

WTO Negotiations on Trade Facilitation: Prospects for Cutting Red Tape at the Borders and Opening Doors for Developing Countries

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LT Customs administration; International trade

“The United Nations Conference on Trade and Development (UNCTAD) estimates 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. With the lowering of tariffs across the globe, the cost of complying with customs formalities has been reported to exceed in many instances the cost of duties to be paid. In the modern business environment of just-in-time production and delivery, traders need fast and predictable release of goods.”¹

Introduction

It is a basic principle that countries that have the most efficient customs and trade procedures have higher levels of exports and imports.² As the frontline for the business and security of a country, a nation’s customs administration has the opportunity to encourage predictable, safe and efficient commerce and investment, or it can inhibit commercial involvement altogether. What cannot be ignored is that customs and border agencies play a key role in the economic growth of countries.³

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1. Hong Kong WTO Ministerial 2005 Briefing Notes, *Trade Facilitation: Cutting Red Tape at the Border*, available at www.wto.org (emphasis added).

2. See World Bank Group, *Doing Business in 2006: Creating Jobs, Trading across Borders*, available at www.doingbusiness.org (Doing Business in 2006).

3. See *Globalization, Growth & Poverty: Building an Inclusive World Economy*, World Bank Policy Research Report, available at www.worldbank.org; World Customs Organization, *Pathway to Efficiency and Effectiveness in the Customs Environment: Customs Role to Facilitate International Trade*, available at www.wcoomd.org (The efficiency and effectiveness of Customs procedures can significantly influence the economic competitiveness of nations.).

Since its inception in 1995, a primary goal of the WTO negotiations has been reduction in tariff barriers to foster open trade and economic development.⁴ And, as a result of WTO commitments, along with multilateral and bilateral agreements, import tariffs on many goods have been reduced substantially or eliminated altogether over the past decade. Today, the average import tariff in developed countries is less than 5 per cent and global trade in goods exceeds \$37 billion each day.⁵ Yet there continue to be vast inefficiencies in trade and customs procedures around the world. The cost of dealing with trade and customs procedures can be as high as 15 per cent of the total value of traded goods.⁶ In many cases, these costs represent “the single greatest cost of trading” and far exceed any import tariffs being imposed.⁷

In particular, importers and exporters face challenges as a result of cumbersome requirements, such as the need to complete dozens of forms for different agencies requesting the same information; requirements that traders obtain multiple signatures for the clearance of goods—in some cases, up to 80 signatures for a single import transaction—which increases the possibility for bribes and corruption; lack of published regulatory requirements and fees; unnecessary requirements that shippers obtain import and/or export licences; frequent inspections of containers, which not only delay movement but create further opportunity for corruption; requirements that goods be cleared through multiple customs agencies within the same country, for example, in the city centre and again at the port; and overall, long delays in final clearance of goods (in many cases ranging from two to five months).

According to the World Bank, for each additional day of transport delays, a seller incurs excess expenses of about 0.5 per cent of total cargo value of the goods. Further, inefficient customs and trade transport means that businesses must hold larger inventories at their warehouses, adding approximately 4–6 per cent to production

4. As at least one author has observed, the lowering of tariffs is not just related to efforts by the WTO, but has a direct relationship with the increase in the number of democracies around the world. See “Democracies Get Rid of Tariffs, But they may encourage subtler forms of protectionism”, *The Economist*, November 25, 2006, p.78. (“[F]reer trade often follows freer elections.”) As consumers gain rights in society, they become less tolerant of artificial restraints on trade; *ibid*.

5. International Monetary Fund, World Economic Outlook Database (April 2006), available at www.imf.org.

6. Speech by Director General Pascal Lamy, “Concluding the WTO’s Doha Round: The Post Hong Kong Roadmap”, South African Institute of International Affairs, Johannesburg, South Africa (February 10, 2006), available at www.wto.org; see also John Wilson, “Trade Facilitation and Economic Development”, World Trade Brief (2005), available at <http://econ.worldbank.org>.

7. *Doing Business in 2006*, above fn.2, p.54.

costs.⁸ For small and medium-sized businesses, which account for up to 60 per cent of GDP in many economies, the restrictions on movement of goods are often more daunting than any tariff levels. As the WTO emphasises, “[t]he administrative barriers for enterprises that do not regularly ship large quantities are often simply too high to make foreign markets appear attractive”.⁹

These types of compounded restrictions not only harm business, but are costly to the governments as well. As the World Bank has observed:

“Filing more documents is associated with more corruption in customs. Faced with long delays and frequent demands for bribes, many traders avoid customs altogether. Instead, they smuggle goods across the border. Smuggling defeats the very reason to have border control of trade: to ensure high quality of goods and levy taxes”.¹⁰

Indeed, corruption and circumvention of customs requirements hinders the host country in a number of respects. Not only does it interfere with the ability of the country to monitor trade and collect revenues, but lack of proper oversight on imports creates security risks and discourages foreign investment, further isolating the country.

