

## CPD Occasional Paper Series

### **Trade Facilitation Negotiations in the WTO: Implications for Bangladesh and Other Least Developed and Developing Countries**

Paper 30

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**The Centre for Policy Dialogue (CPD)**, established in 1993, is a civil society initiative to promote an ongoing dialogue between the principal partners in the decision-making and implementing process. The dialogues are designed to address important policy issues and to seek constructive solutions to these problems. The Centre has already organised a series of such dialogues at local, regional and national levels. The CPD has also organised a number of South Asian bilateral and regional dialogues as well as some international dialogues. These dialogues have brought together ministers, opposition frontbenchers, MPs, business leaders, NGOs, donors, professionals and other functional groups in civil society within a non-confrontational environment to promote focused discussions. The CPD seeks to create a national policy consciousness where members of civil society will be made aware of critical policy issues affecting their lives and will come together in support of particular policy agendas which they feel are conducive to the well being of the country.

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The present paper titled ***Trade Facilitation Negotiations in the WTO: Implications for Bangladesh and Other Least Developed and Developing Countries***, has been prepared under the CPD programme on **Trade Policy Analysis and Multilateral Trading System**. This programme aims at strengthening institutional capacity in Bangladesh in the area of trade policy analysis, negotiations and implementation. The programme, inter alia, seeks to project the civil society's perspectives on the emerging issues emanating from the process of globalization and liberalization. The outputs of the programme will be available to all stakeholder groups including the government and policymakers, entrepreneurs and business leaders, and trade and development partners.

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## **Trade Facilitation Negotiations in the WTO: Implications for Bangladesh and Other Least Developed and Developing Countries**

### **1. Introduction**

The trade facilitation issue has become of significant importance since it was identified as one of the “new issues” in the first Ministerial Conference of the World Trade Organization (WTO) in Singapore in December 1996. The Council for Trade in Goods (CTG) of the WTO was mandated to “undertake exploratory and analytical work...on the simplification of trade procedures in order to assess the scope for WTO rules in this area.”<sup>1</sup> In the following five years that led up to the fourth WTO Ministerial Conference in Doha, Qatar, in November 2001, a great deal of such exploratory and analytical work was undertaken by the WTO and other international organizations, as well as by national governments and non-governmental organization (NGOs).

Prior to the Doha Ministerial Conference, much debate on trade facilitation took place. Most WTO Members acknowledged that overall benefits in trade facilitation could be achieved by removing inefficiencies in areas such as customs and transport. However, disagreement remained over how this should be handled under the framework of the WTO. Many developed countries favoured the creation of a new trade facilitation agreement with binding commitments under the WTO. On the other hand, many developing countries remained hesitant to include the issue in the WTO negotiations that would later subject them to the WTO dispute settlement mechanism. This was a particular point of concern in light of the fact that most developing countries lack the technical and financial capacity to implement comprehensive reforms in customs administration and other trade facilitation areas. After much debate at the 2001 Doha Ministerial Conference, WTO members were able to strike a compromise reflected in the Doha Ministerial Declaration, including the following mandate for trade facilitation:

*“Recognizing the case for further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations. In the period until the Fifth Session, the Council for Trade in Goods shall review and as appropriate, clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 and identify the trade facilitation needs and priorities of members, in particular developing and least-developed countries. We commit ourselves to ensuring adequate technical assistance and support for capacity building in this area.”<sup>2</sup>*

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<sup>1</sup> Singapore Ministerial Declaration, paragraphs 21-22, December 1996.

<sup>2</sup> Doha Ministerial Declaration paragraph 27, November 2001.

As a result, trade facilitation negotiations could be launched if WTO members reach an agreement on the negotiating modalities at the fifth WTO Ministerial Conference to be held in Cancun in September 2003. This means WTO members must agree on the scope of the negotiations on trade facilitation and how the negotiations should be conducted over the coming years.

The possible launch of trade facilitation negotiations in the WTO after the Cancun Ministerial will have profound implications for developing and least-developed countries (LDCs) in the WTO. For most LDCs and developing countries, implementation of trade facilitation obligations negotiated in the WTO may involve broad and detailed domestic customs and trade administration reforms. As a result, developing countries, and the LDCs in particular, will require substantial technical and financial assistance from developed countries and international organizations in order to fulfil their obligations. In addition, there is increased concern among developing countries and LDCs that dispute settlement procedures could be used against them simply because they lack the technical and financial capacity to implement their obligations on trade facilitation.

Bangladesh is an important LDC member in the WTO. However, in the course of multilateral trade negotiations leading to Doha and beyond, apart from voicing concerns through coalition groups of least developed and developing countries, Bangladesh has not taken a strong position on trade facilitation or on the other Singapore issues. As the Cancun Ministerial approaches quickly, it is important to examine the implications that a trade facilitation agreement will have for Bangladesh and other LDCs. LDCs and developing countries need to identify their needs and objectives and formulate adequate negotiating strategies that will advance the trade and investment interests of their countries, while at the same time, reinforcing their commitments to increased trade and investment liberalization within the multilateral trading system.

This paper provides an overview of how trade facilitation has been addressed in the WTO to date, and how this may affect Bangladesh's negotiating strategy on trade facilitation in the upcoming Cancun Ministerial and beyond. Following the Introduction, the second section of this paper defines the term "trade facilitation" as it is used in the context of this paper. The third section reviews the development of trade facilitation in the international community apart from the WTO. The fourth section examines the work that has taken place on the issue in the WTO including the current state of play in trade

facilitation discussions. It provides an overview of WTO provisions that are relevant to the trade facilitation issue as a part of the Doha Development Agenda (DDA) and summarizes the proposals various WTO members have made for enhancing trade facilitation in the WTO. The fifth section addresses some of the implementation issues WTO members face with respect to trade facilitation. The sixth section highlights some of the trade facilitation initiatives that have been taken place in Bangladesh in the last several years. The final section examines the implications that trade facilitation negotiations will have for Bangladesh and other least developed and developing countries and how these will shape the negotiating strategies and policies of these countries.

## **2. Defining Trade Facilitation**

Following the significant reduction in overall tariffs achieved through the application of the General Agreement on Tariffs and Trade (GATT) and the implementation of the Uruguay Round commitments, attention has increasingly focused on cutting red tape at the border that is seen as a barrier to international trade. In particular, the private sector is pressuring governments to implement trade facilitation programs that include the simplification of documentation requirements and customs procedures for trade in goods.

Although trade facilitation is considered as one of the “new issues” identified by the WTO at the Singapore Ministerial Conference in 1996, other international organizations had been working on this issue for a number of years. Originally, trade facilitation was understood to be the harmonization and standardization of different regimes, and the mutual recognition of different customs administrations. It aimed to identify and simplify or remove the main administrative, logistical or procedural obstacles to the movement of goods and services across borders.<sup>3</sup> Both the WTO and the World Customs Organization (WCO) have worked to establish common sets of international standards and good customs practices for their member countries. However, the challenge remains to implement the customs procedures and other administrative measures based on these international standards.

