



TRADE FACILITATION IN REGIONAL TRADE AGREEMENTS



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Trade Facilitation in Regional Trade Agreements

The number of provisions related to customs and trade facilitation included in Regional Trade Agreements (RTAs) has increased over time. Currently, most of RTAs that have been notified to the World Trade Organization (WTO) comprise commitments in such matters, reflecting the growing importance of trade facilitation at the regional level. At the same time, trade facilitation is also being negotiated at the WTO, which suggests the need to examine linkages between future provisions of the agreement currently being negotiated at WTO and trade facilitation commitments in RTAs. The present study presents and discusses issues WTO members face with regards to discrimination and discrepancies between trade facilitation commitments at the regional and multilateral levels. The report also envisages actions to be taken to minimize potentially adverse effects.



Note

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Abbreviations

ADB	Asian Development Bank
APEC	Asia-Pacific Economic Cooperation
APTA	Asia-Pacific Trade Agreement
ASEAN	Association of Southeast Asian Nations
ASYCUDA	Automated System for Customs Data
CAFTA	Central American Free Trade Agreement
CARIFORUM	Caribbean Forum
COMESA	Common Market for Eastern and Southern African States
EAO	Economic Authorized Operators
EDI	Electronic Data Interchange
EFTA	European Free Trade Association
EPA	economic partnership agreement
ESCAP	United Nations Economic and Social Commission for Asia and the Pacific
EU	European Union
FTA	free trade agreement
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
ICT	information and communication technology
LDC	least developed country
LLDC	landlocked developing countries
MFN	most favoured nation
NAFTA	North American Free Trade Area
PTA	preferential trade agreement
RTA	regional trade agreement
SAARC	South Asian Association for Regional Cooperation
SACU	Southern African Customs Union
SAFTA	South Asian Free Trade Agreement
SAPTA	South Asian Free Preferential Agreement
TPP	Trans-Pacific Partner Agreement
WCO	World Customs Organization
WTO	World Trade Organization

Introduction

Under the framework of the Doha Development Agenda, and since 2004, the members of the World Trade Organization (WTO) have been engaged in negotiations of multilateral trade facilitation rules which would clarify and improve existing Articles V, VIII and X of the General Agreement on Tariffs and Trade 1994 (GATT).

After seven years of good progress, the negotiations have reached the stage of a draft text for a future WTO trade facilitation agreement. Many see this agreement as a source of significant benefits to the world trading community and as a potentially significant outcome of an otherwise endangered WTO round. Even if this multilateral framework does not come as soon as expected, some of the substance of the agreement waiting for finalization in Geneva has already made its way, in various forms, into agreements at the regional level.

Virtually every trading nation is today involved in one or more regional trade agreement (RTA). For purposes of this study “RTAs” cover all levels of trade integration, from bilateral and plurilateral free trade areas, to customs unions with common external tariffs. This study includes RTAs signed within developing countries, and between developing and developed countries that have been notified to the WTO. As of May 2011, around 489 RTAs, (counting goods and services notifications separately) were notified to WTO¹. For example, from 202 RTAs on goods and services that have presently been notified to WTO, around 118 (or 58 per cent), include provisions related to some form of customs and trade facilitation measures. This clearly reflects the growing importance of trade facilitation at the regional level and thereby the need to examine the existing linkages of regional trade facilitation commitments and possible future provisions agreed at WTO.

Indeed, this multiplication of trade facilitation rules at the regional level may also have become a source of overlap, and incompatibilities. The present study aims to contribute to a better understanding of the situation WTO members may face in the field of trade facilitation especially in view of a possible adoption of a multilateral agreement and the proliferation of regional instruments on trade matters.

The study analyses customs and other trade facilitation measures contained in these 118 regional trade agreements currently in force in Africa, Asia, Americas, Europe, as well as agreements concluded across regions. Scrutinized provisions in RTAs refer to the publication and administration of trade-related rules, customs procedures, and freedom of transit. These measures, similar to those included in the draft WTO Trade Facilitation Agreement, i.e. the consolidated text document TN/TF/W/165, are here referred to as “WTO-like” measures.

Part 1 of the study discusses the relationship between trade facilitation measures in these RTAs and the core WTO principle of the most favoured nation (MFN), and the exceptions to it. Part 2 provides an overview of the types of trade facilitation provisions contained in analyzed RTAs. Part 3 analyzes differences and overlaps among selected trade facilitation measures under different RTAs. Part 4 provides conclusions and remarks on benefits and risks brought by adherence to multiple RTAs.

¹ http://www.wto.org/english/tratop_e/region_e/region_e.htm

1. WTO rules and regional commitments on trade facilitation

1.1 RTAs in WTO law

The most-favoured-nation (MFN) principle establishes that when trading, every WTO member shall accord the same advantages, favours, privileges or immunities to like products and/or services of all WTO members.² By their nature, RTAs grant more favourable treatment to the parties of such agreements than to other WTO members. Therefore, RTAs represent a departure from one of this core principle of the multilateral trading system.

There are nevertheless WTO rules that allow being exempt from the MFN principle for the purposes of creating RTAs with regard to trade in goods,³ which are:

- Article XXIV of the General Agreement on Tariffs and Trade (GATT) 1994, permits preferential treatment through the creation of a customs union and/or a free trade area;
- The decision on differential and more favourable treatment, reciprocity, and fuller participation of developing countries, known as “Enabling Clause”, which allows developed countries to grant a more favourable tariff treatment to products from developing country members. Furthermore, it also facilitates RTAs on trade in goods among developing countries.

Article XXIV of the GATT sets the conditions under which RTAs can derogate from the MFN principle, while stipulating that they should not raise barriers to trade with other trading partners, i.e. non-member to such RTAs (paragraph 4). Its paragraph 5 (a) specifies that the duties and other regulations created in customs unions:

“[...]shall not on the whole be higher or more restrictive than the general incidence of the duties and regulations of commerce applicable in the constituent territories prior to the formation of such union [...]”

By the same token, its paragraph 5 (b) provides that with respect to a free trade area:

“[...] the duties and other regulations of commerce maintained in each of the constituent territories [...]shall not be higher or more restrictive than the corresponding duties and other regulations of commerce existing in the same constituent territories prior to the formation of the free-trade area [...]”.

The issue is whether and to what extent a preferential measure which is supposed to facilitate trade between trading partners under an RTA does not raise a trade barrier against the other trading partners, i.e. non-members to such an RTA.

