cent of the overall undervaluation detected in India.

The implications of detection of under-invoicing on customs revenue is important in the context of the fast decline in revenue collection as a result of sweeping economic reforms in India, leading to a steep decline in the rate of customs duty. As the customs tariff rate differs from one product to another, the revenue implications are varied in the different product segments. In terms of product groups (i.e., at the HS Section/Chapter level), the likely increase[20] in customs revenue as well as the average of each section are also presented.[21] The results show improved prospects for generating more revenue in the sectors of textiles, chemicals, stone and plaster, base metals and other manufactured products.

3. Further analysis of key concerns

In view of the issues raised by the private sector, several government agencies were interviewed and an effort was made to identify factors responsible for the key concerns of the private sector. Although satisfactory responses could not be obtained on all the issues, a summary of the information collected is presented below.

(a) Customs Department refunds

The perception that customs refunds were not being made was found to be incorrect. Table 5 shows that such refunds from 2000/01 to 2004/05 hovered around an average 0.45 per cent share of total customs revenue. In 2004/05, the amount was almost Rs 187 million. However, it was accepted that, in some cases, refunds took an exceptionally long time.

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[20] The figures indicate the percentage rise in revenue collection in the post-detected period over the customs revenue declared before detection.

[21] To arrive at the Section level figure (in bold), the weighted average of the data at the Chapter level was used. In this case, the number of surveyed firms in each HS Chapter is taken as the weighting while calculating the average at the HS Section level.

Table 5. Customs refunds by customs stations from 2000/01 to 2004/05

	2000/01	2001/02	2002/03	2003/04	2004/05
Total	122.60	188.92	301.08	256.00	186.60
Net customs revenue	47 615.91	40 096.50	44 912.31	48 599.66	57 565.73
Share of customs revenue (%)	0.26	0.47	0.67	0.53	0.32

Source: Standing Committee on Finance, 2005.

(b) Rejection of transaction value

In the private sector interviews, it was found that the rejection of transaction value was often due to frequent under-invoicing. Several importers had then resorted to the instrument of appeal. It was confirmed that 60 to 70 per cent of valuation cases were settled at the level of the Commissioner of Customs (Appeal), with the majority of them being rejected at that level. Of the remaining cases, only 15 to 20 per cent did go all the way to the Tribunal. This raises one important point regarding the working of this mechanism because, initially, it is at the Commissioner s level that permission is granted for initiating an SVB enquiry. The related CBEC circular makes it very clear that it is imperative for the concerned Commissioner of Customs to critically examine the issues involved and decide whether any particular case deserves a detailed enquiry by the SVB.

(c) Concerns related to SVB

As mentioned above, several private sector respondents raised the issue of a lack of transparency and the role of SVB, which has played an important role in generating additional sources of information collected from different international publications. The information is monitored by SVB for a specific period against the various values being quoted at different entry points (customs stations) in India. Several under-invoicing situations are possible for which various data could be collected for detailed research in future. Box 2 presents five types of under-invoicing, among which third country invoicing and the possibilities for double invoicing, using different destinations and sources, are included.

(d) Narrowing the problem

The private sector representatives raised the point that under-invoicing occurred in only 15 per cent to 18 per cent of total transactions. It is important that the firms or sectors concerned are identified so that not all traders face the same treatment. One method would be to distinguish manufacturing and trading firms separately. In this context, there may be some choice between pre-clearance control and post-clearance control. It is suggested that manufacturing units may find it easier to deal with PCAs while in case of the traders pre-clearance control should be made more stringent. The recent introduction of RMS is seen as an important step in this direction.

Box 2. Nature of under-invoicing in different cases

In recent years, the nature of under-invoicing has become diversified as traders have employed different strategies, some of which are detailed below.

Third country invoicing — goods shipped from one countrybut invoiced from another country

In a shipment of 8,000 mt of a polymer manufactured in country M, the invoice was raised in country X by a trading firm. The goods were directly shipped from the manufacturing country, but were invoiced at US$ 500/mt, against the prevailing international prices of US$ 850-US$ 880. Enquiries revealed that the importer had an arrangement with the supplier for a much higher price and the balance was settled through unauthorized payment channels.

Double invoicing — one invoice for the country of export and another for the country of import

Glassware of a reputed brand was imported at a price much lower than the manufacturer s price list. On enquiry through reliable sources, it was revealed that the invoice submitted in the importing country was about 45 per cent lower than the price declared in the exporting country.

Adjusted invoice — selling price of supplier is adjustable

Imported apples originating from country X were declared at 15 Currency Units (CU) per 20-kg carton. As the price was far lower compared with contemporaneous imports, the supplier in the country of export was contacted via email to ascertain the selling price. The supplier quoted a price of 28 CU per carton. He further noted that a letter of credit was established at a reduced rate provided that the balance would be remitted prior to shipment.

Grades of material — importing prime and declaring as Grade II

Gum Arabic imported from country X was declared as Grade II with an invoice price of 500 CU PMT. As there was no market price available for the second grade, the supplier was contacted for details. He confirmed that there was no difference in grades and that he sold the product for 1,000 CU PMT only. However, he prepared invoices for half the price, indicating a lower grade for duty purposes. In such cases, advance payment of 50 per cent was collected before arranging the shipment for the half-priced invoices.

Data exchange — different value by third country invoice

Camera parts imported through a supplier in a third country were invoiced at about 13 per cent of the actual price. In one consignment, the declared price was 4,800 CU against an actual value of 37,000 CU. The undervaluation was established through a verification process with the help of the customs authorities in the exporting country.

Source: Rehman, 2006.

(e) Frequent transfers of manpower

Despite several remedial steps taken by the Customs Department, the field staff is often unacquainted with the valuation and assessment procedures. Examiners and appraisers are the first to interact with importers, but they are often unaware of nuances in this area. Department officials, especially those who come from agencies other than customs, are often unaware of the nuances of customs policies, thus creating an extremely complicated situation for CHAs and importers. Most of the complicated cases are transferred to SVB, which takes a long time to deal with them as it is poorly manned. Therefore, adequate numbers of trained staff should be provided at the field level and at SVB in order to improve efficiency and reduce the time involved in settling such cases. In this context, the Government should also pay attention to the policy of transferring officials from other agencies to key posts in the Customs Department; at least in areas where technical work such as valuation is involved, transfers should be avoided.

C. Policy recommendations and conclusion

As discussed above, imports in India have expanded at a phenomenal rate of 40 per cent per annum in recent times. Despite this increase, very few cases face customs valuation-related constraints - between 3 to 4 per cent of the total transactions. However, this fact assumes importance in the light of the wider efforts being made by India to ensure trade facilitation. A difficult customs valuation regime reduces the impact of, and gains from a successful implementation of the trade facilitation agreement. In this regard, certain important measures may be taken by the Government, the international community and trading partners.

One factor contributing to the decline in the number of reported cases of under-invoicing is that customs duties in India have been greatly reduced. However, this remains a key concern of the trading community. It is a common perception that importers are generally engaged in undervaluation activities, particularly for consumer goods; however, the survey results indicated that such firms were engaged both in manufacturing and consumer products. The survey analysis indicated that a high concentration of under-invoicing had been detected in selected import sectors while other sectors were thinly reported on with regard to occurrences of such economic offences. At the macro level, the detection of under-invoicing is so high that customs revenue is likely to rise significantly when evaded customs products are properly assessed and taxed. A large number of firms are engaged in under-invoicing. However, it is important to note that the average level of evaded customs valuation per firm differs significantly across sectors.

The other factor that eventually may contribute to a further decline in under-invoicing is the launch of a countrywide ACP and RMS for importers, under which regular importers with a reputation for prompt compliance will be accredited. This accreditation will secure them assured facilitation at major customs ports throughout the country. Self-assessment with assurance of quick deliveries of their imported cargo without any examination by the Customs Department is one of the key features. It will also help importers keep lean

inventories as well as reduce transaction costs. Some of the major conclusions and policy recommendations are being summarized herewith.

1. Problem of under-invoicing

Under-invoicing of imported goods is an extremely serious and complex problem that has a negative impact on the Indian economy in several ways. Duties and taxes escape the net and this results in gross economic distortions. This leads to an uneven playing field and unfair competition, and is disadvantageous to goods manufactured in India. However, despite the general decline in customs duties there has been no major decline in the instances of under-invoicing, which is still extensive given the tremendous resource demands in India. As is made clear in this study, under-invoicing is largely attempted by traders although manufacturers are not far behind. High-risk sectors have also been identified here. The estimated loss due to this activity is close to Rs 100 billion. The increased vigilance and deployment of modern systems in India such as the introduction of an electronic RSM, which may alert staff to possible under invoicing, as well as a database of indicative values for imported goods, may help in minimizing this loss. In addition, there appears to be some scope for the Customs Department to work more closely with industry players such as CHAs in identifying wrongdoers. The Indian proposal at WTO also assumes importance in this context, where the help of authorities in other countries may also be accepted in obtaining evidence of under-invoicing.

2. Reduction of customs duties

The continuous reduction of customs duty appears to have helped to some degree in reducing the cases of under-invoicing. In India, consistent efforts have been made to lower import tariffs as the country integrates with the ASEAN economies. The policy pronouncements through the budget speeches of different finance ministers in the past decade have suggested a reduction of the peak customs duty. In 1991, the average customs duty was 99 per cent; by 2005, it had been reduced to 15 per cent while in 2006 it was lowered further to 12.5 per cent. This lowering of tariff duties has a direct impact on the constraints related to customs valuation, as this may remove the incentives for under-invoicing. Thus, a continuation of the policy of lowering duties may eventually contribute to tackling the problem of under-invoicing.

3. Transaction value as the main approach

India is one of the few developing countries to have changed over to the transaction value method while implementing the commitments made at the Tokyo Round of GATT in 1988. Thus, the implementation of ACV in India, even after the relaxed time frame of five years allowed for the developing countries, did not affect the system in a major way. The transaction value is largely accepted as a key technique for assessing trade consignments. It is being expected that new RMS schemes such as the Valuation Corridor , which will consist of a database of highly sensitive commodities with permissible value bands defined for allowing clearance without intervention, may help to strengthen the working of the

transaction valuation system. Any consignment having a declared value below the lower limit of its value band will be redirected for assessment by the Customs Department.

The second part of the valuation component of RMS concerns its contribution to general risk evaluation. Here, the risk is computed statistically for various risk elements, including valuation. Each area is assigned a maximum risk index and every commodity being imported will be evaluated in terms of a percentage of the total risk.

The third part of the valuation risk component will be the use of intervention corridor in RMS to study the valuation trend of newly identified sensitive commodities, and to monitor the efficacy of the Valuation Corridor . In this context, the SVB role should also be analysed in an objective manner. As revealed by several private sector representatives, SVB occupies a huge discretionary space that, at times, creates enormous costs for the trading community and eventually increases transaction costs.

4. Voluntary compliance culture

The private sector, together with the agencies concerned at the sectoral level, would have to be encouraged to promote a culture of voluntary compliance. In the case of exports, this is being dealt with in the context of SPS/TBT commitments, as in India there is excessive focus on exports while very little attention is being paid to industry responsibility in helping the Customs Department to manage constraints such as under-invoicing. Although industry and the Customs Department have informal links for collecting such information, there are no structured mechanisms within the industry forums for addressing such challenges. Various export councils are working at this point with sectoral focus. Their help may be sought in identifying incidents of fraud that include under-invoicing, tariff misdeclarations, incorrect use of tariff headings, non-declaration of goods and the import of counterfeit goods.

The private sector, together with other stakeholders, may also help in the realignment of resources including arranging appropriate equipment needed for continuing and improving the reform process so that their firms and industry as a whole remain on a par with the new technologies being adopted by the Customs Department.[22] The role of the private sector is particularly important in this regard. This assistance would be most important in terms of fighting against fraud in the import process and in continuing the dialogue with all stakeholders to identify specific areas where the private sector can support capacity-building. Another means of promoting ownership of reform that could be introduced by the Customs Department is the identification of sectoral profiles of industrial groupings, which potentially could help in finding common solutions to shared problems through exchanges of experiences.

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[22] Kunio, 2002.

5. Frequent updating of databases

The launch of services such as NIDB has helped the Customs Department in terms of facilitating assessment activities. However, it is equally important to maintain and update the facilities created by DOV, such as NIDB, so that the full benefits in terms of enhancing trade facilitation potential may be realized. As emphasized by the private sector survey, there is a huge time lag in updates, which creates various problems among different sets of importers. It may be a prerequisite to institutionalize such changes and the appropriate bureau resources dedicated to the maintenance and upgrading of the databases. In fact, the NIDB product description convention is to be improved to make it more precise and to ensure that the data are regularly updated in line with the market. This may help in reducing unnecessary friction between customs authorities and importers regarding the use of the value-range information system.

6. Information sharing

The joint proposal by India and the United States in TN/TF/W/57 sets out the basic approach to the establishment of a multilateral mechanism for the exchange and handling of information between WTO members. It is the second communication from India to spell out the exchange of trade transaction information consisting of data elements and documents that are usually collected by customs at the time of importation or exportation.[23] Such exchanges of information may be made through a nodal agency designated by each customs administration, and which would be kept confidential as per Article 10 of the WTO Agreement on Customs Valuation. There could be a cooperation mechanism for exchanging specific information at the multilateral level, as bilateral agreements are not always easy to enter into and which, at times, are limited in nature. Initially, this may be for a limited number of cases such as information on customs valuation, HS classification, full and accurate descriptions, quantity, and the origin of goods in identified cases where there is reason to doubt the truth or accuracy of the declaration filed by an importer or exporter. This may not involve serious implications as far as technical assistance needs are concerned, as this can be achieved through the existing administrative set-up of customs administrations.

During the negotiations, some countries raised objections regarding data sharing, quoting domestic laws on confidentiality. Therefore, it would be pertinent to have some understanding of these sensitivities. However, it must be realized that the idea for such a multilateral arrangement is as old as ACV itself. An International Convention on Mutual Administrative Assistance for the Prevention, Investigation and Repression of Customs Offences was conceived in 1977 at Nairobi under the auspices of CCC.[24] Known as the Nairobi Convention, in its preamble it acknowledged that offences against customs law are prejudicial to the economic, social and fiscal interests of States and to

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[23] World Trade Organization, 2005.

[24] Satapathy, 2000.

the legitimate interests of trade and that action against customs of fences can be rendered more effective by cooperation between customs administrations. This Convention still awaits endorsement but such frameworks are needed as a part of ACV.

7. United Nations Valuation Databank

This issue has been discussed by WCO in different forms at various forums. However, in order to promote global convergence and a uniform application of the harmonized system and valuation practices, it would be useful if any relevant agency within the United Nations system were to consider taking the lead in establishing a valuation database that can be referred to widely whenever needed by any member country s customs authorities.[25] This may help in checking further erosion of the WTO Valuation Agreement. As a significant number of companies undermine the prescribed duty rates and indulge in activities such as under-invoicing, some mechanisms for providing back-up information would prove extremely important.

In the United Nations Trade Database, it is possible to capture the value of imports reported by a country with the value of exports in the SITC classification, while taking due note of the amount of costs including freight as these may vary from country to country, depending on the magnitude of insurance premiums, transport charges, port charges etc. However, this database may still offer considerable assistance.

8. Convergence of approaches in transfer pricing and related party transactions

During several meetings with private sector representatives, it was pointed out that the Government should explore the possible convergence of the different approaches currently being taken by the Customs Department and the Income Tax Department. It was pointed out that this situation frequently leads to cases of parallel litigation in India. Thus, there is a need to develop international understanding, preferably as part of ACV, so that national governments can work out their policy responses to this issue. The further elaboration of ACV provisions related to transfer pricing - which, at this point, only cover arms-length prices comparable to test values arrived at from sales of identical or similar goods - may help. This elaboration may come close to the OECD guidelines related to transfer pricing, but should take fully into account the issue of revenue generation, as this issue remain a key concern of many developing countries.

In the context of related party transactions, customs valuation poses a huge challenge. The issue becomes more pronounced in situations where an imported product comprises a combination of hardware and software. Software is often customized to suit specific country/customer requirements. The differentiation in the product supplied to other countries, in such cases, is extremely difficult and requires a fair degree of technical knowledge to understand and adjudicate matters. In addition, the price at which goods are

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25 World Customs Organization, 2003; Satapathy, 2002.

supplied to other countries may or may not represent a comparable price as various factors are considered in pricing a product for each country. Customs authorities often do not have adequate information or training to understand the differences. More often than not, the price at which identical or similar goods are supplied by the exporter to subsidiaries/ joint ventures in other countries is accepted as a comparable price by the Customs Department in India. In fact, the Customs Department is often specifically requested to declare the prices at which goods are supplied to India. However, an importer in India finds it extremely difficult to obtain such information from an exporter, especially if the exporter is holding a small stake in the importer s business (say, between 5 and 10 per cent), as such information is considered confidential. With increasing global trade and investment, there is a need to consider whether a shareholding of less than 26 per cent in the absence of any other relationship ought to be considered as a relationship for the purpose of valuation under GATT Valuation Rules. There is also a need for clear provisions for working out the effect of indirect holdings for determining such a stake. It is a fact that shareholding is often arranged through a web of entities and it becomes very difficult for the importer to obtain full information.

9. Regional cooperation in Asia and the Pacific

There has been a sudden surge in activities related to bilateral, subregional and regional trade and customs cooperation in the Asia-Pacific region. The arrangements within these different agreements and frameworks (harmonized forms/certificates and other support documents such as road consignment notes, contracts and import licences; origin/destination and transit requirements; and transport charges) should be taken into consideration in order to determine how to realize their potential use and benefits, especially when addressing the current concerns over customs valuation.

In this context, it is worth noting the work being done by CCC.[26] Currently, the participating countries mainly include Central Asian countries such as Azerbaijan, China, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Turkmenistan and Uzbekistan. This work may be further expanded to subsume an Asia-wide programme in order to provide support for customs valuation-related activities.

[26] Asian Development Bank, 2002.

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VI. IMPLEMENTATION OF THE WTO CUSTOMS VALUATION AGREEMENT IN NEPAL: AN EX ANTE IMPACT ASSESSMENT

*By Pushpa Raj Rajkarnikar**

Introduction

Nepal became the one hundred and forty-seventh member of WTO, and the first LDC member to enter through the regular accession process, on 23 April 2004. Under its commitment, Nepal had to implement the WTO Agreement on Customs Valuation (ACV) as per the action plan by 1 January 2007, and to introduce Acts and regulations compatible with the provisions of the agreement. However, the likely impact on trade, price and revenue has yet to be assessed.

The basic purposes of ACV are to require countries to adopt a valuation system that is fair, neutral and uniform, and to prevent the use of arbitrary or fictitious values (Rege, 2002). For customs purposes, Article VII of GATT (WTO, 1995) requires the value of imported merchandise to be based on actual transaction value.

A transaction-based valuation system was introduced by Nepal in 1997. However, the Nepalese customs administration faces continuing difficulties in determining transaction values based on commercial invoices (Ghimire and others, 2005). The customs officials feel uncomfortable with the process of appraisal and verification of transaction values. Similarly, traders are not satisfied with the provisional valuation made by customs on the basis of reference values. Traders complain that there is lack of transparency, fairness and competency in that area (ESCAP, 2006). Therefore, the need to identify the problems that are likely to be encountered in the course of implementing ACV and provide the most suitable solutions is urgent.

This chapter attempts to answer the following questions:

(a) Will the implementation of ACV exert a positive impact on imports?

(b) What will be the effect of implementing ACV on price levels?

(c) Will implementation of ACV contribute to an increase in revenue?

(d) What are the difficulties related to successfully implementing ACV?

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(e) Are the available human and other resources within the Customs Department adequate for, and compatible with implementing ACV?

The study detailed in this chapter is based both on secondary and primary data. Secondary sources of information have been used for a comparative analysis of the existing system of valuation and the WTO (2004) system of valuation. Related Acts, regulations and agreements were thoroughly reviewed. Problems in the implementation of ACV have been identified through discussions with selected customs officials in the three main customs offices and the Customs Department. The study was mainly based on qualitative analysis. However some simple quantitative exercises together with a brief opinion survey among customs agents were conducted in order to assess the likely impact of change in the valuation practice on trade, prices and revenue.

The chapter is divided into four sections. Section A consists of a literature review while section B provides a comparative analytical review of the existing valuation system and the WTO valuation system. An assessment of the likely impact of change in valuation system on trade, prices and revenue is detailed in section C. In conclusion, section D puts forward policy recommendations for ensuring the successful implementation of the WTO valuation system in Nepal.

A. Review of literature on customs valuation

Customs valuation of goods is an important aspect of trade facilitation. Walsh (2003) defined it as an important element in a variety of other aspects of international trade including statistics, quotas and licensing arrangements, taxes and other charges levied on imports, and the application of preference systems. Customs duties are levied mostly on an ad valorem basis and customs valuation is usually the basis on which tariff and tax liability is calculated. Hence, it is important to establish generally acceptable rules and system for the valuation of imported goods.

In view of such importance of the valuation of goods, procedures for determining the dutiable value of imported commodities have been the subject of international negotiations since the early 1920s. Rege (2002) presented a brief account of the historical development of valuation agreement. The formal history of customs valuation started with the establishment of the League of Nations, but the agreement between nations on customs valuation was not finalized until the general conference held in 1947 by the United Nations on trade and employment. The conclusions of this conference were incorporated in Article VII of GATT.

Article VII requires that the value for customs purposes of imported merchandise be based on actual value . However, it also allows countries substantial flexibility in defining the actual value of imports, thus permitting GATT contracting parties to use widely differing valuation practices. In 1950, in an effort to achieve greater harmonization of valuation practices, BDV was developed by 13 European governments. Under BDV, the price of imported merchandise was to be determined based on the price of the merchandise

or the price that the merchandise would fetch if sold on the open market under fully competitive conditions in the importing country. The basic elements of BDV are price, time, place, quantity and commercial level. This concept implies that there is a notional price that can be determined by customs on the basis of available information, taking into account the conditions and other circumstances related to the specific transaction being valued.

Against the notional concept of BDV, on the other hand, big countries such as Australia, Canada, New Zealand and United States used a positive concept of valuation, laying down the standards based on the price actually agreed on in the sale. Since the preparatory phase of the Tokyo Round, the European Union had been seeking for improvements in the GATT rules on valuation, reflecting their desire to restrict customs authorities discretion. In a November 1977 meeting, the European Union agreed to make a fundamental change in its valuation systems by opting for a positive approach instead of the notional approach of BDV. The draft agreement required that in all cases the customs value should be determined on the basis of price paid or payable for the imported goods in the particular transaction. This meant that customs authorities should, as a rule, accept the invoice price .

However, most developing countries did not join the new valuation agreement for fear of the undervaluation of goods, which would lead to significant revenue losses. The situation changed with the Marrakech Agreement, which established WTO, and ACV has now become binding on all member countries. However, the Uruguay Round also offered LDCs extra flexibility in implementing WTO agreements.

The multilateral trade negotiation effort known as the Uruguay Round commenced in 1986 and was concluded in December 1993. The agreement was amended during the Uruguay Round trade negotiations in 1994 and was recognized as the WTO Agreement on Implementation of Article VII of GATT, 1994 . The outcome of this round on customs valuation was to reinforce Article VII of GATT.

Walsh (2003) explained the various provisions of ACV and their implementation procedures. The Agreement on Implementation of Article VII of GATT, 1994, which came to be referred to as the WTO Agreement on Customs Valuation, was one of the results of the Tokyo Round of GATT negotiations. It officially came into force on 1 January 1981 and was adopted by various signatories from the mid-1980s onward. The agreement establishes the rules for the valuation of imported goods that must be applied by all member countries. It requires, as its basis, the use of the transaction value (selling price) between buyer and seller. It also specifies alternative methods to be used in sequential order for determining value when the transaction value cannot be determined under Article 1 (see Annex for details).

Under ACV, developing member countries are allowed to delay application of the agreement for a transition period of five years after their entry into WTO. However, the Committee on Customs Valuation is empowered, on request, to grant an extension of the transition period. Moreover, Part II of the agreement provides for administration, consultation,

and dispute settlement, including the creation of a GATT Committee on Customs Valuation and a Technical Committee of Customs Valuation, whose operation has been delegated to WCO. The main rules of customs valuation, as laid down in the Agreement on Implementation of Article VII of GATT, 1994, are explained in annex 1 to this chapter.

In Nepal, the process of customs valuation for the purpose of customs tariffs was systematized only after the introduction of the Customs Act, 1962 (Ministry of Law, 1962). Accordingly, preparation of a brief valuation manual in traditional form was prepared and a system for record keeping of product prices, which was not included in the manual, was introduced. In 1997, the Customs Act was amended and the value system of official reference prices was, in principle, replaced by a transaction-based valuation system (Government of Nepal, 2004). Following an amendment, the new basic valuation provisions were included in the Customs Act, 1962 and implementation rules were included in the Tariff Act.

However, the Customs Department did not apply the provisions of Articles 5, 6 and 7 of the Agreement of Implementation of Article VII of GATT, 1994 regarding deductive, computed and fall-back method of valuation, respectively. Even after the seventh amendment in 1997, there were no provisions in the Customs Act, 1962 on how the Customs Department should act in cases where a buyer and a seller were related to each other. Even before its accession to WTO, Nepal was examining the modifications that would have to be introduced in current legislation and practices in order to fully implement ACV. However, the legal system has yet to be made fully compatible with ACV.

In the course of joining WTO, Nepal intended to adopt the valuation methods of Articles 2, 3, 5, 6 and 7 as well as improve Nepalese legal provisions in implementing a WTO-consistent regime. For this, Nepal committed to incorporating the remaining provisions of ACV into the Customs Act, 1962 and the Customs Regulations, 1969. A timetable for the enactment of legislation implementing the agreement was provided in the legislative Action Plan circulated in document WT/ACC/NPL/10/REV I and in the Action Plan circulated in document WT/ACC/NPL/15.

The Customs Department of Nepal began implementing a three-year Customs Reform Action Plan in 2003/04. The plan accorded high priority to institutionalizing scientific customs valuation procedures, among others. Accordingly, the ASYCUDA system is being introduced to computerize valuation treatment, and a comprehensive valuation manual is being prepared. In addition, post-entry verification and PCAs are being introduced on a trial basis. Article 20.3 of ACV contains a provision for technical assistance to ensure member countries have the capacity to fully implement the agreement.

In accordance with Section 37 of the Customs Act, 1962, importers have the right of appeal to the Revenue Tribunal against the decisions of customs officials in the determination of customs value. Meanwhile, the establishment of an independent administrative tribunal on the right to appeal against an administrative decision of the customs authority regarding customs valuation is underway. Training of customs officials

in the areas of clearance, verification, audit and methods of combating valuation fraud is also being conducted.

Evasion of duty through undervaluing or misdescribing imports is an acute problem in developing countries. King and others (2003) estimated that under-invoicing was widespread in Nepal, indicating a lack of effective valuation procedures. Also, the transaction value system was introduced without adequate preparation, training and a value information system, and without putting in place the necessary procedural and organizational framework (King and others, 2003). According to Filmer (2003), on the other hand, the trading community held the view that declaring a higher value resulted in clearance delays in order to extract illegal payments. Ghimire and others (2005) reported that major problems in customs valuation included under-invoicing of goods, the use of discretionary power by customs officials and a limited database for value appraisal. A limited database for value appraisal is considered a violation of ACV. A perception survey conducted by Rajkarnikar and others (2005) also identified customs valuation as one of the major issues hindering trade facilitation in Nepal.

A trade and competitiveness study in 2003 gave a brief account of Nepal s existing valuation procedure and its inherent problems. According to the study, the Department of Customs had difficulty in determining the transaction value based on the invoice provided because procedures for determining the value were not fully developed or understood. All the above studies indicate the need to implement ACV, because it provides a fair, uniform, and neutral system for the valuation of goods for customs purposes, conforms to commercial realities and prohibits the use of arbitrary or fictitious customs values.

Valuation fraud is a serious problem in most countries, and particularly in developing countries that have relatively high rates of duties and other various taxes on imported goods. It is often exacerbated by a generally poor level of tax compliance throughout the country, a tendency for many importers to deliberately maintain poor records and the existence of a special relationship with suppliers. WTO valuation rules require an administration to accept the declared transaction value (even when clearly unreasonable), unless the authenticity of the supporting invoice can be unequivocally disproved by the authorities. Developing countries are of the view that requiring customs to accept the transaction value reflected in invoices submitted by importers would impede detection of cases in which imported goods were undervalued to reduce the incidence of duties (Rege, 2002). Most of the implementation requirements for valuation on the basis of ACV are lacking in developing countries. Such requirements include (a) the establishment of a legislative and regulatory framework, (b) a mechanism for judicial review, (c) effective administrative procedures, (d) an organizational structure and (e) training. It is incumbent upon customs administrations to develop the system and procedures necessary to effectively control undervaluation.

Finger and Schuler (2000) argued that the agreement was imposed on developing countries in an imperialistic manner, with little concern for what it would cost such countries to change over from BDV to the new system, how it would be carried out or whether it

would support their development efforts. Finger and Schuler also observed that ACV provided neither an appropriate diagnosis nor an appropriate remedy for the problems of LDC customs administration. Because of the differences in trading environments and the absence of adequate computer systems and databases, customs officials of developing countries remain apprehensive that the application of WTO standards will create practical problems.

A lack of proprietary feeling among WTO member countries with regard to the agreement, a lack of prospects for immediate advantages, and inadequate technical and financial assistance responsive to the needs of developing countries is hindering rapid application of WTO standards. Nepal is no exception.

A study conducted in 2004 as a part of the Integrated Framework for Trade-Related Technical Assistance - Nepal, argued that adopting WTO valuation methods would be beneficial only after customs inspectors had received training in valuation methods as well as access to a database with pricing information. Otherwise, the study noted, using transaction values simply opened the door to fraudulent invoicing. Finger and Schuler (2000) concluded that the Uruguay Round customs valuation agreement presumed an administrative environment that did not exist in many LDCs.

Only a few studies related to customs valuation have been undertaken. Although some of those studies deal with different aspects and issues of customs valuation in Nepal, none provide an assessment of the likely impact of implementing ACV.

B. Customs valuation in Nepal

1. Past practices

Nepal was almost isolated from rest of the world until the political changes of 1950. Traditionally, Nepal s trading partners were limited to India and Tibet. Tariffs on goods imported from Tibet used to be fixed at a specific rate. However, in the case of trade with India, both specific and ad valorem duties were levied. There was no system of customs declaration by importers before 1945. Instead, customs officials used to inspect and value the goods. Thus, the valuation system was in practice even before 1950. However, there was no integrated and uniform system of customs valuation. The process of customs valuation used to be different in different parts of the country. Also, there was no integrated comprehensive customs legislation. In the Rana regime (i.e., before 1950) only government directives, known as *Sanads* and *Istihars*, were issued to regulate customs. In 1945, all previous *Sanads and Istihars* were repealed and a single *Sawal* (also a set of government directives) was introduced for customs purposes; thus, for the first time, the declaration of goods by importers at customs points was started.

A trade treaty was signed with India in 1950, which contained a provision that Nepal would receive a refund of Indian excise levied on goods imported into Nepal directly from Indian manufactures. Accordingly, the importers had to declare the value of goods

and submit invoices for the goods. Customs officers used to verify the invoice prices with the border prices of similar goods between India and Nepal. Thus, the practice of levying ad valorem duty expanded after the trade treaty was signed with India. In addition, a new era of the rule of law began with the establishment of a democratic system in Nepal in 1950. As a result, a Tariff Board was formed and a Customs Commission was established in 1957.

In Nepal, the customs valuation process for the purpose of setting customs tariffs was systematized only after the introduction of the Customs Act, 1962. Accordingly, the valuation of imported and dutiable goods began as per the Act. A valuation guide booklet (a list of reference prices) was published and a system for recording product prices was introduced. The valuation guide booklet was updated with regard to imports from third countries other than India, and published based on consultations with various organizations/ stakeholders such as the Federation of Nepal Chambers of Commerce and Industry, the Nepal Chamber of Commerce and the Nepal Overseas Export-Import Association. For this purpose, Customs Department records, information received from sellers, contracts between buyers and sellers, documentary evidence submitted by importers, international market prices of products and agency price lists were used. In general, the invoice price was taken for granted if the value was more than that listed in the booklet. The valuation of goods was based on the Kolkata CIF price (Customs Department, 2004). If an importer did not declare the value and if it was a first-time case, the valuation was made on the basis of the customs reference record. If there was no reference record and the importer was unable to submit satisfactory documents, the customs officers could determine the value up to an estimated amount of Rs 125,000. For a value determination exceeding this amount, approval of the Customs Department director-general was required. There was also a provision allowing the Government to purchase goods if the declared value was lower than 50 per cent of the actual price.