In recent years, the idea of trade facilitation has expanded to include the modernization and automation of import procedures in order to make the adoption of international standards easier. It is generally understood that trade facilitation involves the reduction

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<sup>3</sup> WTO, WT/COMTD/W/57 “Development Aspects of Trade Facilitation: Note by the Secretariat.”

of the transaction costs for all parties of the enforcement, regulation and administration of trade policies. Trade facilitation has been described as the “plumbing of international trade” which focuses on the efficient implementation of trade rules and regulations. By nature, trade facilitation is very technical and detailed.<sup>4</sup> For example, UNCTAD has estimated the average customs transaction involves 20-30 different parties, 40 documents, 200 data elements and the repeated entry of the same data in the reporting process.<sup>5</sup>

As a result of this complexity, there are many different definitions of what constitutes trade facilitation. For example, the definition of trade facilitation outlined by APEC and the World Bank is quite broad and includes e-commerce and business mobility as important issues that need to be addressed in order to speed up international trade transactions.<sup>6</sup> Work in other forums often gives the term of trade facilitation a broader definition than that of the WTO, sometimes including the Technical Barriers to Trade (TBT) issue, competition policy, government procurement, and transparency in general.

This paper will use the definition given by the WTO, which defines trade facilitation as *“the simplification and harmonization of international trade procedures, with trade procedures being the activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade.”*<sup>7</sup> This includes activities such as import and export procedures, transport formalities, payments, insurance and other financial requirements. The Doha Declaration also refers to “expediting the movement, release and clearance of goods, including goods in transit.”<sup>8</sup> It is expected that the possible negotiations on trade facilitation after Cancun will follow the lines of this definition.

### **3. Trade Facilitation in International Organizations**

Work on trade facilitation has taken place outside of the WTO for a number of years and continues to take place in various arenas. A number of WTO members have pointed the importance of acknowledging the work that is taking place in this field and incorporating results into any future WTO trade facilitation agreement so as not to unnecessarily duplicate these efforts. The World Customs Organization (WCO), and the United

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<sup>4</sup> Staples, Brian Rankin, “Trade Facilitation: Improving the Invisible Infrastructure.”

<sup>5</sup> See [www.wto.org/e...99\\_e/english/about\\_e/15facil\\_e.htm](http://www.wto.org/e...99_e/english/about_e/15facil_e.htm).

<sup>6</sup> World Bank, “Facilitating Trade in the Asia-Pacific,” p. 74.

<sup>7</sup> WTO Website, [http://www.wto.org/english/tratop\\_e/tradfa\\_e/tradfa\\_e.htm](http://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm).

<sup>8</sup> Doha Ministerial Declaration, paragraph 27.

Nations are some of the forums where trade facilitation studies and projects have been and continue to be pursued. Regional trade initiatives have also begun to include trade facilitation on their agendas. Some of the work in these forums is outlined below.

### ***3.1 World Customs Organization***

Historically, the WCO is the international organization that has assumed the most important role in the area of trade facilitation. The WCO works to enhance the effectiveness and efficiency of customs administrations through the oversight of international instruments for harmonization and simplification of customs systems, reinforcing efforts to maintain compliance with trade policies and the promotion of communication and cooperation among Members' customs administrations and related international organizations.<sup>9</sup> Among the various conventions that the WCO oversees is the International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention), which outlines standards for implementation considered necessary for harmonization and simplification, as well as recommended practices that are viewed as important measures for the improvement of customs administration. The Kyoto Convention was revised in 1999 to reflect the changes that have occurred in customs administration and international trade due to the introduction of modern technologies. The WCO also oversees the Customs Convention on Temporary Admission (Istanbul Convention) dealing with the temporary admission of goods or trade samples for exhibition or demonstration purposes. The International Convention on the Harmonized Commodity Description and Coding System is also administered by the WCO and contributes to trade facilitation by providing a common basis for commodity classification and goods valuation for duty purposes. Almost all members of the WTO base their schedules of goods on the Harmonized System (HS). The WCO Arusha Declaration Concerning Integrity in Customs (1993) promotes standardized customs procedures and automation as a method of decreasing malpractice and corruption.

The WCO is involved in a global customs reform and modernization program (CRM), providing technical assistance through training and assisting domestic customs authorities to implement changes that have been established as necessary by a customs needs analysis. In addition, the WCO administers a great number of programs, guidelines, resolutions, norms, recommendations, and conventions. However,

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<sup>9</sup> See the WCO website at <http://wcoomd.org>.



participation by WCO members in the CRM is largely on a voluntary basis, and, unlike the WTO, the WCO lacks a formal process for dispute settlement.

### ***3.2 The United Nations***

Among the many United Nations organizations involved in trade facilitation programs, the United Nations Conference on Trade and Development (UNCTAD) has played an important role in developing the Automated System for Customs Data (ASYCUDA) - an electronic filing system designed for use by traders and customs. The system facilitates processing of customs declarations and accounting procedures, and serves as a database for statistical economic analysis. ASYCUDA is used in more than 70 developing countries. UNCTAD has also done work in the transport sector, including initiatives for port development; development of the Advance Cargo Information System (ACIS), an electronic transport management tool; and promoting the formation of committees to promote dialogue among all stakeholders in the transport sector in order to create efficient policies for the enhancement of trade facilitation. UNCTAD works in cooperation with other international organizations to provide training and support for the implementation of the system.

In 1994, the Columbus Declaration was adopted at the UN-hosted International Symposium on Trade Efficiency. The declaration is a set of detailed recommendations that have become important guidelines in the development of trade facilitation. The symposium also resulted in the establishment of UNCTAD's Trade Point Global Network. The objective of the program is to establish 180 trade points in 109 countries that will be electronically linked to national centres for trade facilitation providing trade-related information and data. One outcome of the program was the establishment in 2000 of the World Trade Point Federation - an international non-governmental organization that assists small and medium enterprises by providing information on international trade and the use of electronic commerce technologies.<sup>10</sup>

Within the United Nations system, the Economic Commission for Europe (ECE) has worked on trade facilitation issues since 1960. In 1997, the UN Centre for Facilitation of Procedures and Practices for Administration, Commerce, and Transportation (CEFACT-UN/ECE) was established to work towards harmonization and automation of customs procedures and information requirements. One of the main focuses of its work is

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<sup>10</sup> See World Trade Point Federation website at <http://www.wtpfed.org>.

electronic data interchange (EDI), which has had an important impact on reducing customs paperwork and exchanging trade-related information between parties to international trade transactions. CEFAC has also produced a number of recommendations on trade facilitation, some of which have been adopted by the International Standards Organization (ISO).<sup>11</sup>

The Economic and Social Commission for Asia and the Pacific (ESCAP) of the United Nations has also played a role in the area of trade facilitation by simplifying import and export documentations and procedural requirements in the region. ESCAP projects have included the alignment of trade documents for Cambodia, Myanmar and Vietnam, as well as India, Nepal and Pakistan.<sup>12</sup>

### **3.3 Regional and Bilateral Initiatives**

A number of regional and bilateral initiatives have also been launched in the area of trade facilitation. These include:

Members of the Asia-Pacific Economic Cooperation (APEC) have made commitments to standardizing customs requirements in the region. They have agreed to align national norms with international standards and to allow for mutual recognition of each other's national standards. The APEC has also emphasized the importance of using technology to facilitate the movement of frequent travelers.

The European Union (EU) has concluded agreements covering the simplification and computerization of customs administrations, free flow of trade, and a common approach to customs valuation among its members.

Two initiatives have been established among the parties to the North America Free Trade Agreement (NAFTA). The Canada-US Shared Border Accord aims to create a common set of objectives for a cooperative approach to trade facilitation and trade compliance. The Heads of Customs Conference is a forum for regular trilateral meetings between Canada, Mexico and the United States to review customs issues and examine ways to facilitate the cross-border movement of goods.

