ADB

ADB Working Paper Series on Regional Economic Integration

Trade Facilitation Measures Under Free Trade Agreements: Are They Discriminatory Against Non-Members?

Shintaro Hamanaka, Aiken Tafgar, and Dorothea Lazaro

No. 55 | July 2010

Asian Development Bank

ADB

ADB Working Paper Series on Regional Economic Integration

Trade Facilitation Measures Under Free Trade Agreements: Are They Discriminatory Against Non-Members?

Shintaro Hamanaka,[+] Aiken Tafgar,[++] and Dorothea Lazaro[+++]

No. 55 | July 2010

The authors would like to thank Teruo Ujiie and Jayant Menon for their helpful comments.

[+]Shintaro Hamanaka is Economist, Office of Regional Economic Integration, Asian Development Bank, 6 ADB Avenue, Mandaluyong City, 1550 Metro Manila, Philippines. Tel +63 2 632 5844, Fax +63 2 636 2342, shamanaka@adb.org

[++]Aiken Tafgar is Consultant, Office of Regional Economic Integration, Asian Development Bank, 6 ADB Avenue, Mandaluyong City, 1550 Metro Manila, Philippines. Tel +63 2 632 5091, Fax +63 2 636 2342, artafgar.consultant@adb.org

[+++]Dorothea Lazaro is Consultant, Office of Regional Economic Integration, Asian Development Bank, 6 ADB Avenue, Mandaluyong City, 1550 Metro Manila, Philippines. Tel +63 2 632 5902, Fax +63 2 636 2342, dlazaro.consultant@adb.org

Asian Development Bank

The ADB Working Paper Series on Regional Economic Integration focuses on topics relating to regional cooperation and integration in the areas of infrastructure and software, trade and investment, money and finance, and regional public goods. The Series is a quick-disseminating, informal publication that seeks to provide information, generate discussion, and elicit comments. Working papers published under this Series may subsequently be published elsewhere.

Disclaimer:

The views expressed in this paper are those of the author and do not necessarily reflect the views and policies of the Asian Development Bank or its Board of Governors or the governments they represent.

The Asian Development Bank does not guarantee the accuracy of the data included in this publication and accepts no responsibility for any consequence of their use.

Use of the term "country" does not imply any judgment by the authors or the Asian Development Bank as to the legal or other status of any territorial entity.

Unless otherwise noted, $ refers to US dollars.

© 2010 by Asian Development Bank
July 2010
Publication Stock No.

Contents

Abstract

Are trade facilitation measures under free trade agreements (FTAs) discriminatory? This important question has yet to be sufficiently explored by the existing literature on trade facilitation. Despite the multilateral scope and non-discriminatory objectives of trade facilitation measures, some trade facilitation measures under FTAs can be discriminatory, similar to those in preferential tariff elimination. Based on a review of FTAs in Asia and the Pacific, this study provides detailed empirical analysis on whether or not trade facilitation provisions in FTAs are exclusive to contracting FTA partners and how the measures can be discriminatory against non-members.

Keywords: Trade facilitation, free trade agreements (FTAs), discriminatory measures, national treatment (NT), most-favored-nation (MFN)

JEL Classification: F53, F15, F13, F59, F42

1. Introduction

Trade facilitation has recently become a hot issue among policymakers and scholars. While many tariff regimes in Asia and the Pacific continue to be liberalized, traders still face difficulties in moving goods across borders. Supporting this view are econometric studies showing that trade facilitation reforms considerably increase international trade and that their impact on trade flows is as equally significant as tariff elimination.[1] Given these propositions, trade facilitation measures aside from tariff elimination are now being seriously discussed as a part of the multilateral and regional trade agenda. Because trade facilitation requires a comprehensive approach, this paper employs a broad definition of trade facilitation, including transparency, [2] customs procedures and fees,[3]conformity assessment, and origin administration (Asian Development Bank [ADB] and the United Nations Economic and Social Commission for Asia and the Pacific [ESCAP], 2009).

Trade facilitation measures under a free trade agreement (FTA) are important because of existing substantial non-tariff barriers among FTA members. Despite the elimination of tariffs, goods may still not always be traded smoothly or timely between FTA members. Trade between FTA partners can be increased through tariff elimination complemented by trade facilitation measures. While multilateral institutions such as the World Customs Organization (WCO) and the World Trade Organization (WTO) focus on the establishment of international standards and principles of trade facilitation, concrete measures to facilitate trade are often taken or implemented at the regional and bilateral levels. Bilateral and regional schemes to liberalize trade usually entail cooperation in terms of facilitating trade flows. FTA policymakers have begun to realize the significance of trade facilitation and have included trade facilitation provisions in recent FTAs.[4]

Using comparative case analyses of 34 FTAs in Asia and the Pacific, Bin (2008) concluded that FTAs are significantly diverse as far as trade facilitation is concerned. Trade facilitation provisions relating to customs procedures appear in almost all FTAs. While 94.1% of FTAs have provisions on technical regulation (e.g., the adoption of international standards) and 61.7% have transparency provisions, 14.7% cover freedom of transit. Wilee and Redden (2007) conducted detailed case studies on trade facilitation initiatives in major regional trade facilitation frameworks in Asia. Their empirical assessment outlined five principles of trade facilitation in regional agreements: (i) compliance with international agreements, (ii) transparency, (iii) simplification, (iv) harmonization, and (v) technical assistance.

It appears that the existing literature on trade facilitation has yet to considerably explore one of the most critical questions regarding FTAs: are trade facilitation measures under

---

[1] For example, see Anderson and Wincoop (2004); Wilson, Mann, and Otsuki (2005); Duval and Utoktham (2009).

[2] General Agreement on Tariffs and Trade (GATT) Article X.

[3] GATT Article VIII.

[4] The first FTA to include trade facilitation provisions was the South Pacific Regional Trade and Economic Cooperation Agreement, signed in 1980.

FTAs discriminatory? A dominant view is that most trade facilitation measures are non-exclusive, unless members adopt specific regional standards (Schiff and Winters, 2003; Maur, 2008). In a similar vein, Moise (2002) argues that the simplification of customs procedures at the regional level rarely has discriminatory effects. At the same time, he observes that concessionary customs fees applicable to members and mutual recognition among members can have discriminatory elements.

This study provides a detailed analysis of whether or not trade facilitation provisions in FTAs are discriminatory and, if so, how they can be discriminatory against non-members. The next section provides a framework of empirical analysis that introduces the concept of discriminatory trade facilitation. The third section identifies how and to what extent trade facilitation measures can be discriminatory by comparing examples of restrictive and liberal trade facilitation provisions under FTAs in Asia and the Pacific. The fourth section discusses policy recommendations, focusing on how to minimize the discriminatory effects of FTA trade facilitation measures on non-members. The final section concludes this study.