With regard to imports from India, there are three types of trading arrangements: (a) the Duty Refund Procedure (DRP), (b) in-bond imports and (c) the Local Purchase System. Under DRP and in-bond imports arrangements, valuation was made by adding freight and insurance to the ex-factory price. Under the Local Purchase System, valuation was carried out with the use of a booklet prepared based on suggestions received from regional meetings of the border customs chiefs. In valuing goods, an amount equivalent to 5 per cent was added to the price mentioned in the booklet to account for freight and insurance. Known as the Set Value System, this method was introduced in order to maintain uniformity in the value of imported goods at all customs offices through reference to the booklet.

With the rapid development of science and technology, various new products began to emerge. As frequently updating the booklet proved impractical, the valuation of new products was then based on catalogues and other documentary evidence submitted by importers. Price records for such new products were maintained and used as the basis for valuing similar goods. In cases where an invoice was submitted showing a value higher than the recorded price, record was revised accordingly.

2. Current valuation policy and practices

The Customs Act, 1962 (amended in 1997) was a landmark with regard to customs valuation. The amendment, for the first time, recognized the transaction value as a basis for customs valuation. Following the amendment of the Customs Act, 1962, The Customs Regulation, 1969 was also amended. According to the amended provisions of the said Act and Regulation, assessment of the customs value of imported goods began to be made based on the invoice price. This amendment conceptually and legally recognized the WTO/GATT valuation system based on the transaction value. However, in order to justify the transaction price of the imported goods, the importers have to submit invoices and other documents as requested by the customs officials. It is the duty of each importer to prove the authenticity of the bills, invoices or documents submitted by them. According to amended Section 13 of the Customs Act, 1962, if the transaction price as quoted by the importer does not correspond to the procedure for fixing the actual transaction value or in cases where importers cannot submit the transaction price of goods, customs will refer to the value of similar or identical goods imported into Nepal. If necessary, customs will fix the price of based on recorded prices, previous prices of identical or similar goods, reference prices, suggested price lists of manufacturers, local market prices, international market prices and other available information.

Implementation rules were also formulated in this regard. In order to check for commercial fraud and valuation discrepancies, the PCA system together with provisions for fines and penalties for offenders were also introduced. In addition, provision was made for surety bonds and fixation of provisional values for immediate clearance in cases where the transaction value of goods could not be ascertained and the importer wishes to clear the goods beforehand.

In the course of joining WTO, Nepal committed to improving its legal provisions in order to implement a WTO-consistent regime, including customs valuation. An action plan for implementing ACV in Nepal was provided in Legislative Action Plan documents WT/ACC/NPL/10/RVI and WT/ACC/NPL/15.

The main items contained in the Action Plan for Implementation of the Agreement on Customs Valuation, submitted to WTO by the working party on the accession of Nepal, included:

(a) Further amendments to the Customs Act and Customs Regulations, enacting the legislative framework for the gradual implementation of valuation hierarchy with regard to transaction valuation;

(b) Amendments to current legislation in order to establish an independent administrative tribunal for the right of appeal against administrative decisions;

(c) Training of customs officials in the areas of clearance, verification, audit and methods of combating valuation fraud;

(d) The preparation of a customs valuation manual;

(e) Provisions of interpretative notes in laws and regulations;

(f) The gradual implementation of a valuation hierarchy - further amendments to legislation to complete the implementation of imputed value, computed value and enforcement of controls on prohibited forms of valuation.

As a developing country, Nepal enjoyed a grace period of three years to fully implement ACV. This means Nepal was not required to implement all the provisions of the agreement immediately. However, it was bound to introduce all provisions of the valuation agreement from 1 January 2007. Hence, Nepal adopted a policy of implementing WTO valuation provisions gradually and progressively.

As mentioned above, implementation of a three-year Customs Reform Action Plan began in financial year 2003/04 with various objectives, including institutionalization of scientific customs valuation procedures as well as making customs valuation systems more scientific and transparent. Accordingly, the ASYCUDA system was introduced for the computerization of valuation treatment. Post-entry verification and PCA are also being carried out on a trial basis. Nepal is seeking all available external technical assistance, including that under Article 20.3 of ACV, to ensure that it has the capacity to fully implement the agreement when the transition period expires. Legal and infrastructural development related to implementation of the agreement is also in progress. Meanwhile, a Manual on Customs Valuation and Post-clearance Audit compatible with WTO is being prepared under the Nepal Window II Trade-Related Capacity-Building Programme by UNDP in coordination with the Government of Nepal. The Customs Department has also started updating valuation data on major commodities and is being assisted by the Trade Promotion Centre, which is supplying the international market prices of major commodities. The aim of the Customs Department is to settle valuation issues within the specified period.

The Government of Nepal, in the process of fulfilling its commitment as a WTO member, drafted an amendment to the Customs Act, 1962. Although the amendment could not be finalized due to the dissolution of Parliament, Finance Ordinances in 2005 and 2006 included several provisions for making the legal system compatible with ACV.

The most notable provisions in Financial Ordinance, 2005 are:

(a) A definition of transaction price;

(b) Customs officers are required to follow the main principles of the WTO customs valuation system while determining the transaction price, whether a buyer and seller are related to each other or not;

(c) If the transaction price declared by an importer is less than that of identical or similar goods, customs can ask for further clarification and other documentary evidence;

(d) If the transaction price cannot be determined as above, customs will verify and determine the transaction price based on unit or computed value, by deducting or adding necessary expenses as per clarification and documents submitted by the importer;

(e) If the transaction price cannot be determined as indicated above, customs may determine the price without violating the principle of WTO valuation system;

(f) If an importer is not satisfied with the valuation decision of customs, he/she may appeal within 15 days to the director-general of the Customs Department directly or through the customs office concerned;

(g) If the transaction value cannot be determined in time, the importer may request a provisional value decision. (Provision is made for PCA as the control measure);

(h) With regard to the valuation of imports under DRP from India, the customs value will be determined based on the value determined by the government of India for excise purpose or the ex-factory or ex-depot price, whichever is the highest. Freight, insurance and other expenses, if any, will also be added into such determined value.

The most notable provisions in Finance Ordinance, 2006 include:

(a) An attempt to make the legal system compatible with ACV;

(b) Further elaboration of the valuation method, which states that if freight and other expenses are included in commercial invoices, the transaction price will be fixed based on those invoices. If there is no inclusion of these expenses, the valuation authority will fix the transaction price by adding in pre-estimated expenses. While fixing the transaction price, the director-general of the Customs Department can fix the basis of expenses incurred or to be incurred in the goods;

(c) A clearly stated valuation process and sequence in cases where importers cannot submit the necessary documents and evidence as demanded by customs, or where the transaction price cannot be determined based on submitted documents and evidence. In such cases, customs will determine the value in following sequence: (i) based on the transaction price of previously imported identical goods; (ii) based on the transaction prices of previously imported similar goods; (iii) the deductive value method or computed value method as chosen by the importer; and (iv) the fall-back method without violating the principle of the WTO valuation system;

(d) Authorization for customs to clear goods, if the price declared by an importer is less than the price determined by customs, by charging 50 per cent of additional duties on such differences. Alternatively, customs can, with the

prior permission of the Customs Department director-general, purchase from the importer at a declared price by adding insurance, freight and 5 per cent of the declared price as profit in such declared prices;

(e) Authorization for customs to fix the value and clear the goods in cases where an importer cannot submit the documents regarding the freight, insurance and other expenses, and applies for the fixation of provisional value for clearance.

The Finance Bill, 2006 does not include any new provisions regarding customs valuation. This is, perhaps, because of the Government s focus on political issues. As the Government is interim in nature it is more concerned with political matters. This indicates the probability that it will take more time to formulate adequate legislation for effective implementation of ACV.

Thus, from the review of customs legislation, the current system of customs valuations in Nepal can be termed as a hybrid of the WTO valuation system and BDV. It does not follow the GATT valuation structure strictly. It permits use of the transaction value of imported goods and other valuation methods such as identical, similar, deducted, computed and fall-back methods, either in explicit or implicit terms. Failure to incorporate all the provisions of the GATT Valuation Code into the Act, Rules, Ordinances or Finance Bill have resulted in a blending of the old valuation system and the GATT valuation system. While it recognizes transaction value, the current valuation system still permits the use of minimum value. The main features of current practice include:

(a) Valuation on the basis of the transaction price;

(b) Determination of the value of imported goods, in cases where the transaction value cannot be determined, in the following sequence: (i) transaction prices of previously imported identical goods; (ii) transaction prices of previously imported similar goods; (iii) use of the deductive value method or computed value method, as chosen by the importer; and (iv) the fall-back method, without violating the principles of the WTO valuation system;

(c) The right of an importer to appeal when he/she is not satisfied with the valuation done by the customs. The director-general of the Customs Department is the final authority to make decision in this regard;

(d) Provisional clearance of goods with surety/deposit;

(e) The requirement for customs to follow the fundamental principles of WTO when fixing the value of imported goods for tariff purposes.

Although Nepal has committed to follow ACV, the valuation system in Nepal does not follow the GATT valuation structure in entirety. The Customs Act, 1962 and the Financial Ordinances/Bill enforced that are from time to time do not contain clear provisions and explanatory notes for each method. There is a lack of detailed provisions for value adjustments. Moreover, the Customs Act, 1962 and the Finance Act, 2006 do not define

the different terms in accordance with ACV. Customs law is incomplete and lacks valuation factors with regard to the use of WTO principles of customs valuation, and there is no illustration and guidance regarding the specific application of valuation methods.

3. Current problems and issues

The study team used both secondary and primary information to identify the problems and issues related to customs valuation in Nepal. The secondary information included laws related to customs valuation as well as various reports, agreements and other documentation published by international organizations such as the World Bank, IMF, WTO and WCO. The study team also held discussions with customs officials at Tribhuvan International Airport, the Customs Department, and the Birgung and Bhairahawa customs offices. Information was also collected from customs agents at Tribhuvan International Airport, and the Biratnagar, Birgunj, Bhairahawa, Mechi and Tatopani customs offices. The study identified problems inherent in the existing valuation system as well as problems expected to be encountered while adopting the WTO valuation system.

The Government of Nepal committed to implementing ACV from January 2007 onwards. Some current basic problems in customs valuation in Nepal are presented in table 1. Various problems exist that are related to human resources, automation and database/information systems with regard to customs valuation. Although the ASYCUDA programme has been introduced at nine customs offices, the personnel directly involved in the operation of the programme are very limited. Table 2 details the current ASYCUDA skilled manpower situation.

A wide area network computer system to transmit information electronically between customs offices and the Customs Department in support of PCA and customs valuations is still lacking.

The customs procedures are still non-transparent and unpredictable. There is less grounds for self-compliance, especially in valuation practices. These are serious hurdles to fully and effectively implementing the WTO valuation system. Moreover, there is no adequate legal provision to cover all WTO provisions. In table 3, existing legal provisions are compared to WTO provisions and associated problems are identified.

The WTO Agreement on Customs Valuations is the outcome of long negotiations by the contracting parties in several Rounds. It is a remarkable development in the sector of customs valuation. The positive aspect of WTO valuation is that it is trader-friendly. In this system, customs administrations cannot challenge the declared value without documentary evidence and cannot increase value without giving importers an opportunity to be heard. This system provides several benefits. Nepal committed to fully implementing the agreement by the beginning of 2007. However, to implement it successfully in a developing country such as Nepal many associated problems and issues need to be addressed, some of which are discussed below.

Table 1. Problem identification and methods used

Current problems in valuation	Identification methods
Progressive implementation of the WTO valuation system is difficult due to weak customs administration.	Literature review (Nepal: Next steps in tax reform , IMF, April 2003).
Customs valuation using the transaction value method was introduced without proper preparation, or procedural and organizational framework, taking the WTO system very lightly.	Literature review (Nepal: Next steps in tax reform , IMF, April 2003).
Customs valuation problems have been under dispute between traders and the customs administration for a long time.	Discussions with customs officials and customs agents, and literature review.
A lack of value information database.	Literature review and discussion with customs officials.
A lack of manpower trained in customs valuation.	Discussions with customs officials and customs agents, and s study of the IMF report.
Problem of legislation: The Customs Act, 1962 (with amendments) and the Finance Bill/Ordinance do not contain detailed provisions compatible with WTO systems.	Literature review (Nepal: Next steps in tax reform , IMF, April 2003).
Problems with PCA: Customs control is an integral part of the customs valuation system. Legal provisions and practices of PCA are in the initial stage in Nepal.	Discussions with customs officials and literature review (Nepal: Next steps in tax reform , IMF, April 2003).

Table 2. Current ASYCUDA skilled manpower situation

Major offices	Total staff excluding attendants, drivers	Skilled operators	Ratio (%)
Customs Department	67	8	12
T.I.A. Customs	112	7	6
Customs ICDs*	30	5	17
Birgunj	62	8	13
Mechi	48	3	6
Biratnagar	48	7	15
Bhairahawa	61	7	11
Tatopani	28	3	11
Krishna Nagar	35	3	9
Nepal Gunj	28	No separate post	

Source: Customs Department, Kathmandu.

* Inland clearance depots.

Table 3. Current problems in the implementation of ACV

Existing provisions and practices	ACV provisions	Associated problems
1. No detailed definitions of valuation terms in the Customs Act, 1962 and Finance Act, 2006.	Detailed definitions in Article 15 of ACV.	The absence of definitions in law will result in misleading interpretation of valuation terms, enabling use of discretionary power by customs officials.
2. The Customs Act, 1962 and Finance Act, 2006 are silent on the issues of price adjustment in Article 8 of the agreement.	The provision of Article 1, i.e., value determination using Transaction Value Method, is always read with Article 8 (related to price adjustment).	Lack of transparent provisions for price adjustment may hamper uniformity in customs valuation.
3. The Customs Department has designed the value declaration form, but the procedures are still ambiguous and are not fully compatible with ACV.	The customs valuation handbook designed by WCO is detailed and compatible with ACV.	The absence of details on the valuation declaration form will make the task of valuation difficult for customs officials.
4. There are no provisions regarding conditions for use of the Transaction Value Method in the Customs Act, 1962 and Finance Act, 2006.	There are six conditions for the use of the Transaction Value Method: (1) there must be evidence of a sale for export; (2) there must be no restriction on disposition of goods by buyer other than specified; (3) the price must not be subject to conditions; (4) no part of resale goes to seller; (5) the parties are not related or the relationship does not influence the price; and (6) sufficient information is available for adjustment.	Partial provisions in legislation will lead to confusion among decisions makers.
5. The Customs Act, 1962 and Finance Act, 2006 both contain partial provisions of ACV. There is no detailed ruling.	There are 24 Articles followed by interpretive notes, explanatory notes in ACV.	Partial implementation of ACV cannot safeguard against revenue loss.
6. The Acts do not state the conditions for the application of transaction values of identical goods.	There are certain conditions for application of Article 2 of ACV.	Partial implementation of ACV cannot safeguard against revenue loss.
7. There is no specific basis for valuation control in either Act.	In ACV, there is a specific purpose for valuation control.	It leaves grey areas open to revenue loss.
8. The Customs Act, 1962 and Finance Act, 2006 do not state conditions for the application of transaction values of similar goods.	ACV states some basic conditions for the application of Articles 2 and 3 that examine the questions of identical and similar goods.	Lack of conditions leaves open the opportunity to use discretionary power.

Table 3. ***(continued)***

Existing provisions and practices	ACV provisions	Associated problems
9. The Finance Act, 2006 does not state the basic principles of Articles 5 of ACV (Deductive Value Method).	ACV has detailed provisions with interpretive notes for DVM.	The lack of detailed provisions makes the use of DVM complicated.
10. The Finance Act, 2006 makes provision for the Computed Value Method. However, it does not quote basic principles for the application of CVM.	ACV has detailed provisions with interpretive notes for the Computed Value Method under Article 6.	Article 6 is not actually being practiced by the customs administration because the producers do not reveal their production details.
11. The Finance Act, 2006 mentions the basic principles of applying the fall-back method, but only in brief.	ACV has detailed provisions of basic principles with interpretive notes for the fall-back method under Article 7.	The fall-back method is the instrument of last resort for value determination. Lack of detailed provisions in legislation may encourage use of discretionary power by customs officials in value determination.

(i) Legal issues

The provisions of the Customs Valuation Act of Nepal are not fully compatible with the WTO valuation system. Section 13 (1) of the Customs Act, 1962 states that the customs duty on imported goods will be assessed on the basis of the transaction value while Section 13 (4) and 13 (5) permit customs officers to fix the price of concerned goods on the basis of recorded prices and price list obtained from the international market. However, the Finance Acts and Ordinances since 1998 have attempted to present illustrative provisions in line with ACV. A mere provision of six methods of customs valuation does not serve the purpose of actual transaction value. There is a need for comprehensive customs rules that can carry all provisions of ACV. The Finance Ordinance/Bill provided for value determination for customs purposes using six methods prescribed by ACV. Yet, the need remains for a detailed explanation. Many terms need to be defined according to the provisions. The Customs Act, 1962 and Finance Ordinances/Bill do not represent the full body of ACV. Inconsistencies remain between the provisions of the Customs Act, 1962 and the Finance Ordinances/Bill.

(ii) Database issues

Nepal has implemented ASYCUDA++ developed by UNCTAD for customs automation. However, local customs offices are not connected with a wide area network. At present, the customs valuation database cannot be disseminated horizontally and vertically. Although transaction value is the price yardstick for customs valuation, value information and the value database are the key factors in testing its accuracy. Data can be generated within

customs and from outside sources such as international price ledgers, magazines etc. But in the absence of adequate computer support, those data cannot be used.

(iii) Issues concerning necessary preparation

The WTO Agreement on Customs Valuation is free from arbitrariness, and is conducive to trade and commerce as the Customs Department cannot use discretionary power to determine customs value. The system relies on the PCA system for customs control. There is no doubt that the provisions of ACV are based on best valuation practices, but the necessary preparations are needed because the valuation procedures are highly technical and demand high skills levels. In the Nepalese Customs Department knowledge of the WTO valuations procedures is inadequate. The Customs Department has difficulty in determining transaction values based on invoices because the procedures for determining the value are not fully developed or understood (Chapman and others, 2003). The infrastructure is not developed sufficiently to cope with the provisions of ACV.

(iv) Issues of post-clearance audit

In its Manual on Measures to Combat Fraud, WCO (1998) defines PCA as a process that enables customs officers to verify the accuracy of declarations through the examination of the books, records, business system and all relevant commercial data held by persons/companies directly and indirectly involved in international trade. It is one of the customs control measures conducted to verify the accuracy of declared customs values. Thus, the effective implementation of PCA is necessary to secure customs revenue and other taxes while facilitating customs clearance at border. It is conducted, after customs clearance, to confirm the accuracy of declared value and all provisions stipulated in the Customs Act, 1962.

The PCA system in Nepal was introduced three years ago, but it still has a long way to go. There is no trained manpower available for audit purposes. An Audit Manual is necessary for the implementation of PCA. However, the result of PCA is not significant in the current Nepalese situation. The WTO Agreement on Customs Valuation is positive with regard to valuation control measures and PCA is the most effective one. Customs is aware of valuation fraud and, if developed properly, PCA can combat the risk of revenue leakages. Currently, there is a Post-Clearance Cell working under the Valuation Section of the Customs Department, in which three officers and four subordinate staff members perform PCA. The Cell selects the particular transaction based on revenue risk and deputes an officer to carry out PCA. At the local level, a Valuation and Post-Clearance Unit carries out PCA and value assessment.

(v) Informal trade issues

Nepal has a long land border with India, which is extremely porous and conducive to informal trade. It is a fact that the higher the customs value, the greater the risk of smuggling and informal trade. Studies have shown that the customs valuation procedures

are the driving force behind informal trade in Nepal, especially with India. The Trade Competitiveness Study (Chapman and others, 2003) stated that the total volume of informal imports from India accounted for 34 per cent of formal trade. Unauthorized trade is increasing even from China. It is extremely difficult to control unauthorized trade in the context of the open border with India and the difficult terrain along the border with China. When informal trade is large-scale, even genuine traders tend to under-invoice in order to make their imports competitive with informal imports. An improvement in customs valuation is thus critical to the reduction of such a high magnitude of informal trade.

(vi) Issues of dispute

Customs valuation has remained a subject of dispute between the Government and the trading community in Nepal. The latter complains that customs valuation is discretionary and unfair. The customs officials charge that the traders always try to undervalue the goods they import. The application of ACV can address the issue, provided importers declare the prices actually paid or are payable for the goods imported.

(vii) Issue of revenue loss

While full implementation of the WTO valuation system with adequate legal, human and technical support will exert a positive impact on trade and revenue, it will require effective PCA in order to control under-invoicing, the absence of which may enhance the problem and result in revenue losses. The infant stage of PCA in Nepal is an issue needing serious consideration before the implementation of ACV.

C. Impact of changes in customs valuation practice

This section attempts to assess the likely impact of change in customs valuation practice on trade volumes, prices and revenue.

1. Methodology

In order to assess the impact of changes in customs valuation on trade and prices, first an attempt was made to estimate average level of undervaluation under the existing valuation practices through review of appeal cases and deductive exercises. A total of 325 appeal cases were registered during the first three quarters of financial year 2005/06. Of 38 appeal cases registered during the last two months of the third quarter of 2005/06, 12 cases were selected for both review and a deductive exercise. Later cases were selected for the reason that market prices were available only for recent months.

Second, the change in price level of imported goods was estimated considering the likely changes in value of imported goods due to elimination of under-declaration and the average rate of the tariff burden being imposed in 2005.

Third, an attempt was made to estimate price elasticity of imports of selected commodities with the help of a regression analysis. This was done using the value of selected imports and a constructed average price index of same imported goods.

Fourth, the impact on the general price level was estimated considering the change in the prices of imported goods resulting from changes in valuation practice and the share of such prices as a component of the general price index. Available secondary information was also used in this process.

The impact on revenue was assessed applying an average tariff rate to the change in the value of imports induced by changes in valuation practice.

It is difficult to ensure that the declared value will reflect the real transaction value even after implementation of the WTO valuation system. It all depends on the behaviour of traders. Therefore, a concise, limited opinion survey was carried out among 25 customs agents who were well acquainted with the performance of customs officials and traders, in order to record their views on the likely trend with regard to the declaration of value, changes in imports and revenue earnings. Twenty-one of the customs agents responded. In addition, discussions were held with officials of two land customs offices, one international airport cargo office and the Customs Department in this connection. Market information was collected from traders.

2. Impact on trade

Table 4 shows the magnitude of under-declaration, which ranges from 1.8 per cent for television parts to 126.2 per cent for multimedia projectors. Of 12 cases, only two cases were found not to have under-declared. Table 4 shows that on average, under-declaration is 21 per cent.

Table 5 shows the deductive exercise for selected imported goods. It reveals an undervaluation of 17 per cent. Based on a review of appeal cases and the deductive exercise, it was concluded that undervaluation ranged from 17 per cent to 21 per cent, or an average 19 per cent.

The average tariff rate is currently 10.5 per cent. This means that if the average of the rate of undervaluation shown by the review of appeal cases and the deductive exercises are used, the traders will have to bear an extra financial burden of 2 per cent (19 x 10.5) on account of the increase in import costs. If this is passed on to customers, the price level of imported goods will increase by about 2.1 per cent (0.1 percentage point is allowed for profit, as customs provides a profit of 5 per cent on the cost of imported goods, when such goods are acquired by customs).

For the regression analysis, six major products comprising raw materials as well as final products were selected. The commodities selected were pesticides, medicinal chemicals, polyester acrylic yarn, polyester fibres, plastic granules and jute. These products were chosen based on the availability of both value and quantity data with similar units of measurement.

Table 4. Declared and reviewed value of imported goods

(Unit: US dollars)

Type of goods	Declared value	Assessed value	Reviewed value	Undervaluation	
				Amount	Per cent
Celeron Del computer Gx 280 small desktop	650/set	750/set	734/set	84	12.9
Samsung colour monitor, 15"	71/unit	73/unit	71/unit	—	—
Colour Plasma TV42d4S	1 800/set	2 280/set	2 280/set	480	26.7
Daewoo 14" CTV parts kit	16.70/kit	17.00/kit	17.00/kit	0.3	1.8
LCD multimedia projector	420/unit	950/unit	950/unit	530	126.2
LG refrigerator sets (413 litres)	283.49/unit	336/unit	315/unit	31.5	11.1
Copy paper	740/mt	790/mt	790/mt	50	6.8
HDPC injection grade	870/mt	900/mt	900/mt	30	3.4
Green peas (whole)	247/mt	263/mt	263/mt	16	6.5
Small cardamom (mix green)	2 600/mt	3 250/mt	3 250/mt	650	25.0
Chlortetracycline, feed grade	1 340/mt	2 150/mt	2 150/mt	810	60.4
Welding electrode 3.2x350mm	555/mt	590/mt	555/mt	—	—
Total	9 593.2	12 349.0	12 275.0	2 682.0	21.0

Table 5. Declared and deducted value of imported goods

(Unit: US dollars)

Type of goods	Aggregate market price[a]	Profit	Transport cost	Customs duty rate %	Deducted value	Declared value	Undervaluation	
							Amount	Per cent
Celeron Del computer Desktop	812.00	40.60	1.00	1	763.00	650.00	113.00	14.8
Samsung colour monitor	100.00	5.00	1.00	1	93.00	71.00	22.00	23.7
Colour plasma television	2 920.00	146.00	2.00	35	2 053.00	1 800.00	253.00	12.3
Daewoo CTV parts	20.55	0.97	1.00	15	16.08	16.70	(0.62)	(3.9)
LCD multimedia	588.00	28.00	2.00	10	516.00	420.00	96.00	18.6
LG Refrigerator (413 Lt)	660.50	31.50	5.00	15	582.00	283.00	29.00	51.4
Copy paper (MT)	866.00	41.00	55.00	15	707.00	420.00	287.00	40.6
MDPE injection grade (MT)	1 049.00	50.00	55.00	10	857.00	870.00	(23.00)	(2.7)
Green peas (MT)	349.00	17.00	55.00	10	252.00	247.00	5.00	2.0
Small cardamom (MT)	3 361.00	160.00	55.00	10	2 886.00	2 600.00	286.00	9.9
Chlor-tetracycline (MT)	2 170.00	103.00	55.00	5	1 945.00	1 340.00	605.00	31.1
Welding rods	611.00	29.00	55.00	5	499.00	555.00	(56.00)	(11.2)
Total					11 169.08	9 272.70	1 886.38	17.0

[a] Aggregate market price refers to the price at which the largest unit of goods was sold during the review period.

[b] Figures in parenthesis indicate overvaluation.

The regression analysis of the price index of selected imported commodities and the volume of imports expressed in real terms showed a negative relationship between prices and commodity imports.[1] The result indicated that a 1 per cent increase in the price level of the imported commodities under consideration would lead to a decrease in imports of around 0.90 per cent. The t-statistics were significant at the 10 per cent level. The R^2 was also fairly high at 0.52, indicating that the explanatory power of the model was relatively good. This means that demand for imports is sensitive to price changes. In other words, changes in valuation practice with a slight increase (2.1 per cent) in the value or cost of imported goods is likely to exert a negative effect of about by 1.9 per cent on the demand for imports.

3. Impact on price

Imported goods have a weight of 30.04 per cent in the National Wholesale Price Index of Nepal. As change in customs valuation practice will induce an increase of 2.1 per cent in the Wholesale Price Index of imported goods, its impact on the general price level will be only 0.6 per cent. Thus, it can be concluded that a change in customs valuation practice will not exert significant pressure on the general price level of the country. Fifty-seven per cent of the customs agents corroborated this view.

4. Impact on revenue

As mentioned above, it was estimated that customs valuation would be increased by 19 per cent after the implementation of WTO valuation practice. Although it is directly related to the value of imported goods, customs revenue would not increase correspondingly because of a decrease in the demand for imports due to the rise in price levels. However, an appropriate valuation system is expected to bring some informal imports from India into the formal channel. In general, with the full implementation of ACV, control of unauthorized imports together with curtailment in under-invoicing practices will exert some positive impact on customs revenue. Forty-three per cent of the customs agents who participated in the discussion were also of the opinion that customs revenue would increase following implementation of ACV.

D. Policy recommendations and conclusion

1. Policy recommendations

The customs processes in poorer countries exhibit many interacting weaknesses in procedures that are not codified together with poorly-trained officials, who often receive side-payments for performing their functions. In addition, there are insufficient provisions

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[1] LOG(IMVA) = 24.76-0.90*LOG(PI)
t-values (-0.90) (-2.31)
R^2 = 0.52; N = 5; DW = 1.36; where
IMVA = import value of selected commodities and PI = price index.

for appeal. In many such poorer countries, smuggling is rampant. Thus, customs valuation is only an inch in the whole yard of customs operations that need improvement through reforms. These reforms need to be based on transparency, objectivity, accountability and balance (Finger and Schuler, 2000). In view of the inherent problems in customs administration of Nepal, a comprehensive customs reform is required to ensure that the implementation of WTO customs valuation requirements is practical and beneficial to Nepal. The reform programme should be constructed around three basic themes: moralization, professionalization and modernization. The key reform measures should involve legislation, organization and management, personnel requirements and development, and computerization and other information and communication technology (ICT) applications.

A closer inspection of current practices in Nepal reveals that WTO valuation methods are not being applied fully at present; in fact, they cannot be applied effectively until the necessary legislation has been prepared. An amendment to make the Customs Act, 1962 fully compatible with WTO valuation has been drafted but it could not be enforced due to political situation in the country. There was no parliament for the last few years. Now political situation has been improved to some extent and parliament has been restored. However, the Finance Bill, 2006 does not include any new provisions related to customs valuation. Thus, legal inadequacy still remains. What is needed is a comprehensive Customs Act with detailed definitions of valuation terms, transparent provision of price adjustment, clear guidance to valuation etc. First, the legislation should cover the valuation principles and methods in the form of a set of valuation rules as mentioned in ACV. Second, provisions should be made in the appropriate Articles of the Customs Act regarding the obligations of importers. The following provisions, corresponding to the different Articles of ACV or ministerial decision, are also recommended for inclusion:

(a) Options with regard to Article 8.2;[2]

(b) Currency conversion, as mentioned in Article 9;[3]

(c) Confidentiality of information as per Article 10;[4]

(d) The right of appeal as per Article 11;[5]

(e) The duration of final value determination under Article 13;[6]

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[2] According to Article 8.2, in framing the legislation each member will provide for inclusion or exclusion from customs values, in whole or in part, of (a) the cost of transportation to the port or place of import, (b) handling charges and (c) costs of insurance.

[3] According to Article 9, the conversion rate should be published by the competent authority. The rate to be used should be that in effect at the time of export or import.

[4] According to Article 10, confidential information provided for valuation must be treated as strictly confidential.

[5] According to Article 11, the legislation should make provisions for appeal against a valuation or penalty decision.

[6] Ministerial decision 6 grants customs authorities the right to ask for supporting documentation or evidence or to be satisfied with evidence presented in support of value declaration.

(f) The authority of customs to request supporting documents and additional information (as per ministerial decision No. 6);

(g) The authority of customs to carry out all actions related to verification, including investigation;

(h) The authority of customs to suspect;

(i) The authority of customs to prosecute offenders.

An adequate database, particularly with regard to price information, is a key prerequisite for successful implementation of ACV. Therefore, the Nepalese Customs Department needs to maintain a comprehensive databank as well as identify and acquire access to appropriate regional and international databases. Under ACV, customs officers can question the declared value whenever they have reasonable doubt about the accuracy of the declared value and the supporting documentation. Reasonable doubt may arise only on the basis of the valuation databank and indicators from the risk assessment system. In order to protect the right of customs to ask suspected importers to justify transaction values, customs officers should be provided with the necessary information. An adequate database on imported goods is also necessary for PCA and for use in making comparisons while using alternate valuation methods (i.e., other than transaction value methods as mentioned in Article 1). Data concerning quantity, quality and time are required for conducting PCA. Electronic data are required for verifying the authenticity of the information provided by importers on the value of identical or similar goods. Thus, the establishment and maintenance of an adequate database is crucial. However, such data would not be for use as reference prices in the initial valuation.

Electronic transmission of information between the Customs Department, customs offices and related agencies is equally important. Therefore, efforts should be made to develop an adequate electronic communication network. At the very least, a wide area network needs to be established between the Customs Department and customs offices. An integrated computer system should be developed at the Customs Department that encompasses all customs regimes, operations, control functions, audits, administration, exchanges of information with foreign trade operators, statistics and management.