In April 2001, Canada and Costa Rica signed a Free Trade Agreement that includes a chapter on trade facilitation. The aim of the chapter is to make trade procedures more

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<sup>11</sup> UN Economic and Social Commission for Asia and the Pacific. *Trade Facilitation Handbook for the Greater Mekong Sub-region*. See [www.unescap.or/itid/publication/t&ipub2224.htm](http://www.unescap.or/itid/publication/t&ipub2224.htm), p. 11.

<sup>12</sup> ESCAP, *Trade Facilitation Handbook for the Greater Mekong Sub-region*, p. 12.

efficient and to reduce the number of formalities and costs to Canadian and Costa Rican businesses. The two countries have consented to base procedures on international standards and incorporate mechanisms such as consultations, cooperation, technical assistance, the exchange of information, and recommendations for best practices.

Trade facilitation has also been an important topic of the Free Trade Area of the Americas (FTAA) negotiations. A number of recommendations incorporating trade facilitation objectives have also been developed under the FTAA negotiations.

#### **4. Trade Facilitation in the WTO**

##### ***4.1 From Singapore to Doha to Cancun***

Along with investment, competition policy, and transparency in government procurement, trade facilitation was formally introduced to the WTO agenda as one of the four new issues that emerged from the 1996 Singapore Ministerial Conference. These issues have since come to be termed the “Singapore issues.” To date, WTO work in the area has focused primarily on customs and border-crossing procedures which can contribute to trade facilitation through the reduction or elimination of excessive requirements and procedures; the design and implementation of targeted, efficient procedures, taking into account the business process and the need for risk analysis; the standardisation of rules and procedures across administrations within a country; the promotion of the use of information technology through the use of electronic filing of documents and making information about customs rules and procedures accessible over the Internet.

One of the most basic methods of identifying areas where trade facilitation is needed is to analyze complaints made by the business community. In 1998, the CTG organized a trade symposium inviting both business and policy representatives to identify and discuss obstacles encountered when moving goods across borders. Concerns voiced by the business community included excessive documentation requirements; lack of automation and insignificant use of information-technology; lack of transparency (unclear and unspecified import and export requirements); lack of modernization of and cooperation among customs and other government agencies, resulting in barriers to trade.<sup>13</sup>

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<sup>13</sup> APEC, p. 77.

The CTG also scheduled meetings throughout 1998-1999 to address the following issues:

- Import and export procedures and requirements, including customs and border-crossing problems;
- Overview of the World Customs Organization International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention);
- Physical requirements which affect the cross-border movement of goods in international trade;
- Electronic facilities and their importance for facilitating international trade;
- Technical cooperation and development issues relating to simplification of trade procedures;
- Consideration of WTO Agreements relating to, or including provisions on trade facilitation;
- Evaluation of the exploratory and analytical work to assess the scope for WTO rules in the area of trade facilitation.<sup>14</sup>

Analytical work on trade facilitation continued in the WTO through 2000. In 2001, WTO Members submitted national papers on their experiences on trade facilitation measures , and a Workshop on Technical Assistance and Capacity Building in Trade Facilitation was organized by the WTO. The workshop provided an overview of the types of trade facilitation initiatives being provided through various technical assistance programs. Conclusions from the workshop identified that successful trade facilitation measures require the political will to implement trade facilitation reforms, coordination and cooperation among donors and providers of technical assistance, and transparency in the process of reforms, stakeholder consultation and benchmarks for measuring process. It was also acknowledged that programs must be designed to provide for long-term sustainability.

After four years of exploratory work, some WTO members proposed that it was time that trade facilitation be added as a new issue for a new round of multilateral trade negotiations. Advocates of a trade facilitation agreement under the WTO are known as the Friends of Trade Facilitation, or the “Colorado Group.” This includes Australia,

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<sup>14</sup> WTO G/L/333, p. 2

Canada, Chile, Colombia, Costa Rica, the EU, Hong Kong/China, Hungary, Japan, Korea, Morocco, New Zealand, Norway, Paraguay, Singapore, Switzerland and the United States. They proposed a two-track approach to the negotiations. As a part of the first track, members would make commitments on border and border-related procedures, building on existing WTO provisions, specifically GATT Articles V, VIII and X. Negotiations would also work towards strengthening WTO principles of transparency, due process, simplification and non-discrimination. The second track would focus on developing and implementing a comprehensive technical assistance program parallel to the negotiations entailing cooperation and coordination among donors and recipients as well as a method for needs assessments.

As mentioned in the introduction, this proposal did not receive the support of all WTO members. Many LDCs and developing countries maintained that the issue was not ripe for binding commitments. These WTO members expressed a desire to undertake work on trade facilitation at national, bilateral and regional levels instead of multilaterally. Informal consultations showed that although WTO Members generally agreed that trade facilitation could be beneficial, large disagreement remained over how the issue should be pursued.

Since the Doha Ministerial Conference, the CTG has held a number of formal meetings to address the core issues of the Doha Declaration mandate including GATT Articles V, VIII, and X, trade facilitation needs and priorities of Members, and technical assistance and capacity building of LDCs and developing countries. WTO members have submitted a number of proposals concerning the clarification of the relevant GATT articles and the scope of the negotiations. The relevant GATT articles in the Doha Ministerial Declaration are examined in Section 4.2, and an overview of WTO member proposals and positions on trade facilitation is provided in Section 4.3 of this paper.

At a meeting of the CTG in December 2002, the WTO Secretariat introduced a paper compiling member's proposals on how to improve and clarify GATT Articles V, VIII and X.<sup>15</sup> The Secretariat pointed out that many of the proposals submitted contained overlapping content and common elements. The Secretariat's paper was received by the European Union and other developed countries as a good photograph of WTO work on

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<sup>15</sup> WTO, G/C/M/67 "Minutes of the Meeting of the Council for Trade in Goods, 6 December 2002." WTO, G/C/W/434 "Review, Clarification and Improvement of GATT Articles V, VIII and X Proposals Made by Delegations: Compilation by the Secretariat."

trade facilitation to date, and a base on which to build further work. On the other hand, developing country representatives, specifically Brazil, India, Malaysia, and Cuba, emphasized that the proposals that have been submitted to date fail to reflect the diversity of opinions that remain among WTO members. Therefore, the common elements present in the proposals should not be understood as indicating any kind of consensus on the issue.

#### ***4.2 State of Play in DDA Negotiations on Trade Facilitation***

Although trade facilitation is considered to be one of the “new issues” on the negotiating agenda, the existing legal framework of the WTO contains a number of articles and provisions in the WTO Agreements that are directly related to facilitating the movement of goods across borders. These provisions are included in the GATT 1994 and other WTO Agreements, and are aimed at increasing transparency and setting minimum procedural standards in aspects of trade administration. The Doha Declaration mandates the CTG to review, clarify and improve GATT Articles V, VIII and X, identify the needs and priorities of members and commits members to technical assistance and support for capacity building. Elements of these provisions and WTO member proposals for their clarification are examined below.<sup>16</sup> Other WTO provisions and Agreements that are relevant to trade facilitation can be found in Annex to this paper.

##### ***4.2.1 GATT Article V (Freedom of Transit)***

GATT Article V provides that traffic in transit will have freedom to move through the territory of a Member to its destination country and will receive Most Favoured Nation (MFN) treatment with respect to all charges, regulations and formalities.<sup>17</sup> Traffic in transit must be exempt from customs and transit duties and any unnecessary delays or restrictions other than for failure to comply with customs regulations. Traffic in transit is to be exempt from customs duties and other charges. There are only two kinds of charges that may be imposed on traffic in transit. These are limited to charges for transportation and for administrative expenses caused by transit or services rendered. Members must also treat traffic in transit no less favourably than it would have been treated had it been transported from its original destination without passing through the territory of a third party.