2. Discriminatory Treatment in Trade Facilitation Measures

Non-discrimination is the fundamental philosophy underlying the international trade system. This is also an important principle of trade facilitation efforts at both global and regional levels. For example, Asia–Pacific Economic Cooperation (APEC) Principles on Trade Facilitation adopted by APEC Ministers responsible for trade in 2001 says:

> Rules and procedures relating to trade should be applied in a manner that does not discriminate [1] between or among like products or services or economic entities in like circumstances.
>
> *Illustrative Example: Charging foreign and domestic entities on an equal basis for trade facilitation services provided to them.*
>
> [1] The discrimination refers to inconsistency with either the national treatment or the most-favored nation (MFN) principle.

This APEC Principle discourages two kinds of discrimination. First is the discriminatory treatment across like products, which is in line with the WTO framework wherein discrimination across like products (Technical Barriers to Trade [TBT] Article 2.1) or products from regions identical or of similar conditions prevail (Sanitary and Phyto-Sanitary [SPS] Article 2.3 and Article 5.5) is prohibited. Moreover, from a policy perspective, comparable treatment across products that are substitutes from the consumers' viewpoint, and not limited to like products, is necessary. For example, if sanitary standards are applied to fish but not to meat, this could raise the price of fish and result in the shift of consumption from fish to meat.[5] This not only distorts

[5] The increase in the price of fish is expected due to the compliance costs required to meet the standards in importing countries. Hooker and Caswell (1999) present a framework for quantifying the impact of SPS measures focused on the difference in compliance costs that domestic and foreign firms face in meeting regulatory standards. They found that increased costs on foreign producers will raise prices, reduce total demand, reduce imports, and increase domestic production in the importing country.

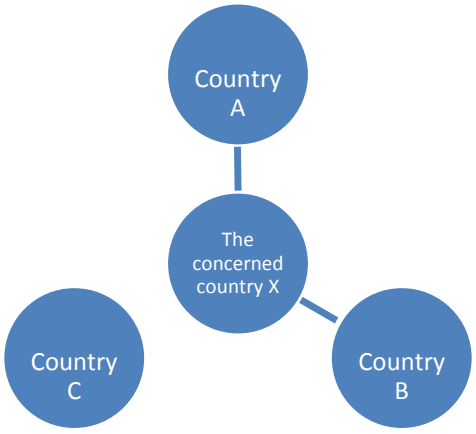
consumption patterns, but also has the potential of increasing the risk levels of food.[6] Policymakers should carefully consider possible negative effects on other products when a trade facilitation measure focusing on a certain product is applied, such as standards harmonization.

The second type of discrimination discouraged by the APEC Principle is the different treatment between domestic and foreign products and across countries, which is the main focus of this paper. While an FTA is an arrangement to provide preferential or discriminatory treatment to goods imported from one of the agreement's members, trade facilitation is fundamentally very liberal because it seeks to eliminate unnecessary barriers to trade. The APEC Principle reaffirms the significance of non-discrimination in the field of trade facilitation in terms of both national treatment and most-favored-nation (MFN) status.

When designing trade facilitation measures under an FTA framework, it is important for policymakers to consider the nature of the proposed measures, particularly whether or not the provisions have discriminatory effects on non-members. Even if the ultimate objective of trade facilitation appears to be multilateral and non-discriminatory, some trade facilitation measures under an FTA could give preferential treatment akin to tariff elimination, especially if the benefits can be enjoyed only by FTA members, or may be extended to non-FTA members only under certain restrictions. The question here is whether goods from third countries (Country B or C) can enjoy the merit of trade facilitation measures under the FTA between Country X and Country A (Figure 1). This is referred to as discriminatory treatment. Also, policymakers should notice that the level of preferential treatment rendered by a country in each FTA in which it is engaged in is not the same for all partners. Country X, a common partner, may render much better treatment in terms of trade facilitation of goods from Country A than goods from Country B, even if both Country A and Country B have an FTA with Country X. This is referred to as differentiated trade facilitation treatment. The analyses below provide a more detailed explanation of discriminatory and differentiated trade facilitation treatment under FTAs.

[6] Another example would be the case of the dispute over asbestos and non-asbestos substitute products in which Canada argued that the asbestos it exports was a like product to the substitute non-asbestos products used in France, therefore deserving no less favorable treatment under the national treatment obligation of Article III:4 of GATT 1994 (Ekins and Vanner, 2009). The appellate body considered consumers' tastes and habits significant in determining "likeness." Further, the body considered the extent to which consumers perceive and treat the products as alternative means of performing particular functions in order to satisfy a particular want or demand.

Figure 1: Discriminatory and Differentiated Treatment under FTAs



Discriminatory treatment. Only goods from Country A and X can enjoy the benefit of trade facilitation measures under the FTA between Country X and Country A. Goods from Country B and Country C cannot enjoy the benefits, or may do so only under restrictive conditions.

Differentiated treatment. Country X renders different trade facilitation treatment to goods from Country A vs. goods from Country B, even if both have an FTA with Country X.

FTA = free trade agreement.
Note: Country X has an FTA with Country A and Country B, but not with Country C.

Source: Authors' diagram.

2.1 Discriminatory Treatment between Members and Non-Members

When trade facilitation measures under an FTA are by nature non-exclusive, which is one of the two conditions of a public good,[7] the benefits can be enjoyed even by non-FTA members. Such measures cannot avoid a free-rider problem because they cannot be made exclusive from the beginning. The same treatment for members and non-members is guaranteed by the non-exclusivity of the measures. This kind of trade facilitation measures is emphasized in existing studies, which argue that most regional trade facilitation measures also benefit non-members.

A customs transparency provision is a typical example of a measure that is non-exclusive by nature. An FTA requiring members to publish customs procedures (e.g., in print or on the internet) makes the information available to non-members too. Another scenario is one in which parties agree to adopt or incorporate existing commitments under international conventions (e.g., the Revised Kyoto Convention) or international standards (e.g., Codex Alimentarius Commission), and respect the rights and obligations of the parties in these international conventions in setting the FTA trade regime between them.

If certain trade facilitation measures under an FTA have exclusivity, FTA parties have two choices in terms of the application of such measures: (i) extend the application of measures to non-members or (ii) limit the application of measures to members only. It is

[7] The other condition of a public good is that it is non-rival.

important to note that the exclusivity of measures does not guarantee different treatment between members and non-members. By way of policymaking, it is possible to make the exclusive measures open for non-members to enjoy. When trade facilitation measures under an FTA are extended to non-members, such a situation is non-discriminatory. The same treatment between members and non-members can, therefore, be achieved through policy.

The following is an illustration of the extension to non-members of trade facilitation measures under an FTA. Preferential treatment occurs when a certain FTA member that initially required ten documents for customs clearance from all of its trade partners decides to reduce documentary requirements to five for FTA partners only. But at the same time, under this situation, the FTA member can also reduce the number of required documents for non-members to five—the same as that for FTA partners. This would be the case if FTA members conducted a unilateral reform of customs procedures upon signing the FTA. The FTA may, therefore, bring about non-discriminatory trade facilitation reform.