Only skilled manpower can take advantage of modern information technology. At the same time, a wide knowledge of WTO valuation among customs staff will be required in order to ensure that the implementation of ACV is successful. Extensive training in valuation methods and ICT applications as well as access to databases containing price information is required for the effective adoption of WTO valuation methods.

However, the Customs Department has no training capacity or strategy, and although the Revenue Training Institute has a faculty staff of 44, none are customs specialists (Customs Department, 2004). Various improvement measures should be taken in the areas of personnel recruitment and development, including fiscal incentives and evaluation to promote integrity in the customs administration.

Customs valuation should not always be a subject of dispute between the Government and the business community. Hence, a congenial environment should be created so that importers will declare the price that is actually paid or is payable for imported goods. Transparency, fairness and competency in the valuation process will develop a voluntary compliance culture in the business community. Attitude and behaviour toward traders as well as technical competency on the part of customs officials are also equally important. This includes computerization and ICT applications that leave little or no room for negotiation, influence or discretion in customs processes, strict staff evaluation and selection procedures, professional training, good incentives, internal control, a code of conduct, enhanced fairness, competency and integrity in customs administration. Therefore, the extension and upgrading of computerization in the Customs Department and all customs offices is recommended. The recent three-year Customs Reform Plan initiated various actions related to the different aspects of good governance. What is now needed is continuous and effective monitoring of good governance with a strong intelligence audit and investigation mechanism to ensure that offenders are prosecuted and penalized, and that traders who voluntarily comply with the law are assisted and enjoy better benefits. The public/private sector consultation mechanism enhances transparency. The Government of Nepal has established an institutional mechanism for consulting the private sector at different stages in the determination of value of imported goods. This should be continued and firmly established as the right of importers. These reforms will enhance mutual trust, confidence and cooperation between the Government and the business community.

An effective customs control system is required in order to plug revenue leakage through under-invoicing under ACV. A strong enforcement mechanism is also required for the protection of honest traders. The Government s budget for 2006/07 made provision for the effective purchase of under-invoiced goods and the completion of PCA of selected firms and goods within 60 days. However, practice of PCA is still in the initial stage in Nepal. In order to ensure effective customs control, PCA should be extended as well as strengthened. However, it is not an easy task in Nepal where traders do not keep proper accounting records. Traders may even feel that PCA is an additional burden and actively resist it. Therefore, special programmes should be launched in this regard. Efforts should be made to convince traders that PCA will provide them with long-term benefits. According to Rege (2000), lack of sense of ownership is one of reasons for the difficulties that face developing countries in implementing ACV. Currently, there is a Post-Clearance Cell under the Valuation Section of the Customs Department. Three officers and four subordinate staff members perform PCAs. The cell selects the particular transaction based on revenue risk and assigns an officer to carry out PCA. At the local level, a Valuation and Post-Clearance Unit undertakes PCA and value assessment. It is recommended that PCA should be undertaken in its fully-fledged form, for which there should be a separate section comprising an adequate number of auditors and subordinate staff at the department and local levels.

In order to develop the necessary capacity to adopt WTO valuation, arrangements should be made for the provision of necessary technical assistance in a broadened way. In addition to assistance under WTO-focused programmes, Nepal needs technical assistance to support the computerization, modernization and reform of its customs procedures. The Government should also invest in capacity-building of domestic institutions in order to take advantage of WTO rules. External support and financing are necessary for upgrading the physical infrastructure, implementing training programmes and improving the organizational structure.

Many WTO member countries have introduced import verification programmes under which importers are required to obtain certificates of inspection issued by authorized pre-shipment inspection (PSI) companies before goods are shipped from the exporting country. The certification covers the nature, quantity, value and tariff classification of goods. This helps to prevent undervaluation and fraud, and assists customs in determining the value. This is an alternative method of detecting undervaluation or overvaluation. However, it is costly and the integrity of PSI companies is often questioned. Nepal, being a small buyer, may not be able to demand PSI certificates from exporting companies and it will be difficult for importing companies to bear the burden of PSI costs. Therefore, PSI may not be an appropriate option for Nepal. Nevertheless, an attempt should be made to recognize the PSI system if major importers in Nepal want to obtain this service. In addition, information received through PSI may be helpful, particularly in the context of inadequate PCA.

As legal provisions are still inadequate, and because PCA is still at the learning stage, the probability of revenue leakages appears to be high should ACV be implemented without addressing these problems. In view of the current political situation in Nepal, it is recommended that the Government ask for a grace period of two years to fully implement ACV.

2. Conclusion

The WTO customs valuation system provides fair, neutral and uniform valuation, and it protects traders from the risk of arbitrary valuation by customs. However, there is a risk that the Government will experience a loss of revenue due to under-invoicing of imports by traders if a controlling mechanism such as PCA is not adequately developed.

In Nepal, PCA is in the infant stage and other requisites in terms of legislation, databases, infrastructure and skilled manpower are still inadequate. A draft amendment to the Customs Act, 1962, aimed at making it WTO valuation compatible, is ready; however, it is being delayed due to the current political situation in Nepal. Although the situation has improved, the enforcement of the amendment in the near future is not expected, as the political agenda is being given less priority than the economic agenda.

The impact on the volume of imports as a result of changing from the existing customs valuation system to ACV will not be significant. The current study has shown that a decrease in imports of only 1.9 per cent is likely to occur. On the other hand, it will

reduce under-invoicing and informal trade, thus creating a positive impact on customs revenue. As estimated by the study, the impact of a valuation change in the general price level of the country will be as low as 0.6 per cent. As its adverse effect on volume of trade and general price level is insignificant and there is positive impact on revenue, the full implementation of the WTO valuation system will be beneficial to the country. However, as the necessary prerequisites have yet to be met, and as the controlling mechanism has yet to be strengthened, the Government of Nepal should request a grace period of two years for the full implementation of ACV.

Annex

WORLD TRADE ORGANIZATION CUSTOMS VALUATION METHODS

There are six WTO customs valuation methods, which are applied in the following hierarchic order:

1. Transaction value of imported goods.
2. Transaction value of identical goods.
3. Transaction value of similar goods.
4. Deductive value method, based on the subsequent sale price in the importing country.
5. Computed value method based on cost of materials, fabrications cost and profit in the country of production.
6. Fall-back or reasonable means method.

1. Transaction value method

The transaction value method is known as the primary method of value determination for customs purposes. Article 1 of ACV states that the value is determined on the basis of the price actually paid or payable to the seller by the buyer after adjustment in accordance with Article 8.

2. Transaction value of identical goods method

The second valuation method in the series is known as the transaction value of identical goods method. If the provisions are not met for establishing the transaction value of imported goods, a consultation will take place between the importer and the customs authority to decide on the transaction value of identical goods.

3. Transaction value of similar goods method

Where customs value cannot be determined using Article 2, the next step is to search for the transaction value that was previously accepted for similar goods sold to the same importing country at or about the same time, at the same commercial level, and in or about the same quantity as the goods being valued.

4. Deductive value method

This valuation method is based on the unit price of the imported goods or of identical or similar imported goods sold in the greatest aggregate quantity to a person not related to the seller in the importing country. From this unit price, customs will deduct actual expenses incurred to reach the actual CIF price of the commodities in question.

5. Computed value method

The computed value is determined by adding to the production costs of the imported goods valued an amount for profit and general expenses equal to that usually reflected in the sales of goods of the same class or type as the goods being valued, and which are produced in the exporting country for shipment to the importing country.

6. Fall-back method

Customs value is determined by using any of methods 1 to 5 in a flexible manner, provided that the criteria employed are consistent with Article VII of GATT. The value so fixed should not, however, be based on any of the following factors, among others:

(a) The price of goods for export to a third country market;

(b) Minimum customs values;

(c) Arbitrary or fictitious values.

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VII. TRADE FACILITATION AND CUSTOMS VALUATION IN FIJI: A COMPARATIVE ANALYSIS OF NEEDS AND PRIORITIES

*By Biman Chand Prasad**

Introduction

International trade has increasingly become an underpinning determinant of economic prosperity in most countries of the world, and Fiji is no exception. Fiji s external trading relations increasingly determine the growth and development of the country, and this influence will only increase with worldwide moves to free trade and globalization. In line with most developing countries, the past decade has seen Fiji adopt an export-oriented, outward-looking approach to trade relations. Import restrictions have been largely lifted in favour of export promotion and, as such, Fiji now has a more liberalized or open economy with increased volumes of both exports and imports.

A concept very much related to trade liberalization and openness is trade facilitation. In simple terms, trade facilitation is the gradual removal of the invisible barriers to trade. Specifically, it is the simplification and harmonization 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.[1] It reduces transaction costs as well as the complexity of international trade induced by documentation, procedures and regulations, thus expanding trade and resulting in both economic growth and development. In view of such an important role for trade facilitation, many international organizations, including the World Trade Organization (WTO), have included it in their scope of work.

Based on case studies and private sector surveys conducted in five Asian countries (Bangladesh, China, India, Indonesia and Nepal) on the need and priorities of trade facilitation measures under negotiations at WTO, ESCAP (2006) identified customs valuation as the main trade facilitation-related concern of the private sector in those countries. Walsh[2]

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[1] World Trade Organization/UNCTAD, Implementation-related issues and concerns , Doha Ministerial Conference, (fourth session), 9-14 November 2001. Website: http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_implementation_e.htm.

[2] T.J. Walsh, 2003, *Customs Valuation, Changing Customs* (edited by Michael Keen), International Monetary Fund, Washington, D.C.

defined trade facilitation as an important element in a variety of other aspects of international trade including statistics, quota and licensing arrangements, taxes and other charges levied on imports, and the application of preference systems. Custom duties are levied mostly on an ad valorem basis, and custom valuation is usually the basis on which tariff and tax liability is calculated. Hence, it is important that generally acceptable rules and systems for the valuation of imported goods, such as those included in ACV, be effectively implemented,

This chapter complements the ARTNeT case studies (ESCAP, 2006) by reviewing the trade facilitation needs and priorities of Fiji, comparing them with those in the other five countries, and examining how ACV (GATT Article VII) has been implemented by Fiji.

Section A discusses the trade facilitation needs and priorities in Fiji as well as the impact on the private sector of the various trade facilitation measures that have been implemented so far, based on a private sector survey carried out in October 2006. Section B examines the practical implementation status of ACV in Fiji and related issues. Policy recommendations and concluding remarks are provided in section C.

A. Trade facilitation needs, priorities and impact in Fiji

The Fiji Islands Revenue and Customs Authority (FIRCA), which plays a pivotal role as far as trade facilitation is concerned, has implemented a number of initiatives over the past few years in order to facilitate trade flows to and from Fiji. Some of these initiatives have been:

(a) Modernization of the legislation that has an impact on trade such as the Income Tax Act, Land Sales Act, Customs Act, Customs Tariff Act and Excise Act, among others;

(b) Harmonization of the above-mentioned legislation with similar legislation in Fiji s trading partner countries;

(c) Modernization of its data processing systems (e.g., upgrading of ASYCUDA to version 18c and improvements in the network infrastructure);

(d) A review of all FIRCA procedures in order to identify weak areas and improve efficiency;

(e) More training as well as the use of a performance management system in order to improve the productivity levels of workers at FIRCA.

While these initiatives suggest that progress may have been made in the area of trade facilitation, a more detailed assessment of the trade facilitation situation would certainly be useful, if only to understand where the country stands in relation to the various trade facilitation measures related to Articles V (Freedom of Transit), VIII (Fees and Formalities) and X (Publication and Administration of Trade Regulations) as well as those under negotiation at WTO.

In order to assess the needs and priorities of trade facilitation as well as the impact of the various trade facilitation measures implemented in Fiji so far, a private sector survey was carried out in the last quarter of 2006. The methodology and results are detailed below. As mentioned above, the results are compared with those from private sector surveys in five other Asian developing countries.

1. Survey methodology

This survey was carried out based on a questionnaire developed by ARTNeT in 2005.[3] It attempted to reach various private sector units and export organizations. The sample size was selected taking into account the relative importance of various sectors in total domestic exports of Fiji. At the sectoral level, export shares were worked out (table 1) and a representative target base was identified.

Table 1. Percentage share of individual commodity groups in Fiji s total domestic exports

Commodity group	2003	2004	2005	Average share
I. Primary products	0.52	0.56	0.62	0.57
Sugar	0.23	0.22	0.26	0.24
Fish	0.08	0.09	0.10	0.09
Gold	0.08	0.09	0.07	0.08
II. Secondary products	0.48	0.44	0.38	0.43
Garments	0.25	0.24	0.14	0.21
Beverages and tobacco	0.05	0.07	0.10	0.07
Footwear	0.02	0.02	0.01	0.02

Source: Fiji Islands Bureau of Statistics.

As table 1 shows, primary goods represent a greater share, hovering at around 57 per cent, while secondary products are at about 43 per cent. The questionnaire was sent to various firms according to the weighting assigned to their sector (table 2). While selecting the firms, care was taken to ensure that they were also engaged in substantial imports in order to avoid any form of bias in the sample selection to export-related activities only. The sample size was decided in a way that major private sector firms in the leading export sectors were covered. Due to time constraints, the private sector firms were covered by a very limited but representative sample size. Of 50 companies approached, responses were received from 25 firms. Consistent with the export shares, a relatively greater emphasis was given to the primary sector, in which 28 firms were approached, of

[3] A template of the questionnaire is available on the ARTNeT website at www.artnetotnrade.org or directly at http://www.unescap.org/tid/artnet/pub/tipub2426_ap2.pdf. Some senior officials from the Fiji Islands Revenue and Customs Authority assisted in tailoring the questionnaire for the Fiji survey.

Table 2. Sample size and number of responses received

Commodity group	Number of samples (category-wise) in target sample	Number of samples (category-wise) in actual sample
I. Primary products	28	15
II. Secondary products	22	10

Source: Private sector survey.

which 15 responded. As far as the secondary sector was concerned, 22 firms were requested to complete the questionnaire. However, only 10 firms responded.

1. Survey results

The private sector survey managed to get a reasonable response on all the three aspects of the questionnaire. These three aspects include:

(a) The private sector perception of the implementation level in Fiji of various trade facilitation measures related to Articles V, VIII and X;

(b) The ranking of the needs and priorities of the selected trade facilitation measures for implementation;

(c) The impact of the various trade facilitation measures implemented in Fiji, so far, on the private sector.

The survey also identified the key trade facilitation-related areas in which private sector respondents faced the most problems.

(a) Perceived level of implementation

The survey results concerning the perceived implementation level of trade facilitation measures in Fiji are summarized in table 3, in which the private sector responses are compared with the responses received from the government officials. As is clear from the table, in most cases the perceptions of most of the traders were similar to the official positions. However, the views differed in some key areas. For example, the majority of the private sector felt that the laws, regulations and judicial decisions were not applied in a uniform, impartial and reasonable manner; however, the government side did not agree with that opinion. Similarly, the private sector felt that a formal and effective private sector consultation mechanism was still not available, which was contrary to the stated government position. The private sector did not believe that there was an effective advance ruling system in place. There were also differences over Article V as the private sector said that goods in transit were subject to unreasonable transit duties or transit charges, a view with which the government side did not agree. The following paragraphs discuss the results regarding the perceived level of implementation in more detail.

Table 3. Comparison of survey results and the government sector

Perceived implementation of trade facilitation measures	Private sector		Government
	Yes (%)	No (%)	Yes (1)/No (0)
Customs procedures and regulations are publicly available and easily accessible.	80	20	1
Changes in regulations and procedures are made available promptly and conveniently.	70	30	1
Laws, regulations and judicial decisions are applied in a uniform, impartial and reasonable manner.	45	55	1
An independent system for appealing trade and/or customs authorities decisions is available and operates effectively.	60	40	1
A formal and effective private sector consultation mechanism exists, which allows traders to comment on proposed changes to regulations and procedures before they are issued and implemented.	30	70	1
An effective advance ruling system is in place.	50	50	1
Documentation requirements for import/export are excessive and time-consuming.	70	30	0
Fees and charges levied on exports and imports are reasonable.	50	50	1
Penalties and fines for minor breaches of customs regulations are small and reasonable.	55	45	1
Easy to submit required trade documentation to trade/customs authorities for approval.	60	40	1
Computerization and automation of customs and trade procedures have noticeably reduced the average time of clearance.	70	30	1
Treatment of goods and vehicles in transit is non-discriminatory.	55	45	1
Goods in transit are subject to unreasonable transit duties or transit charges.	30	70	0
Regulations and procedures for goods in transit are clearly defined and widely available.	50	40	1
Vehicles in transit are allowed to use the most convenient routes to their destination.	60	40	1

A large number of firms appreciated FIRCA s efforts with regard to dissemination of information by making customs procedures and regulations publicly available; as high as 80 per cent of the respondents endorsed the availability. They (70 per cent) also agreed that changes in regulations and procedures were made available in good time.

Although many respondents (60 per cent) felt that an independent system to appeal trade and/or customs authorities decisions was available, 55 per cent felt that laws, regulations and judicial decisions were not applied in a uniform, impartial and reasonable manner. Only 30 per cent of the respondents felt that a formal and effective private sector consultation mechanism existed, allowing traders to comment on proposed changes to regulations and procedures before they were issued and implemented. A large number of respondents said an effective advance ruling system was in place (50 per cent) but an equal percentage also suggested greater policy attention in making the system even more effective. They also stated that documentation requirements for imports/exports were excessive and time-consuming (70 per cent). There was strong satisfaction (70 per cent) with the computerization and automation of customs and trade procedures as the average time of clearance had been noticeably reduced.

There was a general perception that fees and charges levied on exports and imports were reasonable (50 per cent each). However, a large number of respondents (50 per cent) found the penalties and fines for minor breaches of customs regulations to be too high. They (70 per cent) also felt that irregular and arbitrary payments were often required for expediting the release of goods from customs. There was general satisfaction with the trade documentation required by trade/customs authorities for approval (60 per cent). Similarly, the improvement of coordination between relevant agencies, particularly on document requirements (e.g., through the establishment of a single window for one-time submission and collection of all trade documents) was emphasized (59 per cent).

Most of the respondents indicated that the treatment of goods and vehicles in transit was non-discriminatory (55 per cent) and that goods in transit were not subject to unreasonable transit duties or transit charges (70 per cent). Regulations and procedures for goods in transit were considered by 50 per cent of the respondents to be clearly defined and widely available. Although 60 per cent said vehicles in transit were allowed to use the most convenient routes to their destination, it was felt that more needed to be done to improve the infrastructure on those routes. Some respondents pointed out that alternative routes should also be developed so that excessive pressure on existing routes could be avoided. However, in terms of policy, many of the private sector respondents (40 per cent) emphasized the fact that implementation of international and regional transit systems based on international standards and practices was currently not taking place. The private sector also felt that the existing mechanism of bilateral treaties did not take into account the views of the private sector.

Table 4 compares the results obtained on the issue of perceived level of implementation in Fiji with the results obtained by surveys in five other developing countries of Asia and the Pacific.[4] The results in Fiji are similar to those obtained in other countries, but the following results are worth noting:

[4] ESCAP, 2006, An exploration of the need for and cost of selected trade facilitation measures in Asia and the Pacific in the context of the WTO negotiations , *Studies in Trade and Investment* No. 57.

Table 4. Perceived level of implementation of GATT Articles V, VIII and X by the private sector in selected countries

Articles VIII and X (Transparency and Fees and Formalities)	Overall average	Bangladesh	China	Fiji	India	Indonesia	Nepal
Relevant trade and customs procedures and regulations are publicly available and easily accessible.	5.1	3.4	5.1	6.3	5.4	4.9	5.3
Computerization and automation of customs and trade procedures have noticeably reduced average time of clearance.	4.8	4.2	5.8	5.3	5.0	5.6	3.0
Penalties and fines for minor breaches of customs regulation (e.g., due to typing mistakes) are small and reasonable.	4.4	3.3	5.6	4.5	4.3	4.3	4.3
Information about changes in regulations and procedures are made available promptly and conveniently to the public.	4.5	3.1	4.5	5.5	4.9	3.6	5.3
It is easy to submit required trade documentation to trade/customs authorities for approval.	4.4	3.1	3.9	4.6	4.3	5.4	5.0
A formal and effective private sector consultation mechanism exists, which allows traders to comment on proposed changes to regulations and procedures before they are issued and implemented.	3.7	3.7	4.6	2.3	4.0	3.4	4.3
On average, fees and charges levied on export and import are reasonable (i.e., are limited to the cost of services rendered by the authorities).	4.1	3.4	4.3	4.4	4.0	3.3	5.0
An independent system for appealing trade and/or customs authorities decisions is available, and operates effectively.	4.1	2.6	3.6	5.1	4.4	4.2	4.6

Table 4. ***(continued)***

Articles VIII and X (Transparency and Fees and Formalities)	Overall average	Bangladesh	China	Fiji	India	Indonesia	Nepal
An effective advance ruling system is in place, which allows the importer, in advance of trade, to obtain binding rules in certain specific areas (e.g., tariff classification, customs valuation, origin).	3.8	4.1	4.4	4.0	4.0	5.1	1.3
Laws, regulations and judicial decisions are applied in a uniform, impartial and reasonable manner.	3.4	2.7	4.5	3.5	3.9	2.7	3.3
Documentation requirements for import/export are NOT excessive and time-consuming.	3.2	1.9	2.9	2.4	3.3	4.4	4.0
Irregular and arbitrary payments are NOT often required to expedite release of goods from customs.	2.9	1.8	5.9	1.6	3.6	3.2	1.4
Article V (Transit-related)							
Vehicles in transit are allowed to use the most convenient routes to their destination.	5.1	4.3	6.0	5.0	4.8	4.3	6.0
The treatment of goods and vehicles in transit is non-discriminatory (i.e., imported goods are not discriminated based on origin and/or destination).	5.2	4.1	5.8	6.1	4.7	4.3	6.0
Regulation and procedures for goods in transit are clearly defined and widely available.	4.4	3.4	4.3	4.5	4.2	3.9	6.3
Goods in transit are NOT subject to unreasonable transit duties or transit charges.	4.3	3.3	4.9	5.1	4.6	3.8	4.0

Source: ARTNeT Working Papers No. 4, 5, 8, 9 and 10; www.artnetontrade.org.

Notes: 7 = strongly agree; 6 = agree; 5 = slightly agree; 4 = no opinion; 3 = slightly disagree; 2 = disagree; 1 = strongly disagree.

(a) There was broader agreement in the private sector in Fiji that a formal and effective private sector consultation mechanism was not in place;

(b) There was relatively stronger agreement among the Fiji respondents that irregular and arbitrary payments to expedite the release of goods from customs were required;

(c) The respondents from Fiji tended to agree, although only slightly, that an independent system to appeal trade and/or customs authorities decisions was available and operating effectively.

(b) Ranking of needs and priorities

As far as the prioritization of the various trade facilitation measures for implementation is concerned (table 5), the following observations were made.

Table 5. Survey results from the private sector: identifying trade facilitation needs and priorities

(Unit: %)

Trade facilitation needs and priorities	Low priority	Medium priority	High priority	Highest priority
Timely and comprehensive publication and dissemination of trade rules and regulations.	4	8	28	60
Establishment (or improvement in the effectiveness) of enquiry points and/or call centres for up-to-date information on trade procedures.	5	6	39	50
Establishment (or improvement in the effectiveness) of a consultation mechanism through which traders can provide inputs on proposed new or amended rules and regulations.	5	25	30	40
Establishment (or improvement in the effectiveness) of an appeal mechanism outside of the authority of customs or related agencies for traders to dispute customs and other authorities decisions.	3	23	40	34
Establishment (or improvement in the effectiveness) of an advance ruling system, which allows importers, in advance of trade, to obtain binding rules in certain specific areas (e.g., tariff classification, customs valuation, origin).	5	20	40	35
Beginning and, if possible, completing clearance of goods before they have arrived physically in the customs territory (based on advance submission of goods declaration and other documents).	2	11	27	60
Separating release from clearance procedures, i.e., allowing goods to be released before all clearance formalities have been completed (this may be	10	17	40	33

Table 5. ***(continued)***

(Unit: %)

Trade facilitation needs and priorities	Low priority	Medium priority	High priority	Highest priority
subject to providing a financial guarantee to customs and/or post-release audit).				
Reduction and simplification of the documentation requirements for import and export procedures.	4	8	22	60
Harmonization and standardization of documentation requirements based on international standards.	3	15	27	55
Improvement of coordination between relevant agencies, particularly on document requirement, e.g., through the establishment of a single window for one-time submission and collection of all trade documents.	5	9	27	59
Computerization and automation of trade procedures, e.g., online submission and approval of Customs declarations, cargo manifests (including electronic payment of fees and customs duties).	2	8	13	77
Improvement of customs inspection and control procedures, e.g., systematic use of risk analysis to determine which goods should be examined, clearer criteria for green and red channels, and special channels for authorized traders and express shipments.	0	5	39	55
Elimination of bribery and other corrupt practices among officials involved in the clearance and release of imported goods.	1	2	5	92
Implementation of international and regional transit systems, based on international standards and practices.	4	26	40	30

Elimination of bribery and other corrupt practices among officials involved in the clearance and release of imported goods was considered to be of the highest priority by 92 per cent of the respondents. Moreover, 77 per cent of the respondents mentioned that computerization and automation of trade procedures, e.g., online submission and approval of customs declarations, cargo manifests (including electronic payment of fees and customs duties) was their highest priority.

With regard to the reduction and simplification of documentation requirements for import and export procedures, 60 per cent of the participants considered it to be their highest priority. The same percentage also mentioned that completing clearance of goods before arrival physically in the customs territory (based on advance submission of goods declaration and other documents), together with timely and comprehensive publication and dissemination of trade rules and regulations, were their highest priorities.

Fifty-nine per cent of the respondents stated that the improvement of coordination between relevant agencies, particularly on document requirement (e.g., through the establishment of a single window for one-time submission and collection of all trade documents) was their highest priority.

Fifty-five per cent of the respondents also mentioned that improvement in customs inspection and control procedures (e.g., the systematic use of risk analysis to determine which goods should be examined, clearer criteria for green and red channels as well as special channels for authorized traders and express shipments, and harmonization and standardization of documentation requirements based on international standards) were their highest priorities.

Finally, 50 per cent of the respondents stated that the establishment (or improvement in the effectiveness) of enquiry points and/or call centres for up-to-date information on trade procedures was also their highest priority.

Table 6 summarizes how private sector respondents in each of the countries studied (including Fiji) prioritize 14 trade facilitation measures mainly related to Articles VIII and X of GATT. The addition of Fiji does not change any of the overall rankings.

Table 6. Private sector priority ranking of selected trade facilitation measures in selected countries

Measures	Overall	Bangladesh	China	Fiji	India	Indonesia	Nepal
Elimination of bribery and other corrupt practices of officials involved in the clearance and release of imported goods.	1	1	1	1	1	2	1
Improved coordination between relevant agencies, particularly on document requirements, e.g., through the establishment of a single window for one-time submission and collection of all trade documents.	2	3	3	6	4	2	4
Timely and comprehensive publication and dissemination of trade rules and regulations (e.g., through the Internet).	3	6	4	5	4	1	1
Computerization and automation of trade procedures, e.g., online submission and approval of customs declarations and cargo manifests, including electronic payment of fees and customs duties.	4	6	4	2	2	5	6

Table 6. ***(continued)***

Measures	Overall	Bangladesh	China	Fiji	India	Indonesia	Nepal
Harmonization and standardization of required documentation, based on international standards.	5	4		8	8	8	4
Reduction and simplification of the documentation requirements for import and export procedures.	6	1	7	3	3	6	
Improved customs inspection and control procedures, e.g., systematic use of risk analysis to determine which goods should be examined, clearer criteria for green and red channels, and special channels for authorized traders and express shipments.	7	6	7	7	4	10	6
Establishment (or improvement in the effectiveness) of an advance ruling system, which allows importers, in advance of trade, to obtain binding rules in certain specific areas (e.g., tariff classification, customs valuation and origin).	8		4		10	8	1
Beginning and, if possible, completing clearance of goods before they have arrived physically in the customs territory (based on advance submission of goods declaration and other documents).	9	9	2	4	4		9
Establishment (or improvement in the effectiveness) of a consultation mechanism through which traders can provide inputs on proposed new or amended rules and regulations.	10		4			7	6
Establishment (or improvement in the effectiveness) of enquiry points and/or call centres for up-to-date information on trade procedures.		9		9	9	2	

Table 6. ***(continued)***

Measures	Overall	Bangladesh	China	Fiji	India	Indonesia	Nepal
Establishment (or improvement in the effectiveness) of an appeal mechanism outside the authority of customs or related agencies for traders to dispute customs and other authorities decisions.		5				10	9
Separating release from clearance procedures, i.e., allowing goods to be released before all clearance formalities have been completed (this may be subject to providing a financial guarantee to customs and/or post-release audit).			7				
Implementation of international and regional transit systems, based on international standards and practices.							

Sources: ESCAP, 2006, An exploration of the need for and cost of selected trade facilitation measures in Asia and the Pacific in the context of the WTO negotiations , *Studies in Trade and Investment* No. 57, http://www.unescap.org/tid/artnet/pub/tipub2426.asp; ARTNeT Working Papers No. 4, 5, 8, 9 and 10, www.artnetontrade.org.

Note: These figures denote the priority level. For example, 1 = highest priority.

Elimination of bribery and other corrupt practices among officials involved in the clearance and release of imported goods was given top priority in all the countries except Indonesia. Moreover, computerization and automation of trade procedures received quite a high priority level in Fiji, India and China. In addition, the reduction and simplification of document requirements were ranked quite high in Fiji, Bangladesh and India.

The improvement of coordination between relevant agencies, particularly with regard to documentation requirements (e.g., through the establishment of a single window for one-time submission and collection of trade documents), was also given very high priority in all the countries except Fiji. Timely and comprehensive publication and dissemination of trade rules and regulations (e.g., through the Internet) was the highest priority in Indonesia and Nepal, while the reduction and simplification of the documentation requirements for imports/exports was the highest priority in Bangladesh.

Starting and, if possible, completing the clearance of goods before they arrive physically in the customs territory was a priority for the Chinese private sector and, to a lesser extent, for India and Fiji, but not for the other countries. The establishment of enquiry points received high priority in Indonesia, but not in the other countries. The establishment of an advance ruling system was given top priority by the Nepalese private

sector. Interestingly, the establishment of a consultation mechanism through which traders could provide inputs on proposed new or amended rules and regulations, or improvements in customs inspection and control procedures through risk analysis and authorized traders channels, were relatively low priorities in most countries, including Fiji.

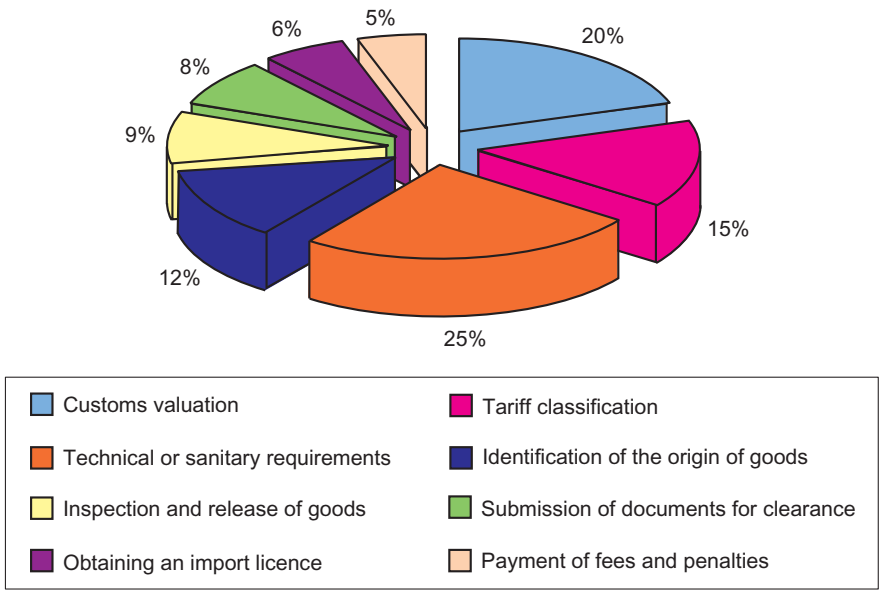
(c) Overall impact of the various trade facilitation measures implemented so far in Fiji

About 60 per cent of the respondents mentioned that the various trade facilitation measures implemented so far (as well as the improvements that have been made in the existing ones) had encouraged them to increase their exports/imports to/from their major trading partners. About half of this 60 per cent also mentioned that these measures had helped them to tap into new export markets. Of the remaining 40 per cent, 30 per cent mentioned that they had not experienced any benefits from the various trade facilitation measures, while the remaining 10 per cent were unsure.