As for the Enabling Clause, in particular paragraph 2(c) allows for an exception from MFN, stipulating that:

“Regional or global arrangements entered into amongst less-developed contracting parties for the mutual reduction or elimination of tariffs and, in accordance with criteria or conditions which may be prescribed by the Contracting Parties, for the mutual reduction or elimination of non-tariff measures, on products imported from one another”.

Even so, Paragraph 3(a) of the Enabling Clause states that *“any differential and more favourable treatment provided under this clause shall be designed to facilitate and promote the*

² The most favoured nation principle for goods is contained in Article I of GATT. With respect to services, this principle is included in Article II of the General Agreement on Trade and Services (GATS).

³ Article V of GATS permits the creation of RTAs on trade in services.

trade of developing countries and not to raise barriers to or create undue difficulties for the trade of any other contracting parties". While this language is softer than that used in GATT Article XXIV:4, it still seems to reflect the overarching spirit of encouraging trade facilitation without the introduction of unnecessary barriers to trade for non-member countries.

1.2 Trade facilitation commitments in RTAs that do and do not discriminate in practice

Trade facilitation commitments in RTAs present a unique characteristic, unlike other substantive obligations of an RTA. Some trade facilitation measures under RTAs are in practice applicable to all trading partners, including non members of the RTA. Therefore, not all of the trade facilitation measures are discriminatory against WTO members that are non-RTAs parties. In fact, trade facilitation at the regional level can be also benefit non-RTA parties.

Examples include some transparency provisions, such as public availability of trade-related laws, regulations and rulings, and the use of international instruments to simplify procedures and documents. It is more efficient and easier to have one internet portal where all the necessary trade-related information is available in one place for all trading partners, rather than publicizing information on a selective basis for a selected number of viewers only. Another example might be the creation of a paperless trading environment or a national single window under an RTA, both of which in practice are usually applied equally to trade flows from all trading partners and not only partners under an RTA.

Certainly, due to the inherent nature of RTAs, some trade facilitation provisions are applied on a preferential basis, i.e. solely among the parties to the RTA in question. This leads to discrimination against other trading partners that are not part of the RTA. Such discrimination may have two forms:

(a) A first type of discrimination lies in trade facilitation measures stipulated to be exclusively applied between RTA members. This is the case, for example, of a provision for advance rulings, harmonized customs procedures, specific fees and charges, or the application of regional standards. These measures discriminate against non-RTA trading partners by not granting them the same facilities.

(b) A second type of discrimination stems from the different levels of preferential trade facilitation measures found across different RTAs. This is the case when individual countries or regional groupings are parties to several RTAs that apply similar trade facilitation measures but different in scope, depth and language. An interesting example of such a differentiated level of preferential trade facilitation measures is the procedure and administration of advance rulings, which varies in scope, depth and language across divers RTAs. This case is discussed in more detail in Part 2 of this report.

As stated above, and as covered under GATT Article XXIV, RTAs allow for a preferential treatment among trading partners under RTAs and thereby discriminate against WTO members not parties to the RTA. In other words, when trade facilitation measures are agreed under an RTA, this preferential treatment can be justified under GATT Article XXIV.

This can steer the analysis to different directions. First, in the context of a dispute, it may arise the issue of whether trade facilitation measures under RTAs, according to GATT Article XXIV, legitimately favour trading partners. Second, the relationship between trade facilitation in RTAs, and in the WTO Agreements also leads to different scenarios than discrimination. This is the case when is possible to extend preferences on trade facilitation to non RTAs partners – even if a WTO commitment has a “best endeavour” language. For example, in the event that a signatory party of an RTA does not extend a trade facilitation preference to non-RTA partners, the latter might question whether this country complies with the future WTO obligation derived

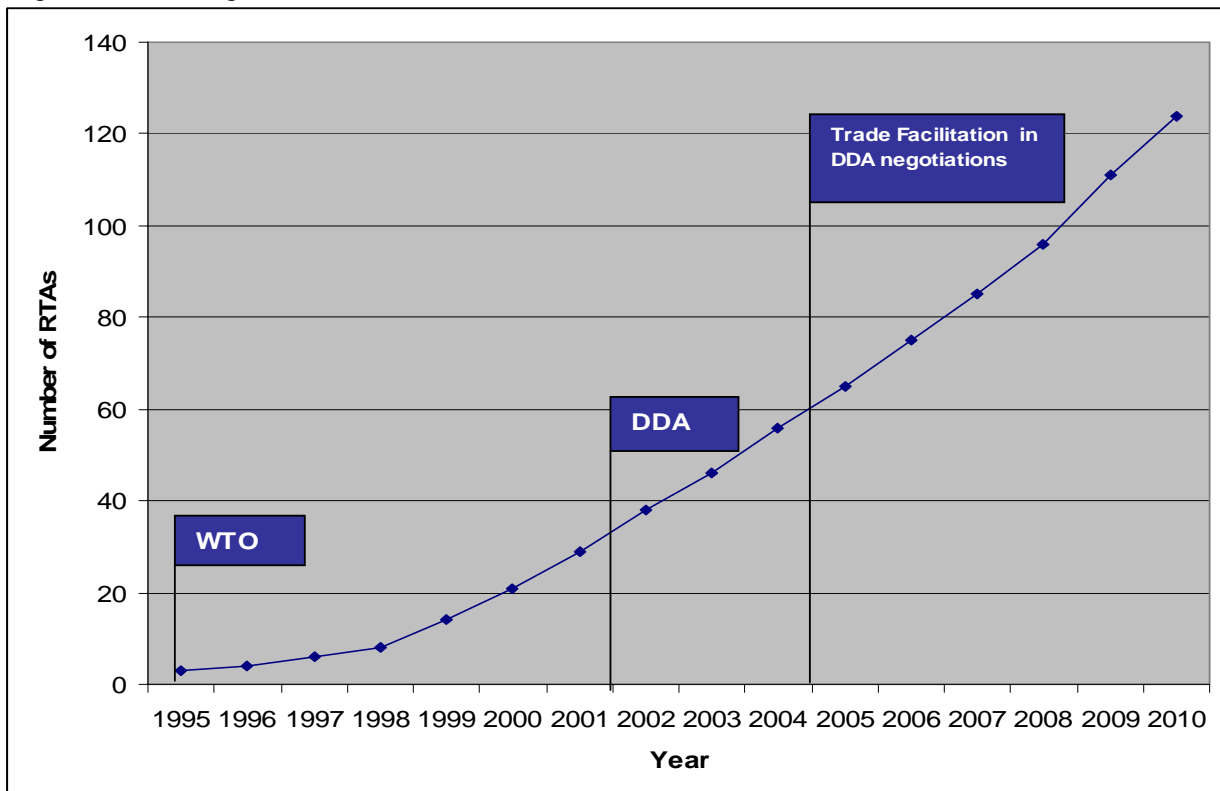
from Article VIII of the GATT. This provision states that: “contracting parties recognize the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements.” This scenario is raised because, in the provision derived from Article VIII of the possible new WTO trade facilitation agreement, members may commit to “minimize” certain requirements. We note that the word “minimizing” is difficult to quantify and therefore, to prove that is possible that a country simplifies formalities further. However, if the country has reduced formalities (e.g. for RTA partners), non-RTA partners may prove that a further reduction is possible.

