REVISED INTERIM REPORT

A Study of Trade Facilitation Measures

From WTO Perspective

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August 2003

Madras Institute of Development Studies
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Preface

The importance and relevance of Trade Facilitation in India is underlined by a Study of this nature supported by the Ministry of Commerce and Industry, Government of India. The Project commenced in February 2003. An Interim Report was submitted in April 2003, on which detailed comments were received. This Revised Interim Report incorporates the comments as well as new inputs in other areas.

We are particularly grateful to all those who were instrumental in initiating this work, and for their cooperation during these few months. This Study required extensive collaboration and interaction with officials in various government departments and related agencies, practical functionaries in trade, and trade experts - in Chennai, New Delhi, and Mumbai. For constraints of space, it is impossible to list their names. We express our thanks to all of them.

A large number of people involved in trade at the borders - exporters, importers, customs agents, transporters, etc. have been contacted by us at different stages, and we thank them for their responses and inputs. In particular we would like to thank the FIEO, Southern Region, for helping us in conducting a survey among a large group of importers/exporters in southern India.

The Anna University KBC Research Centre provided necessary expertise for writing the detailed section in the Report on EDI and e-commerce. We thank the Director of the Centre and Mr M Murali for their valuable help.

Without the substantial inputs received from all the quarters, this Interim Report could not have been completed.

August 2003

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List of Contents

Abbreviations

AAI	Airports Authority of India
ACCP	Accelerated Customs Clearance Procedure
ACS	Accelerated Clearance of Import and Export Scheme
AEPC	Apparel Export Promotion Council
AFACT	Asia Pacific Council for Facilitation of Procedures and Practices for Administration, Commerce and Transport
APEC	Asia Pacific Economic Cooperation.
ASEB	Asia EDIFACT Board
BCAS	Bureau of Civil Aviation Security
BIS	Bureau of Indian Standards
CBEC	Central Board of Excise and Customs
CFS	Container Freight Station
CGE	Computational General Equilibrium
CHA	Custom House Agent
ChPT	Chennai Port Trust
CONCOR	Container Corporation of India
CTD	Committee on Trade and Development
CTG	Council for Trade in Goods
CTS	Council for Trade in Services
DGCI&S	Directorate General of Commercial Intelligence and Statistics
DGFT	Directorate General of Foreign Trade
DSU	Dispute Settlement Understanding
EC	European Commission
EDI	Electronic Data Interchange
EPW	Economic and Political Weekly
ESCAP	Economic and Social Commission for Asia and the Pacific
ETO	Ethylene oxide
EU	European Union
EXIM	Export and Import Policy
FAL	Convention On Facilitation Of International Maritime Traffic
FDA	Food and Drug Administration
FEMA	Foreign Exchange Management Act
FNCCI	The Federation of Nepalese Chambers of Commerce and Industry
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
ICC	International Chamber of Commerce
ICD	Inland Container Depot
ICES	Indian Customs EDI System
IPR	Intellectual Property Rights
ITC	International Trade Centre
JNPT	Jawaharlal Nehru Port Trust
LCL	Less than Container Load

LCS	Land Customs Station
LDC's	Less Developed Countries
MFN	Most Favoured Nation
MMT	Multimodal Transport
MPTA	Major Port Trusts Act
MTD	Multimodal Transport Document
MTO	Multimodal Transport Operators
NHDP	National Highway Development Project
NIC	National Informatics Center
NTB	Non-Tariff Barrier
ODA	Official Development Assistance
OECD	Organisation For Economic Cooperation and Development
PAN	Permanent Account Number
RES	Remote EDI System
SAARC	South Asian Association for Regional Cooperation
SAD	Single Administrative Document
SAFTA	South Asian Free Trade Area
SAPTA	South Asian Preferential Trade Agreement
S & DT	Special and Differential Treatment
SMEs	Small and Medium-Sized Enterprises
SPS	Sanitary and Phytosanitary Measures
TAMP	Tariff Authority for Major Ports
TBT	Technical Barriers to Trade
TEU	Twenty-foot Equivalent Units
TEXPROCIL	Textile Export Promotion Council
TF	Trade Facilitation
TRIMs	Trade-Related Investment Measures
TRIPS	Trade-Related Aspects of Intellectual Property Rights
TRS	Trade Registration System
UCP	Uniform Customs and Practices for Documentary Credits
UN/CEFACT	United Nations Centre For Trade Facilitation and Electronic Business
UNCTAD	United Nations Conference on Trade and Development
UNECE	United Nations Economic Commission for Europe
UNEDIFACT	United Nations Electronic Data Interchange for Administration, Commerce and Transport
WCO	World Customs Organisation

I

Introduction to Trade Facilitation

1.1 Definition

In certain transactions, numerous regulations and procedures need to be observed. For trade and industry the cost of compliance with such regulations and procedures may be high, even higher than the cost of tariff paid. Procedures and regulations are more in international trade than in domestic trade, leading to higher transaction cost for international trade. UNCTAD estimates[1] that the average customs transaction involves 20–30 different parties, 40 documents, 200 data elements (30 of which are repeated at least 30 times) and the re-keying of 60–70% of all data at least once. Systematic rationalisation of procedures and documents for international trade[2] is therefore, an important development agenda. In a few more years, after full implementation of the Uruguay Round Agreements, the tariff rates in the developed countries will be around 3-4% and in developing countries around 10-13%. Hence relative importance of transaction cost related problems will increase. An APEC study estimated[3] that trade facilitation programmes would generate gains of about 0.26% of real GDP to APEC, almost double the expected gains from tariff liberalization, and that the savings in import prices would be between 1–2% of import prices for developing countries in the region. This background illustrates why interest in trade facilitation is on the increase, particularly in international trade.

In a narrow sense, trade facilitation efforts could simply address the logistics of moving goods through ports or more efficiently moving documentation associated with cross-border trade. In recent years, the definition has often been broadened to include the environment in which trade transactions take place. This includes

[1] Briefing Note issued before Doha Ministerial Conference (WTO website – Ministerial Conferences).

[2] This definition is as per *Compendium of Trade Facilitation Recommendations*, 2001, jointly compiled by the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) and UNCTAD.

[3] Briefing Note issued before Doha Ministerial Conference (WTO website – Ministerial Conferences).

transparency and professionalism of customs and regulatory environments, as well as harmonization of standards and conformance to international or regional regulations. Since improvements in cross-border trade often involve improvements in "domestic" policies and institutional structures, the definitions of trade facilitation have been broadened further. Finally, in the light of the rapid integration of technology into trade facilitation, particularly through the dimension of networked information technology, the definition has come to embody a technological imperative as well. It naturally follows, then, that capacity-building efforts can also be considered as part of the trade facilitation effort. The UN agencies, the World Bank, EU, APEC, OECD, Commonwealth Secretariat and the ITC use definitions with different scopes (Wilson, et. al., 2002; Satapathy, 2002). The Kelkar Committee Report defined[4] trade facilitation as:

> *"Trade facilitation revolves around the reduction of all the transaction costs associated with the enforcement of legislation, regulation, and administration of trade policies. It involves several agencies such as customs, airport authority, port authority, central bank, trade ministry etc. The main objective is to reduce the cost of doing business for all parties by eliminating unnecessary administrative burdens associated with bringing goods and services across borders. The means to achieve this objective are the modernization and automation of clearance procedures to established international standards."*

As is to be expected, the question of definition of trade facilitation is a highly debated issue in WTO. Members have indicated several areas as the prime subject of trade facilitation, e.g.:

> "*For the majority of developing countries, trade facilitation meant effective market access for the products of their export interest"* [5].

[4] Chapter 2 of the Kelkar Committee Report

[5] Brazil, G/C/M/61

"Trade facilitation encompasses many things, and that market access was the most important of all" [6].

"Many other Members, among them even trade majors, would agree that rules of origin were perhaps the single most important trade facilitating element" [7].

The EU submission[8] in 1996 that started the work in WTO defined trade facilitation as: simplification and harmonisation of trade procedures and of documentation and as standards for computerisation or standardised trade procedures. The definition[9] given in the Singapore Ministerial Declaration was-

the simplification of trade procedures in order to assess the scope for WTO rules in this area.

It was different from the definition of trade facilitation used in the Doha Ministerial Declaration[10]:

further expediting the movement, release and clearance of goods, including goods in transit.

In the operational matters the Doha Declaration uses a definition that appears to be even more restrictive.

[6] Malaysia, G/C/M/61. Developing countries in particular saw market access as of foremost importance in trade facilitation work. But the market access issue has rarely been addressed directly in trade facilitation discussions. In some recent works however, e.g. a Secretariat note for the Sub-Committee on Least-Developed Countries Negotiating Group on Market Access (WT/COMTD/LDC/W/28, TN/MA/S/7, 30 October 2002) this issue is being addressed. Such cases like Canada' s Trade Facilitation Office providing trade and investment related technical assistance to both Canadian importers and foreign exporters was cited among the initiatives to improve market access related to products of export interest originating from least developed countries.

[7] India, G/C/M/61

[8] "Elements of a WTO programme on trade facilitation", G/C/W/67, 11 November 1996.

[9] Paragraph 21 of the Singapore Declaration

[10] Paragraph 27 of the Doha Declaration

1.2 Scope

In an article published in EPW, Satapathy (2002) referred to global listing of trade facilitation activities and indicated the position of WTO in the trade facilitation work programmes.

The UN/CEFACT and UNCTAD-compiled C*ompendium of Trade Facilitation Recommendations* lists 237 recommendations conveniently grouped as follows:

1. General provisions to facilitate trade,
2. Provisions relating to official procedures and controls,
3. Provisions relating to transport and transport equipment,
4. Provisions relating to movement of persons,
5. Provisions relating to the management of dangerous goods and harmful substances,
6. Provisions relating to payment procedures,
7. Provisions relating to the use of Information and Communications Technology,
8. Provisions relating to commercial practices and the use of international standards,
9. Legal aspects for trade facilitation.

Nineteen of the 237 recommendations listed in this fairly exhaustive Compendium are already subject to WTO discipline.

The Business Guide to the World Trading System (1999) of the Commonwealth Secretariat/ITC lists several international organisations already working in the area of trade facilitation under the categories: (a) International intergovernmental organisations, (b) International non-governmental organisations,

and (c) Regional Organisations. The *Guide* also lists the WTO provisions which deal with some aspects of trade facilitation. These are:

(1) Agreement on Customs Valuation.

(2) Agreement on Rules of Origin.

(3) Agreement on Pre-shipment Inspection.

(4) Agreement on Import Licensing Procedures.

(5) Agreement on Technical Barriers to Trade.

(6) Agreement on the Application of Sanitary and Phytosanitary Measures.

(7) GATT 1994 also contains several provisions which can be considered as trade facilitating:

(i) Article V: Freedom of transit

(ii) Article VIII: Fees and Formalities relating to import and export.

(iii) Article X: Publication and administration of trade regulations.

The three GATT Articles mentioned at the end have found overarching importance in the Doha Declaration; but this was not always so in trade facilitation discussions in the WTO.

How just three GATT Articles acquired their current importance in the WTO is worth reviewing.

1.3 Trade Facilitation and WTO Rules

The Secretariat had prepared a note on WTO rules relevant to trade facilitation, which was presented[11] in the WTO Trade Facilitation Symposium in March 1998. The list of relevant Articles and provisions included in the legal framework of the WTO were given as:

[11] Presented by the Director, Market Access Division, and later available as (G/L/244, 15 May 1998). Also summarised in G/C/W/115, 29 May 1998.

1. GATT 1994: Articles V (Freedom of Transit), Article VII (Valuation for Customs Purposes), Article VIII (Fees and Formalities connected with Importation and Exportation), Article IX (Marks of Origin), and Article X (Publication and Administration of Trade Regulations).

2. WTO Agreements on Customs Valuation, Import Licensing Procedures, Preshipment Inspection, Rules of Origin, Technical Barriers to Trade, Sanitary and Phytosanitary Measures.

3. General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

After this Symposium the Council for Trade in Goods (CTG) agreed to a work proposal on trade facilitation[12] with a core agenda: "evaluation of the exploratory and analytical work to assess the scope for WTO rules in the area of trade facilitation." Among the other items in the agenda was a proposal to invite the Chairpersons of some other Committees of the WTO -

"to propose an item "trade facilitation" for inclusion in the agenda of their meetings. Under this agenda item, these bodies will henceforth address those aspects of trade facilitation which they regard as being related to the respective agreements with a view to introducing the results of these discussions into the informal CTG discussions on trade facilitation in March 1999"[13].

In September 1998, the Chairman of the CTG had sent request letters to the Chairpersons of other WTO bodies all of whom conducted some discussions in the following months. The European Communities had circulated notes[14] in meetings of

[12] G/C/M/34

[13] G/C/M/34

[14] "Trade Facilitation in Relation to Existing WTO Agreements - Communication from the European Communities", later released bearing numbers of different WTO bodies (G/C/W/136, G/L/299, S/C/W/101, IP/C/W/131 10 March 1999).

each of these bodies. The responses and conclusions of these WTO bodies[15] sent to the CTG are of interest:

- The TBT, SPS, Import Licensing and Rules of Origin related Committees informed that the texts of these Agreements recognized the importance of trade facilitation. Some of them listed the specific aspects of the Agreement that were particularly relevant for trade facilitation. However, none of them wanted their works to be burdened with another regular agenda. The SPS Committee was explicit: "The provisions of the SPS Agreement are by their very nature relevant to trade facilitation. Issues related to this matter have therefore been a regular feature of the work of the SPS Committee. … In light of this, the SPS Committee does not consider it necessary to add an additional agenda item entitled "Trade Facilitation" as part of its regular agenda." Others did not write back explicitly, but made no commitment of additional work.

- The Committee on Customs Valuation acknowledged strong link of implementation of this Agreement with trade facilitation but, the Committee wrote: 'the mandate of the Agreement limits the Committee's role in customs matters to those relating to valuation". Similarly, the Working Party on Preshipment Inspection merely indicated that any improvement to the efficient functioning of the Agreement would in itself help to facilitate trade.

- The Chairman of the Council for Trade in Services responded that, 'The concept of trade facilitation as originally raised in the context of trade in goods, … was not as such applicable to trade in services. However, in a broader sense, it was felt that liberalisation of trade in services could play an important role in facilitating trade in goods". Several delegations expressed the view that trade facilitation in services should not be discussed in the CTS as a separate

[15] Compiled under the head 'Trade Facilitation - Contributions Received From Other WTO Bodies - Note by the Secretariat" (G/C/W/149, 14 April 1999)

item, but should rather be taken up as it relates to individual services sectors in the context of the exchange of information exercise.

- The Council for TRIPS authorized the Chairperson to convey to the Council for Trade in Goods the record of the discussions on this agenda item in the TRIPS Council together with copies of the papers that had been presented to the Council on this matter, namely the Secretariat' s background note and the European Communities discussion paper. The EU paper indicated that trade facilitation will, "enable customs to focus resources on increasing detection levels of prohibited or restricted goods (e.g. IPR-infringing goods), ensure better compliance with regulations and hence fewer offences, and improve the cost-efficiency of customs administrations".

- The Committee on Trade and Development discussed trade facilitation at two of its meetings. However, very few concrete issues relating to development aspects of trade facilitation were identified by delegations[16]. Ultimately, the CTD forwarded a list of issues to the CTG, contained in an Issues Paper[17], prepared by the Secretariat on its own responsibility. It was noted specifically that these issues were only evident in the discussions but were neither negotiated nor did they necessarily reflect common or agreed positions of Members of the CTD.

Parallel to this, the work on the core agenda: "evaluation of the exploratory and analytical work to assess the scope for WTO rules in the area of trade facilitation" was going on at CTG meetings. In December 1998, the Secretariat released a background note[18] containing "an inventory of delegations' suggestions on the scope for WTO rules in the area of trade facilitation in the context of the Council for Trade

[16] WT/COMTD/M/24, 27 April 1999

[17] "Trade Facilitation: Contributions by the CTD to the Work Programme of the Council for Trade in Goods (CTG)"

[18] Trade Facilitation - Background Note, CTG: G/C/W/132 and G/C/W/132/Rev.1, 29 March 1999.

in Goods' work programme on this subject". This note did not list the existing WTO provisions on the ground that, 'they will be considered at the third *informal meeting*[19] of the Goods Council in March 1999", as per the core agenda, but this task could not be carried out smoothly. As indicated, the responses from other WTO bodies on trade facilitation[20] were not very encouraging for the proponents of trade facilitation in WTO. No other body was ready to increase its future workload with an additional agenda. But all of them declared that they were doing some aspect of trade facilitation work. Together, they exhausted almost all[21] Articles and provisions included in the legal framework of the WTO relevant for trade facilitation. There was little left for a specialised trade facilitation committee as envisaged in the Singapore Declaration. Members also expressed concern against duplication[22] of the existing work. The protagonists then pushed for a trade facilitation negotiation agenda in the Seattle meeting as if it was agreed in the informal meetings. Already, on the eve of the Seattle Conference the 'informal meetings' of WTO were being questioned. Many countries disliked the manner of proposal. The Seattle meeting ended in a fiasco.

The background note containing "an inventory of delegations' suggestions on the scope for WTO rules, prepared in December 1998[23] and revised[24] later, had grouped the proposals submitted under three categories: (i) proposals concerning government mandated information requirements; (ii) proposals concerning official procedures; and (iii) proposals concerning transparency and related issues. Only two GATT Articles, the Articles VIII and X, were mentioned a couple of times in this document. Based on this 'inventory' document a Status report on Trade Facilitation work was prepared[25] as a preparation to the Seattle conference, which too brought in

[19] Emphasis ours.

[20] G/C/W/149, 14 April 1999: Council for Trade in Goods: "Trade Facilitation - Contributions Received from Other WTO Bodies - Note by the Secretariat".

[21] All except GATT Articles V, VIII and X.

[22] e.g. the Representative of Thailand said in the meeting of the CTG on 26 July 1999 (G/C/M/40): "Members had expressed their serious concerns that an initiative of this kind would not only duplicate the on-going work of the existing WTO bodies, but also of other intergovernmental organizations".

[23] G/C/W/132

[24] G/C/W/132/Rev.1

[25] G/C/W/156

GATT Articles VIII and X only once in a while. Nor did the 2001 Workshop equated or gave prominence to some GATT Articles[26] while explaining the task of trade facilitation. The Briefing Notes[27] issued before the Doha Ministerial Conference was guarded. The section on trade facilitation introduced the issues as:

> "*the WTO has been always been dealing with issues related to the facilitation of trade and WTO rules comprise a variety of provisions that aim to enhance transparency and set minimum procedural standards (such as GATT Articles V, VIII and X or several provisions in agreements like the ones on import licensing, TBT, SPS and others)".*

Thereafter, the note suggested that rules might be built upon "existing WTO provisions (in particular GATT Articles V, VIII and X) and principles such as transparency and due process, simplification, efficiency and non-discrimination".

Given this background, the statement that the CTG "shall review and as appropriate, clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994" until the Fifth Session, demands an explanation. The only explanation that can be given is that out of all relevant Articles and provisions identified in the Trade Facilitation Symposium in March 1998 the CTG could not obtain any review or clarification from any other body with respect to GATT Articles V, VIII and X. For all others, one or the other existing WTO body was responsible, and had sent their reviews and clarifications. The Doha Declaration asked for completion of the review process by specifying the gap area, asking for review of the residual matters. But that may not be misconstrued -in utter disregard of all its past characterisations- as a statement identifying trade facilitation works of WTO merely as those of GATT Articles V, VIII and X.

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[26] By then the GATT Article V too had started receiving more attention than before following the issue by UNCTAD on *Transit problems for landlocked countries* (G/C/W/230, 17 October 2000).

[27] Available on WTO website.

In the post-Doha phase the developing country members repeatedly referred to the inadequacies of the extremely narrow nature of the definition[28], and conflicts that arise [29] between the broad goal set in the first line and adopting a narrow view while explaining the later lines of the Article 27. Others repeatedly referred to the many Rules on trade facilitation that the WTO already contains[30] and also suggested that the major issue of trade facilitation in WTO is one of implementation of the existing Rules[31]. In its summary Report of the trade facilitation work in pursuance of the Doha mandate, the CTG could not but record[32] that the Members referred to the need to complete the harmonization work programme on non-preferential rules of origin as an important trade facilitation measure in identification of Members' trade facilitation needs and priorities.

[28] e.g. If trade facilitation was taken as an isolated element, one would have to wonder about its real meaning (Uruguay, G/C/M/61). The concept of trade facilitation was a much broader one, and it should not be circumscribed and limited to three or four articles only (Cuba, G/C/M/61). "As it was not clear to the representative whether Members would basically just work on those three Articles, or on all the Agreements identified in earlier interventions as well, Pakistan needed some direction on this account" (Pakistan (G/C/M/61, 9 July 2002).