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<sup>16</sup> Most of the proposals submitted to date come developed countries that are advocates of a trade facilitation agreement. The most comprehensive proposals have been submitted by the European Union.

<sup>17</sup> WTO “Article V of the GATT 1994 – Scope and Application,” G/C/W/408.

Article V has never been tested under the WTO dispute settlement mechanism, although violations of the provisions have been asserted. In 1989-1990, Austria proposed to limit traffic of certain heavy trucks (from any nation) on some roads during night hours. This resulted in the German government invoking a ban on Austrian vans operating on any German roads during night hours. Austria claimed that this constituted a violation of Article V because of the exclusive application of the regulation to vehicles of Austrian origin. The two countries finally settled the case by mutual agreement.

In 1996, the EU alleged that the United States Cuban Democracy Act of 1992 violated Article V by prohibiting, among other things, vessels carrying goods or passengers to or from Cuba from entering any US port. Although a panel was established to hear the case, its work was suspended at the EU's request.

A request to establish a panel was made in 2000 concerning EU assertions that a Chilean prohibition on unloading swordfish in Chilean ports violated Article V by making it impossible for EU vessels to transit its swordfish catches through Chilean ports, resulting in damages to the EU industry. The process was suspended after the two parties made a provisional arrangement.

In 2002, Slovenia asserted that a Croatian ban on road transit of oil and oil products through its territory was in violation of GATT Article V. Finally, Slovenia and Croatia agreed to hold consultations to solve their dispute.

In a proposal submitted to the CTG, the EU calls for discussion and clarification on the issue of ensuring non-discrimination between modes of transport, with particular reference to whether or not non-traditional modes of transportation, such as the carriage of gas and oil via pipelines, are covered by the Article.<sup>18</sup> It also identifies a potential conflict between ensuring non-discrimination between individual carriers in relation to transit procedures and GATS restrictions on cross-border supply of services or commercial presence. Relating to non-discrimination between types of consignments, the EU proposes that countries publish lists of sensitive goods that are subject to special provisions in order to ensure consistency of treatment for both the goods and the transport providers. In order to simplify documentary and data requirements and procedures undertaken for transit purposes, the EU proposes the development of a common set of transit data based on international standards. A list of legitimate services

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<sup>18</sup> In light of the considerable natural gas reserves that are believed to be in Bangladesh, inclusion of gas and oil pipelines under this Article would have an important impact on how the industry is developed.

for which fees may be charged could be developed under the WTO. The EU also encourages the promotion of regional transit agreements such as the Customs Convention on the International Transport of Goods (TIR Convention), the European Convention on Common Transit, and the ASEAN Framework Agreement on the Facilitation of Goods in Transit.

In its submission relating to Article V, Korea proposes that negotiations focus on developing a common understanding of how the principles in Article V should be applied, particularly with respect to the prohibition of unnecessary restrictions and charges. It suggests that implementation of Article V be improved through institutionalized cooperation among members' customs authorities and harmonization of policies, simplification of customs procedures, standardization of documentation and increased transparency through notification of fees and charges for transit traffic. Korea also suggests that a distinction be made between goods in transit that undergo transshipment (changing from one mode of transportation to another) and goods without transshipment. The reason given for the need for this differentiation is that transit traffic that does not involve transshipment poses a lower risk of illegal release of goods and would therefore require less sophisticated risk management procedures when compared with transhipped goods.

Canada's submission on Article V also recommends adoption of the use of international instruments relating to Customs transit, including the TIR Convention and the Istanbul Convention. Canada further points out that although the Article provides for most-favoured-nation treatment for traffic in transit, there is no explicit mention of the application of national treatment, which should be added to the Article.

#### *4.2.2 GATT Article VIII (Fees and Formalities Connected with Importation and Exportation)*

GATT Article VIII calls for minimizing the number and complexity of fees and formalities connected with imports and exports.<sup>19</sup> Typical charges to which it applies include licence fees, document fees, stamp fees and inspection fees. While there are no legal requirements for the reduction of fees and charges, WTO Members "recognize the need" for reduction and simplification. The Article states that fees and charges should be kept proportional to the government services used in the process. It encourages

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<sup>19</sup> WTO, "Article VIII of the GATT 1994 – Scope and Application," G/C/W/391.



decreasing and simplifying documentation requirements. The Agreement on Import Licensing Procedures deals with these issues in more detail.

Article VIII has been addressed in both GATT and WTO dispute panels. For example, in *US – Customs User Fee, 1988*, Canada and the European Economic Community asserted that the US application of a merchandise processing fee violated GATT Article VIII.<sup>20</sup> The fee was an *ad valorem* charge imposed for the processing of commercial merchandise entering the US. Canada and the EU argued that the fee was disproportionate to the cost of the services rendered and constituted taxation for fiscal purposes resulting in indirect protection for domestic products. The panel concluded that the cost of services must be determined based on the processing of individual entries, and therefore, the *ad valorem* method of calculating the fee was inconsistent with Article VIII because it collected fees in excess of the cost of services rendered, impairing benefits to Canada and the EU. In another case, *Argentina – Textiles and Apparel*, Argentina argued that a “Memorandum of Understanding” it had with the IMF permitted the imposition of a statistical tax. However, the panel in the case concluded that Argentina did not prove there was an irreconcilable conflict between the “Memorandum of Understanding” and the provisions of Article VIII that prohibit the collection of a tax for fiscal purposes.

Six delegations have submitted proposals on the clarification of Article VIII: Canada, Colombia, European Communities, Hong Kong - China, Japan, and Korea. The EU considers the provisions in GATT Article VIII to be too weak and proposes that WTO members make firm commitments on fees and formalities connected with importation and exportation. It identifies the scope of the Article as extending beyond customs to other government agencies. It proposes that a rule of least trade restrictiveness be applied to import and export procedures to ensure that they do not act as barriers to trade. In addition the EU proposes the adoption of international standards, agreement on the definition of permissible fees, and notification to the WTO of new fees and charges. The EU, along with other delegations, has proposed the adoption of simplified, standardized customs procedures through the adoption of the WCO Kyoto Convention and the Istanbul Convention.

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<sup>20</sup> Panel Report *US – Customs User Fee*, BISD 35S/245.

Canada's proposal for the clarification and improvement of GATT Article VIII recognizes the differences in the level of technological capacity among WTO Members and recommends that simplification of procedures should be applicable and usable in both non-automated or technology based environments. The proposal includes the adoption of existing international standards and the development of common data sets for use in clearance procedures. As a component of border agency coordination, Canada also proposes the concept of a "single window", where exporters and importers are required to report to only one border agency.

#### 4.2.3 GATT Article X (*Publication and Administration of Trade Regulations*)

GATT Article X requires WTO Members to promptly publish all laws, regulations, judicial decisions and administrative rulings affecting imports and exports, and all bilateral agreements affecting international trade policy, so that traders may become acquainted with them. These laws, regulations, and rulings should be administered in a consistent, impartial and reasonable manner. If a new law imposes a more burdensome requirement, it must be published before it is enforced. These obligations are repeated in both the Agreement on Customs Valuation and the Import Licensing Agreement.

In the Appellate Body ruling of *EEC – Poultry*, the scope of the article was defined as relating to the publication and administration of laws, regulations, judicial decisions and administrative rulings rather than the actual content of the measures. In *EEC – Dessert Apples*, the panel concluded that the article specifies no time limit or delay between publication and entry into force, although it would prohibit the use of backdated quotas.

