

Chapter 5

Multilateral Agreement on Trade Facilitation *Important but Complex Agenda for South Asia*

Dushni Weerakoon
Jayanthi Thennakoon
Bilesha Weeraratne

1. Introduction

The global economy has made considerable progress in the last two decades in easing border restrictions on merchandise trade, by addressing trade-protective measures of non-tariff barriers and high tariffs, through the implementation of structural reform programmes as well as commitments undertaken under the multilateral framework of the GATT/WTO. With the passage of such 'first generation' trade policy reforms, attention has focused increasingly on other direct and indirect impacts of domestic regulatory regimes on international trade, the so-called 'second generation' trade issues concerned with behind-border measures that fall under the heading of trade facilitation. Broadly defined, these measures include anything from institutional and regulatory reform to customs and port efficiency and are inherently far more complex and costly to implement.

Concerns for transparency, efficiency and procedural uniformity of cross-border flow of goods and services have generated across-the-board agreement on the necessity for trade facilitation. Nevertheless, developing countries were not convinced that binding rules in the World Trade Organisation (WTO) would be necessary, or helpful, in this area. From the inception of trade facilitation as a separate issue (added to the agenda at the WTO Singapore Ministerial Meeting in 1996), developing countries have not shown enthusiasm to negotiate a multilateral agreement of trade facilitation commitments. While some developing countries have even suggested that trade facilitation remain a national, bilateral or regional concern, others have asked that the agreement – if members insist on creating standards through the WTO – be a list of voluntary guidelines, or an agreement based on capacity building, rather than a legally binding rule-based agreement. In part, the strong opposition by developing countries to the inclusion of 'Singapore issues' (trade facilitation, trade and investment, trade and competition policy and transparency in government procurement) in negotiations resulted in the collapse of the Cancun Ministerial in 2003. The compromise July Package of 2004, however, arrived at an agreement to launch negotiations on trade facilitation under the Doha Round.

This Report is intended to contribute to a wider discussion of the contents and elements of the multilateral framework on trade facilitation, by offering South Asian negotiators an opportunity to examine, in greater detail, the challenges posed by the negotiations on trade facilitation; the scope of the negotiations as delineated by the July Package; the content and elements to be agreed upon; future challenges posed by any new obligations that may arise from implementation of such an agreement; and, finally, discuss and evaluate trade facilitation proposals submitted by South Asian members and their implications for the region.

2. Trade Facilitation: Benefits and Costs

While trade facilitation is subject to numerous definitions, discussions in the WTO are limited to the “simplification and harmonisation of international trade procedures” covering the “activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade”. It relates to a wide range of activities at the border, such as import and export procedures (e.g., procedures related to customs, licensing and quarantine), transport formalities, payments, insurance and other financial requirements.

The rapid growth of international trade in recent years, and with it the relative importance of border procedures, has added to the transaction costs involved in the movement of goods across borders. The growth in the volume of international trade has been facilitated by progressive easing of border trade restrictions, such as tariff and non-tariff barriers. In turn, the reduction of such types of barriers has brought into new prominence the wider regulatory and institutional shortcomings – such as waiting time and customs procedures – in the conduct of international trade. An added impetus has come from the increased complexity of global trade; decentralised networks of sourcing components and the rapid spread of information technologies and e-commerce has progressively encouraged the growth of integrated global supply, production and distribution systems. In this environment, unnecessary or over-complicated trade procedures and requirements can mean a significant cost for both businesses and governments.

For businesses, border-related costs are both direct, such as expenditures related to supplying information and documents to the relevant authority, and indirect, such as those arising from procedural delays, lost business opportunities and lack of predictability in the regulations. Costs to governments include potential loss of revenue collection and smuggling problems, as well as difficulties in implementing trade policy. Inefficient border procedures may also lead to poor export competitiveness and make the country less attractive to investment, limiting the potential to fully participate in global trade expansion.

2.1 Empirical Evidence

Even though quantification of cost and benefits of trade facilitation is rather complex, the wide-ranging impacts of trade facilitation have led to considerable interest in the area more recently in trade literature. Several studies have focused on the impacts of trade facilitation and have attempted to quantify the cost and benefits (Wilson, J.S et al., 2003 and 2004; OECD, 2003; and Messerlin and Zarrouk, 2000).

The study by Wilson et al., (2003b) analyses the relationship between trade facilitation and trade flows in the Asia Pacific region. The study has used gravity model analysis,

incorporating tariffs and other standard variables, to investigate the impacts of trade facilitation in more detail. Country-specific data of four variables, port efficiency, customs environment, regulatory environment and e-business usage, have been used to construct indicators for measuring trade facilitation. Assuming that countries with below average indicator values for these variables improve their capacity half way to the average for all members, the results show that intra-APEC trade would increase by US\$254bn, with trade facilitation efforts on the whole. The benefits of specific-trade facilitation measures have been highlighted. Improvements in port efficiency, custom environment, and improvements behind the border in regulatory harmonisation and e-business usage are estimated to amount to gains of US\$117bn, US\$22bn and another US\$116bn, respectively (Wilson et al., 2003b). The results appear to suggest, therefore, that the positive effects of enhanced port efficiency and regulations have a larger effect on trade flows than those resulting from improved customs efficiencies and usage of greater e-business (even though these variables have an important role in expanding trade). The study further points to the conclusion that the total gain in trade flows from improvements in trade facilitation is higher than that from reductions in tariff. This is not surprising, given that tariffs have been reduced progressively over the years, and, therefore, offers limited returns from further cuts. Improvements in trade facilitation, on the other hand, have become increasingly more important in trade policy reform. Wilson, et al. (2003a), focuses on providing an analysis for the contribution of trade facilitation to a country's development and indicates that the policy reforms result in an improvement of US\$550 in per capita gross domestic product (GDP), on average, for a single APEC member country.

The previous analysis has been further extended by Wilson et al. (2004), by broadening the country set to 75 and utilising better measures for quantitative analysis, based on a gravity model. The study estimates the relationship between trade facilitation and trade flows in manufactured goods in 2000-01 in global trade. Similar to the previous study (Wilson et al., 2003b), the same four indicators have been considered in this analysis. According to the results, the total gain in trade flow in manufacturing goods from improved trade facilitation measures amount to US\$377bn. Improved port efficiency and customs environment is estimated to yield an increase of US\$107bn and US\$33bn, respectively; a better regulatory environment and improved service sector infrastructure is estimated to yield an increase of US\$83bn and US\$154bn in trade, respectively. In addition, the results show that all regions, in particular South Asia, stand to gain in imports and exports, in general; most regions are expected to gain more in terms of exports. The single largest gain is estimated to come from increasing exports to the Organisation for Economic Cooperation and Development (OECD) market.

Since the potential for realising the benefits of trade facilitation varies across countries, sectors and characteristics of traders, an OECD study (OECD, 2003) attempts to incorporate empirical characteristics¹ of the border process into a model-based analysis to identify features that generate benefits from trade facilitation. The results suggest that a one-percent reduction in trade transaction costs (TTCs) would yield about US\$40bn in gains to world income with no losers; more than 80 percent of benefits are estimated to come from reduction in indirect TTCs, where trade facilitation plays a vital role in trade activities. Furthermore, the study finds that gains from trade facilitation are higher for developing countries than for OECD countries, since developing countries are

characterised by dependence on agro-food products, a larger share of small and medium-sized enterprises (SMEs) and less efficient border procedures where best practices can be applied. Moreover, it indicates that benefits gained through better trade facilitation measures are roughly proportional to the size of the reduction in TTCs. Similarly, other studies² have estimated the potential medium-term income gains from trade facilitation to amount to 2-3 percent of the total value of goods traded in the world.

The study also highlights the costs involved in implementation of trade facilitation measures. Reducing the trade transaction cost involves up-front investment and higher operational expenses for governments and businesses. As customs services play a vital role in the area, one element of trade facilitation in developing countries is to introduce an automated customs system, which depends on the availability of basic infrastructure and involves a substantial cost.³ Therefore, many developing countries seek assistance from bilateral and multilateral agencies, to assist them in this regard. For example, the World Bank granted 15 adjustment loans in 1999 to enhance customs reforms, where US\$78mn was devoted to six South-Eastern European countries for customs improvements. In addition, in some countries operating expenses are passed onto traders in the form of higher user fees. Updating the system from time to time can also cost as much as the initial investment. In some cases, however, simple reorganisation of procedures offers more substantial benefits than other measures which require investments in physical infrastructure and human resources.

Messerlin and Zarrouk (2000) address trade facilitation issues, taking technical regulations (TRs) and custom procedures into account, and discuss how to minimise the cost of application and enforcement of national regulations. In addition, their paper provides some quantitative estimates for the importance of trade facilitation and the scope for multilateral actions in the area of designing trade regulations. The paper analyses the costs and benefits; for example, documentary red tape in customs procedures is estimated to increase the cost of imports substantially, by some 7-10 percent of the total value of world trade.⁴ According to Messerlin and Zarrouk (2000), customs-related barriers to trade facilitation make the resulting costs exceed tariffs in some Middle East and North African countries. Even though the total cost cannot be entirely eliminated, trade transaction costs can be reduced by improving the efficiency of border procedures, through the provisions of trade facilitation measures. The study, however, points to the conclusion that designing TRs at the multilateral level is likely to be a costly approach, in terms of time, effort and waste of resources and that multilateral initiatives or enforcing TRs offer much better perspectives and that private initiatives can be very useful at both the levels of design and enforcement.

Despite the apparent benefits of trade facilitation, other studies highlight the many obstacles faced by developing countries in facilitating trade (Hellqvist, 2003). Since some of the requirements of trade facilitation – human capital capacity in the form of computer literate work force, computerised systems, functioning telecommunication system, use of IT solutions, harmonised payment system and standardised transport facilities – are partly the outcome of a country's overall level of development, it can be difficult to meet them in the short run. Developing countries, in particular, lag behind in these areas. Improvements to trade facilitation infrastructure may denote substantial costs in terms of initial set up and maintenance. According to Hellqvist (2003), trade

facilitation increases the level of competition that domestic industries face; increased competition itself means there will be some losers, with particular adverse impacts on small and medium scale industries on the whole. Given the likelihood of transitional costs to developing countries, an argument is made for developed countries to share the cost of implementation and provide technical assistance, as they are also likely to share in the benefits that arise (Hellqvist, 2003). The study concludes that trade facilitation measures in developing countries must focus on reforms that demand a low capacity level with low or no innovation cost and a rapid pay-back period and, initially, be connected to technical assistance and capacity building (Hellqvist, 2003).

The importance of trade facilitation and the gains that can be made from a more efficient flow of goods and services, as well as improvements in international competitiveness, as transactions costs fall due to improved trade facilitation processes have not been disputed. Developing countries have not questioned the merits of improved mechanisms and processes for facilitating the flow of goods and services, but what they have been concerned with are the likely additional obligations and burdens that could arise from a multilateral framework.

3. WTO and Trade Facilitation

While work on trade facilitation has a long history at the national, bilateral and regional levels, the WTO member countries added trade facilitation to the agenda for the first time at the Singapore Ministerial Conference in 1996. The Singapore Ministerial Declaration directed the Council for Trade in Goods (CTG) “to undertake exploratory and analytical work, drawing on the work of other relevant organisations, on the simplification of trade procedures in order to assess the scope for WTO rules in this area”. While specific elements concerned with aspects of simplification and harmonisation of trade procedures are already contained in the WTO legal framework,⁵ they were not seen as creating a coherent framework for trade facilitation and, hence, the response of the Singapore Ministerial Declaration to give the WTO the mandate to take a more comprehensive look at the issue.