(d) Key trade facilitation-related problems faced by the Fijian private sector

The firms that were surveyed were quite enthusiastic about identifying key problem areas in trade facilitation (see figure, Major problems faced by the Fijian private sector). The key problem areas identified were, in the following order, technical and sanitary requirements (25 per cent), customs valuation (20 per cent), tariff classification (15 per cent) and the identification of the origin of the goods (12 per cent).

Major problems faced by the Fijian private sector



The other areas listed as key problems were, in order of ranking, the inspection and release of goods, submission of documents for clearance, obtaining import licences, and payment of fees and penalties. This clearly shows that the current scope of trade facilitation negotiations at WTO may eventually prove to be insufficient in facilitating flow of goods. It is also evident that the private sector needs to be more prepared to take maximum advantage of automation and other programmes of customs agencies.

The inclusion of Fiji has not changed any of the overall rankings of the problematic areas in table 7. The areas and issues identified here go beyond the current scope of the WTO trade facilitation negotiations. In particular, customs valuation, which is not part of the negotiations, still ranked either the most or second most problematic issue in the private sector of all the countries surveyed. Technical or sanitary requirements were ranked the fourth-most problematic area overall, and as the most problematic area by the Chinese and Fijian respondents.

Table 7. Comparison of the most problematic areas in conducting trade in selected countries

Problem	Overall	Bangladesh	China	Fiji	India	Indonesia	Nepal
Customs valuation	1	1	2	2	1	3	2
Inspection and release of goods	2	2	6	5	2	2	1
Tariff classification	3	3	5	3	3	4	3
Technical or sanitary requirements	4	7	1	1	7	5	4
Payment of fees and penalties	5	6	4	8	6	1	n.a.
Obtaining an import licence	6	5	3	7	5	6	n.a.
Submission of documents for clearance	7	4	6	6	4	7	n.a.
Identification of origin of the goods	8	8	8	4	8	8	n.a.

Sources: ARTNeT Working Papers No. 4, 5, 8, 9 and 10, www.artnetontrade.org.

Furthermore, the inspection and release of goods and tariff classification were identified as two of the top four problem areas that could be addressed within the scope of the current WTO negotiations.

In addition, the private sector survey highlighted the fact that most of the difficulties faced by exporters and importers in Fiji stemmed from procedures/regulations in the countries of their buyers (suppliers). Specifically, about 70 per cent of the respondents highlighted this problem.

B. Implementation by Fiji of the WTO Customs Valuation Agreement

In the private sector survey, customs valuation was highlighted as one of the key issues/problems in Fiji. Therefore, this section initially discusses the implementation of ACV by Fiji, followed by a brief discussion of the key issues and constraints.

Customs duties are instruments of fiscal and trade policy that may be calculated by reference to specific rates, ad valorem rates or a combination of both. Like the majority of countries, Fiji also applies ad valorem duties and, as a result, places special emphasis on the valuation principle because a valuation system with uniformity and equity provides a sound base for the assessment of duty, which in turn will deliver fiscal and trade policy aims.

Fiji values imported goods for the purpose of assessing ad valorem duty in accordance with the principles of ACV, which are spelt out under the Article VII of GATT 1994. Fiji s legislative customs valuation provisions are comprehensively set out in Schedule 1 of the Customs Tariff Act, 1986 (parts 1, 2 and 3), which defines how the customs value of imported goods is to be determined in compliance with provisions of ACV. However, minimal reference is made in this chapter to legislative provisions because Fiji s legislation is essentially a mirror reflection of ACV on which it is based.

1. General principles of application of valuation methods

Schedule 1 of the Customs Tariff Act, 1986 is aimed at giving effect to Fiji s commitment under GATT to facilitate international trade by implementing the GATT valuation system. Fiji became a signatory to the GATT agreement on 14 January 1996. The WTO Agreement on Customs Valuation, covered under clauses 1(10)-1(12) of Schedule 1 of the Customs Tariff Act, 1986, provides Fiji with various methods for valuing imported goods prior to the application of ad valorem duty rates. Following the WTO ACV, the primary valuation method adopted is based on the transaction value of imported goods, which is the price actually paid or payable for the goods when sold to Fiji plus adjustments for certain elements - Freight, packaging, commission, goods and services supplied to the buyer free of charge as well as certain other costs may be added to the customs value. In cases where Fiji customs officers are suspicious that the transactions value is false, the value may be determined by sequentially applying the following five options:

(a) The value of identical goods;

(b) The value of similar goods;

(c) The imported price of identical or similar goods, less applicable deductions for costs incurred within the country of import;

(d) Computed value;

(e) Finally, if none of the above methods work, reasonable means may be used on the basis of the data available in Fiji.

However, under Article IV of ACV and clause 1(11) of Schedule 1 of the Customs Tariff Act, 1986 the deductive and computed value methods may be reversed at the request of the importer because of the possibility of difficulties in their respective determinations. So far, Fiji has not taken up this right in its statutory enactments.

(a) Primary basis of valuation: Transaction value

The transaction value will only be acceptable as the customs value of the imported goods if the four conditions set out in paragraph 1 of Article I are satisfied. The four conditions are:

(a) That there are no restrictions on the disposition or use of the goods by the buyer other than certain specified ones which: (i) are imposed or required by law in the importing country; (ii) are limited to the geographic area in which the goods may be resold; and (iii) do not substantially affect the value of the goods;

(b) That the sale or price is not subject to some condition or consideration for which a value cannot be determined with respect to the goods being valued;

(c) That no part of the proceeds of any subsequent resale, disposal or use of the goods by the buyer will accrue directly or indirectly to the seller, unless an appropriate adjustment can be made in accordance with the provisions of Article VIII;

(d) That the buyer and seller are not related or, where the buyer and seller are related, the transaction value is acceptable for customs purposes under the provision of paragraph 2 of Article I.

(b) Subsidiary basis of valuation: Identical and similar goods method

Establishing the value of the imported goods under Article I is not possible when:

(a) The imported goods are not the subject of sale;

(b) The sale is the subject of some restriction on the disposition of use of the imported goods;

(c) The sale is subject to some condition or consideration for which a value can be determined;

(d) An adjustment needs to be made to the price actually paid or payable under Article VIII, but insufficient information is available for making the appropriate adjustment;

(e) The sale occurs between related parties.

In all the above cases, Article I will not apply and hence there will be no transaction value of the imported goods. In such situations, Fiji s customs administration will resort to the first alternative basis of value under Article II which is the transaction value of identical

goods. If the value still cannot be determined under Article II then the second alternative basis is Article III which is the transaction value of similar goods. Clauses 4 and 5 of Schedule 1 of the Customs Tariff Act, 1986 deal with identical and similar good, respectively.

(c) Deductive value method

In cases where the first three methods of arriving at the customs value have been examined and discarded, Fiji customs officials may proceed under Article V. Article V states that when the customs value cannot be determined under Articles I, II and III, the value will be determined on the basis of the price at which the imported goods, or identical or similar imported goods are sold to unrelated buyers in the importing country.

In that connection, the Customs Tariff Act, 1986 requires that in applying the deductive value method for imported goods, profit and general expenses should be taken as a whole and be calculated on the basis of an accounting report prepared in a manner consistent with the generally accepted accounting principles.

(d) Computed value method

Article VI states that where the customs value cannot be based on Article V, it will be based on the sum of the costs incurred in producing the imported goods. Under the deductive value method, the desired basis is a price at which imported goods are sold in the importing country and from which certain sales expenses incurred in that country are deducted, but with computed value cost elements reflected in the production of the imported goods being considered with a view to computing the cost of the goods. For the purpose of Fiji customs procedures, the computed valued is defined in Article VI as being the sum of the following:

(a) The cost or value of materials and fabrication or other processing employed in producing the imported goods;

(b) An amount for profit and general expenses equal to that usually reflected in sales of goods of the same class or type as the goods being valued and which are made by producers in the exporting country;

(c) The cost or value of all other expenses necessary to reflect the valuation option chosen by the party under Article VIII(2).

(e) Fall-back method

Provisions relating to the fall-back method of valuation are set out in clause 8 of Schedule 1 of the Customs Tariff Act, 1986. The five methods of valuation defined in the code normally provide a basis on which to establish value, but certain situations do not allow the later methods to be applied. These situations include:

(a) The transaction involves leased goods;

(b) Identical or similar goods are not imported;

(c) The goods are not resold in the importing country;

(d) The producer is unknown or refuses to disclose cost data to foreigners.

Article VII provides the means for establishing a customs value where the value cannot be determined under any of the other valuation methods. Article VII does not actually provide for a specific valuation method but rather requires the customs value be determined using reasonable means consistent with the principles and general provisions of Article VII of GATT and on the basis of data available in the importing country.

2. Key constraints and issues in implementing the WTO Agreement on Customs Valuation

The WTO Agreement on Customs Valuation has been implemented in conjunction with other trade facilitation initiatives (as discussed in the previous section) over the past decade. The majority of the goods seem to be valued using the transaction value method,[5] with other methods being applied in a manner generally consistent with the ACV.[6]

A FIRCA official confirmed that there had been many cases where imported goods had been undervalued due to a number of reasons. One of the main reasons is the submission of invoices where the goods in question have been undervalued. Once customs officials are able to ascertain (through the application of their own procedures) that a particular shipment of goods is undervalued, these goods are placed on an audit trial during which they are heavily scrutinized in order to determine their true value. Penalties are also imposed on importers found to have deliberately undervalued their goods. The penalties depend on the seriousness of the offence and can range from as low as F$ 150 to as high as F$ 2,000. In exceptional circumstances, penalties can be as high as one third of the value of the imported goods.[7]

Nonetheless, Customs valuation remains a frequent source of problems that often become the subject of disputes between traders and customs. The lack of trained manpower for customs valuation and the arbitrary and partial application of laws, regulations and judicial decisions seem to be particularly important issues. Excessive and time-consuming documentation requirements and the lack of a formal and effective public-private sector consultation mechanism are also alluded to.

C. Policy recommendations and conclusion

This chapter initially discussed the various trade facilitation initiatives that have been implemented in Fiji. It then highlighted the trade facilitation needs and priorities of

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5 A FIRCA official who was interviewed on this issue was not able to quantify the usage of the transactions value method, however.

6 A. Singh, 2006, Research, Policy, Planning and Development Officer, Fiji Islands Revenue and Customs Authority, Suva (personal communication).

7 *Ibid*.

Fiji as well as the impact of the various trade facilitation measures implemented so far on the private sector in Fiji, based on a private sector survey that carried out in October 2006. This chapter also shed some light on the practical implementation of ACV in Fiji and the problems faced during its implementation.

Based on the results of the private sector survey, the following priorities can be identified with regards to trade facilitation and customs valuation:

(a) The elimination of bribery and other corrupt practices among officials involved in the clearance and release of imported goods;

(b) Computerization and automation of trade procedures, e.g., online submission and approval of customs declarations, cargo manifests including electronic payment of fees and customs duties;

(c) The reduction and simplification of required documentation for import and export procedures;

(d) Completing clearance of goods before they have arrived physically in the customs territory (based on advance submission of goods declaration and other documents);

(e) The timely and comprehensive publication and dissemination of trade rules and regulations;

(f) The improvement of coordination between relevant agencies, particularly with regard to documentation requirements, e.g., through the establishment of a single window for one-time submission and collection of all trade documents;

(g) The improvement in customs inspection and control procedures, e.g., systematic use of risk analysis to determine which goods should be examined, clearer criteria for green and red channels as well as special channels for authorized traders and express shipments;

(h) Harmonization and standardization of documentation requirements based on international standards;

(i) The establishment (or improvement in the effectiveness) of enquiry points and/or call centres for up-to-date information on trade procedures.

Fiji, on its own, may need to address recommendation (a), while the other recommendations can be ably addressed through regional initiatives. However, it is also worthwhile mentioning that Fiji, on its own, has already started working on recommendations (b) and (h) above. Finally, the priorities identified through the private sector survey indicate that those regional initiatives that have been implemented or which are in the process of being implemented are generally focusing on the right issues.

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VIII. RELATIONSHIP BETWEEN LIBERALIZATION IN THE LOGISTICS SECTOR AND TRADE FACILITATION*

By Dariel De Sousa and Christopher Findlay

Introduction

Logistics can be broadly defined as the range of activities required for the transportation, storage and handling of production inputs as well as finished products from producer to consumer. The various activities that may be involved in the logistics supply chain , which are often interdependent, play a critical role in international trade. More specifically, exporters of many goods will heavily depend upon logistics services for the efficient, cost-effective and timely delivery of those goods to consumers in the import market.[1] Further, in a recent report prepared by USITC on the global market for logistics services, it was suggested that improving the performance of logistics services through liberalization might generate a virtuous cycle, whereby international trade increases, which, in turn, would increase the demand for logistics services.[2]

In theory, the liberalization of logistics services and other governmental efforts aimed at facilitating trade could be mutually reinforcing. In particular, the benefits of improved performance of logistics services could be enhanced through governmental measures that assist the flow of trade across national borders rather than hindering such trade. Nevertheless, the converse could also be true. In its report, USITC considered the effects on logistic services of trade impediments. It found that the benefits that could potentially accrue to suppliers of logistics services as well as to international traders from measures to enhance the efficiency of logistics services could be undermined by governmental trade barriers.[3] Indeed, such obstacles might result in delays, which, in turn, may erode the comparative advantage of products being exported or imported.

Whether or not a virtuous cycle can be generated will ultimately depend upon the respective extent and pace of measures taken by governments to liberalize the supply of logistics services and to facilitate trade. The study described in this chapter seeks to examine the changing nature of the domestic market for logistics services in Australia during the past 10-15 years with a view to determining the relationship, if any, between the progressive liberalization of logistics services and trade facilitation. For the purposes of

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1 This view tends to be supported by empirical studies that suggest a robust statistical link exists between transportation costs and international trade flows (Lim o and V enables, 2001; pp. 451-479).

2 USITC, 2005, p. ix.

3 *Ibid*, p. 3-1.

the study, the term trade facilitation includes the interpretation of this term as the simplification and harmonization of international trade procedures that apply at the border to exported and imported good, while also encompassing broader governmental measures to facilitate trade, which reduce traders transaction costs and thereby promote trade. The export of tuna from South Australia to Japan is used as an example to illustrate this relationship.

A. Trends in the Australian market for logistics services

1. Importance of liberalization

The services sector plays an important role in any domestic economy. In 1998, the World Bank estimated that among developing countries, the services sector accounted for 38 per cent of gross domestic product in low-income countries and 56 per cent for middle-income countries. For high-income developed countries, the figure was estimated to be 65 per cent.[4] More recently, in 2005, OECD estimated that, among OECD countries, the services sector accounted for more than 70 per cent of total employment.[5]

A number of benefits are touted as flowing from domestic liberalization of the services sector. For example, it is generally considered that regulatory reform of services markets will create opportunities for firms to develop new services, meet emerging global demands and increase employment. Further, liberalization spurs competition, which improves efficiency and innovation.[6] Theory also suggests that liberalization results in lower prices, better quality and increased choice for consumers. Evidence in the telecommunications[7] and financial sectors[8] tend to bear this theory out. The precise impact and size of the gains resulting from services liberalization will depend upon the market structure of the sector in question, the nature and extent of the liberalization measures adopted and the broader regulatory framework within which the services in question are being supplied.

The logistics sector is a particularly important services sector for all domestic economies and, therefore, the rewards of domestic liberalization can be especially significant. The global market for third-party logistics services was valued at around US$ 130 billion in 2002.[9] Notably, consumers of logistics services are typically suppliers of products themselves. Consequently, the efficient supply of logistics services, which is enhanced through liberalization, helps to facilitate the supply of a whole range of other products. The more timely, reliable and efficient the logistics supply chain, the quicker and more reliably can goods be delivered from the point of production to the point of consumption.

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4 Website: http://www.dti.gov.uk/files/file23412.pdf.

5 OECD, 2005; p. 2.

6 OECD, 2005, p. 2.

7 See, for example, International Communications Union, 2002, *World Telecommunication Development Report 2002*, March.

8 See, for example, International Financial Services, 2002, *Impact of Liberalising Financial Services*, January.

9 USITC, 2005; p. 2-1.

In this regard, globalization has highlighted the need for and importance of liberalization of logistics services. As a result of globalization, a vast range of products - perishable and non-perishable alike - can be sourced from all over the world. It is in this context that the cost of time has become a critical factor from the perspective of exporters, importers and suppliers of logistics services. The time it takes to get a product to market may determine whether or not a product gains entry into a foreign market. Furthermore, time may still affect the volume of trade, even in cases where entry into the foreign market has been achieved.[10] Recent studies indicate that a 10 per cent increase in time reduced bilateral trade volumes by between 5 and 8 per cent.[11] The cost of time becomes all the more pressing if the product is perishable and has a short shelf-life and/or if the product is needed for just-in-time production. Additionally, perishable products must not only be safe to consume but also edible upon arrival in the destination market. These combined pressures have driven changes in the logistics sector throughout the world, including in Australia.

Logistics activities represent approximately 9 per cent of Australia s GDP, comparable with 12 per cent for mining, construction and utilities, 11 per cent for wholesale and retail trade, and 12 per cent for manufacturing.

Australia s large geographic dimensions coupled with the breadth of products that are exported abroad, ranging from heavy commodities to delicate perishables, pose important challenges to the supply of logistics services in Australia. A number of different types of logistics services may be necessary to transport and deliver the product from Australia to the export market in the form or state required by consumers. The efficient and cost-effective supply of multi-modal logistics services may be compromised if there are significant differences between the suppliers of each type of service along the logistics supply chain in terms of infrastructure, organization and service standards. Poor performance of just one aspect of the logistics supply chain could affect the competitiveness of the exported product. In the long term, instances of poor performance associated with the supply of logistics services may permanently damage an exporter s reputation abroad.

2. Logistics supply chain

The performance of logistics services can be analysed in the context of the logistics supply chain. The supply chain represents the sequence of logistics activities involved in the transportation, storage and handling of products while en route to the destination market, and illustrates the interdependencies between those activities. Figure I provides a diagrammatic representation of a typical supply chain.

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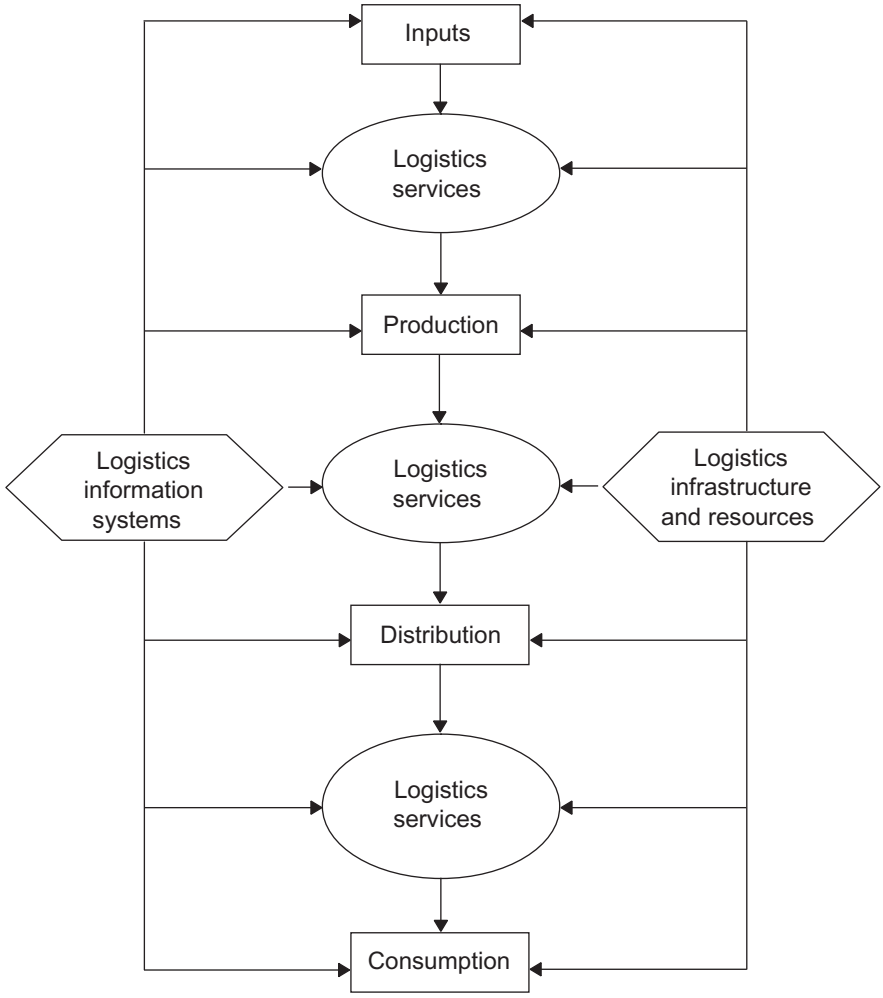
[10] OECD, 2006; p.7.

[11] Notably, a recent survey conducted by the World Bank found that, in the case of a number of developing countries, the time taken to get products from the factory gate to the border for export after clearance was beyond the lead time for delivery of the product prescribed by customers (see OECD, 2006; pp 9-10).

Figure I. Overview of the logistics supply chain



Source: Bureau of Transport Economics, 2001.

Swift and seamless delivery is the primary objective along the entire supply chain. In order to achieve that objective, the supply of a specific logistics service must be undertaken in coordination with the supply of the other interdependent logistics services in the supply chain. One option for achieving an integrated approach is through the in-house supply of logistics services by the producers who require such services. In Australia, around 50 per cent of logistics services are currently supplied in-house. However, this may be a costly and resource-draining option, particularly for firms whose core business is far-removed from the supply of logistics services. Indeed, an important trend in the Australian market for logistics services is the increasing preparedness of firms to outsource

their logistics needs rather than undertake this function in-house. BlueScope Steel, a leading manufacturer of steel in Australia and New Zealand, has adopted a hybrid approach. In particular, one of BlueScope Steel s four business units is called the Market and Logistics Solutions Unit. While this Unit manages the logistics supply chain, it sub-contracts certain aspects of the logistics supply chain to third-party logistics suppliers (3PLs), which exclusively specialize in the supply of logistics services.

Third-party logistics suppliers have played a pivotal role in logistics outsourcing. They are external parties that perform all or part of logistics activities involved in the supply chain for a particular product on behalf of the producer. These suppliers may provide benefits such as lower costs, improved quality and better integration of logistics activities. Freight forwarders are a type of 3PL and are important participants in the logistics supply chain. They organize the dispatch of cargo by road, rail, ship or sea on behalf of producers or other 3PLs that have been engaged to manage the entire logistics supply chain. Apart from securing cargo space on the relevant mode of transport, freight forwarders may also deal with documentary and other formalities associated with such shipments.

Private sector logistics firms operate in many segments of the Australian logistics supply chain. However, such firms may be legally precluded from operating in particular segments where the supply of the logistics service implicates public or quasi-public infrastructure and/or where safety or security concerns exist. An example is the ownership and operation of railway lines, ports and airports. In such cases, governments may choose to own, control and operate the underlying infrastructure rather than entrusting such activities to private enterprise.

3. Market dynamics

The Australian market for the supply of logistics services has been the subject of much study, comment and reform over the past 10-15 years. In general terms, reform has been the result of a mix of public and private initiatives aimed at enhancing efficiency in the supply of logistics services in Australia. The main aspects of these initiatives are discussed below, particularly those having an impact on international trade.

(a) Market access commitments

A potent tool for liberalizing a sector in a country is through the granting of market access to suppliers from other countries, whether on a bilateral, regional or multilateral basis. Depending upon the characteristics of the sector in question, liberalization through market access commitments may imply the arrival of more foreign suppliers, which could translate into lower costs but not necessarily a reduction in the number of domestic suppliers.

During the Uruguay Round of WTO trade negotiations, Australia made commitments to grant market access to foreign suppliers with regard to a number of sectors that covered services included in the logistics supply chain. In particular, Australia made certain

commitments with respect to road and maritime freight transport, storage and warehousing, and various other auxiliary services. Australia s efforts to improve market access to its domestic logistics market are ongoing. In the context of the Doha Round of WTO trade negotiations, a number of offers have been made for new market access commitments that may have an impact upon the domestic market for the supply of logistics services.[12]

The results of Australia s market access commitments are illustrated in the following statistics.

Table 1. Foreign and Australian players in the Australian market for logistics services

Logistics subsector	Major players in terms of market share	
	Foreign	Australian
Road transport	TNT	Toll Holdings Linfox K&S Corporation Scott Corporation
Maritime transport	P&O	Australia National Lines Shipping Line BHP Billiton
Storage	P&O Swire	Toll Holdings Linfox

Source: Based on general literature and press reports concerning the logistics sector in Australia.

(b) Domestic regulatory reform

Regulatory reform in the Australian logistics sector has been driven by changes in regulatory philosophy, dissatisfaction with the service provided by government or monopoly suppliers, and a desire on the part of federal and state governments to reduce expenditure on infrastructure or to fund infrastructure improvements. Reform has seen major changes in the market environment for both public and private suppliers of logistics services in Australia. These changes have predominantly been with regard to the transportation components of the logistics supply chain, transportation being the most significant component of the supply chain in terms of dollars spent.

Prior to such reforms, state monopolies owned and operated the railways while interstate road transport was heavily regulated, irregular and slow. In addition, relatively few shipping lines and airlines serviced Australia. Since then, liberalization and/or privatization have taken place in virtually all segments of the transportation components of the logistics supply chain. Broadly speaking, the result of the reform efforts has been increased

[12] Specifically, Australia has offered market access commitments with respect to maritime cargo handling and agency services, air transport ground handling services, selling and marketing of air and rail transport services, and customs clearance services.

efficiency and broader consumer choice, which, in turn, has facilitated the more efficient movement of freight from Australia through national and international logistics chains.

(i) Rail freight

Rail freight in Australia is used predominantly for the transportation of bulk commodity items such as minerals, coal, crude oil, petroleum, natural gas, fertilizers, grains and forest products. Demand for rail freight services with regard to products destined for export is largely confined to grain, coal and iron ore. Rail freight is not an option where express delivery is required.

In the past, Australian rail freight services suffered from a reputation of poor quality. Reforms in the 1990s transformed Australia s railways through commercialization, corporatization and, in some instances, privatization of government enterprises that had formerly owned and controlled the railways. The number of public and private sector providers of rail freight services has since grown. Notably, the principle of competitive neutrality, which lies at the heart of many transportation reforms, requires that in areas where both public and private sector entities are operating, government businesses should not be advantaged nor disadvantaged relative to the private sector competitors simply by virtue of government ownership. This principle has had particular importance for access by private sector operators to the rail infrastructure, which continues to be within the ownership and control of public sector entities.

Thanks, at least in part, to the railway reforms, real freight rates have fallen significantly over the past two decades. Operators of rail freight services have largely been price takers, given shippers preference for other modes of transportation - especially by road - that tend to be cheaper for low volume, short-haul journeys. The competitive nature of the market for rail freight services is likely to be further enhanced as large freight-transport service providers offer multi-modal services.

Lagging infrastructure and disparate regimes between the Australian States for private sector access to rail tracks that continue to be owned and controlled by public sector entities have previously hindered competition to a certain extent. Nevertheless, innovation and investment in infrastructure is expected to increase as the degree of private participation in rail freight operations continues. Competition between rail and shipping for the transportation of freight has already resulted in the provision of innovative rail services (for example, the establishment of feeder services to and from the port of Melbourne for transportation elsewhere).

(ii) Road freight

Road freight is the mode of transport most commonly used for the movement of non-bulk freight within Australia, particularly from and to rural and regional communities where rail, air and sea freight are not economically or physically viable. Road freight is also often used in combination with the other modes of transportation for goods that are exported from Australia. Road freight is typically preferred to rail freight because it is cheaper, quicker and the routes are more flexible.

The regulation of road transport is linked to externalities such as car accidents involving heavy vehicles, noise emissions, and air pollution and traffic congestion that may damage roads and the environment in the long term. These externalities imply social, environmental and economic concerns that have been addressed in Australia through a variety of safety and technical standards, rules on traffic and driving conditions and charges on the use of road infrastructure, such as freeways.

The States and Territories are primarily responsible for the regulation of road transport under Australia s Constitution.[13] In the past, the States each enacted their own laws dealing with road rules, vehicle standards and driver licensing. Over time, differences between those laws became an impediment to transportation of road freight across state and territory borders. In 1991, the National Road Transport Commission was established to develop uniform arrangements between the States and Territories, and has made considerable progress in harmonizing vehicle registration requirements, vehicle standards and road rules including those related to the carriage of dangerous goods.

The market for road freight services, in which a significant number of small owner-operators are incumbent, is fiercely competitive despite the existence of heavy regulation. The barriers to entry are low given the relatively low start-up capital that is needed (to buy a truck, for example). Inter-modal competition between road and other modes of transportation, such as rail, air and sea, has also served to heighten the level of competition in the market.

Available evidence indicates that competition in the market for road freight has resulted in downward pressure on prices. Such evidence also suggests that competition between incumbents is based largely on specialized services (e.g., vehicles tailored for a particular industry or type of cargo) and reliability, rather than on price. Significantly, increased competition has not seen a concomitant reduction in safety standards. Further, there is evidence of a decline in the incidence of heavy vehicles involved in fatal accidents. Nevertheless, it is notable that the industry is gradually becoming more concentrated as a result of a competitive disadvantage faced by the smaller truck owner-operators - i.e., the difficulties associated with maximizing truck use, 24 hours a day, seven days a week. Large foreign freight companies have become prominent in the industry through capitalizing on this disadvantage. It has yet to be seen whether Australian competition law, which is discussed in more detail below, will have a role to play in addressing increasing concentration in this sector.

(iii) Sea freight

Shipping by sea freight dominates Australia s international freight activity, particularly with regard to long-haul, high-volume movements of cargo.

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[13] The Australian Government comprises three main parts. The first is the Federal Government, which has jurisdiction over, and responsibility for the entire Commonwealth of Australia. The second are the State and Territory Governments, which only have jurisdiction over, and responsibility for the relevant Australian State or Territory they have been elected to govern. The third comprises the local governments, which have responsibility for certain matters within sub-areas in the Australian States and Territories.

The capacity of Australian ports directly affects the supply of sea freight services. Historically, government-owned ports in a number of Australian States developed in isolation from one another and were insulated from competition due to the absence of adequate land transport connections between them. Since then, the various ports have been reformed through corporatization and privatization, and in some State jurisdictions, third-party access regimes have been established to facilitate the supply of auxiliary port services. Improved rail services and enhanced competition in the market for road freight has resulted in increased competition between the ports.

Port reforms have delivered savings to suppliers of sea freight services. Ports have progressively moved away from basing charges on the value or volume of cargo handled; rather, they have introduced charging that is based on cost. However, inadequate port infrastructure at a number of Australian ports may constitute an impediment to the further realization of efficiencies and cost savings.

With respect to the sea freight services themselves, reform has been relatively limited, due in part to the existence of international bodies that play a role in determining the global regulatory framework for the supply of such services, such as the International Maritime Organization. Nevertheless, during the 1990s, several state-owned shipping lines were privatized, including Australian National Lines. The sea freight industry in Australia is now characterized by a high degree of globalization and is relatively concentrated, with foreign-flagged ships carrying the majority of goods in and out of Australia. The speed and nature of the service offered by airfreight poses a competitive threat to sea freight, particularly with regard to low-volume, time-sensitive and valuable freight as well as for inputs needed for just-in-time production. A formidable barrier to entry is the costly acquisition of equipment - in particular, ships. Further, prices for shipping services to and from Australia are largely determined by international freight rates and are known to be the subject of price-fixing.

Shipping conferences are currently conditionally exempted from the application of domestic competition law.[14] The main objective of this exemption is to ensure that exporters have access to sea freight services of adequate frequency, capacity and reliability and at rates that are internationally competitive. Amendments made to domestic competition law in 2000 have provided partial extension of this exemption to assist importers.

(iv) Airfreight

Airfreight is typically used for the transportation of low-volume, high-value products. In Australia, airfreighted imports consist mostly of high-value, high-tech manufactured goods such as computers and other electronic goods, whereas exports are dominated by perishable primary products of lower market value, particularly fresh seafood. Airfreight services can only be accessed through the use of freight forwarders.

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[14] A shipping conference is an alliance made up of a number of carriers that provide a service from specified points to points for a defined route, which is distributed according to market share.