In contrast, experience shows that improvements in customs procedures, reduction in corruption and establishment of transparent regulations brings significant foreign investment to a country. As discussed below, between 2002 and 2004 a number of developing countries proactively made significant advancements in customs procedures to implement initiatives that were being considered in the context of the WTO negotiations. Following these reforms in trade facilitation, foreign investment in developing countries totalled more than US\$165 billion in 2004.¹¹

Indeed, the WTO is uniquely situated to bring about critical reform in the area of trade and customs facilitation.¹² Tools for improving customs procedures have been developed and available for decades.¹³ And most countries have made some efforts in the area of trade facilitation. But practical changes cannot happen without financial resources. A novel aspect of the Doha Development Round is the emphasis on the

provision of technical assistance and capacity building for developing countries. The negotiating framework established in July 2004 specifically recognised that developing and least-developed countries would not be able to participate in and benefit fully from the negotiations without technical assistance and capacity building, and in this regard, members from developed countries made a commitment “to adequately ensure such support and assistance during the negotiations”.¹⁴

Consistent with this commitment, since commencement of the Doha negotiations, developed countries have made significant contributions, in the form of both financial assistance and training. And developing countries have already made tremendous improvements in customs procedures and regulation. In particular, from 2001 through 2004, support for trade facilitation more than tripled, increasing at an annual rate of 52 per cent per year.¹⁵ The United States (currently the largest provider of trade-related assistance) recently announced that it will more than double its contributions to the “Aid for Trade” initiative, from US\$1.3 billion in 2005 to US\$2.7 billion annually by 2010.¹⁶ Japan has also agreed to give substantial assistance over the next three years, including US\$10 billion in grants, loans and human capital. Overall, commitments have increased each year since 2001, and at this point, approximately US\$30 billion is being contributed annually to these efforts.¹⁷ In response, low-income nations are taking advantage of these opportunities to streamline their port and customs operations, and therefore there is a real likelihood that companies across the globe will have new, lower-cost opportunities for sourcing of goods or for export of domestically produced items.

Given the direct and considerable benefits for developing economies in making advancements in customs procedures, it is understandable that “trade facilitation” is a critical component of the current WTO “Development Round”. But the benefits of trade facilitation are not limited to developing countries. As WTO Director General Pascal Lamy recently stressed, “the commitments on trade facilitation have the potential to boost trade more than any previous administrative commitments”.¹⁸ It is therefore no

8. World Bank Group, *Doing Business: Trading across Borders* (October 11, 2005), available at www.doingbusiness.org.

9. Hong Kong WTO Ministerial 2005 Briefing Notes, above fn.1.

10. See *Doing Business in 2006*, above fn.2, p.58.

11. Wilson, above fn.6, p.4.

12. See J. Michael Finger and John S. Wilson, Draft Abstract: “Implementation, Trade Facilitation, the Doha Development Agenda” (April 12, 2006), available at www.worldbank.org (the WTO has “function[ed] as a catalyst for reform; it is perhaps uniquely placed to relate the trade facilitation agenda to the overall trade agenda”).

13. See World Customs Organization, www.wcoomd.org.

14. World Trade Organization, Doha Development Round, July Framework, Annex D para.5, WT/L/579 (August 2, 2004).

15. Finger and Wilson, above fn.12, p.15 (citing “2005 Joint WTO/OECD Report on Trade-Related Technical Assistance and Capacity Building,” available at www.oecd.org); see also WTO 2005 Press Release: “Aid for Trade Capacity in Poorer Countries up by 50 Percent since Doha”, available at www.wto.org.

16. *ibid.* “Aid for Trade” is the phrase given to technical assistance and capacity building efforts as part of the Doha Round negotiations.

17. OECD-WTO Trade Capacity Building Data Base.

18. Speech by Director General Pascal Lamy, “The Doha Development Agenda: Sweet Dreams or Slip Slidin’

surprise that while the other three key areas in the Doha Development Round—agriculture, non-agriculture market access and services—have been contentious, the negotiations over improvements in “trade facilitation” have made steady progress and there is widespread agreement on the benefits that could arise from advancements in the area.

Principal elements of the WTO trade facilitation negotiations

The World Trade Organization negotiations in the Doha Development Round (“Doha Round”) have seven major components: agriculture, non-agricultural market access, services rules, intellectual property, dispute settlement and, perhaps the least-talked about, trade facilitation. “Trade facilitation” refers to a broad area of initiatives, including the negotiation of rules to expedite customs clearance of goods, establishment of transparency and rule of law in customs procedures, elimination of corruption, and generally, reduction of bureaucratic red tape that hinders efficient trade in commerce. Trade facilitation was one of four new issues—competition policy, transparency in government procurement, trade facilitation and investment—that were raised in the First Ministerial at Singapore in 1996 (often referred to as the “Singapore issues”). By 2004, the other three Singapore issues had been dropped from the agenda, while trade facilitation, in contrast, was declared to be an objective of the WTO Doha Round.¹⁹ After a period of intense negotiations, on August 1, 2004, the WTO General Council set forth an ambitious agenda and framework for future negotiations, which became known as “the July Package.”²⁰

Reflecting the overarching objective of the Doha “Development” Round, the July Package dealt with cross-cutting issues, such as special and differential treatment and capacity building for developing members. In addition, the Work Programme set forth four Annexes covering the four primary “pillars” that would shape the future negotiations:

- Annex A: Agriculture;
- Annex B: Non-Agricultural Market Access (NAMA);
- Annex C: Services; and

Away?”, Washington, D.C. (February 17, 2006), available at www.wto.org.

19. See Ministerial Declaration (November 14, 2001) at para.27.

20. See WTO General Council Decision WT/L/579, available at www.wto.org; see also International Centre for Trade and Sustainable Development (ICTSD), Doha Round Briefing Series: Overview of the July Package (December 2004) (noting that the July Package was “the deal that ‘rescued the Doha Round’”).

- Annex D: Trade Facilitation.