After the Singapore Ministerial Conference in 1996, the work on trade facilitation carried out by the WTO has passed through several significant stages. In 1998, the WTO Secretariat updated the background paper, which was the base of the Singapore exploratory work. This background paper explained the work carried out by other organisations on the subject of trade facilitation. In 1998, the CTG held a symposium on trade facilitation, in order to address the main issues faced by traders moving goods across borders. The main concerns identified at the symposium were the problems of excessive documentation requirements, lack of automation, lack of transparency, inadequate procedures and lack of modernisation.⁶ Between September 1998 and July 1999, four dedicated meetings were held by the CTG to conduct further analytical work, in order to focus on trade facilitation work more specifically. These meetings focused on addressing the issues of import-export procedures and requirements (including customs and border crossing problems), issues of physical movements of consignments and the importance of electronic reporting for facilitating international trade. At the fourth meeting, members assessed the scope for WTO rules in trade facilitation. In the preparatory work for the Seattle Ministerial Conference, it was proposed by some developed member countries to establish an additional framework on existing WTO rules aiming at maximum transparency, simplification and harmonisation of trade procedures, in addition to developing a capacity-building programme. Other members, representing the general view of developing countries, preferred to continue the work stipulated at the Singapore Conference and were not convinced of the need to have additional WTO obligations. They were of the view that developing countries should be provided technical assistance, to improve their infrastructure for trade transactions.

Leading up to the Doha Ministerial, several themes were identified by member countries as common issues such as: (i) the cost of implementation of trade facilitation measures; (ii) the importance of having simplified official requirements in applying information

technology; (iii) the benefits of trade facilitation to SMEs; and (iv) efforts to foster a cooperative relationship between governments and the trade community. Some of the measures proposed relating to the principles of transparency and simplification were: (i) publications and making easily accessible all administrative rules and amended procedures; (ii) advance ruling; (iii) establishment of enquiry points; (iv) minimum procedures of trade; (v) modern customs practices; (vi) adaptation of international standards; and (vii) 'single window' submissions. In addition, 'transit procedure and related problems' were included for discussions in the future as a specific issue, while further pointing out the capacity building aspect of trade facilitation. Gaps and overlapping in some areas, due to lack of proper coordination among intergovernmental bodies, donors and government authorities, were identified.

The importance of factors, such as (i) the political will of governments; (ii) coordination and cooperation among the providers of technical assistance; (iii) transparency of reform programmes; (iv) involvement of all stakeholders; (v) the responsiveness of trade facilitation to particular needs of recipients; and (vi) the use of agreed benchmarks in their execution for the successful implementation of trade facilitation-related technical assistance programmes were highlighted.

In the preparatory process for the Doha Conference, it was proposed to add trade facilitation as a new issue to the agenda of new multilateral trade negotiations. In this context, a 'two track approach' was proposed by the advocacy group for negotiations on trade facilitation rules. As part of the first track, it was proposed that rules be clarified, based on existing WTO provisions (General Agreement on Tariffs and Trade (GATT) Articles V, VIII, and X) covering simplification of documentation requirements and the use of international standards, where possible. With regard to the second track, the advocacy group put emphasis on the development and implementation of technical assistance programmes in parallel with negotiations. Even though many developing countries were supportive of the objective of trade facilitation, they expressed caution against having new obligations in the WTO, which exceed their implementation capacities. These concerns were addressed at a series of informal consultations held in 2001, prior to the Ministerial Conference, and ended with some movement towards common ground (as well as a number of divergences).

After considerable discussions, the Doha Ministerial Conference in 2001 agreed that "in the period until the Fifth Session, the CTG shall review and, as appropriate, clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 and identify the trade facilitation needs and priorities of members, in particular developing and least developed countries. We commit ourselves to ensuring adequate technical assistance and support for capacity building in this area". The Doha Ministerial Declaration further stipulates that negotiations on trade facilitation (and other Singapore issues) can commence only on the basis of explicit consensus among WTO members on the modalities for such negotiations. If such explicit consensus were to be arrived at, the negotiations were to begin after the Fifth Session of the Ministerial Conference of 2003 in Cancun, Mexico.

Member countries carried on trade facilitation work based on the Doha Mandate. According to its work programme, the focus was on three core agenda items: (i) GATT

Articles V, VIII and X; (ii) trade facilitation needs and priorities of members, particularly of developing and least developed countries; and (iii) technical assistance and capacity building. With regard to Article X, several delegations proposed to improve and clarify this provision covering various measures to improve transparency while some stressed the need to consider issues such as differences in corresponding needs and development levels of member countries. Discussions based on Article VIII focused on the issues of implementation of the proposed measures and the challenges faced by the countries in trade facilitation. Further, discussions were held on how to clarify and improve Article V and the need to strengthen and operationalise Article V by introducing new binding rules. Developing countries continued to underscore the importance of technical assistance and the principle of special and differential treatment (S&DT) in this context and did not concur with the view of the necessity of binding rules in this area. Several delegations were opposed to the principle of ‘one-size-fits-all’ approach.

Although the Singapore Ministerial Conference gave the WTO the mandate to address trade facilitation comprehensively, the failure of WTO members to launch negotiations for a considerable period of time was due to a number of factors, not least the lack of enthusiasm of developing countries. Developed countries, particularly the European Union (EU), have long argued in favour of negotiating binding rules on trade facilitation. Many developing countries on the other hand, have consistently expressed concerns regarding the incorporation of issues of trade facilitation under the umbrella of the work programme of the WTO. While acknowledging the need for trade facilitation measures, developing countries have long opposed the setting of new binding rules at the WTO on trade facilitation. They remained largely unconvinced that binding rules would be necessary or helpful, arguing, instead, that they could cause problems when new obligations had to be implemented.

Developed countries suggest that trade facilitation measures would lead to an increase in international trade and net welfare benefits, including for developing countries. However, developing countries have maintained that compliance with binding trade facilitation standards – upgrading trade infrastructure, for example – would be an additional cost to developing countries, while developed countries, with the infrastructure already in place, would not face similar adjustment burdens. In addition, the possibility of enforcing binding rules through the dispute settlement mechanism was seen as a disadvantage, given that a country may be exposed to legal action in the event that commitments could not be met.

The argument put forward against binding rules by some developing countries, including Brazil, was that they are not an automatic solution to a problem, as evident in the Agreement on Agriculture (AoA), which has offered far more limited benefits to developing countries than initially anticipated. Instead, there was a call for non-binding guidelines which could be built on later. Some other developing countries, most notably India, argued that improvements in trade facilitation is an area best left to members for autonomous implementation and should not be the subject of an Agreement that is binding on all WTO members. Furthermore, it was suggested that unresolved issues on trade facilitation, such as rules of origin and customs valuation, should be dealt with first before undertaking new commitments on trade facilitation.

3.1 July Package

Developing countries, by and large, continued to express reservations regarding the impact that rules on the four Singapore issues would have on their domestic policies and the fact that they have neither the negotiating resources nor the capacity to implement obligations which such multilateral rules will entail. In particular, many developing countries opposed the launch of new negotiations on the Singapore issues, unless there was progress on issues such as agriculture and market access. Attempts by the EU and Japan, in particular, to insist on the inclusion of the four Singapore issues for WTO negotiations at the Cancun Ministerial Conference of September 2003 saw stiff resistance from some developing countries. A compromise solution to ‘un-bundle’ the four issues – excluding investment and competition for the time being – failed to gain the necessary support of developing countries, which saw little progress being made in the crucial area of agriculture, particularly the issue of agricultural subsidies by developed countries.

The failure of the Cancun Ministerial was viewed as a threat to the entire Doha Round negotiations. In a bid to restart the process, in December 2003, 45 developing countries tabled a formal paper in the WTO, calling for three of the Singapore issues to be dropped from the WTO agenda. They indicated a willingness to continue to review the implications of only trade facilitation, without a commitment to start negotiations on it. There were, nevertheless, fresh attempts to include government procurement alongside trade facilitation on to the negotiating agenda at the March 2004 meeting of the WTO General Council. Informal discussions between the 147 WTO members in April 2004 failed to arrive at a consensus to restart negotiations and the prospects for the Doha Round appeared dim. However, in a surprise move, the WTO General Council reached agreement on July 31, 2004 on a ‘framework’ (July Package) to resume the Doha Round of trade negotiations. The major breakthrough was a commitment by developed countries to eliminate export subsidies on agriculture.

On the Singapore issues, while continuing concerns amongst developing countries regarding the incorporation of trade facilitation under the work programme of the WTO surfaced during the negotiations of the July Package, an agreement was reached on the launching of negotiations on trade facilitation with a view to arriving at an agreed multilateral framework at the conclusion of the Doha Round. The compromise arrived at included that the other three ‘Singapore issues’ (trade and investment, trade and competition policy and transparency in government procurement) would not form part of the work programme set out in the Doha Declaration and, therefore, no work towards negotiations on any of these issues would take place within the WTO during the Doha Round. Furthermore, there seems to be a tacit understanding that negotiations on trade facilitation would be limited in scope to Articles V, VIII and X of the GATT 1994. Annex D of the July Package dealing with modalities on negotiations on trade facilitation states that negotiations “shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994, with a view to further expediting the movement, release and clearance of goods, including goods in transit”.

From a developing country perspective, the Framework Agreement on trade facilitation has recognised that the principle of S&DT should extend beyond the granting of traditional transition periods for implementing commitment. It notes, “in particular, the

extent and timing of entering into commitments shall be related to the implementation capacities of the developing and least developed members. It is further agreed that those members would not be obliged to undertake investments in infrastructure projects beyond their means.” Furthermore, and perhaps for the first time in GATT/WTO negotiations, there is an explicit reference to cost implications of obligations, stating that “members shall seek to identify their trade facilitation needs and priorities, particularly of the developing and least developed countries, and shall also address the concerns of the developing and least developed countries related to cost implications of proposed measures”. Least Developed Countries (LDCs) will not be asked to make commitments that are “not consistent with their individual development, financial and trade needs or their administrative and institutional capabilities”.

4. Articles V, VIII, X of the GATT 1994

The key provision of Article V relates to freedom of transit. The main obligations of WTO members are: (i) to permit freedom of transit through the territory of each member through the most convenient route; (ii) not to subject traffic in transit to any unnecessary delays or restrictions – the commitment entails that such traffic will not be subject to customs, transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative or services expenses that are incurred as a result of the transit; (iii) to ensure that all charges are reasonable and in keeping with the conditions of traffic; and, (iv) that most-favoured-nation (MFN) treatment should be afforded for traffic in transit with respect to all charges, regulation and formalities.

The provisions of Article VIII relate to fees and formalities connected with importation and exportation. The main obligations of WTO members include (i) a commitment that all fees and charges imposed or in connection with importation or exportation must be limited in amount to the approximate cost of the services rendered, they should not represent an indirect protection to domestic products or represent a taxation of imports for fiscal purposes; (ii) desisting from imposing substantial penalties for minor breaches of customs regulations or procedural requirements; (iii) a commitment to recognise that the number and diversity of fees and charges, the incidence and complexity of import and export formalities and the import/export documentation requirements should be reduced/minimised/simplified.

The key provision of Article X relates to the publication and administration of trade regulations. The main obligations of WTO members are to (i) promptly publish all laws, regulations, judicial decisions and administrative rulings affecting imports and exports, so as to enable governments and traders to become acquainted with such regulations; (ii) to publish before enforcement measures imposing a new or more burdensome requirement, restriction or prohibition on imports or on the transfer of payments; (iii) to enforce uniform, impartial and reasonable administration of laws, decisions and rulings affecting imports and exports; and (iv) to ensure the prompt review and correction of administrative action relating to customs matters by maintaining or instituting judicial, arbitral or administrative tribunals or procedures.

In the proposals made by WTO members for clarifying and improving GATT Articles V, VIII and X, it is possible to identify common and interlinking themes. These include transparency, consistency and predictability, non-discrimination, simplification and due process (OECD, 2003).⁷

Transparency of relevant domestic regulations, procedures and practices is critical for ensuring that regulatory objectives are achieved efficiently, while, at the same time, enhancing the benefits expected from trade and investment liberalisation. By revealing the costs and benefits of administrative regulations and ensuring their purpose is clear and appropriately implemented, transparency plays an important role in making governments more effective and efficient. Greater transparency allows market participants and stakeholders to better understand the conditions and constraints for entering and operating in a market, to assess more accurately the costs and returns of their involvement, to be better prepared to meet existing requirements and adjust to potential changes, and to deal with discriminatory or arbitrary decisions. It implies that information on border requirements and procedures are made available easily and systematically.

Consistency and predictability in the application of rules and procedures is also important. Uncertainty can translate into unwarranted transaction costs in international trade, such as warehousing expenses, transport and insurance fees and financing charges. Smaller businesses are likely to be more vulnerable to such problems, given their relative lack of resources. It calls for standard policies and operating procedures that are applied consistently and without discrimination.