[29] e.g. Pakistan said (G/C/M/61): "the case for trade facilitation was … laid down in the opening sentence of paragraph 27, which recognized the case for further expediting the movement, release and clearance of goods, including goods in transit. The removal of the ambiguity with regard to technical assistance was important".

[30] e.g. Japan, New Zealand, Pakistan in G/C/M/61; Philippines, G/C/M/64, India G/C/M/65

[31] e.g. Thailand in the meeting of the CTG on 26 July 1999 (G/C/M/40): "cited document G/G/W/149 which highlighted that existing WTO Agreements already facilitated trade but only if Members were committed to a fuller and a more faithful implementation of the existing agreements".

Brazil (G/C/M/61): "… while meeting to discuss possible new trade facilitation measures in the context of Articles V, VIII and X of GATT 1994, there was still major unfinished trade facilitation business from the Uruguay Round, such as the harmonization work programme of non-preferential rules of origin, a task that was some four years overdue. …It seemed that, until the misgivings of some Members with the trade facilitation commitments undertaken in that Agreement were overcome and the harmonization programme concluded, it would be very difficult to achieve significant progress in the trade facilitation exercise.

[32] "Report (2002) of the Council For Trade In Goods", G/L/595, 28 November 2002.

II

Trade Facilitation issue in WTO

2.1 Doha Work Programme

On the eve of the Singapore Ministerial Conference the EU submitted a paper, which was subsequently included[33] in the Council for Trade in Goods as a Council document. The paper called for an assessment whether steps should also be taken to develop a future multilateral discipline in the trade facilitation area. The Singapore Ministerial Declaration mandated the CTG 'to undertake exploratory and analytical work, drawing on the work of other relevant international organizations, on the simplification of trade procedures in order to assess the scope for WTO rules in this area". Since then trade facilitation has been a standing item on the agenda of the CTG[34]. The CTG organised a Symposium[35] on 9-10 March 1998 at the WTO. Following this, a work programme[36] was adopted which entailed that the Council for Trade in Goods would hold regular, informal meetings to discuss a core agenda that consisted of four topics:

1. import and export procedures and requirements, including customs and border-crossing problems; overview of the Kyoto Convention and its current revision process,

[33] 'Elements of a WTO programme on trade facilitation", (G/C/W/67, 11 November 1996)

[34] Important papers on trade facilitation included in the CTG discussions at this stage include a background note prepared by the Secretariat (G/C/W/80) and papers by the European Community (G/C/W/85) and Switzerland (G/C/W/92).

[35] Brief summary of the outcome (G/L/226), suggestions made (G/C/W/113) and a longer factual report (G/C/W/115) are available.

[36] G/C/M/34

2. physical movement of consignments (transport and transit); payments, insurance and other financial requirements which affect the cross-border movement of goods in international trade,

3. electronic facilities and their importance for facilitating international trade; technical cooperation and development issues relating to simplification of trade procedures; consideration of WTO Agreements relating to, or including provisions on trade facilitation,

4. evaluation of the exploratory and analytical work to assess the scope for WTO rules in the area of trade facilitation.

The other agenda items were that the Chairman of the CTG would invite (a) other WTO bodies to propose an item "trade facilitation" for inclusion in the agenda of their meetings, (b) other international inter-governmental organizations with expertise and experience in the field of trade facilitation to contribute to the exploratory and analytical work. Information on work already done or being done in the area of trade facilitation by a number of international organizations was initially set out in a document[37] in 1997 subsequently updated in 1998 and 2000.

This agenda was pursued in an atmosphere of increasing wariness about the informal meetings. The matter exploded on the eve of the Seattle Ministerial Conference. The CTG had to prepare a status report for introducing to the General Council the work undertaken in this Singapore item. Many Members were not happy with the Status report the Secretariat had prepared summarising the *informal meetings*. The high-handed dealings[38] too did not please many. Following the Seattle fiasco further meetings and discussions on this issue continued. Several other submissions were received on the way to Doha. The first draft of the Doha Ministerial Declaration prepared by the Secretariat proposed negotiations in trade facilitation and in transparency in government procurement (para 22 and 23) to which India raised strong objection[39]. India pointed out that, "we have all along been urging for

[37] G/C/W/80 of May 1997; G/C/W/80/Add.1, 2 December 1998 and G/C/W/80/Rev.1, 22 September 2000.

[38] The summary (G/C/W/153 and later G/C/W/156) and the differences (viz. G/C/M/40, 26 July 1999).

[39] WT/GC/W/459

continuation of the study process, in as much as there is no consensus as yet even on the elements like scope and definition" – an objection that may be valid even now.

The text finally agreed on by Ministers in Doha (Paragraph 27) does not mandate negotiation in any of the Singapore issues including trade facilitation. It is worded as that "… negotiations will take place after the Fifth Session of the Ministerial Conference…" with a qualifying remark introduced primarily at India's insistence, that this will happen "on the basis of a decision to be taken, by explicit consensus, at that Session on the modalities of negotiations". This compromise formulation, reached after intense debate, is likely to be explained and mis-explained in different ways. A key issue for the forthcoming Ministerial Conference is with regard to a decision on whether negotiations should be undertaken for binding commitments in WTO on the matter.

The general definition of trade facilitation is given in the first line of the text as: "… further expediting the movement, release and clearance of goods, including goods in transit". The tasks, at least "In the period until the Fifth Session" of the Ministerial Conference has been specified as "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." Whether the identification exercise called for is about all trade facilitation needs and priorities or needs and priorities only about the three GATT Articles has been widely debated[40].

The text admits "the need for enhanced technical assistance and capacity building in this area" and ends by making a general commitment: "We commit ourselves to ensuring adequate technical assistance and support for capacity building in this area". Questions have been raised about reference made through the term 'in this area' for which adequate technical assistance and support for capacity building has been committed[41]. Questions were also raised[42] about the nature of connection

[40] E.g. Pakistan felt that the concept of trade facilitation affected all WTO agreements. This meant that the identification would also cover all agreements (G/C/M/61).

[41] Turning to the question of the identification of technical assistance and capacity building, the representative of Paraguay noted that paragraph 27 of the Doha Ministerial Declaration referred to these elements by adding the words "in this area". Members had to discover what that area was. In

between the task of identification of needs and priorities of developing and least-developed countries and adequate technical assistance and support for capacity building in this area.

After intense discussions, at its meeting on 22 March, 2002 the delegations finally agreed on a trade facilitation work programme for 2002. The agenda included three items:

1. Trade Facilitation Work Programme: Article X, VIII and V of the GATT 1994.

2. Trade Facilitation Needs and Priorities of Members, Particularly of Developing and Least Developed Countries.

3. Trade Facilitation: Technical Assistance and Capacity Building.

There were serious problems in explanation of this agenda consisting of three items[43]. The work programme provides for four formal meetings of the Goods Council of one day or less duration. It was decided that the focus of the first three

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Paraguay's opinion, the answer to this question could be found in the beginning of paragraph 27, which referred to the expediting of the movement, release and clearance of goods, including goods in transit. This was the area Members had to identify in relation to technical assistance and capacity building. (G/C/M/61, 9 July 2002)

[42] E.g. "When Members were asked to identify needs and priorities, that was not only about technical assistance, and also not necessarily about technical assistance. Rather, it could be about much more substantive issues unrelated to technical assistance" (EC, G/C/M/61).

[43] As for example,
On Hungary' s point regarding sequencing Pakistan was of the view that § 27 needed to be taken in total, and not broken into bits and pieces. Agenda items 1, 2 and 3 were a package and would continue to be so until the end. (Pakistan, G/C/M/61, 9 July 2002)

..items 2 and 3 were very closely inter-linked and that it would be difficult to separate them. (Paraguay, G/C/M/61, 9 July 2002).

"The problem had been from the beginning that the CTG had taken language out of the Doha Declaration and turned it into three separate agenda items, when time had shown that it was not necessarily the most satisfactory way to organise the discussion." (EC in discussions in the CTG meeting from 1-2, October 2002, G/C/M/65).

The United States also agreed that these appeared to be separate elements but in fact they needed to go in tandem (G/C/M/65).

meetings would be one GATT Article[44]. The other two agenda items would be standing items of all these meetings.

The four meetings in 2002 happened on 23-24 May, 22-23 July, 1-2 October and 6 December 2002. The Secretariat prepared notes, and submissions were received from several others, both delegations and international organizations. Two more meetings were scheduled this year, before the forthcoming Ministerial meeting. The March 12-13, 2003 meeting is already over. The next one was on June 12-13. During 2002, the Council for Trade in Goods met eight times in formal session. Among the 15 subject matters which were raised and/or acted upon in the Council were - Periodic reports of the Market Access Committee, TRIMs, Free Trade Agreements, Textiles, Implementation-related issues and Transit issues apart from Trade Facilitation.

2.2 Agenda Item 1: GATT Articles X, VIII and V

The Secretariat prepared Notes on each of the Articles. Several other submissions were received. The primary elements of the GATT Articles X, VIII, and V are broadly outlined below:

GATT Article X*: Publication and Administration of Trade Regulations*

1. Laws, regulations, judicial decisions and administrative rulings of general application, pertaining to the classification or valuation of products for customs purposes, or to rates of duty, taxes, restrictions on imports and exports, or affecting their sale, distribution, transportation, insurance, warehousing, etc. shall be published promptly to enable governments and traders to get acquainted with them.

2. Any increase in duty or other charges or restriction on imports is officially published before enforcement.

3. Independent judicial or administrative tribunals to review and correct administrative action relating to customs matters.

[44] Which too was considered inappropriate, e.g. EC thought that the three articles needed to be looked at as a whole. .. The kinds of ideas and principles delegations had been looking at for Articles VIII and X, would be directly applicable to Article V (G/C/M/65)

In essence, Article X requires a party to do the following:

(i) Publish its trade-related laws, regulations, rulings and agreements in a prompt and accessible manner (para 1);

(ii) Abstain from enforcing measures of general application prior to their publication (para 2); and

(iii) Administer the above-mentioned laws, regulations, rulings and agreements in a uniform, impartial and reasonable manner. In this context, parties are required to institute or maintain tribunals or procedures for the, inter alia, prompt review and correction of administrative action relating to customs matters (para 3).

GATT Article VIII: *Fees and Formalities connected with Importation and Exportation*

1. All fees and formalities shall be limited to the approximate cost of services rendered, and not represent protection to domestic products or taxation of imports and exports.

2. There is need for minimizing the complexity of imports/exports formalities; decrease and simplify import/export documentation requirements.

3. No imposition of substantial penalty for minor breaches of customs regulations or procedures.

GATT Article V*: Freedom of Transit of Goods*

'Traffic in transit" is defined as - movement of goods and means of transport (except aircraft) across a country where starting and terminating points lie beyond it. The Article includes:

1. Freedom of transit via most convenient routes.

2. No distinction be made on factors like flag of vessel, place of origin, etc.

3. Charges for traffic be reasonable and on MFN basis.

Proposals for improvement were: (a) individual carriers should not be discriminated for transit procedures on grounds like recognition of licenses and certificates of vehicles, setting of office by transit operator, (b) countries to publish list of 'sensitive' goods on which freedom of transit can be curtailed, (c) simplification, modernisation of documentary/data requirement, (d) fees and securities should not be excessive. In discussions[45] in CTG meetings the following observations about these papers were made:

Article X: Brazil said that the Secretariat note did not show any substantial inadequacy in the Article itself. Malaysia too agreed that the proponents had not yet made the case for embarking on such an exercise. Brazil' s evaluation was that Article X was already broad and generic enough to cover everything related to trade regulation or legislation. An obligation for an administrative and judicial review mechanism was already contained in Article X, which was a sufficient guarantee that the limits of the legal basis for decisions and rulings would be respected. India pointed out that Article X had been improved over the years. From the other side, Hungary agreed that Article X could not be challenged on the substance of its regulations, but argued that the challenge was on its administration. EC explained that its proposals would constitute an expansion of current Article X requirements on transparency on two areas. One was going down to the level of administrative procedures, and not simply legislation or regulations that needed to be notified. A second expansion was the idea that customs management plans which are related to implementation of WTO commitments should be published.

Article VIII of the GATT is one of the most relevant articles related to trade facilitation. Suggestions to convert the recommendatory provisions of GATT Article VIII (1) (b) and (c) into mandatory ones were met with concern. By picking up from the Secretariat note that certain subjects covered in Article VIII were also regulated by the specific agreements in the WTO such as the Agreements on Pre-shipment Inspection, SPS, TBT, Rules of Origin or Import Licensing, Indonesia argued that this Article had been clarified previously. In

[45] Source: G/C/M/61, G/C/M/64, G/C/M/65

Indonesia' s view, Members should be cautious in their efforts to clarify and improve this article. One should first identify the specific problems faced by Members in implementing this article. Countries like Hong Kong, China favoured injecting of WTO principles into Article VIII to enhance their operations.

Article V: Several countries felt that this was quite a strong Article that would actually fit into the situation of the day, given the mandatory nature of these articles. The Secretariat note confirmed that there had been very few problems[46] in terms of the application of Article V. Countries like Malaysia and Pakistan opined that Article V had a language that was fairly mandatory and obligatory for Members. The EC agreed that this was true but felt that the Article lacked specificity in order to know how to make those mandatory provisions actually operational, and there was nothing on transparency. Also, the importance of transit for landlocked countries was noted. A number of countries, which were in the process of acceding to the WTO, were landlocked countries[47] or countries where transit issues were very relevant. On the transit issue, some members asked for consideration of air transport, types and quantity of road vehicles[48], container movement by railways[49], new means[50] of transport, such as pipelines, water pipes and the like.

In general, the divergence between the proponents like the EC and the developing countries was in the perception of a need to amend these three Articles in the absence of any concrete evidence as to any inadequacy of their provisions. India[51] warned against going beyond that mandate in Paragraph 27 - 'to examine, in order to

[46] However, the Panama Canal Transit Toll issue raised by Ecuador may be an example of violation of this Article that "The general principle therefore is that transit traffic shall not be a source of fiscal revenue". The Republic of Panama considered that the tolls levied on vessels travelling through the Panama Canal were fair and in keeping with any rule of WTO (viz. G/C/W/418 and G/C/M/65).

[47] G/C/M/65

[48] Singapore G/C/M/65

[49] India G/C/M/65

[50] Chile, Canada, EC, G/C/M/65

[51] G/C/M/61

clarify or, as appropriate, improve', and cautioned against some delegations' references to "elaborating" or "modernizing" the GATT Articles.

Countries like Canada or Hong Kong China favoured injecting of WTO principles, such as transparency, non-discrimination, predictability and due process into Articles V, VIII and X, arguing that operations of these Articles would gain from incorporation of WTO principles and concepts that have been developed after the three Articles were originally written. There was a general agreement about the desirability of these principles but it was also said that the existing provisions of these Articles were not necessarily against these principles, or that changing the GATT Articles or their inclusion in WTO is essential for improvement of transparency, etc. The cost-benefit considerations were also brought in, indicating that the immense cost involved may not favourably compare to benefits. It was argued that countries wished to achieve transparency, but it should not pose heavy administrative, physical and financial burdens or additional obligations on members, especially on developing ones[52]. Apprehensions were raised about the possibility of Members resorting to trade distorting measures in the name of trade facilitation, which could hamper the export interests of developing countries[53].

The proponents explained[54] that they favoured binding obligations for two reasons. One, that a binding obligation created the political will to get things done. Secondly, it ensured that all Members were heading in the same direction. One of Canada's biggest worries was that everyone was doing trade facilitation but not necessarily the same thing. Another argument was that the business community would be willing to invest more in this field, and would provide technical assistance if they had some basic guarantee that the improvements they were contributing towards were there to stay[55]. From its experience, Lithuania[56] argued that it was not enough to have

[52] Indonesia, G/C/M/61; Brazil, New Zealand, G/C/M/64

[53] E.g. Pakistan, G/C/M/61

[54] Canada, EC, G/C/M/64

[55] EC, G/C/M/64

[56] G/C/M/64

specialised convention alone. The main principles and general rules should be regulated in a wider WTO framework, making certain provisions stricter.

In course of the discussions the developed countries also explained their positions in certain other matters. While commenting on the UNCTAD paper, the EC highlighted[57] the difficulty of applying a one-size-fits-all solution to all regions of the world irrespective of the level of development. The EC felt that delegations needed to look more at the question of the feasibility of international harmonization in this area, as opposed to the use of international standards and rules adapted to specific regional circumstances. In another meeting[58] the EC said that they would not consider it feasible to envisage any kind of comprehensive notification procedure on every customs procedure, ruling, or guideline of general application to the WTO itself. The resource burden would be too great. The Communities was thinking about the creation of domestic information desks or enquiry points in each country for the trading community. Furthermore, the Communities would not expect members to translate their regulations and procedures into a WTO language. The reality was that everybody operated in his own national language(s), and that traders needed to access the information used in that country. For resource reasons, it would not be feasible to suggest that kind of translation. The US said that the country was very uncomfortable[59] with any suggestion that would lead to two tiers of membership. Hungary also said that it would never agree to any interpretation that qualified trade facilitation as a North-South issue[60].

2.3 Agenda Item 2: Needs and Priorities of Members

As already noted, the division of the Doha mandate into three distinct agenda items did create considerable problems. There was a persistent doubt whether the two other agenda items should have broader perspective or would address trade facilitation issues narrowed down to just three Articles. In discussions on the agenda item *technical assistance and capacity building*, it was freely mentioned that in trade

[57] G/C/M/65

[58] G/C/M/61

[59] G/C/M/64

[60] G/C/M/61

facilitation, the lack of infrastructure is the major constraint faced by the developing countries and LDC's. During the discussion on this third item on the agenda, the issue of 'needs and priorities' was raised, and again and again it was identified as technical assistance[61] for infrastructure and human resource creation. In contrast, the identification exercise under the agenda item 2, specifically on 'trade facilitation needs and priorities of Members, in particular developing and least-developed countries' remained hesitant to raise needs in trade facilitation area other than those under the purview of the three GATT Articles. In almost every meeting the Chairman or a delegate hinted that the discussion of needs and priorities might be restricted to the three Articles. On being questioned by one or the other developing country delegate a clarification was[62] that Members were free to also express their views and their needs and priorities beyond GATT Articles V, VIII and X. But a clear-cut position was never stated allowing the confusion to linger. As can be expected, this agenda item did not draw much response from the developing countries or the LDCs.

Developing countries and LDCs were repeatedly requested to submit papers on their needs and priorities. Several of them hoped to do so and informed that their governments were working on this theme. But ultimately, all these proved to be elusive. In July 2002, the Secretariat prepared a Compendium[63] of the information of the already existing material available with the Secretariat. Most of the examined material did not address trade facilitation needs and priorities of Members as such, but rather focused on particular experiences with specific trade facilitation measures and programmes, or proposed approaches to future WTO work on this subject. Most of the material came from developed rather than developing countries[64]. It becomes clear that no submission was received about the trade facilitation needs and priorities actually felt by the developing country and LDC members, or about them by other

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[61] So much so that the EC said in exasperation, "Members were asked to identify needs and priorities, that was not only about technical assistance, and also not necessarily about technical assistance." (EC, G/C/M/61).

[62] Viz. Minutes of the CTG Meeting 6 December 2002 (G/C/M/67).

[63] *Trade Facilitation Needs And Priorities Of Members*, G/C/W/393, 11 July 2002.

[64] G/C/M/64

development agencies because the scope of discussions was restricted to matters of nominal importance.

The material in the Compendium were grouped into four categories and four corresponding sections: (i) national experience papers, (ii) other relevant submissions by Members, (iii) the two reports of the workshops, and (iv) relevant submissions by other intergovernmental organizations. The problems and measures described in the communications were sometimes several years old, which might not reflect the current needs and priorities. Also, some of the material was fairly general[65], not providing specific information on the subject at hand. Malaysia could see[66] that there were needs and priorities irrespective of a possible rule-making exercise. Agreeing that the resource constraint has to be considered the EC suggested[67] concentrating on areas which were not resource-intensive, like the principle of non-discrimination. The situation was similar in the area of transparency, although in some instances, being more transparent did require resources. EC agreed that such cases should be matched with assistance.

2.4 Agenda Item 3: Technical Assistance and Capacity Building

Paraguay[68] noted that paragraph 27 of the Doha Ministerial Declaration referred to technical assistance and capacity building by adding the words "in this area"[69]. Members had to discover what that area was. In Paraguay's opinion, the answer to this question could be found in the beginning of paragraph 27, which referred to the expediting of the movement, release and clearance of goods, including goods in transit. This was the area Members had to identify in relation to technical assistance and capacity building. Pakistan thanked the Ambassador of Paraguay for

[65] Many countries, e.g. Philippines, Pakistan opined that the Compendium was a very useful document, although of a general nature, because there was not much substantial input given by the developing countries.

[66] G/C/M/65

[67] G/C/M/61

[68] G/C/M/61, 9 July 2002.