Once again, trade facilitation found itself in company with three other highly controversial issues. In this regard, the WTO members agreed that all four pillars would be addressed in a “single undertaking” encompassing one final set of agreements and obligations.²¹ The purpose of the single undertaking was to encourage negotiation and trade-offs among country members, where members might otherwise have been reluctant to liberalise their own sectors.²²

With regard to trade facilitation, the July Package specifically called for negotiation of an Agreement on Trade Facilitation, and limited the scope of the negotiations to three important articles under the GATT 1994: Arts V, VIII, and X²³:

- GATT Art.V deals with “freedom of transit” for goods and requires that all charges and regulations imposed on goods in transit must be “reasonable.”
- GATT Art.VIII provides that fees and formalities connected with importation and exportation must be limited to the approximate cost of the services rendered, and specifies that documentation requirements should be simplified. In addition, Art.VIII notes that parties should not be penalised for minor breaches or mistakes in customs compliance and documentation.
- GATT Art.X requires that all trade laws, regulations and judicial decisions be published; that no change in law which is adverse to a party may be applied prior to publication of the change; and that parties have the opportunity to participate in administrative procedures to correct errors in customs treatment.

Thus, overall, the negotiations were to centre on reasonable fees, simplified procedures and transparency in regulations. Building on these GATT provisions, the negotiations were established in order to set new rules for Member States in processing required information, expediting of customs clearance for imported goods, providing practical and cost-effective methods of trans-shipment for goods that will not be finally consumed in the importing country, and exchange of information between the customs authorities of WTO Member States.

21. Doha Work Programme, Decision Adopted by the General Council on August 1, 2004, WT/L/579, Annex D (August 2, 2004), available at www.wto.org.

22. See Daniel Pruzin and Chris Rugaber, “U.S., Others Give Cold Shoulder to EU Plan for ‘Early Harvest’ Deal on Trade Facilitation”, *BNA WTO Reporter*, July 27, 2006.

23. General Agreement on Tariff and Trade (GATT 1947), available at www.wto.org.

In addition, Annex D of the July Package (Trade Facilitation) included some unprecedented language regarding development and capacity building, noting that obligations to comply with new standards would be linked to the amount of technical assistance received by the developing countries. In other words, where less developed countries lack the capacity to make advancements, such members would “not be obligated to undertake investments in infrastructure projects beyond their means”.²⁴ This approach placed a significant emphasis on developed countries to provide technical assistance and capacity building assistance in order to see global improvements in customs facilitation. As noted above, the contributions by developed countries have been significant, and the benefits in advancement of customs procedures have been real.

Throughout the negotiations, discussions on trade facilitation moved at a steady pace. Indeed, although the Doha negotiations in other areas hit roadblocks and the overall negotiations were formally suspended on July 24, 2006, one day later, on July 25, 2006, European Union Trade Commissioner Peter Mandelson urged WTO members to conclude a separate, early deal on trade facilitation.²⁵ Mandelson suggested that members “should extract from the rubble of the negotiation a significant development package and frontload it, creating an early harvest for the most needy developing countries”.²⁶ WTO members, including the United States and a long list of developing countries, all opposed the suggestion, noting that because trade facilitation was part of the “single undertaking” mandate, a separate agreement could not be concluded.²⁷ On behalf of the Core Group of developing countries, the Philippines stressed that the trade facilitation talks “are part and parcel and integral” to the Doha Round single undertaking.²⁸

Nevertheless, the progress on trade facilitation did not cease—rather, proposals and revisions continued to be submitted by member countries, and as of October 25, 2006, the members had tabled more than 140 formal submissions on the subject.²⁹ In fact, even as the WTO negotiations were suspended, the United States enacted into law legislation that mandates further work on the trade facilitation agenda, regardless of the status of the negotiations. Section 404 of the 2006 SAFE Port Act requires the Department of Homeland

Security and the US Trade Representative to work with the WTO, WCO, IMF and APEC to harmonise customs procedures and facilitate international trade.³⁰

The proposals submitted as part of the WTO negotiations cover a variety of initiatives, including publication of trade regulations and information, notice and comment processes for new rules, opportunities for advance rulings, appeal procedures, procedures to enhance transparency and impartiality, fees and formalities connected with importation and exportation of products, release and clearance of goods, tariff classification and integrity in the process, including fair and equal treatment with respect to fees and clearance of goods.³¹ Proposals also discussed expedited exchange of information between the customs authorities of Member States, technical assistance for developing countries and capacity building.³²

With these proposals in hand, the next step is to draft an Agreement on Trade Facilitation, to be concluded when the WTO negotiations resume. It is expected that the elements of a Trade Facilitation Agreement will include the following aspects³³:

- enhanced political will and commitment for simplification of border procedures in both developed and developing countries;
- increased transparency by agreeing to publish relevant laws, regulations and policies on freely accessible internet sites;
- improved domestic appeal and judicial review procedures of administrative decisions;
- modifications or improvements to fees and charges;
- establishment of international standards for documentation;
- technical assistance and capacity building to developing countries;
- reduction in corruption;
- establishment of “single window” procedures and other streamlined processes;
- methods for reducing transport time, including procedures that favour reduction in the number of signatures needed to obtain clearance, computerised forms (that

24. See WTO General Council Decision WT/L/579, Annex D, available at www.wto.org.

25. Pruzin and Rugaber, above fn.22.

26. *ibid.*

27. *ibid.*

28. *ibid.*

29. See “WTO Negotiations on Trade Facilitation Compilation of Member’ Proposals”, TN/TF/W/43/Rev.10 (August 11, 2006); see also WTO Trade Facilitation Gateway, available at www.wto.org.

30. SAFE Port Act §404, amending 19 U.S.C. §1629 (2006).

31. See “WTO Negotiations”, above fn.29.

32. *ibid.*

33. In addition to these substantive provisions, it is expected that a draft agreement on trade facilitation will include standard provisions, such as a preamble, general principles, basic rights and obligations, definitions and scope, notification to the WTO/monitoring mechanism, consultation/dispute settlement, etc. See Speech by Tadatsugu Toni Matsudaira, “Review and Prospects of the WTO Trade Facilitation Negotiations” (January 20, 2006).

take away discretion in inputting fields), and publication of fees and requirements.