Non-discrimination refers to uniform application of all border-related regulations, procedures and practices. It goes beyond equal treatment between trading partner countries, to focus on the treatment of individual traders.

Simplification of border procedures is one means of increasing the efficiency of border administrations that can result in improved revenue collection and enhanced productivity. At the same time, simplifying procedures may also reduce unnecessary restrictions and burdens that add to transaction costs of international trade, including undue delays at borders. Measures to simplify border procedures include limiting unnecessary paperwork, upgrading regulations, technical capacity, etc.

Due process refers to the availability of appropriate mechanisms for reviewing and addressing administrative actions related to customs and border matters. General legal frameworks available may not always be sufficient to address the more highly technical customs and border matters. The quality of such mechanisms should be judged by their accessibility, impartiality and efficiency in offering redress in accordance with national legislation.

4.1 Post ‘July Package’ Negotiations at the WTO

In line with the modalities set out in Annex D of the July Framework Agreement, the Trade Negotiations Committee (TNC) established a Negotiating Group on Trade Facilitation (NGTF) and appointed its Chair (Malaysia). Three subsequent meetings of the NGTF have been held since, in February, May and October 2005. The first meeting adopted a work plan, which proceeded on clarification and improvements of relevant aspects of Articles; provision of technical assistance and capacity building; effective cooperation between relevant authorities, such as customs; S&DT for developing and least developed countries; identification of trade facilitation needs related to cost implications of proposed measures; and working with other international organisations.

The second and third meetings have focused on issues emanating from the submission of papers that offered specific proposals on new obligations that WTO members should consider undertaking on various aspects of trade facilitation. These include the following:

4.1.1 Article V

Several proposals – primarily by landlocked countries – highlighted problems associated with transit formalities (although such constraints may also exist in federal states of the same country). These include additional controls and checks, excessive security measures, excessive documentation requirements and unreasonably high (and frequently unpublished) transit charges.

Submissions by Bolivia, Mongolia and Paraguay have proposed measures for non-discrimination between modes of transport, origin and destination, carriers, routes and goods; publication of fees and charges with periodic reviews of such charges and meetings of neighbouring authorities; use of international standards for transit formalities; a bonded transport regime; and simplified and preferential clearance treatment for perishable goods in transit. The EU has also called for non-discrimination in relation to transit procedures.

South Korea, meanwhile, has also proposed that goods in transit that do not require transshipment be given a ‘less burdensome’ treatment in transit than those that do require transshipment.

4.1.2 Article VIII

The US has proposed to establish specific parameters for fees charged by members and publish such fees on the internet. The proposal also contains a suggestion to provide specific expedited procedures for express shipments.

The joint proposal of New Zealand, Norway and Switzerland calls for documentation and data requirements to be reduced to the necessary minimum and for the use of international standards.

4.1.3 Article X

Regarding the publication of trade regulations, the EU proposals have asked for an obligation for members to ‘publish and make easily available’ all laws, procedures and rules affecting imports, exports and goods in transit. This includes administrative guidelines, decisions and rulings as well as customs and other government agencies’ management plans relating to the implementation of WTO commitments. This information is to be made available in a ‘simple and accessible manner’ and preferably online as well.

In addition, the EU has proposed that all members should be required to establish a national trade desk where such information will be provided. This has been backed by Taiwan, South Korea and Japan. Furthermore, as new rules and procedures are introduced by members, the EU maintains that these should be notified to the WTO. With respect to the administration of trade regulations, members are to be required to hold prior consultations with the private sector on new and amended rules and procedures before

they are implemented. Members should also be obliged to provide a legal right of appeal against customs and other agency rulings and decisions.

The US, Canada and Taiwan have submitted proposals on the usage of 'advance ruling'. Canada has proposed that members commit themselves to providing binding advance rulings on tariff classification, when requested by traders to do so. The US has also sought internet publication of customs rules and regulations and called for notification to the WTO, with a specified number of days in advance of implementation.

4.2 Developing Country Concerns at the NGTF

There appears to be a clear contrast in the basic approaches taken by developed and developing countries in the NGTF. Many developing countries have continued to raise the issue whether any agreement arising from the negotiations should be legally binding or, instead, should be based on a system of incentives. It has also been stressed that developing countries could only implement commitments if they have the resources to do so, as agreed to in the July Framework Agreement, as well as emphasised the importance of technical assistance and capacity building. China and Pakistan have proposed that an assessment of the needs and priorities of developing countries should be carried out. They have argued that such an approach should form the basis of negotiations, given the open-ended nature of the mandate.

Many developing countries have argued that the proposals submitted so far appear to go beyond the negotiating mandate. Proposals related to binding advance rulings for customs purposes, the obligatory use of HS tariff classification systems, express shipments, requirements for publication of data and more information on the decision-making process, etc., have been argued to go beyond what is required by the mandate of the negotiations. It has been pointed out that the proposals overlook the need for business confidentiality in the publication of information, while the proposal for prior consultation on new rules and procedures goes well beyond the need for transparency.

It has been stressed that the requirement for publication of rules and regulations should not be too stringent and onerous on the resources of developing countries. In addition, the cost implications to governments – from publication of laws, establishment of an enquiry point, etc. – as against the expected benefits to traders, and the broader legal and administrative implications need further detailed assessments.

Developing countries have also been quick to point out that the proposals submitted so far by developed countries do not contain any definitive S&DT, financial or technical assistance components, as mandated by the July Package. The suggestion of some proposals for longer transition periods for developing and least developed countries has been considered as largely inadequate.

Box 1: India's Concerns at the WTO on Trade Facilitation

As India's submission on trade facilitation highlights, the WTO is not a suitable forum for dealing with the trade facilitation issue and it duplicates the on-going work of the World Customs Organisation (WCO). India is of the view that efforts undertaken to bridge the trade facilitation gap between developed and developing countries were not fair and these efforts have ignored the reality of capacity constraints of developing members. As mentioned by many other developing members, Indian concern specifically indicates that negotiations based on binding rules, which ultimately lead to the dispute settlement mechanism, would be particularly harmful to developing countries, while there is a lack of progress in the area of S&DT so far. Furthermore, according to the Indian perspective, trade facilitation is an instrument used by developed countries for trade harassment against developing countries. India remains less than convinced on the need for negotiations on the issue, though the Indian Government has already committed to improve trade facilitation, as a part of its reform agenda.

Source: CUTS, 2005

Box 2: Bangladesh's Concerns at the WTO on Trade Facilitation

As the Bangladesh position highlights, trade facilitation should be regarded as a development dimension and trade facilitation needs and priorities of LDCs need to be identified as an integral part of negotiations. Bangladesh calls for strengthening the institutional capacity of LDCs, with the technical assistance from developed countries. Furthermore, there should be no binding commitments for LDCs with regard to trade facilitation measures. Bangladesh further states that technical assistance and capacity building support should be provided not only in terms of soft infrastructure but also of hard infrastructure, since soft infrastructure alone would not help in this regard.

Source: Bangladesh Institute of Development Studies, 2005

5. Trade Facilitation and South Asia

The importance the South Asian countries attach to trade facilitation has been reflected in the efforts made at the country level to facilitate the flow of goods and services and initiatives at bilateral, sub-regional and regional levels. Such initiatives include the India-Sri Lanka Free Trade Agreement (FTA), the South Asian Association for Regional Cooperation (SAARC) Preferential Trading Agreement (SAPTA), Bay of Bengal Initiative for Multi-Sectoral Technical and Economic Cooperation (BIMSTEC) and the scheduled South Asian Free Trade Area (SAFTA). In the context of the Indo-Lanka FTA, the broadening and deepening of the FTA into a Comprehensive Economic Partnership Agreement (CEPA) pays attention to trade facilitation. The agenda of the CEPA includes efforts to go beyond trade in goods, e.g., liberalisation of trade in services and investment cooperation, and an 'effective mechanism for trade facilitation'. Within the ambit of the SAPTA, Article 6 stipulates that 'Contracting States agree to consider, in addition to the measures set out in Article 4, the adoption of trade facilitation and other measures to support and complement SAPTA to mutual benefit'.

A South Asian Free Trade Area (SAFTA), which is scheduled to come into force in January 2006 recommends the inclusion of trade facilitation, such as harmonisation of standards, simplification of custom clearance procedures, simplification of banking procedures for import financing, transit facilities for intra-SAARC trade, removal of barriers to intra-SAARC investments, development of communication systems and transport infrastructure and simplification of procedures for business visas. Article 3 of the SAFTA Framework Agreements states that the 'SAFTA shall entail adoption of trade facilitation and other measures, and the progressive harmonisation of legislations by the Contracting States in the relevant areas'. Further, in Article 8, it is stated that 'Contracting States agree to consider, in addition to the measures set out in Article 7, the adoption of trade facilitation and other measures to support and complement SAFTA for mutual benefit'.

Within the framework of the BIMSTEC – which includes Bangladesh, India, Sri Lanka and Nepal as members – there exist six priority sectors of cooperation. The sub-section on Trade and Investment pays attention to trade facilitation. At the third BIMSTEC Economic Forum meeting held in Bangkok in 2004, the Task Force decided to restructure the Trade and Investment sub-sector into agricultural products, industrial products and trade facilitation. Under trade facilitation, the following areas were recognised by the Task Force for cooperation: trade-related capacity building (HRD, seminar, training, etc.); movement of goods (freight, goods in transit, carnet); standards, conformity and mutual recognition arrangements (MRAs); harmonisation of custom procedures; banking arrangements, intellectual property rights protection and e-BIMSTEC (BIMSTEC Task Force, 2005).⁸

Despite notable efforts to integrate South Asian economies and improve international competitiveness, most of the trade facilitation initiatives have yielded limited results. Transaction costs in many South Asian countries remain high, as evidenced by high transport and communication costs, long customs and administrative delays at ports and border posts and inefficient international payment systems. Furthermore, poor programme implementation, lack of coordination among and between countries, lack of coordination among relevant agencies within countries, inadequate skilled manpower and lack of a multi-sectoral approach to trade facilitation have also contributed to the less than satisfactory outcomes on trade facilitation initiatives in South Asia.

The consequence has been that transaction costs in South Asia remain relatively high. Table 1 depicts the country-wise performance of Bangladesh, India, Pakistan and Sri Lanka in certain aspects of trade facilitation. In all four countries, survey findings of the Global Competitiveness Report 2004-2005 delineates business impact of customs procedures to be more skewed towards being damaging and custom procedures as being mostly inefficient.

| Table 1: Selected Indicators of Trade Facilitation in South Asia | | | | | |
|---|-------|------------|-------|----------|-----------|
| Country | Mean* | Bangladesh | India | Pakistan | Sri Lanka |
| Hidden barriers to trade (1) | 4.5 | 3.8 | 4.7 | 3.8 | 4.9 |
| Business impact of customs procedures (2) | 4.0 | 2.8 | 3.6 | 2.9 | 3.9 |
| Efficiency of customs procedures (3) | 3.7 | 2.2 | 3.4 | 2.5 | 3.4 |
| Overall infrastructure quality (4) | 4.0 | 2.4 | 3.3 | 2.8 | 2.7 |
| Railroad infrastructure development (5) | 3.1 | 2.5 | 4.3 | 2.6 | 2.1 |
| Port infrastructure quality (6) | 3.9 | 2.5 | 3.3 | 2.4 | 3.5 |
| Air transport infrastructure quality (7) | 4.6 | 3.2 | 4.9 | 5.2 | 3.9 |
| Irregular payments in exports and imports (8) | 4.9 | 2.5 | 4.0 | 3.1 | 3.8 |

Notes: Nepal is excluded due to non-availability of data.
* The mean value of all 104 countries (including developed and developing countries) represented in the report.

(1) 1= important problem, 7= not an important problem
(2) 1= damaging, 7= beneficial
(3) 1= slow and inefficient, 7= among the worlds most efficient
(4) 1= poorly developed and inefficient, 7= among the worlds most efficient
(5) 1= underdeveloped, 7= as extensive and efficient as the world's best
(6) 1= underdeveloped, 7=as extensive and efficient as the world's best
(7) 1= infrequent and inefficient, 7= as extensive and efficient as the world's best
(8) 1= common, 7=never occurs

Source: WEF, *Global Competitiveness Report 2004-2005*.