[69] The first line of Paragraph 27: 'Recognizing the … need for enhanced technical assistance and capacity building *in this area*". The last line, "We commit ourselves to ensuring adequate technical assistance and support for capacity building *in this area*."

rightly reminding the Council what the case for trade facilitation was. All Members agreed on the importance of predictability and transparency, and appreciated these sublime concepts. But if one had technical assistance just on Article X, one might have the most automated ideal system on publication of domestic regulations, but if one could not clear a good at a port any faster, it was of no use for the country itself, or for their trading partners[70].

The real problems reside not in the inadequacy of multilateral disciplines, but in the deficiencies in the human, financial and institutional resources of developing countries[71]. Nigeria said[72], 'Developing countries' needs would go beyond the issue of continually evolving rules or continually mounting pillars to support Article V, Article VIII or Article X. One had to talk about infrastructures. If infrastructures were not in place in developing countries, no matter what kind of rules one put in place, and no matter how one wanted to strengthen the three Articles, developing countries would still not be able to meet the expectations of developed country Members". Philippines and Korea pointed out[73] that any modern Customs techniques were not easy to implement without a sound IT infrastructure. For a country like Philippines, that was one of the current deficiencies. Thailand[74] narrated how their exports to EC were delayed at Customs, against the spirit of the Article VIII, because EC does not have adequate infrastructures. Every Member of the WTO, not only developing countries and LDCs, but also developed countries like EC suffer from infrastructure problems in facilitating legitimate international trade.

During the discussions on Article V, the EC noted[75] that the WTO itself was not the delivery organ for aid, but could leverage greater flows of both development aid and private investment if there were clearer standards and commitments.

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[70] Pakistan, G/C/M/61

[71] Brazil, G/C/M/61

[72] G/C/M/65

[73] G/C/M/64

[74] G/C/M/64

[75] G/C/M/65

Countries noted that two issues are regarded as *technical assistance and capacity building* in trade facilitation area – (a) meeting infrastructure needs and (b) training programmes through seminars and workshops to educate Customs and other officials dealing with trade facilitation. The current tendency is to assist only through training. About 15 national seminars[76] were organized in 2002 on trade facilitation-related technical assistance programme. For the 2003 Technical Assistance Plan[77], the Secretariat did not receive enough requests for assistance. So it asked the Members specifically to submit such requests. The Secretariat was then flooded with more than 1,000 requests. Only a very small percentage of those requests were related to trade facilitation. Being asked by the Secretariat to identify priorities among the 1,000+ proposals, most of those few asking for trade facilitation were withdrawn. Faced with the need to sort, prioritise and rationalize their requests, Members had generally given preference to activities other than trade facilitation[78]. It was summed up by New Zealand that there was nothing surprising since the priorities lie in areas other than trade facilitation.

There were different opinions even about the usefulness of seminars and workshops included in the technical assistance programmes. Considering that only generalities are discussed in most of these seminars and workshops, the United States drew attention[79] to the compendium of tools prepared by the WCO as a very specific assistance distinct from seminars of general nature. Everybody was able to understand what these tools were, both at the implementational level, and in Customs facilities in different countries. How countries could benefit from them was another question, but it would come a lot closer to helping countries to get the kind of direct, practical and concrete means of facilitating trade.

Countries like India, New Zealand, the Philippines, and Pakistan opined that technical assistance had to go beyond covering one or two agreements, and stated that seminars and workshop conducted by the Secretariat where trade facilitation was one

[76] viz. WT/COMTD/W/95/Rev.3

[77] G/C/W/378, G/C/W/380

[78] G/C/M/65

[79] G/C/M/65

of the themes and not the only theme, were acceptable. These countries agreed that trade facilitation permeated into many agreements[80]. The EC however, expressed its dissatisfaction, stating[81] that the EC would prefer to see trade facilitation in a broader way and handled in a specified manner in the Technical Assistance Work Programme for 2003. Malaysia observed[82] that a lot of technical assistance had already been provided both bilaterally and plurilaterally, leading to questions on the success of technical assistance programmes. The Cuban representative highlighted[83] some of the elements included in the document presented by the UNCTAD Secretariat, which indicated that technical assistance requests were nothing new and that in the 1990s, commitments to help developing countries via ODA dropped by more than 50% compared to the previous decade.

The meetings also reported[84] creation of a database, jointly managed by the WTO and the OECD, which essentially will be the bulk of the report mandated in paragraph 41 of the Doha Ministerial Declaration[85].

2.5 Modalities for negotiation

The agreed text of the Doha Ministerial Declaration runs as –

"… negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on the modalities of negotiations".

[80] G/C/M/61

[81] G/C/M/65

[82] G/C/M/64

[83] G/C/M/65

[84] G/C/M/64

[85] About specific commitments on technical cooperation and capacity building mentioned in paragraphs 16, 22, 25-27, 33, 38-40, 42 and 43, of Doha Ministerial Declaration and in reaffirmation of the understanding in paragraph 2 on the important role of 'sustainably financed technical assistance and capacity-building programmes'. The Director-General has been instructed to report to the Fifth Session of the Ministerial Conference, with an interim report to the General Council in December 2002 on the implementation and adequacy of these commitments in the identified paragraphs.

A key issue for the forthcoming Ministerial Conference is with regard to a decision on whether negotiations should be undertaken for binding commitments in WTO on the matter, and if so, what should be the modalities for negotiations. In a paper[86] submitted recently the USA argues that GATT Articles V, VIII and X already impose binding obligations on Members. This is a valid argument. However, developing countries may still remain worried about application of dispute settlement provisions in any new agreement. Doha Declaration does not define 'modalities'. It's meaning has to be found in past practices of WTO. Until now no clear set of modalities have been proposed. EC has submitted a note[87] suggesting 'elements of modalities' which lists the following broad categories: a) procedural issues pertaining to the negotiating phase, (b) the scope and coverage of the negotiating agenda, and (c) special and differential treatment. There is no specific suggestion in any of these categories and several developing countries including India rejects[88] any possibility of arriving at a consensus on the basis of this vague list. Among other submissions the USA paper[89] deserves some attention. This paper proposed a three point approach to Special and Differential Treatment but also discouraged the developing countries from asking for certain S & DT provision.

> 'For Members at lower levels of development, the gains of an agreement on Trade Facilitation could potentially be significant and immediate – provided that the provisions are not eroded by outmoded approaches to special and differential treatment."

The EC paper assumes that negotiations will commence after Cancun on all the Singapore issues. The Doha Declaration that "…decision to be taken, by explicit consensus, at that Session on the modalities of negotiations" does not mandate negotiation. This is subject to consensus obtained in modalities of negotiations, if one is suggested. Also, several countries are against considering all the four Singapore issues together. The Doha Declaration treats all these in separate paragraphs –an

[86] G/C/W/451
[87] WT/GC/W/491, 27 February 2003.
[88] Draft as on June 29, 2003, Communications being prepared by several countries on EC communication.

[89] G/C/W/451

agreement on negotiations on one issue does not entail a similar agreement on all four issues.

Some developing country officials are apprehensive that a wide range of matters can be brought under dispute settlement provisions. As of now, the GATT Articles X, VIII and V did not find many disputes that could be brought in to WTO. Until now, in discussions at the WTO no delegation has presented much by way of extending the scope of dispute settlement provision. Various other suggestions about future WTO activities in the area of Trade Facilitation area have been made in course of discussions. Several countries have suggested continuation of discussions for some more time to identify modalities of negotiations. Considering that no structural flaws were found in Articles V, VIII and X, the Brazilian delegation suggested[90] that some non-binding guidelines or best practices in these areas may be indicated instead of binding rules. Malaysia raised the question[91] whether in the hypothetical situation of Members not agreeing to negotiate binding rules, a possible outcome; it meant that the technical assistance would not be granted. In Malaysia' s view, this should not be the case. Trade facilitation was something which everybody agreed was good for the country and the economy, and it should not be held hostage by the need to set up rules. Technical assistance should be there with or without rules on a continuous basis. Turning to the issue of special and differential treatment, Malaysia noted that it concurred[92] with the views expressed by the Philippines that this was not only a question of transition periods. The experience from the Uruguay Round Agreements had shown that the mere granting of a longer period for implementation was not sufficient. Five years would not make up the difference between a developing and a developed country. Therefore, Members should take an approach to special and differential treatment that would build it in from the beginning and not just be an add-on at the end of the exercise. The Brazilian representative underlined the need for an approach which would see an effective commitment to address the structural differences between countries, so that one would not be faced again with the situation currently experienced in the CTD in special session, in which the Doha mandate to make special and differential provisions effective and operational was only discussed, with

[90] G/C/M/65

[91] G/C/M/65
[92] Brazil, G/C/M/67

nothing getting done. Brazil wished to avoid that situation in the trade facilitation context.

III

Trade Facilitation Programmes in India

The Indian trade policy has undergone fundamental shifts over the years to balance the earlier anti-import bias. The focus of these policy reforms has been on liberalisation, openness, transparency and globalisation. The current target is to achieve one- percent share in world trade by 2007. The initiatives and strategies of the modified Export-Import (EXIM) Policy for 2003-04 are also aimed at accelerating the rate of growth in exports and imports.

In a Vision Document published by the C.B.E.C. in 1998, trade facilitation was given the same thrust as realising revenue and combating duty evasion. In his Budget Speech for 1999-2000 the Union Finance Minister announced the formation of a High Powered Committee under the Revenue Secretary to go into the problems of transaction costs and to suggest measures/steps to reduce such costs on India's exports. The Committee made its recommendations in 1999, many of which have been pursued since then. Recently, the Kelkar Committee indicated the importance of trade facilitation. In his Budget Speech 2003-2004, the Finance Minister recommended trade facilitation measures not only for customs but also for excise.

Transaction costs are generally higher for international trade than for domestic trade. Studies on informal cross border trade[93] have shown that higher transaction costs encourage higher levels of informal trade across borders. This follows from the fact that transaction costs of trading in informal channels are significantly lower than the costs incurred in formal channels, and this in turn is a pointer that informal trade takes place due to inefficiencies in the formal institutional framework. An EXIM Bank sample survey followed by an update (EXIM, 2003), of select firms show the *perceptions* of Indian exporters about the importance of transaction costs in different industries, expressed as percentage of export revenues. The two studies show that very remarkable improvements have been brought about in just five years, between

[93] Taneja & Pohit (2002); and Report of the Committee on Informal Cross Border Trade (2002)

1998 and 2003. However, the survey was that of perceptions of exporters, not their actual gains. The findings need to be appreciated in this light.

The Medium Term Export Strategy announced by the GoI in January 2002 in the EXIM Policy 2002-07, and the modified EXIM Policy for 2003-04 – have set broad policy directions for facilitating trade and for reducing transaction time and costs. Apart from direct measures to enhance the country's imports and exports, the focus is on procedural simplification measures as an incentive to trade across the borders. The priority to EDI with the provision of online approvals to exporters in 23 customs ports, the introduction of annual advance licence facility for status holders so that they can plan for imports of raw materials and components on an annual basis, same-day licensing in all regional offices of DGFT, simultaneous notifications by DGFT and CBEC, reduction in the maximum fee limit for electronic applications under various schemes, are a few of the schemes envisaged to ease hurdles in the conduct of international trade.

Initiatives have also been taken by the government to commission studies to review existing international trade procedures, rules/regulations, documentation processes, functioning of different agencies, time management, infrastructure, etc. and suggest measures to streamline the entire mechanism.[94]

India has voluntarily embarked on TF from its felt needs and priorities and depending on the available resources. The following is an account of some of the improvement measures that give an idea of the kind of trade facilitation work going on. This is by no means an exhaustive list of the relevant work undertaken.

3.1 Infrastructure

For obtaining customs clearance, goods for import or export are brought at customs stations and kept at customs areas for clearance by the customs authorities. Customs Stations include Customs Port, Inland Container Depot, Customs Airport, and Land Customs Station. India has a coastline of approximately 6000 kms. with 12 major ports, 145 minor ports, over 160 ICDs/CFSs and numerous Land Customs Stations involved in cargo clearance.

[94] Varde, V et. al (2001, 2002) are two such specific studies.

About 95% of India's foreign trade by weight/volume and about 70% by value involve transportation by sea. Following liberalisation and opening up of the economy in the early nineties, there has been a significant increase in India' s maritime trade. In this short time, considerable improvements of containerisation of general cargo, berthing capacity, etc. have been brought about at major ports. But, there are still large gaps between what is needed and what is in existence. Most major ports were originally designed to handle specific categories of cargo, which have declined in time while other types of cargoes have gained in importance. The ports have not been able to adjust to the newer categories. There are thus several berths for traditional cargo, which are under-utilized, and only a few for new cargo, which are overutilised. Equipment is obsolete and poorly maintained.

Few large liner ships are willing to call on Indian ports, as they cannot afford the long waiting time. Indian container cargo is trans-shipped at Colombo, Dubai or Singapore resulting in additional costs and transit time. As a consequence, an Indian exporter, with rare exception, is not in a position to avail of "fixed-day-of-the week" services offered by the liner industry at a time when manufacturing and trading companies abroad are increasingly selling and buying on "just-in-time" basis. Most Indian exporters are, therefore, operating on the basis of substantial buffer stocks, except probably a few who operate on "just-in-time" basis. Substantial buffer stocks make Indian exporters less competitive. It has been estimated that the annual incidence of these factors such as demurrage charges, trans-shipment costs, pre-berthing delays and vessel turn-around time could be as high as US $ 1.5 billion per annum[95]. These costs have ultimately to be borne by the end users, raising the cost of India's exports in international markets and the prices of imports for the Indian economy. The Government recognises that additional port capacity to meet the increasing traffic cannot be met without the help of massive private investment. Accordingly, policy guidelines were issued in 1997 to enable the major ports to set up joint ventures with foreign ports, minor ports or private companies. The major Port Trust Act was amended to give effect to the guidelines issued in 1996 and 1997. Induction of private sector participation has also been suggested for upgradation of international airports at Delhi, Mumbai, Chennai, and Kolkata.

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[95] Sunder (2000).

As much as 60% of the total freight traffic of India moves on roads. But even the National Highway system suffers from capacity constraints and inadequacies. The Government has embarked upon an ambitious project to upgrade the existing national highway infrastructure. A programme for 4/6 laning of National Highways under National Highway Development Project (NHDP) comprising the Golden Quadrilateral connecting the four metros of Delhi, Mumbai, Chennai and Kolkata and the North-South, East-West corridors connecting Srinagar-Kanyakumari and Silchar-Porbandar respectively has been formulated. An ambitious project called Pradhan Mantri Gram Sadak Yojana was launched in December 2000 with the annual allocation of Rs. 25 billion to improve road transport links in rural areas.

The Airports Authority of India (AAI) maintains five international cargo terminals in Delhi, Mumbai, Kolkata, Chennai, and Thiruvananthapuram. In addition, there are six other airports granted international airport status (as on June 2000), viz. Amritsar, Ahmedabad, Goa, Guwahati, Hyderabad and Bangalore. There are eight Customs airports in the country - Calicut, Coimbatore, Tiruchirapalli, Jaipur, Agra, Lucknow, Varanasi, and Patna- for clearing import-export cargo. The AAI handles export cargo on behalf of over 55 operating airlines.

International cargo at 5 major international airports, 6 newly declared international airports and at domestic airports increased by 13.4%, 54.2% and 48.7% respectively in the period (April - January) 2002- 2003 vis-à-vis (April - January) 2001-2002. There has been a rise of 16.6% in the total international cargo handled by the AAI during this period. The total cargo traffic handled in January 2003 has increased by 15.5% as compared to January 2002, with international cargo traffic increasing by 14.2%[96].

The importance of air transportation of cargo has grown rapidly in recent years in India's foreign trade. But the infrastructure necessary has not grown in tandem. The multimodal transport and door-to-door movement of goods under the responsibility of a single transport operator is a globally successful concept. There are around 200 multimodal transport operators (MTO) in India. India is one of the few developing countries that have standards imposed by Government. The Government of India

[96] Source: AAI website www.airportsindia.org.in/aai/about.htm

enacted the Multimodal Transportation of Goods Act, 1993, based on the UNCTAD/ICC rules. Directorate General of Shipping, Mumbai regulates the multi-modal transport governed by the Act.

Containerisation of general cargo was introduced late in India, but has shown a steady increase. In recent years, a large number of Inland Container Depots/Container Freight Stations (ICDs/CFSs) have been set up outside the port and in the hinterland to enable the exporters and importers to export/import goods at their doorsteps. A procedure has been prescribed for movement of export/import goods from/to ICDs/CFSs in hinterland to/from ports/airports/air cargo complexes in bonded trucks. The procedure facilitates trade by way of allowing clearance of goods at their doorsteps. It also helps in development of ICDs in the hinterland. The Container Corporation of India Ltd. (CONCOR) is initiating a measure to facilitate trade of perishables by offering cold supply chains to transport agricultural, dairy, and pharmaceutical imports and exports. This will be done by setting up several warehouses across the country having the latest technology such as controlled atmosphere, controlled temperature and deep freeze facilities for processing and storage of produce. This fulfils a much-felt need in the international trade of perishables which till date is dependent almost wholly on small-unorganised players.

3.2 Import and export procedures and requirements

Documentation Requirements

For clearance of imported goods, normally, three documents are required to be furnished by the importers namely, invoice, packing list and Bill of Lading/Airway Bill. All other certificates/documents such as health certificate, plant certificates, phytosanitary certificates, country of origin certificate, are required for import/export of certain categories of goods. Certain additional documents are required if import/export is being made under one of the export incentive schemes. At land border stations, Bill of Entry/Shipping Bill is asked for by Customs. A number of measures to simplify the Customs procedures have already been taken. A Shipping Bill format introduced about a decade back is now a widely accepted document. The present AR4 too is a simplified document. The Shipping Bill can be filed through the service centres. The drawback payment system has been re-engineered to provide for

direct disbursement of the amount into the exporters' bank accounts after the goods have been exported. Generally, the drawback is credited within 72 hours of the departure of the vessel or the aircraft. Export air cargo is required to be brought in "ready for carriage condition" with proper packing, labelling, marks & numbers, etc, prominently marked on all sides of packages, duly accompanied by a ' Carting Order' from the concerned airline, Air Waybill, Shipping Bill, and Baggage Declaration, for admission of cargo.

To reduce the paper work for clearance of import/export goods, the Government has introduced EDI at almost all the major ports and air cargo complexes. At Delhi Air Cargo, the ICES also provides for the filing of the declarations i.e., Bill of Entry and Shipping Bills electronically from the premises of the importer / exporter or his agent through the Remote EDI System (RES). This facility does away with the requirement of the importer/CHA of having to come to the Custom House for filing a declaration. In locations other than Air Cargo Delhi, the importers and exporters have to use the Service Center facilities till such time the Gateway Project gets implemented. Remote filing is expected to be standardized and made universal with the implementation of the EDI Gateway.

In an example of operation of EDI, the Chennai Port Trust (ChPT) is moving towards facilitating paperless transaction for port users with plans to introduce an electronic facility to access all information at the port including vessel arrival and berthing. Users can also book workers, hire equipment and other marine services. In the second phase, the ChPT will include electronic payment whereby port users can make all port-related payments online.

Some other simplifications such as the procedure for trans-shipment of imported cargo from the gateway ports to other ports/ICDs/CFSs have been made. For issuance of permission for trans-shipment from gateway port, a single window system has been introduced, where applications for trans-shipment are processed expeditiously with the help of computer. All Central as well as State Public Sector Undertakings and custodians of ICDs/CFSs, have been exempted from the requirement of bank guarantee for undertaking trans-shipment of imported cargo from the gateway ports of ICDs/CFSs. Further, the compulsory sealing of containers by Customs before trans-shipment has been dispensed with.

Official Procedures

To allow expeditious clearance of import/export goods, the Government has introduced two-shift working. The working hours for Customs at the air cargo complexes have been increased to allow clearance of imported/export cargo from 8.00 a.m. to 10.00 p.m. on working days and from 10.00 A.M. to 5.00 P.M. on holidays. Electronic data exchange system that enable ships to inform the port authorities about their cargo arrangements so that the port authorities can prepare for a speedy unloading of vessels, together with linkage to Customs to enable cargo clearance in advance, have not been established in all the major ports.

For a long time now, books, periodicals, newspapers and life saving drugs are being allowed clearance on a fast track mode, that is to say these goods are cleared instantaneously without any procedural delays. Perishables, commercial samples and exhibition goods are also cleared on observance of simple formalities. The Government has also introduced a Fast Track Clearance Scheme under which certain categories of importers have been allowed to pay duty and clear the imported goods on the basis of self-assessment of duty. A facility of obtaining faster clearance through the Green Channel is available to select importers, especially those who have a good track record. There is a proposal to extend the scope of this facility to more importers in the above category. As a measure of trade facilitation and to reduce the transaction cost of exports, the Government has reduced the scale of examination for export goods considerably and has also simplified the procedure for examination of such cargo. In view of the fact that the examination norms for export cargo have been lowered significantly, a little higher percentage of examination has been prescribed for export consignments sent to sensitive places, namely, Dubai, Sharjah, Singapore, Hong Kong and Colombo.