2. Trade facilitation in regional trade agreements

Between 1995 and 2010, the number of RTAs with trade facilitation provisions has grown remarkably, especially since the launch of trade facilitation negotiations with the Doha Development Agenda at the WTO (see figure 1). Trade facilitation provisions in RTAs may be found as part of general principles, a chapter on customs procedures, or contained in an independent chapter. Their scope has evolved significantly over the years.

Initially, RTAs mainly included provisions narrowly focused on customs procedures. More recently, these provisions have expanded to areas as transparency, simplification and harmonization of trade documents, and coordination among border agencies, as well as with the business community. Provisions dealing with customs matters have also evolved and now cover a wider range of measures including risk management, right of appeal, advance rulings, release of goods, temporary admission and express shipments.

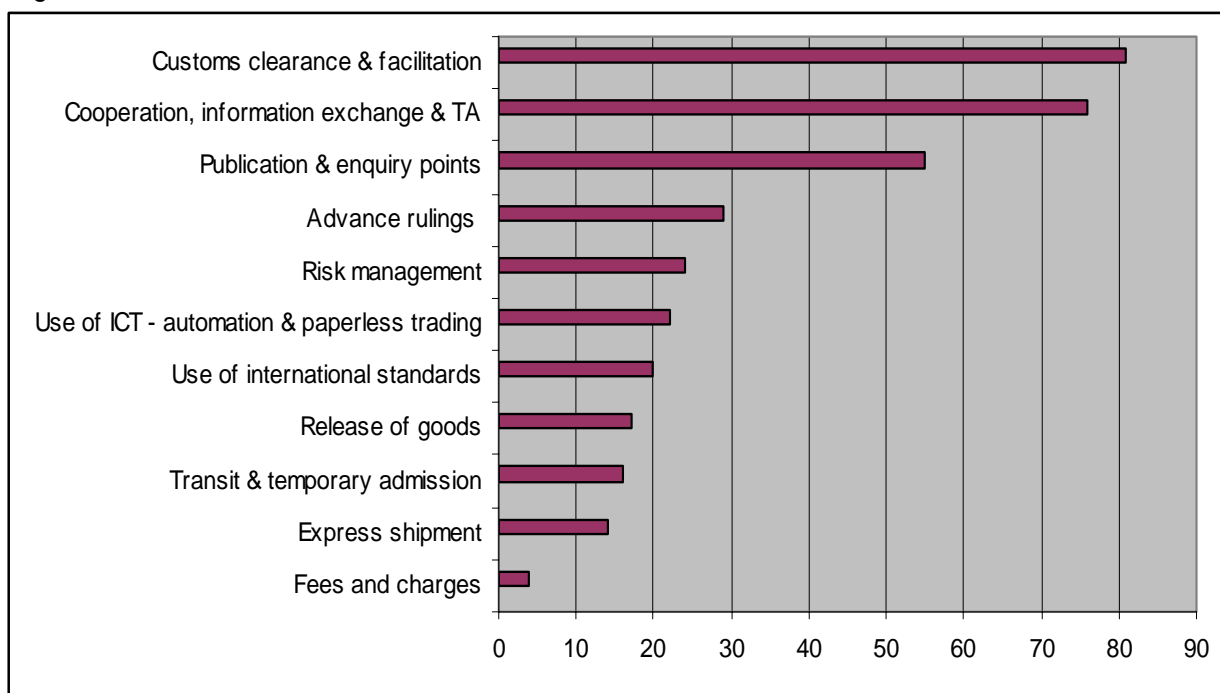
Figure 1. Increasing number of RTAs with customs and other trade facilitation measures



Source: UNCTAD secretariat based WTO RTA Database.

Examples of RTAs that contain detailed provisions on customs procedures and other trade facilitation measures include Japan-Singapore Economic Partnership Agreement, Economic Partnership Agreements (EPAs) between the EU and ACP countries, bilateral agreements between the European Free Trade Association (EFTA) and some developing countries, some Association of Southeast Asian Nations (ASEAN) Plus RTAs, the RTAs of the USA with third countries, the Asia-Pacific Trade Agreement (APTA) and the Trans-Pacific Strategic Economic Partnership agreement (TPP). The list of these RTAs is provided in Annex 1. (See also figure 2 for a grouping of WTO-like measures included in RTAs.)

Figure 2. Breakdown of “WTO-like” trade facilitation measures contained in RTAs



Source: UNCTAD secretariat based analyzed RTAs.

Some of the factors that may have shaped trade facilitation measures in RTAs include:

(a) Specificities and common interests of trading partners: When an RTA involves a landlocked country; usually includes transit-related provisions sometimes linked to provisions on development of transport infrastructure and logistics. Freedom of transit and use of land transport and seaports systems in coastal transit States are of vital importance for landlocked developing countries' trade with overseas markets. Some interesting examples of RTAs with detailed provisions on transit, transport policies and/or transport infrastructure development include the Common Market for Eastern and Southern African States (COMESA) and the Southern African Customs Union (SACU) treaties. Some RTAs also contain provisions encouraging the information technology (IT) solutions, such as paperless trading and electronic transactions. Provisions on electronic filing and transfer of trade-related information and electronic versions of documents (such as bills of lading, invoices, letters of credit, and insurance certificates) can be found in bilateral agreements between Japan and the Philippines, Singapore and Thailand.

