



Trade Facilitation: Need to Strike a Balance between Pragmatism and Caution

Among Singapore issues Trade Facilitation (TF) is the only issue accepted by the WTO members for further negotiations. In fact over the last couple of months it has emerged as the brightest part of Post-Cancun trade negotiations despite sporadic concerns raised by couple of members at different points. The current mandate of the Negotiating Group for Trade Facilitation (NGTF) is to clarify and improve the three articles, viz. Articles V, VIII and X of the GATT 1994. As per Annex 'D' the NGTF has the mandate to identify special and differential treatment apart from exploring areas for technical assistance and support for capacity building for developing and least developed country members.

The broad objective is to increase the global welfare gains through the reduction in trade transaction costs though magnitude of the available estimates of such gains vary in a major way (see Table 1). Even if those numbers are left aside for a moment, it is not very clear as to how much would be the cost that developing countries would have to incur once they opt for a binding commitment in TF, especially in a situation when the interpretation of the various articles, as identified for the negotiations, is continuously expanding. The numbers emerging are not precise and in fact in most of the cases even a wild estimation is very difficult as most of the countries already have some level of advancement which varies across border agencies in a major way. The Annex E of the First Draft Ministerial Text is about the trade facilitation and seems to bring out a huge set of rules and guidelines but is not very clear, if not silent, about the effective technical assistance (TA) and capacity building (CB).

In this situation any attempt to harmonize the trade facilitation regimes seems feasible only in long term provided several medium and short term measures are launched right away. Sequencing and timing of such measures would be the key to success.

Current State of Play

The current state of play in trade facilitation has come a long way from the initial ambivalence about the relevance of the agreement. At that point some

delegations were of the view that the WTO could develop general guidelines or recommendations to provide political support for trade facilitation initiatives that were under way in any case, both nationally and in other international fora and there is no need for a binding commitment. However, Annex 'E' gives a different picture now. In a subtle way it enlists huge areas of agreement.

Publication and Administration (Article X)

The Article X basically deals with publication and administration of trade regulations. The idea basically is to disseminate information about customs related rules and regulation to the trading community. However, the proposals received at WTO by various members intend to cover issues related to establishment of single national focal point; time period between publication and implementation; consultation and commenting on new and amended rules; provisions of advance ruling; and appeal procedures and maintenance of integrity among officials. In case of publication, internet publication and automation have received a major attention.

In this regard automation may help in a major way, but would help those countries much more who have a long history of automation in other areas of public policy. However, various countries are at different levels of development and so is the state of affairs of their automation programmes. At the WTO debate, Kenya and others raised the issue of poor IT infrastructure in African countries. According to a USAID survey (2004) covering 9 border posts in Kenya, Tanzania, Uganda and Rwanda, there are no telephone lines in many of these locations; not even electricity is available in most part of the day. The survey brings out the digital divide in a very emphatic manner.

Fees and Formalities (Article VIII)

The GATT Article VIII deals with issues related to fees and charges and import and export formalities and documentation requirements. There is proposal to avoid hefty penalties for minor breaches. Regarding the reduction in documents required (and thus

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reducing the time taken) there is need to gear up lot of technical work so that best use of the achievements by relevant international organizations, such as the WCO Customs Data Model and the UN Layout Key, which were both designed to standardize the format and layout of trade-related documents are made available.

Article VIII provides that fees and charges should be limited in amount to the approximate cost of services rendered. On this the EC came out with a proposal recognizing that fees and charges might be an important source of government revenue for some developing countries, which should be taken into account and suggested that the fees and charges themselves could be used to help fund some of the customs services provided. This generous comment was not without purpose as has been found in an OECD study that 54 per cent of fees in high-income economies were levied on an *ad valorem* basis. This adds to the cost of trade and transaction with the developed countries.

The debate on Article VIII has also included a proposal related to the establishment of a ‘Single Window’ to streamline document submission and quicker delivery. Though organizations like OECD presume that it may be easier to establish a Single Window in developing countries, as it may be less difficult to set up an integrated mechanism from scratch than to overhaul an already-existing system into an integrated mechanism but it needs to be realized that in no country we have to start from scratch.

Article VIII also proposes to set out guidelines regarding the kind and amount of charges that were permissible. Though Australia and EU are quite emphatic about such guidelines, many LDCs may have problems in listing *a priori* the entire universe of charges that fell within the prescribed parameters. Jamaica, for instance, in the submission mentions that there are other bodies (other than WTO) established to deal with specific charges levied in concrete circumstances.

Freedom of Transit (Article V)

This article deals with the issues related to transit and attempts to address the challenges being faced by the landlocked countries that affect their competitiveness.

There are five broad concerns in this Article which are addressed by the various proposals, viz. matters relating to transit goods, disciplines on fees and charges, disciplines on transit formalities and documentation requirements, improved cooperation among authorities. However, the key hurdles in terms of implementing this Article are related to different

standards and regulations adopted by various neighbouring countries, inadequate transport infrastructure and different level of automation. The lack of common legal approaches and border crossing formalities also hamper effective implementation.