Special attention is given to the speedy handling of cargo for reducing its dwell time. The objective is to reduce dwell time of exports to 12 hours, and of imports to 24 hours to conform internationally accepted norms. Cargo clearance will be on 24-hour basis. Infrastructure relating to cargo handling like satellite freight cities with multi-modal transport, cargo terminals, cold storage, automatic storage and retrieval systems, mechanised transportation of cargo, computerisation and automation, etc., is being set up on top priority basis. Such facilities have come up at

smaller places too. The Electronic Data Interchange systems have been developed with the objective of establishing linkages amongst all stakeholders in the trade.

Exporters can now stuff their cargo at the CFS approved by the Customs authority; these CFSs have also been given the autonomy of acting as the custodians of the cargo, where Customs examination facilities are available. Likewise, importers can take their import boxes for destuffing, and take charge of their cargo. This reduces the dwell time for import boxes at the port of entry. The procedure for movement of goods in coastal vessels has been simplified considerably. To allow the trader to take clearance of cargo at their nearest port, a scheme has been introduced to allow the imported cargo unloaded at a gateway port to be taken to another port in a coastal vessel. The formalities for customs clearance are undertaken at such other ports. Similarly, export cargo after clearance at a port may be taken to another port in a coastal vessel for loading unto an outbound vessel. In such cases, duty drawback is paid immediately after export has been allowed at the originating port without waiting for the proof of export from the gateway port. For better capacity utilization of such coastal vessels and to reduce the freight cost, the Government has allowed carriage of domestic cargo along with imported/export cargo. To increase the competitiveness among various modes of transport and to reduce freight charges, the Government has allowed movement of export cargo from one port to another by rail.

As a measure of trade facilitation, the exporters are allowed to get their goods stuffed in containers in their factories in presence of officers from the Customs or Central Excise. Such factory stuffed containers are not subjected to further examination at the gateway ports. Until very recently, the exporters were required to take permission from the Department each time they wanted to avail of the facility. In some of the field formations, permission was being given for a fixed period ranging from three to six months. To avoid procedural hassles involved in renewal of permission for factory stuffing, the Department has recently introduced a system of one-time permission, to be valid forever unless is withdrawn by the Customs in case of the exporter committing any fraud or other irregularity.

To develop Indian ports as consolidation hub ports and to reduce freight charges for exporters and importers, the Government has allowed consolidation of LCL (Less than Container Load) cargoes at Indian ports. The facility allows shipping

lines to take the containers stuffed with LCL export cargo, irrespective of destination, from ICD/CFS to a gateway port, where these are opened and reworked with cargoes received from different ICDs/CFSs. After such re-working, cargoes are stuffed in containers destination-wise. Similarly LCL import cargo brought from different destinations at any gateway port is allowed to be re-worked and consolidated to stuff containers ICD-wise. The facility of re-working of containers at gateway ports has immensely benefited the exporters and importers by way of saving in freight charges, reduction in transit time, and better handling and safer delivery of cargoes.

A procedure for movement of export cargo from ICDs/CFSs/factories to gateway ports/airports by trucks has been introduced for faster movement of cargo. A procedure has been introduced for carriage of imported cargo from one port to another port by vessels as also by rail. Regulations have been framed to allow import and export through the courier mode. The Customs clearance facility for items imported and exported through courier mode is presently available at Delhi, Chennai, Kolkata, Mumbai, Ahmedabad, Jaipur, Bangalore and Hyderabad airports and to land customs stations at Petrapole and Gojadanga in West Bengal. As soon as goods arrive, these are cleared by Customs on fulfillment of simple formalities by the courier companies. The importer/exporter or his representation need not come to Customs for taking clearance. It is claimed that approximately 80% of daily air cargo shipments are assessed on the same day by Customs (subject to the condition that all the required documentation is complete). The Airports Authority has launched "Operation Instant Cargo" which envisages de-congesting of the Import Cargo Terminals by disposing of all unclaimed/uncleared cargo in consultation with Customs.

As part of the accession process, India has undertaken a thorough review of the provisions of the Revised Kyoto Convention and it has been found that barring few exceptions, most of its provisions have already been implemented in India.

The Government has constituted a Project Team to work on the Customs re-engineering exclusively. The Project Team is working on several projects to simplify and modernise customs procedures such as: Accelerated Customs Clearance Procedure (ACCP), post clearance audit and risk management strategy. ACCP will be based on self-assessment principle available to all importers and exporters subject to fulfilment of certain conditions. The goods cleared under the ACCP will be subject to

post clearance audit. In respect of importers not eligible for the ACCP, the existing assessment process will continue. However, even in these cases, there shall be no concurrent audit and they too will be subject to post audit. For hazardous goods, there are special procedures like 'cooling off' period of 24 hours, insisted upon at the airports.

At present, the initial audit of the assessments is done through the mechanism of concurrent audit. In line with the best international practices, the Project Team is working on a project for introduction of post clearance audit. The CBEC has recently introduced a new self-assessment scheme called the Accelerated Clearance of Import and Export Scheme (ACS). The importer will determine the 8-digit custom classification, claim the relevant exemption benefit, declare the correct value as loaded in the invoice and the EDI system would calculate the duty based on such declaration. Physical inspection of imported goods would be done by using risk assessment and management techniques on a computer-based system, and not on the order of customs examining staff. The existing system of concurrent audit of import documents would be replaced by post-clearance audit. The scheme would apply to those importers/exporters operating for the past two years from a particular customs station, who have filed at least 25 bills of entry during the preceding year at that station, and against whom no proceedings have been initiated under Customs, Central Excise/FEMA Act, etc. Initially, the scheme would be operated on a pilot basis at Air Customs (import/export) at Sahar, ICD Tughlakabad, New Delhi, and Chennai Sea Customs (import/export).

Transparency, Predictability and Consistency

All the rules and notifications are available real time on the DGFT website and 75% of the license applications are being filed and processed on-line. The CBEC website has gone on-line in August 2000. The Tele Enquiry Systems have been introduced at major Custom Houses for automated information regarding status of import and export consignments. The facility for filing the import and export documents over the Internet is also expected to be introduced shortly. Touch Screen Kiosks have been installed in some Custom Houses.

In the past few years, a number of steps have been taken to simplify the tariff structure. Some of these measures include (i) reduction in number of slabs of duty rates, (ii) reduction in number of exemption notifications, and (iii) uniformity in rates of duty in chapters, etc. These measures have considerably reduced disputes in classification and delays in customs clearance. The simplification in tariff structure has in turn simplified the customs clearance procedures to a great extent.

A new commodity classification for imports and exports has been adopted by DGFT and this classification shall be adopted by the Central Board of Excise and Customs (CBEC) and Directorate General of Commercial Intelligence and Statistics (DGCI&S). The common classification to be used by DGFT and CBEC will eliminate the classification disputes and hence reduce transaction cost and time. Disputes regarding classification have considerably reduced. The Finance Bill 1999 has provided a legal framework for issue of Advance Ruling in classification.

Appeals against any decisions regarding valuation and procedures taken by the Customs authorities is examined by the Commissioner (Appeals) within three months of communication from Customs. Judicial appeals to the Customs, Excise and Gold (Control) Appellate Tribunal (CEGAT) may be made within three months of communication from Customs. However, it is not possible for the Commissioner (Appeals) to decide all appeals within the three-month period, due to shortage of staff and infrastructure support, and given the fact that the tribunal receives appeals on matters other than valuation and classification. It is claimed that the number of appeals made to the Appellate Tribunal on Customs matters and decisions taken on appeals for this period have come down though there is still a long way to go[97].

3.3 Payments, Insurance and other Financial Requirements

In India, the major ports are placed in Serial 27 under the Union List of the Constitution, and are administered under the MPTA (Major Port Trusts Act), 1963 by the GoI. Other ports are placed in Serial 31 of the Concurrent List of the Constitution and are administered under the India Ports Act, 1908. The other Acts applicable in the port sector are the Merchant Shipping Act, 1958, and the Dock Workers (safety, health and welfare) Act, 1986. In 1997, the Government of India allowed the major

[97] Pending matters are in the range of ten or twenty thousands.

ports to set up joint ventures with foreign ports, minor ports or private companies. For modernization, the Government took a decision that all new ports will be set up as companies under the Indian Companies Act and the existing Port Trusts will also be gradually corporatized and set up as companies, eventually leading to their privatisation. Once private sector was allowed entry into the major ports to provide services often in competition with the Port Trusts, there was a demand from the private sector for an independent regulator to set port tariffs. In 1996 the Tariff Authority for Major Ports (TAMP) was established. All the powers of the Government for fixing tariff in major ports are now vested with TAMP, pertaining to transaction of business, appointment of staff, and guidelines for regulations on tariff. TAMP has attempted to introduce transparency and promote participation of interested parties[98], but it has no jurisdiction over the minor/private ports.

Rationalisation has been attempted in some other areas. For example, services rendered to trade beyond normal office hours and on holidays on a levy of a merchant overtime fee.

The foreign manufacturers are required to observe certain provisions of the Bureau of Indian Standards Act. The Act also specifies liabilities for violation of certain provisions. In order to meet the statutory provisions, it has been considered necessary to make some person legally liable, under a certification scheme, for non-adherence to such statutory provisions. For purposes of registration and license application formalities, the foreign exporter must have a liaison office or a commercial subsidiary in India. He cannot have recourse to an agent (importer, distributor). Indeed, the license application must be submitted through a subsidiary or the Indian office of the foreign company. In addition, the exporter must provide proof of authorization from the Indian authorities to open such an office in India. Finally, the foreign manufacturer undertakes not to relocate his office within Indian territory without authorization from the BIS. However, in order to simplify the matter further, while keeping the provision for liabilities intact, the issue of permitting appointment of an Indian agent located in India (who would accept the liabilities under the Act on behalf of the foreign manufacturer through an agreement/undertaking) is being considered.

[98] Sunder and Sarkar (1999)

The financial agencies related to export and import play the primary role in safeguarding receipt and payment of funds; banking institutions have also been playing an active role in creating export capability among Indian companies. These agencies are involved at all stages of the export-import business cycle – import of technology, export product development, export production, export marketing, pre-shipment, post-shipment, and overseas investment.

The International Chamber of Commerce (ICC) has approved the "International Standard Banking Practice" for the examination of documents under documentary credits. In India, training programmes have been undertaken to sensitize bankers about UCP (Uniform Customs and Practices for Documentary Credits) & e-UCP and their use in overcoming the problems of discrepancies in the paper and electronic media. Though voluntary, UCP Rules are observed in countless number of transactions everyday and has become part of the fabric of international trade. The International Chambers of Commerce has developed a supplement to the UCP covering electronic presentations, but the market-expectation is that we would still paper documents would be in circulation for a considerable time to come. The uptake of electronic means of document delivery would depend on the ability to be able to communicate electronic data on a common platform. The readiness of banks and companies to move to such an environment would depend upon a number of factors including the requirement to move away from the letter of credit concept that we have today, that is, excessive terms and conditions to the one which would provide for simple data messaging service to achieve compliance or otherwise.

3.4 Electronic facilities

India joined the EDI movement in 1992, when it became a member of the Asia Pacific Council for Facilitation of Procedures and Practices for Administration, Commerce and Transport (AFACT, earlier Asia EDIFACT Board). The apex body, the EC/EDI Council of India, is gradually laying down a policy framework. National standards for EDI implementation, commercial transactions and bar coding have been announced. The Information Technology Act was adopted in 2000. The Act provides legal recognition for transactions carried out by means of electronic data interchange and other means of electronic communication. To facilitate international trade a co-

ordinated EC/EDI implementation project is underway involving several departments/organizations –

- Customs
- Directorate General of Foreign Trade (DGFT)
- Central Excise
- Reserve Bank of India (RBI)/Scheduled Banks
- Sea Ports
- Container Corporation of India (CONCOR)
- Indian Railways
- Airport Authority of India (AAI)
- Airlines
- Express Courier System
- CHA/Freight Forwarders
- Domestic Trade Sector
- Apparel Export Promotion Council (AEPC), Cotton & Textile Export Promotion Council (TEXPROCIL), etc.
- Other Export Promotion Organisations.

Some of the features of Indian Customs EDI System (ICES) are (i) electronic filing of goods declarations and manifests; (ii) paperless processing of the electronically filed declaration in a manner that is transparent and accountable; (iii) electronic messaging with the banks for collection of duties and disbursal of duty drawback; (iv) real-time electronic messaging with licensing, regulatory and quota agencies concerned with cargo clearance; and (v) single point of interface of trade with Customs.

An EDI Gateway Project is under implementation, which would provide a flexible and highly reliable framework to Customs for exchange of electronic messages with its various trading partners. The gateway project has emerged out of the necessity to enable remote filing of Customs declarations by the importers and exporters from their offices and to enable electronic data interchange (EDI) with the trading partners. Under this system, the Custom House Agent (CHA) or the importer lodges the import document called the Bill of Entry by using service centers. The appraising officers of Customs assess the document on-line and their approval is communicated electronically to the CHA/importer. The system provides for clarification of doubts by exchange of queries and replies between Customs and trade. Thereafter, the import duty can be paid at the designated banks that are linked to Customs on EDI. The only interface between Customs and the import trade is at the time of collection of goods.

The gateway and the network are complementary. By establishing the gateway, the Customs will be able to facilitate:

- Filing of import and export declarations online over Internet to any of the 23 major Customs locations and obtain online clearance.
- The international cargo carriers can file the customs cargo reports or manifests electronically.
- Regulatory agencies such as DGFT, RBI and export quota agencies can exchange online information with the major Custom Houses.

To facilitate the gateway activity, an "Enterprise Management Systems" has been installed centrally to manage the entire department's IT infrastructure. A certificate authority infrastructure to help enable secure electronic commerce over the internet is being established.

3.5 Physical movement of consignments (transport and transit)

Except Maldives and Sri Lanka, the other neighbouring countries share long land borders with India. The sea-lane separating Sri Lanka and India is also sufficiently short for small craft (motor powered or not) to cross easily. As such there

is a thriving border trade, often through informal channels, a large part of which may be unrecorded in either country, and some of which is illegal according to laws of one, and often both, countries sharing the border. India serves as a convenient and relatively inexpensive source of imports to these countries. India has a positive trade balance with some of its neighbouring countries. Around 90% of its exports to these countries, especially Bangladesh, however, are not based on any tariff concession by the importing countries, but on normal MFN rates of duty. While India' s exports to these countries have increased, its imports from these countries also have increased over the years.

Trade Agreements

India has taken a number of steps towards forging free trade agreements with its neighbouring countries, but has achieved different degrees of success. It has bilateral trade agreements with Nepal and Bhutan, giving substantial market access to the products originating from these countries, a Free Trade Agreement with Sri Lanka under which duty concessions are being exchanged on a bilateral basis. For several years now, India has accorded the MFN status to Pakistan. But Pakistan still refuses to extend the MFN status to India flouting its WTO obligation. India-Myanmar official meeting at different levels have addressed issues such as border management, promotion of trade and travel through land route, etc. But little has been achieved.

The South Asian Preferential Trade Agreement (SAPTA) came into force in December 1995. Since then several Rounds of negotiations have been concluded for exchanging tariff concessions between the Member States. But the goal of forging a South Asian Free Trade Area (SAFTA) Treaty has not yet been achieved. SAARC also began work on harmonising Quality and Measurement Standards, which will facilitate intra-regional trade flows. India is a member of the Bangkok Agreement, originally signed in 1975. However till date, only two Rounds of Trade Negotiations have taken place. The Indian Ocean Rim Association for Regional Co-operation was recently formed. Six areas have been identified for co-operation, namely, trade and investment, technology, transportation and communication, energy, tourism, and fisheries. Not much progress has been made as yet.

Nepal is landlocked, and most of its trade has to transit through India. Indo-Nepal trade is free and Nepal has much lower tariffs on imports of third country goods than India. The Indo-Nepal Treaty on Trade and Transit is very favourable for this landlocked country. Nepalese goods are allowed preferential entry in to India on meeting a minimum material content requirement (Value Addition Norm) defined under the Treaty. India tried to remove this norm and for some time all the products manufactured in Nepal were made eligible for duty free exports to India. But that led to flooding of Chinese made goods through Nepal. In later renewals of the Treaty the provisions relating to Value Addition and Certificate of Origin, etc. have been incorporated. Imports are now allowed on the basis of a Certificate of Origin issued by the agency designated by the Government of Nepal in the format prescribed. The value addition norm of an article is defined as involving a manufacturing process in Nepal that brings about a change in classification at four digit level, of the Harmonised Commodities Description and Coding System, different from those, in which all the third country origin materials used in its manufacture are classified; and the manufacturing process is not limited to insufficient working or processing as indicated in Annexure 'B' to the Protocol to the Treaty. The Treaty provides for consultation in the event of problems of excessive imports.

Transit Arrangements

India has agreements with Bhutan and Nepal that allow trucks to move across the border, though not inland. Indian trucks / vehicles are allowed free entry to Nepal whereas Nepalese trucks / transport vehicles are not provided similar facilities in India. The Federation of Nepalese Chambers of Commerce and Industry (FNCCI) has been advocating free entry to India for Nepal registered transport vehicles. No foreign vehicle is allowed on Bangladesh roads. The road route between East India and Northeast India through Bangladesh reduces transport distance by more than 60 per cent in comparison to the current route around Bangladesh through Siliguri. But it is not open under current trade protocol. India has adopted IMO Convention on the Facilitation of International maritime Traffic (FAL), but not the Montreal Protocol IV.

The scope of railway transit facility to Nepal is limited because of physical constraints. In 1998, the World Bank financed construction of three inland container depots at Birganj. With the construction of a 5.4 kms. rail extension from Raxaul

these ICDs will have a direct rail connection to the seaports. To facilitate traffic from landlocked Nepal and third country, a transit traffic agreement between the governments of Nepal, India and Bangladesh was concluded in 1997. The transit traffic could move by road from Nepal to Bangladesh through India and avail a second port facility of Chittagong. Initially, the agreement was for six months but has been extended time and again.

India shares broad gauge railways with Pakistan and Bangladesh, a historical legacy. India has bilateral rail interchange agreements with these two neighbours. But the conditions are stringent and performance poor.

The India-Bangladesh Protocol on Inland Transit & Trade has a framework, which may facilitate movement of cargo to the north-eastern states. Under the new Protocol, Kolkata, Haldia, Pandu and Karimganj on the Indian side and Narayanganj, Sirajganj, Khulana and Mongla on the Bangladesh side have been designated as Ports of Call. The Protocol also provides for steps to ensure equal sharing of inter-country and transit cargo by the ships of the two countries to and from ports of call/customs stations including extended places of loading and unloading. Both sides also agreed upon the restoration of multi-modal communication links between the two countries which should go a long way in providing the infrastructure necessary to enable economic interaction between India and Bangladesh attain its true potential. Both sides also focussed on the need to provide a framework for border trade. A proposal for the trans-shipment of Indian goods across Bangladesh by Bangladesh carriers is under the active consideration by the Government of Bangladesh.

Customs and cross border procedures are complex. As mentioned earlier, access for transit cargo to or from Northeastern India through Bangladesh may reduce distance by about 60%. But the procedural requirements are that the cargo is transferred from Indian to Bangladeshi trucks and back to Indian trucks. Also there are considerable delays at the cross-border processing at the two borders. One study points out that these costs would offset any potential benefits from the reduced distance. If border-crossing procedures are significantly reduced and if transit access for Indian vehicles is allowed, there will be significant savings in time and cost.

A procedure has been established to allow exporters to take clearance of export cargo meant for Nepal and Bangladesh at any of the ICDs and then take the cargo in sealed containers to Nepal and Bangladesh by rail or/and road through LCSs. At the Land Customs Stations, the Custom officers check the seal of the containers and allow export. The facility helps in reducing congestion at the LCSs and allows exporters to take clearance at their doorsteps. The facility of import and export by courier mode was earlier available through international airports only. To facilitate Indo-Bangladesh trade, the facility has been extended at Land Customs Stations at Petrapole and Gojadanga at the Indo-Bangladesh border. Under the scheme, the authorised couriers are allowed to take clearance on behalf of the importer and exporter under a simplified procedure.

New Modes of Transit

There is a proposal for construction of a 2600 km pipeline (1600 km from Iran to Sindh province in Pakistan and 1000 km on to India) to transfer gas from Iran to India through Pakistan. Pakistan hopes to receive around USD 600 million as transit fee annually from the pipeline and is therefore keen on the project. Among other proposals is one for construction of a trans-Afghan pipeline that would carry gas from Turkmenistan to Afghanistan and Pakistan and possibly, include India at a later stage.