(b) Increased appearance of international standards: Most recent agreements, including EPAs between EU and ACP countries, Asia – Pacific Trade Agreement (APTA), bilateral FTAs to which EFTA is party, Trans-Pacific Partner Agreement (TPP), Peru-China, often refer to

international trade facilitation standards developed by the World Customs Organization (WCO).⁴ The WCO Revised Kyoto Convention⁵ provides a comprehensive set of standards and guidelines to implement simplified and harmonized customs procedures. These are echoed in specific chapters on customs procedures and administration in a large number of RTAs. Adherence to such international standards helps ensure that the countries align with the same internationally agreed benchmarks and contributes to convergence between RTAs.

(c) WTO negotiations on trade facilitation and WTO-like measures: The majority of the RTAs concluded after the launch of the WTO negotiations on trade facilitation in July 2004 contain measures which are very similar or identical in their content to those considered at the WTO, i.e. “WTO-like trade facilitation measures”.

The convergence between regional commitments and multilateral efforts at WTO is therefore clear. Trade facilitation commitments contained in existing RTAs have provided a basis to those tabled at the WTO, as much as WTO texts have served as a source for provisions included in post 2004 negotiated RTAs.

Evidence may be found, for example, in the well-established pattern by the United States to include provisions on express shipment in FTAs, now mirrored at the WTO in the negotiated draft text agreement. Similar observations can be made in the case of the EU with Economic Authorized Operators (EAO). Provisions addressing EAOs can be found in most EPAs and are likewise advocated by the EU at the WTO. Finally, a closer look at the Framework Agreement on Trade Facilitation under the Asia-Pacific Trade Agreement (formerly known as the Bangkok Agreement) reveals that its trade facilitation measures are to a large extent similar to those negotiated at the WTO. Based on their content, WTO-like measures in RTAs can be grouped into three main clusters:

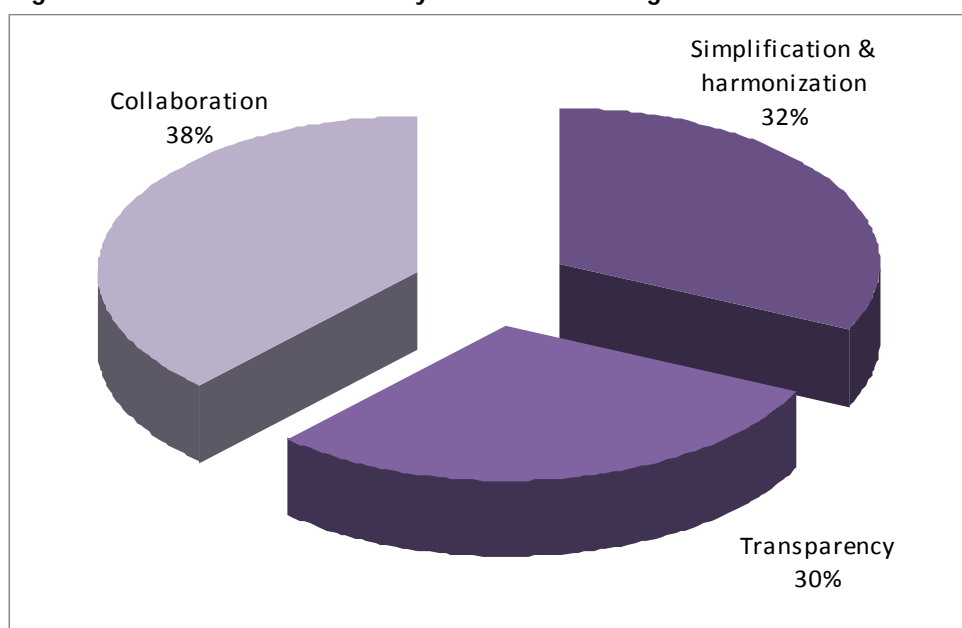
- (a) Transparency measures: These ensure predictability in the administration and application of the rules and procedures specified. Making trade rules more predictable reduces uncertainty, which has a direct effect on costs. Measures include (i) publication of trade-related laws, regulations and procedures; (ii) enquiry points; and (iii) administration of advance rulings.
- (b) Simplification and harmonization measures: These lead to more streamlined and leaner trade procedures and documents, and are based on international standards recommended by WCO or UNECE. Several WTO-like measures in proposals made at the WTO can be found in RTAs. They include customs clearance and facilitation, express shipments, risk management, use of international standards, single window automation, fees and charges, and transit matters.
- (c) Collaboration measures: These are linked to the fact that trade facilitation directly involves or affects a large number of actors from the public and private sector needing to collaborate. It is important to create collaboration mechanisms such as committees or working groups at the national level, among the domestic agencies, as well as across the border, i.e. with the trading partners. Collaboration measures, especially those that involve a cross-border collaboration and coordination of the RTA parties, target different stakeholders such as customs other government agencies, and the business community.

⁴ Such standards include SAFE Framework of Standards to Secure and Facilitate Global Trade, ATA and Temporary Admission Conventions, and the WCO Data Model.

⁵ The International Convention on the Simplification and Harmonization of Customs procedures (Kyoto Convention) entered into force in 1974 and was revised and updated to ensure that it meets the current demands of governments and international trade. The WCO Council adopted the revised Kyoto Convention in June 1999 as the blueprint for modern and efficient Customs procedures in the twenty-first century. More information can be found on http://www.wcoomd.org/home/pfoverviewboxes_tools_and_instruments_pfrevisedkyotoconv.htm.

The share of trade facilitation measures under each cluster is rather balanced (figure 3).

Figure 3. Share of measures in analysed RTAs according to three main clusters



Source: UNCTAD secretariat based on the number of RTAs analysed.

3. WTO-like trade facilitation measures in RTAs

Over the years, trade facilitation standards and recommended best practices have been incorporated into existing RTAs around the world and are now also present in the draft consolidated text of the WTO agreement on trade facilitation. A closer look at existing “WTO-like” provisions on customs and trade facilitation in RTAs, shows that the latter vary greatly in scope, depth, and detail.

Ordered by decreasing number of times, they appear in the 118 agreements scrutinized, WTO-like trade facilitation measures incorporated in RTAs are briefly reviewed below (See also figure 2 above). Annex 1 provides the list of analysed agreements. Details by region of selected RTAs including trade facilitation provisions are provided in Annex 2.