However, advancements in customs and trade facilitation need not await the conclusion of the Doha negotiations. WTO members, along with a group of international organisations, continue today to work together to advance trade facilitation and modernisation initiatives.

Co-operation with international organisations

Annex D of the July Framework specifically directed that:

“in order to make technical assistance and capacity building more effective and operational and to ensure better coherence, Members shall invite relevant international organizations, including the IMF, OECD, UNCTAD, WCO and the World Bank to undertake a collaborative effort in this regard”.³⁴

Based on this mandate, these organisations—known as the “Annex D Organisations”—regularly meet and provide tools for advancing trade facilitation initiatives. As a general matter, all of the Annex D organisations gather information and publish reports that aid in trade facilitation efforts. In addition, the organisations provide concrete tools and models for developing efficient port operations and general customs procedures. Below is a brief summary of some the functions and tools offered by each of these organisations.³⁵

The World Customs Organization (WCO)

The World Customs Organization (WCO) was first created in 1952 and is regarded today as the global expert on customs matters. The organisation now comprises 170 member countries accounting for 99 per cent of world trade.³⁶ The overall mission of the WCO is to:

“enhance the effectiveness and efficiency of Customs administrations [and] to assist them in contributing to national development goals, particularly in the areas of trade facilitation, revenue collection, community

protection and supply chain security, thereby contributing to the development of international trade and to the economic and social well-being of a country”.³⁷

The World Customs Organization has piloted major efforts in improvement of customs procedures. In this regard, the WCO initiates discussions with its members on improvement of customs practices and development of standards, and works with business sectors, governmental and non-governmental agencies to provide technical support for countries that lack capacity in customs facilitation.³⁸ For example, in 1999, the WCO Council revised and updated the International Convention on the Simplification and Harmonization of Customs Procedures (the Kyoto Convention).³⁹ The Kyoto Convention first entered into force in 1974 and contained important provisions regarding the establishment of simple, uniform and transparent customs procedures for the facilitation of trade.⁴⁰ By updating the Agreement, the WCO created a useful model for current-day customs procedures, which has become known as “the most important reference on the simplification and harmonization of Customs procedures”.⁴¹ The Revised Kyoto Convention is a binding agreement with certain obligatory rules, and currently, 51 of the 170 WCO members have signed on to the Agreement.⁴²

As a veteran organisation, the WCO welcomed the WTO initiatives on trade facilitation, and has contributed to the negotiations process as a key participant. The WCO has submitted its own proposals during the WTO negotiation process, and a number of WTO member countries have mirrored or embraced the WCO submissions.⁴³ The WCO initiatives are intended to be compatible with and complementary to the WTO agenda, including the principles set forth in Arts V, XIII and X of the GATT 1994.

37. Information Note: WCO instruments and GATT Arts V, VIII and X, www.wcoomd.org. Having been in existence for many years, as a member of the international community, the WCO welcomed the WTO initiative and has contributed to the negotiation process. It particularly appreciates the WTO decision that as one of the modalities of the negotiations, “due account shall be taken of the relevant work of the WCO and other relevant international organizations in this area”.

38. World Customs Organization, Indicative List of WTO Proposals, www.wcoomd.org.

39. The Revised Kyoto Convention entered into force on February 3, 2006; available at www.wcoomd.org.

40. See Revised Kyoto Convention, *ibid*.

41. Speech by Kunio Mikuriya, Deputy Secretary General, WCO, “The Challenges of Facilitating the Flow of Commerce in a Heightened Security Environment”, UNECE International Forum on Trade Facilitation, United Nations, Geneva, Switzerland (May 29–30, 2002), available at www.wcoomd.org.

42. See Presentation by Toni Matsudaira, “WTO Proposals and WCO Instruments and Tools: Workshop on ‘Use of International Standards’”, p.7 (June 6, 2006).

43. World Customs Organization, Indicative List of WTO Proposals, www.wcoomd.org.

34. Doha Work Programme, above fn.21, para.8. The IMF refers to the International Monetary Fund; OECD refers to the Organization for Economic Cooperation and Development; UNCTAD is the United Nations Centre for Trade and Development and the WCO refers to the World Customs Organization.

35. Note that there are a multitude of studies and reports that provide tools for advancing customs procedures. For a list of some of the most prominent studies and report, please refer to Shweta Bagai and John S. Wilson, “The Data Chase: What’s Out There on Trade Costs and Nontariff Barriers?”, World Bank (April 2006), available at www.worldbank.org.

36. World Customs Organization, www.wcoomd.org.

In general, the WCO carries out three objectives with respect to the WTO negotiations on trade facilitation: (1) facilitating co-operation among international organisations, and between customs administrations; (2) providing tools for understanding and improving upon the objectives outlined in the relevant GATT Arts V, VIII and X; and (3) providing technical assistance and capacity building through experience and co-operation with international organisations.