The domestic Australian market for airfreight services can now be described as vigorously competitive following the introduction of competition during the past two decades. Competition has been increased through granting of the right to provide air services under air services arrangements that have been negotiated by Australia and other countries, largely on the basis of mutual benefit. Such arrangements determine the number of aircraft authorized to operate on each route.

As a result of increased competition, the air freight industry is now serviced by a number of different airlines, both domestic and foreign. A large proportion of air freight transported to and from Australia is carried in the belly-holds of passenger aircraft, as this is cheaper than using aircraft that are dedicated to air freight. Previously, air freight cargo rates were negotiated and fixed at traffic conferences convened by the International Air Transport Association (IATA) and were subsequently approved by governments under air services arrangements. However, indicative reference fares have since replaced the fixed rates, leaving airlines with some price flexibility. Demand tends to be highly price-elastic with respect to low value-to-weight cargo (i.e., those products typically imported into Australia via airfreight), whereas cargo rates on outbound journeys from Australia for high-volume, low-value goods tend to be higher. Of relevance in this regard is the fact that airfreight operators are reluctant to carry high-volume, low-value cargo on outbound journeys from Australia if this compromises their ability to carry high-value products on a subsequent leg of the journey. If the users of freight services are flexible regarding the time taken to deliver freight, cheaper, less direct routes may be possible.

Infrastructure capacity has been, and will continue to be a constraining factor with respect to the supply of airfreight services. In the longer term, airlines are expected to invest in larger dedicated freight aircraft to take advantage of this fast-growing sector.

4. Role of domestic competition policy

In 1995, the State and Federal Governments agreed to a domestic reform package called the National Competition Policy. It was pursuant to this policy that many of the reforms referred to above concerning the supply of transportation services in Australia were undertaken. Competition policy continues to play a role with regard to a number of the market segments along the logistics supply chain. In particular, competition policy has a bearing upon access to publicly and privately owned infrastructure, particularly with regard to rail freight. It may also be relevant to mergers, alliances and cooperative arrangements that have been struck between companies supplying services within and/or between segments of the logistics supply chain.

(a) Access to infrastructure

The terms and conditions according to which access to infrastructure is granted will have a direct impact on the supply of services that are immediately dependent upon that infrastructure (for example, access to rail tracks to provide rail freight services). Moreover, service providers further downstream in the supply chain may also be affected if the cost

and time associated with negotiating and arranging access to infrastructure result in delays and uncertainty.

Competition policy can help to strike a balance between the competing interests of the infrastructure owner to make a reasonable return on investment while conversely granting users of the infrastructure certain, fair and equitable access to infrastructure. Competition policy may also assist in ensuring a competitive environment among service providers seeking access to such infrastructure.

Australian competition law governs access to essential facilities, including interstate and intrastate rail infrastructure controlled by public as well as private entities. That law establishes the framework for access to rail infrastructure in Australia. In particular, it provides that rail infrastructure must be accessible by third parties that wish to provide a service dependent upon such infrastructure through a declaration process. The terms and conditions according to which access will be granted is determined up front through undertakings made by the infrastructure owners, and which are enforceable in court. Competition law also provides for arbitration by the competition regulator in the event that access to rail infrastructure is the subject of dispute between the owner and third parties seeking access to the infrastructure in question.

(b) Other competition issues

As is evident from the foregoing discussion, the degree of competition within particular market segments along the logistics supply chain varies; in some cases, this variation is considerable. The regulatory environment in which the logistics service in question is supplied will clearly have an impact on the degree of competition within the relevant market segment. Furthermore, the degree of competition will be affected by the nature of the service being supplied and the market structure. More specifically, the competitive environment will be affected by the degree of homogeneity of the particular services being supplied. It will also be affected by the existence or absence of barriers to entry. Buyer power will also be relevant. For example, the larger the firm seeking to ship its cargo, the greater its power to demand speedy, cost-effective and tailor-made freight transport solutions. Further, the level of competition will depend upon the degree of consolidation, partnerships and alliances within particular segments of the logistics supply chain and as between segments of the supply chain.

Australian competition law and policy has a role to play in ensuring that the degree of competition in each market segment along the logistics supply chain maximizes benefits for the suppliers and consumers of such services. It is of particular relevance with regard to the emergence of increased supply chain collaboration, which is possible thanks to increased globalization, advances in information technology, and a series of acquisitions, mergers and other alliances.

On the one hand, formal as well as informal linkages between players along the logistics supply chain may result in cost savings for service suppliers and service users. They may also lead to improvements in the range of services offered. Additionally, and

perhaps, more importantly, such linkages may facilitate the supply of integrated, seamless logistics services, which is increasingly of utmost importance to consumers of logistics services. In this regard, it is important to note that studies undertaken over the past decade indicate that seamless integration along the logistics supply chain had previously not been achieved in Australia. This was due, at least in part, to fragmented market structures, incompatible information systems and infrastructure (particularly at inter-modal transfer points) as well as the independent and competitive mindset of supply chain participants. On the other hand, however, linkages between players along the logistics supply chain may attract the application of Australian competition law if they compromise the degree of competition in the domestic market. For example, mergers among large global players have been the subject of scrutiny by the Australian competition regulator in relation to the supply of rail freight services, maritime freight services and stevedoring services. However, as yet, action has not been taken by the competition regulator to prevent such mergers.

5. General observations

Despite Australia s relatively close geographic proximity to key export markets in the Asia-Pacific region, in the past logistics costs had been higher than in a number of competing countries. Inefficiencies within segments of the logistics supply chain as well as lack of integration along the supply chain were at least partly responsible.

As noted above, Australia has implemented a number of reforms in the logistics sector. Some of these reforms have been undertaken with regard to specific aspects of

Table 2. Summary of main reforms in Australia that have had an impact upon the logistics sector

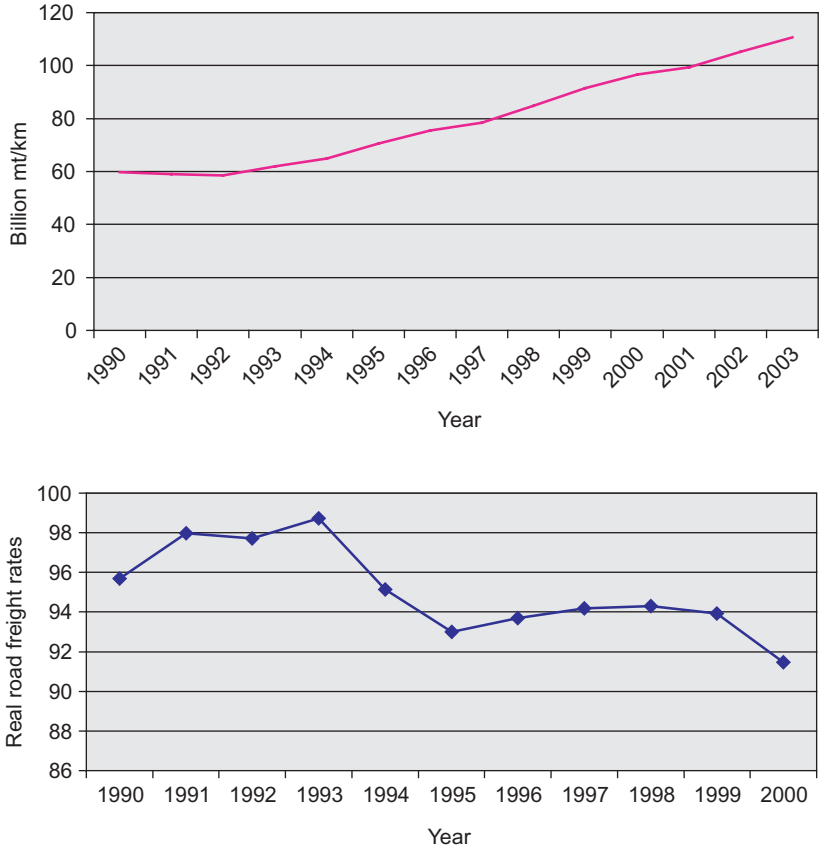
Type of reform	General/specific to logistics sector	Aspect of logistics supply chain affected	Time of adoption
Privatization/ deregulation	Specific	Rail freight Road freight Sea freight (including port reform)	1990s
Market access commitments	Specific	Road freight Sea freight Storage Warehousing Auxiliary logistics services	1994
National Competition Policy	General	Potentially all aspects but particularly relevant in relation to rail freight and sea freight	1995

the logistics supply chain (e.g., with respect to rail and port reform) while others are applicable more generally (i.e., the National Competition Policy). These are summarized in table 2.

The above-mentioned reforms appear to have yielded positive results from the perspective of suppliers of logistics services as well as international traders.

As is evident from figure II, the utilization of road freight services has steadily increased since 1990. Moreover, real road freight rates dropped by 4 cents per mt/km between 1990 and 2001.

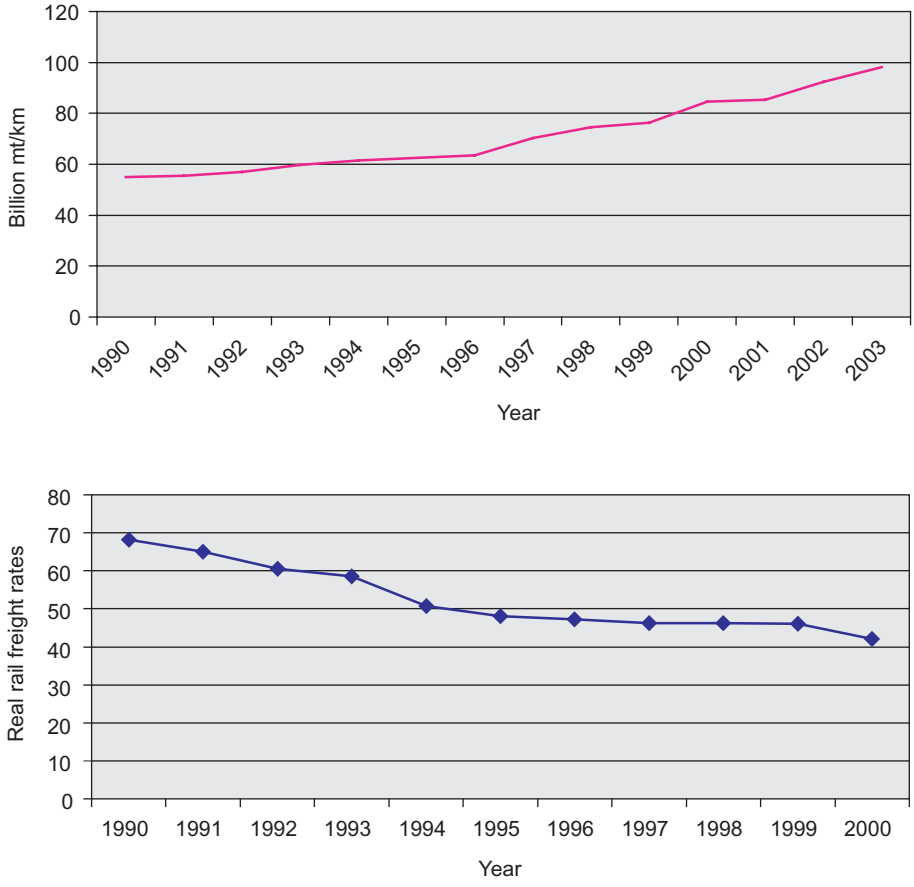
Figure II. Road freight trends



Source: Bureau of Transport and Regional Economics, 2006.

Figure III illustrates a similar steady increase since 1990 in the utilization of rail freight services. Notably, real rail freight rates declined by 26 cents per mt/km between 1990 and 2001.

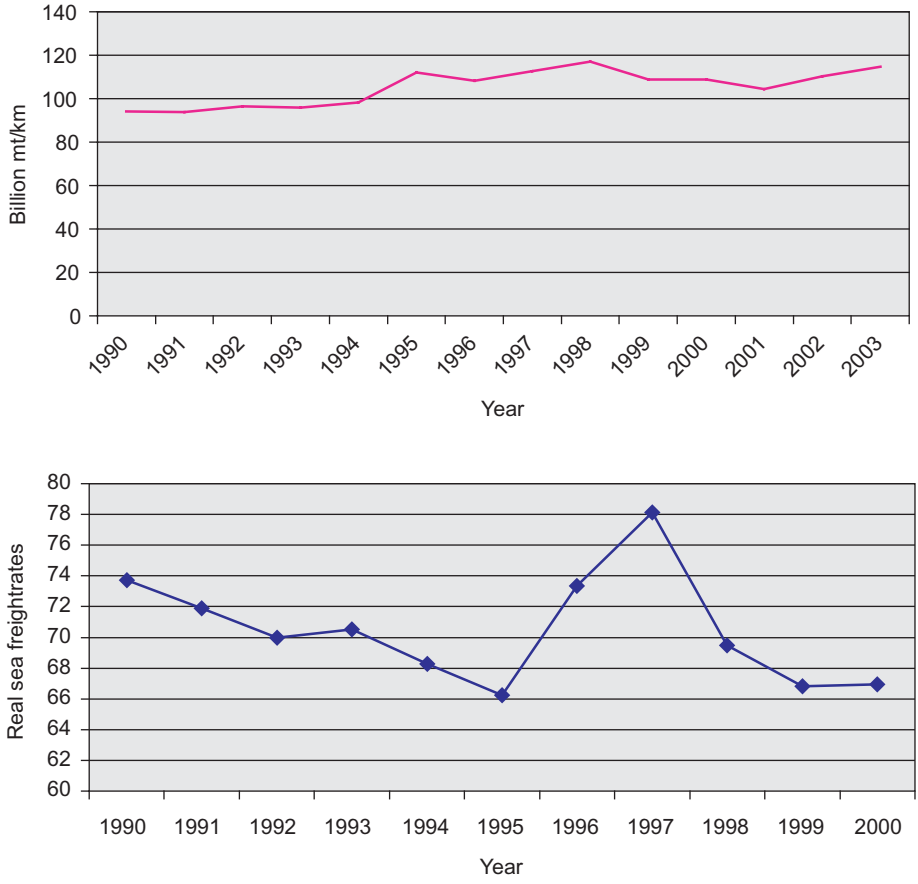
Figure III. Rail freight trends



Source: Bureau of Transport and Regional Economics, Department of Transport and Regional Services, 2006.

Figure IV shows that the utilization of sea freight has also increased since 1990, although more gently than is the case for road and rail freight. Real sea freight rates declined by 7 cents per mt/km between 1990 and 2000.

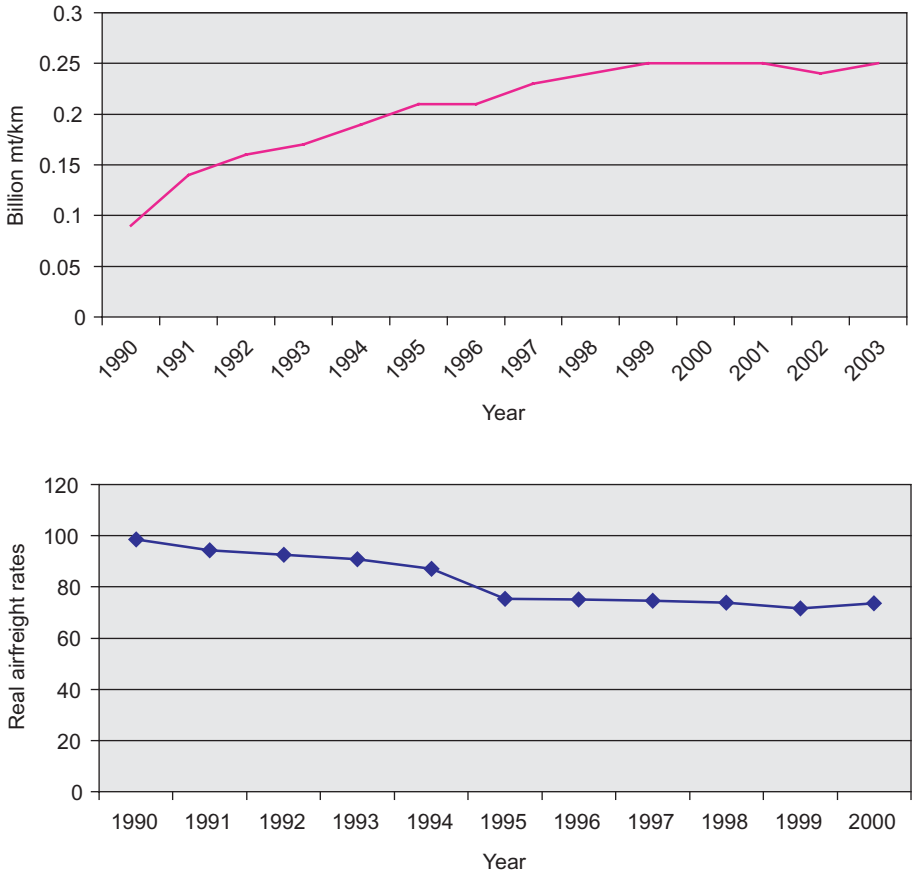
Figure IV. Sea freight trends



Source: Bureau of Transport and Regional Economics, Department of Transport and Regional Services, 2006.

Finally, figure V shows a marked increase in the utilization of airfreight services since 1990. Real airfreight rates declined by 27 cents per mt/km between 1990 and 2000.

Figure V. Airfreight trends



Source: Bureau of Transport and Regional Economics, Department of Transport and Regional Services, 2006.

Australian competition policy and law currently plays, and will continue to play an important role in striking a balance between the need, on the one hand, to maintain a competitive environment that produces the efficient supply of good quality logistics services at a reasonable price and, on the other hand, in allowing linkages between suppliers of logistics services in aid of an integrated, seamless supply chain.

B. Governmental measures that may have an impact on the supply of logistics services

As noted above, non-tariff governmental measures have the potential to undermine the benefits of logistics liberalization. Indeed, in its report on the global logistics market, USITC[15] noted that border customs procedures and inspections pose the most significant obstacles to the supply of certain logistics services, the principal objective of which is to move freight expeditiously, reliably and at the lowest cost possible. Nevertheless, in appraising governmental border measures that may have an impact upon the supply of logistics services, their rationale needs to be considered. This is particularly important with regard to the globalized context in which such services are supplied, where real security threats at national borders exist. Indeed, tighter border controls over freight movement, handling and storage throughout the world are being implemented in the face of increasing security concerns. Furthermore, while the removal of certain governmental measures might facilitate trade, it could also seriously jeopardize the health and safety of citizens on both sides of a country s border. Therefore, a balance is needed between furthering the trade facilitation objective and ensuring that borders are secure against terrorist, health and safety threats.

Australia s international trade is subject to a number of customs and quarantine requirements, which are relevant to the logistics supply chain. The governmental institutions that administer such requirements are the Australian Customs Service (ACS) and the Australian Quarantine and Inspection Service (AQIS). As a rule, exporters and importers must provide the ACS and AQIS certain information about movements of products between Australia and overseas origins or destinations. That information is primarily required for the purposes of collecting customs duties, preventing the entry of pests and diseases into Australia, quality certification of some exports and national security reasons. Various organizations are involved in the provision of this information, including shippers, shipping lines, terminal operators, customs brokers and freight forwarders. Other governmental agencies, such as state-based agriculture departments, may also be involved on the government side.

1. Export controls

Under Australian customs law, goods may not be exported nor loaded on to a ship or aircraft for export unless they have been entered in the Customs Export Integration System (EXIT). EXIT is an electronic data interchange clearance and reporting system that: (a) automates procedures for reporting exports; (b) accelerates and simplifies the clearance of outward bound air and sea cargo; and (c) enables ACS to monitor high-risk exports without impeding the majority of exports, which pose no risk. The EXIT system links ACS with exporters, freight forwarders, airline and shipping companies, and the Australian Bureau of Statistics for the record of Australia s export statistics. Exporters that have been registered in the EXIT system apply for export clearance by transmitting

[15] USITC, 2005, p. 3-2.

information to ACS electronically. EXIT verifies the data and, if valid, an export clearance number will be issued, with a turnaround time of approximately 10 minutes.

A similar system for the clearance of cargo by AQIS exists. The Export Documentation System (EXDOC) was developed by AQIS to facilitate export approval and health certification by AQIS. The purpose of the EXDOC system is to electronically process and produce government-to-government documentation required for exports of certain prescribed goods. This system expedites the clearance of cargo and helps to minimize delays by automatically generating a sanitary and phytosanitary certificate required by importing customs authorities. Currently, export approval for all meat and meat products is available using EXDOC, which now also covers dairy, fish, grains and horticultural products. EXDOC is available 24 hours a day, seven days a week.

EXDOC and EXIT are linked, providing a single electronic window through which exporters may access ACS as well as AQIS. The single electronic window allows exporters to lodge one message requesting clearance of cargo by both ACS and AQIS. Currently, some 98 per cent of export entries are lodged electronically, directly into the EXIT system.

2. Import controls

Goods imported into Australia must be cleared by both ACS and AQIS. Import declarations are used to obtain ACS clearance for security, health and safety reasons. Import declarations must be filed in the Integrated Cargo System (ICS), which can be accessed in three ways. First, a hard copy of an import declaration may be filed with an ACS officer. Second, an importer may purchase a digital certificate that enables communication with ACS electronically via an interactive website. Finally, the services of a customs broker can be engaged to complete the customs requirements. Occasionally, ACS will examine the imported goods to verify that they correspond to the description of the goods in the import declaration or to ensure that the goods are not prohibited, restricted or pose a quarantine risk

Imported goods may also be screened by AQIS. For example, imported foods are monitored by AQIS to ensure that they conform to the Australian Food Standards Code. High-risk food products are subjected to mandatory inspection and testing whereas low-risk food may be randomly tested. Rapid quarantine clearance is available for cargo accompanied by documentation demonstrating that the entry requirements have been met. An electronic entry request may be lodged with AQIS via the Joint Entry Management System (JEMS). The entry request will then be sent to the AQIS Import Management System (AIMS), which enables tax concessions, broker accreditation and other co-regulation activities to be implemented and monitored. Finally, AQIS officers also use the Import Conditions Database (ICON) to check the quarantine requirements for particular goods and to verify that the relevant entry import permit is valid.

3. Other

In the context of the 1999 World Customs Organization s Revised Kyoto Protocol (which seeks to establish a blueprint for modern, efficient and effective customs procedures), ACS and AQIS continue to work closely with foreign customs administrations with a view to establishing harmonized customs procedures.

Table 3 summarises the main Australian governmental measures that may have an impact on the supply of logistics services.

Table 3. Summary of main Australian governmental measures that may have an impact on the logistics sector

	Type of control	Mechanisms to facilitate trade
Export controls	Clearance by ACS Clearance by AQIS	EXIT EXDOC
Import controls	Clearance by ACS Screening by AQIS	ICS JEMS AIMS ICON

C. Relationship between logistics liberalization and trade facilitation: An illustrative example from the seafood industry of South Australia

So far in this chapter, the general trends in the Australian market for logistics services have been examined. In addition, governmental measures that may have an impact on the supply of logistics services have been considered. What remains to be discussed is the interrelationship, if any, between logistics liberalization and trade facilitation. The evolution of the logistics supply chain for the exportation of South Australian tuna to Japan is considered with a view to determining the impact, if any, that the liberalization of logistics has had on trade in this product. The role of governmental measures is also considered in this context.

1. Introduction

The Australian seafood industry is worth in excess of A$ 2 billion annually. South Australia accounts for 20 per cent of total seafood production in Australia, a significant proportion of which is exported. South Australian seafood is renowned abroad for its premium quality. This reputation is largely the result of rigorous quality control mechanisms implemented by seafood producers from the point of capture until the point of consumption. These initiatives have been successful in optimizing seafood shelf-life and ensuring that the condition of the seafood is to the consumer s satisfaction, which, in turn, has bolstered

the reputation of South Australian seafood. Efforts undertaken by the local South Australian seafood industry to continually improve product quality have been supported by legislative measures, which have sought to simultaneously promote quality as well as sustainable production.

2. Some factors affecting the supply of South Australian tuna

This subsection focuses on exports of tuna from South Australia (in particular, from the coastal town of Port Lincoln) to Japan, the latter country being one of the world s largest markets for fresh tuna.

Despite the existence of a quota limiting the amount of tuna that can be fished in Australia,[16] tuna is the fastest growing and most lucrative type of seafood exported from South Australia. In 1991, the first experimental tuna farm was established in Port Lincoln and, by 1992, tuna exports from South Australia had commenced. The vast proportion of tuna produced in Port Lincoln is being exported to Japan for the premium sashimi market. The total export value of the industry grew from around 2,000 mt, worth approximately A$ 40 million, in 1994 to 10,000 mt, worth around A$ 264 million, in 2006.

There are numerous tuna producers based in Port Lincoln. The industry body representing them, the Australian Tuna Boat Owners Association, has played a critical role in the evolution of the tuna industry in South Australia. Through the association, producers have jointly adopted initiatives to nurture, market and preserve the reputation of South Australian tuna abroad. They have also worked closely with Japanese purchasers (who are heavily involved in the tuna production process in South Australia) to achieve advances in fishing and aquaculture techniques, which have contributed to the quality and value of South Australian tuna in export markets.

In the early 1990s, South Australian southern blue fin tuna faced competition from imports by Japan from China, Indonesia, the Philippines and Taiwan Province of China. However, the degree of competition has significantly lessened during recent years. Over-fishing in the breeding grounds proximate to those competing countries has led to a diminution in the supply of southern blue fin tuna. Rising fuel costs have prevented producers in the competing countries from fishing further afield and, consequently, have largely driven them out of the Japanese market for the supply of high-end tuna.

3. Logistics supply chain for the export of tuna from South Australia to Japan

Perishable products are prone to deterioration and spoilage. Tuna is one such product. The role of logistics services for the delivery of tuna from the point of production to the final destination, and for that matter all perishable products, is critical. The speed

[16] The quota is imposed pursuant to an agreement reached between Australia, New Zealand and Japan under the auspices of the Commission for Conservation of Southern Blue Fin Tuna, which was established in 1994 to restore the global population of southern blue fin tuna that had been significantly depleted due to overfishing in the early 1980s.

and manner in which perishables are delivered to consumers will have an impact on the condition of the product at the point of consumption. The better the condition of the product at the point of consumption in terms of its colour, taste, appearance and safety for consumption, the higher the price paid and the greater the likelihood of repeat business. Delays in transportation and failure to transport, handle and store in a manner that inhibits the deterioration of product throughout the logistics supply chain could mean spoilage of the product with a consequent mark-down of the price payable for the product or outright rejection of the entire consignment of the product, and possibly even refusal to accept future consignments from the producer concerned as well as other producers of the product from the same geographical area. In other words, deficiencies in the logistics supply chain may have widespread and profound repercussions for an industry.

The logistics supply chain for the export of tuna from South Australia to Japan depends upon the form in which the tuna is being exported, i.e., chilled or frozen. When exports of tuna from South Australia to Japan first commenced, it was exclusively supplied in chilled form. Limitations in freezing technology at the time prevented the exportation of frozen tuna. However, since then, the use of nitrogen freezing as a complement to blast freezing has made exports of frozen tuna to Japan possible. Currently, 3,000 mt of South Australian of fresh tuna and 7,000 mt of frozen tuna are exported each year.

In general, the longer and more circuitous the route is from Australia to Japan, the cheaper the cost of delivery. However, lower costs may come at the expense of quality. The longer the delivery path, the greater the likelihood of breaks in the so-called cold chain ,[17] and the more vulnerable the product is to spoilage. Temperature control along the entire supply chain and minimization of breaks in the cold chain are of critical importance to exports of both chilled and frozen tuna. The price of tuna that has been improperly handled in transit may be less than a third of the price that would otherwise be receivable. In every case, a balance must be struck between the need to get the tuna to market as soon as possible, the cost associated with achieving that objective and the requirement that the tuna be fit for consumption when it finally reaches its destination.

The organization of the logistics supply chain for the delivery of tuna from South Australia was somewhat fraught during the early days when exports to Japan were just starting to accelerate. Tuna producers faced an increasingly customer-driven market in which time and quality were of the essence. Simultaneously, the logistics system in Australia prior to export as well as in Japan became more and more complex. The increasing complexity made optimization of the path of delivery, from production to consumption, difficult. In addition, as mentioned above, the state of technology at that time imposed certain limitations on the supply chain.

In order to ensure that they could compete in the global marketplace, the South Australian tuna producers worked closely together with the Japanese purchasers as well

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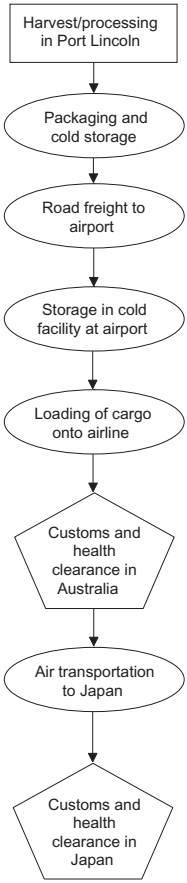
[17] The cold chain refers to the supply or demand chain for cooled or frozen produce. It requires the continual maintenance of the correct temperature for the product concerned, from the point of production/ harvesting through all stages of packaging, transport, storage and retailing.

as with suppliers of logistics services to establish the most efficient logistics supply chain in terms of processing, storage and transportation, which minimized the time in transit and the risk to the quality of the product being exported. Freight forwarders and other 3PLs have played an important role in organizing and supervising the supply chain on behalf of South Australian tuna exporters.

(a) Chilled tuna

Clearly, the speed of delivery is critical for exported chilled tuna. The shelf-life of tuna is attenuated by a day for every hour it is left unrefrigerated. The only manner in which chilled tuna can reach the Japanese market in a safe, edible form is by airfreight. Thanks to increased competition and capacity among airlines carrying cargo as well as the establishment of direct routes from Australia to the destination export markets, airfreight is an increasingly viable option for exports to Japan by South Australian tuna producers.

Figure VI. Logistics supply chain for chilled tuna prior to export to Japan



South Australian tuna is sent by airfreight from Adelaide, Sydney and Melbourne airports. In all cases, the tuna must be transported by road freight from Port Lincoln to the relevant airport (figure VI). Road freight reforms have resulted in incremental efficiency improvements with regard to the transportation of tuna by truck from Port Lincoln, which have led to lower costs. In addition, tuna exporters have witnessed quicker transportation times. It is now possible to transport tuna from Port Lincoln to Sydney or Melbourne within three days of catching it. Competition has also led to the emergence of road freight companies with particular expertise in the transportation and handling of perishable goods such as tuna. Chilled tuna must be transported in a pre-cooled refrigerated vehicle, which must preserve the temperature of the tuna for the duration of its journey. Specialist road freight companies are now able to supply trucks fitted with rollarised decks to minimize handling while loading and unloading the tuna onto the trucks. The trucks are also refrigerated and triple insulated to maintain the temperature of the fish.

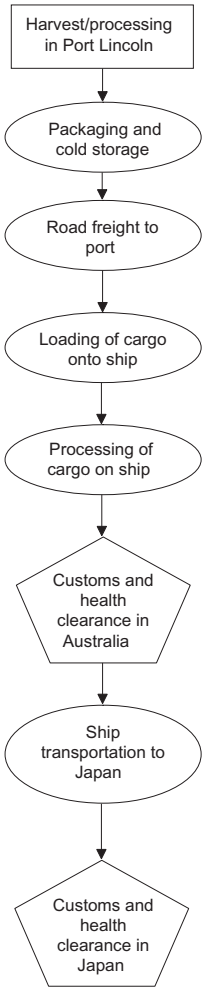
Once the tuna arrives at the relevant airport, it must be stored in a cold storage facility. The cold storage facility at Adelaide airport has been identified as a potential weak link in the logistics supply chain for the export of tuna from South Australia to Japan. The costs associated with operating the facility, even for small quantities of tuna, are so high that it has proved uneconomical for many producers to transport their chilled tuna via Adelaide airport. The result has been the diversion of tuna from Adelaide airport to Sydney and Melbourne airports, which has increased transportation time and costs. Further, there is a heightened risk of product spoilage because of additional breaks in the cold chain.

Freight forwarders must be experienced in arranging the transportation of cargo by airfreight, given that airlines will only deal with freight forwarders when allocating cargo space. Lack of regulation in the freight forwarding market has meant that some freight forwarders lack the requisite skills to ensure appropriate handling, storage and transportation of perishable products by airfreight, including tuna from South Australia. Furthermore, growing competition and declining margins in the freight forwarding business have led to the adoption of cut-throat business tactics. For example, some freight forwarders are known for reserving cargo space on airlines without having first secured contracts for the transportation of cargo with prospective exporters. Such tactics have resulted in inefficiencies in the logistics supply chain for the export of chilled tuna by airfreight.