3.1 Customs clearance and facilitation (81 Agreements)

Most scrutinized agreements have some reference to customs clearance procedures and simplification of administrative formalities. Customs provisions vary across RTAs, for example in RTAs concluded by Pakistan, ASEAN and Japan, compared to “trade facilitation” provisions in the Canada-Costa RTA or “simplification and harmonization of trade procedures and documents” under the COMESA Treaty.

Three RTAs concluded by ASEAN provide an example of differences found in the scope, depth and language. The ASEAN–Republic of Korea RTA⁶ is limited to recognizing the importance of “cooperation among authorities on customs matters”; the ASEAN–Japan RTA⁷ contains provisions on customs procedures, of general nature and in “best-endeavour” language.

⁶ <http://www.akfta.net/>.

⁷ <http://www.mofa.go.jp/policy/economy/fta/asean.html>.

On the other hand, the ASEAN-Australia-New Zealand RTA⁸ contains detailed provisions on customs procedures objectives, scope, definitions, cooperation, the use of automated systems, advance rulings, risk management, confidentiality, enquiry points, and review and appeal.

Box 1. Slight but tangible differences in RTAs between ASEAN and partners

ASEAN–Republic of Korea FTA, Annex, Economic Cooperation, Article 1, Customs Procedures:

The parties, recognizing that cooperation among authorities on customs matters is an important means of facilitating international trade, shall, subject to their respective domestic laws and consistent with their own policies and procedures:

- (a) Share expertise on ways to streamline and simplify customs procedures;
- (b) Exchange information on best practices relating to customs procedures, enforcement and risk management techniques with the exception of confidential information;
- (c) Facilitate cooperation and exchange of experiences in the application of information technology and improvement of monitoring and inspection systems in customs procedures; and
- (d) Ensure, as they deem fit, that their customs laws and regulations are published and publicly available, and their customs procedures, where necessary, are exchanged among customs contact points.

ASEAN–Japan Free Trade Agreement, Article 22, Customs Procedures:

1. Each Party shall endeavour to apply its customs procedures in a predictable, consistent and transparent manner.
2. Recognizing the importance of improving transparency in the area of customs procedures, each Party, subject to its laws and regulations, and available resources, shall endeavour to provide information relating to specific matters raised by interested persons of the parties pertaining to its customs laws. Each Party shall endeavour to supply not only such information but also other pertinent information which it considers the interested persons should be made aware of.
3. For prompt customs clearance of goods traded among the parties, each Party, recognizing the significant role of customs authorities and the importance of customs procedures in promoting trade facilitation, shall endeavour to:
 - (a) Simplify its customs procedures; and
 - (b) harmonize its customs procedures, to the extent possible, with relevant international standards and recommended practices such as those made under the auspices of the Customs Cooperation Council.

ASEAN–Australia–New Zealand FTA. Chapter 4, Customs Procedures. Article 4, Customs Procedures and Facilitation

1. Each Party shall ensure that its customs procedures and practices are predictable, consistent, transparent and facilitate trade, including through the expeditious clearance of goods.
2. Customs procedures of each party shall, where possible and to extend permitted by its customs law, conform with the standards and recommended practices of the World Customs Organization.
3. The customs administration of each Party shall review its customs procedures with a view to their simplification to facilitate trade.

Source: ASEAN–Republic of Korea, ASEAN–Japan and ASEAN–Australia–New Zealand FTAs.

Provisions on customs clearance procedures in RTAs between Japan and its trading partners, Indonesia, Malaysia, Philippines, Thailand and Chile, are similar in scope and depth. The majority of these RTAs call upon the use of information and communication technology, simplification of customs procedures, harmonization of customs procedures with international standards (in particular those of the Customs Cooperation Council/World Customs Organization) (CCC-WCO), promotion of cooperation, between both customs and other national authorities, as well as Customs and trading communities. On the other hand, RTAs between Japan–Singapore and Japan–Mexico are limited to some of these measures only (e.g. limited to simplified procedures and conformity with international standards and practices under the auspices of CCC/WCO only).

Major differences also lie in the language used. For example, the Japan–Indonesia and Chile–Japan RTAs stipulate that “Parties shall apply their respective customs procedures in a

⁸ <http://www.asean.fta.govt.nz/>.

predictable, consistent and transparent manner”, establishing a mandatory commitment. Similarly, the Japan–Singapore RTA states that “the Parties shall ensure that its customs procedures are predictable, consistent, and transparent and facilitate trade [...]”. On the other hand, the Japan–Malaysia, Japan–Philippines, Japan–Thailand and Japan–Mexico RTAs use soft language such as “shall endeavour to”, or “shall make cooperative efforts for”.

3.2 Cooperation and exchange of information (76 agreements)

The majority of analysed RTAs contain more or less elaborate provisions on cooperation among customs agencies. In addition, some RTAs include cooperation between customs and the business community (e.g. Canada–Costa Rica, EPAs by the EU, Japan–Malaysia), or between customs and non-parties (e.g. Japan–Viet Nam) so as to extend such collaboration to all the trading partners.

The scope of cooperation and information exchange greatly differs among RTAs, but generally it is channeled to the following areas (further details in box 2):

- Customs-related measures;
- Provision of technical assistance and capacity building;
- Development of the joint work programmes; and
- Implementation of international standards and instruments.

Box 2. Illustrative list of areas of cooperation and exchange of information based on the measures contained in different RTAs

Cooperation usually covers customs-related issues:

Training; risk assessment; prevention and detection of contraband and illegal activities; implementation of the Customs Valuation Agreement; audit and verification frameworks; customs laboratories; electronic exchange of information; simplification of customs procedures; enhancing the use of technologies to improve compliance with laws and regulations; advance ruling, simplified procedures for entry and release of goods, post release controls and company audit methods; introduction of procedures and practices which reflect as far as practicable, international instruments and standards; automation of customs and other trade procedures.

Information exchange among the parties is often mentioned for:

Customs legislation and procedures; the name and address of the importer, exporter, manufacturer, buyer, vendor, broker, or transporter; shipping information relating to container number, size, port of loading before arrival, destination port after departure, name of vessel and carrier, the country of origin, place of export, mode of transportation, port of entry of the goods; cargo description; classification number, quantity, unit of measure, declared value, and tariff treatment; new enforcement techniques proven to be effective; new trends, means or methods of committing violation or attempted violation of customs laws; goods known to be associated with the violation or attempted violation of customs laws, as well as transport.

