

DEPARTMENT FOR INTERNATIONAL DEVELOPMENT

**STUDY ON TRADE FACILITATION:
CONCERNS, OPTIONS &
THE WAY FORWARD**

FINAL REPORT

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April 2003

bccb International Expertise Award Winner 2002

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ACRONYMS AND ABBREVIATIONS

| | |
|----------------|--|
| ACP | African, Caribbean & Pacific States |
| APEC | Asia-Pacific Economic Co-operation |
| ASYCUDA | Automated System for Customs Data Processing |

ACRONYMS AND ABBREVIATIONS

| | |
|------------------|--|
| DFID | Department for International Development |
| EDI | Electronic Data Interchange |
| EDIFACT | Electronic Data Interchange for Administration, Commerce & Transport |
| EU | European Union |
| FDI | Foreign Direct Investment |
| GATT | General Agreement on Tariffs & Trade |
| GSP | Generalised System of Preferences |
| ICAO | International Civil Aviation Organisation |
| ICC | International Chamber of Commerce |
| IMO | International Maritime Organisation |
| ITA | Information Technology Agreement |
| MFN | Most Favoured Nation |
| NAFTA | North American Free Trade Agreement |
| PRSP | Poverty Reduction Strategy Paper |
| SME | Small or Medium-sized Enterprise |
| ToRs | Terms of Reference |
| UN/CEFACT | United Nations Centre for Trade Facilitation & Electronic Business |
| UNCTAD | United Nations Conference on Trade & Development |
| UNECE | United Nations Economic Commission for Europe |
| UNISTE | United Nations International Symposium on Trade Efficiency |
| WCO | World Customs Organisation |
| WTO | World Trade Organisation |

DISCLAIMER

Introduction

This paper has been prepared by Crown Agents and DMI Associates, at the request of the United Kingdom's Department for International Development (DFID). It draws upon Crown Agents' and DMI's combined experiences in the trade field, and uses these experiences to analyse the concerns of developing countries relating to the possible design and implementation of trade facilitation initiatives.

In drafting this paper, the author has interviewed a number of Geneva-based delegates to the World Trade Organisation (WTO), and consulted with a range of officials from developing and developed countries. The author has also sought the advice and input of a selection of officials from within the United Nations Economic Commission for Europe (UNECE), the United Nations Conference on Trade & Development (UNCTAD), the WTO, and the World Customs Organisation (WCO).

The author is very grateful for the comments and advice received from all the above-mentioned parties, but any errors or omissions are the responsibility of the author. The views expressed in the paper are personal and should not be attributed to the Department for International Development (DFID).

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EXECUTIVE SUMMARY

Introduction

Recent years have seen a steadily growing interest in the subject of trade facilitation – amongst developed and developing countries alike. A number of factors have stimulated this. Over the last few decades, the expansion of international trade relative to national economies has brought into sharp focus the economic consequences of complex and customs and trade-related procedures. This longer term trend is now being re-inforced by shorter term factors – the rapid spread of information technology, e-commerce and the renewed increase in trade procedures and security following the World Trade Centre disaster of September 2001.

As a consequence, the challenges to developing countries posed by the need to facilitate trade are becoming ever more pressing. Developing countries face challenges to participate in international negotiations on trade facilitation in the World Trade Organisation (WTO) – and in other fora that are developing new standards for trade facilitation. At the same time, and more fundamentally, the implementation of trade facilitation measures is a developmental challenge, at both the national and regional level.

Key Concerns

The research conducted during the course of this study indicates that developing countries have a number of key concerns about negotiations related to trade facilitation in the WTO. These are that:

- The forthcoming negotiations on trade facilitation in the WTO should be delayed, or their scope narrowed, in order to preserve negotiating room in the overall negotiations
- The negotiations on trade facilitation will lead to obligations that are expensive and difficult for developing country administrations to implement
- The scope for new obligations on trade facilitation under the WTO is uncertain
- Developing countries are reluctant to be subject to new obligations which are subject to dispute settlement in the WTO, and that
- Commitments to capacity building and trade facilitation by WTO members will prove to be insufficient.

Challenges and Opportunities

There are both competitive challenges to be addressed and potential opportunities to be realised which taken together should prompt developing countries to examine and implement trade facilitation initiatives.

The competitive challenges stem from the fact that trade facilitation initiatives will continue to be implemented on a voluntary basis amongst developed countries and those developing countries that are more dynamic traders – regardless of the stance which the majority of developing countries choose to take. This will result in competitive pressures on producers in economies that do not participate in trade facilitation initiatives.

Potential opportunities for developing countries stem from trade facilitation initiatives and related reforms of customs administration that will contribute to their economic development through the expansion of trade, through improvements in customs integrity and reduced incentives for corruption, through more effective and selective border controls, and through more efficient revenue collection.

EXECUTIVE SUMMARY (CONTINUED)

Key Conclusions

Trade facilitation needs to be recognised as a priority for development, since trade facilitation initiatives can be an important means to foster economic growth, creating an enabling policy and regulatory environment that supports the expansion of both trade and encourages investment.

An effort is therefore required from both recipient countries as well as donors (bilateral or multilateral) for clearly identifying trade facilitation as a priority – to ensure that it receives the attention it is due in development co-operation and the promotion of good governance. At the same time, developing countries need to be more active in articulating their vision of what would constitute an appropriate clarification of the rules for trade facilitation.

*Crown Agents & DMI Associates
London & Geneva
April, 2003*

1. INTRODUCTION & BACKGROUND

1.1. INTRODUCTION

Trade facilitation is a cross-cutting issue which impacts upon every country across the world. It involves many aspects of government policy, legislation and administration at the national level – and encompasses various initiatives and organisations at the international level.

Many developing countries have expressed concerns about their capacity to implement trade facilitation measures, and are reluctant to consider international initiatives which promote trade facilitation – either through negotiations in the World Trade Organisation (WTO) or through the development of new instruments and standards for trade facilitation. Yet trade facilitation can, despite this, play a crucial role in helping developing countries to gain from trade and to promote their economic growth.

1.2. WHAT IS TRADE FACILITATION?

Trade facilitation refers, in general terms, to the capacity for goods to be moved expeditiously across national borders. However, the scope of the precise definition varies.

Trade facilitation is sometimes defined narrowly in relation to the various customs formalities and procedures which must be passed through to ensure the clearance of goods across national borders. According to this definition, trade facilitation refers to the simplification, harmonisation and automation of trade procedures – in particular, the import, export and transit procedures applied by customs and other agencies to control the cross-border movement of goods.

Often, however, trade facilitation is defined more broadly, to encompass all the formalities and procedures related to international trade and the transportation of goods and services across borders – including contractual, transactional and payments issues. The wide scope of potential elements that relate to trade facilitation is suggested by the list of factors included in the diagnostics tool proposed by the World Bank in the context of the Global Facilitation Partnership for Transportation and Trade¹. These factors include:

- The operational efficiency and integrity of customs services;
- The management of ports through which imports and exports are processed;
- Commercial integrity, and the compliance of the private sector with trade-related procedures;
- The national and international trade-related regulatory framework;
- Multi-modal transport operations and legislation;

¹ Raven, J. (2001) *Trade and Transport Facilitation: A Toolkit for Audit, Analysis and Remedial Action*. The World Bank.

- Payment systems for traded goods and services;
- The automation of trade-related systems and procedures;
- Agents' functions and attitudes;
- Institutional resources, and
- The flows of information and consultation between various parties involved in international trade.