The discriminatory treatment between members and non-members exists when FTA countries decide not to extend the application of measures to non-members. An actual reform through an FTA can be said to be discriminatory if, for example, the required documents for customs clearance are reduced for FTA partners only, while those for non-FTA members remain unchanged.

2.2 Differentiated Treatment Across FTAs

An FTA partner engaging in different FTAs cannot guarantee the same trade facilitation measures and benefits across partners in different FTAs. Trade facilitation measures offered by one country under a certain FTA can be different from trade facilitation measures offered by the same country to another partner in another FTA. In other words, trade facilitation measures covered by different FTAs are not necessarily harmonized, even if there are common members. In some cases, trade facilitation measures covered by a specific FTA in which a certain country is a member could be more liberal than those included in another FTA in which the same country is also a member. This type of discriminatory trade facilitation treatment existing across FTAs with a common FTA partner is known as a differentiated trade facilitation measure.

For example, a country, which requires ten documents for customs clearance against all trade partners, may request five documents from one FTA partner in one FTA, and may accept a single document from another partner in a different FTA. The possible explanation here is the degree of readiness and willingness of different FTA partners to comply with the trade facilitation measures espoused by an FTA member with multiple FTAs.

The differentiated treatment of trade partners across FTAs is a problem intrinsic to trade facilitation. In tariff elimination, at least there is a fundamental objective: an FTA should eliminate tariffs on "substantially all" trade, as stipulated in Article XXIV of the General Agreement on Tariffs and Trade (GATT). While there are issues that allow different treatments in the field of tariffs, such as products included in a sensitive list and rules of

origin, the underlying objective is to abolish all tariffs among FTA members. In short, as far as tariff policies are concerned, an FTA is basically an all-or-nothing proposition, leaving minimal discretion to FTA contracting parties. In contrast, trade facilitation measures can be tailor-made to suit the contracting parties since there is no constraint under the WTO system on the measures that can be adopted by FTAs. The lack of a multilateral guideline on trade facilitation has resulted in differentiated measures across FTAs. As discussed above, even FTAs with common members do not guarantee harmonized measures.

3. Examples of Trade Facilitation Provisions in FTAs: Comparing Discriminatory and Non-Discriminatory Cases

There is no strict test for determining whether a certain trade facilitation provision contributes to or hinders the objectives of multilateralism. Non-discriminatory principles in trade facilitation can be expressly or implicitly superseded by more specific provisions in the FTA, operational guidelines between the contracting partners, or implementing rules and regulations of customs and other border agencies.

Below is a review of trade facilitation provisions in FTAs in Asia and the Pacific. The review assesses the discriminatory elements included in trade facilitation measures under FTAs, citing actual trade facilitation provisions.[8]

3.1 Transparency

Transparency provisions in FTAs are, in general, multilateral-friendly since pertinent information is readily made available to all interested persons. In the context of trade facilitation, transparency includes the availability of trade-related laws and regulations, establishment of enquiry points, intervals between publication and implementation of trade laws and regulations, prior consultation on new or amended rules, and effective appeal mechanisms (ADB and ESCAP, 2009).

Many FTA provisions on transparency incorporate an important principle of trade facilitation, which addresses the differing and sometimes arbitrary interpretation of laws by customs and border officials. The effects of those transparency provisions are usually non-discriminatory. A clear case of a non-discriminatory transparency measure is provided in the Association of Southeast Asian Nations (ASEAN)–Japan Comprehensive Economic Partnership Agreement (CEPA).

> **ASEAN–Japan CEPA, Chapter 1 General Provision, Article 4 Transparency**
> 1. Each Party shall, in accordance with its laws and regulations, make publicly available its laws, regulations, administrative procedures …
> 2. Each Party shall make publicly available the names and addresses of the competent authorities responsible for laws, regulations, administrative procedures...

[8] Underscoring supplied by the authors to identify and illustrate differences in trade facilitation provisions in FTAs.

In other FTAs, obligations related to publication surpass what is required by the WTO. Making relevant trade information available on the internet is one such example. This is also a non-exclusive action because non-members can access the information online.

> **Pakistan–People's Republic of China (PRC) FTA, Chapter 3 National Treatment and Market Access for Goods, Article 9 Administrative Fees and Formalities**
> Each Party shall make available through the Internet or a comparable computer-based telecommunications network a list of the fees and charges and changes thereto levied by the central/federal Government, as the case may be, thereof in connection with importation or exportation.

How is it discriminatory? It should be noted that transparency requirements are sometimes included in other chapters of an FTA such as under SPS and TBT. These provisions usually replicate the obligations set in the SPS and TBT agreements, and thus are non-discriminatory, but some WTO-plus requirements could be discriminatory.

> **PRC–Singapore FTA, Chapter 7 TBT and SPS, Article 54**
> Parties shall notify each other through their respective TBT and SPS enquiry points, under the TBT Agreement and the SPS Agreement, of any new technical regulation and SPS measure related to the trade of products in accordance with the TBT Agreement and the SPS Agreement, or any change to them. Each Party shall allow at least sixty (60) days for the other Party to present comments in writing on any notification except where considerations of health, safety, environmental protection, or national security arise or threaten to arise to warrant more urgent action.

The first half of this provision is essentially non-discriminatory because the clause only obliges the FTA members to notify their partners at the same time that they notify WTO members. However, as to the second half, the 60-day commenting period is guaranteed only to the FTA partner. Given that TBT Agreement Article 2.9.4 and SPS Agreement Annex B 5 (d) request that WTO members allow reasonable time for other members to make comments, the unilateral application of the 60-day commenting period seems to be a more liberal approach.

Furthermore, some WTO-plus transparency provisions in TBT and SPS, such as participation, may be more clearly restricted to FTA members. Although the development of a country's standards regarding trade facilitation is closely related to national sovereignty, outside parties can assume direct influence so long as they are granted national treatment. The provision of national treatment in the Australia–United States (US) FTA is a good example.

> **Australia–US FTA, Chapter 8 TBT, Article 8.7 Transparency**
> 1. Each Party shall allow persons of the other Party to participate in the development of standards, technical regulations, and conformity assessment procedures on terms no less favourable than those accorded to its own persons.

This provision is certainly WTO-plus and contributes to a higher level of transparency, because parties outside the country (so long as they are geographically covered by the FTA) can also participate in the formulation process of standards. However, participation is enjoyed only by the parties to the FTA as well as non-governmental bodies in their

respective territories.[9] The privilege thus becomes exclusive to contracting parties of the FTA.

3.2 Customs Procedures

Despite the notion that any reform of customs procedures by one country can benefit all countries irrespective of the existence of an FTA, most provisions on simplification of customs procedures in FTAs are usually applicable to members only. Perhaps, one of the few examples that does not limit the application of prompt customs procedures is the ASEAN-Australia-New Zealand (NZ) FTA.

> **ASEAN–Australia–NZ FTA, Chapter 4 Customs Procedures, Article 1 Objectives**
> The objectives of this Chapter are to:
> a. ensure predictability, consistency and transparency in the application of customs laws and regulations of the Parties;
> b. promote efficient, economical administration of customs procedures, and the expeditious clearance of goods;
> c. simplify customs procedures; and
> d. promote cooperation among the customs administrations of the Parties.