Source: Legal texts of various RTAs.

3.3 Publication and enquiry points (in 55 agreements)

Provisions on transparency, publication requirements and/or enquiry points are included in fifty-five of the analysed RTAs. These can be found either among the general provisions, or are directly included in customs and trade facilitation chapters. The scope of these provisions varies somewhat. Most RTAs contain provisions on the type of information published and the publishing media, including print, Internet, or a comparable computer-based telecommunications network. However, the type of published information is more or less similar among the different RTAs and includes customs laws, regulations, and general administrative procedures e.g. administrative procedures applicable or enforceable by its customs administration. In addition,

some bilateral RTAs to which the United States is a party contain provisions on publishing and commenting on new or amended regulations prior to their adoption.

A number of RTAs (e.g. Thailand–Australia, Thailand–New Zealand, Pakistan–Malaysia, TPP, EPAs by the EU) stipulate the establishment of enquiry points to address requests from “interested parties” on relevant trade related matters. In some cases, it is required that information be made available via Internet.

Transparency measures, pertaining, amongst other things, to public availability of information, are covered by the GATT Article X. In particular, the establishment of enquiry points has become an important issue in the WTO trade facilitation negotiations. If effectively implemented under RTAs, these measures can create viable preconditions for the future implementation of similar measures at the WTO level. Transparency measures such as the availability of countries’ laws, regulations, procedures via Internet or the establishment and operation of enquiry points on customs matters are generally beneficial to all trading partners, not only to preferential ones.

3.4 Advance ruling (in 29 agreements)

Some twenty-nine of the analysed RTAs include provisions on advance rulings, as part of the chapters on Customs Procedures or Customs Administration. Advance ruling provisions set up a process whereby importers, exporters or producers may, upon request, obtain information from customs administrations prior to a foreseen import transaction. Advance ruling systems enhance certainty and predictability of cross-border trade transactions, thus enabling traders to better plan their operations based on the information obtained.

The scope of advance ruling schemes in various RTAs differs. They may cover such varying elements as (a) tariff classification; (b) customs valuation criteria; (c) duty drawback; (d) origin of the goods; and (e) re-entered goods. For example, United States–Chile and United States–Colombia RTAs cover all five issues, while the United States–Australia RTA covers (a), (b) and (d) only. TPP requires advance rulings in respect of (a), (b), (d) and (e). Thailand–Australia and Thailand–New Zealand RTAs include only advance rulings on “pre-classification” or “classification” of the goods, which implies the use of two different terms in two different RTAs to which Thailand is a party.

Significant differences also occur in the time periods granted for issuing the advance ruling. These range from 30 days (RTAs Thailand–Australia and Thailand–New Zealand RTAs) to 60 days (TPP), 120 days (United States–Australia, Canada–Costa Rica) and 150 days (most of RTAs concluded by the United States). The ASEAN–Australia–New Zealand RTA requires that an advance ruling be issued to the applicant expeditiously, within the period specified in each party’s domestic laws, regulations or administrative determinations.

Similar differences occur in terms of the validity of an advance ruling, where the validity period oscillates between three years (Thailand–New Zealand, ASEAN–Australia–New Zealand, United States–Chile) to five years (Thailand–Australia). In some cases, there are no provisions on the validity at all (e.g. United States–Colombia, and United States–Australia). Some differences may be found in the governance and publication of advance rulings, as well as in the procedure for modification or revocation of the ruling.

Differences between RTA provisions on advance rulings and those of the future WTO Trade Facilitation Agreement might also arise with regard to the scope and the period of issuance and validity of advance ruling by national authorities.

3.5 Risk management (in 24 agreements)

It is impossible for border agencies to control all cargo. Too many checks and controls cause unnecessary delays and costs, and counteract the aim of trade facilitation. Thus, the

introduction and application of risk management systems are important to balance enforcement and facilitation. Twenty-four of the RTAs under scrutiny contain provisions on risk management, with a relatively high degree of convergence between them. Generally, the provisions ask the parties to adopt and maintain risk management systems that enable their customs authorities to focus on high-risk goods and simplify the clearance and movement of low-risk goods. Some RTAs refer to risk management and related measures as “modern customs techniques”, meaning less trade-disruptive and more facilitation-oriented.

Some RTAs include additional requirements to respect the confidential nature of the information processed for the purpose of risk analysis (e.g. United States–Colombia), or allow for pre arrival information processing (e.g. United States–Australia, or United States–Singapore). These measures do not appear in other United States bilateral RTAs (e.g. United States–Chile, United States–Peru, or United States–Oman). Certain RTAs also call for parties to exchange information, including best practices, on risk management techniques as part of their customs procedures (e.g. Peru–Singapore, Pakistan–Malaysia).

The EPA between the EU and CARIFORUM recalls that trade and customs legislation and procedures should be based upon “the need to apply modern customs techniques, including risk assessment, simplified procedures at import and export, post release controls and objective procedures for authorized traders.”⁹

3.6 Single window and automation (in 22 agreements)

Twenty-two of the analysed RTAs include provisions on the use of single window, automation of customs procedures and/ or paperless trading. While provisions on automation are usually included in the chapter on Customs Procedures or Customs Administration and Trade Facilitation, paperless trading provisions in most cases appear as a stand-alone chapter or article (e.g. TPP, Thailand–Australia, Thailand–New Zealand and Japan–Thailand), or under the Electronic Commerce chapter.

With regards to the use of information technologies, the aim of the measure is to expedite procedures. Some RTAs expand the scope of this measure to the provision of electronic submission and processing of information and data before goods arrival to allow for their release upon arrival. The IT systems should also apply to risk management and facilitation of government-to-government exchange of international trade data (e.g. United States–Peru and United States–Colombia).

Information technologies are generally perceived as trade facilitation “enablers”, as they simplify and speed up trade data processing. To this effect, some RTAs include a reference to relevant international and regional standards, including those promoted by WCO and Asia Pacific Economic Cooperation (APEC) (e.g. Thailand–Australia and Thailand–New Zealand RTAs). The United States–Peru and United States–Colombia RTAs ask the parties to work on common data elements and processes in accordance with the WCO Customs Data Model and APEC guidelines.

3.7 Use of international standards (in 20 agreements)

Twenty of the analysed RTAs contain provisions which refer to the use of international standards, conventions and practices. This may constitute an important trade facilitation measure, as it caters for the harmonization of trade and customs procedures, practices, and documents among trading partners on an internationally agreed basis.