Of course, any such list is a matter for discussion. Some observers would suggest that this list, although relatively broad in that it includes trade and transport issues together, still remains very focused on the movement of goods without considering the legal and transactional issues associated with e-commerce and supply chains in a cross-border context.

1.3. SCOPE OF THIS PAPER

For the purposes of this paper, it is not necessary to choose definitively between a narrow or broad definition of what constitutes trade facilitation, but it is important to recognise that discussions of trade facilitation often shift between the narrower and broader definitions outlined above. Unless elsewhere specified, this paper uses the narrow definition of trade facilitation, since this is the definition that is used in WTO negotiating fora.

Although discussions in the WTO, the UN or in regional bodies can play an important role in promoting common approaches to trade facilitation, it is important to recognise that trade facilitation is also an issue for individual countries in their development strategies, independent of such international negotiations. Efforts to facilitate trade can inform various other development initiatives, such as the preparation of Poverty Reduction Strategy Papers (Preps) – themselves intended to promote greater co-ordination of donor assistance in line with national development priorities.

In response to the Terms of Reference (ToRs) provided by DFID, this paper examines the following questions:²

- Why is trade facilitation an issue for developing countries now?
- What are the concerns of, and challenges for, developing countries in the trade facilitation field?
- How can developing countries benefit from measures that facilitate trade?
- What are the related costs for developing countries of such measures? And,
- What steps could now be taken to broaden developing countries' involvement in the design and implementation of trade facilitation initiatives?

² In addition to the main body of the report, Appendix A examines a range of initiatives in the field of trade facilitation and Appendix B examines trade facilitation work within the World Trade Organisation.

2. WHY IS TRADE FACILITATION AN ISSUE NOW?

2.1. KEY FACTORS

A number of factors – both longer-term trends and more recent developments – are stimulating current interest in developing and implementing better approaches to the facilitation of trade at the global and the regional level. As the volume of international trade has expanded relative to national economies, so the economic consequences of customs formalities and procedures or other legal and regulatory factors that delay or block the movement of goods across borders have become more significant in their economic implications. The response to this trend has been an increased focus on trade facilitation initiatives amongst the most developed countries – as well as some developing countries.

Longer-term factors which have spurred a growing interest in the field of trade facilitation include the overall trend to expanded international trade over the last half century, during a period of relative peace and security at the global level. Specific elements within this include:

- Reductions in transport costs due to new technologies and substantial investments in global transport infrastructure;
- Reductions in tariffs and trade barriers through global and regional agreements, and
- Reductions in international communications costs.

Shorter-term factors include the following:

- Reductions in tariffs and other trade barriers resulting from the Uruguay Round of 1995;
- The rapid spread of information technology, the internet and e-commerce;
- The agreement under the Doha Declaration to prepare for negotiations on trade facilitation, and
- Renewed concerns about the need to maintain the integrity and security of goods moving across borders, in light of the World Trade Centre disaster and the United States Government's subsequent war on terrorism.

2.2. OBSTACLES TO TRADE FACILITATION

Significant economic benefits can be realised through the implementation of trade facilitation measures. Even when customs services function relatively well, the costs of documentation and delays in the clearance of goods impose a significant burden on business – especially Small and Medium-sized Enterprises (SMEs). Yet in many countries customs services do not function well. The economic effects of the combination of high transport costs, lengthy delays in border clearance and relatively high trade barriers have compounding effects on the growth potential of many developing countries.

Figure 1 – The Challenges Faced by Landlocked Countries

Landlocked Countries and Transport Costs

The combination of high transport costs, poor infrastructure, and the high costs of border clearance can be a substantial obstacle to development – especially in the case of landlocked countries. For example, the cost of shipping a standard container from Rotterdam to Dar es Salaam in Tanzania – a distance of 7,300km by air – costs US\$1,400, but shipping the same container to Kigali in Rwanda by road over a distance of 1,280km costs about double this amount.³ So in economic terms Dar es Salaam is ‘closer’ to Rotterdam than to Kigali. Studies by the World Bank confirm that the links between transport costs, poor infrastructure and poor trade performance are mutually reinforcing, particularly for land-locked African countries. These studies suggest that such different factors taken together explain to a considerable extent the poor trade performance of many landlocked countries.⁴ The development challenge is to find ways to break out of the vicious circle of high transport costs, poor infrastructure and poor trade performance which besets many landlocked countries.

In considering the distribution of poverty and wealth in a globalising world economy, contemporary economists such as Rodrik and Sachs have brought back into discussion the role of geography and the concerns of the classical economists about patterns of economic development and growth. Tackling the challenges of uneven economic development and improving the development prospects of the poorer nations (and poorer regions of large nations such as China and India) requires a willingness to examine the obstacles to economic growth from the widest possible perspective – considering geography, transport costs, and infrastructure deficiencies. It also requires that policymakers recognise the ways in which inappropriate policies can raise transport costs and impede development.

Obstacles to trade facilitation can act in the same way as geographic barriers and poor infrastructure – reducing the potential for trade and contributing to underdevelopment and poverty. Measures that facilitate trade are comparable to reductions in transport costs. It is readily understood that building a new port or a railway tunnel through a mountain range can open up new trading opportunities, bringing economic benefits and helping impoverished peoples – but it is not always recognised that trade facilitation initiatives can offer similar benefits by expanding trade opportunities and thereby increasing opportunities for poverty reduction. Yet the investment required to introduce trade facilitation measures is frequently less costly and can yield greater returns over the longer term.

For landlocked states, the combination of high transport, transit and customs clearance costs adds significantly to cross-border transactions. The consequent low trade volumes reduce the quality and quantity of investment in transport infrastructure, in turn resulting in increased transport costs – creating a vicious circle. For these states, economic development requires investment in the ‘hardware’ of transport infrastructure as well as the ‘software’ of trade facilitation – but this presupposes co-operation with their neighbours. Costly investment in transport infrastructure will yield substantially more benefits, and would be more likely to be self-financing, if in parallel trade facilitation measures were introduced in order to permit goods to move more expeditiously across borders.

³ Gallup, J., Mellinger, A. and Sachs, J.D. (1998) *The Geography of Poverty and Wealth* – paper prepared for the World Bank. Centre for International Development, Harvard University.

⁴ Limao, N. and Venables, A. (2000) *Infrastructure, Geographical Disadvantage and Transport Costs* – paper prepared for the World Bank.

The poorer landlocked countries tend to have very limited capacity to participate in voluntary trade facilitation initiatives, and they are very dependent upon the co-operation of their neighbours if trade facilitation initiatives are to be successful. These landlocked countries are often not represented in Geneva for negotiations in the WTO, and their capacity to participate in the WTO is therefore extremely limited⁵.

In preparing this report, a special effort was made to contact officials in the capitals of landlocked low-income countries. Many of these countries do not have well-developed positions on the trade facilitation negotiations which take place in the WTO, and they participate only to a limited extent in voluntary trade facilitation initiatives. Yet these poor landlocked countries might benefit significantly from the clearer and more predictable rules for transit trade that could emerge from negotiations in the WTO. At the same time, the countries they import and export through could also benefit through broader economic development.

2.3. CHALLENGES & OPPORTUNITIES

There are both competitive challenges to be addressed and potential opportunities to be realised which, when taken together, should prompt developing countries to examine and to implement trade facilitation initiatives. The competitive challenges stem from the fact that trade facilitation initiatives will continue to occur at least on a voluntary basis amongst developed countries – along with those transition and developing countries that are the more dynamic traders. They are therefore increasingly likely to expand their share of world trade, leaving those countries which do not engage in trade facilitation initiatives with correspondingly diminishing shares, leading eventually to further marginalisation and poverty.