The EU has argued that despite the provisions of GATT Article X, lack of transparency and predictability is creating delays and additional costs for the business community. The EU, Canada, Japan and Korea have submitted proposals for clarification of Article X. They include specifications regarding the regulations covered and the availability of the information; recommendations for officially designated, accessible electronic publication of regulation; establishment of centralized inquiry points (via websites where possible) for publication of all information and provision of information services; and notification to the WTO of the media through which measures are published. The proposals also recommend establishment of an advance ruling system on importations with rulings that are binding on importing authorities. Another recommendation is the creation of a consultative/feedback mechanism provided for stakeholders to comment on proposed

rules and procedures before their implementation. All four proposals also recommended a non-discriminatory, legal right of appeal against customs and other agency rulings and decisions.

#### *4.2.4 Identification of Needs and Priorities for Technical Assistance to LDCs and*

##### *Developing Countries in the Area of Trade Facilitation*

Since trade facilitation was introduced as one of the Singapore issues, a number of submissions documenting experiences of individual countries have been made to the WTO. However, rather than identifying needs and priorities, these papers often detail trade facilitation initiatives which are already taking place. At the December 2002 meeting of the CTG, the Canadian representative noted that identification of the needs and priorities, especially those of LDCs and developing countries, was an important part of the Doha mandate, but more work needs to be done to understand the various concerns of these countries.

Proposals by the EU also call for better integration of developing countries (LDCs, in particular) into the world trading system in the area of trade facilitation. With regard to the capacity of LDCs to meet their obligations, although one method for achieving this would be a blanket exemption from obligations until LDCs reach a level where they are ready to implement new trade facilitation measures, the EU is of the view that this would create a “two-tier” system. Instead, the EU proposes giving special and differential treatment to LDCs and developing countries to allow for transitional periods for implementing commitments and distinguishing from commitments that are resource intensive and those that are more easily achieved. Measures would be taken by developed countries to ensure that their customs procedures facilitate trade of developing countries. In addition to any agreement on trade facilitation, there would be a parallel capacity building program for LDCs and developing countries. Ideally, the program would involve the cooperation of the WTO and other international organizations such as the World Bank, UNCTAD and the WCO, that are participating in trade facilitation capacity building projects.

Korea also acknowledges the need for technical assistance and capacity building for developing countries, suggesting that longer implementation periods be allowed as a form of special and differential treatment. Finally, Korea asserts that the trade facilitation needs and capabilities of developing countries must be understood, and recommends that

developing countries take steps to determine in which areas they most need technical assistance.

The United States has proposed a concurrent and integrated approach to technical assistance that is integrated into the development and implementation of an agreement on trade facilitation. This approach would establish transition periods for specific obligations based on individual Members' situations rather than a blanket transition period for the implementation of an agreement as a whole. It would include more comprehensive and detailed technical assistance using diagnostic and benchmark programs to track the progress of implementation. With respect to enforcement, the United States has also suggested exploring the possibility of establishing a consultation or mediation process to be used when individual capacity has been determined as the reason for non-compliance.

While most developing countries recognize that trade facilitation is beneficial in the long run, many have expressed the view that it is an issue of domestic capacity building and therefore it should not be included under multilateral trade rules. Developing countries are concerned that they lack adequate resources and technical capacity to implement trade facilitation commitments. It is felt that this would increase their risk of facing dispute settlement procedures under the WTO if binding rules on trade facilitation are negotiated and implemented. Therefore, developing countries remain cautious of entering comprehensive trade facilitation negotiations in the WTO. Due to experiences with past WTO agreements, such as the TRIPs Agreement, developing countries are calling for technical assistance programs to be designed before negotiations are concluded, rather than being considered subsequent to the agreement. Rather than new requirements under the WTO, this group of countries encourages further research and analysis of the issue and cooperation with other international organizations such as the WCO. With the exception of Brazil, developing countries refrained from submitting proposals for trade facilitation negotiations.

Least developed countries have not formally submitted any proposals on trade facilitation in the WTO. However, in August 2001, LDCs, as a group, collectively submitted the Zanzibar Declaration to the WTO. The Declaration was the result of the meeting of the LDC Ministers Responsible for trade. At that time, the LDC position on trade facilitation was summarized in the following paragraph:

*LDCs concur with the general assessment that trade facilitation measures are necessary and beneficial and they share the view that this area does not require new rule making. Existing rules and regulations both within and outside WTO are sufficient but may require improvement and a high degree of implementation. In the context of the LDCs, improved facilitation would require increased financial and technical assistance to narrow the technology and human resources gap that exists between them and developed trade partners. Hence the study process in the Working group should continue.*<sup>21</sup>

## **5. Trade Facilitation Implementation Issues**

Implementation of trade facilitation measures in a country is usually associated with the use of new technologies and building capacity in order to provide an enabling environment and adequate infrastructure for reforms to take hold. Information technology can provide a cost effective means of overcoming obstacles at the border by speeding up procedures, enhancing accuracy and getting rid of redundant and repetitive manual reporting tasks. However, benefits from automation can only be achieved if effective administrative and commercial practices are in place prior to computerization.

Many trade facilitation programs emphasize automation of customs administrations. An efficient customs administration is of particular importance to a country's trade policy because it covers important areas such as clearance of imported or exported goods; revenue collection; prevention of smuggling of arms, drugs and aliens; and the provision of statistical data and information for analysis, and policy evaluation and planning, etc. Technical assistance programs like those provided through UNCTAD and the WCO assist administrations to utilize information technology in making better use of resources, strengthening management skills and designing and implementing effective policies.

Technology is also a useful tool for transport management, facilitating the tracking of transport equipment and cargo in ports, railways, lakes and roads. Automation of transport management systems provides more reliable information, creating a database of up-to-date information on the status and location of consignments for parties involved in trade transactions, as well as providing governments with analytical data.

Automation of customs administrations can allow for increased security information sharing both domestically and internationally. Since the terrorist attacks of September 11, 2001, security has become an issue of prime concern and importance. Leaders of the APEC economies have declared that trade facilitation must promote the movement of

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<sup>21</sup> WTO, WT/L/409.

goods and services while at the same time maintaining adequate security measures. Some multilateral forums are considering the adoption of measures such as the Container Security Initiative and the Customs-Trade Partnership (C-TPAT), which have been supported by the United States.<sup>22</sup> These initiatives could have important consequences, especially for small and medium-sized enterprises. For example, selection of “safe ports” by the U.S. Customs Service could result in changes to the routes of major trade flows; the screening of containers will require appropriate equipment which ports in developing countries may be lacking; and the C-TPAT requires trading partners to work with service providers throughout the supply chain as a means to enhance security processes and procedures. The results may require changes to policies, regulations and procedures.

The WCO has also developed an action plan to assist customs agencies to improve national security while continuing to facilitate legitimate trade.<sup>23</sup> The initiatives in the Action Plan include risk management, advanced transmission of passenger and goods data, co-operation with the private sector and exchange of information. Risk management techniques will assist with the identification of high-risk consignments for thorough inspection. To this end, the WCO is developing guidelines that will be compiled in a risk management handbook.

Assessing the costs and benefits of trade facilitation usually involves examination of trade transaction costs.<sup>24</sup> These include compliance costs that arise from supplying information to customs and filing documents required for the movement of goods or methods of payment; charges for trade-related services, such as trade insurance, which may be affected by government policy; procedural delays that result from complications in customs clearance; lack of predictability due to unclear regulations and procedures; and lost business opportunities resulting from procedural delays that negatively affect the production chain in business practices, like just-in-time delivery.