Reinforcing the statistics, studies⁹ have noted that extensive documentation requirements and the associated processing delays in India are an impediment to trade. For instance, an export clearance requires over 250 signatures, 118 copies of the same information and 22 hours of typing in connection with perfecting documents.¹⁰ In addition to documentation, the delays are attributed to complex tariff structures and multiple exemptions and duplication of work between the Customs and the Ministry of Commerce (Taneja, 2004). Other studies have noted that, while the Indian Government publishes tariffs and additional tax rates applied to imports, there is no single official publication that includes all information on tariffs, fees and tax rates on imports.¹¹ In order to arrive at the current tariff and tax rates, importers have to refer to separate tariff and excise tax schedules, in addition to any applicable additional public notifications and notices. Contributing towards more costs and confusion, the official Indian publications identified¹² the use of different classification nomenclatures for tariffs and excise taxes, while every State in the country levies taxes on interstate commerce.¹³ In this light, except for approximately a fourth of the respondents, Investment Climate Survey findings revealed that all others felt that tax rates and tax administration in India and Pakistan varied between being a minor obstacle to a very severe obstacle (See Annex 1). However, in the case of Sri Lanka, 58 percent of the respondents felt that tax rates were not an obstacle for business, while 64 percent felt that tax administration was not an obstacle for business.

A clear example of relatively low trade facilitation in India is its restrictions on importation of automotive products. For instance, motor vehicles are permitted to be imported only through three identified ports, despite the availability of 11 major ports and 139 minor operable ports around the Indian coast.¹⁴ Further, motorcycles can be imported only by holders of a special licence granted to foreign nationals. However, certain domestic importers are permitted to import vehicles in the absence of a licence, provided that these imports are offset by exports of the same importer.

In terms of infrastructure, all four countries are considered to be below average (Table 1). India is above average in terms of railroad infrastructure development, due to its railway network which spreads over 62,915 km covering 7068 stations, operating on three gauges – broad gauge (1676 mm), meter gauge (1000 mm) and narrow gauge (762 and 610 mm). The railway throughput is approximately 12 million passengers and 1.2 million tons of freight per day. Yet, ‘the inadequacy of an inter-linked, exhaustive and all-penetrating railway network or inland/coastal waterways or airways, road transport has assumed a pivotal role’¹⁵ in crucial areas of future improvement in trade facilitation in India.

In terms of airport infrastructure quality, both India and Pakistan are placed above the mean level, while Bangladesh and Sri Lanka are below the mean level. In Nepal, inadequacies in airports, such as lack of weighbridges, X-ray machines, quarantine facilities and refrigeration storage in important customs offices, prevent efficiency of trade. The absence of X-ray machines contributes to a delay of 24 hours, in terms of a cooling period. In addition to physical lacunae, restricted working hours, not only in Nepal but also in India, and the valuation procedure of imported goods, which is plagued by lack of transparency and lack of competent personnel, further contribute towards delays in customs clearance in Nepal. In the context of port infrastructure quality – the

channel through which most trade takes place in South Asia – all four countries have been placed below mean level. In taking a closer look at Bangladesh, insufficient space in ports, shortage of handling equipment and lack of through-transit facilities for containers are considered to inhibit successful trade facilitation in ports. Further, the success of risk management and post-clearance audit processes already in place are considered to be a function of many future developments, such as changes in the customs clearance procedures and changes to the Customs Act, etc., to name a few.

Irregular payments in export and import appear to be common in all the South Asian countries considered. According to the Investment Climate Survey statistics, in Bangladesh, corruption was considered a very severe problem by 35 percent of the respondents, while only 13 percent felt that it was not an obstacle to business (See Annex 1). However, hidden barriers to trade do not appear to be an important problem in any of the South Asian countries.

5.1 Current Status¹⁶

In considering the status of trade facilitation measures in South Asian countries, it is evident that many initiatives and attempts have been made by individual countries at the national level as well.

5.1.1 Article V

Issues of transit facilities are most relevant to India, Bangladesh and Nepal. This has been dealt primarily as a bilateral issue in the region.¹⁷ Nepal, for example, faces a severe impediment in trading with the rest of the world, due to its landlocked geographic location, bordering China and India. The cost borne by Nepalese exporters, in terms of transport and transit procedures, are higher (ranging up to 25 percent) than those of their competitors in other countries.¹⁸ The seaport nearest to Nepal is Kolkata, which is approximately 700 km away from Nepal and requires eight days of travelling from Kathmandu. In addition, 3-5 days are estimated to be required to process documents to clear Indian customs. As such, Nepal has to rely heavily on India for transiting and Nepal insists on the internationally binding agreement on transit, which ensures the right of exporters/importers and transport operators. India too faces issues of transit with Bangladesh (which has been reluctant to offer transit facilities for fear that Indian goods might enter Bangladesh) along its north-eastern region. While transporting through Bangladesh is likely to be more efficient than taking a circuitous route, the net outcome depends on Bangladesh's customs clearance procedures.

Transit issues dealt with on a bilateral basis between India and Nepal include several provisions to facilitate trade and transport such as exceptions to the principle of non-discrimination for sensitive items and goods requiring transshipment, regional transit agreements and use of international standards. The two parties have agreed to provide new measures for clearance to Nepalese containerised traffic in transit to and from Nepal, and India is carrying out new measures to simplify the procedure furthermore. The necessity of additional procedure for inspection of goods (for sensitive items) also needs to be considered in trade facilitation. India, Bangladesh and Nepal have, so far, not acceded to international transit conventions, such as the TIR convention¹⁹ or the ATA Convention,²⁰ although India uses the ATA Carnet to a limited extent.

Even though the issue of Article V is important for the country, Bangladesh has not showed much interest in adopting trade facilitation measures under Article V and the implication of Article V on government policy from a Bangladesh perspective is not visible at the moment. Sri Lanka and Pakistan have not included measures under Article V in their trade facilitation efforts so far.

5.1.2 Article VIII

The Trade Policy Review (TPR) of the WTO for Sri Lanka (2004) identifies three main policy reforms undertaken in the country towards trade facilitation: (i) adoption of the Sri Lanka Automated Cargo Clearance Systems (SLACCS); (ii) implementation of the WTO/GATT Valuation Agreement; and (iii) simplification and harmonisation of customs procedures. While the report notes that export procedures have been streamlined and computerised, it nevertheless notes that exports continue to be regulated by a myriad of laws in Sri Lanka, besides the Customs Ordinance (WTO, 2004). In the case of certain goods, export control permits and licences are required.²¹ In exporting plants and animals, quarantine or veterinary certificates issued by the Department of Agriculture are needed and quarantine inspections are carried out, while tea exports are subject to pre-shipment sampling in order to ensure the quality. Cashew kernels and fishery products require a quality certification prior to export. The determination of duty rate for exports is made by the Director General of Customs. The exporter is required to register a contract with the Director General, specifying the total quantity to be exported (i.e., covered by the contract) and the proposed period for the merchandise to be exported.²² As of 2004, no exports were subject to duties. Nonetheless, export cesses are imposed on tea, coconut products, unshelled raw cashew, raw hides and skins.

The charges for imports consist of import tariffs and other levies such as import surcharge, VAT, excise duty, cess, the Ports and Airports Development Levy (PAL), seal charges (Rs. 100 per container) and a container examination charge (Rs. 400 for the first container and Rs. 100 per additional container) are applicable. In the export procedure, all exporters are required to be registered with the Department of Customs and submit a goods declaration, furnishing the quantity, quality and value of the goods. In addition to the Sri Lanka Customs Department, the other institutions involved in the import process include Import and Export Control Department, Sri Lanka Standard Institution, Health and Plant Quarantine, while the commonly required documents comprise of delivery order, bill of lading, invoice, packing list, certificate of origin, certificate of registration, with an English translation for used motor vehicles and, if applicable, an import licence, in addition to the Customs Declaration (CUSDEC).

In terms of technological developments for trade facilitation, the system of Electronic Data Interchange (EDI) was established in Sri Lanka in 2004 under a project named Sri Lanka Automated Cargo Clearance System (SLACCS). EDI facilities for electronic submissions of import documents were available to entities registered under the Board of Investment (BOI) Sri Lanka since 2004, while export submission commenced in May 2005. For non-BOI entities, submissions through EDI have commenced on an experimental basis recently. Electronically submitted documents are evaluated and assessed by the customs officials and approved/disapproved accordingly.

The ASYCUDA system for lodging entries with customs and assessing them has been in operation since 1994, while ASYCUDA++ has been in use since 1998. Further, the Sri Lanka Customs Automated Data Processing Division using ASYCUDA++ as its base has enabled automation of Bonded Warehouse Stock Control. Presently, a valuation database, as a tool for risk management for the front line officers, is being set up. In terms of documentation, Sri Lanka has committed to introduce international standards.

As in the case of Sri Lanka, reforms in trade facilitation have taken place across other South Asian economies in the recent past. In the case of Bangladesh, the clearance procedure is still complex and complicated, since it consists of excessive checking, documentation, undue and partial computerisation, wide use of manual operations, limited opening hours, delays and bureaucratic practices. A larger number of trade policies have made this more complex. Therefore, several programmes have been introduced to simplify trade procedure, with respect to fees and formalities. Some of the key programmes initiated recently in Bangladesh include: (i) introduction of a self-assessment and rapid clearance procedure; (ii) simplification of tariff structure; (iii) customs modernisation, with the objective of increasing the efficiency of customs clearance; and (iv) simplification of documentation procedures.

Presently, there are three types of border charges levied in Bangladesh - an infrastructure development surcharge (IDS), a letter of credit authorisation (LCA) and an import permit (IP) fee. All of them are charged at the rate of 2.5 percent. In addition, advance income tax, supplementary duties and value added tax (VAT) are applied. Imports and domestically produced goods are normally subjected to 15 percent VAT, while in the case of textiles, domestically produced substitutes are exempted from VAT. In addition, some goods, such as liquor, tobacco products, petroleum products, motor vehicles, etc., are subject to a supplementary levy, ranging from 5-270 percent. In some cases, charges have been exempted totally. According to the authorities, exports are exempted from taxes, charges or levies. With regard to the use of international standards in Bangladesh and setting up of standard processing time, no progress has been reported to date.

There has been some progress in the efforts to simplify documentation requirements. For instance, in relation to customs administration, the ASYCUDA ++ system and SPEED are in operation and the introduction of a single administrative document for export and import and Direct Trader Input (DTI) facility for traders to lodge bills of entries from their offices have paved the path for full automation of export-import declaration. In addition, export procedures have been simplified by allowing exports without a letter of credit. Exporters, therefore, have to submit only an EXP form and the shipping bill. Simplification of customs clearance procedures through the introduction of Pre-shipment Inspection System (PIS) in 2001 and reduction of signatures for clearance and frequency of inspection of consignments are argued to have 'substantially reduced the harassment faced by the importers and the time of import clearance'.²³ The decline in the number of signatures required for an export and import clearance, from 25 in 1999 to five in 2002, indicates the degree of progress in the direction of trade facilitation.

The use of a new Custom Declaration form and a Single Administrative Document were introduced as measures towards improved trade facilitation in Nepal. Further, the ASYCUDA system was implemented with the intention of reducing documentation

requirements and Nepal is currently working on an IT-based Advanced Cargo Information System (ACIS) as well. However, the process of clearance still necessitates a considerable number of documentation to be completed. Depending on the goods, around 15 documents are required for imports and 11 documents for exports, with separate sets of copies for business, income tax and VAT registration (CUTS, 2004). In Nepal, transit requirements necessitate an additional Customs Transit Declaration (CTD) form for sea-based import and export. For customs clearances in Nepal, 83 types of documents, with 102 copies and 113 signatures, are required, while it needs nearly 22 days of human resource requirement. Besides, fees, charges and levies imposed by the Nepalese authorities are also large in number; some of the key fees and levies include visa cell charges, charges for issuing certificate of origin, valuation certificate fees and local development fees. In Nepal, import-export control is almost non-existent. In addition, Nepal has agreed, in its Working Party Report, to fully implement the Technical Barriers to Trade (TBT) and Sanitary and Phytosanitary (SPS) agreements, comply with international standards by 2007 and remove quantitative restrictions on imports and other non-tariff measures. In this context, it is identified that extension of the same principles to GATT Article VIII will not be difficult (Wickramasinghe, 2004). Even so, no progress has been reported with regard to a standard processing time in Nepal and there is likely to be only limited progress in the immediate future in this regard.

