

## India's Interests in the Doha Round of Negotiation on "Trade Facilitation"

Chandan Mukherjee\*

### Introduction

The Doha Round of negotiation for multilateral trade liberalisation has resumed in early 2007. The talks were suspended in July 2006 when trade ministers from some key WTO Member countries like US, EU, India and Brazil could not decide on the modalities for liberalising trade. The WTO Chief, Pascal Lamy, has expressed that the moment is ripe once again to get "back to full-negotiating mode" after US, EU and other key members reported progress in bilateral talks.<sup>1</sup> However, details of the negotiation are still to be finalised for taking them to the political level.

It is a fact that though market access of many WTO Member countries has increased over the years through reduction in tariff barriers, it is not concomitant. This is mainly due to complicated trade procedures and presence of numerous barriers, which hinder easy flow of goods and services. In this scenario, facilitating trade through implementation of certain measures has increasingly become an issue of ardent interest for the WTO Member countries. Prior to the suspension of the trade negotiation in July 2006, trade facilitation (TF) was one of the few issues in the Doha Round negotiation that appeared to be heading for an agreement as per schedule. Measures for trade facilitation include simplification of customs procedures, and right of a WTO Member country to transit through another.

India, being an important player in the Doha Round of negotiation, has a major say in the TF negotiation. Conclusion of a WTO Agreement on TF is expected to generate significant benefits to India and enhance its participation in international trade.

### A Brief Background

Negotiation on TF is based on several articles of the GATT Agreement. They are as follows:

- Article V (freedom of transit)
- Article VIII (fees and formalities connected with importation and exportation)
- Article X (publication and administration of trade regulations)

TF also includes elements of other GATT agreements like those covering customs valuation, import licensing, pre-shipment inspection, rules of origin, technical barriers to trade, sanitary and phyto-sanitary measures, and intellectual property rights. However, the Doha Round of

**Table 1: GATT Articles on Trade Facilitation**

<b>Article V</b> (Freedom of Transit)	<ul style="list-style-type: none"> <li>• Deals with freedom of transit through the most convenient route</li> <li>• States that no discrimination be made on the basis of flag of vessel, place of origin, departure, entry, exit or destination</li> <li>• Calls parties also not to discriminate on the basis of ownership of goods or means of transport</li> <li>• Requires that no unnecessary delays or restrictions be imposed on transits</li> <li>• Requires members to impose reasonable fees and charges that would be non-discriminatory and limited to cost of service provided</li> </ul>
<b>Article VIII</b> (Fees and Formalities connected with Importation and Exportation)	<ul style="list-style-type: none"> <li>• Requires contracting parties to impose fees and charges in relation to import/export in a manner that is limited to cost of services provided</li> <li>• Requires that Members recognise the need to reduce the number and diversity of fees and charges and the incidence and complexity of import and export formalities</li> <li>• Requires Members to review its operation, upon request by others and not to impose substantial penalties for minor breaches of customs regulations or procedural requirements</li> </ul>
<b>Article X</b> (Publication and Administration of Trade Regulations)	<ul style="list-style-type: none"> <li>• Requires Members to publish all laws, regulations, judicial decisions and administrative rulings relevant to export/import in a manner as to enable governments and traders, to become acquainted with them</li> <li>• Elaborates the laws, regulations, judicial decisions and administrative rulings</li> <li>• Requires that Members should publish all trade agreements affecting international trade policy</li> </ul>

Source: *The Results of the Uruguay Round of Multilateral Trade Negotiations: The Legal Texts*, GATT Secretariat, Geneva: 1994

\* Assistant Policy Analyst, CUTS International

negotiation on TF is restricted to the above-stated three articles of GATT. Table 1 mentions the major elements of these articles.

### **The Doha Round of TF Negotiation**

Trade facilitation was first discussed at the Singapore Ministerial Conference of the WTO in 1996. This Ministerial Conference directed the WTO Council for Trade in Goods “to undertake exploratory and analytical work ... on the simplification of trade procedures in order to assess the scope for WTO rules in this area.” Thus, trade facilitation becomes a part of the (in)famous Singapore Issues.