Although enhancing trade facilitation usually involves initial costs such as re-training of administrators and the implementation of new procedures, there is general agreement among trade policy analysts that the long-term effects of trade facilitation will be positive. Implementing more efficient procedures and reducing transaction costs can

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<sup>22</sup> UNCTAD, “Problems of and Potential for the Application of Current Trade Facilitation Measures,” TD/B/COM.3/EM.17/2, 2002.

<sup>23</sup> Mikuriya, Kunio, “The Challenges of Facilitating the Flow of Commerce in a Heightened Security Environment,” UNECE International Forum on Trade Facilitation, May 2002, p. 4.

<sup>24</sup> Kleitz, Anthony, “Costs and Benefits of Trade Facilitation,” p. 2.

benefit an economy by increasing trade in goods and services, promoting competition and efficient use of resources, encouraging technology transfer, and increasing the incentive for foreign direct investment, thereby contributing to overall development.

## **6. Trade Facilitation Initiatives in Bangladesh**

In Bangladesh, initiatives for trade facilitation have taken place in the context of customs reforms under the broad objective of export diversification.<sup>25</sup> In the past, many customs procedures lacked transparency and were out dated and subject to corruption. Estimates of the revenue lost as a result of inefficiency and corruption ranged from as high as one-third of potential revenue collection.<sup>26</sup> The basic infrastructure for information technology support of customs operations as well as human and financial resources was extremely limited. Previous attempts at reform met with political opposition from those whose interests lay in maintaining the status quo.

In 1999, the Bangladesh Export Diversification Project (BDXDP) was created with the goal of strengthening the country's economy by increasing export trade. Funding and support for the project is provided jointly through the World Bank and the World Customs Organization.<sup>27</sup> Trade facilitation initiatives in Bangladesh include WCO-sponsored experts from other customs administrations providing technical assistance workshops; a team of international and local experts, coupled with NBR staff for planning, training and the drafting of legislation; and the installation by UNCTAD of the ASYCUDA++ system for electronic data control.

Under the BDXDP, the Customs Administration Modernization Project (CAM Project) is funded by the World Bank for the support of export diversification, which includes customs reforms, trade and tariff policy reforms, and support to companies seeking to develop export products and expand markets. The main goals are the reform and simplification of customs procedures; a shift to post-entry audits for warehouse imports; bringing the private sector into the process of export reform through raising awareness with programs such as training seminars and publication of research; facilitating diversification of exports by electronic information for speedy processing, effective risk

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<sup>25</sup> Information in this section comes from "Technical Assistance and Capacity Building for Trade Facilitation: The Experiences of Bangladesh" presented by Mobarak Ali Molla, NBR Member and Project Director of the CAM-1 Project at the WTO Symposium on Technical Assistance and Capacity Building for Trade Facilitation, May 2001, and Charles Draper "Reforming Customs Administration: the Unlikely Case of Bangladesh?" [www1.worldbank.org/wbiep/trade/othertrade/files/Draper\\_customs.pdf](http://www1.worldbank.org/wbiep/trade/othertrade/files/Draper_customs.pdf).

<sup>26</sup> Draper, Charles, "Reforming Customs Administration: the Unlikely Case of Bangladesh?" p. 1.

<sup>27</sup> Draper, Charles, p. 2.

management and policy decisions. The project is specifically targeted at the ready-made garment sector in order to increase efficiency and simplify the customs clearance process for both imports and exports. Under Phase 1 of the CAM Project the NBR made legislative changes to the Customs Act of 1969 facilitating the use of electronic processing, post-clearance audit, the issue of binding rulings, management rights to transfer staff, and limitations on shipment detention. The tariff structure has also been simplified so that import assessments would be more consistent. Changes to legislation and details concerning regulations have been published and can be accessed on the Internet. Private Pre-Shipment Inspection companies have replaced customs inspections for most imports, and a task force has been formed to address delays at the main port of entry. The project is a part of the NBR's long-term plan to modernize the whole revenue administration in Bangladesh.

In the past, customs inspected every imported shipment, resulting in delays and harassment of importers. To counter this, the GOB introduced the use of Pre-Shipment Inspection (PSI) in February 2000. PSI refers to the verification of unit prices and the examination and reporting of the quantity and quality of exports before they are sent to the importing country. In terms of trade facilitation, PSI can create more efficient administrations by controlling over- or under-invoicing of imports, misclassification of imports, under-collection of taxes on imports, misappropriation of funds, and compliance with national regulations. The Bangladesh-PSI project was designed by the National Board of Revenue, in consultation with both importers and staff. Three private PSI companies were contracted to inspect goods to be imported to Bangladesh and certify the accuracy of the information related to them. A fourth company is assigned the role of auditing the activities of the three PSI companies. One of the rules guiding the PSI project in Bangladesh limits the physical examination of shipments by customs to 5 percent of the total of all shipments, while the rest undergo documentation checks only. The port of Chittagong now clears 40 percent of bills of entry in two working days or less. The number of bills of entry cleared in two days or less has increased by close to 25 percent per month. The number of bills of entry taking 7 days or more for clearance has been reduced from 26 percent to 21 percent. The target of the GOB is to clear all bills of entry in less than two days with the exception of goods that need to be fully inspected for customs purposes.



A selectivity system is also being implemented at the port of Chittagong, where shipments are screened against pre-determined risk criteria and then processed through the appropriate channel. The categories are “green channel” imports that are released with minimal documentation checks and no physical inspection, “yellow channel” imports that undergo a full documentation check, and “red channel” imports that account for 10 to 12 percent of the total and receive full documentation and physical inspection. A post-audit system is also being developed to verify the accuracy of green channel and yellow channel clearances. The government plans to extend the system to include both imports and exports and to implement the system at other customs offices.

The Automated System for Customs Data (ASYCUDA ++)<sup>28</sup> is an electronic data system that allows random selection of consignments and staff for inspection purposes in order to cut down on the opportunity for bribes. The system is being installed by a national team of eight members from customs administration, in coordination with an international consultant (Clapp and Mayne) representing UNCTAD. The original version of ASYCUDA was introduced to Dhaka and Chittagong between 1992-1996. The ASYCUDA++ project was designed to introduce the updated system at 5 customs ports: ICD, Dhaka, Chittagong, Benapole and Mongla. The system covers most foreign trade procedures, including manifests and customs declarations, accounting procedures, risk management, and warehousing procedures. It serves as a database of detailed information about foreign trade transactions, which is helpful in economic analysis and planning. It is important that the system is being implemented in coordination with the wider project of customs reform. An UNCTAD study has observed that ASYCUDA “cannot be successfully implemented without first undertaking a major reform of customs procedures.”<sup>28</sup> In other words, computerization alone cannot result in more efficient customs administration.

The implementation of these initiatives in Bangladesh has not been without challenges. One of the initial challenges was to ensure that there was adequate political will to implement the changes. Administrative reforms can be subject to resistance from those who profit from a corrupt and inefficient regime. However, in the case of Bangladesh, the government perceived that the need to raise more revenue could be met through reforming an inefficient and corrupt customs administration. Pressure for change also

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<sup>28</sup> Cited in Staples, p. 144.

came from the private sector, especially from exporters who were unable to meet the costs of doing business in a corrupt system.