The most often quoted international standards and instruments in RTAs (such as EPAs by EU, APTA, ASEAN–New Zealand, TPP, Peru–China) include WCO instruments such as the

⁹ Chapter 4, Customs and trade facilitation, Article 31, Customs legislation and procedures.

Revised Kyoto Convention, the WCO Framework of Standards to Secure and Facilitate Global Trade, the WCO Customs Data Model and the International Convention on the Harmonized Commodity Description and Coding System. Reference in some of these agreements is also made to the WTO rules on customs valuation, and GATT Articles V, VIII and X.

Some RTAs, such as Canada–Costa Rica, Pakistan–Malaysia, and RTAs between Japan and trading partners, provide more flexibility with regard to international instruments. They suggest the parties harmonize their customs procedures with relevant international standards and recommended practices to the extent possible.

COMESA in its Chapter nine, titled “Simplification and Harmonization of Trade Documents and Procedures”, dedicates a whole article to the standardization of trade documents and information, and foresees their use of computerized data systems, such as UNCTAD’s Automated SYstem for CUstoms DAta (ASYCUDA). This measure appears linked to other trade facilitation measures covered in the chapter and to the establishment of national trade facilitation bodies.¹⁰

Similarly, the Peru–China RTA foresees the establishment of a Committee on Trade Facilitation “to adopt customs practices and standards which facilitate commercial exchange between the Parties, according to the international standards” (Chapter 4, Customs Procedures and Trade Facilitation, Article 54, Facilitation).

RTAs such as those signed between Taiwan Province of China–Nicaragua and Canada–Costa Rica reiterate the rights and obligations of the parties under GATT Article V (Freedom of Transit), Article VIII (Fees and Formalities Connected with Imports and Exports) and Article X (Publication and Implementation of Trade Regulations). This suggests that, in case of a potential conflict among the parties, the WTO rules would prevail over the RTA rules.

Embedding the use of international standards and instruments in RTAs is more likely to ensure that countries work according to the same agreed benchmarks. It also reduces the risk of discrimination against third parties through differing standards and practices, and thus significantly contributes to a convergence in compatible substance between overlapping RTAs.

3.8 Transit (in 16 agreements)

Provisions on transit are contained in sixteen RTAs and the difference among these provisions is rather significant.

For example, some bilateral RTAs in Asia (e.g. RTAs of Japan with Malaysia, Philippines, Singapore, Thailand and Viet Nam, and the Republic of Korea–Singapore RTA), link the temporary admission of goods and goods in transit. These RTAs contain a separate article addressing the facilitation of procedures for the temporary admission of goods traded between the parties in accordance with the ATA Convention,¹¹ and to facilitate customs

¹⁰ COMESA, ARTICLE 71 Standardization of Trade Documents and Information

1. The Member States undertake, where appropriate, to design and standardize their trade documents and the information required to be contained in such documents in accordance with internationally accepted standards, practices and guidelines, and taking into account their possible use in computer and other automatic data programming systems.
2. The simplification, harmonization and standardization of customs regulations, documents and procedures and their computerization will be facilitated by the regional Automated System for Customs Data Centre at the Headquarters of the Common Market.
3. For the purpose of implementing the provisions of this Chapter, the Member States agree to establish national trade facilitation bodies.

¹¹ “The ATA is a system allowing the free movement of goods across frontiers and their temporary admission into a Customs territory with relief from duties and taxes. The goods are covered by a single document known as the ATA carnet that is secured by an international guarantee system. The term ‘ATA’ is a combination of the initial letters of the French words ‘*Admission Temporaire*’ and the English words ‘Temporary Admission’.” See http://www.wcoomd.org/home_pfoverviewboxes_tools_and_instruments_pfatasystemconven.htm.

clearance of goods in transit from or to the territory of the other party. The use of ATA carnets for the temporary admission of goods could be considered by the preferential trading partners as a convergence measure, which would “multilateralize” the existing preferences, as the procedures and documents for the temporary admission of goods would be based on the international convention by WCO.

More detailed provisions on transit are found in the EPAs between EU–Côte d’Ivoire and EU–Cameroon, including on freedom of transit, non-discrimination, national treatment, bonded transport regimes, promotion of regional transit arrangements, use of international standards and promotion of national and cross-border cooperation and coordination among relevant agencies.

The most elaborate provisions on transit can be found in the COMESA Treaty,¹² membership of which comprises both landlocked and transit countries. The Treaty includes several dedicated articles and a Protocol on Transit Trade and Transit Facilities (see box 3). The protocol contains provisions on definitions, scope of application, licensing of carriers, national treatment, approval of means of transport, bonds and sureties, Common Market Transit Document, exemption from customs examinations and charges, transit procedures, obligations of member States and sureties, and miscellaneous provisions. In particular, transit measures in the case of COMESA are clearly measures which go far deeper and broader than the existing GATT Article V and the draft consolidated negotiating text at the WTO. If the current wording of the draft WTO agreement on trade facilitation in the area of transit prevails, these regional obligations might be deemed discriminatory under the multilateral rules.

Box 3. Selected measures under COMESA Protocol on Transit Trade and Transit Facilities

The COMESA Treaty contains a comprehensive protocol dedicated to transit issues which are broader and deeper than the current draft consolidated negotiating text of the WTO agreement on trade facilitation:

Article 1 contains definition, including “transit traffic”, “goods”, “means of transport”;

Article 2 contains general provisions;

Article 3 addresses scope of application, providing that the protocol shall apply to transit goods being carried by whatever means of transport, except that in the case of air, water and rail transport, the aircraft, vessel or train in transit shall be exempted from the application;

Article 4 deals with licensing of carriers;

Article 5 covers provisions on approval of means of transport;

Article 6 provides for bonds and sureties;

Article 7 addresses the use of a Common Market Transit Document, applicable for all means of transport covered by the protocol;

Article 8 stipulates for exemption from customs examinations and charges, in case goods are carried in sealed means of transport or packages;

Article 9 contains detailed provisions on transit procedures linked to submission of the Common market Transit Document supported by bonds. To prevent abuses, it allows for escorts via transit territory and examination en route;

Article 10 addresses the administration of sureties; and

Article 11 contains miscellaneous provisions including the requirement to operate customs 24 hours and not levying charges except where it is provided on days or at times or places other than those appointed for such operations.