As a basic matter, the WCO acts as a liaison and facilitator for co-operation among relevant international organisations. In its proposal to the WTO, the WCO encourages the use of “international standards and instruments as the basis for the import and export procedures”.⁴⁴ In this regard, the WCO encourages the use of data and models provided by the other Annex D organisations and serves as a mechanism for bringing together the strengths of each organisation.⁴⁵

With respect to the relevant GATT Articles that are subject to negotiation, the WCO has identified five key areas for improvement:

- (1) *Binding/advance rulings*. The main benefit for the holder is the legal guarantee that the decision will be applied.
- (2) *Appeals in customs matters*. The existence of an appeal process ensures that customs decisions are made in a transparent and fair manner.
- (3) *Single window*. A single window is “a facility that allows parties involved in trade and transport to lodge standardized information and documents with a single entry point to fulfill all import, export, and transit related—related regulatory requirement”. This permits a trader to submit all data needed only once to the authorities involved. In addition, if examination of goods is necessary, the WCO encourages the co-ordination of physical inspection among the relevant agencies. Further, the WCO encourages countries to explore “regional approaches” to the single window concept, by working with neighbouring countries to exchange information and promote customs modernisation at the regional level.
- (4) *Risk management/post clearance control*. The “risk management process” involves “identifying the risks which could arise, analyzing the likelihood that they will in fact occur, evaluating their impact

and assigning an order of priority for dealing with them”. By implementing a “risk management procedure,” customs administrations will be able focus attention on the high-risk cargo, while performing fewer inspections on low-risk areas. The WCO also encourages “post-clearance” controls and audits, which normally involve in-depth scrutiny or compliance verification on the premises of the importer or exporter. By conducting periodic, comprehensive reviews of traders, customs administrations can shift the audit away from the individual transactions at the border, and thus facilitate simplified entry or export of goods.

- (5) *Simplified procedures/authorised persons*. With risk procedures in place, customs administrations can establish “fast track” procedures for low-risk traders. This also fosters a public–private partnership, which strengthens security and at the same time facilitates trade.

Finally, in conjunction with the other Annex D organisations, the WCO provides significant contributions in the area of technical assistance and capacity building. Notably, the Annex D organisations and individual WTO members have stressed the need for assistance in identifying needs and priorities. In other words, while there are a number of initiatives that would benefit most countries, there is no “one-size-fits-all” approach, and it will be necessary to more accurately determine the needs of each country. Each country faces unique problems and the appropriate trade facilitation initiatives will vary depending on the country and circumstances. Therefore the negotiating groups are considering ways to objectively measure the needs of each country, in order to provide adequate funding and assistance.

With this in mind, the Annex D organisations have compiled (and are further developing) a number of useful tools for determining the amount and type of technical assistance and capacity building that may be needed, including, for example, a self-assessment questionnaire developed by the WTO and a comprehensive “Gap Analysis” produced by the World Bank—both of which allow administrators to assess areas for which improvement is needed in customs procedures.⁴⁶

44. Submission to the WTO by the World Customs Organization, TN/TF/W/46 (date).

45. See, e.g. Submission to the WTO by the World Customs Organization, TN/TF/W/18 and TN/TF/W/57 (date).

46. See WTO Self Assessment Questionnaire, TN/TF/W/59 (July 2005); World Bank Gap Analysis, TN/TF/W/51 (July 2005).

The World Bank

The World Bank has provided some key mechanisms for understanding the existence and impacts of inefficient customs procedures in various economies around the world. In 2004, the World Bank commenced a series of annual reports, entitled *Doing Business*, in which it investigates and collects data regarding 155 countries across the globe, measuring factors in each country that both enhance and inhibit business activity. Each annual report focuses on different business topics and is comprehensive of the prior reports. The 2006 *Doing Business* includes a new topic, *Trading across Borders*, and therefore, is particularly relevant to the area of trade facilitation. *Trading across Borders* is a compilation of procedural requirements for exporting and importing a standardised cargo of goods (a dry-cargo, 20-foot, full container load) from the beginning of a transaction to the time the cargo is delivered to the customer.⁴⁷ The study tabulates three basic factors with respect to import and export transactions: (1) the number of documents required; (2) the number of signatures required; and (3) the total time in calendar days for clearance and delivery of goods.⁴⁸ Information for the study is collected from local freight forwarders, shipping lines, customs brokers and port officials.⁴⁹ As discussed further below, the study also highlights country experiences and improvements in customs procedures, and directly links those initiatives with reductions in red tape and delays at the borders.⁵⁰

The International Monetary Fund (IMF)

The International Monetary Fund and the WTO work together on a number of objectives. In this regard, the IMF provides monetary assistance for trade liberalisation, technical assistance and training and conducts data analysis as is needed to track and research trade policy developments. In addition, the IMF participates actively in the trade facilitation negotiations and attends working group meetings with the Annex D organisations.

United Nations Conference on Trade and Development (UNCTAD)

While a number of United Nations entities provide useful tools regarding trade and customs facilitation, UNCTAD (the designated Annex D

organisation) publishes guidelines and provides training periodically regarding trade and economic development, such as training regarding the use of information technology to simplify procedures and other customs modernisation procedures. In particular, UNCTAD collects data from various countries regarding their experiences with trade facilitation problems and initiatives, and publishes a "Trade Facilitation Handbook" that is styled as a "lessons learned" handbook.⁵¹ As discussed in more detail below, UNCTAD's database (or repository, maintained as part of the UN Centre for Trade Facilitation and Electronic Business (UN/CEFACT)) of case studies serves as an invaluable tool for assessing the types of problems that can arise and the factors that lead to success when implementing trade facilitation programmes. In addition, UNCTAD has developed a computerised customs management system, entitled "Automated System for Customs Data" or (ASYCUDA), that generates trade data that can be used for statistical purposes.⁵² In addition, the United Nations maintains the Global Facilitation Partnership for Transportation and Trade, which serves as a clearinghouse for information on trade facilitation definitions and initiatives.⁵³

Organization of Economic Cooperation and Development (OECD)

As a core member of the trade facilitation negotiating group, the OECD is active in publishing studies regarding the costs and benefits of trade facilitation, and has submitted various trade facilitation working papers to the WTO in order to assist in considering the best approaches for customs modernisation.⁵⁴

As part of the mandate to provide technical assistance and capacity building to developing countries, the OECD also commenced the OECD/DAC Project on Trade Facilitation which provides a summary of technical assistance and capacity building efforts underway. In addition, the WTO and OECD jointly established a database for tracking technical assistance and capacity building projects, referred to as the Trade Capacity Building Database.