The project also entails extensive training and retraining of customs officials that sometimes means bringing about a change in values as well as physical working conditions and wages. To a certain extent, these changes have been assisted through the external support of the World Bank, the WCO and UNCTAD in providing both financial and technical assistance. It has been observed that this external support has likely had a positive psychological impact, weakening the strength of critics of the reforms.<sup>29</sup> On the other hand, more funding will be needed in order to ensure long-term customs reforms in order to promote trade facilitation in the country.

## **7. Implications for Bangladesh and Other Least Developed and Developing Countries**

With the ongoing customs reforms in Bangladesh, the possible future negotiations on trade facilitation in the WTO will have a profound impact on Bangladesh, as well as on other LDC and developing countries. These countries will benefit greatly from new trade facilitation initiatives. At the same time, these countries will face enormous challenges to implement their commitments in the area of trade facilitation. These countries should closely monitor the Doha negotiations in this area and be prepared to formulate their negotiating strategies. They should also continue with customs administration reform and trade facilitation capacity building programs in order to develop their own capacity.

First, these countries should conduct a full assessment of the benefits from trade facilitation initiatives. Exporters from Bangladesh and other least developed and developing countries could benefit through gaining easier access to other markets as other countries implement similar trade facilitation programs. Governments of these countries can also capture lost revenue by making import administration more efficient and by implementing best practices in order to increase integrity. Most LDC and developing countries have realized that customs and transport inefficiency can act as major barriers to integration into the international trading system. It can also impede export competitiveness or the ability to attract foreign direct investment. Both governments and companies with limited resources will gain in the long run from the implementation of more efficient customs procedures. Trade facilitation can benefit both

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<sup>29</sup> Draper, p. 2.

importers and consumers by lowering prices as the cost of administration is reduced. Improvements in trade facilitation could also be extremely beneficial for small and medium-sized enterprises that find administrative barriers more difficult to overcome than larger enterprises that regularly ship large quantities of goods.

Measures that facilitate trade for least developed and developing countries may also have significant developmental potential. For example, simplification of documentary requirements can increase transparency, reduce delays at border crossings and prevent opportunities for corruption. The experience of Chile provides an example of successful reform and modernization of customs administration through the use of information technology. The use of Electronic Data Interchange (EDI) led to more efficient use of human resources, reductions in customs import declaration processing time from 10.8 hours to 2.2 hours, elimination of errors and an increase in the quality of customs controls.<sup>30</sup> Efficiency can reduce the ability of traders to avoid fees, increasing collected revenue and also making the implementation of new regulations easier. Likewise, streamlining of procedures and the implementation of more effective communication systems can reduce transaction costs. Thus, trade facilitation acts as a complement to efforts to reduce tariffs and non-tariff barriers by lowering administrative barriers

A WTO Secretariat note on the “Development Aspects of Trade Facilitation” concludes that developing countries have much to gain from trade facilitation despite the short-term costs. Facilitated trade in developed countries could increase exports into those markets from developing countries. Trade facilitation in developing countries can be beneficial for both importers and exporters, increasing intra-developing country trade and attracting foreign direct investment. If trade facilitation rules are negotiated and agreed upon in the WTO, the bulk of reforms would be needed in developing countries in order to implement their obligations. These reforms will likely benefit these countries to strengthen the export potential of their small and medium-sized enterprises, currently unable to overcome administrative trade barriers.

Second, these countries need to adequately anticipate the challenges that lie ahead if a trade facilitation agreement is reached in the WTO after Cancun. It is expected that implementation of trade facilitation obligations will require enormous investments for Bangladesh and other least developed and developing countries. The need to deploy

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<sup>30</sup> WT/COMTD/W/57, “Development Aspects of Trade Facilitation: Note by the Secretariat.”

financial, physical and human resources to the area of trade facilitation can be extremely difficult for them to achieve without external financial and technical support. Although information technology may mean faster, cheaper and more transparent procedures, successful implementation of increased trade facilitation obligations in the WTO also requires basic physical infrastructure and regulatory environments that are often lacking in Bangladesh and other least developed and developing countries. There is a need for a literate workforce with computer skills, access to physical resources such as computer software and hardware and telecommunications systems. The need for trade facilitation also differs among countries and across sectors within countries. Therefore, the challenge for the new round of multilateral trade negotiations is to ensure adequate financial and technical assistance and capacity building in trade facilitation across differing economies. This has been one of the concerns identified by developing countries opposed to the creation of binding rules on trade facilitation in the WTO. Gains from trade facilitation measures are expected to come later. The risk associated with making new binding commitments in this area is that valuable resources could be diverted from other high priority areas that least developed and developing countries need to address in order to implement their commitments on trade facilitation.<sup>31</sup>

For example, a number of basic infrastructure difficulties have been identified as posing challenges to trade facilitation initiatives in the Philippines.<sup>32</sup> One of the most basic concerns is the effect of weather on the processing of goods by customs. Due to inadequate secure warehouse space, officers often have to wait for rain to stop in order to resume inspections outdoors. Poor weather can also result in power outages causing processing delays. As a result of insufficient electricity generating capacity, some ports shut off air conditioning units in order to maintain computer capability. Interruptions also occur when working conditions become too hot forcing personnel to leave the office building. The Bureau of Customs has also received complaints that their computers are too slow. Upgrading to newer models was not possible with a 2002 Customs budget that allocated 0.0 for capital expenses, 0.0 for overtime hours and 0.0 for new personnel. Therefore, upgrading of PCs is dependent on donations of old Pentium III PCs from the private sector, or a change in the budget. Similarly, the Philippines relies on the private

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<sup>31</sup> Winters, p. 34.

<sup>32</sup> Arevalo, Alexander, *A Developing Country's View on Trade Facilitation*. International Forum on Trade Facilitation: Simpler Procedures for World Trade Growth and Development, United Nations Economic Commission for Europe, May 2002.

sector to provide funding for the implementation of plans for the automation of exports processing, in what has been termed “self-help private-sector trade facilitation.” As a Deputy Commissioner for the Philippines Bureau of customs concludes, “We did our best, but our best was just not good enough.”<sup>33</sup>

Most proposals that have been submitted to the WTO on the issue of trade facilitation acknowledge that least developed and developing countries will require technical assistance in order to implement new obligations. However, these proposals lack concrete suggestions for how this should be undertaken. It is extremely important that a comprehensive technical assistance and capacity building plan be worked out *before* large commitments on trade facilitation are made by least developed and developing countries. Least developed and developing countries could demand, as a part of their DDA negotiating strategy, the binding commitments of developed WTO members on financial and technical assistance to LDCs and developing countries in the area of trade facilitation.

However, it should be recognized that technical assistance alone is not sufficient to address the needs of least developed and developing countries. These countries need to be able to administer and manage the technical assistance they receive. Program input and stakeholder participation in bottom-to-top implementation rather than simply top-to-bottom policy making is necessary if reforms are to take hold and be sustained and to be successfully put into practice.<sup>34</sup> The need for a consultation process within the short DDA negotiating schedule places added pressure on the limited resources of LDC and developing countries. It is important that Bangladesh and other least developed and developing countries have the time and assistance to undertake needs assessments in order to understand which areas would benefit the most from increased efficiency through trade facilitation.

The importance of technical capacity-building programs for LDC and developing countries, such as UNCTAD’s ASYCUDA and ACIS, and funding from other international financial institutions cannot be overemphasized. However, implementation of these programs needs close coordination with other reform priorities as well as with initiatives that are being taken in other forums. Closer cooperation and coordination among international organizations involved in trade facilitation is also important in order

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<sup>33</sup> Ibid. p. 5.