IV

Analysis of Indian Position

In this chapter we will analyse whether the trade facilitation measures undertaken by India will be sufficient for meeting our obligations, if at the Cancun Ministerial meeting the Members agree to start a new round of negotiations. There are certain complexities in defining the appropriate frame for such an analysis. If agreed at Cancun, rules will be framed in the next two years, and will be approved, if at all, not before 2005. Allowing for adjustment time, these rules may come into effect not before 2010. Therefore, our assessment must be based not just on the current situation but also on likely conditions after 2010 or later.

Besides, the assessment has to be with respect to the specific trade facilitation issues that may be taken up, if negotiations are agreed to at Cancun. As already explained, trade facilitation issues are numerous. For the convenience of analysis however, we may consider in this chapter, only the possibility of GATT Articles X, VIII and V being brought under WTO discipline. This must not be misconstrued as our suggestion. As the previous chapters show, there is every reason to argue for a broader definition of 'trade facilitation' and question the need for changing these Articles. This chapter may be regarded as an analysis of a worst-case scenario. Here we will list the problems that may be faced in implementing any binding agreement in the WTO trade facilitation agenda that may arise in due course. The list currently revolves around the three Articles of GATT 1994, several submissions by Members and concerned parties, notes and summaries prepared by the WTO Secretariat. The following is an analysis of the problems[99] that may be faced in spite of India's initiatives in trade facilitation, as discussed in the previous chapter.

[99] The sections and subsections of this chapter are, to the extent possible, as per the WTO Secretariat Compilation (G/C/W/434) dated 15th November 2002.

4.1 Article X of the GATT 1994

1. *Publication and availability of information*

Although facilities exist, India will be required to accomplish a lot more in this matter. Several initiatives have already been taken up. The DGFT and the CBEC websites have started functioning. But till now, those carry only a fraction of relevant information. Comprehensive notification on customs procedure, ruling, or guideline of general application that is needed for international trade, and may be asked by the WTO, is not difficult to meet with present facilities. The casual nature of compliance found at present, has to be replaced by systematic work. Proposals to have trade enquiry points can be implemented through the EDI route. In other words, a WTO mandate may compel the existing facilities to be functional. At present, systematic effort is lacking.

On the other hand, the demand made by WTO may be excessive. Every relevant detail cannot be made publicly available.

2. *Consultative/feedback mechanisms and minimum time periods before entry into force*

Customs and Central Excise procedures are being changed rather frequently. Invariably, the procedures are framed in consultation with the field officers and there is no apparent involvement of the trade and industry[100]. Prior consultation goes on before budget and some other policy announcements. But these are usually informal. This problem exists also in other departments[101]. This is one area which will need not only institution of formal procedures but also changing the mindset of officials. The Kelkar Committee recommended constituting a Standing Committee on Procedures or some such institutional mechanism. The recommendations may remain out of our purview. But this is certainly an area where WTO obligations may be more demanding than the existing practices, including the current trend.

Time periods before entry into force is also another area where there may be some problem. The Kelkar Committee noted (Ch. 7):

[100] Kelkar Committee Report (Ch. 7)
[101] Sunder Committee

New procedures come into effect from the date they are brought to the notice of field formations. Each instruction contains a direction to the field formations to issue suitable public notices/ trade notices to inform the trade. Not only does this catch the trade by surprise but it may also happen that a procedure has been in force but is not complied with for the reason that the trade may not have come to know about it. Invariably, such situation also leads to compliance issuance and disputes. Also, the Departmental Systems personnel are unable to modify their software, if required. It is the view that this matter requires remedy.

3. Review and appeal procedures and due process

In India, provisions for Advance Rulings exist in the Customs Act, and also in the Finance Bill, 1999. Procedures and organisational setup for advance rulings may be developed in due course. As per revised the Kyoto Convention, an adjudication order is to be issued by the Customs within a period specified in national legislation. The Indian Customs Act has since been amended with a provision that the adjudication order is to be issued by the proper officer within a period of one year in cases involving collusion, wilful mis-statement or suppression of facts, and within six months in other cases. These are yet to be effective. The judicial and administrative systems in India in general, are complete with review and appeal procedures. If anything, questions may be raised about time and delay. There are several countries where review and appeal mechanism is absent[102]. In this matter a WTO regime leading to introduction of review and appeal mechanism in these countries will be in India's interest. Only in the remote possibility of a WTO discipline specifying certain review and appeal procedures and insisting on specific Processes which differ from the existing Indian procedures, India may face some problems.

The EXIM Policy (1999-2000) proposed for the appointment of an Ombudsman at Mumbai. For attending to problems at gateway ports and airports, no regular system exists. The Sunder Committee recommended the appointment of a

[102] We were told that China is one of them. We could not verify this.

high level functionary for mediation. Also, there are problems involving many departments which would need to be tackled by Inter-Departmental Committees.

4.2 Article VIII of the GATT 1994

1. Provisions regarding fees and charges

After its formation, the TAMP became an authority for fixing tariffs. But it had no other regulatory functions or powers. All the conservancy powers in ports and all other regulatory functions in regard to safety etc. were vested in the Port Trust. With private investment coming in, some of the port trusts have been arguing that there is no need for TAMP and what is required at best is a tribunal to hear complaints, if any, against port tariffs. A recent proposal is to convert TAMP into an appellate tribunal and restore powers to the major port trusts to fix and revise tariffs. This, in effect, would leave the tariff-setting mechanism to market forces. In this scenario, major port trusts and private operators at major ports would be free to fix and revise their own tariffs with an appellate body at the helm to take care of user grievances. While the rates approved by the TAMP would be the tariff for the major port trusts, it would only act as a ceiling for the private operators beyond which they cannot charge. WTO rules are not likely to question the justness of a market regulated structure. The direction of reforms is therefore, WTO compatible. The only problem that may arise is that it would be sometime before TAMP can withdraw from active regulation.

However, this may not ensure fair, simple and transparent system of tariffs. Ideally, competition should ensure that the charges levied are reasonable and that the quality of service is satisfactory. However, competition is lacking in most areas. Many private service providers are monopoly operators. On many occasions traders have to pay extra for inefficiencies even if the payment is to be at approved rates. Services received may not commensurate with charges. Many agents such as the steamer agents, freight forwarders, air cargo agents, stevedores, MTOs, etc. often charge at very high rates for nominal services. Agents of foreign MTOs, who are neither registered with DG Shipping nor with the Customs, often collect very high sums of money for delivery of goods without rendering additional service.

Unless competition develops, the situation will not improve. Till then, regulation may be the other way for keeping the fees and charges at reasonable levels. Indeed, TAMP was constituted with this purpose. But, each port has its own tariff schedule and scales and also the accounting procedures are different. Without uniformity and common accounting procedures amongst ports, TAMP cannot hope to move towards fixing uniform principles for fixation of tariffs. The tariff structures at different ports vary widely and are extremely complex. The TAMP could not make much headway.

2. *Provisions regarding data and documentation requirements and procedures*

By an estimate[103], documents required for importing or exporting one consignment in/out of India, on an average includes:

Type of Documents	29
No. of Copies	118
No. of Signature	256
Manpower Required	7
Cost of Procedures	10% of Consignment Value

The present format of Shipping Bill, evolved in 1991, is the only notable success. It is already a common document used by various departments, such as Customs, RBI and Port Trust. Prior to this, numerous declarations were required to be signed by importer/exporter, in addition to the specific legal provisions – for certifying and validating the information provided. Even regular importers/exporters are not allowed to file a single legal declaration, valid for a period of at least one year. Changing this would require consultation with the Law Ministry.

Several attempts were made to simplify documents. But none was pursued further. In 1991, along with the modified Shipping Bill, a UN aligned documentation

[103] ESCAP (2000)

was evolved for several commercial documents such as invoice, proforma invoice, packing list, inspection certificate, shipping order, etc. which was left to voluntary adoption and therefore did not become extensive. UN ESCAP started a project[104] for this, with little consequence. The Sunder Committee looked into the feasibility of evolving a single transport document, and suggested that the MMT document may be used for this purpose. But implementing this suggestion requires the acceptance of this document by several agencies, including banks and insurance. No initiative has been taken as yet. On the import side, the Sunder Committee recommended evolving a SAD in the lines of the EC, again without any impact.

Another serious problem is that the measures taken in India are not always in harmony with international systems. Nomenclature and codes for commodity description are not in accordance[105] with the Harmonized System of Nomenclature, as evolved by the WCO. Under EDI, the NIC has developed a system for the Customs which has been installed. But this is at variance with EDIFACT and is not able to send or receive EDIFACT messages. Every Port was left to develop its own system. They chose the EDIFACT standards. As a consequence, at present, the EDI cannot operate at present, between customs and ports. Traders are required to establish necessary infrastructure to send the same message in two different formats for ports and Customs. They are not ready to make such investments, in absence of any visible benefits, when ports and Customs are yet to be linked.

Part of the reason is that computerisation in India started spontaneously through independent initiatives by departments and agencies. They developed whatever was best for them, with little need to look at international documents and data formats. The effectiveness of the EDI system depends on the connectivity between all the players - ports, airports, customs, DGFT, RBI, steamer agents, shippers – ultimately reaching railways, road transport, banks, insurance and so on. The efforts made at present are largely, stand-alone using different systems. A Customs Gateway project is seen as the panacea to all problems. But there is no

[104] In May 1999, the United Nations Economic and Social Commission for Asia and the Pacific (UN ESCAP) with the financial support of the Government of Japan initiated the Project on the Alignment of Trade Documents and Procedures of India, Nepal and Pakistan. The Project was to be mentioned at the Third Meeting of the SAARC Group on Customs Co-operation.

[105] Source: Sunder Committee Report

conceivable reason why establishment of the Project is taking such a long time. Until then, the traders have to make extra effort for entering the data. Transaction cost has indeed, gone up as a consequence of partial implementation of EDI. Even the claim that about 80% of India's international trade is covered by the twenty-three automated Customs stations is suspect. In most stations only a part of the data has been computerised, leaving ample room for unscrupulous parties to take advantage of the loopholes. It is not clear what policy directives have been issued by the Government, although the details are required to be finalized after meetings and discussions. We could not trace any future plan, policies, goals, timeframe, EDI architecture and practice, or Quality of Service and certification criteria. Some more details about automation and computerization will be found in Annexure IV.

3. Provisions regarding customs and related import / export procedures

There are still too many procedures for export or import of a typical consignment. Some may have to be simplified, some others abolished. Some trade facilitation schemes have so many restrictions that the scope of application is very limited. To mention a few, containers moving from hinterland and bearing Customs seal affixed by Central Excise Officers are opened and re-sealed by Customs Officers. Customs cleared containers are not allowed to be moved from one port to another, even in case of disruption of scheduled arrival of a vessel, without following the 'back to town' procedure. Many of the export consignments require clearance/certification from designated export inspection agencies. The respective agencies are located at different places and some of them are far away from the port/airport and ICD/CFS. As a result exporters have to spend considerable time and effort in obtaining these certificates. Departments and organisations dealing with the clearance of import/export cargo have different holidays and limited working hours. Apprehensions restrict implementation of liberal clearance procedures in several fields. For e.g. New Courier Imports & Exports (Clearance) Regulations 1998 have dispensed with several regulations on movement. But because of some apprehension of the Bureau of Civil Aviation Security (BCAS), the new regulations have not been implemented. One does not know what variety of procedures may come under WTO discipline in case it is decided to do so. However, these are some of the areas which may be improved by commitments to reform and concerted efforts.

Improving some other procedures may prove to be far more difficult. Self-sealing of export containers by exporters with good records and Fast Track Scheme for Customs clearance are two trade facilitation schemes that have been introduced. But very few of exporters and importers are able to avail of the advantages of these schemes. Self-sealing of export containers is not widely accepted by the Customs officials for a definite reason. They feel, and correctly so, that there are numerous export incentive schemes providing immense scope of frauds leading to loss of revenue, e.g. (a) by way of drawback of duty paid on the inputs used in the manufacture of export goods, and (b) duty-free import of inputs which are required for use in manufacture of export goods. For similar reasons, very few cases are allowed under the Fast Track scheme for Customs clearance. The developed countries have succeeded not because of low tariff rates or absence of export incentives but because of complementary mechanism like post-clearance audit. For various reasons the development of such practices is slow. One is the absence of excise audit without which post clearance audit is not possible. In the absence of a common identification number for scrutiny audit of this nature is impossible. Without a common identification the databases available at different departments cannot be accessed. Recently, a high level decision was taken to use the PAN number for the purpose of unique identification number. But this is applicable only for the income tax payers.

These are genuine problems and have no simple solution. Procedures such as post clearance audit have been suggested. A post clearance audit, to be conducted through desk audit, commodity based audit and field audit – either singly or in combination – is being introduced by the GoI. But the scheme will be launched through a few pilot projects. The feedback from the pilot projects would be taken as the basis for designing the whole process. This is because considerable ground will have to be covered and a great deal of details spelt out for implementing the post clearance audit. The experiences of many European countries show that it takes a decade or more for post clearance audit system to take firm root. Recently, a systems appraisal procedure has been introduced by Customs, but very few have come forward to avail this opportunity.

Risk Analysis: India has already reduced the percentage check on consignment to about 2%. However, the risk analysis procedure followed in India may not

withstand WTO requirements if binding rules are formulated. At present, the various Customs formations have been *informally* using the technique of risk analysis that can be observed from the existing procedures. The Department relies upon the experience of its officers to evaluate the risk towards revenue while processing the information provided by the importer. The officers evaluate the risk by taking into account factors such as the country of origin, nature of transaction, current domestic prices, background of the importer, etc. A codified risk management module has been tested recently for import consignments at ICD Tughlakabad. The computerised module assesses import consignments through 21 risk factors and analyses 11,640 items, identifying sensitive consignments and indicating the rest for immediate release. Since there is a tendency to draw parllels, we note, risk assessment in this area has no similarity to that of the SPS Agreement. Under Article 3.3 of the SPS Agreement, countries may set their own level of protection. It is mandatory to notify such country standards in advance to enable traders to comply with them. By disclosing its risk assessment parameters a Customs department will only direct smuggling to lines assessed as low risk ones.

4. *Cooperation and coordination among different authorities; communication with traders*

In earlier paragraphs, we have indicated a wide variety of areas where coordination between different authorities is necessary. Because of its characteristic political structure, this is one area where considerable groundwork needs to be done in India for effecting a change.

Apart from the coordination problems noted earlier, another area requires particular mention. Legal changes are needed to make many facilitation measures effective. The Customs Act 1962 provides for advance filing of Bill of Entry only for vessels and not for aircrafts. In most countries, the multimodal transport document (MTD) includes air transport. A major lacuna in the Indian legislation is it excludes air transport; so the trade is restricted to sending containers only through rail, road and sea. Also, Indian Railways have not taken any initiative in tying up with transport companies or shipping lines. This will require amendments of the Railways Act. Most Indian banks still do not recognise multimodal transport document (MTD) -- a single document valid for all modes of transport. A RBI notification is required permitting

domestic banks to treat MTD as a negotiable instrument. No major domestic insurance company is willing to offer insurance cover, a value addition for the customers. On the other hand, foreign insurance firms, such as P&I Club and TT Club, have agents in India and give insurance cover for cargo sent through multimodal transport. Legal changes, however, are complex and time-consuming procedures.

4.3 Article V of the GATT 1994

1. *Customs procedures and documentation requirements*

Benapole is the principal land port for border crossing between India and Bangladesh. Here often there is acute congestion with lines of up to 1500 trucks and waiting time of one to five days. Though the situation may not be so bad at the Nepal border, the need for simplifying customs procedures for transit is seen from the example cited. However, India prefers bilateral Agreements to solve such problems depending on the kind of relations with its neighbour. For example, there is a proposal to do away with the Bill of Entry/Shipping Bill for Customs purpose at the land border stations between India and Nepal. A simple certificate may be considered enough.

2. *Non-discriminatory treatment*

Even though the SAARC countries have begun to liberalise trade, failure to address logistic inefficiencies not only compromises the extent and depth of other reforms, but also risks loss in market share. Except for the World Bank sponsored ICD project in Nepal, India and its neighbours do not share their railway transport facilities. Excessive border dwell times are common. At the India/Bangladesh border at Gede/Darsana, the average dwell time is of the order of two days. The average wagon cycle time between Lahore (Pakistan) and Amritsar (India) is as much as 5-6 days. By contrast, between the Islamic Republic of Iran and Turkey which also share a common track gauge, the average border dwell time is about two hours. The India-Pakistan bilateral rail interchange agreement requires both sides to achieve a zero balance in their exchange of wagons at the end of each ten day accounting period, a complex and inefficient exercise. Operational inefficiencies exist also in the cross-border exchange of wagons between India and Bangladesh. Though India has

agreements with Bhutan and Nepal that allow trucks to move across the border, their movements within the country are restricted. As mentioned in the previous chapter, no vehicle of any other country is allowed on Bangladesh roads. As a result, all products transported by road to Bangladesh from the neighbouring countries are transferred onto Bangladeshi trucks at the border, adding to the transportation costs and delays at the border crossings. Commodities between the Northeast Indian states and the rest of India get routed around Bangladesh through India' s narrow land corridor.

National treatment of foreign vehicles may be a way out of this problem. However, a WTO rule towards this end will allow entry and movement of foreign transport suppliers from all over the world. India prefers bilateral agreements to solve this problem. Even in bilateral agreements there are problems. Considerable difference exists in customs rates of India and Nepal. This gives an incentive to divert enroute consignments meant for Nepal. Smuggling of goods and pilferage of consignments in transit is a danger that has to be reckoned with. Open trucks cannot be allowed. Even containers may be pilfered.

Pipeline for transfer gas from Iran to India will certainly be in India's interest. Both Iran and Pakistan are interested. But India is hesitant for legitimate reasons. By not granting MFN status to India, Pakistan continues to flout the basic requirement of the WTO with impunity. There is little guarantee that WTO can safeguard India's position in this pipeline project.

3. Differentiation of trans-shipment and non-trans-shipment

For trans-shipment to a third country, Indian Customs clearance has to be obtained before re-export. Formalities in re-export of courier consignments intended for third countries delay shipments to inland consignees and stifles trade with neighbouring SAARC countries. India is a natural hub for several of its neighbours. Reduction of procedural complexities will help in realization of this potential and will benefit both India and its neighbours.

4.4 Infrastructure Problems

Simplification of import and export procedures, reduction of data and documentation requirements, publication of information, consultation, non-discriminatory treatment and excellent scope of review and appeal would not serve any purpose without the requisite capacity to meet the obligations. Capacity constraint is severe. The major ports of India deal with traffic much in excess of capacity. As a result, in India ships have to wait for berths instead of berths having to wait for ships. The average vessel turn around time for Indian ports varies from 37 - 50 hours to 145 hours (2000) as compared to the international benchmark of 24 hours and less than 12 hours in Singapore (2000). Indian ports have one of the lowest rates of productivity in handling cargo (World Bank, 2002). The manpower productivity at the JNPT- India's most modern container terminal is 330 TEU/person as compared to 2303 TEU/person in Singapore port. While, efficiency has since improved, productivity of Indian ports is still below international standards. In many ports, shore facilities cannot be fully utilized and operations are adversely affected, as the rail and road connections do not have capacity matching with port throughput. Surface transport connections to hinterland are inadequate.

All the international airports in India have shortage of space in their air cargo complexes resulting in severe congestion, often making storage of goods on the tarmac unavoidable. Also, the limitations of space make it difficult to allocate spaces to other operators to facilitate competition. For courier services new and separate fully equipped courier terminals are required. State-of-the-art equipments for quick inspection of sealed containers are very costly and India cannot afford to purchase many. Laboratories for testing of samples are a serious bottleneck in both import and export cargo. From land border stations samples have to be brought over a long distance, e.g. the import of food articles from Myanmar involves testing of the items in laboratories located in Kolkata. The ICDs/CFCs in the hinterlands often do not function well because of lack of requisite equipment and facilities.

Much more needs to be done in the area of EDI and at a far quicker pace. In fact, the C.B.E.C. itself appears to be lagging behind in terms of infrastructure and use of computer information. Proposals like acceptance of a system of Single Window for

submission of documents/data and EDI connectivity with all customs locations involve enormous costs.

Along India's long border with neighbouring countries, the Infrastructure for storage and movement of goods and vehicular traffic is highly inadequate. Even basic facilities like post offices, banks, vehicle parking, hotels, etc. are not available at all places. Customs organizational set up along the border is barely enough to cope with the present volumes. Conditions of roads leading to border stations are chaotic due to road traffic conditions and local law and order problems.