There is need to spell out rights and obligations of land-locked countries as many economies have expanded and internationalized their operations including trade transactions. So far, many of these rights and obligations are governed by bilateral trade and transit treaties which have a pre-dominant focus on security concerns and least incorporation of any of the TF measures.

Cost Estimations and Related Concerns

There is a wide agreement that the simplification of trade procedures has potential for considerable savings in time, money, as well as human and other resources. It may result in substantial benefits many economies provided the initial costs are absorbed effectively. There are several country studies launched by OECD and ARTNeT of UNESCAP to assess cost implications for various TF measures. The preliminary results from these studies are available from the policy briefs issued by these agencies. It is found from most of the country studies that cost experiences vary according to the level of economic development. However, in some cases it is reported that separate cost calculation for individual TF measure is difficult to bring out as many of these countries are already implementing TF measures on their own. As a result of this, for example, in India, the dwell time, risk assessment and other major TF measures are already in place. Separate cost estimation for them or even for printing of rules (under Article VIII) is difficult to distinguish. However, in areas where fresh beginning is to be made – for example, several features under Article V – it would be easier to come out with cost quantification.

The preliminary cost estimates from RIS study for the three articles in case of India seems to indicate that India would have to be very cautious while opting for any binding commitment. In case of Articles VIII and X, the minimum cost of compliance would be Rs. 2016.34 million while for Article V, it would be Rs. 159.24 million.

Among the major challenges the developing countries and LDCs, in particular, may face are the potentially high start-up costs, poor infrastructure, and lack of human resources for coping up with the commitments at the WTO. Moreover, many of these members are still grappling with the implementation of several other commitments from the Uruguay Round. That way, TF would be an additional burden. In the developing countries the fly-by-night operators pose different kind of challenges for TF. Though technical assistance is being seen as a major option, its timing, magnitude and purpose are the key areas of concern.

Capacity Building and Technical Assistance

Though trade facilitation is one of the few agreements of the WTO in which resources for technical assistance

Table 1: Projections of Welfare Gains from Trade Facilitation

| | Francois <i>et. al.</i> 2005 | OECD 2003 | APEC 2002 | UNCTAD 2001 |
|--------------------|---------------------------------|--------------|--------------|----------------|
| Global Income Gain | USD 72 bn. | USD 40 bn. | USD 154 bn* | USD 7 bn |
| TTC Reduction | 1.5 % | 1% | 5% | 1% |

Note: TTC: Trade Transaction Cost, * for APEC only.

Source: OECD, 2005.

Box 1: Continuing Chasm between ‘Concerns’ and ‘Proposals’

The general lack of analytical and negotiating capability and preparedness of developing countries has seriously affected their ability to get their concern addressed in the NGTF meetings. The developing countries generally confine their interventions to react to the proposals made by developed countries rather than coming up with their own proactive proposals. They could not come up with any credible estimates of costs of compliance of proposed commitments and technical assistance that they may need. There is also no estimation available of expected revenue loss or gain. This phenomenon brings back the point that the developing world still needs to work on articulation, and approach the negotiating table with better formulations to reflect on their actual concerns.

This may also reflect, in some cases, on perceptual differences between the Geneva missions and the capitals, as the Geneva-based negotiators may not have ready access to expert advice from their capitals. Many countries have not established appropriate coordination mechanisms in their capitals that are able to respond to the questions emerging in Geneva. However, in the process, the concerns expressed during the discussions somehow fail to get into a pragmatic proposal and thus adversely affect proactive stand by the developing world if at all it is there. This not only hampers the interests of these countries but also impedes the ongoing dialogue at various fora including at WTO.

Realizing this, the World Bank launched a Trade Facilitation Negotiations Support Project to better equip Geneva-based negotiators to actively participate in the negotiations process. The project in pilot stage covers three countries, namely Jamaica, Uganda and Sri Lanka but the developing world certainly need to go beyond these support programmes and develop indigenous mechanisms for strengthening the proactive abilities.

and capacity building have multiplied quite rapidly over last three years, greater certainty about technical assistance would become possible only with greater clarity about the sort of commitments WTO Members are agreeing to. The interesting situation here is that the developing countries want something completely different. Their position is that the level of assistance provided should be based on an assessment of their actual needs beyond what they could implement with domestic resources. It is in this light that the TA/CB debate needs to be looked at.

The reports from Trade Related Technical Assistance and Capacity Building (TRTA/CB) gives a detailed account of various elements of support to developing countries and LDCs. The total amount of money allocated for TF is \$ 384 million. However, several LDCs are not finding adequate assistance. There are cases in which some of the LDCs have to bear as high as 25 per cent of the cost of introduction of particular elements of TF. In case of Bangladesh, out of a project of Tk 2260 million, only Tk1680 million has come as concessional loan from ADB. The rest of the gap (25 per cent) would be met by Bangladesh from own its resources. The other concern here is that the recipients of these loans under TF programme do not have enough maneuverability to choose key components according to their requirements. In this case nearly Tk 744 million would be spent on the activation of ASYCUDA++ computer system linked to CPA computer system and installation of two container scanners.

