

Doha Round of Negotiations on Trade Facilitation

The State of Play

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The matter of efficiency and procedural uniformity to regulate cross-border flow of goods and services has received considerable attention. However, many developing countries have been uneasy about adhering to binding rules in the WTO (World Trade Organisation) as they are hamstrung by a lack of implementation capacity or high future implementation costs. Nevertheless, countries have come to an agreement based on 'explicit consensus' to commence negotiations on trade facilitation under the Doha Round.

Text based proposals have now been made on roughly half the issues being negotiated and it is also to be noted that the WTO Members have started text-based discussions. Reportedly, discussions are revolving around 33 'new generation' proposals; these are much revised versions of earlier ones, the objective being to arrive at a draft text for a potential agreement. Some developing and least-developed countries have expressed their concerns that trade facilitation negotiations are proceeding 'too speedily', and have stressed that an agreement should not be finalised before a deal is struck on the subject of agricultural and industrial tariffs.

Mandate

Since July 2004 the WTO Members have been dealing with three core items with respect to trade facilitation:

- Articles V, VIII and X of the GATT 1994;
- Trade facilitation needs and priorities of Members, particularly developing and least developed countries; and
- Technical assistance and capacity building, as per the Work Programme of the WTO Working Group on Trade Facilitation (WGTF), organised according to the Annex D of the July 2004 Package.

Article V deals with freedom of transit for goods from one WTO Member to another Member and states that all charges imposed on goods in transit must be 'reasonable'. Article VIII says that fees and formalities connected with importation and exportation must be approximately equal to the cost of the services rendered so that they do not constitute a form of indirect protection, and calls for reducing the number and diversity of such fees. Article X requires all trade regulations to be clearly published and fairly administered.

The Sixth WTO Ministerial Conference, held in Hong Kong in December, 2005, set the stage for intensifying the negotiations on trade facilitation.

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WTO Members are working towards clarification and improvement of the Articles related to trade facilitation mentioned in the July 2004 Package. The negotiating process is described as 'flexible', 'evolutionary' and 'member driven'. Many of the proposals tabled are built upon already -revised submissions to propose specific wording for different sections of a future agreement.

The significance of trade facilitation for South Asian countries is reflected in the efforts made by individual members and joint regional initiatives. Countries are hopeful that the negotiations will address their concerns about border delays and higher transit costs for their goods. However, parties differ with regard to the timing and extent of commitments pertaining to technical and financial assistance for the implementation of a multilateral agreement on trade facilitation by LDCs and developing countries.

Since February 2006, the WGTF has intensified interactive discussion on substantive issues under the mandate and it has been receiving new and updated proposals from the Members. However, considerable doubt exists over whether negotiations on a single draft text for a future WTO agreement on trade facilitation can start in the absence of consensus elsewhere.

Freedom of Transit for Goods (Article V)

The issue has been the subject of many interventions. Most countries felt that the choice of transit route should be based on commercial consideration, and be left to an operator. For instance, Chile (TN/TF/W/70) and another joint eight-country paper (by Armenia, Canada, the EU, the Kyrgyz Republic, Mongolia, New Zealand, Paraguay and Moldova) called on the Members to make transit-related charges transparent, roughly equivalent to the cost of the service rendered, and subject to periodic review.

The EU, Taiwan and Switzerland put forward a submission calling for simplified customs procedures to be applied to 'authorised traders' who have a record of compliance with import and export requirements and other specific financial and security-related criteria. Other Members such as India were reportedly not in favour of making the establishment of 'authorised trader status' mandatory. In an attempt to get countries to speed up customs clearance times, EU, Japan, Korea, Mongolia, and Taiwan proposed rules for Members to periodically calculate and publish the length of their average periods for releasing goods, and commit to trying to reduce them. Australia and India said that they did not want any such commitment to be mandatory.

Trade-related Fees and Formalities (Article VIII)

Chile's proposal included a 'single-window' for export/import clearance, as well as a register of all services connected with export and import operations in order to increase transparency and predictability. Some Members felt that this proposal for a 'register' would turn out to be a costly exercise. India made a submission about harmonisation across customs unions. In a proposal, it stressed for uniform border clearance procedures for agriculture and food products among parties to a customs union, including specifications, definitions, inspection, sampling and test methods.