Despite the fact that Pakistan's tariff structure has undergone simplification in terms of scope, it remains relatively complex. Tariff concessions introduced under these measures often result in misclassifications of interpretations and, thus, opens the door to corruption. Pakistan's trade procedure still has domestic protection measures for some sensitive items, such as specific or compound duties, state trading activities, export subsidies or freight costs. Despite the absence of licensing requirements, imports of several products need prior approval and recommendations from government authorities, while certain items, such as chemicals, require additional approvals. In this respect, import policy in Pakistan is considered to be quite complex.

Importers and exporters are required to go through several individuals and use the services of several agents for different aspects of procedures. For example, traders should engage a customs house agent for customs-related documentation, while importers have to go through different customs appraiser groups for registration, inspection, endorsement, counter-signing, etc. With regard to exports, all goods are subjected to customs inspection. In addition, import-export procedures in Pakistan require considerable documentation. However, since 1996, several computerised procedures have been carried out, such as on-line filling of entry bills and bills of export at the customs and dry ports, with the objective of simplifying documentation requirements. Improvements are, nevertheless, required for faster customs clearance for specific items, customs valuation modifications and use of electronic assessment system.

With the introduction of new trade facilitation measures, however, some import restrictions are being removed, while only a few withholding type taxes are applied to virtually all imports to Pakistan. Since 2000, an Electronic Assessment System (EASY) has been introduced to increase the speed of customs procedures, including assessment and customs clearance time. During its initial stage, EASY was available to multinationals and local firms eligible for an 'express-lane-facility'. In addition, Pakistan has agreed to

implement internal standards on documents. However, with respect to the standard processing time, no official time has been set so far.

Indian trade procedures – both imports and exports – are also complex on the subject of fees and formalities. Considerable documentation is required, often involving duplication of work between different authorities. With regard to export, for instance, it has been pointed out that an exporter needs to obtain 258 signatures and make 118 copies of the required documents (Wickramasinghe, 2004). India does not have a single agency that is responsible for handling documentation procedures. While most fees and charges imposed by India are based on the cost of actual services provided, there are some cases where fees are based on the value of the goods (*ad valorem* basis). In addition, while the number of tariff lines has decreased over time, the tariff structure remains fairly complex. Since February 2003, India has been engaged in harmonising customs codes at the eight-digit level. Further, in order to fully implement International Standards based on Revised Kyoto Convention, India will need to implement reforms in the area of customs administration, such as upgrading the existing EDI system, incorporating the best practices of risk assessment and assessment system in the custom administration, moving towards a universal Green Channel System, etc.

In addition, India has set basic guidelines on standard processing time for their customs stations for clearances matters, even though the set time is different for different customs stations. Therefore, India needs substantial investment to fully implement such guidelines, since it may be difficult to have unique standard processing time for all the customs stations in India with the current level of development. India has also established EDI linkages at 23 customs locations. However, it has been pointed out that even in the locations where the facility is available, the utilisation remains limited.²⁴

5.1.3 Article X

Bangladesh authorities have started the usage of electronic media, with the introduction of the SPEED system and ASYCUDA. In case of disputes, Import Trade Control Committee (ITCC) adjudicates between the customs and importers in disputes and an appeal can be made to the central ITCC if the importer is dissatisfied with the decision. There is, however, still no progress reported with regard to advance rulings.

Nepal has made commitments at the WTO that it would take necessary action to fulfil transparency requirements established in Article X of the GATT 1994, Article II of GATS and other WTO agreements. Nepal publishes all trade-related measures, laws, regulations, administrative rulings and multilateral agreements. The Supreme Court of Nepal publishes judgments in journals. Nepal is planning to establish an official journal or website on a regular basis and appoint an institutional body responsible for ensuring transparency obligations. In relation to appeals, the Nepalese legislation provides the right to appeal to the affected party concerning decisions of the authorities, as required by the WTO agreements on Import Licensing, Customs Valuation, TBT, SPS and Trade-Related Aspects of Intellectual Property Rights (TRIPS), and the Nepal Department of Commerce coordinates with agencies in appeal-related procedures. Nepal has also attempted to simplify the customs procedures. The Department of Customs has recognised the need for customs modernisation and has already begun to revise the

Customs Act and Rules. In addition, the Government (under World Bank assistance) has developed Inland Customs Depots in three border points, Birgung, Biratnagar and Bhairahawa, in order to reduce the time and the cost significantly.

In India, the scheme for advance rulings became operational in February 2004, where the Authority for Advance Rulings (AAR) performs the role of advanced rulings required under the GATT. The rulings of this AAR may be on classification, valuation, and applicability of duty exemption related to export, import, production and manufacture. Yet, the scope of advance ruling is limited. The existing system has been designed for foreign investors, while such facilities are not available for solely Indian-owned companies, mostly small and medium-scale players, who face higher transaction costs in this regard. In terms of information, both the electronic and print media are used to disseminate information. The Central Board for Excise and Customs (CBEC), the Directorate General of Foreign Trade (DGFT) and the Reserve Bank of India (RBI) use electronic media to a greater extent, while the private sector disseminates information, both through published materials and websites, in a more accessible manner. As for appeals, India has an appeal mechanism, which allows appeals at various levels, up to the Supreme Court, and appeals can be made to any superior officer in the Customs Department, other than the adjudicating officer. The Customs and Excise and Gold Control (Appellate) Tribunal (CEGAT) is the highest body responsible for this. However, the cost of legal disputes, including both money and time is high in India. In addition, there is no officially designated inquiry point for traders, while India is yet to fully implement the consultative mechanism, which is currently at a proposal stage.

Customs clearance in Sri Lanka consists of three channels. The Green Channel operates for low risk declarations, where goods are released without calling for documents and cargo examination. In the Yellow Channel, medium risk consignments are cleared upon examining the required documents, without cargo examination. High risk declarations are cleared in the Red Channel, with the examination of both documents and cargo. Additionally, there is a programme to provide incentives for good compliance – named Gold Card Holders – which provides a ‘fast track’ procedure in clearance. With regard to green and yellow consignments, it is expected that customs clearance will be given prior to the arrival of the vessel, provided that reporting of the manifest by the shipping agents is ensured at least two days prior to the arrival of the vessel. This type of customs clearance would result in ‘zero time clearance’, as far as the customs clearance procedure is concerned.

Sri Lanka signed the Revised Kyoto Convention (RKC) in 1999, subject to ratification. The Department of Customs or the Central Bank of Sri Lanka use both printed and electronic media to publish regulatory and administrative changes related to trade. Dissemination of information regarding tariffs and regulations are through gazette notifications. In addition, changes in tariffs are instantaneously made public through Revenue Protection Orders (RPOs). Sri Lanka customs has launched campaigns, including seminars, magazines and newsletters, in order to create awareness among trade parties on the benefits of the electronic media in facilitating trade. In addition, it is responsible for advance rulings on classification and a standard format is used for this purpose. In the context of rules and appeals in Sri Lanka, the “D” Branch of the Department of Customs provides classification, subsequent to submitting relevant particulars and

samples, where applicable, for advance ruling. The validity period for advanced rulings is six months, which could be extended on request. However, even though several government agencies are involved in import and export transactions, the country has not established a single window for inquires on imports and exports. Several committees assist the Director General of Customs in appeal procedures. The technical committees – Custom Valuation Committee and the Nomenclature Committee – handle valuation disputes and classification disputes, respectively. Two additional committees (Customs Enforcement Committee and Customs Facilitation Committee) address issues of enforcement and facilitation area.

In Pakistan, all laws, regulations and the majority of administrative guidelines are published in the gazette, while some information is also available on official websites. Customs tariff rates and other regulations are published annually by the official gazette, as well as being available on-line while the Central Board of Revenue (CBR) publishes the customs tariffs with various duty exemptions, rules and charges. With the use of unified procedure, some statutory regulatory orders have been reduced substantially. In Pakistan, public sector agencies use internet websites to a great extent. However, no information has been found on advance ruling so far.

5.2 Trade Facilitation in Sri Lanka: Stakeholder Interviews

At the country level, Sri Lanka is seen to ‘emphasise its broad acceptance of some of the trade facilitation principles and potential benefits identified by members through adhering to the trade facilitation process’ (GOSL, 2004).²⁵ Stakeholder interviews were carried out to assess the progress of trade facilitation measures in Sri Lanka, identify problem areas, etc. The limitations of this survey included its scope and size. The survey area was limited to one district (Colombo) and the sample consisted of only 37 respondents, including 28 stakeholders and 9 officials. Therefore, the survey was limited to a descriptive analysis, based on the questionnaires answered and interviews. The scope of the analysis was also limited, since the sample was not truly representative of all types of stakeholders at the national level. The breakdown of stakeholders interviewed is given in Table 2.

| Type of Stakeholder | No |
|--|----|
| Exporters/importers | 13 |
| Shipping agents/shippers | 3 |
| Clearing Freight forwarders | 9 |
| Logistic Providers | 3 |
| Total | 28 |
| <i>Note: a. Some stakeholders were dealing with multiple operations.</i> | |

Nine experienced and knowledgeable officials from the Sri Lanka Customs, Sri Lanka Port Authority, Sri Lanka Navy, Board of Investment, Department of Commerce, Export Development Board, EDI facilitators and researchers were interviewed in order to elicit first-hand information with regard to different aspects of trade facilitation. Different stakeholders were chosen, with a view to arriving at an appropriate balance on the aspects of information collection – i.e., stakeholders and officials.

The main data collection tool was a questionnaire (Appendix 2) which consisted of both open and closed-ended questions. The questionnaire of the present survey consisted of nine sections, which addressed general information, type of agency, laws, regulations and formalities, problems faced with personnel, inspection and assessment, fees, charges and costs, dwell time, problems of account of arrival/departure, penalty and appeal, major problems of moving freight within the country, problems faced in other countries and expected gains from trade facilitation. This was used to collect data on stakeholders, while the interview method was used to collect information from officials.

The following sections deal with the key information gathered from the interviews.

5.2.1 Laws, Regulations, Formalities and Procedures

The survey found that despite the major trade facilitation measures introduced in recent years, administrative procedures associated with laws, formalities and procedures are still complex and irrational. Nearly 70 percent of the respondents in the sample²⁶ reported that the trade-related information collection was very time-consuming, whereas 45 percent said it was costly. In this environment, new entrants (new traders) had borne higher time and monetary costs, when compared with large-scale players, who had the know-how of getting information through long-term experience. The perception of stakeholders towards information collection revealed that the laws and administrative rulings had not been easily accessible to 60 percent of the sample, while they were not well informed of all the standard information pertaining to them. Therefore, it is reasonable to say that the authorities have not succeeded in providing the necessary information in an accessible manner. In addition, both stakeholders and officials perceived that there were sudden changes in rules, regulations and policies in Sri Lanka and, according to the survey results, the affected parties had not been promptly informed by the authorities. However, it was mentioned by the officials that Sri Lanka Customs published the new amendments to the laws without delays. Nevertheless, it was noted that government procedure takes time in publishing information through gazette notifications. According to the survey results, these changes in rules and regulations have caused a weakening in the credibility of the government policies. One positive suggestion made by all the respondents in the sample was that the Government should consult traders and trade-related associations often and before framing rules, regulations and procedures.

Even though there are officially designated enquiry points²⁷ for traders to obtain trade-related information, the services of these enquiry points were not at a satisfactory level according to 50 percent of the sample, while some of the traders were not aware of these enquiry points. They were of the view that the Government should set up a single window enquiry point online. A researcher pointed out that even though several government agencies have already launched websites, these websites have not been regularly updated in order to provide all relevant laws, regulations, procedures,

documents and tariffs.²⁸ In addition, some of the government agencies still have not started websites, which is viewed as a necessary tool in today's competitive world. However, tea exporters had faced lesser procedures in obtaining information compared to the other exporters. It was partly due to the fact that effective methods have been carried out by the Tea Board and other related authorities to provide necessary information.