(b) Frozen tuna

The combination of nitrogen and blast freezing, which rapidly freezes tuna while maintaining a uniform fresh quality of the fish, has meant that tuna may be exported frozen to Japan, defrosted and then used fresh for the sashimi market (figure VII). While the speed of delivery is not as critical as for chilled tuna exports, it is still an important consideration. The longer the period of freezing, the more susceptible the tuna is to alteration, deterioration and, ultimately, spoilage.

Figure VII. Logistics supply chain for frozen tuna prior to export to Japan



Port reform in Australia has facilitated the export of frozen tuna from South Australia to Japan in two ways. First, such reform has directly translated into lower costs for tuna exporters using port services to export their product. Second, such reforms have had a major impact on efficiencies and costs at Australian ports associated with the storage and handling of imported feed that is used for tuna aquaculture in South Australia.

The supply of sea freight services for exports of tuna from South Australia to Japan is usually undertaken by Japanese flag ships, whose crews are experienced in the processing, preparation and transportation of tuna. Global expansion of the shipping sector has led to the emergence of massive shipping companies that have the capacity

and facilities to efficiently ship perishable products in refrigerated containers. While it is not obligatory to use freight forwarders for sea freight, they have proved useful for small-scale fish producers who do not have the volume to secure cargo space on large freighters without the intervention of an intermediary.

4. Governmental measures affecting tuna exports from South Australia to Japan

(a) Export control

Members of the South Australian tuna industry have commended the fact that they face relatively few governmental impediments in exporting their tuna to Japan. Indeed, the electronic, automated export clearance procedure on the Australian side (discussed earlier in this chapter) has helped to preserve the tuna producers comparative advantage. A number of other mechanisms are being implemented by Australian governmental authorities, which have served to further strengthen this advantage.

AQIS bears responsibility for ensuring that the systems implemented in Australia result in the production of fish and fish products that are safe to eat and are as free as possible from hazards that are potentially harmful to humans. To this end, fish producers are required to develop, implement and maintain Approved Arrangements . Once implemented, AQIS must then decide whether or not to authorise an Approved Arrangement. Initially, a desk audit will be conducted to evaluate the control system that is proposed by the producer and will then be followed by a site audit. If and when changes to the operations of a fishing establishment occur, an application for approval of the variation must be made to AQIS.

The Approved Arrangements have been an important mechanism through which governmental impediments to tuna exports have been minimized in three distinct ways. First, the Approved Arrangements essentially seek to ensure that the wholesomeness and integrity of fish are maintained during their preparation for export. In other words, such agreements amount to instruments to control the quality of tuna, which helps to reduce the likelihood of the tuna being blocked at the border in Japan on health and safety grounds. Second, while the establishment and implementation of such arrangements involve governmental input at the outset, once authorized, governmental intervention is significantly reduced. Third, the Approved Arrangements may be a vehicle through which logistical issues confronting exporters may be addressed.

For example, an important issue that has arisen regarding AQIS involvement in exports of tuna from South Australia to Japan concerns the point at which the minimum temperature of tuna must be established prior to export for safety reasons. Initially, AQIS required the minimum temperature to be attained ex-factory. However, subsequent to discussions with the tuna producers, AQIS authorized the establishment of the minimum temperature just prior to export. This means that in the case of chilled tuna, which is usually transported by road from Port Lincoln to Melbourne or Sydney from where it is delivered by airfreight to Japan, the truck journey from Port Lincoln to Melbourne and

Sydney airports may be used to cool the tuna down to the required minimum temperature. This minimum temperature requirement has been formalized in the Approved Arrangements reached between AQIS and South Australian tuna producers.

The Australian Government has also facilitated the export of tuna to Japan through its indirect involvement in a body promoting South Australian food abroad. Specifically, Food Adelaide is a government-funded body that provides direct trade promotion services in export markets. In addition, this body collects and disseminates market intelligence regarding export markets of particular importance to South Australian exporters, including Japan.

(b) Import control

Japanese governmental controls that apply to imports of tuna include tariffs[18] as well as health and safety regulations. As is the case for imports of goods into Australia, an import declaration must be submitted in order to obtain import clearance of South Australian tuna in Japan.

Notably, in a report prepared on the impact of the IT revolution on cross-border movement of goods, the Japanese Government explicitly stated that increased efficiency in the logistics supply chain meant that it was ever more incumbent upon customs authorities to ensure shorter cargo clearance times through, for example, computerized systems. Accordingly, the Nippon Automated Cargo Clearance System, which was originally established in 1978, has been continuously expanded and further developed to facilitate speedy customs clearance by streamlining procedures and making the customs clearance process more user-friendly. It is a comprehensive electronic interface system, which establishes a single window system so that all necessary import, export or port-related procedures may be completed electronically, by a single communication through the Nippon Automated Cargo Clearance System.

The Japanese Government has established a pre-arrival examination system that may dispense with the need for inspection of goods by customs authorities when the goods actually reach Japan (figure VIII).

Further, in cases where the quality of the imported product is assured, this may dispense with the need for any inspection or examination. In fact, with the cooperation of the South Australian Department of Primary Industries and Resources, the tuna industry has imposed upon itself certain quality controls that have obviated the need for testing for dioxin and mercury residues by Japanese quarantine officials. This has translated into cost savings for tuna producers and has served to further enhance the reputation of South Australian tuna in Japan.

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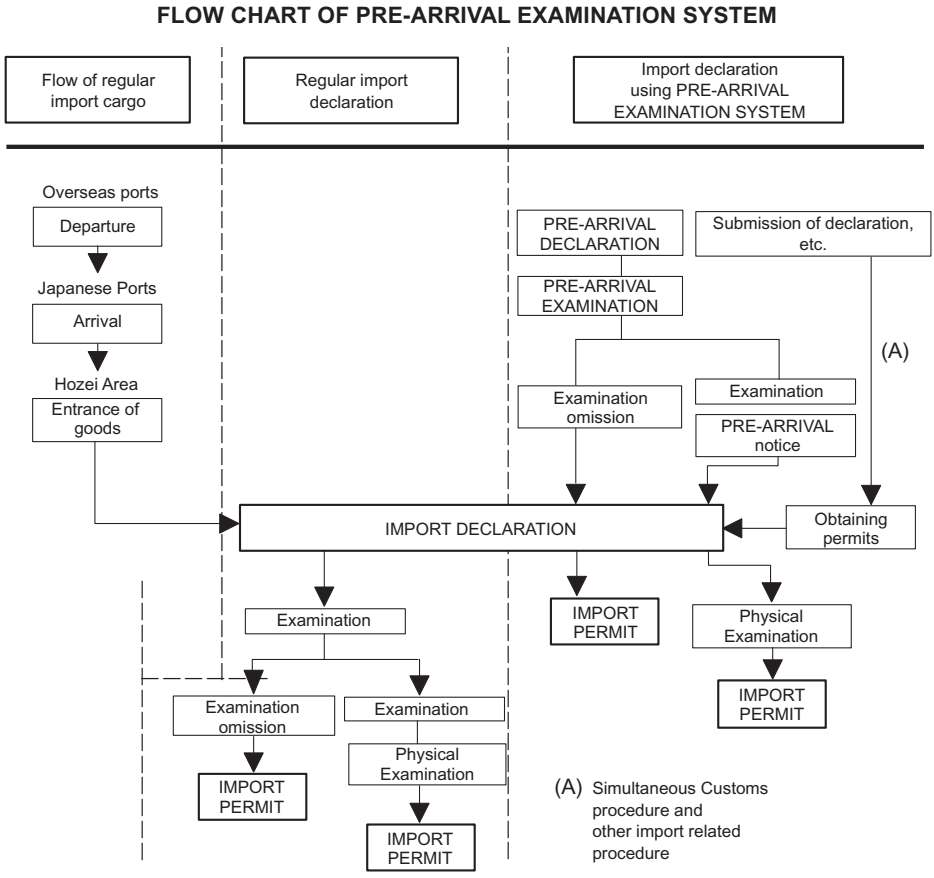
[18] These were reduced from 5 per cent to 3.5 per cent during the Uruguay Round of WTO trade negotiations.

Figure VIII. Pre-arrival examination system in Japan



Source: http://www.customs.go.jp/asem/partners_db/preflow.htm.

5. General observations

It is evident from the foregoing that the logistics supply chain for the export of tuna from South Australia to Japan is complex, involving a number of different players and transactions. South Australian tuna producers have, in general, successfully navigated this complex maze through a profound understanding of the market environment and regulatory requirements regarding the supply of tuna in Japan. They have been so intent upon preserving the positive image of South Australian tuna in Japan that they have imposed upon themselves certain quality standards that are not demanded by law. These self-imposed standards reduce the risk that the product will be blocked for health and safety reasons in Australia prior to export as well in Japan following importation. In addition, the success of the South Australian tuna producers can be linked to the effective

efforts they have made to establish and manage relationships between all the relevant players in the supply chain, all with a view to ensuring customers expectations are met and that the price payable for their tuna is the highest possible. Their success is evident from export statistics, which indicate a marked increase in exports of tuna to Japan over time. In particular, in 2000, tuna exports were worth A$ 214 million, 18 per cent more than in the previous year and 196 per cent more than in 1997.

Such export success on the part of South Australian tuna producers is attributable not just to the tuna producers themselves. It is also attributable to initiatives taken by suppliers in the logistics supply chain to improve customer satisfaction as well as by government bodies in Australia at the state and federal levels (and of course by the Japanese Government in terms of speedier, more efficient custom clearance of tuna imports). In Australia, air, sea and land freight councils have been established to address issues such as process and control issues concerning the logistics supply chain, public policy as it concerns the supply of logistics services as well as cultural change. These councils have been useful forums in which to identify, discuss and address issues that have hindered the supply of seamless, integrated logistics services in the past.

Moreover, the domestic reform measures adopted to liberalize the market for the supply of logistics services in Australia appear to have played a role in the South Australian tuna producers success. Liberalization measures in the airfreight sector have increased airfreight capacity and, consequently, have made airfreight of chilled tuna to Japan more economically viable. There has been a marked increase in the use of airfreight for exports of southern blue fin tuna from South Australia, from some 100 mt in 2001/02 to some 3,000 mt in 2004/05, according to ABS/Maritrade data. Exports of southern blue-fin tuna from South Australia to Japan by sea freight have also seen a marked increase, rising from close to 400 mt in 1997/98 to some 5,000 mt in 2004/05, according to ABS Maritrade. Heightened competition in the road freight sector has contributed to the development of specialist service providers with trucks that are fitted with equipment to maximize the degree of insulation, ensure temperature control during transit and minimize the time spent unloading the tuna cargo from truck onto aircraft or ships.

Significantly, the tuna industry considers that the involvement of ACS and AQIS in the export of tuna from Australia to Japan has served to enhance its comparative advantage rather than to hinder trade. Minimal documentary requirements coupled with rigorous quality standards have helped to support the reputation of South Australian tuna abroad without imposing unduly onerous obligations on exporters. Furthermore, computerized single windows in both Australia and Japan for the processing of export and import requests, respectively, have minimized trade barriers.

On the negative side, intense competition in the Australian logistics market has, on occasion, led freight forwarders, desperate for business in a market of declining margins, to accept delivery contracts for the export of tuna to Japan despite their lack of experience with tuna. This lack of experience could mean that the conditions needed to ensure the delivery of a high-quality product in Japan are not maintained, which could put the sale of the tuna producers product in Japan at risk. Accreditation systems for freight forwarders

for quality control purposes of a kind similar to those in place in Europe would minimize such risks.[19] Additionally, the practical limitations associated with utilization of the cold storage facility at Adelaide airport discussed above, which have led to certain inefficiencies in the logistics supply chain, highlight the need to ensure that infrastructure matches the needs of participants in, and users of the logistics supply chain. Industry consultation is essential to ensure that the development of infrastructure takes into consideration all the relevant interests at stake.

D. Implications for developing countries and policymakers

1. Importance of efficient logistics for economic growth

The cost of logistics services typically amounts to between 12 per cent and 17 per cent of GDP. Estimates indicate that total logistics costs may reach 20 per cent of total production costs in developed countries and, for certain landlocked developing countries, freight costs alone could represent up to 40 per cent of export values.

Efficient logistics supply chains may enhance international competitiveness whereas inefficiencies may undermine a country s comparative advantage. The sources of inefficiencies in the logistics supply chain may stem from a mix of action or inaction on the part of governmental authorities as well as private players involved in the supply of logistics services. More specifically, such inefficiencies may be the product of procedural red tape, inadequate infrastructure that may result in delays, or overly intense competition that may deter suppliers of logistics services from working together to provide a seamless, integrated supply chain. On the basis of the Australian experience, it appears that addressing such inefficiencies in a consistent and coherent fashion will yield productivity and competitiveness gains for developed and developing countries alike.

2. Acknowledging the relationship between supply of logistics services and trade facilitation

This chapter has illustrated that there is a clear relationship between logistics services and trade facilitation. Specifically, governmental measures that hinder the efficient supply of logistics services may, by extension, impede trade in goods. Any benefits that might accrue through the liberalization of logistics services to enhance efficiency and thereby expedite the export or import of products could well be undermined by governmental

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[19] The International Air Cargo Association states that freight forwarders should only be able to provide services if they are properly trained and certified. It further states that national associations should create standardized training and certification requirements for forwarders, and that the Government should endorse them. The Association notes that, for example, in Germany, Austria and Switzerland, accreditation may be obtained following a three-year apprenticeship and business administration programme, followed by an examination. While these training programmes are not mandated by government, they are nevertheless encouraged. Furthermore, Switzerland s Federal Office for Professional Education and Technology grants diplomas in international freight forwarding and logistics (see the website at <http://www.tiaca.org/articles/2006/06/26/DE79CF63C2FB4D4390714753009FBCD8.asp>).

export and import controls that unduly delay delivery of such products to their destination. Conversely, however, measures or conditions that facilitate and/or promote trade may promote greater demand for logistic services. The example of tuna exports from South Australia to Japan highlights the fact that minimal and, at best, actively positive governmental intervention may improve an industry s competitive standing in an export market. This may result in an increase in trade of that industry s product, which will entail the consumption of more logistics services.

Given the close interrelationship between logistics and trade facilitation, it is important for the liberalization of the logistics supply chain and more general efforts by governments to facilitate trade to be undertaken on a complementary basis. Taking the initial step of recognizing and acknowledging the role that logistics may play in fostering international trade is essential. Such recognition and acknowledgement will help to ensure that, to the extent possible, governments establish the appropriate physical and regulatory framework to maximize the efficiency of the logistics supply chain. Ideally, the framework should ensure:

(a) The adequacy of and reasonable access to relevant infrastructure;

(b) Cohesion at inter-modal transfer points (e.g., road/rail, road/rail/ports) in transport networks; and

(c) A level of competition in the various segments of the logistics supply chain that promotes innovation and specialization without undermining the ultimate objective of ensuring a seamless, integrated supply chain.

Such a framework will not necessarily compromise the ability of governments to ensure trade that is safe, secure and sustainable. Obviously, measures to facilitate trade must be subject to controls in order to safeguard these concerns. However, these controls should be the least trade-disruptive possible. In this regard, it is essential that the measures adopted to establish such a framework are undertaken in a balanced, prudent fashion, bearing in mind all the interests and issues at stake.

3. The need to consult all relevant stakeholders

Logistics services involve a multitude of different institutions and concern a broad range of sectors. The various stakeholders affected by the supply of logistics services include relevant government ministries and regulatory bodies, multinational or national suppliers of logistics services, and exporters and importers dependent upon logistics services. The concerns and interests of these stakeholders are varied but, at least to some extent, interdependent. Therefore, it is essential that all stakeholders be consulted during the establishment of the framework for the supply of logistics services to ensure that synergies are realized.

Effective dialogue between the public and private sector players will help to secure coherence between private and public sector initiatives. Such dialogue may also result in public/private partnerships, which will facilitate the regulatory reform process. With respect

to the prospect of foreign competition as a result of market access commitments made in the logistics area, consultation with the private sector will assist in mobilizing political support from key players for such commitments. Cooperation between private sector players in this process will not necessarily preclude competition between them. Rather, relationship-building between these stakeholders may yield benefits for individual firms as well as for the industry as whole.

4. Issues concerning regulatory framework establishment

A variety of tools that might be useful in liberalizing the logistics sector have been referred to in this chapter. Commitments to providing market access to foreign suppliers of logistics services, corporatization or privatization of government utilities owning and/or operating the infrastructure on which the supply of logistics services is dependent, and the application of competition law to the market for the supply of logistics services are but a few of the available tools.

This chapter has also highlighted the importance of balancing competitive liberalization in logistics services with sustainable industry practice and quality control systems. The existence of unbridled competition, as was the case with freight forwarders, may lead to increased risk for traders. Prudent regulation can contribute to the quality, safety and reliability of the exported product while simultaneously abiding by the principle of minimizing trade-distorting barriers.

The question of whether a particular type of infrastructure upon which the supply of logistics services is dependent should be retained in public control, or whether it should be privatized, is a complex issue with which policymakers need to grapple. The benefits of privatization may include enhanced efficiency, enhanced competition and less government interference, but could be outweighed by the threat to the public interest that might be posed by private ownership. In weighing up the benefits and the disadvantages, it is necessary to identify the objective of ownership of the infrastructure in question, and to ensure that the incentives that will exist for a private, public or even corporatized owner of the asset achieve that objective.

Consultation of the various stakeholders affected by the supply of logistics services will assist the national government in identifying the nature of and priorities for regulatory reform. The establishment of a framework for the efficient supply of logistic services may involve a clear sequence of discrete steps to be taken, but it may also indicate that certain steps should ideally be undertaken in tandem. Ultimately, the prioritization of steps in the regulatory reform process as well as the sequencing of those steps will depend upon the domestic regulatory environment and the dynamics in the local market for the supply of logistics services.

The resistance that governments may face domestically to efforts in reforming the supply of logistics services may be addressed through regional or multilateral forums. Initiatives taken at the regional and/or multilateral level will help to maximize and multiply

the benefits of logistics liberalization. More specifically, such initiatives will give traders an advantage not only in the export market but also in the import market.

E. Conclusion and research implications

Developed and developing countries have much to gain from the liberalization of logistics services. The benefits that may accrue to suppliers of logistics services, exporters and importers that are dependent upon such services and nations as a whole are clear. Logistics liberalization facilitates international trade, which, in turn, drives economic growth and development. Trade facilitation measures that promote trade (including but not limited to more efficient, well-coordinated border control mechanisms) may also consequently promote greater demand for logistic services, thereby generating a virtuous cycle.

This chapter has highlighted the fact that a balanced regulatory framework for achieving liberalization of logistics services while at the same time maintaining the requisite degree of control at national borders to protect against security, safety and health threat, will lay the foundation for such a virtuous cycle. Consultation with all the relevant stakeholders - governmental bodies, suppliers of logistics services, and exporters and importers dependent upon logistics services - will help to realize the known benefits of logistics liberalization.

The interplay between liberalization of logistical services on the one hand, and trade facilitation on the other hand, is equally clear and should be borne in mind in the context of WTO negotiations on services and trade facilitation when they are pursued in the future. Thus, negotiators in both contexts should at least explicitly recognize the potential for mutual reinforcement of liberalization of the logistics sector together with trade facilitation.

A final comment on the value of further research in the area of logistics services and trade facilitation - it would be useful for further research to focus on the role of governments in developing countries in determining the appropriate balance between prudential regulation and progressive liberalization of logistic services. For example, case studies might be drawn from countries such as Singapore or Malaysia that examine the nature of successful regulatory measures in specific segments of the logistics supply chain that have been trade-enhancing.

Identification of the variety of policy tools that have been successful in achieving progressive liberalization and sequencing of logistics services would also add value. Deregulation, privatization and competition policy are among domestic reform policies that, if implemented appropriately, could lead to greater realization of efficiencies in the logistics services supply chain.

Given the relevant implications of government reforms affecting the logistics services industry and trade facilitation derived from the above analysis of the seafood industry in Australia, there would be significant lessons to be drawn from a cost-benefit analysis of the advantages (or potential advantages) of logistic services liberalization in

a developing country in the region. It would be interesting, for example, for such an analysis to focus on the clothing and textile industry in China or in a least developed country such as Cambodia.

The vital nature of government-private sector consultation and cooperation on logistics services and trade facilitation policy reform has been manifest throughout this chapter. Specific research and analysis as to how various governments, developed and developing, have undertaken such consultation and cooperation in specific segments of the logistics supply chain would also be instructive in determining future policy-making approaches.

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IX. IMPACT OF TRADE COSTS ON TRADE: EMPIRICAL EVIDENCE FROM ASIAN COUNTRIES

*By Prabir De**

Introduction

Higher trade costs form an obstacle to trade and impede the realization of gains from trade liberalization. Gains from trade depend not only on the tariff liberalization but also on the quality of infrastructure and related services. Improved infrastructural and logistics services play an important role in the flow of international trade. On one hand, they generate enormous wealth by reducing the costs of trade because of their non-discriminatory and non-rivalrous characteristics; on the other hand, they integrate production and trade across countries.

Trade costs are often cited as an important determinant of the volume of trade. The growth of literature concerning this aspect documents the impact of trade costs on the volume of trade.[1] Most of these studies show that integration is the result of reduced costs of transportation in particular and other infrastructure services in general. The shared objective of economic integration, in general, is to reduce trade barriers - visible and invisible. Direct evidence on border costs shows that tariff barriers are now low in most countries - on average less than 5 per cent on average (trade-weighted or arithmetic) for rich countries and, with a few exceptions, between 10 to 20 per cent on average for developing countries (Anderson and van Wincoop, 2004).

While the world has witnessed a drastic fall in tariffs over the past two decades, many barriers remain that penalize trade, among which are both soft and hard barriers. One set of such soft barriers is dealt with through trade and business facilitation measures. The hard set of barriers, which are often cited as physical or infrastructure barriers, are dealt with through transport facilitation measures. In a different vein, the costs created by these barriers can be clubbed together and can be termed as trade costs that are

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[1] The 2004 study, Trade costs by E. Anderson and E. van Wincoop elaborately covered the major seminal studies carried out on this subject. See also P. De, 2006a for an updated list of studies dealing trade costs.

measured as a mark-up between export and import prices; this mark-up roughly indicates the relative costs of the transfer of goods from one country to another.

In recent years, Asia has witnessed the spread of regional and bilateral integration and cooperation initiatives.[2] Trade volume in Asia has been rising at a very rapid pace while at the same time the composition of trade within Asia has been taking a new shape. Countries in Asia are gradually specializing in trade in intermediate and finished products, where the effectiveness of the transportation infrastructure plays an important role in trade and international integration. The effective rate of protection provided by transport costs in many cases is higher than that provided by tariffs (World Bank, 2001). For the majority of countries in sub-Saharan Africa, Latin America and the Caribbean as well as a large part of Asia, transportation cost incidence for exports is five times higher than tariff cost incidence (World Bank, 2001).[3] Therefore, supply constraints are the primary factors that have limited the ability of many countries to exploit trade opportunities. As a result, complementary trade policies focusing on trade costs have gained immense importance in enhancing international trade.

With the rise of bilateralism in Asia, any attempt towards deeper integration of the economies of the region thus holds high promise if accompanied by initiatives that help improve trade efficiency and reduce trade costs (Asian Development Bank, 2006).

The reduction of trade costs helps traders to get their goods to market more quickly and cheaply. Considering the increase in trade interdependency in Asia, the need for a better enabling environment to trade in Asia has gained high momentum. On the demand side, the noticeable development is that tariff barrier in Asia has become low as a result of trade liberalization. However, on the supply side, rising trade costs are having an adverse impact on trade. Freight costs are one major component of trade costs. While freight costs for imports in developed countries continue to be lower than those in developing countries, in the case of developing Asia such costs are hovering around 6.5 per cent, thereby affecting the comparative advantage of Asian countries. Table 1 shows that freight costs in developing Asia are, on an average, 116 per cent higher than in developed countries.

According to UNCTAD (2006), this difference is mainly attributable to global trade structures, regional infrastructure facilities, logistics systems and the more influential distribution strategies of shippers of developed countries.

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[2] Regionalism entered Asia with the establishment of ASEAN in the 1960s. Since then, several regional and subregional initiatives have appeared in Asia, such as Bangkok Agreement, SAARC etc. However, the East Asia Summit in 2005 involving the ASEAN+6 countries indicated the rise of constructive regionalism in Asia. Slow progress in the WTO Doha Round and pan-Asian integration has encouraged the proliferation of bilateral agreements in Asia. In 2005, some 36 bilateral agreements in Asia were notified to WTO, compared with only three involving developing Asian countries before 1995; currently, 46 agreements have yet to be notified to WTO and a further 42 agreements are being negotiated (Asian Development Bank, 2006; ESCAP, 2005).

[3] According to the World Bank, for 168 of 216 United States trading partners, transportation cost barriers outweighed tariff barriers.

Table 1. Estimates of total freight costs for imports

(Unit: Percentage)

Year	Developed countries	Developing countries	Developing Asia
1990	2.9	6.7	6.9
2000	2.9	5.9	6.5
2003	2.9	6.1	6.7
2004	3.0	5.9	6.5

Source: UNCTAD, 2006.

Note: As a percentage of import value (taken at CIF).

Freight costs vary across Asia. Inefficient transportation services are reflected in higher freight costs and longer delivery times. Table 2 indicates that while ocean freight has fallen over time (here, between 2003 and 2005) for the movement of vessels among some selected Asian countries, auxiliary (other) charges have gone up, thereby offsetting the gains arising from (a) technological advancement (e.g., bigger vessels) and (b) trade liberalization (e.g., lower tariffs). Therefore, differences across countries in transport costs are a source of absolute and comparative advantage and affect the volume and composition of trade (World Trade Organization, 2004).[4]

How are the Asian countries progressing with regard to reducing trade costs? A clear understanding of the role of trade costs in enhancing trade will help to promote deeper integration of the region. This chapter therefore seeks to enhance understanding in this area in the context of selected Asian countries. In particular, the impact of selected trade cost components and other factors on trade flows of separate customs territories in nine Southeast and East Asian countries as well as India are evaluated. Section A defines trade costs and review studies done so far on the subject. Some insights into the freight cost components as possible trade barriers are presented in section B. Econometric results are presented and discussed in section C followed by conclusions in section D.

A. Trade costs and their relevance

In broad terms, trade costs include all costs incurred in getting a product to a final user other than the marginal cost of producing the good itself, such as transportation costs (both freight costs and time costs), policy barriers (tariffs and non-tariff barriers), information costs, contract enforcement costs, costs associated with the use of different currencies, legal and regulatory costs, and local distribution costs (wholesale and retail). Trade costs are reported in terms of their ad valorem tax equivalent. According to Anderson and van

[4] In another context, while describing East Asia s outward-oriented growth, an Asian Development Bank-Japan Bank for International Cooperation-World Bank (2005, pp. 61-64) team commented that the efficiency of East Asia s logistics was falling behind, with costs of transportation representing a high proportion of the final price of goods, thereby affecting the competitiveness of the region.

Table 2. Trends in freight costs in selected Asian countries[a]

Country of origin	Destination country	Base ocean freight		Other charges[b]		Total	
		2003	2005	2003	2005	2003	2005
		(US$ per 20-foot container)					
Japan	China	250	275	178	223	428	498
Japan	Republic of Korea	300	275	238	289	538	564
Japan	Hong Kong, China	196	200	419	425	615	625
Japan	Malaysia	366	375	244	296	610	671
Japan	Singapore	312	325	307	321	619	646
Japan	India	1 546	1 600	489	523	2 035	2 123
Japan	Thailand	312	275	232	258	544	533
China	Japan	900	800	162	366	1 062	1 166
China	Republic of Korea	300	500	190	240	490	740
China	Hong Kong, China	412	400	331	345	743	745
China	Malaysia	620	600	213	217	833	817
China	Singapore	410	400	240	241	650	641
China	India	2 109	2 000	288	302	2 397	2 302
China	Thailand	608	600	166	180	774	780
Republic of Korea	Japan	300	400	218	262	518	662
Republic of Korea	China	250	350	203	220	453	570
Republic of Korea	Hong Kong, China	444	450	419	422	863	872
Republic of Korea	Malaysia	388	400	267	282	655	682
Republic of Korea	Singapore	398	400	309	318	707	718
Republic of Korea	India	2 010	1 950	517	528	2 527	2 478
Republic of Korea	Thailand	395	400	251	255	646	655

Source: Calculations based on freight rates provided by Maersk Sealand, 2006.

Notes: [a] Rates are collected for shipment of a 20-foot container (TEU) from a country s major ports. Rates are averaged for the years 2003 and 2005.

[b] Including container handling charges, documentation fees, government taxes and levies etc. of both trading partners.

Wincoop (2004), the 170 per cent of representative trade costs in industrialized countries breaks down into transportation costs (21 per cent), border-related trade barriers (44 per cent) and retail and wholesale distribution costs (55 per cent) (figure I).

In general, an exporter or importer incurs trade costs in all phases of the export or import process, starting from obtaining information about market conditions in any given foreign market and ending with receipt of final payment. One part of the trade costs is trader specific and depends upon his/her operational efficiency. The magnitude of this part of the trade costs diminishes with an increase in the efficiency level of the trader, under the prevailing framework of any economy.

Figure I. Estimated trade costs in industrialized countries

No.	Components	Tariff rate equivalent (%)
1	Total trade costs[a]	170
1.1	International trade costs[b]	74
1.1.1	Border-related trade barriers	44
1.1.1.1	Policy	8
1.1.1.2	Language	7
1.1.1.3	Currency	14
1.1.1.4	Information cost	6
1.1.1.5	Security	3
1.1.2	Transportation cost	21
1.1.2.1	Freight	11
1.1.2.2	Time (transit cost)[c]	9
1.2	Retail and wholesale distribution costs	55

Source: J.E. Anderson and E. van Wincoop, 2004.

Notes: [a] Trade costs due to international trade is 74 per cent (1.21*1.44 = 1.74), as reported in this table. The total trade costs, as shown in Anderson and van Wincoop (2004) is 170 per cent (1.74*1.55-1). The costs are not simply additive, but rather multiplicative.

[b] The combination of direct observation and inferred costs, which, according to the author, is an extremely approximate breakdown.

[c] Tax equivalent of the time value of goods in transit. Both are based on estimates for United States data.

The other part of the trade costs is specific to the trading environment and is incurred by the traders due to in-built inefficiencies in the trading environment. It includes institutional bottlenecks (transport, regulatory and other logistics infrastructure), information asymmetry and administrative power that give rise to rent-seeking activities by government officials at various stages of the transaction. This may cost traders (or a country) time and money, including demurrage charges, making transactions more expensive.

Trade costs are large, even aside from trade policy barriers and even between apparently highly integrated economies. In explaining trade costs, Anderson and van Wincoop (2004) referred to the example of Mattel s Barbie doll (discussed in Feenstra, 1998), which indicated that the production costs for the doll were US$ 1, while it sold for about US$ 10 in the United States. The cost of transportation, marketing, wholesaling and retailing represented an ad valorem tax equivalent of 900 per cent. Anderson and van Wincoop (2004) commented: The tax equivalent of representative trade costs for rich countries is 170 per cent. This includes all transport, border-related and local distribution costs from foreign producer to final user in the domestic country. Trade costs are richly linked to economic policy. Direct policy instruments (tariffs, the tariff equivalents of quotas and trade barriers associated with the exchange rate system) are less important than other

policies (transport infrastructure investment, law enforcement and related property rights institutions, informational institutions, regulation and language).

Direct transport costs include freight charges and insurance, which are customarily added to the freight charge. Indirect transport user costs include holding costs for the goods in transit, inventory costs due to buffering the variability of delivery dates, preparation costs associated with shipment size (full container load vs. partial loads) etc. Indirect costs must be inferred. Alongside tariffs and NTBs, transport costs appear to be comparable in average magnitude and variability across countries, commodities and time.

Trade costs have large welfare implications. Current policy-related costs are often worth more than 10 per cent of national income (Anderson and van Wincoop, 2002). Obstfeld and Rogoff (2000) commented that all the major puzzles of international macroeconomics hung on trade costs. Some studies (for example: Asia-Pacific Economic Cooperation, 2002; OECD, 2003; and Francois and others, 2005) estimated that for each 1 per cent reduction in trade transaction costs, world income could increase by US$ 30 billion to US$ 40 billion.