Recent trends – such as the development of e-commerce and of inter-connected global supply chains – will continue and may even accelerate in the foreseeable future, despite the collapse of the internet stock bubble. Even renewed concerns about terrorism and the security of the international shipment of goods, will not stop initiatives for trade facilitation amongst developed countries. Indeed, such concerns will probably serve to increase demand for such initiatives, as the new security measures emphasise the profiling of shippers and cargoes and pre-arrival electronic notification. There is also likely to be an additional stimulus on customs administrations towards the utilisation of technology-based applications, to which developing country exporters may lack access.

Taken together, these new trade facilitation initiatives amongst developed countries and the concerns for intensified security surveillance, will lead to competitive pressures on producers in those countries which do not participate in the design and introduction of trade facilitation initiatives.

⁵ One notable exception to this is Paraguay, which maintains a Permanent Representative in Geneva at the WTO. The Government of Paraguay has made particular efforts to involve itself in international discussions through its Permanent Representative, drawing attention to and analysing the particular problems which poorer landlocked countries face.

See Boettner, L. M. R. (2000) *Trade Facilitation – A Presentation by the Permanent Representative of Paraguay in Geneva*. WTO Paper G/C/W/237. This paper is referred to and discussed briefly in section four of this report.

At the same time, trade facilitation initiatives and the related reforms of customs procedures in developing countries could contribute to their own economic development – through the expansion of trade, improvements in the environment for Foreign Direct Investment (FDI), improvements in customs integrity, more effective and selective border controls, and more efficient revenue collection. Achieving these potential benefits will however require substantial investment – to modernise customs and other border-related services. The ability of developing countries to maximise these benefits will also depend on the existence of complementary policies – such as education policy, and macroeconomic policy.

Trade facilitation initiatives will continue amongst the developed countries and those developing countries that are active in international trade – regardless of whether or not other countries participate in these developments. For developing countries it is important to understand any new proposals, as well as existing trade facilitation measures, and to consider how such instruments can be adapted to benefit them and to contribute to their development. Otherwise there is a clear risk of further marginalisation, especially of the very poorest countries.

3. DEVELOPING COUNTRY CONCERNS & CHALLENGES

3.1. GENERAL PERCEPTIONS

In analysing developing country perceptions about negotiations on trade facilitation in the WTO, a range of issues can be identified. These include:

- Issue linkage concerns
- The lack of familiarity with existing trade facilitation instruments
- Implementation concerns relating to existing Uruguay Round commitments
- Concerns that the mandatory obligations will be subject to dispute settlement
- Concerns that the new agreement will include standards that exceed developing countries' capacity to implement them
- Concerns that the new agreement will be developed without regard to developing countries' input
- Uncertainty over the scope of new obligations, and
- Scepticism about whether commitments to provide technical assistance and support through capacity building are meaningful and realistic.

The following sections discuss each of these issues in more detail.

Issue Linkage

The reluctance of some developing countries to involve themselves in the formal launch of negotiations on trade facilitation seems in part to be motivated by broader negotiating strategies and what can be described as ‘*issue linkage*’. There is much greater reluctance on the part of some developing countries to initiate negotiations on the ‘Singapore issues’⁶ – and thus there is reluctance to launch negotiations on trade facilitation in particular, because this could be perceived as creating a precedent for negotiations on the other issues. Although this concern seems to have been overcome in the agreement reached under the Doha Ministerial Declaration, the reservations expressed by a number of developing countries in the preparations for Doha mean that the issue could re-emerge in the context of the debate about the ‘modalities of negotiation’ at the Mexico Ministerial. Many developing countries also have concerns surrounding the number of issues being negotiated, and their ability to follow and participate in so many negotiations concurrently.

The potential for issue linkage to block negotiations on trade facilitation will inevitably remain an open question, because the overall balance of interests of various groups of countries is always a factor in the success or failure of a multilateral multi-issue negotiation. Although both developed and developing countries are members of the so-called ‘Colorado’ group⁷ which supports trade facilitation negotiations in the WTO, many developing countries view developed countries as the ‘demanders’ on this issue.

Undoubtedly the prospects for negotiations in the WTO on trade facilitation after the Ministerial in Mexico will be influenced by overall developments in WTO negotiations. Issue linkage could re-emerge as a significant factor if negotiators do not sufficiently recognise the constraints or priorities of other members on more contentious issues in the Doha Development Agenda.

Challenges of Implementing Existing Trade Facilitation Standards

Most developing countries do not participate in the full range of existing instruments under the United Nations Economic Commission for Europe (UNECE) and the World Customs Organisation (WCO). Meantime, virtually all developed countries do participate in the full range of these trade facilitation instruments and conventions.⁸ Of the various instruments surveyed, the participation of developing countries is greatest – but not universal – in the WCO International Convention on the Harmonised Commodity Description and Coding System (1983), the UNCTAD ASYCUDA electronic customs programme, the UN Layout Key and EDIFACT standards for Electronic Data Interchange (EDI).

⁶ The 1996 Singapore Ministerial Declaration mandated the establishment of working groups to analyse issues related to investment, competition policy and transparency in government procurement. It also directed the Council for Trade in Goods to undertake analytical work on the simplification of trade-related procedures, in order to assess the scope for WTO rules in this area. Since that time, these four areas (investment, competition policy, government procurement and trade facilitation) have come to be known collectively as the *Singapore Issues*.

⁷ The Colorado Group was formed in 1998 to promote work on trade facilitation within the WTO, and consists of the United States, the European Union, Japan, Canada, Chile, Costa Rica, Australia, New Zealand, Hong Kong, Singapore, Korea, Hungary, Norway, Switzerland and Morocco. This marked the first time that a group of nations within the WTO assembled in a united front to promote the simplification and harmonisation of trade-related procedures.

⁸ See annex entitled ‘List of countries or territories having accepted or acceded to trade facilitation instruments’ in UNECE (2002) *Compendium of Trade Facilitation Recommendations*. New York and Geneva, pp. 65-69.

Furthermore, since these practices tend to be voluntary or best efforts, the issue is not simply a matter of ratification of international protocols, it is instead a matter of effective implementation within national administrations. Thus, there is a substantial challenge to encourage and support the participation of developing countries in these conventions and more importantly to assist them to implement these various instruments and conventions for trade facilitation.

Implementation Issues in the WTO

The concerns of many developing countries about negotiations on trade facilitation in the WTO are linked to concerns about the resources necessary to implement existing WTO agreements. Particular examples of such concerns include:

- Requirements relating to the reform of customs valuation legislation and methods;
- The removal of performance requirements on investment;
- Prohibitions on import-substitution and export-linked subsidies, and
- Requirements for the protection of intellectual property rights.

Principally, these concerns have been driven by the belated realisation of domestic policy needs and the economic impact of change, and also in part by realisation of the domestic political will needed to secure sustainable reform.

An extensive review of the implementation issues facing developing countries in the WTO was undertaken during the period between 2000 and 2002, and agreement on the Doha Ministerial Declaration for future negotiations was only reached in conjunction with a parallel lengthy and detailed Ministerial decision on Implementation Issues. The WTO debate about 'implementation', especially in respect to customs valuation, has directly influenced the debate about trade facilitation. Many developing countries have just experienced, or are still facing, challenges in the implementation of obligations such as the reform of customs valuation legislation and administrative procedures. These remain expensive and difficult for them to implement because of the limited capacities of their customs services, and as a consequence they are very reluctant to take on new obligations which impose related but additional challenges.