<sup>34</sup> Winters, p. 35.

to avoid duplication of work and maximize the use of resources. It has been suggested that a Memorandum of Understanding be established outlining the roles and responsibilities of various agencies in order to facilitate joint management of programs.<sup>35</sup> This could include coordination in the dissemination of information on work programs to the general community through an Internet database. Likewise, closer coordination and the uniting of domestic agencies can save costs of program implementation and system operations. However, it is not enough to rely on financial and technical assistance from developed countries. Developing countries also have an important part to play by cooperating and working together with the international community in the identification of needs for capacity development and active participation in the implementation of technical assistance programs.

Finally, Bangladesh and other least developed and developing countries need to closely monitor the ongoing negotiations under the Doha Development Agenda and pay special attention to emerging issues such as trade facilitation which are of great interest to their countries. These countries should take advantage of the commitments developed countries have made to integrating developing countries into the global trading system and ensuring that adequate technical assistance is available for the implementation of any new commitments. They should obtain technical assistance in the area of trade facilitation in order to build and strengthen their capacity.

From the past experience, LDC and developing countries often felt that once they agreed to an issue being placed on the agenda, developed countries then negotiated the details on their own terms. In order to ensure that their interests are addressed, LDC and developing countries need to take an active role in the negotiations and demand a clear definition of the modalities and principles that determine how trade facilitation will be addressed in the negotiations. In the lead up to the Doha Ministerial, LDCs assumed a common position in the submission of the Zanzibar Declaration to the WTO that there should be no new obligations on trade facilitation. At Cancun, LDCs may once again acknowledge that trade facilitation can be beneficial, and affirm their commitment to further work being carried out in the relevant international organizations such as the WCO and UNCTAD.

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<sup>35</sup> United Nations Economic and Social Council, "Trade Facilitation in a Global Trade Environment," TRADE/2002/21, 2002, p. 22.

However, it is likely that developed countries will push for an agreement on trade facilitation as a part of a “single-undertaking” – in other words, any agreement that results from this round of negotiations must be adopted in its entirety with no exceptions. In addition, if LDC and developing countries want to make gains in other areas of importance, they must be prepared to make some concessions in particular areas such as trade facilitation. Therefore, LDC and developing countries must determine what kind of trade facilitation obligations would be acceptable if developed countries insist on including trade facilitation in the “single-undertaking.” In Bangladesh, trade facilitation initiatives are well under way but more technical assistance will be needed to ensure full and lasting reforms in the area. Binding minimum standards in the area of customs could ensure that achievements made to date be lasting. Bangladesh and other least developed and developing countries could agree to negotiations on trade facilitation, provided they are limited to customs-related issues and do not spill over into larger issues regarding basic infrastructure, such as transport and telecommunications.

Participating in WTO trade facilitation negotiations under certain modalities could prove beneficial for Bangladesh. However, any agreement that is made must include binding commitments from developed WTO members to provide technical assistance and capacity building programs in coordination with other international organizations. Phase-in time periods for implementation of obligations is also a necessity. In the past, most notably with respect to the TRIPs agreement, developing countries have had difficulty instituting reforms within the allotted time period. If any commitments are taken on trade facilitation, sufficient time should be given for LDC and developing countries to make necessary changes, including a mechanism for review of progress and extension of the time frame, if necessary. LDC and developing countries should take advantage of the commitments made in paragraph 27 of the Doha Declaration to obtain adequate technical assistance in the area of trade facilitation – ensuring that the term “adequate” is defined in concrete terms.

## *Annex*

### **Other WTO Provisions and Agreements Relevant to Trade Facilitation<sup>36</sup>**

*GATT Article VII (Valuation for Customs Purposes)* lays down the main principles governing the valuation of imports for assessment of duties or other charges (not including internal taxes), in order to enable traders to estimate, with a reasonable degree of certainty, the value of imported products for customs purposes. Assessment should be based on the actual value of the imported products or of like products and not on the value of corresponding national merchandise or on arbitrary fictitious values. The Article requires that regulations be published and that there be consistency in the methods of determination of value. The Agreement on Customs Valuation clarifies the provisions of this Article.

*GATT Article IX (Marks of Origin)* establishes MFN treatment with respect to marking requirements, and calls for reduction of the burdens that result from laws relating to marks of origin. When possible, marks should be affixed at the time of importation. Trade names should not be used in a manner that confuses them with protected distinctive regional or geographical names of products.

*The Agreement on Customs Valuation* clarifies the interpretation and application of GATT Article VII, and establishes the rules for valuing imports for the assessment of ad valorem customs duties. Harmonization of the methods used for valuing imported goods is a means of establishing predictability and transparency for importers and exporters of international goods. The agreement provides for the establishment of an adequate legal and judicial framework to ensure the right of appeal for importers. A technical assistance programme was designed by the WTO to enable developing countries to implement the Agreement within a transition period of five years.

*The Agreement on Import Licensing Procedures* provides more detail relating to the provisions in GATT Article VII. The Agreement establishes disciplines to ensure that import licensing procedures are administered in a neutral and non-discriminatory manner. It sets up time limits for the publication of information concerning licensing procedures and the processing of licence applications, as well as for notification to the Committee on Import Licensing. The Agreement requires that rules and information concerning procedures for submitting licence applications be published prior to enforcement in order for governments and traders to become familiar with them. Foreign exchange is to be made available on the same basis for both licensed imports and for those goods not requiring import licences.

*The Agreement on Preshipment Inspection* governs the use by government authorities of private agents to conduct quantity, quality and price inspection of imports. It aims to harmonize worldwide use of preshipment inspection services by requiring that inspection activities are carried out in an objective and non-discriminatory manner and offer sufficient guarantees of uniform, fair and due process.

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<sup>36</sup> The information in this section is based on the WTO document G/L/244.



*The Agreement on Rules of Origin (RoO)* aims to harmonize non-preferential rules of origin to ensure that the rules are not unnecessary obstacles to trade. A three-year harmonization work programme of the WTO for non-preferential rules of origin was to be undertaken in cooperation with the World Customs Organization.

*The Agreement on Technical Barriers to Trade (TBT)* allows WTO Members to determine their own technical regulations, standards and conformity assessment procedures, provided they are not more trade restrictive than necessary to fulfil a legitimate objective. The Agreement includes the principle of non-discrimination and encourages Members to use international standards when developing their own regulations. WTO members are also encouraged to give consideration to accepting regulations of other Members if they fulfil the same objectives, and where possible, to establish mutual recognition agreements.

*The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS)* requires that WTO Members ensure that SPS measures do not arbitrarily or unjustifiably discriminate between Members and shall not be a disguised trade barrier. The SPS Agreement encourages the use of international standards and guidelines in order to increase transparency and security. The Agreement also encourages Members to hold bilateral and multilateral consultations with the aim of creating equivalence agreements in SPS measures. WTO members must establish Enquiry Points to provide additional information on new or existing SPS measures and their application.

*The General Agreement on Trade in Services (GATS)* applies the Most Favoured Nation (MFN) principle to services and service providers from other WTO Members. In order to maintain transparency, all measures affecting trade in services must be published, and the WTO must be notified of any changes to laws and regulations affecting sectors where commitments have been made. The GATS relates to all types of transport services (excluding air traffic rights), electronic data interchange, various telecommunications systems, financial services and distribution services that may affect trade facilitation.

*The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs)* generally applies to internal policies rather than those imposed at the border. However, IPR holders can obtain assistance from customs authorities in order to suspend the release of any goods suspected of being counterfeit or pirated. This ensures that IPRs are enforced effectively and in a manner that avoids the creation of barriers to legitimate trade.

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