Many commentators have indicated that the success of trade liberalization will always be sub-optimal if transport costs are not controlled. According to WTO (2004), the effective rate of protection provided by transport costs in many cases is higher than that provided by tariffs . According to the World Bank (2001), for 168 out of 216 trading partners of the United States, transport cost barriers outweighed tariff barriers. It is estimated that doubling the distance increases overall freight rates by between 20 and 30 per cent (Hummels, 1999b). Time delays affect international trade. It is estimated that, on average, each additional day that a product is delayed prior to being shipped reduces trade by at least 1 per cent (Djankov and others, 2006).[5] Therefore, what follows is that gains from trade will be more if trade frictions are minimized.

Details of trade costs also matter to economic geography. For example, the home market effect hypothesis (big countries produce more goods with scale economies) hangs on differentiated goods with scale economies having greater trade costs than homogeneous goods (Davis, 1998). The cross-commodity structure of policy barriers is important to welfare (see, for example, Anderson, 1994).

In dealing with cross-country trade, influenced by new trade theory, several studies have explicitly considered transport costs (or, often interchangeably, transaction costs) such as, for example, Bergstrand (1985 and 1989), Davis (1998), Deardorff (1998), Limao and Venables (2001), Fink and others (2002), Clark, Dollar and Miucco (2004), Redding and Venables (2004), Hummels (1999a, 2001), Wilson and others (2003).

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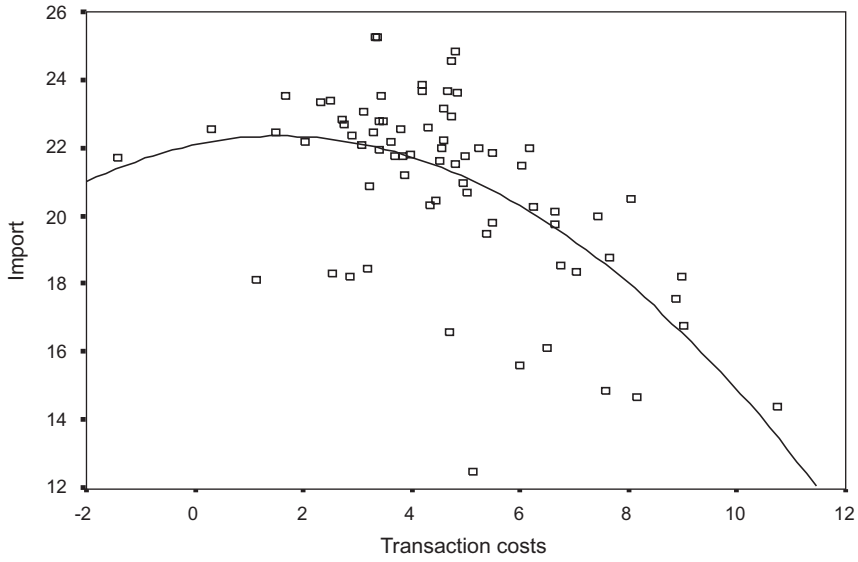
[5] This was estimated by the authors through a structured gravity model using the newly constructed *Doing Business* database of the World Bank for shipment of cargo from the factory gate to the ship (vessel) in 126 countries.

Poor institutions and poor infrastructure act as impediments to trade, differentially across countries. While dealing with barriers to trade, some studies explicitly emphasized the quality of infrastructure (as a proxy of trade costs) associated with cross-country trade. A country s infrastructure plays a vital role in carrying trade. For example, by incorporating transport infrastructure in a two-country Ricardian framework, Bougheas and others (1999) showed the circumstances under which it affected trade volumes. According to Francois and Manchin (2006), the transport and communications infrastructure and institutional quality are significant determinants not only for a country s export levels but also for the likelihood of exports. Nord s and Piermartini (2004) showed that the quality of infrastructure was an important determinant of trade performance wherein port efficiency alone had the largest impact on trade among all indicators of infrastructure. De (2005 and 2006b) provided evidence that transaction costs were statistically significant and important in explaining variations in trade in Asia.

In addition, De (2005 and 2006b) found that port efficiency and infrastructure quality were two important determinants of trade costs. In other words, the higher the transaction costs, the lower the volume of trade. This is exemplified in figure II, which shows a negative non-linear relationship between transaction costs and imports for 2004 in the context of 15 Asian economies. This relationship clearly points to the fact that trade transaction costs do influence trade.

Figure II. Relative importance of trade transaction costs in Asia



Source: P. De, 2006b.

Note: Import and transaction costs are based on pooled bilateral trading pairs for 15 Asian economies (listed in this chapter) for 2004.

The infrastructure variables have explanatory power in predicting trade volume. Limao and Venables (2001) emphasized the dependence of trade costs on infrastructure, where infrastructure is measured as an average of the density of the road network, the paved road network, the rail network and the number of telephone main lines per person. A deterioration of the infrastructure from the median to the 75th percentile of destinations raises transport costs by 12 per cent. The median landlocked country has transport costs which are 55 per cent higher than the median coastal economy.[6] A country s comparative advantage also depends upon the quality of its infrastructure. Yeaple and Golub (2002) found that differences in the quality of public infrastructure between countries could explain differences in total factor productivity.

Some studies have indicated that the cost of trade facilitation (specifically trade documentation and procedures) is high, ranging between 4 and 7 per cent of the value of goods shipped. In 1996, APEC conducted a study that highlighted the gain from effective trade facilitation. For example, the gains from streamlining customs procedures exceeded those resulting from trade liberalization, such as tariff reduction. Gains from effective trade facilitation would account for about 0.26 per cent of real GDP of APEC members (about US$ 45 billion), while the gains from trade liberalization would be 0.14 per cent of real GDP (about US$ 23 billion).[7] According to the World Bank (2002), raising performance across the region to halfway up to the level of the APEC average could result in a 10 per cent increase in intra-APEC exports, worth roughly US$ 280 billion.

Finally, efforts to understand trade costs and their role in determining international trade flows must take into consideration the internal geography of countries and the associated interior trade costs. This chapter builds upon the earlier literature on this subject, and in particular, De (2006a; 2006b).[8]

B. Barriers to trade: Ocean freight and auxiliary shipping charges

Despite technological advancements, the cost of moving goods across countries has not fallen in Asia. As an indication of the relative importance of lower, simplified and transparent ocean freight for trade, figure III and table 3 provide the composition and structure of ocean freight in Asia for 2004. Some 60 per cent of total shipping costs for the

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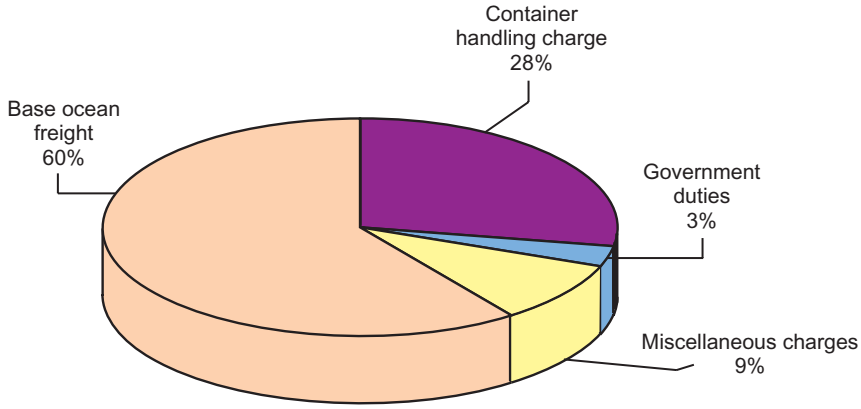
6 Bougheas and others, 1999 estimated gravity equations for a sample limited to nine European countries. They included the product of the partner s kilometres of motorway in one specification and that of public capital stock in another, and found that these have a positive particle correlation with bilateral exports.

7 Similar indications were obtained for countries in APEC (Cernat, 2001; World Bank, 2002; and Wilson and others, 2003).

8 In particular, the extended gravity model presented in section C controls for remoteness. In addition, it is estimated using a large cross-section of data taken at 4-digit HS level for 10 Asian countries and controls for endogeneity problems. See Annex to this chapter for details.

Figure III. Broad overview of total ocean freight in Asia



Source: Calculated based on table 3.

Table 3. Components of total ocean freight in Asia

Freight components	Collected by	Rate (%)*
(a) Mandatory charges		
Base ocean freight between origin and destination	Shipping company	60.00
Container handling charge at origin	Terminal or port operator	16.00
Container handling charge at destination	Terminal or port operator	12.00
Carrier security charge	Shipping company	0.80
Documentation fee at origin	Shipping company	2.25
Documentation fee at destination	Shipping company	1.60
Government and port duties	Terminal or port operator	2.20
(b) Optional charges		
Wharfage	Terminal or port operator	0.60
Container cleaning charge	Shipping company	0.25
Peak season surcharge	Shipping company	0.65
Congestion surcharge	Shipping company	0.85
Bunker Adjustment Factor	Shipping company	0.70
Yen Appreciation Surcharge	Shipping company	0.60
Fuel Adjustment Factor	Shipping company	0.50
Delivery order	Shipping company	0.70
EDI charge	Terminal or port operator	0.30
Total		100.00

Note: *Average charges, calculated based on shipping rates provided by Maersk Sealand for 2004 for the movement of a container vessel among 10 countries/areas as listed in this chapter.

movement of cargo between origin and destination countries is charged by shipping lines as base ocean freight, whereas 28 per cent is container handling charges, recovered by the terminal or port operators. Government duties are also not negligible; about 3 per cent of total shipping costs is imposed by governments as taxes and levies for using port and navigation facilities.

However, the extent of auxiliary shipping charges[9] is very wide and covers several components, such as peak season surcharge, congestion surcharge, Bunker Adjustment Factor, Yen Appreciation Surcharge, Fuel Adjustment Factor and delivery order etc., which often make shipping between countries costlier. For example, exporters had to pay an average of US$ 35 per 20-foot container towards the Bunker Adjustment Factor in 2004, which was imposed by the shipping lines as a fuel surcharge, and an average of US$ 30 per 20-foot container as the Yen Appreciation Surcharge for cargo going to Japan.

In many cases, the volume of auxiliary shipping charges often overtakes base ocean freight. This is clearly shown in table 4. For cargo originating in Japan and going to Hong Kong, China an average of US$ 425 per 20-foot container had to be paid towards auxiliary charges in 2004, whereas the base ocean freight was only US$ 200, thus making container transportation between the two countries effectively costlier than that between Japan and India. The sea trade between Japan and the Republic of Korea follows the same direction. Because of the close proximity as well as advanced maritime and shipping facilities, it would be expected that auxiliary charges would be low. However, this study found that the charges between the two countries were higher than the base ocean freight. Quite contrary to popular belief, the volume of auxiliary shipping charges in South Asian countries is relatively low. For example, for cargo originating in Japan and destined for Sri Lanka, about US$ 231 had to be paid (11.94 per cent of the total shipping costs) as auxiliary charges. Cargo originating at China and destined for India incurred a US$ 302 (13.11 per cent of the total shipping costs) payment towards auxiliary charges in 2004.

Therefore, as table 4 indicates, the auxiliary shipping charges have witnessed a steep rise in recent years, which is likely to offset the gains arising from tariff liberalization and make the entire trade costlier. A major part of these charges, such as documentation fees, government taxes and levies etc., are soft barriers to trade and very much explicit in the system, over which traders (both exporters and importers) have less control. While some auxiliary charges, such as terminal handling charges, are market driven, government duties and levies (similar to tariffs) are very much ad hoc and offer less economic rationale . Apparently, the auxiliary charges are relatively higher at the ports of Japan and Hong Kong, China as well as most of the countries/areas located in Northeast Asia and Southeast Asia, where the volume of two-way trade is also very high. Therefore, it follows that auxiliary shipping charges are increasingly becoming critical to trade in Asia, which should be seen unambiguously as explicit barriers to merchandise trade.

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[9] Auxiliary shipping charges include all shipping charges other than basic ocean freight in this study. In figure IV, auxiliary shipping charges include a container handling charge, government duties and miscellaneous charges (40 per cent of total ocean freight).

Table 4. Ocean freight and auxiliary charges in Asia, 2004

Country/area of origin	Destination country/area	Base ocean freight[a]	Auxiliary charges[a]	BOF-AC ratio[b]	Country/area of origin	Destination country/area	Base ocean freight[a]	Auxiliary charges[a]	BOF-AC ratio[b]
		(%)					(%)		
HK, China [c]	Singapore	52.71	47.29	89.70	Thailand	China	79.80	20.20	25.32
HK, China	Sri Lanka	71.08	28.92	40.68	Thailand	Singapore	71.27	28.73	40.32
HK, China	India	71.57	28.43	39.72	Thailand	Sri Lanka	77.36	22.64	29.27
HK, China	Malaysia	35.74	64.26	179.80	Thailand	Japan	75.23	24.77	32.93
HK, China	Indonesia	64.44	35.56	55.18	Thailand	Malaysia	73.28	26.72	36.46
HK, China	Thailand	62.28	37.72	60.56	Thailand	Indonesia	69.32	30.68	44.27
HK, China	Japan	46.88	53.12	113.30	Thailand	India	76.23	23.77	31.18
HK, China	Rep. of Korea	40.27	59.73	148.30	Thailand	HK, China	63.97	36.03	56.33
HK, China	Philippines	43.15	56.85	131.72	Thailand	Rep. of Korea	69.87	30.13	43.12
HK, China	Viet Nam	48.08	51.92	107.99	Thailand	Philippines	76.72	23.28	30.34
HK, China	Taiwan [d]	63.62	36.38	57.18	Thailand	Viet Nam	86.08	13.92	16.17
Japan	China	55.21	44.79	81.13	Thailand	Taiwan	61.88	38.12	61.60
Japan	Singapore	50.34	49.66	98.63	Singapore	China	60.57	39.43	65.10
Japan	Sri Lanka	88.06	11.94	13.56	Singapore	Malaysia	48.70	51.30	105.35
Japan	India	75.37	24.63	32.68	Singapore	Sri Lanka	73.16	26.84	36.68
Japan	Malaysia	55.93	44.07	78.80	Singapore	Japan	70.74	29.26	41.36
Japan	Indonesia	53.57	46.43	86.68	Singapore	Thailand	46.12	53.88	116.84
Japan	Thailand	51.58	48.42	93.87	Singapore	Indonesia	34.89	65.11	186.58
Japan	HK, China	32.01	67.99	212.44	Singapore	India	68.18	31.82	46.68
Japan	Rep. of Korea	48.79	51.21	104.97	Singapore	HK, China	36.79	63.21	171.84
Japan	Philippines	62.41	37.59	60.24	Singapore	Rep. of Korea	50.12	49.88	99.51
Japan	Viet Nam	71.65	28.35	39.56	Singapore	Philippines	73.93	26.07	35.26

Table 4. ***(continued)***

ountry/area of origin	Destination country/area	Base ocean freight[a]	Auxiliary charges[a]	BOF-AC ratio[b]	Country/area of origin	Destination country/area	Base ocean freight[a]	Auxiliary charges[a]	BOF-AC ratio[b]
		(%)					(%)		
Japan	Taiwan	35.15	64.85	184.52	Singapore	Viet Nam	67.50	32.50	48.16
Indonesia	Shanghai	64.51	35.49	55.01	Singapore	Taiwan	34.86	65.14	186.89
Indonesia	Singapore	52.35	47.65	91.02	Rep. of Korea	China	61.37	38.63	62.95
Indonesia	Colombo	76.99	23.01	29.89	Rep. of Korea	Malaysia	58.63	41.37	70.55
Indonesia	Tokyo	72.07	27.93	38.75	Rep. of Korea	Sri Lanka	79.72	20.28	25.44
Indonesia	Thailand	58.67	41.33	70.45	Rep. of Korea	Japan	59.86	40.14	67.06
Indonesia	Malaysia	52.84	47.16	89.26	Rep. of Korea	Thailand	61.04	38.96	63.84
Indonesia	India	77.90	22.10	28.38	Rep. of Korea	Indonesia	57.76	42.24	73.13
Indonesia	HK, China	53.37	46.63	87.38	Rep. of Korea	India	78.68	21.32	27.09
Indonesia	Rep. of Korea	51.33	48.67	94.82	Rep. of Korea	HK, China	51.60	48.40	93.80
Indonesia	Philippines	71.38	28.62	40.09	Rep. of Korea	Singapore	55.73	44.27	79.45
Indonesia	Viet Nam	75.88	24.12	31.79	Rep. of Korea	Philippines	71.19	28.81	40.48
Indonesia	Taiwan	47.34	52.66	111.25	Rep. of Korea	Viet Nam	80.20	19.80	24.69
Malaysia	China	64.54	35.46	54.94	Rep. of Korea	Taiwan	40.57	59.43	146.50
Malaysia	Singapore	54.75	45.25	82.66	China	Japan	68.78	31.22	45.39
Malaysia	Sri Lanka	80.80	19.20	23.76	China	Singapore	62.37	37.63	60.33
Malaysia	Japan	82.63	17.37	21.02	China	Sri Lanka	86.89	13.11	15.09
Malaysia	Thailand	56.82	43.18	76.00	China	India	86.89	13.11	15.09
Malaysia	Indonesia	53.50	46.50	86.90	China	Malaysia	73.46	26.54	36.12
Malaysia	India	82.06	17.94	21.87	China	Indonesia	62.53	37.47	59.92
Malaysia	HK, China	33.72	66.28	196.55	China	Thailand	76.92	23.08	30.00
Malaysia	Rep. of Korea	54.77	45.23	82.58	China	HK, China	53.68	46.32	86.27

Table 4. ***(continued)***

ountry/area of origin	Destination country/area	Base ocean freight[a]	Auxiliary charges[a]	BOF-AC ratio[b]	Country/area of origin	Destination country/area	Base ocean freight[a]	Auxiliary charges[a]	BOF-AC ratio[b]
		(%)					(%)		
Malaysia	Philippines	74.50	25.50	34.23	China	Rep. of Korea	67.47	32.53	48.21
Malaysia	Viet Nam	65.63	34.37	52.37	China	Philippines	81.18	18.82	23.19
Malaysia	Taiwan	50.90	49.10	96.47	China	Viet Nam	87.30	12.70	14.55
					China	Taiwan	58.00	42.00	72.41

[a] As a percentage of total freight in bilateral pairs. Other charges include all shipping charges except ocean freight as indicated in table 2. Calculated based on shipping rates provided by Maersk Sealand for 2004 for the movement of a container vessel among 10 countries/areas as listed in this chapter.

[b] Ratio between base ocean freight and auxiliary charges.

[c] Hong Kong, China

[d] Taiwan Province of China

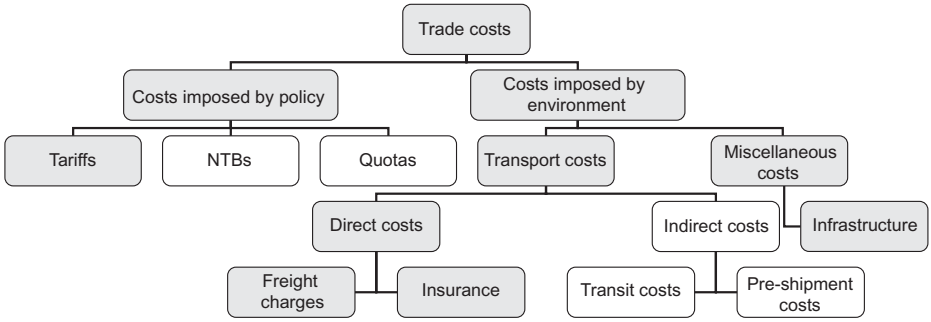
C. Estimating the effects of trade costs on trade

1. Data and methodology

The main objective of this section is to estimate the effect of trade costs on trade flows of 10 Asian economies. The specification of the gravity equation - i.e., the equation specifying bilateral trade flows as a function of trading economies gross domestic products, distance, trade costs, and other relevant factors - and details of its estimation are provided in Annex to this chapter.

The study dealt with selected components of trade costs imposed by both policy (such as tariffs) as well as environment (such as transportation and others). The shaded boxes in figure IV are the trade cost components considered in the study. Due to lack of compatible quantitative information, the study did not consider NTBs, quotas, and transit and pre-shipment costs.

Figure IV. Trade costs and its components



In estimating bilateral transportation costs, two methods have been used: (a) the difference in ad valorem trade-weighted freight rates;[10] and (b) the differences in intercountry costs of transportation using shipping rates collected from shipping agents.[11]

[10] Many methods have been constructed to measure transportation cost. The most straightforward measure in international trade is the difference between cost, insurance and freight (CIF), and free on board (FOB) quotations of trade. The difference between these two values is a measure of the cost of getting an item from the exporting country to the importing country. There is another source for obtaining data for transport costs from industry or shipping firms. Limao and Venables (2001) obtained quotes from shipping firms for a standard container shipped from Baltimore to various destinations. Hummels (1991a) obtained indices of ocean shipping and air freight rates from trade journals, which presumably are averages of such quotes. The most widely available data (many countries and years are covered) are average ad valorem transport costs based on the aggregate bilateral CIF/FOB ratios from the United Nations COMTRADE database, supplemented in some cases with national data sources. Because of the availability of this data as well as the difficulty of obtaining better estimates for a wide range of countries and years, apparently careful work such as J. Harrigan, 1993, and S.L. Baier and J.F. Bergstrand, 2001 used this measure.

[11] Ocean freight rates, collected from Maersk Sealand, 2006, have been used here.

2. Estimation results

Table 5 shows the estimation results of gravity equation (9) for two scenarios of transportation costs, one using equation (4) and the other using equation (5).[12] The explanatory variables of interest are trade infrastructure (II), transport costs (TC) and tariffs (T) in equation (9). It is assumed that the TC, T and II are negatively correlated with the volume of imports, respectively.[13] The gravity model performs well and most of the

Table 5. OLS (log linear) results at the 4-digit HS level for 2004

	Model 1[a]		Model 2[b]	
	Coefficient	t-value	Coefficient	t-value
GDP of importing countries/areas	0.107 [e]	3.720	0.059 [d]	2.350
GDP of exporting countries/areas	0.488 [e]	20.440	0.394 [e]	21.230
Infrastructure of importing countries/areas	-0.421 [e]	-7.500	-0.586 [e]	-12.090
Infrastructure of exporting countries/areas	-0.054 [c]	-1.990	-0.148 [e]	-5.930
Weighted tariff	-0.276 [e]	-13.830	-0.161 [e]	-9.450
Trade-weighted transport costs[$]			-0.571 [e]	-11.620
Trade-weighted transport costs[#]	-0.021 [c]	-1.940		
Remoteness of importing countries/areas	-0.001	-0.010	-0.680 [e]	-8.260
Remoteness of exporting countries/areas	-0.638 [e]	-8.720	-0.929 [e]	-15.150
Distance	-0.420 [e]	-9.970	-0.573 [e]	-15.570
Free Trade Agreement dummy	0.323 [e]	5.900	0.179 [e]	3.970
Adjacency dummy	0.163 [d]	2.260	0.072	1.290
Language dummy	0.114	1.570	0.117 [c]	2.000
Country/area effect				
China	0.693 [e]	4.940	0.579 [e]	9.580
Hong Kong, China	Insignificant		Insignificant	
India	Insignificant		Insignificant	
Indonesia	0.087	1.080	-0.212 [d]	-2.810
Japan	Insignificant		Insignificant	
Korea, Republic of	-0.488 [e]	-6.340	-0.964 [e]	-13.750
Malaysia	Insignificant		Insignificant	
Singapore	Insignificant		Insignificant	
Thailand	0.119 [c]	1.940	0.241 [e]	4.570
Number of observations	20 533		12 051	
Adjusted R^2	0.130		0.555	

[a] Estimated using equation (4).

[b] Estimated using equation (5).

[c] Significant at the 10 per cent level.

[d] Significant at the 5 per cent level.

[e] Significant at the1 per cent level.

[12] See Annex I for details.

[13] The usual caveat is that in this particular case, an inverse measure of II in the regression was taken so that an increase in II is expected to be associated with an increase in the TC, and vice versa.

variables have expected signs. The results show that the volume of import is inversely proportional to the II, TC, and T. Variables being in natural logarithms, estimated coefficients capture their elasticity. Given the large cross-section nature of the data at the 4-digit HS level for 2004, estimated gravity models explain 13 per cent of the variation in trade flows when ad valorem trade-weighted freight rates are considered for measuring transportation costs, and about 55 per cent of the variation in trade flows when shipping rate quotes from shipping agents are used.

The volume of imports is increasing in GDP and decreasing in distance. However, this is a rather common phenomenon since it is aggregate behaviour that is being dealt with here. The most interesting result is the strong influence of components of trade costs on trade. The higher the transportation costs and the tariffs between each pair of countries, the less they trade. The coefficient of transportation costs is statistically significant at the 1 per cent level in Model 2 and is also negative. It also indicates that trade-weighted transportation costs using ocean freight rates appears to be a better method compared to the conventional way of estimating transportation costs (i.e., using CIF and FOB trade data) in this case.

With 12,051 observations at the 4-figit HS level (Model 2 in table 5), variables representing trade costs such as tariff, infrastructure, and transport costs were found to be significant, and showed the expected relationship between trade and trade costs components. The estimated coefficients indicate that a reduction in tariff and transportation costs by 10 per cent each would increase bilateral trade by about 1.6 per cent and 5.7 per cent, respectively. Therefore, the propensity to increase the trade will be higher with a reduction of transportation costs, rather than tariff reductions.

Infrastructure quality is also an important determinant of trade flows. This study found that the quality of infrastructure has a strong impact on trade. Infrastructure qualities of both importing and exporting countries were found to be statistically significant. In other words, an improvement of the current state of infrastructure by 10 per cent in importing and exporting countries will lead to rise in imports by 5.9 per cent and 1.5 percent in importing countries, respectively.[14]

What is interesting is that preferential and/or free trade arrangements among the Asian countries have positively influenced trade. The significant coefficient of the FTA dummy indicates that trade in Asia has benefited from the PTA/FTA environment. The estimated coefficient also indicates that trade in the present context is not much influenced by geographical contiguity as the adjacency dummy appears with a positive sign but is statistically insignificant, whereas language similarity does influence trade as reflected in the estimated positive and statistically significant coefficient. Therefore, countries that speak the same language would trade more holds in this case.

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[14] Following Limao and Venables (2001), an inverse of the infrastructure index was included in the model so as to express the barrier effect (trade costs) associated with a poor or inadequate infrastructure, hence the signs reported in tables 5 and 6. Both infrastructure and transport related trade costs influence the import (here dependent variable) in the same direction.

Models 1 and 2 in table 5 report the results, including remoteness of both exporting and importing countries. Coefficients of remoteness and distance are significant with unchanged negative signs, thereby indicating that a country s distance from its trading partner and relative remoteness from the rest of the world has a clear negative effect on imports. Therefore, the importance of distance is not diminished, even if quality of infrastructure is included. Since distance is a proxy for trade costs where, according to several studies quoted in this chapter, trade costs are largely determined by the quality of infrastructure, this is somewhat surprising. It is likely that better infrastructure and lower transportation costs primarily increase the trade volume, while distance is as important as before for the distribution of trade in individual trading partners.

The sign of country effects is a reflection of the current trade situation. Country effects also appeared significantly in the case of China, Indonesia, the Republic of Korea and Thailand. China and Thailand show positive and significant country effects, while in the case Indonesia and the Republic of Korea the effects are negative and significant. The reason is large or medium-sized countries such as China and Thailand, which are major producers and exporters, have much to influence the trade in Asia, thus showing positive and significant country effects. On the other hand, countries such as Indonesia and the Republic of Korea are still unable to gain adequate benefits due to the presence of comparatively higher trade barriers such as higher tariffs and transportations costs. It may also be inferred that countries with negative and significant country effects (here, for example, Indonesia and the Republic of Korea) indicate a low exploitation level of trade potentiality and a high presence of trade barriers.[15]

A two-stage least square estimation procedure (2SLS) is implemented to address the potential endogeneity of transport costs, using the number of ports engaged in trade in country pairs as instrument (see table 6). The explanatory power of the models has improved slightly as a result, although only marginally.

The 2SLS estimates indicate that trade cost components, i.e., infrastructure quality, transportation costs and tariffs, have statistically significant negative impacts on the volume of imports. The coefficients of these trade cost components increase marginally, compared with the OLS results. Therefore, 2SLS estimates imply that a 10 per cent saving in transportation costs and a 10 per cent reduction in tariffs will increase imports by about 6 per cent and 2 per cent, respectively. At the same time, a 10 per cent improvement in infrastructure quality will increase imports by 3 per cent.

Therefore, a country s infrastructure quality and transportation costs are the two main determinants of cross-country variations of trade flows in the present context. Interestingly, these two barriers are explicitly related to the environment, where the rise in transportation costs is an outcome of the environment and policy constraints on the regional trade and infrastructure system. Nevertheless, these findings provide sufficient indications of presence of trade costs in Asia.

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15 However, the problems of multi-colinearity associated with the results cannot be refuted.

Table 6. 2SLS (log linear) results at the 4-digit HS level for 2004

	Model 1[a]		Model 2[b]	
	Coefficient	**t-value**	**Coefficient**	**t-value**
GDP of importing countries/areas	0.014	0.410	0.150 [e]	4.950
GDP of exporting countries/areas	0.325 [e]	9.390	0.112 [e]	3.800
Infrastructure of importing countries/areas	-0.279 [e]	-4.640	-0.341 [e]	-6.550
Infrastructure of exporting countries/areas	-0.008	-0.290	-0.170 [e]	-6.830
Weighted tariff	-0.276 [e]	-13.830	-0.159 [e]	-9.360
Trade-weighted transport costs [b]			-0.574 [e]	-7.700
Trade-weighted transport costs[a]	-0.024 [d]	-2.210		
Remoteness of importing countries/areas	-0.056	-0.600	-0.727 [e]	-8.880
Remoteness of exporting countries/areas	-0.504 [e]	-6.640	-0.726 [e]	-11.500
Distance	-0.530 [e]	-11.680	-0.786 [e]	-19.460
Free Trade Agreement dummy	0.292 [e]	5.310	0.014	0.300
Adjacency dummy	-0.006	-0.080	-0.036	-0.640
Language dummy	0.171 [e]	2.330	0.066	1.130
Country/area effect				
China	0.738 [e]	5.260	0.470 [e]	7.750
Hong Kong, China	Insignificant		Insignificant	
India	Insignificant		Insignificant	
Indonesia	Insignificant		-0.378 [e]	-4.970
Japan	Insignificant		Insignificant	
Korea, Republic of	-0.555 [e]	-7.160	-1.029 [e]	-14.720
Malaysia	Insignificant		Insignificant	
Singapore	Insignificant		Insignificant	
Thailand	0.300 [e]	4.450	0.548 [e]	9.460
Instrument: Number of seaports for exports and imports in bilateral pair	Yes		Yes	
Number of observations	20 533		12 051	
Adjusted R^2	0.132		0.560	

[a] Estimated using equation (4).

[b] Estimated using equation (5).

[c] Significant at 10 per cent level.

[d] Significant at 5 per cent level.

[e] Significant at 1 per cent level.

To summarize, there is strong empirical evidence that trade cost components, i.e., infrastructure quality, tariffs and transportation, costs are important for international trade patterns. Indeed, as product differentiation, vertical specialization and international outsourcing have become more prominent in world trade, the relative importance of these costs as a determinant of international trade has increased in Asia.

D. Conclusion

This chapter has provided new empirical estimates of the impact of trade barriers using an extended gravity model. First, infrastructure quality of trading partners is introduced as it is believed to have an impact on trade. Second, bilateral tariffs, which are largely ignored in the empirical gravity literature in the context of Asia, are introduced. Third, in order to ensure unbiased estimates, resistance parameters have been used. Fourth, in order to find the relative robustness of transportation costs, trade-weighted transportation costs that consider cross-country shipping rates have been used, which is also a new contribution to the gravity literature. Fifth, in order to control for the potential problem of omitted variable bias and endogeneity, the model was estimated using an instrumental variable estimation procedure.

The findings presented in this chapter highlight the significance of trade costs in the context of Asian trade. In particular, the analysis carried out provides sufficient evidence to ascertain that variations in transportation costs together with infrastructure facilities have significant influence on regional trade flows in Asia. A 10 per cent saving in transportation costs is likely to increase trade by about 6 per cent. Further, the findings show that tariffs have a relatively large and negative impact on trade, and that the importance of distance is not diminished, even if the quality of infrastructure and transportation costs is included.

The econometric results also indicate that trade in Asia has been benefited from FTAs, whereas trade in the present context is not much influenced by geographical contiguity. Further, it is shown that countries that speak the same language also trade more. Countries such as China, Indonesia, the Republic of Korea and Thailand, which are major regional producers and exporters, have influenced Asian trade more than others in recent years. However, countries such as Indonesia and the Republic of Korea have yet to reap much benefit from the freer trade environment due to a low level of exploitation of trade potentiality and a high presence of trade barriers. Also highlighted is the fact that a country s infrastructure quality and transportation costs are the two main determinants of cross-country variations of trade flows in the present context. Interestingly, these two barriers are explicitly related to the environment, where the rise in transportation costs is an outcome of the environment and policy constraints on the regional trade and infrastructure system.