Until the launch of the Doha Round of trade negotiation in November 2001 work in this regard at the WTO Council for Trade in Goods (CTG) had focused mainly on customs and border crossing procedures. The Doha Ministerial Declaration called for negotiation on TF subject to an agreement by the WTO Member countries on modalities of the negotiation. The mandate on TF negotiation was that “...the Council for Trade in Goods shall review and as appropriate, clarify and improve relevant aspects of Articles V (freedom of transit), Article VIII (fees and formalities connected with importation and exportation) and Article X (publication and administration of trade regulations) of General Agreement of Tariffs and Trade (GATT) 1994 and identify TF needs and priorities of Members, in particular developing and LDCs.”<sup>2</sup>

The Doha Declaration further clarified that negotiation on TF would take place only after “explicit consensus” on modalities is reached for each issue at the Cancun Ministerial Conference of the WTO in September 2003. No decisions were taken at Cancun since the Ministerial was not concluded. Many developing countries were, however, particularly resistant to bringing Singapore issues into the Doha Round of negotiation. Their apprehensions were based on a concern that commitments on such issues would involve significant implementation costs.

#### The July 2004 Package

In July 2004, the WTO Members agreed to launch the negotiation of TF as part of an overall package.<sup>3</sup> In Annex D of the July 2004 Framework, the negotiating mandate on TF was defined as clarifying and improving relevant aspects of GATT Articles V, VIII, and X “with a view to further expediting movement, release and clearance of goods, including goods in transit.” To allay the concerns of many developing and least developed countries, it was accompanied by assurance of special treatment and technical assistance to them for negotiation and implementation.

As an integral part of this negotiation the WTO Members, particularly those of developing and least developed countries, were expected to identify their TF needs and priorities, and also to address their concerns related to the cost of implementation of proposed measures. WTO Members made about 50 contributions to the work of the Negotiating Group on TF concerning many different aspects of the negotiations, such as:

- Publication and administration of trade regulations
- Advance rulings,

- Express shipments
- Border agency cooperation
- Release of goods
- Consular fees
- Cargo in transit
- Risk assessment and management
- Pre-arrival examination
- Post-clearance audit
- Technical assistance and capacity building

#### Hong Kong Ministerial Declaration

The Hong Kong Ministerial Conference of the WTO held in December 2005 took stock of the progress on the negotiation on TF and emphasised that work on TF needs to be continued to identify individual Member’s needs and priorities and cost implication of possible measures. It also recommended deepening and intensifying negotiations on issue of special and differential treatment with a view to arrive at provisions that are precise, effective and operational.

### **Trade Facilitation and India**

#### *The Present State in India*

Through autonomous liberalisation India has implemented and is implementing many TF measures. The present state of TF measures in India as regard to Articles V, VIII and X of the GATT are as follows.

#### Article V

India has preferred to deal with transit issues at a bilateral level, especially with Bangladesh and Nepal. With Bangladesh, India needs transit facility for its northeastern states. Nepal is a land-locked country and needs transit facility through India. India has already adopted measures under Article V to simplify procedures for transit. India allows transit facilities to Nepal as per a bilateral treaty. India has also simplified transit procedures. However, India and its neighbouring countries face the problem of weak infrastructure in border areas, development of which requires huge resources.

#### Article VIII

While some fees and charges appear to be nominal (for example, a fee of Rs1000 or US\$23 is charged in case of application for an Importer-Exporter code number), in other areas it is relatively high. For instance, application fee for an import license is based on the c.i.f. value of goods imported and for a c.i.f value greater than Rs 50,000 (US\$1,132) the fee charged is Rs two per thousand subject to a minimum of Rs 200 (US\$4.5) and a maximum of Rs 150,000 (US\$3,395).<sup>4</sup> This raises the issue of what a ‘reasonable’ fee should be.

Among other issues, at present India does not have a single administrative data set for export/import or a single one-time presentation to one agency. The most significant step taken by India in this regard is harmonisation of customs code. The Central Board of Excise and Customs (CBEC) and the Directorate General of Foreign Trade (DGFT) lay out standard processing time. However, such standards are only of the nature of intent and since

several customs station are there and level of infrastructure varies considerably between them, uniform standard processing time for all customs stations may not be possible.<sup>5</sup>

In order to simplify and reduce export/import procedures, India is making automation of custom stations through the use of electronic data interchange (EDI). Though significant progress has been made in computer connectivity much remains to be done. India has recently introduced the use of risk assessment methods in one customs location in Delhi and the module is gradually being replicated to other custom stations.