For example, since many developing countries lack sophisticated tools and operating procedures for comparing prices on invoices for imports or exports of similar products, they remain worried about the shift to the transaction value standard for customs⁹, which they perceive as increasing the potential for a greater incidence of price manipulation and customs fraud, which in turn undercuts both tariff and tax revenues. Several developing countries are concerned that WTO negotiations may bind them to new standards that will exceed their capacity to implement.

⁹ The WTO Agreement on the Implementation of Article VII of the GATT stipulates that customs valuation shall, except in specified circumstances, be based on the actual price of the goods to be valued. This is more generally known as the transaction value, defined by the WTO in the following manner: '...the price actually paid or payable is the total payment made to the buyer to or for the benefit of the seller for the imported goods, and includes all payments made as a condition of sale of the imported goods...'

For further discussion of customs valuation methods and the issues related to their implementation in developing countries see Rege, V. (2002) *Customs Valuation and Customs Reform*, chapter 15 in English, P., Hoekman, B. and Mattoo, A. *Development, Trade and the WTO – A Handbook*. World Bank.

Mandatory Obligations and Dispute Settlement

Many developing countries state that they support the goal of trade facilitation, but emphasise that they believe co-operation on trade facilitation should be voluntary. Trade facilitation should not, in their opinion, be incorporated in mandatory WTO obligations that are subject to dispute settlement in the WTO. In truth, even voluntary approaches such as the Asia-Pacific Economic Co-operation (APEC) initiatives on trade facilitation have not been without controversy, but many developing countries do seem to prefer a voluntary approach that allows them to be flexible in the implementation of common standards and approaches to trade facilitation.

At the same time, it must be noted that many developing countries have not participated in the various existing trade facilitation instruments which they have signed up to – or have fully implemented the agreements which they have ratified. It might be argued that the voluntary approach has significantly failed in unlocking the full benefits of trade facilitation, from which developing countries and small traders stand proportionately to gain the most. The United Nations Conference on Trade & Development's (UNCTAD's) Columbus Declaration¹⁰ – poorly implemented in practice – demonstrates the drawback of 'soft law' recommendations where political will to change is absent. The benefit of a WTO agreement on trade facilitation would be the more robust and coherent implementation of trade facilitation concepts and principles.

Negotiating Resource Constraints

Since many developing countries do not participate in the existing range of trade facilitation instruments and conventions, it is not surprising that they are wary of the development of new standards for trade facilitation. Even voluntary standards have implications for competitive conditions in the marketplace. There is considerable concern amongst developing countries that these new standards (either voluntary or mandatory WTO obligations) will not reflect their needs or concerns, but will nevertheless become accepted as the norm by the wider international community. If developing countries do not actively participate in the design and formulation of these trade facilitation initiatives and ensure that these new standards reflect their needs and priorities, they will risk further marginalisation in world trade and economic activity.

Since many developing countries have limited delegations to the WTO, WCO and other UN agencies (and a significant number of the smaller and poorer nations are not even represented in the Geneva by missions), the capacity of developing countries to follow, let alone participate, in the development of new standards and instruments for trade facilitation in the WTO, the UNECE, the WCO or other forums is extremely limited. Although a number of initiatives are beginning to enhance the capacity of developing countries to engage in international trade negotiations, this is a long-term process that encompasses a great deal more than just trade facilitation.

¹⁰ The Columbus Ministerial Declaration was adopted in October 1994 during the United Nations International Symposium on Trade Efficiency (UNISTE). The Declaration was prepared in recognition of advances on the field of information technology and states the need to promote electronic trade world-wide, based on the principle of equality of access for all countries to systems compatible with international standards recommended by the UN.

Uncertainty about the Scope of New Obligations

A number of developing countries have expressed concerns about the scope of the potential obligations that might be negotiated in the trade facilitation field in the WTO. An example that was cited by one particular developing country during the course of this study was that it feared mandatory deadlines would be imposed on the clearance of goods through customs, something which developing countries would be unable to implement – or could at best only implement at great expense. Although this has never been proposed by a WTO Member, it serves to demonstrate developing countries' fears that WTO negotiations will lead to unreasonable obligations being imposed upon them.

Of course, it is possible that proposals for obligations on trade facilitation could impose mandatory requirements that would be costly and onerous to implement, but it is less likely that this would be the agreed outcome of broad-based multilateral negotiations. However, because the nature and scope of the precise obligations are uncertain, this does create a significant degree of uncertainty in developing countries. This uncertainty, combined with their limited capacity to participate in the negotiations in the WTO, makes developing countries hesitant to accept new obligations.

3.2. MEANINGFUL CAPACITY BUILDING

Commitments under the Doha Declaration that WTO members will provide technical assistance and capacity building with respect to trade facilitation (and other WTO negotiations) are viewed with considerable scepticism and doubt by many developing countries. There is a widespread concern that such technical assistance will be slowly delivered and will be insufficient to address the challenges faced by developing countries seeking to upgrade their customs services and to develop the administrative structures and operational computer networks necessary to speed the movement of goods. Even the European Commission – which supports WTO negotiations on trade facilitation – has recommended that a reliable mechanism for meeting developing country capacity-building needs must be properly integrated into the rules-making process, stating that:

“...Our experience in implementing the Uruguay Round agreements shows the practical difficulties if one undertakes WTO commitments, however desirable in themselves, if the means are lacking to implement them. The same experience also shows that it is not always enough to establish commitments but then to confine assistance only to training officials to understand what they mean. Assistance should not be afterthought but be designed before the end of the negotiation process and delivered once an agreement is in place...”¹¹.

Developing countries seem to welcome the position of the EC on capacity building even if they have concerns about negotiations on trade facilitation, but they express strongly the perspective that technical assistance and capacity building needs to precede agreement and be undertaken in parallel with the negotiations on trade facilitation. Otherwise they are concerned that the support for capacity building will be too little and too late. While the absence of agreed standards will make it difficult to target technical assistance accurately (since the aims of the technical assistance will not be clearly identifiable), capacity building in trade facilitation policy will be crucial if developing countries are to fully participate in negotiations – and to ensure that a balanced and workable agreement is reached.

¹¹ European Commission (2000). *Technical Assistance and Capacity Building in Relation to Trade Facilitation*, a Communication to the WTO Council for Trade in Goods (ref G/C/W/235).

These concerns have an objective basis, because the scale of technical assistance required to implement comprehensive reform and upgrading of customs services would be significant – even if countries such as Chile and others have shown that there can be early and long-term gains from such measures. It can be countered that some aspects of trade facilitation, such as adopting customs documents to standard formats, would be less costly. However, several developing countries and consulting organisations take the view, based on their experience to date with the implementation of customs-related reforms, that it is not possible to address one aspect of the customs system without undertaking more substantial, broad-based investments in the modernisation of the entire customs administration¹². The various linkages and inter-relationships between different aspects of customs operations tend to favour a more holistic approach to capacity building.

Nevertheless, this need not always be the case – particularly in situations where reforms are designed in close partnership with developing country governments, and have their full support and buy-in. Under such circumstances, incremental, sequential changes can in time be effective. In addition, several proposals for rules (for instance, relating to transparency and non-discrimination, the use of international standards, and the rationalisation of border controls) are cost-neutral or will save resources.

It must also be recognised that while the agreement on customs valuation came into effect on January 1st, 2000 (with an option for developing countries to request an extension until January 1st, 2003 for some selected provisions), many developing countries have not fully implemented their commitments. Some of those who have adapted their legislation are experiencing difficulties with administrative implementation. Whilst increasingly customs services have audit capabilities and computerised databases to compare and to track the declarations of traders, along with post-entry audit capabilities to mitigate the potential for fraud by different techniques and means, numerous developing countries still lack these capabilities because of the cost, lack of training and other factors.