The important point here is that this FTA does not limit the application scope of prompt customs procedures (cf. ASEAN-Japan CEPA below). It is critical for policymakers to acknowledge that the fundamental goal of customs reform is to expedite customs procedures for all goods, not only for goods traded between FTA members.

Express shipment refers to expediting the clearance of goods through pre-arrival information processing; acceptance of a single manifest or document; and submission thereof through electronic means, if possible. Express shipment is critical to trade facilitation because it can significantly reduce the amount of time spent crossing a border. While only goods traded between parties can use express shipment, most express shipment provisions mention the importance of the efficient clearance of all shipments. (This is not the case with all such provisions, however, as evident in the US–Republic of Korea (Korea) FTA discussed below.) The US–Singapore FTA is a good example because it recognizes that express shipment is a second-best option. It can be said that the US–Singapore FTA has a better approach to express shipment from the perspective of non-members.

> **US–Singapore FTA, Chapter 4 Customs Administration, Article 4.10 Express Shipments**
> Each Party shall ensure efficient clearance of all shipments, while maintaining appropriate control and customs selection. In the event that a Party's existing system does not ensure efficient clearance, it should adopt procedures to expedite express shipments. Such procedures shall:
> (e) allow, in normal circumstances, for an express shipment to be released within six hours of the submission of necessary customs documentation.

[9] Australia–US Free Trade Agreement Article 8.7, paras 1–2.

How is it discriminatory? Most provisions on customs procedure in FTAs state that customs procedures should be simplified for goods traded between contracting parties, rather than encompassing "all goods or shipments."

> **ASEAN–Japan CEPA, Chapter 2 Trade in Goods, Article 22 Customs Procedures**
> 3. For prompt customs clearance of goods traded among the Parties, each Party, recognizing the significant role of customs authorities and the importance of customs procedures in promoting trade facilitation, shall endeavor to:
> (a) simplify its customs procedures; and …

When express shipment is covered by FTAs, the prescribed level of speed is applicable to goods traded between members only, and is thus discriminatory. Further, differentiated treatment in terms of the speed of customs clearance across FTAs can become an issue due to different stipulated time limitations prescribed for the different FTA partners of a country. Given the resources of US customs, for example, different time requirements across FTAs in terms of express shipment is not a large problem. However, for less developed countries, it is more efficient to stick to a single expedited amount of time to avoid maintaining several lanes—regular lanes, express lanes, super-express lanes—which would entail additional administrative costs.

> **US–Korea FTA, Chapter 7 Customs Administration and Trade Facilitation, Article 7.7 Express Shipments**
> Each Party shall adopt or maintain expedited customs procedures for express shipments while maintaining appropriate customs control and selection. These procedures shall:
> (e) under normal circumstances, provide for clearance of express shipments within four hours after submission of the necessary customs documents, provided the shipment has arrived.

3.3 Exemption of Fees on Digital Products

Fees are among the critical factors that affect the cost of importation and exportation. GATT Article VIII stipulates that all fees and charges in connection with importation and exportation shall be limited in amount to the approximate cost of services rendered. This does not constrain FTA members to introduce the concessionary fees or exemption of fees to FTA members. The clause providing for non-application or exemption from duties, fees, and other charges is an example of a trade facilitation provision with the same discriminatory effect as a tariff exemption.

Exemption of fees is seldom applicable across the board. Fees can be waived only when certain goods are traded through a certain method.[10] Many FTAs stipulate that when digital products—computer programs, text, video, images, sound recordings, and other products that are digitally encoded—are traded via electronic transmission, fees are exempted.[11]

[10] For an analysis of digital products provisions in FTAs, particularly the implication for customs valuation and taxation, see Cannistra and Cuadros (2009).

[11] US–Singapore FTA, Chapter 14, Article 14.4.

The question is whether or not the application of this provision is, in practice, liberal or restrictive. The provision is very liberal if the FTA applies fee exemption on the trade of digital products by electronic transmission regardless of their origin. The US–Singapore FTA is a good example in the sense that digital products produced outside the FTA also qualify for fee exemption.[12]

> **US–Singapore FTA, Chapter 14 Electronic Commerce, Article 14.3 Digital Products**
> 1. A Party shall not apply customs duties or other duties, fees, or charges on or in connection with the importation or exportation of digital products by electronic transmission.
> 3. A Party shall not accord less favorable treatment to some digital products than it accords to other like digital products:
> (a) on the basis that
> (i) the digital products receiving less favorable treatment are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms, outside its territory; or
> (ii) the author, performer, producer, developer, or distributor of such digital products is a person of the other Party or a non-Party, …
> 4. (a) A Party shall not accord less favorable treatment to digital products created … in the territory of the other Party than it accords to like digital products created … in the territory of a non-Party.
> (b) A Party shall not accord less favorable treatment to digital products whose author … is a person of the other Party than it accords to like digital products whose author … is a person of a non-Party.

How is it discriminatory? While the digital product provisions in the US–Singapore FTA are very liberal, those contained in the Korea–Singapore FTA limit the application of fee exemptions to digital products that are created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the FTA partner's territory.

> **Korea–Singapore FTA, Chapter 14 Electronic Commerce, Article 14.4 Digital Products**
> 1. Each Party shall not apply customs duties or other duties, fees, or charges on or in connection with the importation or exportation of a digital product of the other Party by electronic transmission.
> 3. A Party shall not accord less favourable treatment to a digital product than it accords to other like digital products:
> (a) on the basis that:
> (i) the digital product receiving less favourable treatment is created, produced, published, stored, transmitted, contracted for, commissioned, or first made available on commercial terms in the territory of the other Party; or
> (ii) the author, performer, producer, developer, or distributor of such digital product is a person of the other Party, …

[12] Singapore–Australia FTA Chapter 14, Article 3 and Korea–Singapore FTA Article 14.4 have similar provisions.

3.4 Origin Administration for Preferential Tariff Treatment

Origin administration provisions in FTAs are meant to ease the procedure for establishing the origin of goods. Establishing the origin of the goods in question is necessary for claims of preferential tariff treatment. This is precisely the reason why origin provisions are usually enjoyed only by FTA partners. However, the degree of ease in obtaining a certificate of origin for claims of preferential tariff varies across FTAs. Therefore, the issue here is differentiated treatment across FTAs.

In some FTAs, a certificate of origin shall be issued by government authorities (e.g., under the ASEAN–PRC FTA). A more liberal approach to the issuance of a certificate of origin would be to allow relevant parties designated by the government, such as associations, to issue the certificate (e.g., under the ASEAN–Japan CEPA).

> **Framework Agreement on ASEAN–PRC FTA, Annex 3 Rules of Origin for the ASEAN–PRC FTA, Attachment A**
> Rule 1: The Certificate of Origin shall be issued by the Government authorities of the exporting Party.
>
> **ASEAN–Japan CEPA, Annex 4 Operational Certification Procedures**
> Rule 2: Issuance of Certificate of Origin
> 1. The competent governmental authority of the exporting Party shall, upon request made in writing by the exporter or its authorized agent, issue a CO or, under the authorization given in accordance with the applicable laws and regulations of the exporting Party, may designate other entities or bodies (hereinafter referred to as "designees") to issue a CO.