#### Article X

All trade related information is published by the CBEC and DGFT, which operate under the Ministry of Commerce and Industry, Government of India, and the Reserve Bank of India (RBI). Private players are also playing an important role to make information more accessible to traders. An “advance ruling mechanism” has been set up as per the Finance Act of 1999 in order to deal with classification, valuation and applicability of duty exemption in respect of export, import, production and manufacturing. However, in its present form the Authority on “advance ruling” has limited scope and offers this facility only to foreign firms who operate through joint ventures and wholly owned subsidiaries in India.

Electronic media is widely used by the CBEC, DGFT and RBI for dissemination of information though there is room for improvement. However, as of now there is no officially designated single enquiry point for traders. There is also no provision for consultation between interested groups.

On the other hand, India has an excellent institutional mechanism dealing with appeals protesting a decision of the authority dealing with customs and related assessment problems. Under the Foreign Trade (Development and Regulations) Act of 1992 an appeal can be made by any party against a decision of the DGFT.

#### **India's Concerns**

India's major concern on TF is that implementation of most of these measures require huge financial resources, which the country is not well equipped to provide given other developmental needs. Gestation lags in TF projects are also high when one looks at percolation of benefits.

In general, India views that efforts to bridge gaps between developed and developing countries on TF measures is not fair or desirable, nor in the best interests of the developing countries or a development-oriented trading system. This is because such an approach is expected to ignore the reality of resource constraints and may crowd-out welfare and other development priorities of poor countries.

It is also feared that it may be particularly difficult for developing countries to implement TF measures with binding commitments at the WTO and with the possibility of enforcing them through the WTO's dispute settlement mechanism. It also seems difficult for India to meet a uniform standard of automation and modernisation in all its ports, airports and land custom stations.

India also raises a concern that most of the TF measures and standards are developed as models, which are devised by the rich countries in the light of their own needs, experiences, capacities and objectives. Compliance with such standards will be virtually cost-free for them. But developing countries, being standard-takers and not standard-setters, would have a double disadvantage in upgrading their trade infrastructure, and adopting something, which is not homegrown as well as bearing the costs of adjustment.

So far, promises on S&DT cannot be taken at their face value given the experiences while implementing the Uruguay Round agreements. The ‘one-size-fits-all’ transition time that may be offered to India along with other developing countries will be of little comfort and utility. TF might thus become another onerous obligation on developing countries and on the other hand, may provide developed countries yet another sophisticated instrument for trade protectionism.

Use of international standards such as the ATA Carnets (Customs Convention on the ATA Carnet for the Temporary Admission of Goods) or the TIR Carnets (Customs Convention on the international transport of goods) is absent in India. India uses the ATA Carnet for a very limited purpose, mostly for duty-free temporary admission of imports. The requirements of the TIR Convention (in terms of specifications for vehicles and procedures) would be extremely difficult to adhere to for countries like India. At this stage, India may not be able to meet the rigorous requirements of these Conventions, as they would require enormous resources and a fairly large time span.

India might accept proposals like a *carte-blanche* freedom to all consignments and publish a list of ‘sensitive items’ for transit and may also go for provisions like additional inspection for goods requiring trans-shipment, but this requires enormous financial resources.

Existing WTO provisions on TF do not allow fees and charges related to export/imports to be charged on *ad valorem* basis. India's use of *ad valorem* basis for calculating fees and charges may not be compatible with current provisions of Article VIII.

There is a suggestion that India needs to apply the principle of least trade restrictiveness to import and export procedures. However, accepting suggestions on the principle of least trade restrictiveness would imply identification of unnecessary procedures and requirements including requesting information that is already available to authorities, requesting for same information more than once, requesting document specifically prepared for administrative process when the same information can be found in commercial documents.

#### **Conclusion**

India holds a view that there should not be any duplication of work, which is going on in the World Customs Organisation (WCO), an expert body, in context of revised Kyoto Convention of the WCO. There is also no need to bring procedural issues to WTO, which is a body focused more on trade rules, rights and obligations.