47. World Bank, *Doing Business: Creating Jobs*, p.54, Box 9.1. The time when the cargo is at sea is not counted.
48. *ibid.*
49. *ibid.*
50. *ibid.*

51. See Trade Facilitation Handbook, Part 1: "National Facilitation Bodies, Lessons from Experience", available at www.unctad.org.

52. See www.asycuda.org.

53. See www.gfptt.org.

54. See OECD/DAC Project on Trade Facilitation, Phase 1: A Review of Technical Assistance and Capacity Building Initiatives for Trade Facilitation.

Customs reforms and success stories

Since commencement of the Doha Round negotiations, dozens of countries have made significant improvements in their customs and trade procedures, many of which are developing or least developed economies.⁵⁵ Some of the most notable examples of effective changes and pilot programmes relate to: (1) wholesale personnel reform and elimination of opportunities for corruption; (2) establishment of a “single window”; (3) improvement in speed for clearance of express shipments; (4) establishment of an electronic filing procedure; (5) implementation of efficient risk management procedures; (6) elimination and/or simplification of export licence requirements; and (7) changes in infrastructure that facilitate trade. Below is a snapshot of some of the advancements that have been made in these areas.

Personnel reform

One of the most dramatic examples of the benefits that can be achieved through changes in customs procedures involves Bolivia. Using significant private-sector support, the Bolivian Government was able to make some wholesale changes to its customs procedures, reducing serious corruption and establishing legitimate border tax collection.⁵⁶ As explained in a recent World Bank study:

“Before reform, the customs service was widely viewed within Bolivia as corrupt. Forty percent of staff was not salaried; the income was from keeping a part of the taxes collected. Many employees were obligated to kick back a share of their income to the political officials who had assigned them to the customs service. Every shipment was subject to physical inspection, this inspection provided an opportunity for bargaining over entry. Customs duties averaged over 20 percent, smuggling was pervasive. Customs revenues lost because of smuggling were estimated to be \$800 million/year, greater than the countries’ foreign assistance receipts.”⁵⁷

To address these problems, Bolivia established a new civil service system in which personnel were hired by an independent consulting firm according to their qualifications for the work.

55. As part of the WTO trade negotiations process, a number of member countries have submitted “national experience papers” in order to provide insight and examples regarding the costs of benefits of certain trade facilitation initiatives. These submissions are available on the WTO website at www.wto.org.

56. Finger and Wilson, above fn.12, p.24; see also Flavio Escobar, in *Customs Modernization Initiatives: Case Studies—Bolivia* (Luc De Wulf and José B. Sokol ed., World Bank, Washington, D.C., 2004), Ch.1 at pp.7–18.

57. Finger and Wilson, above fn.12, p.24.

Bolivia also reduced its inspection rate to 20 per cent of declarations, selected at random. Most notably, the Customs Bureau retains a share of the revenues collected, and therefore the Government and economy benefit significantly from the changes.

Establishment of a “single window”

In many countries, both importers and exporters are required to satisfy the requirements of multiple agencies, including the filing of a variety of forms and documents, payment of differing fees and the need to obtain clearance from a variety of offices or government officials. The single window concept was developed to allow traders to submit information just once to a single recipient agency in a manner that will then permit all participating government agencies access to the information they need in order to fulfil all import- or export-related regulatory requirements.

A good resource for information regarding the single window initiative is the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT). In September, 2004, UN/CEFACT published a comprehensive set of guidelines for establishing a single window.⁵⁸ In addition, in response to requests for further information, UN/CEFACT has developed a repository of “case studies” of countries that already have operational, or soon to be operational, single window programmes.⁵⁹ The current repository contains detailed information regarding 12 of the more than 30 single window pilot programmes currently in place. UN/CEFACT intends to expand its repository over time to include further examples. In addition, as noted above, the WTO Doha Negotiations website includes a compilation of “national experience” papers in which various members describe the experiences of trade facilitation pilot programmes such as the single window initiative.⁶⁰

One notable aspect of the single window initiative is that, if adopted, it involves significant changes for both advanced and developing economies. The single window repository compiled by UN/CEFACT includes case studies relating to Finland, Germany, Ghana, Guatemala, Hong

58. Case Studies on Implementing a Single Window, Economic Commission for Europe, United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) (released June 2006), available at www.unece.org.

59. Recommendation and Guidelines on Establishing a Single Window, Recommendation No.33, Economic Commission for Europe, United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) (released September 2004, published July 2005), available at www.unece.org.

60. See www.wto.org.

Kong SAR (China), Japan, Malaysia, Mauritius, Senegal, Singapore, Sweden and the United States. As part of its compilation, UN/CEFACT observed some general conclusions. First, although the list of countries is fairly diverse, there has been a common set of factors that lead to success:

- strong leadership, which can come from the private (Guatemala) or the public sector (Ghana, Malaysia, Senegal, United States, Singapore);
- co-operation and commitment of all stakeholders, private and public (Finland, Ghana, Mauritius, Malaysia, Senegal, United States, Singapore);
- user-friendly systems, which do not create complications for usual business procedures (China, Malaysia, Sweden, Senegal, United States);
- investments in modern technologies (Guatemala, Malaysia);
- phased, flexible approach (Germany, Mauritius, Singapore);
- neutrality, transparency and reliability of the proposed technical solution (Hong Kong SAR (China)).⁶¹

In contrast, countries experienced difficulties in the following areas:

- changing the established business and state practices (Ghana, Malaysia, Senegal, Singapore, United States);
- establishing co-operation and commitment of various state authorities involved in import/export procedures (Finland, United States);
- modernising the technologies currently used by the state and the private sector (Guatemala), and small and medium-sized business enterprises in particular (Sweden).⁶²