4.5 Problem of Human Resources

India, a country of continental proportions, has some 60 major and minor ports, 8 customs airports, 5 international aircargo terminals, over 160 ICDs/CFSs, a very long border with its neighbouring countries with above 100 Land Customs Stations. For effective trade facilitation all personnel associated with trade, viz., licensing authorities, Customs officials, inspectors, scientists manning testing and quality control laboratories, banking and insurance staff should be present at each of these locations. This requires enormous cost and effort. Many ICDs/CFCs in the hinterlands or the land ports often did not function well because of non-availability of full complement of customs staff and other export inspection agencies. Besides, the Sunder Committee also observed that the staff of department/agencies at the grassroot level were not always aware of the extant provisions of policy, law and procedures. Officers working in the hinterland needed particular attention. Training inputs were inadequate.

The number or knowledge-base of the personnel are not the only reasons. The Sunder Committee also observed[106] that a very large number of problems relating to delays are attributable to tardy procedures, excessive documentation and narrow sectoral perception of the respective departments/organisations. But many of these are also the result of a lack of positive approach and service orientation on the part of officers and staff. Prohibitive infrastructure cost is not the only reason why EDI is not developed at a quicker pace. Many operational modernisation projects have not been

[106] The Sunder Committee Report, pt. 2.2

extended for a long time even after successful experimentation at one or two places. The Sunder Committee thought it important and essential to evolve a holistic approach to deal with the needs and difficulties of the trade. The Kelkar Committee was even more emphatic about the requirement of a change in mindset away from controls rigidly administered, towards a more liberal policy environment in line with international standards. However, it also observed that some effort has been made, e.g. the C.B.E.C. has suo moto taken up the exercise of evolving modern and efficient procedures, reflecting the changed mindset.

Much has been said about the necessity of changing the mindset of government personnel. But little has been said about a matching requirement in private parties, traders, operators and business executives. Fiddling with government rules is almost a cultural practice. Unless this mindset is changed, a regime based on trust -- suggested so strongly by the Kelkar Committee can only be misused.

According to the Kelkar Committee, training in two key areas is necessary for human resource development - the use of computers and change in mindset. Particular attention needs to be paid to changing the mindset at the cutting edge. The Sunder Committee recommended that each department/agency should prepare a mission statement setting out the services and assistance that it renders to trade, and the concerned department and agency should also fix and announce a standard time frame for critical items of work relating to imports and exports.

4.6 E-Survey

An e-survey is being conducted by us to assess the perceptions and experiences of Indian exporters about trade facilitation requirements in India and in other (importing) countries. The survey work is still continuing. Preliminary findings about trade-related problems of exporters at the Indian side are listed below:

1. Multiple documentation requirements from different agencies (one instance cited above), and the procedures involved therein add to delay. Excessive paperwork is involved for obtaining permits, and numerous visits are required at different agencies in different locations, often for filing similar repetitive data. Certain departmental permission is difficult to obtain due to non-working hours on weekends, holidays and after-office, thus limiting time for export activities.

2. Information relating to relevant export laws, regulations, administrative matters, and all trade related procedures are not easily available and accessible from one single agency or department. Updated information and new rules are not available on a single platform, and frequent changes in export incentives implies loss to the exporter in terms of commitments made. The maze of information is not collated and presented in a user-friendly package.

3. Multiplicity of fees and charges: In case of commodities requiring clearance certificates from different departments, each of the agencies involved have separate charges. Floriculture is a case in point, in the export of which certificates are required from Wildlife department (Cites Exemption certificate), Customs, Phytosanitary, and Airports Authority. Multiple charges administered by all the agencies add to costs. In addition, the charges are perceived to be higher than the facilities available and the services rendered. THC at ports are also considered very high.

4. Shortage and non-availability of concerned officials is cited as a reason for delay in physical verification of consignments. The time required for customs clearance is also stated to be high (cited as almost 8-10 hours). The cooling period at departure points is also high.

5. Regarding personnel–related problems in India, the finger points to corrupt government officials, overtime charges- since port and customs officials do not work round the clock, and limited training and information/knowledge which is detrimental to trade.

One may note that these survey findings are in consonance with our analysis in this chapter.

V

Some Other Information & Conclusion

5.1 Trade Facilitation Measures in Other Countries

A country is influenced by WTO in two different ways – by its effects on domestic trade and economy, and externally, by success (or failure) of exports from that country. Therefore, we should study not only the internal feasibility or unfeasibility of meeting a WTO rule but also the changes that will be brought about in the global trade environment due to a WTO rule. India's international trade, like that of any other country, is expected to benefit after other countries too implement trade facilitation under WTO mandate. We should therefore, understand the extent of changes that may take place the world over and the likely benefits for the Indian exporters from such changes. In this section we make such an effort.

The number of Customs conventions a country is a party to, can to a certain extent, ascertain the extent of Trade Facilitation in that country. Data on this matter, compiled from two sources[107] are presented in Annexure III. For convenience, only a few, mostly top ranking countries are shown in the tables here (Annexure III). All other countries not shown in the table, have less Trade Facilitation instruments than India. The comparative tables show that India has a commendable position in this matter. Next to the European countries, India with the USA, Canada or Korea, is in the league of countries that have accepted most trade facilitation instruments. India's commitments to trade facilitation instruments are better than some of the countries

[107] The data from these two sources had a few anomalies and also certain areas needed clarification as the information from the internet and that present in the table was contradictory. For example, according to the WCO website China is a contracting party to the CC Display whereas the information in the table contradicts it. Due to the above discrepancies a need arose for further verification. These are noted in the Annexure.

known as the 'Friends of Trade Facilitation'[108] e.g. Japan, Singapore, Hong Kong China, Chile, Colombia, Costa Rica and Paraguay.

We are also conducting an e-survey to collate the trade problems faced by Indian exporters in their export activities in India and in the destination countries. The feedback from a cross-section of exporters is representative of the issues covered under the trade facilitation agenda.

The information sought through the questionnaire is with respect to problems associated with: fees and charges connected with exports; export formalities and procedures; data and documentation requirements; time requirement for verification and clearance of goods; logistics of presenting documentation; infrastructure in relation to storage, warehousing, etc.; personnel; discriminatory use and sudden change of laws, regulations, etc; penalty for minor breach of customs procedure; knowledge of all relevant export-related rules, regulations, procedures etc., and availability of information. In addition to this common set of queries for the Indian end of the chain and the destination country for exports, a few questions addressed issues relating specifically to the latter. These relate to goods in transit through a third country and any problem therein, possibility and right of appeal against customs/other agency rulings and the time and modality involved.

The main findings based on the preliminary feedback reveal considerable trade-related problems at the Indian end. The comparatively fewer responses about difficulties in export-destination countries could be attributed to the fact that small traders deal through intermediaries[109], and are generally not in the know of import formalities and procedures in the foreign country.

[108] Also known as Colorado Group.

[109] This is not a problem specific to India. During discussions (May 23-24, 2002: G/C/M/61) at CTG Thailand said – Some Members had raised concerns that small traders and SMEs need more transparent procedures of customs practices to be able to facilitate the importation and exportation of goods. The representative expressed his view that small traders and SMEs were very busy with their own operations and management. Many of them used the services of customs brokers for the clearance of imported or exported goods, who, as experts, were more familiar with official procedures and formalities. International companies, on the other hand, did not have problems with transparency and predictability matter under Article X, as they had adequate resources and efficient employees, as well as specialised departments for customs clearance, legal and appeal matters, transportation and warehousing to ensure a smooth clearance of goods.

To highlight some of the issues in export destination countries:

- Information regarding laws, regulations, guidelines, etc. is collected from secondary sources (internet/agencies) since it is time consuming to collect this from the primary source.

- In relation to procedures and formalities, and verification of consignments, some countries, viz., Saudi Arabia and Ivory Coast have lengthy, time consuming and procedural barriers resulting in delay in clearance of goods. Also multiple documentation requirements and replication of information, especially in the former country complicates the process.

- The case of appeals – depending on the particular country can be expeditious or time consuming, expensive per se or expenses may be built into the cost of hiring lawyers, etc, even as the departmental charges are minimal.

- The FDA of the United States detains import cargo containers for random sampling, and this information is posted on their website. However, the status of the consignment post testing and release is not updated; and hence the Internet information shows the status as detained for FDA clearance.

- The difficulties and barriers faced by exporters in some countries and regions, e.g., Australia, the EU, and the Baltic countries relate more to their strict health and hygiene standards, rather than to any trade facilitation requirements under GATT Articles V, VIII, and X. The restrictive procedures and measures adopted, which are time consuming and hence add to expenses of export, are in the nature of SPS and TBT measures. Moreover varying procedures for meeting quality standards in different countries implies adoption of different techniques (e.g., ETO treatment, steam sterilization, etc.), which add to the cost of production.

- Following from the above, if perishable cargo is rejected by the importing country, the procedure for destroying it at the destination or for bringing it back, is opaque and not available on a country to country basis.

- A new regulation of the United States' Customs Service to enforce 24-hour advance filing of import cargo declaration for cargo entering the country. In addition, there is a proposed FDA (Food and Drug Administration) regulation implementing the Public Health Security and Bio-terrorism Preparedness and Response Act of 2002 (Bio-terrorism Act), requiring prior notification of imported food to begin by December 2003. This would adversely affect perishable export cargo, as there are hardly any direct flights out of India to the US. Most of the cargo is transhipped at a hub either in the Gulf or in Europe. The advance FDA notification requires the flight information of the carrier, which transports the cargo into the US, and not the flight information from the country of origin. Providing such information would not be easy for Indian exporters as the cargo is transhipped at midpoint where there are a number of flights to the US. The cargo is also required to receive fresh approval 24 hours in advance from the mid-point hub before it finally enters the US. The cargo is likely to perish by the time the process is completed.

Evidently, there are problems in one or the other area in several countries which pertain to the issues covered by Articles X and VIII. However, the survey also indicates that only a few of the respondents mentioned problems in these areas. Many other exporters were not informed of formalities and procedures in the foreign countries since they were dealing through intermediaries. The respondents however, have detailed export-related problems faced by the exporter in India more extensively. Even those who commented on situations in foreign countries did not always consider problems in areas covered by the three GATT Articles most important. Several of them considered SPS related restrictions in destination countries far more important.

5.2 Cost-Benefit Analysis

In CTG meetings the representatives of several developing countries had stated that they certainly wished to achieve transparency, but this should not impose heavy administrative, physical and financial burdens or additional obligations on members. It was pointed out that the immense cost involved in undertaking future WTO obligations on changes in keeping with GATT Articles X, VII and V, might not favourably compare with the benefits. In this section we address this question.

Several authors and agencies have made attempts to estimate benefits of trade facilitation. Before we introduce these methods we must make it clear that they may serve, at the most, as starting points. All those attempts were for estimation of benefits of trade facilitation per se. The task before us is somewhat different. India has already initiated certain trade facilitation programmes. The costs and benefits of these programmes will be there even if at Cancun the Ministers decide to keep trade facilitation out of the purview of the WTO. If the decision is to keep it in, its implication will be some additional cost and benefit (or loss) for India. The task before us is assessment of the additional costs and benefits of any possible WTO discipline. We have to take into account the marginal cost of introduction of additional measures - above or against the already committed ones. We need to compare it not with the whole of the benefit of trade facilitation, but only with any additional benefit (or loss) that will accrue by adopting the WTO recommendations above or against the voluntary domestic approach to trade facilitation that India is pursuing. A suitable procedure for our analysis is to start with the standard identification and estimation methods for cost benefit analysis of trade facilitation. Thereafter, we will modify the standard method to account only for the WTO implications. This report contains only the elements of a cost benefit analysis of WTO's trade facilitation programme.

Benefit estimation methods

Trade facilitation reduces transaction cost of trade, which may be expressed as an identity:

BENEFIT of trade facilitation = Reduction in trade transaction COST.

In the use of the word 'cost' in the following introduction to cost-benefit analysis of trade facilitation, sometimes we refer to costs of trade facilitation measures and sometimes to costs of trade transaction for referring to benefits of trade facilitation measures.

Trade Transaction Costs consist[110] of Direct Costs like

1. Compliance costs: related to supply of information and documents
2. Charges for trade related services: e.g. trade insurance, port management

and Indirect Costs due to-

3. Procedural delays: time for clearance, etc.
4. Lack of predictability
5. Lost business opportunity

One way of studying benefits of trade facilitation is by directly looking at savings in trade transaction costs. As trade transaction costs are studied element-by-element, trade facilitation benefits may be examined measure-by-measure. Based on reports, impressions or sample surveys, some estimates may be obtained say, for reduction in time for customs clearance and cargo handling. This may be explained as benefits due to a certain trade facilitation programme. In India the EXIM bank studies are of this nature. Most studies do not make any effort to express improvements as savings in money terms. Some studies identify potential gains of trade facilitation as equal to the total transaction costs, which is not a correct approach. There are transaction costs that will not be possible to eliminate through trade facilitation measures. The benefits of trade facilitation therefore, will be smaller than total trade transaction costs.

A better method of estimation is to focus specifically at the trade facilitation benefits. All benefits do not accrue to everyone. There are also primary and secondary benefits. The following[111] is a list of the benefits of trade facilitation:

Trader Benefits

- Cutting costs and reducing delays
- Faster Customs clearance and release through predictable official intervention

[110] Source: OECD studies
[111] Source: UN Economic Commission for Europe

- Simple commercial framework for doing both domestic and international trade
- Enhanced competitiveness

Government Benefits

- Increased effectiveness of control methods
- More effective and efficient deployment of resources
- Correct revenue yields
- Improved trader compliance
- Accelerated economic development
- Encouragement of foreign investment.

The total impact on the economy is an issue that needs somewhat more complex considerations. From the perspective of a national economy, inefficient procedures are equivalent to trade taxes, providing a bias against foreign economic activity – both import and export. In contrast, more efficient procedures and lower transaction costs provide significant benefits to the economy[112] as:

Direct:

1. Increasing trade in goods and services

Indirect:

2. Promoting competition, thus enhancing efficiency in the use of resources, encouraging technology transfer and realising productivity gains
3. Increasing the incentives for international investment, economic growth from increased trade impact, higher living standards, etc.

One can only expect that effects of trade facilitation over time will be positive. But in the final analysis this is determined by the interplay of forces. Even if the net

[112] Source: OECD studies

benefit of trade facilitation on the economy is positive that may not be shared by all sections of people. In the multilateral trading system today, it is important to consider carefully the implications of trade policy measures for small and new actors, in particular developing countries and small and medium enterprises (SMEs). Asymmetric effects on SMEs in developing countries need special attention in any analysis of trade facilitation.

For estimation of benefits, three types of analytical techniques are used:

- Inventories of business complaints
- Detailed firm-level surveys
- Modelling trade and welfare effects.

The first two are easily understood. Modelling trade and welfare effects is a challenging task. At the most we can provide brief introductions of the approaches taken. The direct benefits of trade facilitation may be estimated by using a CGE (Computational General Equilibrium) model. The World Bank has developed a new approach for quantifying the economic impact of trade facilitation (Wilson, Mann, Otsuki, 2002). Instead of CGE the authors used a 'Gravity Model' approach. A massive database for all the APEC countries was prepared from survey and economic evidence. Seven indicators of trade facilitation were used to measure seven different categories of trade facilitation efforts. The indicators were: (1) port logistics, (2) customs procedures, (3) own regulatory environment, (4) standards harmonisation, (5) business mobility, (6) e-business activity, and (7) administrative transparency and professionalism. These indicators, the authors claimed, are able to represent APEC's framework for trade facilitation. The WTO definition is somewhat narrow. However, more interesting for the present study is the goal of the analysis. The World Bank study was directed to find which task of trade facilitation should be given priority for a country. The WTO instead, recommends a homogenous structure implicitly implying that the same task is important for all countries irrespective of their state of development.

Benefit estimation of WTO disciplining

A Common concern expressed in India is that WTO trade facilitation would bring in loss of revenue and create problems of national security. Both the apprehensions are based on wrong premises. Any reduction in customs revenue can only be related to the tariff reduction programmes of WTO norms. Trade facilitation does not propose tariff reduction. It is directed to obtain improved trader compliance and will instead, help in obtaining correct revenue yields. Regarding the national security issue, smuggling is still prevalent. The systematisation proposed under WTO is directed to obtain increased effectiveness of control methods. There are other benefits in store for the public sector.

As such, multilateral disciplines in trade facilitation may not be difficult to implement for the Government of India. The country is already on the route. The general direction of the reforms is compatible with WTO disciplines. Indeed, in some areas, where the reforms are slow or off the track, demand for stringent standard, time bound programme and accountability will keep reforms in track. Several measures taken in India, including EDI, are not always in harmony with international systems. Policy directives for harmonisation are needed to avert future complexity, but are still awaited. Because of the size, and democratic political structure, co-operation and co-ordination among different authorities is a complex problem. Legal changes are also needed to make many existing facilitation measures effective. These are areas where considerable groundwork needs to be done in India for effecting a change, and hence the progress is hesitant. If a WTO-induced compulsion adds momentum to ongoing or to pending co-ordination work it will be welcome. The proponents of trade facilitation argue that binding obligations are desirable even though a country has voluntarily embarked upon trade facilitation because of two reasons:

(a) A binding obligation creates the political will to get things done.

(b) It ensures that all Members are heading in the same direction.

This is certainly true for India.

However, a developing country like India should be cautious in agreeing to negotiations. History of negotiations has made the developing countries apprehensive

that a WTO mandate will not be restrained enough to meet their interests. The negotiators representing developed countries are generally unable to understand and appreciate the reasons advanced by the developing-country negotiators. Sometimes the ignorance is genuine, sometimes the developed country negotiators feign ignorance in the cut-throat trading world. Some of the areas where negotiations may adversely affect India's interests may be read from discussions in Chapter 4. To recollect a few:

In matters like consultative mechanisms and notification, the WTO obligations may be more demanding than the existing practices. Physical and structural constraints make it difficult to improve some procedures. Even though some developed countries have required several years of sustained efforts to introduce certain procedural reforms, in the WTO they may not show sufficient consideration to the developing countries requirements. Procedures recommended by international agencies but not preferred by traders of developing countries are not unknown. A WTO discipline may insist on some specific review and appeal procedures, different from the existing Indian procedures, but without any additional gain. In the Indian federal structure fees and charges are levied by States as well, some of which may come under scrutiny under WTO.

There are apprehensions that a WTO Agreement may limit the ability of customs officials to deal with cases where goods are deliberately under- or over-valued by the importers. Owing to much higher rate of tariffs, Customs-related malpractice is less in developed countries, whereas in the developing countries there is a greater incidence of smuggling, undervaluation, misclassification as well as importation of substandard and counterfeit/pirated goods. It is argued that security of revenue demands greater control and vigilance since goods get diverted en route within the transit country itself without payment of duty. According to Finger and Schuler (1999), where the tariffs are high and accounting expertise and access to electronic information limited, shifting to a risk-based valuation system that depends on in-depth examination of a sample (15 or 20 per cent) of shipments might increase (rather than decrease) the number of shipments on which importers attempt to under-invoice. Traders might view the change as giving them a better, not worse, chance to get away with under-invoicing. However, these arguments seem to be based on

imperfect understanding of the suggested procedures. Risk analysis is conducted with the sole purpose of paying greater attention to high risk shipments instead of dividing the resources equally. If high risk areas are correctly identified in the risk analysis method adopted, the approach will increase the intensity of scrutiny of such areas leading to consequent reduction in chances of getting away with under-invoicing. In effect, it allows greater control and vigilance where needed and therefore, is not likely to have adverse effect on security of revenue. But there are genuine problems in some other spheres, which may limit the ability of the customs officials to deal with deliberately under- or over-valued imports. The success of a risk management strategy is heavily dependent on the feasibility of post-clearance audit. India has just taken some preliminary steps for conducting post-clearance audit. It will be years before a functional system is established. Many European countries have taken a decade or more for post clearance audit system to take root.

On the whole, a sufficiently long period may allow India to implement most of the multilateral regulations. An important factor that would act as a very serious deterrent for India in realising trade facilitation benefits is the infrastructure bottleneck. This point has been raised time and again by the developing countries. If port capacities do not increase simultaneous to the increase in international trade due to trade facilitation measures, then cargo would have to wait for longer for berths, offsetting the benefits. In a country of continental proportions like India, developing infrastructure and human resources to match world standards would require enormous resources and would take time. We will not deal with this point any further hoping that the importance is easily perceived.

Finally, it is not very meaningful to talk of benefits of trade facilitation without taking into account NTBs. Issues related to technical regulations and standards, not just customs procedures, have become an increasing source of conflict in the WTO. While developed countries are critical of the customs procedures of developing countries, the latter are increasingly worried about the imposition of ever expanding technical regulations and standards by industrial countries (Messerlin and Zarrouk, 1999). For example, an estimated 60 percent or more of U.S. exports are subject to mandatory health, safety, and related TRS. For exports to the EC, government-issued certificates were required for 45 percent of these goods, whereas

private, third party certification was accepted in 15 percent of the cases, and for the remainder manufacturers' self-certification sufficed.