Furthermore, the survey results show that the import-export process still require a lot of documentation at the customs and ports, depending on the goods, while some other forms are required to be submitted to the concerned agencies, other than the above two. A commercial importer has to submit the Goods Declaration in five copies (warrant copy, delivery copy, exchange copy, statistical copy and consignee's copy) to the customs and the ports authorities. Further, nine documents should be filed with Goods Declaration with the customs, including import control licence, certificate of origin, bank stamp invoice, etc. In addition, an importer of some specific items (food items, other consumer goods, building materials and electrical products) has to submit several other documents and copies, such as invoice, packing list, a formal application in the SLSI format, quality certificate from overseas, etc. About 52 percent of the sample, which comprised many small-scale industries, mentioned that these documents were too many, while the rest were of the opinion that these documents were essential, even though they were too many in number. In most cases, larger scale industries had an advantage in the process of documentation, since documentation procedures in these companies were handled by a specialised group of personnel. Small-scale industries, on the other hand, faced more difficulties in handling a large number of documents. One other complaint made by the respondents was that some supporting materials have to be submitted time and again.

5.2.2 The Use of Electronic Data Inter exchange

Another area which needs attention in this analysis is the use of online trading procedures in Sri Lanka. Better usage of EDI or any computerised submission system has curtailed the number of visits made by the trading partners to related agencies and, therefore, has avoided unnecessary delays. The percentage value of the respondents who filed documents electronically to other agencies was limited to nearly 60 percent, while 80 percent had availed themselves of EDI facilities through their own offices. Most of them were large-scale traders. The approved partner of EDI in Sri Lanka is E-services Lanka Limited, which provides a secure e-commerce gateway for electronic submission of CUSDECS and allied documentation, incorporating electronic exchange of messages related to this process. As stated by the managing director of E-services Lanka Limited "at present 400 clients are using the system, including 60 big players, and with the setting up of BOI air cargo at Katunayake, the number of clients has been increasing. Nearly 5000 transactions are carried out through E-services Lanka Limited per month, in terms of imports, and the service has been recently enhanced towards export entries as well. The larger scale businesses who use EDI can gain immediately, while small-scale industries gains ultimately. The barriers to improving the EDI facilities consist of the lack of awareness of the traders regarding the benefits of the system and the high costs of electronic data communication prevailing in Sri Lanka."

As highlighted by personnel at the Department of Customs, only 40 companies use EDI through the customs for their transactions at present. It is partly because the system has been recently introduced. The operation of the new EDI system has been limited due to several reasons. One such reason offered was that the new system is not well acknowledged by the intermediary participants, such as clearing agents, possibly because they will be the losers of the expected improvement. In addition, Sri Lanka Customs expects to fully implement the EDI set-up in November 2005. According to BOI personnel, most of the enterprises registered with BOI use EDI facility, where only small-scale enterprises, who do not engage in regular transactions, rarely use it. Over 300 entries are passed through the BOI per week. The restrictions highlighted by the official with regard to BOI facilities were scarcity of human resources in number and larger space for a cargo village. A key barrier to setting up a fully implemented and interlinked EDI system with relevant authorities is the lack of coordination between different government agencies and the widespread bureaucratic problems prevalent in these offices.

5.2.3 Dwell Time

Although new trade facilitation measures have been intended to simplify procedures, handling and processing of documents by customs and port administrators have caused unnecessary delays, as well as being time-consuming. As revealed by stakeholders, the most time-consuming aspects of trade procedures in Sri Lanka can be highlighted as obtaining various refunds, like duty drawbacks,²⁹ obtaining different licences and export/import codes and clearance through customs, getting remittance through banks and final dispatch of export consignments (in order of the time taken for the process).

It has been reported that nearly 75 percent of general cargo is cleared within a maximum period of 3-4 days. As mentioned in the present survey, the standard processing time set by the authorities for different aspects of clearing a shipment or cargo is three days. Even so, 46 percent of the sample was not aware of the standard processing time set by the authorities. Most of the sample mentioned that transport services were late in dropping off cargo or picking up cargo, while only a negligible proportion (3.7 percent) said that they were never late. Yet, they believed that the average time required for clearance through customs was high, despite several steps taken by the Department of Customs to avoid delays, such as the Speedy Declaration Process by Investor Separate Facilitation Centre and special declaration process in a separate BOI office, etc. The reasons attributed for delays in clearances were: (i) operation hours of customs and ports (63 percent of the sample); (ii) random opening of self-sealed containers (48 percent); (iii) non-availability of customs officials for inspection (66 percent); (iv) congestion at ports (77 percent); (v) poor port handling facility (63 percent); (vi) lack of adequate berthing space in ports (33 percent); (vii) missing of container trailers due to de-stuffing and re-stuffing (55 percent); and (viii) processing of shipping bills (44 percent). Therefore, it is apparent that the lack of clearance facilities and equipment and restricted working hours has slowed down the customs clearances process. Survey experience indicated that many of the government offices were closed during the night and on Sundays, further reducing the effective operation hours, although 24 hour-service of customs has been highlighted as an important element in trade facilitation.

The 24-hour cooling-off period procedure has also increased the clearance time due to the non-use of the technical equipment in the process, such as X-ray machines. In addition, another reason given by the sample for the delay in customs was the inspection of cargo, which was considered to be time-consuming. In order to avoid unnecessary delays of the procedure, three channels have been introduced by the Department of Customs; imports by black-listed traders and imports without necessary documents (Red Channel Imports) are subjected to 100-percent examination; Amber Channel cargo is released after the conduct of limited checks; and Green Channel imports³⁰ are not subjected to any physical inspection. However, as found in the survey, there were some instances where smugglers tried to clear their goods through the Green Channel, whereas this channel had been introduced as a trade facilitation measure.

One other special procedure for speedy clearance has been implemented by the BOI in Sri Lanka for manufacturing enterprises registered at the BOI. These enterprises have been exempted from the rigid application of customs procedures. CUSDEC Declarations are processed in the BOI as speedily as possible, utilising a different procedure. The BOI was established in Sri Lanka with the aim of providing investor-friendly facilities and eliminating bureaucratic obstacles. As such, it provides 24-hour service for their customers, where traders are required to submit necessary documentation to a 'one-stop-desk'.

The Sri Lanka Port Authority (SLPA) is a port operator, terminal operator and policy developer for Sri Lankan ports. It is one of the key bodies responsible for a smooth and speedy clearance procedure. With the introduction of a private sector terminal, to operate in Sri Lanka (South Asia Gateway Terminal), the operations of the Jaya Terminal have become more competitive, efficient and service-oriented. At present, the SLPA uses electronic data systems to some extent, in order to avoid port congestion and reduce paper work. As was pointed out by a researcher, the SLPA is an apex body which facilitates trade at a satisfactory level on a competitive basis. For example, the vessel turnover time has significantly improved in the last six months and it has become one of the best ports in the region in terms of the transshipment rates. The SLPA expects to increase the number of containers discharged per day to 65, from the current level of 35. In addition, the SLPA expects to improve its service, so that it could compete with other ports in the region, while emphasising the need of having a common position for South Asia in handling port facilities.

The Sri Lanka Navy is responsible for the security aspects of trade and one suggestion made by it to reduce the clearing time was to set up a joint working mechanism for all the three bodies, viz., the SLPA, the Sri Lanka Customs and the Navy, for the inspection procedure. However, with the support of the United States, the SLPA is going to introduce a 'Mega Port Concept' for security processing, which might add to delays. Under this new concept, exports to USA are subjected to an additional inspection procedure, which consists of a new technological mechanism for screening containers.

As revealed in many interviews, delays in trade procedures can add significant costs and losses to trading partners in a competitive environment. Similarly, according to the present survey results, delays in clearing had caused 36 percent of the sample to incur

losses or additional costs, in terms of rejection of shipments or acceptance of shipments at a discount price. Some of the respondents had carried out several measures – such as speedy procedures and long working hours – to cover the cost of delays taking place at government offices and were, therefore, convinced that they had not incurred losses.

5.2.4 Monetary Cost: Fees, Charges, Penalties and Appeals

Even though Article VIII obliges member countries to limit the fees and charges that they impose on importation and exportation in proportion to the cost of services and to reduce the number of fees, stakeholders pointed out that the fees and charges imposed by authorities in Sri Lanka are large in number and amount. It was said by over half the respondents that these fees were not reasonable. However, what was additionally found in the survey regarding fees and charges was that, in most cases, the information on these fees had been readily available for traders.

In analysing the penalty and appeal procedures in Sri Lanka, it was found that half of the sample had paid penalties. According to 75 percent of them, the amount of the penalty for minor breaches of customs or other procedures was excessive. Moreover, as reported by the sample, proceedings of the Department of Customs into enquiries did not have a standard time limit for the completion of such enquiries. Besides, since the scale of penalties depended on the value of goods and was not in proportion to the revenue loss, officers had imposed maximum penalties without any concern.

Sri Lanka has an institutional mechanism dealing with appeals in order to correct or review administrative actions relating to customs matters. A negligible proportion of the respondents in the sample had appealed against customs ruling. The survey found that the procedure of appeal was costly and not reasonable to traders at present.

5.2.5 Corruption-related Costs

One common complaint that many traders highlighted was the widespread bureaucratic practices in the Customs and Port Authorities. The existence of ‘rent-seeking activities’ at government offices for facilitating clearance and other document-related issues increase the cost of exports, imports and other related services. For instance, the proportional value of unofficial fees paid by most of the sample respondents to speed up the clearing process ranged from one to 25 percent of the total cost that they bore for clearing a 20-ft container. In some instances, it was almost 50 percent of the total cost. About 85 percent of them were compelled to pay such bribes or gifts, since they could not clear goods without such transactions. Some stakeholders indicated that in the absence of paying ‘speed money’ to officials, goods could never be cleared, passing relevant stages. However, it is important to note that nearly 35 percent were convinced that corrupt practices have reduced in recent years after duty reductions and procedural improvements, while the rest of the sample believed this to be the other way round. Even though some respondents (about 54 percent) did not provide detailed information about the bribes and gifts that they paid to government personnel in order to speed up actions, they mentioned that they could not pass some of the stages at the port and the customs without paying bribes.

5.2.6 Personnel at Government Agencies

On the Government side, personnel at customs, port, airport, border crossings, etc., need to be more service-oriented. It was found in the perception survey that the majority of stakeholders in the sample were not satisfied with the services provided by the personnel at the above points. As one researcher highlighted, poor quality of service and the role of these authorities in trade facilitation are also affected by the lack of thorough knowledge on the part of these personnel on matters such as classification, valuation of goods, standards, etc. This also adds to the procedural delays. As the study found, 85 percent mentioned that the performance levels of these personnel were at an average or below average level, while no information has been found in support of an 'excellent' service provided by the personnel at customs, port and airport. The service of such personnel had not been readily available, even though there were surplus workers employed at these points.

5.2.7 Gains of Trade Facilitation

Some respondents speculated on the associated benefits of trade facilitation in terms of a percentage value of cost reduction. According to many of them, the expected cost reduction (monetary cost) ranged from 5 percent to 25 percent on average. The survey results showed that the expected cost reduction from trade facilitation were relatively higher for small-scale enterprises than for large-scale enterprises. The advantages that they would expect from trade facilitation – apart from cost reduction – are efficiency and productivity gains, speedy clearance, and more business overall. Expected advantages highlighted by small-scale industries were higher than those highlighted by large-scale industries. As said by the respondents, trade facilitation could increase and attract foreign investors to Sri Lanka, since it ultimately reduces common bureaucratic practices in Sri Lanka. It would contribute to a significant rise in exports, provided that the cost savings can be used to become more competitive.

On the side of administration, there are several vague clarifications with regard to trade facilitation measures. For example, there is a trade-off between trade facilitation measures and revenue collection practices of the government agencies. One possible example given was that revenue from customs is an important source of income for the government, which gives specific revenue targets to be met by the Department of Customs. In addition, Sri Lanka Customs was the enforcement agency in Sri Lanka in formulating rules and regulations. As mentioned by the personnel at customs, these are the two defined roles for Department of Customs. One suggestion made was that the negotiating group of Sri Lanka should take this typical role of customs into consideration in future Ministerial Conferences.

Some positive suggestions by the personnel at Sri Lanka Customs, EDB, BOI and SLPA to minimise the institutional problems in trade facilitation were the use of EDI, online training for government officers, systematic development for customs and ports authority at a grass-root level and guidelines for best practices on the website.