A "self certificate" is the most liberal approach to establishing origin. Self-certification, or certification that emanates from the traders as a means of application for preferential treatment, is certainly less burdensome than an application for a certificate of origin emanating from government authorities. A certificate can usually be issued by importers, but under some FTAs, exporters can also issue them.

> **ASEAN Free Trade Area (AFTA), Annex 8 Operational Certification Procedure for the Rules of Origin under Chapter 3, Rule 5 Application for Certificate of Origin**
> At the time of carrying out the formalities for exporting the products under preferential treatment, the exporter or his authorized representative shall submit a written application for the Certificate of Origin (Form D) together with appropriate supporting documents proving that the products to be exported qualify for the issuance of a Certificate of Origin (Form D).
>
> **Malaysia–NZ FTA, Annex 3 Procedures and Verifications, Article 1 Declaration of Origin**
> 1. A claim that goods are eligible for preferential tariff treatment shall be supported by a declaration as to the origin of a good from the exporter or producer.
>
> **US–Singapore FTA, Chapter 3 Rules of Origin, Article 3.13: Claims for Preferential Treatment**
> 1. Each Party shall provide that an importer may make a claim for preferential treatment under this Agreement based on the importer's knowledge or on information in the importer's possession that the good qualifies as an originating good.

Further, other FTAs waive the application for the certificate of origin for any consignment of goods below the defined customs value, ranging from a ceiling of US$200 to over US$2,000 free on board (FOB). The varying thresholds for a certificate of origin exemption in FTAs can also be discriminatory between partners of a country with multiple FTAs.[13] Under AFTA, for example, if the export value (FOB) does not exceed US$200, Form D (certificate of origin for claims of preferential treatment) is waived. Instead of Form D, a simplified declaration by the exporter that the goods have originated in the exporting member state will be accepted.

> **AFTA Common Effective Preferential Tariff (CEPT), Annex 8 Operational Certification Procedure for the Rules of Origin under Chapter 3, Rule 15 Waiver of Certificate of Origin**
> In the case of consignments of goods originating in the exporting Member State and not exceeding US$200 FOB, the production of Certificate of Origin (Form D) shall be waived and the use of simplified declaration by the exporter that the goods in question have originated in the exporting Member State will be accepted. Goods sent through the post not exceeding US$200 FOB shall also be similarly treated.
>
> **Japan–Singapore EPA, Article 29 Claim for Preferential Tariff Treatment**
> 1. … the importing Party shall not require a certificate of origin form importers for:
> (a) an importation of a consignment of a good whose aggregate customs value does not exceed JPY200,000 or its equivalent amount.[14]

3.5 Conformity Assessment of Standards

SPS and TBT are at the core of behind-the-border issues in a broader definition of trade facilitation. In view of this, some FTAs try to achieve the harmonization of product standards and/or mutual recognition[15] of each other's standards, despite the inherent difficulty. [16] Alternatively, some FTAs provide for mutual recognition of conformity assessment of standards, which is relatively easier than mutual recognition of standards and thus has great potential for trade facilitation.

ASEAN member countries signed a framework on mutual recognition arrangements (MRAs) in 1998. A few years later, sectoral MRAs were agreed upon for electrical and electronic equipment,[17] telecommunications,[18] and cosmetics.[19] ASEAN MRAs require

[13] Under US$200 FOB for AFTA, ASEAN–PRC FTA, ASEAN–Japan CEPA; under US$600 FOB for PRC–Singapore FTA and PRC–Chile FTA; and under US$1,000 FOB for Japan–Mexico FTA, Japan–Malaysia EPA, and Korea–Singapore FTA.

[14] JPY200,000 is equivalent to US$2350 (US$1 is roughly JPY85 as of June 2010).

[15] Mutual recognition arraignments (MRAs) are arrangements between two or more parties to mutually recognize or accept some or all aspects of one another's conformity assessment results (e.g., test reports and certificates of compliance).

[16] Under the Singapore–Australia FTA, "a Party shall accept a food standard of the other Party as equivalent even if the standard differs from its own… [if such] achieves the purposes of the importing Party's food standard" (Food Sectoral Annex 3.1.1).

[17] ASEAN sectoral MRAs for Electrical and Electronic Equipment (EEE), signed in April 2002, and for ASEAN Harmonized Electronic Equipment Regulatory Scheme, signed in December 2005.

[18] To date, MRAs have been entered into between Singapore and Indonesia, Singapore and Brunei, and

parties to accept the test reports and certifications issued by the testing laboratories and certification bodies of the other parties.[20] This reduces, if not eliminates, duplicate testing and certification requirements in all ASEAN territories.[21]

Furthermore, the MRA on electrical and electronic equipment (EEE) provides an extremely liberal approach to conformance assessment. ASEAN does not preclude the possibility that the conformity assessment might be conducted outside ASEAN (unlike other FTAs, such as US–Australia).

> **ASEAN Harmonized Conformity Assessment Procedures for EEE, Appendix C**
> 1.2. Test Reports and/or Certificates of Conformity issued by Conformity Assessment Bodies located outside ASEAN in compliance with the requirements of this Agreement may be accepted provided that ASEAN enters into a Mutual Recognition Agreement with the country or countries where the said Conformity Assessment Bodies are situated.

How is it discriminatory? Specific conformity assessment provisions can also be territorial in nature and hence exclusive to FTA members. This includes the national treatment in conformity assessment bodies as in the case of the US–Australia FTA, and unlike the case of AFTA mentioned above.

> **Australia–US FTA**, **Chapter 8 TBT, Article 8.6 Conformity Assessment Procedures**
> 3. Each Party shall accredit, approve, license, or otherwise recognise conformity assessment bodies in the territory of the other Party on terms no less favourable than those it accords to conformity assessment bodies in its territory…

Japan's Economic Partnership Agreements (EPA) with Singapore, the Philippines, and Thailand feature a case of differentiated treatment of conformity assessment bodies across different FTA partners. It can be argued that the first EPA is more liberal than the latter two. The Japan–Singapore EPA allows the designation of conformity assessment bodies (CABs) by the host country and registration with the other party. This means that both Singapore and Japan only need to register under this agreement the CABs that each of their designating authorities assigned to issue certificates of conformity. In contrast, the Japan–Philippines EPA and Japan–Thailand EPA require that CABs issuing certificates of conformity assessments in the Philippines and Thailand must be accredited by the Japanese government.

> **Japan–Singapore EPA, Chapter 6 Mutual Recognition, Article 46 General Obligations**[22]
> Each party shall accept, in accordance with the provisions of this Chapter, the results of conformity assessment procedures required by the applicable laws, regulations and

---

Singapore and Malaysia.