As noted above, this is one of the areas where developed countries such as the United States are involved. Indeed, the notion of creating a “single window” may very well be the most complicated reform for countries such as the United States, Finland or Germany that have established procedures involving multiple agencies. Even so, with the momentum of the trade facilitation negotiations, at some point in the near future we are likely to see some real changes in customs processing procedures in both developing and developed countries, as the administering authorities implement a single window (or similar) process. In Finland, for example, the operators explain:

61. Case Studies on Implementing a Single Window, above fn.58, p.5.

62. *ibid.*

“The greatest obstacle has been establishing the co-operation between authorities and real commitment. Initially it was very difficult. Once those obstacles were removed, problems vanished. In fact, co-operation is getting better all the time. We have seen it time and time again that without this co-operation the idea does not work, no matter how good the system is technically. There are major barriers between these authorities that have to be pulled down: some of the authorities are not used to/do not like to share information with other authorities. There are also matters of authority (who will take the lead?), how will financing be shared and what about federal borders. The authorities may also be located under different ministries. Often there seems to be no one responsible for an application covering this large an area of jurisdiction. We have also seen that once an enlightened person is found in an organization, high enough in command, problems tend to resolve themselves. The final initiative, however, has to come from the inside.”⁶³

The United States’ single window initiative is referred to as the International Trade Data System (ITDS), which was first established in 1996. The United States’ stated long-range goal of the programme is to provide one electronic interface for all information for all government agencies. Currently, there are about 20 participating US government agencies, not yet including US Customs and Border Protection (CBP), which is still working on determining its required standard data elements. The United States expects to implement the single window initiative as part of the rollout of the Automated Commercial Environment (ACE). Because implementation of the single window is to accompany the rollout of ACE, it is unclear at this time when the single window operation will be fully functional.

As a substantive matter, the United States makes particular note regarding the benefits in *security* that will come from the implementation of a single window. The United States notes:

“Governments often forget the public’s expectation of what is expected from their government processing of international trade data. Citizens expect their government to protect them from unsafe food, dangerous goods, environmental concerns, security and terrorism concerns, safe vehicles, etc. The lack of coordination among government agencies erodes the public’s confidence in the government’s ability to meet these basic concerns. A coordinated, integrated approach will improve the government’s ability to meet the public’s expectations.”⁶⁴

Indeed, security was a key motivation for establishing a single window approach in Sierra Leone. In May, 2006, the Commissioner of the National Revenue Authority announced that the NRA would be reducing tariffs and at the same time establishing a “one-stop shop” (or single window). These changes were said to be in response

63. *ibid.*

64. *ibid.*

to the high levels of smuggling taking place in the country and to enhance trade facilitation. While this initiative is still in progress, it may be one of the most promising advancements in trade facilitation yet. According to the World Bank's report, *Doing Business*, countries in sub-Saharan Africa remain the most bureaucratic and inefficient across the globe with respect to customs procedures.⁶⁵ As of 2005, an import transaction in Sierra Leone took nearly 40 days and required 22 signatures for clearance. Thus, in addition to providing improved border security, a functioning single window initiative could result in drastic changes for companies that do business in the region.

In fact, the most apparent and direct advantage of implementing a single window initiative is the simplification of procedures and the reduction in transaction time. The case of Egypt may be one of the most notable examples of how a country can rapidly improve its customs efficiency through a single window initiative. In 2004, Egypt incorporated wholesale changes in its customs and trade facilitation infrastructure (including the use of a single window approach), and reduced its required signatures from 26 to five. As a result, Egypt was able to cut down its import transport time from an average of 22 days to two to six hours.⁶⁶ Further, Egypt has instituted a maximum time-limit of two days for clearance through customs. Following Egypt's example, a number of other countries, including Columbia, Guatemala, Peru and four other countries have imposed a maximum time-limit of two days for clearance through customs.⁶⁷

Speedy clearance of express shipments

In order to respond to the business realities of "just in time" delivery and "zero inventory" management techniques, Taiwan reformed its clearance procedures for express consignments. Taiwan modelled its new procedures on the "WCO Guidelines for the Immediate Release of Consignment by Customs".⁶⁸ These guidelines categorise shipments into four categories, in order to allow rapid clearance as needed:

- correspondence and documents;
- low-value consignments with no duties and taxes;
- low-value dutiable consignments;
- high-value consignments.⁶⁹

65. *Doing Business in 2006*, above fn.2, p.55.

66. [See WTO submissions; World Bank report].

67. *Doing Business in 2006*, above fn.2, p.55.

68. See WCO Submission to the World Trade Organization, TN/TF/W/10, pp.44 and 45.

69. *ibid.*

In addition, Taiwan was able to obtain assistance for the programme through the Technical Assistance Program of the APEC Sub-Committee on Customs Procedures. Key elements in the new procedure are 24-hour/7-day service, application of risk management techniques to minimise the number of shipments subject to physical inspection, and the introduction of other incentives that encourage self-compliance by shippers.⁷⁰ As a result of these initiatives, Taiwan has been able to cut down its clearance time for express shipments from 48 hours in 1996 to just two hours in 2005. And Taiwan has seen real benefits—a 58 per cent growth in express import and export shipments between 2001 and 2003 and an 11 per cent growth in standard import and export shipments.⁷¹