6. Summary and Recommendations

South Asian countries acknowledge that existing inefficiencies in trade facilitation measures need to be tackled if they are to become more competitive in the international markets. Efficiency and capacity constraints in South Asia consist of common factors, such as low port efficiency and less competitiveness, poor port infrastructure, lack of cross border transit points and road connections across the region, high cost of road transport, licensing restrictions, poor railway facilities, poor management at customs with high monetary and time costs, administrative problems, non-transparent trade procedures, lack of technical equipments used in customs administration, restrictions on information technology and service sector infrastructure, lack of modern infrastructure networks and problems in meeting standards and technical regulations. In addition, the political will to implement trade facilitation measures seems to be lacking in some countries. One of the barriers to trade facilitation in these countries is widespread bureaucratic practices at customs and other key government institutions where officials have become accustomed to the existing systems. Furthermore, the pressure from stakeholders to implement trade facilitation measures in most of the South Asian countries is lacking, partly because the business community is not fully conversant with the potential benefits of trade facilitation. However, a key factor inhibiting most developing countries from implementing trade facilitation measures are the costs associated with large-scale improvements in trade infrastructure.

South Asia nevertheless faces formidable challenges in actually being able and having the capacity to contribute to the actual negotiations. Negotiating strength obviously differs across South Asia. The smaller economies are likely to face numerous difficulties, including the ability to follow and participate in the negotiations; the ability to analyse and synthesise proposals and submissions made by other WTO member countries and evaluate the implications of those proposals; the capacity and ability to develop negotiating proposals, which take into account concerns of individual countries and their development aspects; and, finally, the capacity and ability to be able to assess the cost implications of taking on board new commitments and obligations associated with a possible multilateral framework on trade facilitation.

Issues of transit facilities under Article V are most relevant to India, Bangladesh and Nepal. For the most part, transit issues in the sub-continent have been dealt with on a bilateral basis (e.g., Nepal-India Treaty of Transit). However, India, Bangladesh and Nepal are yet to accede to international transit conventions such as the TIR Convention or the ATA Convention, although India uses the ATA Carnet to a limited extent.

The status of South Asian countries with respect to the key proposals based on Article VIII indicate that even though these countries have undertaken several computerised

systems such as use of ASYCUDA, EASY, EDI, etc., in order to reduce documentation requirements in import and export procedures, there are continuing procedural complexities. In addition, fees and charges in most of these countries are fairly large in number and the amounts can be substantial. According to available information, no official standard processing time has been set in these countries so far. Some countries such as India and Sri Lanka have set some basic guidelines for their customs stations. Pakistan, Sri Lanka and Nepal have committed to implement international standards, while India also needs to implement several reforms to fully meet international standards.

The current status of South Asian countries with regard to the proposals based on Article X reveals that authorities in India, Pakistan, Bangladesh, Sri Lanka and Nepal disseminate information using electronic media to some extent, while still using print media as well. Authorities have started to use electronic media with the introduction of several computerised systems. However, in the case of Bangladesh, Pakistan and Nepal there is still no progress reported with regard to advance rulings. None of the countries has established a single window enquiry point for traders. In addition, there is no consultative mechanism at the moment in many countries; the Sri Lankan, Indian and Nepalese legislations provide the right of appeal to the affected party.

It is evident that the concerns expressed by developed countries in the negotiations are different from developing countries. While some developed members have submitted their proposals for new obligations or clarifications of the relevant existing GATT rules, many developing countries, on the other hand, insist on voluntary guidelines, rather than legally binding rule-based agreements. Even though the developing countries do not disagree with the merits of trade facilitation, they argue that compliance with binding trade facilitation standards would be an additional cost to them. LDCs in particular stress the need for precise, effective and operational S&DT provisions and have expressed concerns that the proposals submitted so far do not provide for technical and financial assistance by developed countries. One another submission is that the legal and administrative implications of the proposed measures need to be examined, taking into account existing institutional and administrative capacities of developing and least developed country members.

Some countries from South Asia such as Pakistan have highlighted that an assessment should be carried out on the needs and priorities of developing countries as the basis for future negotiations on trade facilitation. Bangladesh, like many other LDCs, has expressed concerns that implementation of trade facilitation measures require technical know-how and necessary resources. Technical assistance alone cannot ensure effective implementation and it has expressed the view that the scope of future negotiations on trade facilitation should be within the existing capacity of member countries.

India, too, has expressed concerns on the scope and content of the negotiations, arguing that some of the proposals – such as those relating to binding advance rulings for customs purpose, the obligatory use of HS tariff classification, express shipments, etc. – exceed the mandate for negotiations. Furthermore, India is of the view that the WTO is not the most suitable forum for dealing with trade facilitation issues since other specialised international organisations or conventions are in force at present. Negotiations on trade facilitation with binding rules are not viewed with enthusiasm,

with a preference for more general incentive-based reform commitments and autonomous implementation.

The priority areas in improving trade facilitation for many South Asian countries are improving customs procedures and formalities, harmonisation of standards, removing constraints on transit procedures, etc. The countries are, therefore, likely to call for the scope of current negotiations on trade facilitation under the WTO to be limited to Articles V, VIII and X of GATT 1994. Despite the recognised potential benefits of trade facilitation, concerns regarding additional costs associated with new commitments and implementation capacities will mean that the importance of providing S&DT and technical assistance and capacity building for developing countries and LDCs at both the negotiation stage and implementation stage needs to be highlighted in future negotiations.

Endnotes

- 1 Empirical characteristics include features such as differences in direct and indirect TTCs; country-specific differences in trade facilitation potential, such as the quality of border process, nature of products and the size of businesses.
- 2 UNCTAD (1994) and APEC (1999) cited in OECD (2003).
- 3 For example, in Chile, the cost of introducing an automated system amounted to US\$5mn in the 1990s, while in Jamaica it was US\$5.5mn (OECD, 2003).
- 4 Staple (1998) cited in Messerlin and Zarrouk (2000).
- 5 Articles V, VII, VIII, X of the GATT 1994, as well as in Agreements on Customs Valuation, Import Licensing, Preshipment Inspection, Rules of Origin, Technical Barriers to Trade, and the Agreement on the Application of Sanitary and Phytosanitary Measures.
- 6 <http://www.wto.org>
- 7 OECD (2003), "Trade Facilitation Principles in GATT Articles V, VIII and X: Reflections on Possible Implementation Approaches", TD/TC/WP(2003)12/FINAL.
- 8 BIMSTEC Taskforce, 2005, "Report of the BIMSTEC Task Force to review the Sectors and Sub sectors for Economic Cooperation under BIMSTEC", Bangkok: BIMSTEC Taskforce. (<http://www.mfa.go.th/bimstec/bimstecweb/files/Full%20Report%20of%20the%20Task%20Force%2031.1.2005.doc>)
- 9 USTR (2005) and CUTS (2004).
- 10 Roy as cited in CUTS (2004) and Economic and Social Commission for Asia and the Pacific (2000). Alignment of Trade Documents and Procedures of India, Nepal and Pakistan. <http://www.unescap.org/tid/MTG/SAARCDoc.PDF#search='India trade facilitation'>
- 11 USTR (2005).
- 12 USTR (2005).
- 13 USTR (2005).
- 14 USTR (2005).
- 15 Macro-Logistics and Infrastructure in India- Problems, Issues and Strategies. <http://www.translogintl.com/papers/TAS.PDF#search='India Road transportation problems'>
- 16 This section relies heavily on Wickramasinghe (2004) and country-specific Trade Policy Reviews prepared by the WTO Secretariat.
- 17 For example, the Indo-Nepal Transit Treaty.
- 18 Dabadi Hemant (2005), " Trade Facilitation in the WTO negotiations and Issues for LDCs: The case of Nepal", Katmandu : SAWTEE.
- 19 An international transit system for goods carried by road.
- 20 Designed to facilitate the importation, irrespective of the means of transport used, of goods which are granted temporary duty-free admission.
- 21 Items subject to licence and permits include Tea Permit issued by Tea Controller for Tea under Tea Board Act; an R.M.V certificate issued by Registrar of Motor Vehicles for export of registered vehicles; a permit issued by Wild Life Department for items under Fauna and Flora Protection Ordinance; a permit issued by Ministry of Fisheries and Aquatic Resources for restricted list of species; and a document for Ayurvedic Drugs should be produced in which name and the registration number of the physician who scrutinised the production should be mentioned.
- 22 Weerasekera and Kananathalingam (2002) as cited in TPR Secretariat Report (2004).
- 23 CUTS (2004).
- 24 Taneja (2004) cited in Wickramasinghe (2004).
- 25 Trade Policy Review Government Report: Sri Lanka (2004). WTO. WT/TPR/G/128 http://www.wto.org/wto/english/tratop_e/tpr_e/g128_e.doc
- 26 The word 'sample' hereafter refers to the stakeholders.
- 27 For example, Sri Lanka Customs, Board of Investment, Export Development Board, Ceylon Chamber of Commerce, etc.
- 28 For example, the website of Sri Lanka Customs.
- 29 It was said that it usually takes several years to secure a refund.
- 30 For example cargo imported by government institutions and reputed importers and goods of an urgent nature.

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(http://www.wto.org/english/tratop_e/tpr_e/g128_e.doc)

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| Appendix 1: Trade Facilitation in South Asia | | | | | |
|---|--------------------|-----------------------|--------------------------|-----------------------|-----------------------------|
| Business Constraint | No Obstacle | Minor Obstacle | Moderate Obstacle | Major Obstacle | Very Severe Obstacle |
| Bangladesh | | | | | |
| Telecommunications | 29.82% | 22.41% | 23.12% | 15.01% | 9.63% |
| Electricity | 3.52% | 4.02% | 19.30% | 31.26% | 41.91% |
| Transport | 18.59% | 25.43% | 31.36% | 16.96% | 7.66% |
| Tax rates | 18.02% | 18.02% | 28.11% | 23.32% | 12.53% |
| Tax administration | 11.24% | 12.77% | 25.33% | 25.64% | 25.03% |
| Customs and trade regulations | 14.80% | 16.87% | 25.16% | 23.29% | 19.88% |
| Economic & regulatory policy uncertainty | 15.30% | 18.48% | 20.84% | 26.28% | 19.10% |
| Corruption | 12.69% | 11.78% | 17.62% | 22.56% | 35.35% |
| India | | | | | |
| Telecommunications | 58.59% | 27.46% | 8.62% | 3.40% | 1.92% |
| Electricity | 26.73% | 23.60% | 20.75% | 16.74% | 12.18% |
| Transport | 40.29% | 31.28% | 16.03% | 9.82% | 2.58% |
| Tax rates | 26.73% | 22.77% | 22.61% | 19.25% | 8.64% |
| Tax administration | 29.04% | 20.11% | 24.46% | 17.63% | 8.76% |
| Customs and trade regulations | 42.04% | 24.67% | 19.28% | 9.82% | 4.19% |
| Economic & regulatory policy uncertainty | 33.63% | 24.16% | 21.27% | 14.03% | 6.90% |
| Corruption | 21.19% | 18.27% | 23.12% | 19.48% | 17.94% |
| Nepal | | | | | |
| Telecommunications | 78.54% | 4.57% | 9.13% | 6.39% | 1.37% |
| Electricity | 23.04% | 6.45% | 29.03% | 7.37% | 34.10% |
| Transport | 70.37% | 14.35% | 3.70% | 11.57% | na |
| Tax rates | na | na | na | na | na |
| Tax administration | na | na | na | na | na |
| Customs and trade regulations | 26.92% | 7.69% | 58.97% | 6.41% (protected) | |
| Economic & regulatory policy uncertainty | na | na | na | na | na |
| Corruption | na | na | na | na | na |
| Pakistan | | | | | |
| Telecommunications | 52.13% | 25.55% | 13.08% | 5.09% | 4.15% |
| Electricity | 20.93% | 20.31% | 19.59% | 15.96% | 23.21% |
| Transport | 46.68% | 23.13% | 20.23% | 6.33% | 3.63% |
| Tax rates | 26.01% | 10.26% | 18.13% | 15.34% | 30.26% |
| Tax administration | 23.76% | 12.34% | 17.84% | 17.43% | 28.63% |
| Customs and trade regulations | 43.80% | 14.39% | 17.21% | 13.24% | 11.37% |
| Economic & regulatory policy uncertainty | 29.22% | 11.50% | 19.17% | 13.89% | 26.22% |
| Corruption | 29.05% | 12.03% | 18.57% | 15.04% | 25.31% |
| Sri Lanka | | | | | |
| Telecommunications | 57.11% | 12.89% | 16% | 6.22% | 7.78% |
| Electricity | 18.89% | 17.33% | 22.44% | 23.33% | 18% |
| Transport | 50.89% | 12.89% | 14.22% | 13.11% | 8.89% |
| Tax rates | 58.22% | 10.44% | 12.22% | 10% | 9.11% |
| Tax administration | 64.37% | 10.69% | 12.47% | 6.01% | 6.46% |
| Customs and trade regulations | 58.44% | 13.56% | 13.33% | 10.44% | 4.22% |
| Economic & regulatory policy uncertainty | 34.44% | 14.22% | 17.33% | 18.44% | 15.56% |
| Corruption | 52.22% | 15.78% | 15.11% | 9.56% | 7.33% |

Source: World Bank, Investment Climate Survey . The survey was carried out in the following years for respective countries: Bangladesh (2002), India (2002), Nepal (2000), Pakistan (2002), Sri Lanka (2004).