19 ASEAN Harmonized Cosmetic Regulatory Scheme, signed in September 2003.

20 ASEAN EEE MRA Article 3, para 1.

21 The implementation of the MRAs, however, has yet to be extended to ASEAN's external partners in ASEAN plus FTAs.

22 Singapore–Korea FTA has the same provision (Article 8.5.3). Article 53 (Registration of Conformity Assessment Bodies) of Japan–Singapore FTA stipulates the actual procedures of registration.

administrative provisions of that Party specified in the relevant Sectoral Annex, including certificates and marks of conformity, that are conducted by the registered conformity assessment bodies of the other Party.

Japan–Philippines EPA, Chapter 6 Mutual Recognition, Article 60 General Obligations[23]

Each Party shall, in accordance with the provisions of this Chapter, permit participation of conformity assessment bodies of the other Party, in the system of the former Party providing for conformity assessment procedures and shall accept the results of conformity assessment procedures required by its applicable laws, regulations and administrative provisions specified in the relevant Sectoral Annex, including certificates of conformity, that are conducted by the conformity assessment bodies of the other Party registered by the Registering Authority of the former Party.

The Japan–Singapore EPA's MRA has wider coverage than the Japan–Philippines EPA. Under the former, the mutual recognition of conformity assessments includes electrical products, telecommunications terminal equipment, and radio equipment (Annex III, Sectoral Annex), while under the later two EPAs, the mutual recognition covers only electrical products (Annex 4 of each EPA).

4. Policy Recommendations: Minimizing Negative Effects of Trade Facilitation under FTAs

An FTA aims principally to promote international trade by eliminating tariffs between or among its members. By nature, an FTA offers preferential tariff treatment to FTA members only. Therefore, whether an FTA is a building block or stumbling block to a multilateral trading system is a critical question for trade economists (Bhagwati, 1995).[24]

Similarly, trade facilitation measures can be enjoyed, in most cases, by FTA members only. These measures have negative effects on non-members just as tariff elimination has a negative effect (e.g., trade diversion). Although the relationship between regionalism and multilateralism in the field of trade facilitation merits equal attention to that in tariff elimination, the systemic problem regarding trade facilitation seems to have been overlooked by both policymakers and international trade theorists. While GATT Article XXIV sets three conditions[25] for tariff elimination among FTA members, there is no equivalent guideline in the field of trade facilitation.

[23] Japan–Thailand EPA has a similar provision (Chapter 6 Article 62).

[24] Proponents, while recognizing FTAs as being second-best to multilateralism, argue that FTAs generate large trade creation effects. Critics of regionalism through FTAs focus on the significant trade diversion effects and caution that FTAs could lead to a decline in global welfare. The building block vs. stumbling block debate on trade liberalization remains.

[25] Three conditions stipulated in GATT Article XXIV are: (i) substantially all the trade should be covered by the FTA (GATT XXIV-8), (ii) the FTA should be formed within a reasonable time frame (GATT XXIV-5c), and (iii) trade barriers against non-FTA members should not be higher or more restrictive than those prior to the formation of the FTA (GATT XXIV-5a).

It is critical for policymakers to consider the impact on non-members of trade facilitation measures under FTAs, particularly measures that may have discriminatory elements against non-members. The best scenario is to multilateralize or extend the application of trade facilitation measures under the FTA to all non-members. If there is a need to implement trade facilitation measures that can be enjoyed only by FTA partners, then the second-best policy is to minimize the negative effects against non-FTA members. At the same time, differentiated treatment—in terms of trade facilitation measures across FTAs with common partners—should also be considered. Therefore, it is important that negotiators and policymakers consider the three questions or issues listed below in designing trade facilitation measures in FTAs.

Can trade facilitation measures under an FTA be multilateralized? When FTA members introduce trade facilitation measures that can be enjoyed only by partners, it is important to justify such measures. For example, as we have seen, when an FTA allows parties of member countries to participate in the formulation process of new standards with a national treatment status, it is critical to carefully examine why such a treatment cannot be granted to parties of non-member countries. Likewise, when an FTA allows CABs in an FTA partner's territory to conduct a conformity assessment test, it is critical to consider why a test conducted by CABs outside the FTA territory would not be acceptable. In short, FTA countries should make every effort to multilateralize or implement the same trade facilitation measures across all countries. Listed below are illustrative examples of multilateralizing trade facilitation measures originally targeted at FTA partners.

(i) When FTA members allow parties of FTA member countries to participate in the standards formulation process, the members must consider why parties in non-member countries cannot get involved in the process.

(ii) When FTA members reduce the number of required documents for FTA partners, the members must consider why it may be impossible to apply the same measures to non-FTA partners.

(iii) When FTA members introduce concessional fees to FTA partners, the members must consider why the same fees cannot be made applicable to non-FTA partners.

(iv) When FTA members agree with the mutual recognition of conformity assessment, the members should consider why the testing laboratory should be located in the territory of FTA members.

Does the treatment of non-FTA partners become worse-off? When an FTA introduces trade facilitation measures that can be enjoyed only by FTA partners, the treatment of non-FTA members must not be made worse when compared with the treatment they received before the introduction of the trade facilitation measures. One of the three conditions for FTAs stipulated under GATT Article XXIV for goods integration—trade barriers to non-members should not be reinforced when FTAs are introduced (GATT XXIV-5)—can be a helpful guideline in minimizing the negative effects of trade facilitation measures under FTAs. Some express shipment provisions introduced in this

paper, which state that the first priority is to expedite the clearance of all shipment and that express shipment is second best, are good examples of minimizing the negative effects of trade facilitation measures under FTAs.

(i) When FTA members decide to make trade rules and regulations available via a website, the members should ensure that the paper-based information is not made less efficient as a result. Paper-based information is critical for traders without internet access, especially in the least developed countries.

(ii) When FTA members introduce the express shipment system for FTA partners, this should not lead to longer customs clearance times at the lane used by non-FTA partners.

(iii) When FTA members introduce automated customs clearance systems, the existing paper clearance system for other countries (particularly least developed countries) that are unable to introduce an electronic system should, as much as possible, remain efficient or be made as efficient as the electronic system. If the paper-based system becomes less efficient because resources are reallocated to the electronic system, then this effectively creates higher barriers to trade for non-members.

Is it possible to introduce an MFN clause in trade facilitation provisions under FTAs? When a country has FTAs with various countries, it is important to consider the consistency of trade facilitation measures included in each FTA. If one country renders differentiated trade facilitation treatment across various FTA partners, this may sometimes cause confusion. The distinction of goods from FTA-partner and non-partners seems to be more straightforward than the situation in which a country has different rules for each FTA partner.

(i) When a country with multiple FTAs introduces express shipment, it may be advisable to have one express shipment lane for all FTA partners. For example, having a regular lane (for non-FTA partners), express lane (for certain FTA partners), and a super-express lane (for other FTA partners) makes the overall process complicated and inefficient.

(ii) When FTA members accept self certificate under a certain FTA, but require a certificate issued by government authorities under another FTA, origin administration may become complicated from a business perspective. Different threshold values for the exemption of submitting certificates across FTAs may also be confusing for traders.