4. HOW CAN DEVELOPING COUNTRIES BENEFIT?

4.1. BENEFITS FROM GLOBAL TRADE

Regardless of international negotiations or initiatives in the WTO, the UN or the WCO, the capacity of developing countries to facilitate trade is crucial to their economic development and poverty alleviation prospects. The poorest countries face the greatest challenges in implementing trade facilitation proposals, but they could obtain significant economic benefits and enhance their development opportunities as a result.

Trade facilitation is necessary to achieve greater benefits from the Generalised System of Preferences (GSP) tariff programme, or other arrangements – including the Cotonou Arrangement between the group of African, Caribbean and Pacific (ACP) countries and the EU, and US arrangements for Africa and the Caribbean. Preferential market access to high-income markets is of little benefit to developing country exporters and will not

¹² For a broader discussion of customs reforms initiatives see: Crown Agents (2003). *Review of Crown Agents' Experiences in the Field of Customs Reform* – a paper prepared for the Organisation for Economic Co-operation and Development.

serve the objective of promoting economic development if these exporters cannot complete the documentation needed to satisfy rules of origin requirements under the preferential tariffs – or if they cannot satisfy documentation requirements for technical standards and sanitary and phytosanitary measures.

Trade facilitation measures – either to simplify developing country export procedures or to assist developing country exports in meeting the documentation requirements of high-income markets – are critical to enable developing countries to reap the potential gains from trade. Similarly, expeditious and predictable access to imported products and components is a key element in an ‘enabling’ legal and policy framework that will facilitate the growth and development of SMEs and the private sector. Simplifying import and export procedures in developing countries will also facilitate trade between developing countries.

Trade facilitation is essential if countries are to secure the benefits from trade liberalisation strategies. One illustration of this was cited during the preparation of this paper. The case in question was that of a transition economy in central and eastern Europe, which had joined the Information Technology Agreement (ITA) and had subsequently removed all tariffs on computers and components when it acceded to the WTO. The country sought to develop export-oriented computer assembly activities – using imported components – through the removal of all computer-related tariffs. However, such activities were blocked by cumbersome customs procedures, that delayed imported components in customs for lengthy and unpredictable periods.

Conversely in China, the customs authorities have implemented a trial program for the simplification of customs procedures, based on international standards, in Guangzhou province – and have found that customs clearances can be reduced from an average of 7 days to 24 hours. The Chinese authorities believe that this will bring significant benefits to the electronics and computer assembly industry in the Guangzhou province.

4.2. BENEFITS FROM REGIONAL TRADE

Many developing countries participate in regional trade initiatives intended to promote expanded trade, investment and economic development. The effective functioning of these regional trading arrangements depends on the development and effective implementation of common customs forms and procedures. Expansion of trade among regional partners requires that rules of origin and other documentation requirements can be satisfied without undue costs, and that traded goods can move in a timely and cost-effective manner across national borders within the regional arrangement. Many of the regional trading arrangements among developing countries are not as effective in practice as they could be, because of a failure to implement trade facilitation standards.

Trade facilitation initiatives and practices based on global standards promoted possibly via the WTO, could serve to stimulate trade and investment within regional trading groups in developing countries. This may be a particularly important factor, given that 40% of developing country exports of manufactured goods are to other developing countries (WTO Secretariat, 1999).

4.3. DEVELOPMENT OPPORTUNITIES FOR LANDLOCKED COUNTRIES

The special concerns of landlocked countries warrant particular attention. Landlocked states comprise a significant proportion of the world's poorest nations, and improving their economic development prospects will require a co-ordinated strategy. Such a strategy must address the need to increase regional economic co-operation between landlocked states and their neighbours, to invest in the 'hardware' of transportation infrastructure, and to invest in the 'software' of trade and transport facilitation. And in the case of land-locked countries this also means the borders of their neighbours.

Improving the economic development prospects of landlocked countries is an economic challenge at the global level, and trade facilitation, although only one part of the solution, could make a significant contribution to this goal. Yet the capacities of the poorest landlocked economies to participate in international initiatives for trade facilitation and to implement the necessary reforms in their domestic administration are extremely limited.

However, in a few instances, landlocked countries have made progress – both in articulating their own concerns and opinions with regard to trade facilitation, and also in taking concrete steps to overcome the barriers that they face. The Government of Paraguay, for instance, has participated actively in a number of regional initiatives¹³ – as a signature to the Paraguay-Paraná Waterway Treaty of 1992, and more recently through free port agreements with both Argentina and Uruguay. As a result of its efforts, Paraguay is now playing a more active role within the Mercosur regional economic integration project which covers Argentina, Brazil, Paraguay and Uruguay – with Bolivia and Chile as associate members. By pressing for free ports in both Chile and Peru, and arguing that the main integration corridor from the Atlantic to the Pacific should pass through its territory, the Paraguayan Government has taken a strategic position – aiming to turn its apparent geographical handicap into a longer term asset.

Paraguay's experience suggests that positive steps can be taken to lessen or overcome landlocked countries' handicaps. However, its Government has argued that insufficient attention is paid to landlocked countries. To address this, it may be necessary for the international community to recognise landlocked countries as a separate country category within the WTO, and promote case studies such as Paraguay's to established if similar paths can be followed by other Governments in similar positions.

4.4. BENEFITS FROM TRADE & GOVERNANCE REFORMS

Trade facilitation is conceptually distinct at a policy level from other elements of trade reform, including trade liberalisation or improvements in economic governance (such as the prevention of corruption and enhancement of the efficiency of revenue collection). Nevertheless, these areas are inter-linked. Reforms in customs administration and procedures that lead to improved transparency, predictability and efficiency will bring broader benefits in limiting the scope of, and incentives for, corruption, contraband and fraud. Such reforms can also enhance the efficiency of revenue collection activities.

¹³ Boettner, L. M. R. (2000) *Trade Facilitation – A Presentation by the Permanent Representative of Paraguay in Geneva*. WTO Paper G/C/W/237.

Trade liberalisation measures intended to promote economic development – such as tariff reductions – will not be effective if legitimate and reputable traders cannot move their goods expeditiously through customs. Trade facilitation measures can also be designed to reward compliant and honest traders with faster procedures (e.g., systems of ‘authorised traders’), thus breaking the vicious circle of corrupt officials and dishonest traders.

4.5. BENEFITS FROM CUSTOMS REFORM

Some developing countries see the reform and modernisation of customs as being both expensive and technically difficult. But the experience of Chile, Singapore and other countries seems to suggest that the costs are manageable and investments in trade facilitation have the potential for rapid pay back¹⁴. There is scope for cost-recovery from some trade facilitation measures and practices in relatively short time-frames. In addition, the reform and modernisation of customs should severely curtail the need for use of pre-shipment inspection services, which are expensive for many developing countries, and do not serve to enhance customs authorities’ institutional capacity.

5. THE COSTS OF TRADE FACILITATION

5.1. CAPACITY CONSTRAINTS

It is essential to acknowledge that there are sometimes significant constraints to the capacities of developing countries to implement trade facilitation initiatives, and that significant short-term costs can be incurred in implementing trade facilitation instruments and measures.