Electronic filing procedures

One of the most effective initiatives means for improving trade is institution of electronic data entry systems. According to a study conducted by the Government of Japan, movement to an electronic system can lead to a reduction in trading costs of nearly 40 per cent.⁷² Singapore instituted electronic filing procedures in 1989, and thus led the challenge for reform in this area. Within two years of instituting the new programme, cargo clearance times in Singapore were reduced from four days to just 30 minutes. As a result of being a leader in this initiative, Singapore also became a leader in trade. According to the World Bank *Doing Business* Report, following institution of the electronic filing procedures, the number of shipments processed in Singapore tripled, to 32,000 per day, and the cost of trading fell by one-third.⁷³ "The reform made Singapore one of the easiest places for exporters and enhanced its position as a global trading center."⁷⁴

Following Singapore, more than two dozen countries have introduced electronic filing of customs documents. For example, both Fiji and Hungary have instituted options for electronic filing of customs documents and now 88 per cent of shipments are cleared without stopping. The electronic filing is made before the cargo reaches the border and usually is approved within 10 minutes of receipt. A risk assessment

70. Finger and Wilson, fn.12 above, p.22.

71. *ibid.*; see also WTO Negotiating Group on Trade Facilitation, Communication from the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, TF/W/44 (June 8, 2005).

72. Finger and Wilson, above fn.12, p.24; see Quantitative Assessment of the Benefits of Trade Facilitation, Paris, OECD, TD/TC/WP (2003) 31/FINAL; based on Japan External Trade Organization (JETRO) Report on Market Access to Japan: Single Window for Trade and Port-related Procedures (Tokyo 2002) (in Japanese).

73. Finger and Wilson, above fn.12, p.56.

74. *ibid.*

programme flags entries which require further review (approximately 12 per cent) and ultimately only about 2 per cent of all shipments are physically inspected.⁷⁵ Other countries are also making advancements in this area, and it is expected that as funding continues, more options will become available for electronic filing.

Efficient risk management procedures

In addition to electronic filing procedures, technological advancements with respect to “risk assessment” can be important. In a number of developing countries, in particular in Africa and South Asia, the standard practice is to inspect all or a large majority of imported cargo containers.⁷⁶ These inspections take time, slow down the transport process and can lead to increased corruption. However, inspections can be greatly reduced and streamlined with the use of risk assessment software. Risk management software allows for streamlined processing on cargo that is deemed to be low-risk, and more in-depth inspection where the risk is considered to be higher. The WCO Guidelines on the Revised Kyoto Convention provide a useful summary regarding the concept of risk management:

“For Customs administrations there is always an element of risk in facilitating the movement of goods and persons. The extent of controls to ensure compliance with the laws and regulations which the Customs are responsible for enforcing should be proportionate to the level of assessed risk.

Customs administrations today are required to provide extensive facilitation while maintaining control over the international movement of goods, means of transport and persons. The level of risk is determined in the context of the priorities of the Customs administrations, *e.g.*, whether the priority is collection of duties and taxes or checking prohibitions and restrictions or any other specific area that has been identified.”⁷⁷

Peru was a leader in implementing efficient risk assessment procedures. Prior to instituting a risk analysis programme, shipments into to Peru took almost 20 days to clear customs.⁷⁸ Following the introduction of the risk analysis programme, clearance was reduced to just 90 minutes for most goods.⁷⁹ The small number of goods that

are flagged for inspection (maximum by law of 15 per cent of cargo) are processed through the “red channel”, and nevertheless, are cleared within one day.⁸⁰ Japan has also instituted a risk assessment programme, and as a result was able to reduce its import clearance time from an average of seven days to just under three days,⁸¹ a difference that can be critical for seasonal or perishable goods.

Eliminated or simplified export licence requirements

The requirement of import and export licences is also a significant barrier to trade. Four countries—Germany, Pakistan, Uganda and Yemen—have eliminated or simplified requirements to obtain trade licences upon import or export. For example, Pakistan no longer requires that an importer or exporter obtain a licence for each shipment. Rather, licences are now granted to the importer/exporter for a period of two years. This change results in less hassle and time, and may reduce corruption owing to the reduction in approvals required.

Improvements in infrastructure

Finally, a number of countries have made improvements to infrastructure in order to cut down on customs processing time. For example, the United Arab Emirates and Shanghai both added port space in order to reduce cargo loading time. As a result of these changes, in the United Arab Emirates, loading time for cargo has been reduced from six days in 2004 to an average of only 17 hours.

Implications for global business

The status and outcome of the trade facilitation negotiations are of interest to the private sector for several important reasons. First, the negotiations hold considerable promise of achieving greater efficiency and less cost in the movement of goods around the world, which will become more important as trade continues to increase in volume. Secondly, there is a real emphasis on “technical assistance” and “capacity building”, and therefore developing countries are receiving and will continue to receive significant funding and training in order to improve on their customs laws. Thirdly, as customs administrations move

75. Risk analysis software is also used significantly in OECD countries, allowing ports in the region to inspect just 5% of total goods, as opposed to the 70%–100% of packages that are inspected in Africa and South Asia. *Doing Business in 2006*, above fn.2, p.57.

76. *ibid.*

77. World Customs Organization, Kyoto Convention—General Annex—Chapter 6, Guidelines on Customs Control (July 2000), available at www.wcoomd.org.

78. *Doing Business in 2006*, above fn.2, p.57.

79. *ibid.*

80. *ibid.*

81. Communication from Japan: Explanatory Note on Risk Management—Japan’s Experience, TN/TF/W/42 (June 3, 2005).

closer to public/private partnerships, and further away from transaction-by-transaction inspection, more companies will have the opportunity to ship goods on a “low-risk, fast-track” basis.

Eventually trade compliance will become less costly and the markets for available goods will expand. With modernised customs procedures and open trade, developing countries should see investment and economic expansion, leading to greater supply and demand for goods. In order

to remain at the head of the market, companies small and large should consider these upcoming opportunities for production, investment, imports and exports of consumer goods.