As tariffs have fallen not only in Asia but also across most of the economies of the world, more attention is being paid towards trade and transportation facilitation. As Asia is moving progressively into more complex and higher-value manufacturing, and greater integration into global production chains, logistics requirements have become more sophisticated. The challenge for Asian countries is thus to identify improvements in logistics services and related infrastructure that can be achieved in the short-to-medium term and that would have a significant impact on their competitiveness. The results presented in this study have important policy implications for Asian countries seeking to expand trade. These findings also have important policy implications for LDCs. If improvements in the quality of infrastructure in LDCs continue to lag behind the more developed countries, the share of LDCs in world trade is likely to continue to decline.

The present study has considered some direct and indirect trade costs components but omitted infrastructure costs as well as wholesale and distribution costs. The impacts of infrastructure costs together with wholesale and distribution costs thus need to be captured more accurately in future models. Future studies may also attempt to establish the technological relationship between transportation costs and distance as bigger vessels are now plying between Asian ports, and the region is witnessing a more liberal trade environment.

One of the objectives of technological development and improved trade facilitation measures at ports and borders is to reduce the costs of the movement of goods across countries. In this chapter, a plausible explanation has been given as to why ocean freight costs are penalizing merchandise trade. While individual components of ocean freight costs have not been considered in the model, future studies should be carried out that attempt to understand how the components of ocean freight costs (such as base ocean freight and auxiliary shipping charges) together with other trade barriers are affecting trade.

Annexes

Annex I. Methodology

A. Bilateral transportation cost estimation

Importing countries report the value of imports from partner countries inclusive of transportation charges, and exporting countries report their value exclusive of transportation charges, which measures the costs of the imports and all charges incurred in placing the merchandise aboard a carrier in the exporting port. Alternatively, using the freight rate, we arrive at variations in transportation costs across countries. Let T_{ij} denote the unit cost of shipping a particular good from country *j* to country *i*. We assume that it is determined by:

$$T_{ij} = f(x_{ij}, X_i, X_j, \mu_{ij}) \quad (1)$$

where x_{ij} is a vector of characteristics related to the journey between *i* and *j*, X_i is a vector of characteristics of country *i*, X_j is a vector of characteristics of country *j*, and μ_{ij} represents all unobservable variables.

Denoting the export price shipped from *j* to *i* by p_{ij}, we define t_{ij}, the ad valorem transportation cost factor, as

$$t_{ij} = (p_{ij} + T_{ij}) / p_{ij} = t(x_{ij}, X_i, X_j, \mu_{ij}) \quad (2)$$

where the determinants of T_{ij} are given in equation (1). The ratio of import and export costs provides the measure of transportation costs of trade between each pair of countries. Assuming that t_{ij} can be approximated by a log linear function up to some measurement error, the average observed transaction cost rates t_{ij} appears as

$$\ln t_{ij} = \alpha + \beta \ln x_{ij} + \gamma \ln X_i + \delta \ln X_j + \omega_j \quad (3)$$

Here, the transport costs t_{ij} represent costs of transportation between country *i* and *j*.

In the present study, two separate methods have been used to estimate t_{ij}. Method I is trade-weighted transport costs, derived from the differences in export and import prices, whereas Method II represents weighted costs of transportation, estimated using cross-country shipping rates.[16] While both methods have been widely used to estimate transportation costs, there is a methodological difference between the two. The trade-weighted transport cost in Method I for commodity *k* is

$$t_{ij}^k = \left(\frac{IM_{ij}^k}{EX_{ji}^k} - 1 \right) S_i^k \quad (4)$$

[16] Here, methodology follows Limao and Venables (2001), which was adopted from Hummels (1999a).

where IM^k_{ij} stands for import price of country *i* from country *j* for commodity *k*, EX^k_{ji} denotes export price of country *j* to country *i* for commodity *k*, and S^k_i is the value-share of commodity *k* in country *i* in bilateral trade (here, at the 4-digit HS level). In terms of data, CIF values are used to represent IM^k_{ij}, and *fob* values for EX^k_{ji}. As indicated by Limao and Venables (2001), CIF/FOB data contain information about the cross-sectional variation in transportation costs, and the results from using these data are quite consistent with those obtained from the shipping costs data.[17]

The trade-weighted transport cost at the 4-digit HS level in Method II is derived using

$$t^k_{ij} = \frac{Q^k_{ij} f^k_{ji}}{Q_{ij}} \tag{5}$$

where Q^k_{ij} stands for imports in quantity by country *i* from country *j* for commodity *k*, f^k_{ji} stands for shipping costs per unit of import of commodity *k* by country *i* from country *j*, and Q_{ij} is country *i* s total import from country *j*.

For country characteristics, the focus is on infrastructure measures - the country s ability to enhance the movement of merchandise. Here infrastructure is treated as a proxy for those costs, which are equally responsible for the movement of goods across and within countries. Infrastructure facilities, arising from differential factor endowments within a country, are responsible for the movement of goods. To assess the impact of infrastructure facilities on bilateral trade, we have constructed an Infrastructure Index (II), comprising nine infrastructure variables for each individual country. The II is designed to measure the costs of travel across a country. In theory, the export and import prices are border prices and thus it would seem that own and trading partner infrastructures as defined here should not affect these rates. It is possible that there are interactions between the variables. The simplest example is that an increase in land distance should increase the cost of going through a given infrastructure. The II was constructed based on Principal Component Analysis (PCA),[18] and it measures the relative position of a country considering a set of observables. Briefly, the II is a linear combination of the unit free values of the individual facilities such that

$$II_{ij} = \sum W_{kj} X_{kij} \tag{6}$$

where II_{ij} is infrastructure index of the i-th country in j-th time, W_{kj} is weight of the k-th facility in j-th time, and X_{kij} = unit free value of the k-th facility for the i-th country in j-th time point.

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[17] However, the CIF/FOB ratio has several drawbacks. The first is measurement error; the CIF/FOB factor is calculated for those countries that report the total value of imports at CIF and FOB values, both of which involve some measurement error. The second concern is that the measure aggregates over all commodities imported, so it is biased if high transportation cost countries systematically import lower transportation cost goods. This would be particularly important if exports, which tend to be concentrated in a few specific goods, were being used. It is less so for imports, which are generally more diversified and vary less in composition across countries (Limao and Venables, 2001)

[18] See B. Fruchter, 1967.

B. Infrastructure index

While indexing the infrastructure stocks of the countries, we considered following nine variables which are directly involved in moving the merchandise between countries: (a) railway length density (km per 1,000 km^2 of surface area); (b) road length density (km per 1,000 km^2 of surface area); (c) air transport freight (million tons per km); (d) air transport, passengers carried (percentage of population); (e) aircraft departures (percentage of population); (f) a country s percentage share in the world fleet (per cent); (g) container port traffic (TEUs per terminal); (h) fixed line and mobile telephone subscribers (per 1,000 people); and (i) electric power consumption (kWh per capita). The weights of these variables and the index, derived from PCA, are given in tables I.A and I.B.

Table I.A. Estimated weights

Infrastructure indicator	Factor loadings 1	Factor loadings 2
Air transport freight (million tons per km)	0.81	0.57
Air transport, passengers carried (percentage of population)	0.88	-0.38
Aircraft departures (percentage of population)	0.91	-0.36
Country s percentage share in world fleet (percentage)	0.36	0.69
Container port traffic (TEUs per terminal)	0.53	0.69
Electric power consumption (kWh per capita)	0.90	0.10
Fixed line and mobile phone subscribers (per 1,000 people)	0.93	0.02
Railway length density (km per 1,000 km^2 of surface area)	0.92	-0.31
Road length density (km per 1,000 km^2 of surface area)	0.90	-0.26
Explained variance (percentage of total)	0.67	0.19

Note: Factor loadings (unrotated).

Table I.B. Infrastructure index and ranks in 2004

Country/area	Score	Rank
Singapore	6.01	1
Hong Kong, China	5.60	2
Japan	4.23	3
Republic of Korea	3.22	4
China	1.92	5
Malaysia	1.74	6
Thailand	0.99	7
India	0.59	8
Philippines	0.59	9
Indonesia	0.46	10
Viet Nam	0.40	11

C. Gravity Model

The gravity model provides the main link between trade barriers and trade flows. The gravity equation proposed here is a sort of reduced form of an intra-industry trade model. Following Anderson and van Wincoop (2003), the baseline equation is

$$X_{ij} = \frac{Y_i Y_j}{Y_w} \left(\frac{T_{ij}}{P_i P_j} \right)^{1-\sigma} \tag{7}$$

where Y_i Y_j and Y_w denote the aggregate size of countries *i*, *j* and the world, respectively; T_{ij} accounts for trade costs and other trade barriers; P_i and P_j reflect the implicit aggregate equilibrium prices; and σ is the constant elasticity of substitution (CES) between all goods in the consumption utility function.[19]

It is assumed from equation (7) that T_{ij} may be divided into several components, namely, infrastructure quality, tariff barriers, transport costs, distance, difference in language and other border effects. Assuming monopolistically competitive market, the term (1-σ) should be negatively related to volume of trade.

In order to carry out the estimations, following Head (2003), and Anderson and van Wincoop (2003), it is assumed that the implicit aggregate equilibrium prices P_i and P_j are basically resistance term or remoteness (trade weighted average distances from rest of the world).[20] Here, remoteness (R_i), as a proxy of implicit aggregate equilibrium prices, is derived through

$$R_i = \sum_{m \rangle j} \left(\frac{d_{im}}{Y_m} \right) \tag{8}$$

where R_i reflects the average distance of country *i* from all trading partners other than *j*, d_{im} is the distance between countries *i* and *m*, Y_m is the GDP of country *m*.

In order to explore the impact of trade costs on trade flows, our empirical analysis considers an augmented gravity model, since it is one of the popular partial equilibrium models known in explaining the variation of trade flows.

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[19] See, Anderson and van Wincoop (2003) for compete derivation of the model. We assume, as shown in Anderson (1979) and Anderson and van Wincoop (2003), all goods are differentiated by place of origin and each country is specialized in the production of only one good. Therefore, supply of each good is fixed (n_i = 1), but it allows preferences to vary across countries subject to the constraint of market clearing (CES).

[20] In fact, some authors tentatively estimated model with price index variables (Baier and Bergstrand, 2001). Baier, S.L. and Bergstrand, J.H. 2001. The Growth of World Trade: Tariffs, Transport Costs, and Income Similarity , *Journal of International Economics*, Vol. 53, pp. 1-27.

The gravity model explains bilateral trade flows as a function of the trading partners market sizes and their bilateral barriers to trade. As indicated in Nordos and Piermartini (2004), a number of standard variables are used in the empirical literature to capture trade barriers:

(a) Transportation costs are generally captured by distance and island, landlocked and border dummies to reflect that transport costs increase with distance. They are higher for landlocked countries and islands and are lower for neighbouring countries;

(b) Information costs are generally captured by a dummy for common language;

(c) Tariff barriers are generally neglected. However, data on tariff barriers show that there is a high degree of variability in cross-country bilateral applied tariffs. Since neglecting tariffs may be a source of an omitted variable bias, bilateral tariffs have therefore been included in our estimations.

The, final estimable gravity equation takes following shape

$$\ln IM_{ij} = \alpha_0 + \alpha_i + \beta_1 \ln Y_i Y_j + \beta_2 \ln II_i + \beta_3 \ln II_j + \beta_4 \ln TC_{ij} + \beta_5 \ln T_{ij} + \beta_6 \ln R_i + \beta_7 \ln R_j + \beta_8 \ln D_{ij} + \beta_9 d_1 + \beta_{10} d_2 + \beta_{11} d_3 + \varepsilon_{ij} \quad (9)$$

where *i* and *j* are the importing and exporting country, respectively, IM_{ij} represents import by country *i* from country *j*, taken at constant US dollars, Y_i and Y_j denote gross domestic products, taken at constant US dollars, of countries *i* and *j*, respectively, II represents country s infrastructure quality, measured through an index, TC_{ij} stands for transportation costs for bilateral trade between countries *i* and *j*, T_{ij} stands for bilateral tariff (weighted average) between country *i* and *j*, R_i and R_j denote average remoteness of countries *i* and *j*, and D_{ij} is the distance between countries *i* and *j*. Dummies 1, 2 and 3 refer to PTA/FTA in force, adjacency, and language, respectively. To capture country effects, we use country specific dummy, α_i. The parameters to be estimated are denoted by β, and ε_{ij} is the error term.

There are a few important reasons for considering the equation (9). First, we estimate a modified gravity equation, controlling for endogeneity and remoteness. Second, an alternative method for obtaining unbiased estimates of the impact of distance and other bilateral variables on bilateral trade flows is to replace the multilateral resistance indexes with importer and exporter dummies.[21] We therefore estimate a gravity equation including country specific effects. Third, the variables are identified keeping in mind their importance in influencing bilateral trade. Fourth, elasticity of trade flows can be estimated with regard to exogenous variables. Fifth, a country s trade with any given partner is dependent upon its average remoteness to the rest of the world (Anderson and van Wincoop, 2003). Studies that do not control for remoteness produce biased estimates of the impact of transaction costs on trade. Finally, in an attempt to minimize the possibility of endogeneity

[21] See J.E. Anderson and E. van Wincoop, 2003.

bias, equation (9) is also estimated using the number of ports in bilateral pairs as an instrument for a country s imports. This instrument is selected for two main reasons: (a) countries in Asia rely more on seaports for merchandise trade, rather than overland transportation, and (b) due to spatial distribution, the number of seaports are unlikely to be affected by the total volume of imports in a given pair.

The augmented gravity model considered here uses data for 2004 at the 4-digit HS level for 10 Asian countries/areas: China; Hong Kong, China; India; Indonesia; Japan; Republic of Korea; Malaysia; Singapore; Taiwan Province of China; and Thailand. By taking tariffs, transportation costs and infrastructure quality, a major portion of trade costs is covered. Bilateral trade, transportation costs and tariffs are taken at the 4-digit HS level for 2004.[22] Since the gravity equation is the standard analytical framework for the prediction of bilateral trade flows, we use it as a policy simulation technique rather than extending it for forecasting purposes.

The major sources of secondary data were the International Monetary Fund (2006), United Nations Statistical Division, UNCTAD and the World Bank.

[22] The model also suffers from data limitation when considering equation (4) for estimating transportation costs. On average, 56 per cent of total observations for all sectors are found to be either zero or negative, or missing. Theoretically, t_{ij} cannot be negative or zero. Due to the poor quality of data compilation, a discrepancy is faced in transportation cost estimation. However, better results are achieved when considering equation (5) and using freight rates. Annex II shows the country-wise observations collected and those with errors.

Annex II. Discrepancies in transportation cost estimations at 4-digit HS, and data classification

Table II.A below illustrates the discrepancies in transportation cost estimations and table II.B presents the data classifications.

Table II.A. Discrepancies in transportation cost estimations at 4-digit HS

Importer	Total observations at HS 4 level	Total observations with positive transport costs at HS 4 level	Total observations with zero/negative/ missing transport costs at HS 4 level
China	6 380	2 847	3 533
Hong Kong, China	5 734	2 626	3 108
India	5 652	2 566	3 086
Indonesia	6 213	2 916	3 297
Japan	5 582	2 548	3 034
Korea, Republic of	5 705	2 599	3 106
Malaysia	6 736	2 924	3 812
Singapore	6 937	2 755	4 182
Taiwan Province of China	5 517	2 266	3 251
Thailand	6 463	2 584	3 879
Total	60 919	26 631	34 288

Table II.B. Data classification

Sector	Corresponding 2-digit HS level	Remarks
Food	16-23	Taken all at HS 4
Chemical	28-40	
Textiles and clothing	41-67	
Machinery	84	Excluding HS 8415, 8418, 8471, 8473
Electronics	85, 90, 91, 92, 95	Including HS 8415, 8418, 8471, 8473
Auto components	87	Taken all at HS 4
Steel and metal	72-83	
Transport equipment	86, 88, 89	

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X. PRIORITIZING TRADE FACILITATION MEASURES: A NOTE

*By Florian A. Alburo**

Introduction

The progress achieved by the current Negotiating Group on Trade Facilitation (NGTF) as evidenced by the wide participation of WTO members, especially from developing and least developed economies, the constructive coalitions between North and South on common trade facilitation issues, and the promises of concrete technical assistance and capacity-building support, has given the Doha Round a much needed confidence-building boost. This has, in turn, led to a view that in the likelihood of the Round s failure, NGTF should proceed to an agreement on trade facilitation as an exemption from the single undertaking. While this is a practical recognition of its importance, it remains doubtful whether it will actually deliver a sustainable development impact from trade. After all, facilitation and other supply considerations are only half of what is needed to push for a significant contribution of trade to development. Both trade facilitation and market access are essential to its realization. It also remains to be seen whether important concerns of developing and least developed WTO members would be addressed in the same magnitude if trade facilitation proceeds outside of the single undertaking.

The purpose of this note is to argue that despite the surfeit of trade facilitation proposals on the table, even more difficult hurdles need to be overcome to reach a binding agreement. Even more challenging is the design of measures that the developing and least developed economies can implement without substantial costs or from which they can reap significant benefits. This implies that some prioritization of trade facilitation measures would be necessary, which could become the basis for concluding a multilateral agreement.

Section A presents a summary of the many trade facilitation proposals received by NGTF, as reported by NGTF to the WTO Ministers and which are found in Annex E of the Hong Kong WTO Ministerial Declaration (World Trade Organization, 2005). Section B briefly examines the results of some studies in Asia on trade facilitation implementation and the scale of measures that are considered important to trade users and other stakeholders. Section C outlines what is needed in terms of the next steps to move the trade facilitation measures into concrete and binding commitments, especially on the part of developing and least developed economies. Section D presents concluding remarks.

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A. Trade facilitation proposals

While not exclusive, the Doha Ministerial Declaration of WTO delineated the boundaries of trade facilitation in terms of Articles V, VIII, and X of GATT 1994 (World Trade Organization, 2001). Article X is related to Publication and Administration of Trade Regulations, Article VIII to Fees and Formalities Connected with Imports and Exports, and Article V to Freedom of Transit. The WTO members were asked to look at these specific articles with regard to their review, clarification and improvement and to ...identify trade facilitation needs and priorities of members, in particular developing and least developed countries. We commit ourselves to ensuring adequate technical assistance and capacity-building support in this area... (paragraph 27). The subsequent July Package of the Doha Work Programme (see World Trade Organization, 2004.) specified the various modalities for the trade facilitation negotiations (Annex D).

In all, more than 150 proposals have been submitted to NGTF in relation to the three Articles, with more than one-fourth incrementally added since the Hong Kong Ministerial Meeting of WTO in 2005 (World Trade Organization, 2007). In the comprehensive NGTF report, the summary of the proposals lists more than 60 proposed measures under 13 categories that follow the three Articles mandated in the July Package modalities. Of the 13, six groups of measures clarify and improve Article X, another six groups deal with Article VIII and only one group deals with Article V.

Table 1. Proposed trade facilitation measures

Article	Categories (number)	Measures (number)
Article V: Freedom of Transit	1	18
Article VIII: Fees and Formalities Connected with Imports and Exports	6	26
Article X: Publication and Administration of Trade Regulations	6	20

Source: World Trade Organization, 2005, Hong Kong Ministerial Declaration Annex E.

Table 1, which shows the proposed trade facilitation measures submitted to NGTF, does not really yield adequate information about the substance of the potential commitments that countries can give in any agreement. The specific measure has to be examined instead of the broad article being further clarified. There are some commonalities generally across all Articles, but especially between Articles VIII and X. For example, many of the measures under Article V are related to fees and charges as well as the publication of regulations surrounding goods in transit, which come under Articles VIII and X.

A close review of the proposed trade facilitation measures elicits several observations that suggest the need for a larger agenda.

First, of the 64 proposed measures summarized by NGTF for the Hong Kong WTO Ministerial Declaration no more than 15 are direct proposals for the use of information technology (IT). Even these are not purely IT, but the use of electronic formats for publication and distribution of forms and public notices.[1] What developed, developing and least developed WTO member countries are pointing to is the extensive information dissemination of rules, procedures, requirements and other documentary materials necessary for trade transactions. These measures are more fundamental to greater transparency and a predictable business and trade environment than the barriers and bottlenecks to the movement of goods themselves.

Second, some of the measures are clearly linked to other multilateral agreements in GATT 1994. Difficulties in carrying out customs valuation, for example, suggest further clarification and improvements despite a separate article on the understanding of customs valuation. Measures to clarify the agreement on import licensing in the context of Articles VIII and X also affect trade facilitation. Therefore, the scope of trade facilitation, as delineated in the mandate, is quite inadequate, limited and GATT-centred. It is, of course, true that, based on the number of proposals alone and with the focus on the three GATT 1994 Articles, there is already a great deal on the plate. Yet, trade facilitation is slowly being understood to cover measures at the border and behind the border, and even before the border. Confining the scope to the negotiations may be essential but it is important to recognize that compartmentalization equally diminishes the totality of trade facilitation. Indeed, this broader realization could often lead to expanded agreements and commitments.

Third, with the large number of proposals on trade facilitation, there do not appear to be overly high expectations of capacities beyond what the developing and least developed economies can muster. Those proposals by the developing and least developed members appear to be within their means; if they are not, special and differential provisions are invoked through delayed implementation, or the measures are not required if these are beyond existing capacities, with notifications to be given to WTO upon the acquisition of capacities to carry out the measures. Therefore, the fear among those countries that they would be required to undertake obligations beyond their means is turning out to be unfounded, since even those measures that encompass automation and other forms of IT applications are only a small fraction of the many measures that have been proposed.

Fourth, the proposed trade facilitation measures do not indicate any scale of priorities and needs among developing and least developed economies. Each of the proposals submitted has not been tagged in terms of importance or ranking in facilitating trade among WTO members. However, it is possible to imply priorities by the number of measures proposed according to some criteria (e.g., Articles V, VIII and X). What can be observed from the report found in Annex E of the WTO Hong Kong Ministerial Declaration is that many proposals pertain to increasing the transparency of rules, procedures and requirements for trade transactions through wider dissemination, the publication of existing

[1] This particularly refers to the use of the Internet through the creation of websites that contain information in electronic formats.

rules and, in other measures, the further specification of these as additional ways of enhancing the movement of goods. Publication and dissemination suggests that their posting on the Internet would be a widely accessible manner of ensuring availability of information for traders inside and outside the countries concerned. Simple information such as flow charts of procedures should be posted in public places in order to guide those interested in moving goods across borders. However, at many borders such information indicating procedural steps and the necessary requirements as well as the time taken for each step is still seldom available or even accessible.

Finally, apart from the lack of prioritization, the proposed trade facilitation measures have yet to be transformed into operational legally-binding commitments on the part of all WTO members to a trade facilitation agreement. This requires that negotiated agreements should be sufficiently clear and unambiguous, so that members can bring specific instances of violations to the dispute settlement mechanism of WTO. This would include even the commitments of technical assistance and capacity-building agreed on by developed members. This requires compressing the proposed trade facilitation measures into those that bind members, given the potential costs and benefits. Thus, the identification of the needs and priorities in trade facilitation is a useful first step. What is implied by the proposed trade facilitation measures must be validated by the expressed preferences and priorities of traders and other stakeholders in the developing countries and LDCs. This is where the results of independent studies become relevant. While the more careful text-based third-generation proposals appear to be geared towards an eventual language of an agreement, which in turn may lead to a consensus, there is really no prioritization (implied or actual) as yet. In fact, these are just elaborations and refinements of the original proposed measures.[2]

B. Trade facilitation priorities of traders and stakeholders

In a series of research studies and surveys of the private sector in several countries in Asia (Bangladesh, China, India, Indonesia and Nepal) under the auspices of ESCAP-ARTNeT, the state of implementation of trade facilitation measures centred around the three GATT 1994 Articles was reviewed, with attempts to determine the costs of some of the measures. The private sector was asked to rank the important barriers to the efficient movement of goods (Bhattacharya and Hossain, 2006; Damuri, 2006; Rajkarnikar and others, 2006; Chaturvedi, 2006; Wenjing and Wei, 2006). OECD has likewise completed several country studies related to the costs of implementing trade facilitation measures (Mo s , 2004).

The results from those private sector surveys in some of the Asian countries revealed similar concerns, ranked comparable priorities and suggested common directions among trade stakeholders (see the summary of the country surveys in Duval, 2006b). The

[2] There is no indication in TN/TF/W/43/Rev. 12, 25 July 2007 (World Trade Organization, 2007) that there are already priorities in the proposed measures encompassing the third-generation proposals. See also SITPRO, 2007.

leading concern (and priority) expressed in the surveys was the irregular payments that had to be made for the clearance and release of goods, a euphemism for bribes to officials for the facilitation of goods movement. The need for good governance in the bureaucracy is the overall meaning of this concern. Next among the concerns were coordination among government agencies having border responsibilities in terms of issuing licences and permits for trade (import or export), the lack of a one-stop centre for submission and securing of necessary documentation; and the timely publication and dissemination of trade rules and requirements. The remaining concerns covered computerization and automation of trade clearance and procedures among responsible agencies, harmonization and standardization of documents, and the simplification and reduction of these requirements in the export and import process. The Asian studies/surveys show that the first three concerns (and priorities) are similar among the five countries concerned while the last two may show wider variation across the surveys.

The relevant question is whether trade facilitation measures (proposed or implemented) exist that address these concerns (and priorities). Take the top-most concern regarding irregular payments for the clearance and release of goods. Aside from being a national issue, there are really no standards, no best practices and no benchmarks to address governance. One (if not the only) way to apply a measure here is to understand the possible causes of its underlying failure. While this would open a whole coterie of hypotheses and explanations (e.g., low salaries of bureaucrats in developing countries), an important factor is the lack of information about what is needed to complete a trade transaction. Put differently, when information is privately appropriated instead of being publicly available, it invites irregular payments. That is why the other concerns (and priorities) expressed in the survey impinge on this leading concern.

Consider the next two important concerns that roughly pertain to information dissemination, publication, and wider circulation of procedures, processes and other requirements for trade. Relevant measures exist in the countries studied, although with provisions for varying degrees of enforcement. Several of the proposals further clarify and expand them, and these interact to reduce irregular payments. Annex E of the Hong Kong Ministerial Declaration includes proposals not only related to publishing payments of fees and charges but also for a measure for **not** paying when such fees and charges are **not** indicated (G of Annex E ...prohibition of collection of unpublished fees and charges...).

When the implied priorities of the various proposed trade facilitation measures are compared to the priorities and concerns expressed in the country studies, a tight fit can be observed.[3] This is particularly true with regard to the importance attached to information

[3] This is not to say that the scope of trade facilitation is adequate. As noted by Duval in chapter I of this publication, the priority problematic areas in conducting trade that were identified in the surveys extend beyond Articles V, VIII, and X. A policy-wide set of issues needs to be addressed. Tariff classification problems arise, for example, when many tariff bands exist with varying rates, international (harmonized systems) standards are not followed and testing facilities for product specifications are inadequate. On the other hand, customs valuation problems arise when insufficient training on the appropriate valuation steps to follow is provided for customs officials.

accessibility, dissemination and wider publication of trade rules, procedures, documentary requirements etc. Indeed, the survey results across several countries validated what had been submitted by the WTO members as important measures to facilitate trade.

What has not been easy to determine is the cost of undertaking the various trade facilitation measures. An alternative followed was a qualitative measure of costs and benefits of trade facilitation through an expert survey (Duval, 2006a). The idea was to take the broad classification of measures in the three GATT 1994 Articles and then arrive at what experts considered to be the associated benefits and costs. This can provide a reference point for examining implementation options for trade facilitation measures.

C. From measures to binding commitments and agreement

The consistency between the proposed trade facilitation measures and the concerns and priorities expressed by stakeholders is an important first step in transforming them into actual components of a potential trade facilitation agreement. The convergent importance of groups of measures from among many becomes another step in the determination of what will comprise such an agreement. In addition, the specification of measures into actionable language contributes to agreement and compliance. It is unlikely that incorporating all the more than 150 measures into a multilateral agreement would be acceptable or enforceable. Scaling them to a third may be feasible but it is equally doubtful that WTO members will accept them. What may be more useful is to focus on some general principles and a framework that can bear legal obligations.

1. Classifying measures based on implied priority

The scale of measures drawn up from the proposals submitted to NGTF and merged with concerns and priorities from a larger sample of survey results[4] than that reported here (and from other countries) appear to imply a workable framework. The proposals to NGTF do not have explicit priorities but their distribution suggests a scale of importance. Their fit with priorities from the surveys reinforces the underlying needs. At the same time, based on the previous section, principles for information dissemination, wider publication and related activities can be obligations to a trade facilitation agreement. Another tier of trade facilitation measures can be obligated in the form of reduction, simplification, standardization and harmonization of trade documents and procedures (anchored, for example, on the Revised Kyoto Convention). A final tier could be the obligation for computerization and automation of trade procedures following established flows. These tiers would define trade facilitation priorities and needs.

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[4] The five studies through ARTNeT (in Asia) may not provide a sufficient sample of WTO members from which to derive trade facilitation priorities and concerns for comparison with submissions by the wider WTO membership.

2. Binding commitments on top tier measures

Trade facilitation obligations can be in tiers that are tied either to the capacity to carry them out or to some kind of special and differential treatment in terms of a time schedule for implementation.[5] The most basic and fundamental tier includes measures that promote transparency and predictability of the trading system. This involves obligations to disseminate information, publicize rules and regulations, procedures and other trade requirements. Public display and dissemination of procedural flow charts for the entry and exit of goods in all media forms then become a binding commitment of a trade facilitation agreement. The succeeding tier obligations become subject to notification to WTO.

3. Concrete commitment from developed countries on trade facilitation costs

The concept behind the consideration of trade facilitation costs as part of the obligation in an agreement is not the determination of actual outlays needed, but whether support for such costs can become a commitment on the part of the developed members of WTO as a technical assistance and capacity-building contribution. This could be a separate principle defining criteria for technical assistance and capacity-building. This could also be associated with higher tiers of trade facilitation measures. For example, succeeding tiers beyond basic and fundamental transparency are obligations that go with commitment of support. Obligations on the part of the developing and least developed member countries are coupled with obligations on the part of the developed member countries for technical assistance and capacity-building, and these obligations have to be specified and notified to WTO.

Obligations and commitments, both in terms of trade facilitation measures and trade facilitation support, should be capable of being brought before the WTO dispute settlement mechanism for consultations, conciliation, mediation and arbitration regarding violations. For example, when members are unable to display flow charts of import and export procedures in the public media they should be held accountable for trade facilitation measure violations in the same way as that for second tier trade facilitation measures. For example, after their notification of implementation and committed technical assistance and capacity-building, developed country members can be brought before the dispute settlement body when such assistance is not forthcoming.

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[5] Tiering and compression simplify and tighten language, which does not seem to be the direction of the third-generation proposals. Indeed the ...third-generation proposals represent a significant advance, but not an agreement, and are not without prejudice to the right of Members to put forward further proposals... (SITPRO, 2007, p. 6). Moreover, there are more than 30 of these text-based proposals.

D. Conclusion

The many proposed trade facilitation measures point to the need to translate them into a sufficiently flexible multilateral agreement that binds countries to certain general principles of trade facilitation within their capacities, and which holds developed country members to specific types of support that can be made subject to complaint and dispute with consequences similar to other types of trade commitments. When these trade facilitation measures are cast in certain tiers associated with some principles instead of detailing various proposals, they can be binding. Provisions for notification in higher-tier trade facilitation could effectively bind WTO members under the general agreement.

When seen in this context, negotiations on trade facilitation appear to be far from reaching an agreement. Developing countries and LDCs remain apprehensive about obligations beyond their capacities, developed countries continue to be hesitant in committing concrete assistance, demands for special and differential treatment remain an impediment and few, if any, countries are expected to announce implementation of trade facilitation measures.

However, the main ingredients for a trade facilitation agreement are there - the many collaborative and cooperative proposed measures summarized in Annex E, the scale of associated support, the recognition of limited capacities among developing and least developed WTO members, and the variety of independent designs and formulations for trade facilitation (e.g., the trade facilitation templates noted above). In addition, there is the general acknowledgment of the importance of trade facilitation to expanding trade, especially among the emerging economies, and of the need of those emerging economies for support as they integrate more into the global economy, and achieve development goals and poverty reduction.

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