The mentioned eight-Member paper sets out a principle of 'non-discrimination' with regard to trade-related procedures and fees that echoes GATT prohibitions on discrimination between goods based on their national origin. It proposes that "...Members shall accord to traffic in transit to or from the territory of any Member, treatment no less favourable than that accorded to domestic goods, exports and imports, and their movement." This proposal also specifies that the treatment of traffic in transit must not be arbitrary, or constitute a disguised restriction on international trade in the guise of national security, health, safety and the environment.

Transparency in the Regulation and Administration of Trade Regulations (Article X)

In a proposal on transparency, India has argued that the 'rapid-alert' system used in some customs unions (and countries) to monitor and ensure the quality of imported food had 'trade-restricting' effects. Under such a system every member of the customs union as well as the exporting country is notified as soon as contaminated imports or those that fail to meet the required standards are detected. Following such detection, consignments from the exporter are subject to 100 percent inspection at points of entry, thus delaying clearance.

India said that such alerts may be triggered by the application of different requirements by different member states of a customs union. It argued, therefore, that customs unions should use a rapid alert system only if standards are uniform across all constituent states. India also proposed that procedures for rapid alerts should not be used as an unfair barrier to trade.

While the Indian proposal received praise for its substantive content and concrete focus, the EU and some other Members questioned whether the issues they raised fell within the mandate of the trade facilitation talks. India responded that while standard setting did indeed lie outside the WGTF's mandate, the problem in question was not about the standard, but about transparency and uniformity in administrative procedures at borders.

In a joint submission, Peru, Chile and the US called for trade regulations to be published on the internet as it was an inexpensive mode. Special and differential treatment (S&D) provisions of this proposal included deferred implementation of commitments, along with technical assistance to support the development and maintenance of the relevant website. Nevertheless, some developing countries such as India, Kenya, Egypt and Jamaica expressed concerns about compliance costs, internet literacy and the availability of information technology.

Technical Assistance and Capacity Building

A number of proposals expressed concerns about technical assistance, capacity building, and the cost of implementing future rules on trade facilitation. There are two prominent submissions in this regard. The first one came from a 'core group' of 21 small and large developing and least developed countries, and several alliances. The second one was submitted by a 23-country group of developed and developing countries. Both of them proposed detailed steps for the implementation of trade facilitation obligations based on self-assessment of technical assistance, capacity needs and aid provisions. The 'core group' proposal also divided provisions into 'mandatory' and 'best endeavours'; the proposal was that

some of the mandatory obligations would get addressed only after the necessary capacity had been acquired and duly notified to the WTO.

As to the issue of determining whether developing countries have acquired a capacity to implement trade facilitation commitments, the proposal submitted that the concerned country should work details out bilaterally with donors. In the case of LDCs, the proposal reiterated the need for technical assistance and capacity building (TACB) efforts to be tailored to individual countries. It also left the determination of capacity acquisition solely to each LDC Member.

A majority of WTO Members also called for the creation of a Trade Facilitation Technical Assistance and Capacity Building Support Unit within the WTO Secretariat that will be mandated to match TACB resources provided by donors with the needs identified by the concerned Members.

However, these proposals faced strong criticism from some Developed Country Members such as the EU and Switzerland, and also a few developing countries like Costa Rica, for seeking too many exemptions for

developing countries on the implementation of key provisions of a multilateral agreement on trade facilitation. Generally, some developed countries were unhappy about letting developing countries to 'self-assess' implementation capacity, instead preferring a multilateral mechanism. The Philippines countered this criticism by saying that the objective was not to create opt-outs, but to ensure that developing countries get technical assistance they require to implement the agreement. Thus, S&DT and TACB remain contentious.

Conclusion

Trade facilitation, through constructive discussions on various proposals, is an area on which progress has been substantial enough to allow WTO Members to draft the text of an agreement. Determination of capacity development and the extent to which commitments would bind has remained a significant issue for negotiations. Differences remain on issues such as whether concrete timeframes and deadlines for implementation are desirable or not. The LDC Group felt that it is still unclear how special and differentiated treatment and technical assistance and capacity building would function.

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