**Table 2: Time-Cost Matrix of Trade Facilitation Measures**

Time		High	Low
C O S T	High	<ul style="list-style-type: none"> <li>Improvement of port logistics</li> <li>Development of customs procedures</li> <li>Rationalisation of tax structure</li> <li>Facilitation of inter-state commerce</li> <li>Automation in customs procedure</li> <li>Public-private partnership</li> <li>Internal transit procedure</li> </ul>	<ul style="list-style-type: none"> <li>Development of e-business facility</li> <li>Formation of single enquiry point</li> <li>Formation of e-business infrastructure</li> </ul>
	Low	<ul style="list-style-type: none"> <li>Transparency in the management system</li> </ul>	<ul style="list-style-type: none"> <li>Mutual recognition of standards</li> <li>Liberalised visa regime</li> <li>Linking the financial system to trade</li> </ul>

The Government of India is committed to improving TF, as part of its overall reform agenda. India wants to implement TF-related suggestions by setting its own methodology and timeframe, given the human and financial resources and can also adopt best practices as it thinks fit. Costs associated with implementing TF measures as being discussed as part of the Doha Round of negotiation are very high, and therefore, India could accept many such proposals on a “best endeavour basis.”

India wants that flexibility should be provided for adopting international standards to decrease and simplify export/import documents. Moreover, India views that a custom station needs to apply a harmonised risk management system. Also specific criteria for risk management and for identifying authorised traders needs to be left on individual members. India demands that publication mandate, as per GATT Article X should only cover laws and regulations and not judicial decisions. India has proposed to set up separate enquiry points instead of single window in the country, being a large federal country. India is of the opinion that the WTO Members need to notify the places where relevant information regarding regulations/procedures on exports and imports would be available.

India also states that standard time needs to be set for resolution of minor appeals at the administrative level.<sup>6</sup> India, along with Indonesia, has proposed that collection of unpublicised fees and charges should not be prohibited and moreover, private sector needs to be allowed to fix fee and charges as some ports and airports are being privatised in the country. India also wants that prior consultation should be limited to domestic consultations only.

India wants that under Article VIII, for border clearance of goods and in particular, for clearance of agriculture and food products, Member states of a customs union should adopt same border procedures. This should include the adoption of same standards including specification, terminologies and definitions, inspection, sampling and test methods. All documentation requirements relating to import clearance needs to be uniform for all Member states of a customs union. Norms for authorised trader status should be applied uniformly by all Member states of a customs union. In case of rejection of a food consignment on account of failure to meet certain standards, India wants that an option should first be given to the importer to return the rejected good to the exporter and only upon failure on the part of the importer to exercise this option within a reasonable period of time, a different course of action can be taken, including destruction of goods by an appropriate authority of the importing country.

India has recognised the benefits of TF and made significant efforts through autonomous liberalisation to remove or reduce delays in customs procedures, and to reduce and simplify documentation to the extent possible. Further adaptation of TF measures by the country will depend on available human and financial resources and also on the special and differential treatment to be provided to the country as per the Doha Round of trade negotiations. Any further implementation of TF measures by India would also depend on the extent of liberalisation that has been under taken by other countries with which India has trade interest.

## Endnotes

- 1 Ministers agree to resume WTO talks, Reuters, January 27, 2007 [http://today.reuters.co.uk/news/articlenews.aspx?type=topNews&storyID=2007-01-27T153448Z\\_01\\_L27762360\\_RTRUKOC\\_0\\_UK-DAVOS-TRADE.xml&WTmodLoc=Top+News-C1-Headline-8](http://today.reuters.co.uk/news/articlenews.aspx?type=topNews&storyID=2007-01-27T153448Z_01_L27762360_RTRUKOC_0_UK-DAVOS-TRADE.xml&WTmodLoc=Top+News-C1-Headline-8)
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- 6 Chaturvedi, Sachin, Trade Facilitation Priorities in India and Commitments at WTO: A Overview of Current Trends, Research and Information System for Non-aligned and Other Developing Countries, New Delhi: 2006 [http://www.ris.org.in/dp109\\_pap.pdf](http://www.ris.org.in/dp109_pap.pdf)

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