To a considerable degree, the problem resulting from differentiated trade facilitation treatment measures across FTAs with common partners can be solved through the introduction of automatic MFN status in terms of trade facilitation. In fact, some FTAs provide for automatic MFN wherein a party is obliged to extend to its existing FTA partners any future trade liberalization or facilitation measures offered to WTO members, as well as preferential treatment accorded to future FTA partners. Using tariff rates as an

example, in cases where the agreed FTA rate is higher than the MFN rate, the MFN rate is automatically adopted in the FTA. The automatic MFN clause is also adopted in trade facilitation where the parties state that if they agree to use certain trade facilitation principles or mechanisms with any non-party or future FTA partner, such as a back-to-back certificate of origin or third party invoicing, then these principles should be automatically incorporated in the FTA.

> **India–Singapore CECA[26] Annex I**
> The Parties confirm…that in the event that India adopts and implements the usage and concepts of De Minimis and Outward Processing in any bilateral, regional, or global trade agreement with any third party or parties, India shall adopt and implement the same usage and concepts…for the Agreement.

5. Conclusion

Are trade facilitation measures under FTAs discriminatory? This study tackled the question by providing detailed empirical analysis on whether or not trade facilitation provisions in FTAs are exclusive to contracting FTA partners, and how the measures can be discriminatory against non-members. This study also analyzed the implications of differentiated trade facilitation treatment across various FTAs. The analysis found that despite the multilateral scope and non-discriminatory objectives of trade facilitation measures, some trade facilitation measures under FTAs may actually be discriminatory, with the same impact as preferential tariff elimination.

In summary, designers of trade facilitation provisions in FTAs need to consider (i) whether or not discriminatory trade facilitation treatment between FTA members and non-members is necessary, and (ii) how to avoid or minimize any negative impacts on non-members of introducing trade facilitation measures under FTAs. Furthermore, applying the same trade facilitation treatment across various FTA partners, rather than different treatment for different FTA partners, significantly contributes to easing the administration of the flow of goods across borders.

[26] Comprehensive Economic Cooperation Agreement.

References

ADB. 2008. How to Design, Negotiate, and Implement a Free Trade Agreement in Asia. Available at: http://www.aric.adb.org/

ADB and United Nations Economic and Social Commission for Asia and the Pacific. 2009. Designing and Implementing Trade Facilitation in Asia and the Pacific. Available at: http://www.aric.adb.org/

J. E. Anderson and E. van Wincoop. 2004. Trade Cost. *Journal of Economic Literature.* 42 (3). pp. 691–751.

J. Bhagwati. 1995. US Trade Policy: The Infatuation with Free Trade Areas. In J. Bhagwati and A. O. Krueger, eds. *The Dangerous Drift to Preferential Trade Agreements.* Washington, DC: The AEI Press. pp. 1–18.

P. Bin. 2008. *Trade Facilitation Provisions in Regional Agreements in Asia and the Pacific.* Available at: http://www.unescap.org/tid/publication/swp108.pdf

D. Cannistra and M.A.R. Cuadros. 2009. Digital Convergence and Electric Commerce: Customs and Trade Implications. *Global Trade and Customs Journal.* 5 (4). pp. 135–143.

Y. Duval and C. Utoktham. 2009. Behind the Border Trade Facilitation in Asia-Pacific: Cost of Trade, Credit Information, Contract Enforcement and Regulatory Coherence. *Trade and Investment Division, Staff Working Paper.* 02/09. Bangkok: United Nations Economic and Social Commision for Asia and the Pacific.

P. Ekins and R. Vanner. 2009. Reducing the Impacts of the Production and Trade of Commodities. In P. Ekins and T. Voituriez. eds. *Trade, Globalization and Sustainability Impact Assessment.* MapSet.

N. Hooker and J. Caswell. 1999. A Framework for Evaluating Non-Tariff Barriers to Trade Related to Sanitary and Phytosanitary Regulation. *Journal of Agricultural Economics*. 50 (2). pp. 23–46.

J-C. Maur. 2008. Regionalism and Trade Facilitation: A Primer. *Policy Research Working Paper.* 4464. Washington, DC: World Bank.

E. Moïsé. 2002. The Relationship Between Regional Trade Agreements and Multilateral Trading System: Trade Facilitation, Working Party of the Trade Committee, *TD/TC/WP(2002)17/FINAL.* Paris: Organization for Economic Co-operation and Development.

M.G. Plummer. 2007. Best Practices in Regional Trading Agreements: An Application to Asia. *World Economy.* 30 (12). pp. 1771–1796.

M. Schiff and L.A. Winters. 2003. *Regional Integration and Development*. Washington DC: The World Bank.

P. Wille and J. Redden. 2007. A Comparative Analysis of Trade Facilitation in Selected Regional and Bilateral Agreements and Initiatives in United Nations Economic and Social Commission for Asia and the Pacific's *Trade Facilitation Beyond the Multilateral Trade Negotiations: Regional Practices, Customs Valuation and Other Emerging Issues.*

J.S. Wilson, C.L. Mann, and Otsuki T. Assessing the Benefits of Trade Facilitation: A Global Perspective. *The World Economy.* 28 (6). pp. 841–871.

ADB Working Paper Series on Regional Economic Integration*

1. “The ASEAN Economic Community and the European Experience” by Michael G. Plummer

2. “Economic Integration in East Asia: Trends, Prospects, and a Possible Roadmap” by Pradumna B. Rana

3. “Central Asia after Fifteen Years of Transition: Growth, Regional Cooperation, and Policy Choices” by Malcolm Dowling and Ganeshan Wignaraja

4. “Global Imbalances and the Asian Economies: Implications for Regional Cooperation” by Barry Eichengreen

5. “Toward Win-Win Regionalism in Asia: Issues and Challenges in Forming Efficient Trade Agreements” by Michael G. Plummer

6. “Liberalizing Cross-Border Capital Flows: How Effective Are Institutional Arrangements against Crisis in Southeast Asia” by Alfred Steinherr, Alessandro Cisotta, Erik Klär, and Kenan Šehović

7. “Managing the Noodle Bowl: The Fragility of East Asian Regionalism” by Richard E. Baldwin

8. “Measuring Regional Market Integration in Developing Asia: a Dynamic Factor Error Correction Model (DF-ECM) Approach” by Duo Qin, Marie Anne Cagas, Geoffrey Ducanes, Nedelyn Magtibay-Ramos, and Pilipinas F. Quising

9. “The Post-Crisis Sequencing of Economic Integration in Asia: Trade as a Complement to a Monetary Future” by Michael G. Plummer and Ganeshan Wignaraja

10. “Trade Intensity and Business Cycle Synchronization: The Case of East Asia” by Pradumna B. Rana

11. "Inequality and Growth Revisited" by Robert J. Barro

12. "Securitization in East Asia" by Paul Lejot, Douglas Arner, and Lotte Schou-Zibell