In many developing countries, the customs authorities or other agencies involved in aspects of trade regulation are poorly paid, poorly trained and operate without adequate tools and operating procedures or administrative support. Electronic filing and paperless clearance are major challenges for most developing countries, although most simplification measures do not require an electronic environment. It is important to recognise that trade facilitation starts with very simple and paper based instruments, such as common formats for declarations.

The challenges for developing countries have two major elements. One element is to build their capacity to participate in negotiations in the WTO and in international standards-setting for a, under the auspices of the UN and the WCO. The other element is to develop the capacity within their countries to implement trade facilitation instruments and practices. It is evident that the transformation and upgrading of the skills, operating procedures, and infrastructure of customs services and other agencies requires appropriate investment in training, in improved salaries for public officials, and operating infrastructure.

¹⁴ Illustrations of the potential benefits which can be generated by customs reform initiatives are quoted in Crown Agents (2003). *Review of Crown Agents’ Experiences in the Field of Customs Reform* – a paper prepared for the Organisation for Economic Co-operation and Development. This outlines the case of Mozambique, where under a broad-based programme to modernise customs, revenues almost doubled over the 4-year period between 1997 and 2000. Revenue increases were such, that the Mozambican Government recouped much of its initial investment in the reforms within the first 14 months.

5.2. COSTS OF PARTICIPATING IN INTERNATIONAL FORA

For many developing countries, the cost of participating in any international fora, including the trade facilitation negotiations in the WTO, is high. This is true not only because of their small or non-existent delegations, but also because of the support they need from their authorities in the national capital and in the implementing agencies. Participating effectively in international fora costs much more than maintaining small missions in Geneva or sending a few officials from capitals to international conferences and meetings. Effective participation requires that there is adequate capacity in national capitals to track international initiatives and to assess their implications for national interests, policies and administration, on an on-going basis. The relevant international organisations – the WTO, WCO, UN, UNCTAD, WB and regional development banks – can all play a constructive part to ensure an adequate flow of information to developing countries. Yet despite this, developing countries still need the capacity to assess their own interests.

5.3. COSTS OF MODERNISING CUSTOMS SERVICES

A key component of effective trade facilitation is the integrity and efficiency of customs services and other border agencies. While reform of customs authorities will be crucial for trade facilitation initiatives to be successful, reform is often expensive and resource intensive for many developing countries. Given the large numbers of personnel employed in customs authorities, the costs related to improving pay and training of personnel can be significant. The development of effective and operational open-architecture computer systems and the application of analytical tools for price comparisons and the tracking of shippers and importers, can offer significant benefits, including cost-savings. Yet they can also be expensive and resource intensive.

An important concept within the field of trade facilitation is ‘being able to do more with less’. Once reform measures are in place, there should be a smaller, better paid and more effectively targeted customs workforce, focused on the known areas of greatest risk to trade. This reorientation of customs’ resources should in turn lead to increased revenue collection levels and the detection of illicit traffic – eventually offsetting any initial investment costs.

The modernisation of customs services is a necessary element of trade facilitation – but is not sufficient in itself. Border controls and inspections are imposed for other reasons and by other agencies – for the protection of animal, plant or human health, for instance. Such controls can have a significant impact on the ease and efficiency with which goods can be traded internationally. Thus, other border-related agencies, such as the inspection and quarantine services, need to be upgraded in parallel with customs modernisation, or at least co-ordinated in time and place.

A number of developing countries are concerned that if trade facilitation measures are not implemented properly it will lead to a greater incidence of customs fraud and revenue loss. Therefore, for developing countries to ensure the considerable benefits of trade facilitation are realised they will need significant help in implementing any agreement.

6. NEXT STEPS

6.1. POSSIBLE ACTION POINTS

Securing Commitment for Capacity Building

It is clear that if the negotiations on trade facilitation in the WTO are to proceed, then commitment to ensuring adequate technical assistance and support for capacity building in this area must be obtained. The research conducted during the course of this study indicates that such commitment can only be secured through a combination of specific initiatives which will directly support negotiations in the WTO, and a much broader set of initiatives which encourage co-operation on trade facilitation on a regional and global basis.

The case for developing initiatives to promote co-operation on trade facilitation is independent of the negotiations in the WTO, given the potential economic benefits which such initiatives can generate. However, progress in the implementation of trade facilitation instruments and practices in developing countries – either individually or in groups – will influence their perspective on the negotiations.

Proposals to support capacity building in the trade facilitation field have two major components. One component is to assist developing countries to participate in the negotiations in the WTO and in the standards-setting activities under the auspices of the UN and the WCO. The second component is to support the actual implementation of trade facilitation measures by developing countries. Whilst both components are important, it is clear that the second component involves a substantially greater commitment of resources – because it is linked to the administrative reform of customs services and other regulatory authorities. Whilst the first component focuses on the training of developing country officials to understand what negotiations mean, the second component encompasses a much broader and more demanding range of activities, including:

- The training of officials in modern trade management and customs techniques
- The automation of trade-related systems
- Participation in international standards setting, and
- Measures to improve port management and cargo handling¹⁵.

All such activities will require substantial longer term maintenance and follow up, to ensure that they become firmly rooted.

A number of proposals have been made that could be useful in supporting both policy dialogue and capacity building in various aspects of trade facilitation. However, there have been no specific proposals as to what might be the best modalities or institutions for supporting and implementing such initiatives. Obviously different donors and different organisations could be involved and in differing ways on different aspects, but it is very important that assistance is given in a co-ordinated and thoughtful manner to reduce the burden and improve the absorption of capacity building initiatives.

¹⁵ See European Commission (2000). *Technical Assistance and Capacity Building in Relation to Trade Facilitation*, a Communication to the WTO Council for Trade in Goods (ref G/C/W/235).

Participation in International Fora on Trade Facilitation

At present the capacities of developing countries for effective participation in both the forthcoming negotiations in the WTO on trade facilitation and the various fora under the auspices of the UN and the WCO that are involved in the development of new standards for trade facilitation are limited.

Negotiations in the WTO

No one, including the participants, can or should seek to prejudge the outcome of negotiations within WTO – including those that relate to trade facilitation. The negotiations will only reach a successful conclusion if there is a broad consensus of developed and developing countries on the overall package of commitments.

The WTO negotiations on trade facilitation are more likely to be successful if the proposed clarifications or amendments to existing rules and obligations under the WTO address issues of concern to both developed and developing countries alike. At this time, the real work of identifying specific issues and concerns that might be appropriate for elaboration or clarification of existing WTO obligations under Articles V, VIII and X of the GATT 1994 is now well underway. WTO members, especially those which are promoting the negotiations on trade facilitation, must identify issues and priorities in the WTO Council for Trade in Goods meetings devoted to trade facilitation – and respond properly to developing country concerns. By the same token, countries that are reluctant to commit themselves to negotiations need to articulate their specific problems, rather than resort to generalities or non-directly related concerns. All participants need to talk frankly if progress is to be made and a genuine resolution reached.

A number of specific initiatives can be put forward to support negotiations and to help developing countries to articulate their perspectives and practical concerns about trade facilitation. These could include country-specific studies and action-plans involving the customs authorities and other border-related agencies. Such initiatives would also help countries to understand the practical costs and benefits of trade facilitation.

Given their limited representation in Geneva, initiatives that analyse and report on the proposals and discussion on post-Cancun trade facilitation negotiations would be useful to developing countries. Regional seminars could help developing countries to exchange their perspectives on trade facilitation and to develop co-ordinated positions. These seminars could examine specific issues and proposals – such as the challenges faced by landlocked countries and the possible elements of a WTO agreement on trade facilitation. The WTO's 2003 Work Programme for trade-related technical assistance includes a substantial component on trade facilitation, as this will greatly help Members to understand the issues properly.