Annexure 2

Questionnaire
Stakeholder Perception Survey for Trade Facilitation

Identification of Respondent

Name:

Name of Company:

Address:

Telephone No:

Fax No.

Email Address:

Website:

Date of response:

Type of Agency

1.1) Is the establishment involved in

Import export

a) Which countries do you export to?

b) Which countries do you import from?

c) What type of goods do you export?

d) What type of goods do you import?

Clearing and Forwarding Agency ?

Yes No

Multimodal transport operator ?

Yes No

Express Delivery Agency?

Yes No

Road Carrier ?

Yes No

Ship Agents/Shipping line ?

Yes No

Others (specify)

1.2) What type of goods do you generally handle?

I. Give an indication about the size of the business (annual turnover):

II. Approximate No of employees:

Border Crossing in Trade with Neighbouring Countries

(For Land Lock countries. Answer if applicable)

1. Do you think the cost of transit services are reasonable? Yes No
If not explain.

2. Do you think the waiting time to cross a border is reasonable? Yes No
If not explain.

3. What is the time taken for crossing different borders? Yes No

4. Do you think the time taken for customs clearance for landlocked countries to enter transit country is reasonable? Yes No
If not explain:

5. Do you think that the transit procedures and formalities are complicated compared to the import procedure? Yes No
Please explain:

6. Do you think that the transit procedure is time consuming compared to the import procedure? Yes No
Please explain:

7. Do you think that the transit procedure is costly compared to the import procedure? Yes No
Please explain:

8. Do you pay any other charges for other than the services provided? Yes No
If Yes, please explain:

9. What are the major problems that need attention in terms of Transit Facilities?

Laws, Regulations, Formalities and Procedures

1. Are laws, regulations, judicial decisions and administrative rulings pertaining to your business / company easily accessible to you? Yes No
If yes, in what media is it available?

2. Do you feel that the Government of Sri Lanka should consult traders and trade associations often and much before framing rules, regulations and procedures? Yes No

3. Are you aware of all the standard information? Yes No

4. Is standard information and information about changes in rules available easily? Yes No
If yes, are these notified in a prompt and accessible manner? Yes No

5. Are there sudden changes in rules, laws, regulations and policies in Sri Lanka? Yes No
 If yes, are these changes made public instantly? Yes No
6. Did you ever suffer any loss due to such a change? Yes No
7. Have you ever faced any harassment due to the ignorance of line department officials regarding change in rules etc.? Yes No
8. Is information collection time consuming? Yes No
 How much time is spent?
9. Is information collection costly? Yes No
 What would be the cost (if possible, cost also as p.c. of value added)?
10. Are there inquiry points for trade related information? Yes No
 If yes, are they efficient and helpful for your operation? Yes No

11. Which agencies/offices do you visit for obtaining/submitted the necessary documentation?

12. Are these offices located far away? Yes No
13. Could any of these visits be curtailed if the offices had data sharing system? Yes No

14. How many documents do you have to fill in?
 Please list the documents required at the above points?

15. Do you feel that these documents are too many? Yes No
16. Is there any data (or supporting material) that has to be submitted time and again? Yes No

If yes, what is it?

17. Is self-declaration allowed Always Sometimes Never
18. If always or sometimes, where is self-declaration allowed?
-
-

19. Do you file documents electronically (using EDI) to any agency? Yes No
 If yes, name the document and the corresponding agency:

20. From where do you avail EDI - your office or from some other place?
21. Is computerized submission time-and cost- saving? Yes No

22. What are the offices that work on-
Weekends and Holidays:

After office hours if required:

Problems Faced with Personnel

1. Are the number of personnel employed at Ports, Airports, Border-crossing points, etc, adequate? Yes No
2. Are their services readily available? Yes No
3. What is your impression about the performance level of such personnel?
Excellent Above average Average Below Average Bad
4. Have you ever experienced discriminatory or unreasonable use of laws, regulations and rulings by the Customs or other? Yes No

Inspection/Assessment

1. Which agencies or authorities are involved in the inspection of your imports/exports?

2. Do you face any delay due to the above procedure? Yes No
3. Do you incur substantial additional costs or suffer losses due to inspection?
Yes No
4. Did you ever miss any shipments due to time taken in completion of formalities?
Yes No
5. What is the total time spent in queues for inspection before interacting with officials?

Fees, Charges and Cost Estimate

1. How many different fees are involved in the import/export procedure at the customs level in Sri Lanka?
2. How many different fees are involved in the import/export procedure paid to government authorities beyond customs, in Sri Lanka?
3. Are these taxes/charges readily available for public? Yes No
If Yes, in what form?

4. Do you think these fees are reasonable? Yes No
If No, please explain:

5. What is the method of payment for a typical export order?
Letter of credit: Yes No
Open account: Yes No
Cash against document: Yes No

Telegraphic Transfer Yes No
 D/P Yes No
 D/A Yes No
 Other (please specify):

6. What is the percentage of cost spent for the preparation of documents related to exports/imports?
 7. Do you engage any agency for the above purpose? Yes No

Corruption Related Costs

8. What is total cost you bear for clearing a 20/40 ft container?
 9. What is proportion of unofficial fees (bribes or gifts etc. to speed up action)?
 10. Were you compelled to pay such bribes or gifts or could you clear goods without such transactions? Yes No
 11. In the absence of such transactions what is the time taken for clearing a shipment?
 12. Have corrupt practices reduced in recent years after duty reduction, procedural improvements and EDI? Yes No

Dwell Time

- 1) Is there a standard processing time set by the authorities for different aspects of clearing a shipment or cargo? Yes No
 If yes, what is it?
 If yes, by how many hours does the actual time differ from the standard time?

Time taken (in no. of days) for -

- (a) Obtaining different export /import codes
- (b) Obtaining different Licenses
- (c) Processing of Shipping Bills through EDI
- (d) Obtaining various refunds like duty drawbacks
- (e) Getting remittances through banks
- (f) Customs clearances
- (g) Final dispatch of export consignments
- (h) Any other delay that needs improvement:

What is average time required for clearing through customs?

- 2) How frequently are transport services late in dropping off cargo or picking up cargo from your point for delivery? Always Sometimes Never
 3) Do you feel that the average time required for clearance through Customs is high? Yes No
 4) Which of the following reasons do you attribute for delay in Customs clearance?

Operation hours of Customs and Ports Yes No
 Random opening of self sealed containers Yes No

- | | |
|--|--|
| Non-availability of Customs officials for inspection | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Congestion at port | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Poor port handling facility | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Lack of adequate berthing space in ports | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Missing of container trailers due to de-stuffing and re-stuffing | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Processing of shipping bills | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Others, specify | |
-
-

- 5) Has any shipment been rejected or returned or taken at a discount price due to delay? Yes No
- 6) Have you incurred any loss due to damage (perishables) of shipment with delay in clearing: Yes No
- 7) If relevant, for air cargo, what average time needed for customs clearance?

Problems on account of arrival / departure/storage, etc.

1. What is the average cooling period for goods?
Is this high? Yes No
2. Are transit vehicles easily available? Yes No
If not, what is the delay in clearance?
3. Are the storage and warehouse facilities sufficient? Yes No
If not, what is the delay in clearance?
4. Are there instances of clearances insisted upon, though not required under regulations? Yes No

Major Problems of Moving Freight within your country

1. Are the major problems of moving freight within Sri Lanka, related to:

| | |
|---|--|
| Road, Railways | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Vehicles, Containers and Packaging | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Private Agencies | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Laws, regulations (including Cesses and Levies) | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Costs | Yes <input type="checkbox"/> No <input type="checkbox"/> |
| Highways | Yes <input type="checkbox"/> No <input type="checkbox"/> |
 2. Any other problem faced inside Sri Lanka that needs attention? (Please Specify)
-
-

Penalty and Appeal

1. Is there a mechanism for appeal in order to correct or review administrative action relating to custom matters? Yes No
2. Did you ever pay any penalty for minor breaches of Customs procedures/any other procedures? Yes No
3. Were these excessive in your view? Yes No
4. Have you ever appealed against a Customs ruling? Yes No
5. Is the cost of such an appeal reasonable? Yes No
6. Indicate if any collateral or monetary security provisions were necessary to release goods pending outcome of an appeal:

Problems Faced in Other Countries

1. Who, on your behalf, attends to the formalities and procedures in other countries?

2. Do you face problems in getting information about laws and regulations in the partner trading Country/Countries? Yes No
If yes, what are these countries?
3. Do you face problems in getting information about entry-point procedures in the partner trading Country/Countries? Yes No
If yes, what are these countries?
4. Do you face problems in getting information about administrative rulings and judicial decisions, right of appeal and procedures, including all amendments thereto, advance rulings in the partner trading Country/Countries? Yes No
If yes, what are these countries?
5. Do you face problems in getting information about fees and charges in the partner trading Country/Countries? Yes No
If yes, what are these countries?
6. Do you think that the documents asked and data that need to be given for clearance in any of the trading countries is excessive? Yes No
If yes, what are these countries?
7. Do you find that the Phytosanitary requirements in any of the trading countries adversely affect your trade? Yes No
If yes, what are these countries?
8. Are there any Special Security requirements in a trading country/countries that adversely affect your trade? Yes No
If yes what are these countries?
9. Does any other Rule in a trading country adversely affect your trade? Yes No

10. Did you ever pay any penalty for minor breaches of customs procedure?
 Yes No
 If yes, are these excessive in your view Yes No
11. What is the average cooling period for goods? _____
12. Is this high? Yes No
13. Which countries/regions levy unreasonably high fees and charges?

14. Have you ever experienced discriminatory and unreasonable use of laws, regulations, rulings and agreements of a country by the customs or any other agency?
 Yes No
15. Is it possible to appeal against customs and other agency rulings and decisions?
 Yes No
16. Is the cost of such an appeal reasonable? Yes No
17. Is the time taken to settle an appeal reasonable? Yes No
18. Whether the Goods can be released under conditions pending outcome of an appeal?
 Yes No
19. Has your cargo ever been rejected in a trading country? If so what is the procedure followed to bring it back / destroy it?
 Yes No
20. Do you export to a country that need transiting through a third country?
 Yes No
 If so, did you face any restriction or discrimination in the transit country?
 Yes No
21. Are your exports/imports subjected to inspection by any agency/authority at arrival/ departure point? Yes No
22. Do you face delay, incur additional costs or suffer losses due to such inspection?
 Yes No
23. Any other problems faced in other Countries

Gains of Trade Facilitation

Trade Facilitation is directed to make information easily available, simplification of formalities and procedures, rationalisation of penalty and appeal procedures, faster clearance of goods, dwell time reduction, reasonable rates of fees and charges, electronic submissions, transparency, non-discrimination, less corruption and streamlines trade procedures with neighbouring countries.

1. Even though it is difficult, please make a guess what would be your cost reduction from trade facilitation?

2. What other advantages you may get apart from cost reduction?

3. Will you expand into new areas of foreign trade if there is better trade facilitation?

Yes No

4. Do you think competition from foreign companies will increase after trade facilitation?

Yes No