There are different views and experiences about the efficacy of ASYCUDA. However, multilateral agencies are somehow keen only to promote this package.

Policy Recommendations

While the current mandate for the negotiation is being attended to at the WTO, there still hangs a doubt about the role of a new agreement on trade

facilitation at WTO in many minds. There is a view that there are various other agreements that may well address the need of TF rather than an independent agreement itself. Since an agreement on TF has been initiated now we need to see the working of the agreement and carve out steps for a way forward.

There are already some proposals at the WTO which discuss various possibilities. There is a suggestion that the WTO should oversee the policy aspects of the Kyoto Convention, including the dispute settlement procedures, while the WCO should handle technical aspects of trade facilitation. These proposals need to be carefully assessed. Following issues may be considered while negotiating the TF agreement only as part of a best endeavor clause.

Limiting Interpretation of Articles

There is an urgent need to check efforts for expanding the scope of current negotiations and that way enhance the listed contents of the three Articles. The Article X envisages publications of rules related information to help out traders well in time. The EU came out with a proposal to publish not only the rules and regulations but also the judicial decisions and administrative rulings. Similarly, the submission from Korea (TN/TF/W/7) increases the scope of ‘prior comment’ to include even other WTO Members. This is far ahead of the stated understanding of covering domestic industry only. An enhanced scope would make the whole exercise completely unmanageable. Similarly, the proposal from New Zealand (TN/TF/W/24) not only enhances the scope but suggests giving Members and traders a right to comment on judicial decisions as well.

The proposal from Canada and the United States (TN/TF/W/9 and TN/TF/W/12 respectively) suggest that a system of advance rulings could lend greater predictability to the trade regime and thus would

advance the cause of Trade Facilitation. However, it had to be considered carefully whether it could be covered under the scope of GATT Article X, which dealt with the publication of rules and regulations of general application rather than for specific cases, as was the case for advance rulings.

Sequencing and Linkages with Other Commitments

If the focus of the trade facilitation work programme remains as the current negotiating strategy is, then it may be very difficult to achieve the real objectives of such an exercise. The Chairman of the CTG (March 1999) had invited the Chairpersons of the Committees on Customs Valuation, Import Licensing, Rules of Origin, Sanitary and Phytosanitary Measures, Technical Barriers to Trade, and the Chairperson of the Working Party on Pre-shipment Inspection to propose an item "trade facilitation" for inclusion in the agenda of their meetings. These bodies were requested to address those aspects of trade facilitation which they regard as being related to the respective agreements with a view to introduce the results of these discussions into the informal CTG discussions on trade facilitation. This work needs to be taken further to ensure that trade facilitation becomes a prime objective across various agreements rather than overloading the commitments in the TF agreement itself.

South-South Cooperation

Complex and costly systems would not be appropriate tools in facilitating trade. Therefore, a range of information technology options, which caters to the needs of different types of clients, may have to be introduced.

In automation the issue of digital divide is clearly visible. Advanced developing countries may launch automation programmes with or without technical assistance but for many LDCs, it may remain as main challenge to overcome this gap. In this context, some developing countries with ICT achievements, such as India, should come forward. India with sufficient advancements in the automation of customs and other border agencies has already achieved many of the TF features through indigenous efforts. As the experience from Bangladesh clearly shows, the cost of automation from any multilateral agency especially from ASYCUDA is very high. Moreover, there are several problems including of compatibility which are reported from several countries like Azerbaijan, Kazakhstan, Mongolia, PRC and Baltic countries.

South-South cooperation may help other developing countries in their endeavors for automation.

Role for Regional Organizations

In the context of south-south cooperation the regional cooperation may be equally effective and in fact may play an extremely substantive role. Though international inter-governmental organizations with expertise and experience in the field of trade facilitation like ITC, UN/ECE, UNCTAD and WCO have been parts of the exploratory and analytical work on trade facilitation right from the beginning, somehow the regional trade organizations have been missing from the scene.

The success achieved through APEC and other organizations is a case in point. In the context of Article V the regional collaboration may help in addressing security concern apart from lack of infrastructure which defeats the implementation of concerns like time limit, etc. In some cases, there is no effective mechanism with neighbouring countries for better control of border ports.

Provisions of S&DT

The First Ministerial Draft is quite vague in this context. There is a need to acknowledge that the S&DT provisions should extend beyond the granting of traditional transition periods for implementing commitments.

In particular, the extent and the timing of entering into commitments shall be related to the implementation capacities of developing and least-developed Members. These Members should not be obliged to undertake investments in infrastructure projects beyond their means.

Substantive and Relevant TA/CB

In many countries it is Customs and the related programmes, which are attracting most of the TA and CB related funding but automation needs to extend beyond customs administrations, and needs to include all players in the trade transaction chain.

In other areas also it would be necessary for developing countries and LDCs to be provided with necessary technical assistance; for example on use of the HS classification system when making tariff classification decisions. Existing technical assistance programmes by various international agencies and intergovernmental organizations address only specific parts of what is believed to be a whole set of trade related procedures.

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