Participation in Trade Facilitation Organisations and Fora

The participation of developing countries in efforts to develop new standards for trade facilitation under the existing UN and WCO conventions and instruments is limited and uneven.

In parallel with regional seminars to build capacity on the negotiations on trade facilitation in the WTO, these regional seminars could examine in detail the issues

involved in trade facilitation instruments developed in the UN system and in the WCO, as well as other organisations. In addition, the participation of developing countries in the design of new standards for trade facilitation should be actively supported. Greater effort needs to be made to disseminate information about proposals for trade facilitation to developing countries.

Promoting Co-operation on Trade Facilitation

Regardless of the negotiating dynamics in the WTO, it is evident that trade facilitation is an important tool in promoting trade with, and investment in, developing countries and that measures to support capacity building and effective implementation of trade facilitation measures will contribute to economic development and help developing countries to gain from trade.

Promotion of Trade Facilitation in Regional Integration Agreements

Trade facilitation measures can contribute significantly to the effective functioning of regional agreements. Although issues such as the certification of compliance with preferential rules of origin are not addressed in multilateral rules in the WTO, the trade facilitation instruments developed in the WCO and UNECE can facilitate the operation of regional trade agreements.¹⁶

Trade facilitation should be an important component of the regional integration initiatives of developing countries and this should be a priority for technical assistance and capacity building to support such regional integration arrangements. The UN Regional Commissions and institutions such as the World Bank may have a particularly useful role to play here, but time is clearly important.

Promotion of Trade Facilitation in National Development Strategies

Trade facilitation is much more likely to be actively implemented in developing countries if it is incorporated within national trade, investment and economic development strategies. Since implementation of trade facilitation requires the political will to adjust legislation and to change administrative practice through different parts of the government and the economy, it is necessary for high-level policy makers to be aware of the benefits of trade facilitation and to attach priority to the implementation of trade facilitation measures and practices. One of the consequences of addressing the issue in the WTO is to create and harness the necessary political will and attention to reform.

A specific initiative that could promote the incorporation of trade facilitation in national trade, investment, and economic development strategies could involve sharing of experience in individual countries drawn from different regions and different levels of development – helping to identify success stories and to learn lessons for the implementation of trade facilitation.

The potential for this concept is borne out in those papers which have already been tabled by various WTO members as ‘national experience’ papers.

¹⁶ The significance of trade facilitation for regional integration is not happenstance, since the development of the European Community and more recently NAFTA have been a stimulus to the development of trade facilitation approaches.

6.2. MAKING TRADE FACILITATION A DEVELOPMENT PRIORITY

Linking Trade Facilitation to a wider Development Agenda

Various bilateral and multilateral donors and international financial organisations support technical assistance in developing countries. Specialised technical assistance is available from various international organisations including the UN agencies, the WTO and the WCO. There is much competition for differing priorities for these technical assistance funds – for laudable goals such as development of civil society, social development and promoting sustainable development. Trade facilitation can contribute to economic and social development, but if there is not a significant and substantial investment in customs modernisation and reform there are risks that trade facilitation initiatives will not succeed.

Trade facilitation needs to be recognised as a priority for development assistance policies, since trade facilitation can support the expansion of trade and investment and promote a private sector enabling policy framework that will support economic development. An effort is therefore needed from both recipient countries as well as donors for clearly identifying trade facilitation as a priority is an important factor in ensuring that trade facilitation receives the attention it is due in development co-operation and good governance.

Strengthening & Enhancing the Provision of Technical Assistance

Technical assistance for capacity building in the field of trade facilitation should be linked to, or co-ordinated with, broader initiatives to support the modernisation of customs – and should proceed in parallel with the actual negotiation and implementation of new rules for trade facilitation. By starting to address capacity building needs during the negotiation process, there is a greater likelihood that assistance can be made quickly operational once agreements are in place.

At the same time, it is essential that steps be taken to ensure greater co-ordination between the various donor organisations currently funding initiatives in the trade facilitation field. Existing programmes are often narrowly focused – and do not take a sufficiently holistic perspective, addressing all the different stages involved in the trade transaction. There is limited sharing of information and co-ordination between different initiatives – and in the absence of globally recognised criteria or benchmarks against which to simplify trade procedures, there is a very real danger that current reform measures will be counterproductive, maintaining or re-inforcing differences between countries rather than removing them.

Developing countries need to be more active in articulating their vision of what should be encompassed within any new rules for trade facilitation. There is at present a reluctance across many developing countries to make proposals, because they fear that in doing so they will undermine their negotiating position – tainting themselves as reluctant partners that must be cajoled into participation. However, if developing countries were to make specific, focused proposals, then this could have a significant positive influence on negotiations.

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APPENDIX A

**CURRENT TRADE
FACILITATION INITIATIVES**

Current Trade Facilitation Initiatives

The United Nations system, including the United Nations Economic Commission for Europe (UNECE), as well as other UN agencies and business organisations such as the International Chamber of Commerce (ICC) have played a key role in the development of standards for trade facilitation and the development of instruments for all aspects of trade and transport transactions. A *Compendium of Trade Facilitation Recommendations* published by the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) identifies more than 200 instruments related to facilitation of trade transactions, transportation and payments under the WTO, WCO, UNECE, ICC, the International Civil Aviation Organisation (ICAO) and the International Maritime Organisation (IMO).¹⁷

The World Customs Organisation (WCO) is an intergovernmental organisation, which works with the national customs services in member countries. As an organisation devoted to co-operation among customs services, the WCO emphasises objectives such as customs enforcement, security of borders and efficiency of revenue collection as well as trade facilitation. The WCO administers the Kyoto Convention which was updated in 1999 in order to promote trade facilitation, but ratification is still pending until forty member states of the Kyoto Convention (1974) ratify the revised version of the convention. To date ten countries – Algeria, Australia, Canada, China, Czech Republic, Japan, Latvia, Lesotho, Morocco, and New Zealand – have ratified the Protocol and six – Democratic Republic of the Congo, Slovakia, Sri Lanka, Switzerland, Zambia, and Zimbabwe – have signed the Protocol subject to ratification.

The revised Kyoto Convention has as its core governing principle the commitment by Customs administrations to provide transparency and predictability for all those involved in various aspects of international trade. In addition, Customs administrations commit to adopt the use of risk management techniques, to co-operate with other relevant authorities and trade communities and to implement appropriate international standards.

The activities of UNECE and other UN agencies and the WCO are complementary with existing obligations in the WTO related to trade facilitation. The activities of UNECE and WCO involve voluntary co-operation between business and customs authorities in the development of standards in a variety of areas ranging from standard formats for customs, trade, and payments documents to the development of standards for Electronic Data Interchange (EDI) and paperless clearance.

The current initiatives in Trade Facilitation in the UNECE and WCO involve two tracks.¹⁸ One track involves harmonising and implementing existing standards and the other track involves ‘...developing the next generation of rules and standards to facilitate the emerging new economy, characterised by e-commerce and global supply chains...’¹⁹

¹⁷ UN/CEFACT, UNECE & UNCTAD (2002) *Compendium of Trade Facilitation Recommendations*. United Nations, New York and Geneva.

¹⁸ UNECE (2002) *Trade Facilitation in a Global Trade Environment* – note by the Secretariat, 21st March.

¹⁹ Ibid, p. 3.

The current level of participation of developing countries in these trade facilitation instruments is low, thus the first track of involving developing countries in the harmonisation and implementation of existing standards is of considerable importance. However, the capacity of developing countries to participate in either track is extremely limited.