Trade facilitation includes a whole set of procedures for clearance of goods starting from the time of arrival at ports to deporting to warehouses. Improvements in some aspects may also be offset by increase in trade restrictive measures in some other areas. This is a point of concern in the WTO regime. Under the aegis of the WTO the demands for technical regulations and standards -- from testing and certification to the origin of the imported products -- have rapidly become more important as barriers to international trade. In the EC, some 75 percent of the value of intra-EU trade in goods is subject to mandatory technical regulations. (Messerlin and Zarrouk, 1999). Delays in clearance for NTBs like SPS lead to an increase in the transaction value. This increase in transaction value is writing off the effect of even the decrease in tariffs brought about by the WTO. The limited trade facilitation efforts being proposed now may not have much benefit if the NTBs continue. In fact, future negotiations of trade facilitation may further increase the demands for technical regulations and standards, hence the cost of complying. Much has been said about the SMEs benefiting from trade facilitation. They will benefit no doubt, from true trade facilitation; but not in the present situation where NTBs act increasingly as trade barriers[113]. In Chapter I we have shown how the trade facilitation work in the WTO has gradually eliminated all such trade facilitation-related issues while zeroing in on the three GATT Articles.

Summarizing, (a) technical and financial assistance for infrastructure development, (b) a WTO mandate sufficiently restrained to reflect developing country situations, including sufficiently long time for implementation of the multilateral agreements, and (c) widening of the trade facilitation agenda to include NTBs as well instead of the current narrow scope, are the three requirements which need to be met for India to benefit from trade facilitation negotiations.

Before concluding this section we must note the internal dimension of realization of benefits. Domestic reforms must match with foreign trade. Otherwise the domestic traders will be at a disadvantage when global trade is privileged with the

[113] Redundant testing and conformity assessment procedures faced by Hewlett-Packard increased six-fold over the years 1990-1997. (Messerlin and Zarrouk, 1999).

aid of the WTO. The Kelkar Committee had very correctly put equal stress on trade facilitation on both the fronts – domestic and international trade. The domestic trade agenda is not in our purview. Nevertheless, it is important to point out that the benefits of trade facilitation under the aegies of the WTO will result in uneven benefits if the domestic sector trade continues to suffer from apathetic policies.

Cost estimation

In contrast to benefits, the costs of trade facilitation have not been inquired in to in detail. An OECD study brushes this issue away as:

> *Although trade facilitation measures will typically entail some costs (e.g. for training and for implementing new procedures, equipment (especially for information technology) and even infrastructure, it can be assumed that the overall net effects of trade facilitation over time will be positive.*

This may be acceptable for assessment of the importance of trade facilitation in isolation. But there are many other activities and programmes for which one can make such statements of merit. However, resources are scarce. Economic decision-makers have to choose between several viable projects and programmes. Hence the cost of trade facilitation cannot be brushed aside. The World Bank study (Wilson et. al., 2002) was directed to find out which trade facilitation activity should be given priority in each of the countries studied.

The question of cost is indeed doubly important because of the proposal to bring trade facilitation under WTO purview. The WTO mandates consist not merely of classical international trade issues like tariffs and quantitative restrictions. Institutional mandates as on customs valuation, intellectual property rights, SPS and TBT standards, etc, are now very much parts of global trade considerations. In a sharp criticism J. Michael Finger, lead economist for trade policy at the World Bank, pointed out that the WTO regime has compelled developing countries to spend large sums to achieve higher levels of plant and animal sanitation, upgradation of intellectual property laws and enforcement and so on. A proper approach would have been to find whether these were the best investment opportunities or the money should have been invested in some other alternatives. Trade facilitation too is an institutional agenda. Its desirability is not in doubt. But a proper cost-benefit analysis

is needed before it is accepted – under WTO directives – to determine whether this is the investment priority of the moment.

Cost of trade facilitation too has to be defined starting from trade transaction cost. Basic cost of operation of customs and other trade-related public services are unavoidable. Any changes in these services may entail additional costs which will be cost of trade facilitation. These may include -

1. Cost of equipment, especially for information technology
2. Cost of implementing new procedures
3. Costs of training
4. Costs of dispute settlement

The first three may be mainly short-term costs, though that does not mean that the amount required is nominal. But contesting disputes in the WTO may be perpetual. However, there is an opinion that the scope of WTO dispute settlement agenda in the area of trade facilitation is limited, as evident from the limited number of disputes noted in the past under GATT Articles X, VIII and V.

Infrastructure cost is not considered as a trade facilitation cost, but in reality it is. The World Bank extends support for roads, etc. in the name of capacity building for trade facilitation.

5.3 Technical assistance and capacity building

As mentioned earlier, two types of measures are regarded as technical assistance and capacity building in the area of trade facilitation – (a) meeting infrastructure needs, and (b) training programmes to educate customs and other officials dealing with trade facilitation. If the necessary infrastructure does not exist in developing countries, irrespective of the kind of rules formulated, and irrespective of the steps taken to strengthen the three Articles, these countries would still not be able to meet the expectations of developed country Members. In most other trade policy areas in WTO, technical assistance is required primarily for strengthening the capacity of developing country officials to participate in WTO negotiations and to implement commitments. But technical assistance in customs reform and modernization involves providing physical infrastructure and institutional know-how, and thus requiring large

commitments in terms of time and money. In one of the World Bank technical assistance programmes, it turned out that only Tanzania's requirements of technical assistance amounts to $8-10 million in trade facilitation (Wilson et. al., 2002). Even though India has initiated some trade facilitation measures, the country still needs massive financial and technical support to effectively implement trade facilitation. The three areas where technical assistance is needed are: (a) technical assistance software, (b) technical know-how, and (c) equipments. Alternatively, financial assistance may be granted for meeting these needs.

From the discussions of problems in the previous chapter one may identify several areas where training and human resource development are needed. A concerted effort to identify such areas as well as the agencies to impart training should be made by the departments requiring such training. The CBEC has initiated an institutionalized training programme run by NACEN and the Commissionerates also conduct in-house training programmes from time to time. The Kelkar Committee however felt, that the common perception is that much more needs to be done in training the officers. The Committee also suggested that the CBEC should make full use of the technical assistance of multilateral agencies such as the World Bank, the Asian Development Bank and the World Customs Organization, and suggested that a UN body, the Center for Facilitation of Procedures and Practices for Administration, Commerce, and Transportation (CEFACT- UN/ECE) be contacted for assistance. The Department of Commerce and the CBEC must find out the areas where technical assistance may be sought.

References:

Asian Institute of Transport Development, 1999: "Workshop on International Conventions on Land Transport Facilitation", organised by the Asian Institute of Transport Development from May 19-21, 1999, New Delhi.

Department of Administrative Reforms and Public Grievances, Government of India, 1996: "Study of Procedural Aspect of Export-Cargo Clearance by Customs Department of Indira Gandhi Airport", New Delhi. http://persmin.nic.in/arpg/PGP-AIRPORT.htm.

Department of Commerce (Economic Division), 2002: "Report of the Committee on Informal Cross Border Trade", Ministry of Commerce and Industry, Government of India.

EXIM Bank of India, 2002: "20th Annual Report 2001-2002".

_____ 2003: "Transaction Costs of Indian Exports: A Review", Working Paper No.4, EXIM Bank of India.

Finger, J. M. and Schuler, P., 1999: "Implementation of Uruguay Round Commitments: The Development Challenge", Policy Research Working Paper No.2215, World Bank, (Internet).

Finger, J. Michael, 2000: "The WTO's Special Burden on Less Developed Countries", *Cato Journal,* 19 (3), Cato Institute.

Government of India, 2003: "Union Budget 2003-2004", Budget Speech.

Kelkar, V., 2002: "Final Report on Indirect Taxes", New Delhi.

Messerlin, Patrick A. and Jamel Zarrouk, 1999: "Trade Facilitation: Technical Regulations and Customs Procedures", WTO-World Bank *Conference on Developing Countries' in a Millennium Round*, , 20-21 September 1999 ,WTO Secretariat, Geneva.

Ministry of Commerce, Government of India, 1999: "Report of The Expert Committee on an Integrated Approach to the Movement of Goods in International Trade".

OECD, (n.d): "Costs And Benefits of Trade Facilitation", Kleitz, A., Trade Directorate.

_____ 2002: "Business Benefits of Trade Facilitation", Matsudaira, T. supervised by Anthony Kleitz, Working Party of the Trade Committee.

Rege, V., 2002: "Points Made on Selected Issues in the Case Studies on Trade Facilitation: Synthesis Document", Workshop organised by the Commonwealth Secretariat on Trade Facilitation, 26 - 28 Sept. 2002.

Rege, V., 2002: "Comments on the Proposals Tabled by Delegations in the WTO Discussions for Clarification of GATT Articles X and VIII", Workshop organised by the Commonwealth Secretariat on Trade Facilitation, 26 - 28 Sep. 2002.

Sarkar S. K. and Sundar S., 1999: "Background Paper on the Port Sector "in Transition to a Liberalized Environment: Experiences and Issues in Regulation, edited by L Srivastava and S K Sarkar, pp. 255–262, Tata Energy Research Institute, NewDelhi.
http://www.teriin.org/division/regdiv/docs/ft03.pdf

Satpathy, C., 2002: " Trade Facilitation: A Singapore Issue Knocking at WTO's Door" *Economic and Political Weekly*, 37 (17), pp1587-90.

Sundar, S., 2000: "Port Restructuring in India", *in Second SAFIR Core Training Course on Infrastructure Regulation and Reform*, (Sri Lanka, 4 -15 December 2000) Tata Energy Research Institute, NewDelhi.
http://www.teriin.org/division/regdiv/docs/ft22.pdf

Taneja, N. and Pohit, S., 2002: "Characteristics of India's Informal and Formal Trading with Nepal: A Comparative Analysis", *Indian Economic Review*, Vol. XXXVII, No. 1, pp. 69-89.

UN/CEFACT, 2001: "Compendium of Trade Facilitation Recommendations", United Nations, (Internet).

UN Economic Commission for Europe, (n.d): "Trade Facilitation – An Introduction to the Basic Concepts and Benefits."
www.unece.org/trade/forums/forum02/docs/02tfbroch.pdf

Varde, V. et. al., 2001: "Dwell Time Study of Import-Export Cargo", Agricultural Finance Corporation Ltd, Mumbai. (mimeo)

Varde, V. et. al., 2002: "Study of Process Re-Engineering at Mumbai Port" Agricultural Finance Corporation Limited, Mumbai. (mimeo)

Verwaal, E. and Donkers, B.,2001:"Customs-Related Transaction Costs, Firm Size and international Trade Intensity", ERIM Report Series ,ERS-2001-13-MKT, Erasmus Research Institute of Management, The Netherlands. http://www.eur.nl/WebDOC/doc/erim/erimrs20010226105731.pdf

World Bank, 2002: "India's Transport Sector - The Challenges Ahead", Volume 1 & 2.
http://www.worldbank.org.in/sar/sa.nsf/6062ad876fb8c066852567d7005d648a/6fcfc02e809feb0c85256beb00440cde?OpenDocument

____ 2002a: "Trade Facilitation and Economic Development: Measuring the Impact", Wilson, J.S. et. al. (mimeo).

____ 2002b: "Trade Facilitation: A Development Perspective in the Asia Pacific Region", World Bank & Asia Pacific Economic Cooperation, Wilson, J.S. et. al. 2002.
http://econ.worldbank.org/files/20929_APEC_TF_Report_Final.pdf

Annexure – I

Doha Ministerial Declaration: Trade Facilitation

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

Annexure – II

GATT 1994: RELEVANT ARTICLES

Article X: Publication and Administration of Trade Regulations

1. Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefore, or affecting their sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. Agreements affecting international trade policy which are in force between the government or a governmental agency of any contracting party and the government or governmental agency of any other contracting party shall also be published. The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

2. No measure of general application taken by any contracting party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefore, shall be enforced before such measure has been officially published.

3. (a) Each contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.

(b) Each contracting party shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement and their decisions shall be implemented by, and shall govern the practice of, such agencies unless an appeal is lodged with a court or tribunal of superior jurisdiction within the time prescribed for appeals to be lodged by importers; Provided that the central administration of such agency may take steps to obtain a review of the matter in another proceeding if there is good cause to believe that the decision is inconsistent with established principles of law or the actual facts.

(c) The provisions of sub-paragraph (b) of this paragraph shall not require the elimination or substitution of procedures in force in the territory of a contracting party on the date of this Agreement which in fact provide for an objective and impartial review of administrative action even though such procedures are not fully or formally independent of the agencies entrusted with administrative enforcement. Any contracting party employing such procedures shall, upon request, furnish the CONTRACTING PARTIES with full information thereon in order that they may determine whether such procedures conform to the requirements of this sub-paragraph.

Article VIII: Fees and Formalities connected with Importation and Exportation

1. (a) All fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.

(b) The contracting parties recognize the need for reducing the number and diversity of fees and charges referred to in sub-paragraph (a).

*(c) The contracting parties also recognize the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements.**

2. A contracting party shall, upon request by another contracting party or by the CONTRACTING PARTIES, review the operation of its laws and regulations in the light of the provisions of this Article.

3. No contracting party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.

4. The provisions of this Article shall extend to fees, charges, formalities and requirements imposed by governmental authorities in connection with importation and exportation, including those relating to:

(a) consular transactions, such as consular invoices and certificates;
(b) quantitative restrictions;
(c) licensing;
(d) exchange control;
(e) statistical services;
(f) documents, documentation and certification;
(g) analysis and inspection; and
(h) quarantine, sanitation and fumigation.

Article V: Freedom of Transit

1. Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a contracting party when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the contracting party across whose territory the traffic passes. Traffic of this nature is termed in this article "traffic in transit".

2. There shall be freedom of transit through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties. No distinction shall be made which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or of other means of transport.

3. Any contracting party may require that traffic in transit through its territory be entered at the proper custom house, but, except in cases of failure to comply with applicable customs laws and regulations, such traffic coming from or going to the territory of other contracting parties shall not be subject to any unnecessary delays or

restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.

4. All charges and regulations imposed by contracting parties on traffic in transit to or from the territories of other contracting parties shall be reasonable, having regard to the conditions of the traffic.

*5. With respect to all charges, regulations and formalities in connection with transit, each contracting party shall accord to traffic in transit to or from the territory of any other contracting party treatment no less favourable than the treatment accorded to traffic in transit to or from any third country.**

6. Each contracting party shall accord to products which have been in transit through the territory of any other contracting party treatment no less favourable than that which would have been accorded to such products had they been transported from their place of origin to their destination without going through the territory of such other contracting party. Any contracting party shall, however, be free to maintain its requirements of direct consignment existing on the date of this Agreement, in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of the goods at preferential rates of duty or has relation to the contracting party's prescribed method of valuation for duty purposes.

7. The provisions of this Article shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage).

Annexure – III

SUBSTANTIVE COMMENTS ON CERTAIN ISSUES

(a) Review and Appeal Mechanism

The regular appellate machinery broadly works under the following mechanism:

There are four tiers of officials -

Assistant Commisioners → Deputy Commisioners→Joint

Commissioners→Commissioners

The first round of appeals to the Commissioner (appeals)

↓ ↓

Majority of cases to be decided by the Commissioner

↓

Appeals against Commissioners' order go to CEGAT

↓

A percentage of cases go to the High Court

↓

And finally the Supreme Court arbitrates the cases which move up

Alternate to this system is the Settlement Commission which was set up in 1998 to deal with tax and trade related disputes and offences. It is claimed that under this system, settlement of cases is speedier and more efficient.

The review and appeal procedures within the judicial and administrative system in India are fairly comprehensive. The redressal machinery is superior to many other countries. In comparison, many other countries have very little review and appeal

procedure in place, and Indian exporters are sure to benefit if WTO can compel them to improve. The apprehension that we expressed about WTO discipline was because of two reasons:

(i) On the executive side, the system is modernized but the execution gets delayed, and procedural delays lead to delay in trade. Certain provisions of the judiciary are still archaic. Indian laws are strong, but there are serious problems and shortcomings in effective implementation of the existing system.

(ii) The WTO discipline in this area may even be too demanding. Canada and the European Communities have suggested a mechanism to allow goods to be released and the possibility, in certain situations, for payment of duties and taxes to be left in abeyance, subject to the payment of a surety, guarantee or other form of bond pending the outcome of the appeal. In certain circumstances, pending an outcome of an appeal, goods could be released on the basis of the provision of collateral or some form of monetary security to ensure that obligations of importers, exporters, warehouse operators or international transporters of goods are met. Such reforms, requiring amendment of national legislation, may be too demanding.

By way of precedents for review and appeal mechanisms in the WTO system, attention has been drawn to the mechanisms that can be found in a number of WTO agreements, for example the Agreements on Countervailing Measures and Anti-Dumping Practices, Customs Valuation, Import Licensing, Rules of Origin, Preshipment Inspection and TRIPS and in paragraph 3(b) of Article X of the GATT 1994.[114] A note by the Secretariat that was prepared in response to a request by the Working Group reproduces the relevant provisions in the WTO Agreements.[115] In response, the point has been made during discussions in the Working Group[116] that WTO agreements do not have a consistent approach towards domestic review procedures. It might not be feasible to transpose the provisions regarding review mechanisms in other WTO Agreements into a transparency agreement since the scope of the rules under those Agreements go beyond simple transparency obligations.

(b) Risk Assessment

Risk assessment is contrasted with a full-scale transactional compliance approach which envisages the comprehensive examination at the border of each shipment for full compliance with all requirements. A risk management system is focussed on identifying higher-risk areas among clients, industry sectors, and trade chains. Using tools such as links with international enforcement agencies, data from carrier reservations systems, client profiles, and customs audits, customs officials will be able to focus resources on identifying and effectively attending to areas of higher and unknown risk thereby freeing up time and resources for other purposes. The Revised Kyoto Convention has a Chapter in the General Annex, Chapter 6 – Customs Controls, which set out the Standards for application of Risk Management. The chapter consists of –

[114] WT/WGTGP/W/15.
[115] WT/WGTGP/W/3.
[116] WT/WGTGP/W/33, 3 October 2002

6.1. Standard: All goods, including means of transport, which enter or leave the Customs territory, regardless of whether they are liable to duties and taxes, shall be subject to Customs control.

6.2. Standard: Customs control shall be limited to that necessary to ensure compliance with the Customs law.

6.3. Standard : In the application of Customs control, the Customs shall use risk management.

6.4. Standard : The Customs shall use risk analysis to determine which persons and which goods, including means of transport, should be examined and the extent of the examination.

6.5. Standard : The Customs shall adopt a compliance measurement strategy to support risk management.

6.6 etc.

The full legal text and accompanying implementation guidelines, including that of risk management, for the Revised Kyoto Convention is available on CD-ROM. Individual Implementation Guidelines are available for each Chapter of the General Annex and for each of the Specific Annexes. The guidelines permit enough flexibility, e.g.

> Risk management can operate in any organization with manual or automated systems and its application can range from the strategic to tactical level. Whilst the overall risk management principles remain the same for all administrations, each Customs Administration will need to develop and refine its own individual risk management regime to meet national and departmental objectives. Risk management is supported by risk assessment which comprises of a series of technical processes intended to identify and quantify individual risks. The Customs Control principles based on Risk Management also require Customs control systems to use audit-based controls such as post clearance audit and traders systems audit[117].

WCO is not the only agency developing risk assessment standard. Canada claims that it has developed a number of streamlined or special procedures, based on risk assessment principles to facilitate "fast-track" clearance. Canada has expressed interest in discussing with WTO Members the possibility for developing specific technical assistance/training in this area.

[117] G/C/W/407, Communication from the World Customs Organization

(c) Acceptance Of Commercially Available Information

Data requirements should be the minimum necessary for effective controls, should be based on international standards, be aligned to data required for other control purposes, and be based as far as possible on commercially available information. Unnecessary or excessive data or documentation requirements (e.g. irrelevant data requests, non-acceptance of commercially available information, multiple forms, multiple authorisations and fees, consular invoices) create delays and additional costs for traders. Acceptance of relevant commercially available information and documents, except for some justifiable case, should be the norm. Republic of Korea has suggested that acceptance of commercially available information and copies can be introduced without delay, on the ground that it does not involve a significant financial or administrative burden[118]. The EC has suggested regular review of data requirements in consultation with the affected business community, in order to move into a process of continued simplification – a principle comparable to that already found in TBT Article 2.3[119].

(d) Single Window System

"Single window" is an arrangement through which a trader can submit, once and for all, the required data to a single agency for various official purposes. In other words it implies the establishment of the principle that submission of data or other information requirements either for export or import be one time only and to a single agency (normally customs or a trade department), which will then ensure onward transmission of data to other relevant agencies, and interagency co-ordination thereafter.