13. "Patterns and Determinants of Cross-border Financial Asset Holdings in East Asia" by Jong-Wha Lee

14. "Regionalism as an Engine of Multilateralism: A Case for a Single East Asian FTA" by Masahiro Kawai and Ganeshan Wignaraja

15. "The Impact of Capital Inflows on Emerging East Asian Economies: Is Too Much Money Chasing Too Little Good?" by Soyoung Kim and Doo Yong Yang

16. "Emerging East Asian Banking Systems Ten Years after the 1997/98 Crisis" by Charles Adams

17. "Real and Financial Integration in East Asia" by Soyoung Kim and Jong-Wha Lee

18. “Global Financial Turmoil: Impact and Challenges for Asia’s Financial Systems” by Jong-Wha Lee and Cyn-Young Park

19. “Cambodia’s Persistent Dollarization: Causes and Policy Options” by Jayant Menon

20. "Welfare Implications of International Financial Integration" by Jong-Wha Lee and Kwanho Shin

21. "Is the ASEAN-Korea Free Trade Area (AKFTA) an Optimal Free Trade Area?" by Donghyun Park, Innwon Park, and Gemma Esther B. Estrada

22. "India’s Bond Market—Developments and Challenges Ahead" by Stephen Wells and Lotte Schou- Zibell

23. “Commodity Prices and Monetary Policy in Emerging East Asia” by Hsiao Chink Tang

24. "Does Trade Integration Contribute to Peace?" by Jong-Wha Lee and Ju Hyun Pyun

25. “Aging in Asia: Trends, Impacts, and Responses” by Jayant Menon and Anna Melendez-Nakamura

26. “Re-considering Asian Financial Regionalism in the 1990s” by Shintaro Hamanaka

27. “Managing Success in Viet Nam: Macroeconomic Consequences of Large Capital Inflows with Limited Policy Tools” by Jayant Menon

28. “The Building Block versus Stumbling Block Debate of Regionalism: From the Perspective of Service Trade Liberalization in Asia” by Shintaro Hamanaka

29. “East Asian and European Economic Integration: A Comparative Analysis” by Giovanni Capannelli and Carlo Filippini

30. “Promoting Trade and Investment in India’s Northeastern Region” by M. Govinda Rao

31. "Emerging Asia: Decoupling or Recoupling" by Soyoung Kim, Jong-Wha Lee, and Cyn-Young Park

32. “India’s Role in South Asia Trade and Investment Integration” by Rajiv Kumar and Manjeeta Singh

33. “Developing Indicators for Regional Economic Integration and Cooperation” by Giovanni Capannelli, Jong-Wha Lee, and Peter Petri

34. “Beyond the Crisis: Financial Regulatory Reform in Emerging Asia” by Chee Sung Lee and Cyn-Young Park

35. "Regional Economic Impacts of Cross-Border Infrastructure: A General Equilibrium Application to Thailand and Lao PDR" by Peter Warr, Jayant Menon, and Arief Anshory Yusuf

36. "Exchange Rate Regimes in the Asia-Pacific Region and the Global Financial Crisis" by Warwick J. McKibbin and Waranya Pim Chanthapun

37. “Roads for Asian Integration: Measuring ADB's Contribution to the Asian Highway Network” by Srinivasa Madhur, Ganeshan Wignaraja,and Peter Darjes

38. "The Financial Crisis and Money Markets in Emerging Asia" by Robert Rigg and Lotte Schou-Zibell

39. “Complements or Substitutes? Preferential and Multilateral Trade Liberalization at the Sectoral Level” by Mitsuyo Ando, Antoni Estevadeordal, and Christian Volpe Martincus

40. “Regulatory Reforms for Improving the Business Environment in Selected Asian Economies—How Monitoring and Comparative Benchmarking can Provide Incentive for Reform” by Lotte Schou-Zibell and Srinivasa Madhur

41. “Global Production Sharing, Trade Patterns, and Determinants of Trade Flows in East Asia” by Prema–Chandra Athukorala and Jayant Menon

42. “Regionalism Cycle in Asia (-Pacific): A Game Theory Approach to the Rise and Fall of Asian Regional Institutions” by Shintaro Hamanaka

43. “A Macroprudential Framework for Monitoring and Examining Financial Soundness” by Lotte Schou-Zibell, Jose Ramon Albert, and Lei Lei Song

44. “A Macroprudential Framework for the Early Detection of Banking Problems in Emerging Economies” by Claudio Loser, Miguel Kiguel, and David Mermelstein

45. “The 2008 Financial Crisis and Potential Output in Asia: Impact and Policy Implications” by Cyn-Young Park, Ruperto Majuca, and Josef Yap

46. “Do Hub-and-Spoke Free Trade Agreements Increase Trade? A Panel Data Analysis” by Jung Hur,Joseph Alba,and Donghyun Park

47. “Does a Leapfrogging Growth Strategy Raise Growth Rate? Some International Evidence” by Zhi Wang, Shang-Jin Wei, and Anna Wong

48. “Crises in Asia: Recovery and Policy Responses” by Kiseok Hong and Hsiao Chink Tang

49. "A New Multi-Dimensional Framework for Analyzing Regional Integration: Regional Integration Evaluation (RIE) Methodology" by Donghyun Park and Mario Arturo Ruiz Estrada

50. “Regional Surveillance for East Asia: How Can It Be Designed to Complement Global Surveillance?” by Shinji Takagi

51. "Poverty Impacts of Government Expenditure from Natural Resource Revenues" by Peter Warr, Jayant Menon, and Arief Anshory Yusuf

52. "Methods for Ex Ante Economic Evaluation of Free Trade Agreements" by David Cheong

53. “The Role of Membership Rules in Regional Organizations” by Judith Kelley

54. “The Political Economy of Regional Cooperation in South Asia” by V.V.Desai

* These papers can be downloaded from: (ARIC) http://aric.adb.org/reipapers/ or (ADB) www.adb.org/publications/category.asp?id=2805

Trade Facilitation Measures Under Free Trade Agreements: Are They Discriminatory Against Non-Members?

Are trade facilitation measures under free trade agreements (FTAs) discriminatory? This paper addresses this important question by citing both discriminatory and non-discriminatory examples of actual trade facilitation provisions in FTAs.

About the Asian Development Bank

ADB's vision is an Asia and Pacific region free of poverty. Its mission is to help its developing member countries substantially reduce poverty and improve the quality of life of their people. Despite the region's many successes, it remains home to two-thirds of the world's poor: 1.8 billion people who live on less than $2 a day, with 903 million struggling on less than $1.25 a day. ADB is committed to reducing poverty through inclusive economic growth, environmentally sustainable growth, and regional integration.

Based in Manila, ADB is owned by 67 members, including 48 from the region. Its main instruments for helping its developing member countries are policy dialogue, loans, equity investments, guarantees, grants, and technical assistance.

Asian Development Bank
6 ADB Avenue, Mandaluyong City
1550 Metro Manila, Philippines
www.adb.org/poverty
Publication Stock No.

Printed in the Philippines