Most importantly, with negotiations on trade facilitation in the WTO planned after the Mexico Ministerial, there are now three tracks for addressing trade facilitation, implementation of existing standards, development of new standards, and negotiations in the WTO.

APPENDIX B

**TRADE FACILITATION IN THE
WORLD TRADE ORGANISATION**

Introduction

Issues related to trade facilitation are covered by a number of the provisions and obligations under the WTO, there has been a working group on trade facilitation, and under the Doha Ministerial Declaration, preparatory work is underway in the Committee on Trade in Goods for future negotiations on trade facilitation.

Current Provisions and Implementation Issues

As the enclosed box indicates, many aspects of the WTO are related to trade facilitation.

Figure 2 – Existing Provisions in the WTO

| <i>Existing Provisions in the WTO</i> |
|---|
| <p>Trade-facilitation-related issues are already addressed by various obligations and provisions under the WTO including:</p> <ul style="list-style-type: none">• GATT 1994, notably Articles I, V, VII, VIII and X• Agreement on Interpretation of Article VII (Customs Valuation) of the GATT 1994• Agreement on Import Licensing• Agreement on Pre-Shipment Inspection• Agreement on Technical Barriers to Trade• Agreement on Application of Sanitary and Phytosanitary Measures• Agreement on Rules of Origin, and• Agreement on Trade-Related Aspects of Intellectual Property Rights. <p>This list reflects a narrow definition of trade facilitation as formalities and procedures related to the clearance and movement of goods across borders since the General Agreement on Trade in Services has provisions relevant to the broader definitions of trade facilitation including payment issues.</p> |

It is important when considering the WTO obligations to examine the core obligations under the GATT 1994. These can be summarised as follows:

- Article I contains the key obligation of *Most-Favoured-Nation (MFN) treatment* which means that imports from, or exports to, any WTO member must receive non-discriminatory treatment in the application of customs duties and all aspects of customs formalities i.e. countries cannot discriminate between countries.
- Article III provides another basic obligation to guard against discrimination by guaranteeing National Treatment – i.e., ensuring imports are not treated less favourably than similar goods which are domestically-produced/ countries cannot discriminate between foreign and domestic companies.
- Article V contains obligations related to Freedom of Transit including transportation routes, customs duties and customs formalities.
- Article VII contains key obligations on Valuation for Customs Purposes, which are elaborated on in the WTO Agreement on Interpretation of Article VII.

- Article VIII contains obligations on Fees and Formalities connected with Importation and Exportation, which specifies that all fees – other than customs duties or non-discriminatory domestic commodity, excise and sales taxes – must be limited to the costs of services; that customs penalties should not be punitive, and that countries should seek to simplify import and export formalities.
- Article X is a transparency obligation that requires Publications and Administration of Trade Regulations, which covers all issues related to trade facilitation including, “Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments, or affecting their sale, distribution, transportation, insurance, warehousing inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them.”²⁰

Now other obligations under the GATT 1994 such as under Article II and Article XI also have some relevance, the above are the key obligations most relevant to trade facilitation measures and proposals for negotiation of trade facilitation.

Logically Article V is of great relevance to land-locked countries since it deals with transit trade, but there have been no formal disputes in the GATT/WTO about obligations under Article V. However under the GATT the practice was to avoid bringing disputes between developing countries to dispute settlement and the overall participation of developing countries in the GATT was limited. Now some developing countries have brought issues to dispute settlement in the WTO, but so far none of the disputes have involved the application of Article V. Of course, since, land-locked countries are often dependent on their neighbours to transport goods etc, they are understandably reluctant to bring dispute settlement cases. However, clarification of the obligations under Article V, which has not been revised significantly since 1947, could be very useful to land-locked countries and could facilitate their ‘co-operation discussions’ with their neighbours without recourse to formal dispute settlement.

It is interesting to note that Article VIII is a broad commitment to ensure trade facilitation. Again, it has not been common practice to bring disputes under this provision. A notable exceptions is that the European Communities brought a complaint against the United States’ customs user fees that relate to Articles II and VIII of the GATT 1947. However, until now much less negotiating attention was focused on Article VIII (Fees and Formalities) as compared with Article VII (Customs Valuation), which was the subject of a special supplementary agreement going back to the Tokyo Round but is now a covered agreement under the WTO.

Although the range of existing obligations under the WTO related to trade facilitation is extensive, and the key obligations under Articles V, VIII and X of the GATT 1994 have been elements of the GATT/WTO system since 1947, some of the specific obligations under the instruments now brought fully the WTO were subject to transition periods that delayed their implementation for developing countries. Thus, for example, obligations such as implementation of the Agreement on Interpretation of Article VII of the GATT 1994 Customs Valuation were delayed until January 1, 2000 for developing countries not already party to the Tokyo Round Customs Valuation Agreement, with the option to extend the implementation of selected obligations until January 1, 2003.

²⁰ Article X(1), GATT 1994, Annex 1A, Marrakech Agreement establishing the WTO.

The various transition provisions for developing countries that were agreed in the Uruguay Round and incorporated in the WTO have similar characteristics of delays in the implementation of obligations for developing countries. In addition to the obligations on customs procedures just noted, obligations on export-linked and import-substitution subsidies, performance requirements on investment and trade-related intellectual property rights were subject to implementation delays after 1995 for periods ranging from five to ten years depending on the particular provision and the level of development of the country.

Now the obligations on customs valuation, which were subject to transition provisions, are the most relevant to trade facilitation, the fact that many developing countries are now struggling with the implementation of the various obligations under the WTO has created major challenges for their governments. Also the challenges of implementation of these various provisions have affected the climate for negotiations in the WTO since several developing countries have requested extensions of the transition periods for adapting their legislation, policy and administrative procedures and undoubtedly some developing countries have not yet addressed the challenges of implementation.

The Doha Declaration and Future Negotiations

The November 2001 Doha Declaration commits WTO members to negotiations on trade facilitation after the Cancun Ministerial in 2003, subject to the requirement that there is an explicit consensus decision on modalities of negotiations and mandates a work program under the Council for Trade in Goods to “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.”²¹

The preparatory work for the negotiations is now underway in the Committee for Trade in Goods and a work program has been established to examine the issues related to Articles V, VIII and X of the GATT 1994 from the perspective of WTO members. The work has benefited from a significant number of submissions to the WTO prior to and following Doha. Clearly the results of this work and the extent to which a consensus of WTO members emerges on specific issues related to trade facilitation will determine the results of the next WTO Ministerial session scheduled for Mexico with respect to the decision about the modalities for negotiation on trade facilitation.

Quite different perspectives are expressed on the preparatory work program and the forthcoming negotiations. Negotiations on trade facilitation are actively supported by the Colorado group of twenty (thirty-four) developed and developing countries. The group is comprised of the large developed countries – European Communities, United States, Japan, and Canada – and several other developed countries, including Australia, New Zealand, Norway, and Switzerland. The group is also comprised of Hong Kong, Korea and Singapore, which historically were developing countries, several developing countries, including, Chile, Columbia, Costa Rica, Morocco, Paraguay, and Turkey as well as transition economies Czech Republic, Hungary and Poland. In contrast some developing countries in South Asia and Africa are deeply sceptical about the forthcoming negotiations on trade facilitation, while other developing countries in South East Asia and Latin America tend to have more moderate positions expressing some concerns about the negotiations, but also recognising that there are benefits to be gained from concluding them.

²¹ Declaration of the Doha WTO Ministerial Conference, paragraph 27 (www.wto.org).