The WCO has recognized that one of the key strategic issues for the future would be the development of the concept of the "single window". It is envisaged that the main technical committee dealing with procedural matters within the WCO in this regard will develop the strategic and policy issues and at the implementation level will be addressed by other WCO initiatives such as the WCO Data Model. The WCO Customs Data Model aims to include other governmental regulatory requirements in order to establish a single-window environment. This may allow traders to exchange information only once with a single official body, preferably Customs, to fulfil all regulatory requirements related to an import or an export. This work will require the involvement of other regulatory authorities and international bodies in the work of the WCO Customs Data Model. The WCO is also co-operating with the UNECE in its work towards the development of a formal Recommendation to governments and business on the establishment of a Single Window and a practical guide that is to accompany the Recommendation.

When identifying its scope, it needs to be noted that a "single window" concept seems practical and feasible only in an electronic environment. No international

[118] Secretariat Compilation, 15 November 2002, G/C/W/434

[119] CTG Meeting, 22, 23 and 30 July, 2002, G/C/M/64

instruments could be found which provide for a single-window approach. However, one useful differentiation could be made between data and information required for the release of the goods and such data and information that is not. For the present the G7 initiative agreed to include the following areas in their Feasibility Study on Other Governmental Departments/Agencies: food, pharmaceutical products, drugs, animal and plant health and quarantine. With this limitation the following WCO/Customs Instruments apply[120]:

KYOTO CONVENTION

Existing Convention of 1973

Annex B.1 (Clearance for home use), Standard 11, paragraph 2:

The competent authorities shall require the Goods declaration to provide only such particulars as are deemed necessary for the assessment and collection of import duties and taxes, the compilation of statistics and the application of the other laws and regulations which the Customs are responsible for enforcing.

Annex C.1 (Outright exportation), Standard 8, paragraph 2;

The Customs authorities shall require only such particulars as are deemed necessary for the assessment and collection of any export duties and taxes chargeable, any repayment of, or exemption from, internal duties and taxes, the compilation of statistics and the application of the other laws and regulations which the Customs are responsible for enforcing.

Proposed revised Convention

General Annex, Chapter 3 (Clearance formalities), Standard 12:

"The Customs shall limit the data required in the Goods declaration to only such particulars as are deemed necessary for the assessment and collection of duties and taxes, the compilation of statistics and the application of Customs law."

Single Windows access would function efficiently only if a proper IT infrastructure and an efficient mechanism for information flow among the various authorities were established. The introduction of the concept of single window on a world-wide level also requires top-level political commitment.

[120] G/C/W/132/Rev.1

(e) Official Control

Lack of coordination among different agencies concerned with import and export, and the resulting requirement to subject cargoes to multiple checks at different times and places, has been cited by traders as a major drawback. In view of the multiplication of regulatory controls worldwide, some rationalisation of procedural aspects of such controls is essential to improve trade flows. Thus, where documentary or physical verification of consignments by more than one agency is necessary this should be carried out at a single place and time, to the extent possible, and at hours that meet traders' needs. This is known as Convergence of official controls.

The Standard *3.35* of Chapter 3 of the General Annex on Clearance and other Customs formalities of the Revised Kyoto convention requires that Customs should ensure that their inspections are co-ordinated with other competent authorities and are carried out at the same time.

> In the interest of cost-effectiveness and efficiency to both governments and the trade, Customs may give consideration to re-engineering its clearance process based on this Standard. It could establish an inspection service or compliance verification process that is integrated with the other competent authorities that have a vested interest in controlling the movements of goods. *Such a convergence of controls into a single control to meet all government requirements is an important trade facilitation measure*. It would concentrate and optimize inspection expertise at designated (Customs) offices, and would be particularly beneficial at locations that have a high volume of imports or exports requiring special examination procedures. To achieve the maximum efficiency and effectiveness for all government compliance verifications, such high-volume locations that offer single controls could provide clearances 24 hours, 7 days a week[121].

The EC has in two broad areas suggested measures to streamline official controls by different agencies, including agencies whose operations fall under the TBT Agreement. First, the principle that submission of data or other information requirements either at export or import be one time only and to a single agency (normally customs or a trade department), which will then ensure onward transmission of data to other relevant agencies, and interagency coordination thereafter. EDI is obviously an important element in the functioning of such arrangements. Second, related provisions to ensure, notably at import, that goods entering a country are subject only to a single (if at all) intervention, normally by customs on behalf of other agencies. In other words, administrations would ensure, over time, a level of coordination and delegation of controls to customs to enable all verifications (e.g. health and safety data and certification, sanction controls, IPR verification, import licence checks, export subsidy verification) to be done once only and in one place. The aim should be to set a norm of such integration, subject of course to exceptions where customs may not be qualified to carry out specific expert functions. Clearly, agencies operating health, safety and environmental checks on goods entering the ports would be part of such coordinated procedures. The benefits of working towards such systems are manifold. Trade and transport interests benefit in terms of reduced delay and cost from a one stop procedure that fits to their commercial rhythms and needs, and allows them to organise their compliance

[121] G/C/W/407

and cooperation much more efficiently, while the use of a single interface with the administration makes it easier for traders to align their computer networks with the receiving agency. Administrations benefit through the optimal use of their resources and personnel, and through improving control levels and results[122].

[122] G/C/W/136, G/L/299, S/C/W/101, IP/C/W/131

Annexure – IV

ANALYSIS OF AUTOMATION WORK IN TF

Earlier in the text, it has been noted that much more needs to be done and at a more rapid pace for EDI in international trade. The following is an account of the strength and weakness of EDI in India, in the sphere of international trade. The study is largely based on observations and interviews. In spite of repeated efforts we could not obtain any written record of meetings, resolutions, announcements, policy papers, guidelines, or other details. According to the senior officials decisions were arrived at in meetings, where designs and other details were discussed threadbare, and that much of this has been done in consultation with the international organizations. We were not able to find any of the resolutions or designs, nor were junior officials aware of any plans. Traders complained that introduction of EDI has not been effective. The officials respond that everything will be set right after the Customs Gateway project is complete; but there is no sign of its nearing completion. The concerned department claims success in many experimental steps. There is no explanation why these steps have not been adopted, or what is the plan of extension. Some Customs officials claim that they had started automation on their own initiative. After the government started relying on third party services the earlier efforts of the departmental staff have been discarded. The following is a summary of our findings:

General Observation

1. Every entity has used its IT capabilities very effectively to create systems.

2. Each of them are operating well and the people involved are very proud of their systems.

3. There is a complete lack of understanding on standards and the need for standards (EDI related).

4. There are no documented architectural framework in keeping with International standards.

5. The documented processes do not lean towards the Standards.

6. There are no strategies for trends and the need to plan for future for EDI support. Everyone believes that all these problems will be tackled after the Customs Gateway Project.

The government departments use third party services to capture and manage the data related to EDI. These are managed using flat files. These are not related to any of the standards. The flat file definitions are provided by NIC. Every other department is hopeful that after the Customs EDI Gateway all the activity can be online. This is doubtful. There were no details on time frame, standards and integration issues that will come at the time of implementation of Customs Gateway Project.

Customers are concerned for reasons like the following:

1. Inordinate delay in settlement of drawback claims from customs houses.

2. The process is complex for brand rate application. This seems to be the cause for delay in refunds.

3. Non-availability of software package such as supplementary claims is piling returns.

4. Many times, it takes 30 days to get EDI shipping bill.

5. Refund of Excise Duty is a severe problem.

It is not an exhaustive list but would give the flavor of the problems.

Problem Diagnosis

There are many factors that restrain the government departments in India from providing full potential of EDI facilities. These are listed below as:

Technological

1. International Standards change creating the need to adopt rapidly. The needs are not met.

2. Large initiative required to manage the regression and load testing of the developed solutions are not feasible within the resources.

3. Expensive technologies that offer marginal row increase in productivity.

4. Connecting extreme ends is a daunting task. On one hand, several customers have manual operation. On the other, several customers have gone past the technical capabilities of the service organization. To manage these two ends is tough.

Operational

1. Lack of willingness to evolve our own standard (This is more of a political positioning to get attention from the international community. Countries like China, Japan and HK have effectively managed to synchronize with the standards).

2. Lack of readiness to adopt EDI by certain government entities. The technology implementation is not uniform across government organizations. The departments implementing EDI will have to maintain both a paper solution and a paperless solution. This approach is very resource intensive.

3. Security is of paramount for private organization and many private organizations do not have the confidence that their privacy will be protected. In present EDI in India security mechanism is absent.

4. Most of the EDI centers are using manual entry for making a transaction. This can only scale up to a certain level. Chennai Air cargo authorities for example, have managed the crisis using several creative time / resource management practices. However this will have to be seriously looked into for

more efficiency and scaling up as well. For instance, they are managing around 400 transactions on a daily basis. With proper technology architecture and process maintenance, this should scale up to 10 times this value. There were no proper metrics to measure performance or process to evaluate the extendibility of the technology in place.

Resources

1. Several departments are struggling with a two-fold problem. Lack of technically trained resources and lack of physical resources.

2. There is no technical team to help with architecting the solutions, as a result the solutions are arbitrary and non-standard.

3. There is lack of appreciation of efforts put in. While the people involved have done lot of work and so far has managed the activity well, it does not help much in achieving the trade facilitation goal.

4. Lack of knowledge of standards is complicating the issues. There is also clear lack of knowledge to understand the need for standards.

5. There is a total lack of EDI expertise to manage a comprehensive solution. There is excellent IT expertise to build the system. Individually, people have built the systems well. They do not connect well or extend.

Business

1. EDI resource centers are excellent business models for the centers and the department hiring them. However, these centers do not handle technology integration. There are long queues and waits and this does not give a picture of technological efficiency. No resource planning or a business model exists to manage the services. Cost and benefit is not favourable to the users.

2. Solutions are not architectured. Currently the solution provides service for the existing customer only. Ideally, it should continue to provide support for legacy systems, extend support for future systems, and provide services across heterogeneous systems.

3. There is no organization to cover the QoS (Quality of Service) issue.

4. Issues related to security are managed by manual process.

Tasks Needed

The following are the gap areas identified and the tasks needed: -

1. EDI expertise: An expert group with a good mix of functional and technical expertise of EDI may greatly improve the functioning of the present system by providing specific deliverables (such as policy, goals, architecture, practice, certification, service and education).

2. Planning and Policy Making: There is no authority dedicated to systematically work in the following matters - (a) developing policies, (b) setting goals, (c) adopting suitable architecture, (d) deciding EDI practice,

and (e) arranging certification[123]. The need is to form such an authority. This authority also needs a feedback process from the users to fine tune the needs and achieve set goals.

3. Training: In Global trade, it is essential to be prepared for accepting standard based (EDI) transaction. While individuals have good practice knowledge, much needs to be done via training and capacity building to address this effectively. It is necessary to address issues related to proliferating technologies and a proper method by which every one gets knowledge to manage these areas effectively.

The vertical markets, such as healthcare or Insurance are not handled here. However, similar template could be used to manage that part of the EDI as well.

123 The tasks are explained below:

Policy: issues related to business practices, government regulations, rules capturing etc.,

Goals: metrics such as number of transactions to be managed, what levels of service to be delivered, what percentage of global trade are we expecting to handle etc.,

Architecture: the issues of technically managing the systems to provide service for existing customers, provide bridge for the legacy systems, provide extendibility structure for future expansion and connect the system heterogeneously to other systems.

EDI practice: issues related to run EDI practice e.g. user, design, integrated solutions to the end user. In this, additional customization can be handled for business rules.

Certification: issues related to certifying, auditing and managing the process effectively. This is needed to ensure the QoS related issues.

Annexure V

INTER COUNTRY COMPARISON OF TRADE FACILITATION

Table – 1: International Conventions and Contracting Parties

Contracting Parties	CTemp	CCTemp	CCDisplay	CAdv	ICHFCG	IMO	Montreal	Kyoto
Finland, Sweden, Denmark, Netherlands, Belgium, Hungary, Switzerland, France, Greece, Italy, Spain, Portugal, United Kingdom, Ireland,	+	+	+	+	+	+	+	+
Czech Republic, Poland, Austria, Germany, Luxembourg,	+	+	+	+	+	+	not	+
Slovenia, Croatia	not	+	+	+	+	+	+	+
Australia	+	+	+	+	not	+	+	+
Norway	not	+	+	+	+	+	+	+
Slovak Republic	not	+	+	+	+	+	not	+
Turkey	+	+	+	+	not	not	+	+
Israel	+	+	+	+	not	+	+	not
Cuba	not	+	+	+	+	+	not	+
United States	not	+	not	+	not	+	+	+
Canada	not	+	not	+	not	+	+	+
Korea	not	+	+	+	not	+[124]	not	+
INDIA	**not**	**+**	**+**	**+**	**not**	**+**	**not**	**+**
New Zealand	not	+	+	+	not	+	not	+
Sri Lanka	not	+	+	+	not	+	not	+
Cyprus	not	+	+	+	not	not	+	+
Morocco	+	+	+	not	not	not	+	+
Nigeria	+	+	not	+	not	+	not	+
Mauritius	+	+	not	+	not	+	+	not
Egypt	not	+	+	+	not	+	+	not
All other Countries have at least one less. These include:								
Algeria	+	not	+	not	not	+	not	+
Russian Federation	+	+	not	not	+	+	not	not
Iran	not	+	+	+	not	+	not	not
China	+	+	not[125]	not	not	+	not	+
Malaysia	not	+	not	+	not	not	not	+
Japan	not	+	+	+	not	not	not[126]	+
Singapore	not	+	not	+	not	+	+	not
Thailand	not	+	+	+	not	+	not	not
South Africa	not	+	+	not	+	not	not	+
Brazil	not	not	not	not	not	+	+	not
Chile	not	not	not	not	not	+	+	not
Sources: *Trade Facilitation : Background Note* : (*Revision*), G/C/W/132/Rev.1; 29 March 1999, Council For Trade In Goods, WTO								

[124] This information contradicts the information in Table-2

[125] According to the WCO website, China is a contracting party to the convention as on 27/08/1993 http://www.wcoomd.org/ie/en/Conventions/PG0024E1.PDF

[126] According to the ICAO website Japan has deposited the Instrument of Accession for the Montreal Protocol no.4 as on 20th June 2000 http://www.icao.int/icao/en/leb/mp4.htm

Table – 2: List of Countries or Territories
Having Accepted or Acceded to Trade Facilitation Instruments

Country/ Territory	***Trade Facilitation Instruments***								
	IMO	UN/ECE			ICC	ICAO	WCO		
	FAL	TIR	HAR	UN/CEFACT	UCP500		CCO	KC	HS
Finland, Hungary, Switzerland, Spain	+	+	+	+	+	+	+	+	+
Denmark, Belgium, France	+	+	+	+	+	+	not	+	+
Sweden, Netherlands, Italy, United Kingdom	+	+	+	+	+	+	not	+	+
Greece	+	+	+	not	+	+	+	+	+
Ireland	+	+	+	+	+	not	not	+	+
Portugal	+	+	+	not	+	not	not	+	+
Czech Republic, Poland, Austria	+	+	+	+	+	+	+	+	+
Germany, Luxembourg, Slovenia, Croatia,	+	+	+	+	+	+	not	+	+
Australia	+	not	not	+	+	+	+	+	+
Norway	+	+	+	not	+	+	not	+	+
Slovak Republic	+	+	+	+	+	not	+	+	+
Turkey	not	+	not	+	+	+	+	+	+
Israel	+	+	not	+	+	+	not	+	+
Cuba	+	not	+	+	not	+	+	+	+
United States	+	+	not	+	+	+	+	+	+
Canada	+	+	not	+	+	+	+	+	+
Korea (Republic of)	not[127]	+	not	+	+	+	+	+	+
INDIA	+	**not**	**not**	+	+	+	**not**	+	+
New Zealand	+	not	not	+	+	not	+	+	+
Sri Lanka	+	not	not	not	+	+	not	+	+
Cyprus	not	+	not	not	+	+	not	+	+
Morocco	not	+	not	not	+	not	+	+	+
Nigeria	+	not	not	+	+	not	not	+	+
Mauritius	+	not	not	not	not	+	not	not	+
Egypt	+	not	not	+	not	not	not	not	+
Algeria	+	+	not	not	+	+	+	+	+
Russian Federation	+	not[128]	+	+	+	+	+	not	+
Iran	+	+	not	+	+	+	not	not	+
China	+	not	not	not	+	+	+	+	+
Malaysia	not	not	not	+	+	+	not	+	+
Japan	not	not	not	+	+	not[129]	not	+	+
Singapore	+	not	not	+	+	+	not	not	not[130]
Thailand	+	not	not	not	+	+	not	not	+
South Africa	not	not	+	+	+	not	not	+	+
Brazil	+	not	not	not	+	+	not	not	+
Chile	+	+	not	+	+	not	not	not	not
Sources: *Compendium Of Trade Facilitation Recommendations*, UN 2001.									

[127] This information contradicts the information given in Table -1

[128] Russia has accessed the convention on 08.12.1982 according to the UN/ECE website http://www.unece.org/trade/tir/tir24.htm

[129] According to the ICAO website, Japan is a ICAO contracting state as on 20th June 2002 http://www.icao.int/cgi/goto.pl?icao/en/members.htm

[130] According to the WCO website, Singapore has applied the convention but is not a party to it www.wcoomd.org/ie/En/Topics_issues/HarmonizedSystem/Hsconve2.pdf

List of Abbreviations

Table - 1

CTemp	Convention on Temporary Admission
CCTemp	Customs Convention on the ATA carnet for the temporary admission of goods
CCDisplay	Customs Convention concerning facilities for the importation of goods for display or use at exhibitions, fairs, meetings or similar events
CAdv	International Convention to facilitate the importation of commercial samples and advertising material
ICHFCG	International Convention on the Harmonization of Frontier Controls of Goods
IMO	IMO Facilitation Convention
Montreal	Montreal Protocol No.4
Kyoto	International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention)

Table - 2

CCO	Customs Convention On Containers
FAL	Convention On Facilitation Of International Maritime Traffic
HAR	International Convention On The Harmonization Of Frontier Control Of Goods.
HS	International Convention On the Harmonized Commodity Description and Coding System [Harmonized System]
ICAO	International Civil Aviation Organization
ICC	International Chamber Of Commerce
IMO	International Maritime Organization
KC	International Convention On The Simplification and Harmonization Of Customs Procedures [Kyoto Convention]
TIR	Transports Internationaux Routiers
UCP	Uniform Customs and Practice For Documentary Credits
UN/CEFACT	United Nations Centre For Trade Facilitation and Electronic Business
UN/ECE	United Nations Economic Commission For Europe
WCO	World Customs Organization

Terms Of Reference

(Sub: Study on Trade Facilitation by the Madras Institute of Development Studies (MIDS), Chennai)

(*Order issued by the Trade Policy Division, Department of Commerce, Ministry of Commerce & Industry, Government of India, F. No. 15/17/2002-TPD dated the 23rd November, 2002*.)

	Item	*Chapter of Report*
(i)	Listing of forthcoming issues for negotiation in WTO beginning with the proposals made during the earlier study process on trade facilitation in WTO since 1997 and listed out in a 1999 WTO Paper (G/C/W/132 Rev. 1 dated 29 March 1999) and the subsequent progress of discussions on all the three core agenda in the Council for Trade in Goods, namely, Article V, VIII and X.	II
(ii)	Preparation of a country report for India introducing the trade facilitation schemes already under way. In addition, other data like existing trade notices/public notices, proposed modernisation and simplification of customs clearance procedures will be included.	III
(iii)	Conducting an e-survey on exporters' assessment of trade facilitation needs in other countries.	IV, V
(iv)	Benefit and cost implications for India of each of the items likely to come up in the Fifth Ministerial Conference, considering the economic structure and specificity of this country. This will include analysis of expected gains and likely loss of revenue on account of liberalised clearance procedure, duty evasion etc. Apart from formal rules, existing practices, norms, conventions, etc. will also be taken into account.	IV, V
(v)	Cost estimation of instituting technical assistance and capacity building programmes, both in terms of country requirements, and in donor commitments. This would take into account the costs incurred by the Dept. of Revenue in introducing modern procedures, as well as the projected future costs. Efforts will be made to identify technical assistance needs of India in specific subjects. The study will also consider the kind of	V

	safeguards that the country would require to submit in the course of discussions on trade facilitation in the WTO.	
(vi)	Assessments of infrastructure constraints at the ports, airports etc. that could preclude implementation of certain commitments on trade facilitation. This section would also look at the current efforts at modernisation initiated by the port trust, the airport authorities, the health authorities, etc, for modernisation of infrastructure/procedures.	III, IV
(vii)	From a larger perspective some attention will be given to identification of any additional items in the Indian context, e.g. study of facilitation measures in the banking, insurance and other services sectors, etc. Though this is not the present mandate on trade facilitation in WTO, such inputs will be useful.	V
(viii)	Interface of some other WTO provisions, e.g., the Agreements on Customs Valuation, Rules of Origin, Pre-shipment Inspection, Import Licensing Procedures, TBT and SPS, on trade facilitation.	I