Source: COMESA Treaty, Protocol on Transit Trade and Transit.

¹² http://www.worldtradelaw.net/fta/agreements/COMESA_Protocol1.pdf.

3.9 Release of goods (in 17 agreements)

About seventeen of the analysed RTAs contain rules on the release of goods. These rules deal with simplified procedures for the release for goods, time period for release, release in port of entry without temporary transfer to warehouses or other locations, and guarantees in the form of a surety, a deposit, or some other appropriate instrument, to cover the ultimate payment of the customs duties, taxes, and fees in connection.

For example, some RTAs between the United States and its trading partners – including Chile, Peru, Colombia, Singapore, Australia, Oman and Morocco – provide for the release of goods within a period no longer than that required to ensure compliance with its customs laws and regulations and, to the extent possible, within 48 hours of arrival. This measure might become a standard measure, as it was also included in other RTAs such as the TPP (Brunei–Darussalam, Chile and New Zealand) and the Peru–Singapore RTA.

More elaborate rules requiring customs to give importers the option of providing financial security (in any form such as guarantees, bonds, or other non-cash financial instrument) are contained only in two RTAs, namely United States–Australia and United States–Singapore. Such financial security has to be based on tariff rates under domestic and international law, and on valuation in accordance with the WTO Customs Valuation Agreement.

The Canada–Costa Rica RTA contains provisions related to the release of goods under the chapter on Trade Facilitation, instead of the Customs chapter. The provisions ask the parties to release goods promptly, particularly those which are unrestricted or uncontrolled. Such release is done at the time of entry and is conditioned by the submission of documentation before or at the arrival of goods. Customs maintain the right of requiring more extensive documentation through post-entry accounting and verification, i.e. referred to as post-clearance audit. This FTA also explicitly reaffirms the rights and obligations of the parties under Article VIII (Fees and Formalities Connected with Importation and Exportation) and X (Publication and Administration of Trade Regulations) of the GATT 1994.

3.10 Express shipments (in 14 agreements)

Fourteen of the analysed RTAs contain provisions on express shipments. All involve the United States or trading partners in the Americas. Most of the RTAs to which the United States is a party require adopting or maintaining separate, expedited customs procedures for express shipments, while maintaining appropriate customs control and selection. Provisions basically ask that information be submitted in advance, single manifests covering all goods are used, and that the documentation required for the release of express shipments be minimized to the extent possible. They also set the time limit for clearance of express shipments – within six hours after submission of the necessary customs documents – provided that the shipment has arrived. In addition, two RTAs, United States–Colombia and United States–Peru, contain a rule on low-value cargo which says that, under normal circumstances, customs duties or taxes should not be levied and/or formal entry documents are not required for express shipments valued at \$200 or less.

The Canada–Costa Rica RTA limits its rule related to this measure only to the application of WCO Principles on Express Consignment. It further requires that simplified clearance procedures apply for the entry of goods which are low in value and for which the revenue associated with such imports is not considered significant by the party.

Another difference appears in the language and the scope of measures between the United States–Peru and Peru–Singapore RTAs, involving Peru as one of the contracting parties. In the first case, the United States–Peru agreement, the parties are bound by an obligation to “adopt or maintain” expedited customs procedures for express shipments while maintaining appropriate customs control and selection. This RTA further provides a detailed and precise list

of related measures to be adopted by both parties. In the case of the Peru–Singapore RTA, the parties are required to “ensure efficient clearance of all shipments” without making a distinction between express and other shipments. Furthermore, the provisions are in best-endeavour language and suggest that “in the event that a party’s existing system does not ensure efficient clearance, it should adopt procedures to expedite express consignments”.

3.11 Fees and charges (in 4 agreements)

Provisions on fees and charges are found in four RTAs, namely APTA, China–Pakistan RTA, EU–Cameroon EPA, and EU–Côte d’Ivoire EPA. The provisions on fees and charges vary across the analysed RTAs in their scope and language, although they do not seem to contradict one another. In addition, as these provisions are in the spirit of GATT Article VIII, they could provide a useful basis for the implementation of the future WTO agreement on trade facilitation in this area.

The EU–Côte d’Ivoire EPA simply reaffirms the parties’ commitment to complying with the provisions of Article VIII of GATT 1994. The other three agreements stipulate that fees and charges imposed on or in connection with importation or exportation be limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.

The China–Pakistan RTA¹³ requires each party to make available, through the Internet or a comparable computer-based telecommunications network, a list of fees and charges and charges levied by the central/federal Government. In the case of China, this obligation does not concern fees and charges that might be levied at the cantonal level. APTA (China is one of its members) uses GATT VIII language requesting countries to limit the charges to “approximate cost of the services rendered”, but does not address the issue of availability of information on charges (see box 4).

Box 4. Different, but not contradictory rules applied by China under two different RTAs

Asia–Pacific Trade Agreement (APTA), Framework Trade Facilitation Agreement, Article 5, Measures for Simplicity and Efficiency:

Participating States shall:

Consolidate, rationalize and minimize the number and diversity of fee and charges imposed in connection with importation and exportation:

- (a) Fees and charges shall only be imposed for services provided in direct connection with the specific importation and exportation in question and shall not exceed the approximate cost of the services rendered;
- (b) Each Participating State shall periodically review its fees and charges with a view to consolidating them and reducing their number and diversity.

Pakistan–China, FTA, Chapter III, National Treatment and Market Access for Goods, Article 9 Administrative Fees and Formalities:

1. Each Party shall ensure, in accordance with Article VIII:1 of the GATT 1994 and its interpretive notes, that all fees and charges of whatever character (other than import customs duties, charges equivalent to an internal tax or other internal charge applied consistently with Article III:2 of the GATT 1994, and antidumping and countervailing duties) imposed on or in connection with importation or exportation are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation of imports or exports for fiscal purposes.

2. Each Party shall make available through the Internet or a comparable computer-based telecommunications network a list of the fees and charges and changes thereto levied by the central/federal Government, as the case may be, thereof in connection with importation or exportation.

Source: Legal texts of APTA and Pakistan–China RTA.

¹³ http://www.commerce.gov.pk/?page_id=202.

4. Final remarks and policy options

4.1 Cohesive approach to trade facilitation

While the primary objective of trade facilitation is to reduce the unwieldy and costly formalities involved in international trade, the proliferation of regional and bilateral instruments may have led in some cases to a “spaghetti bowl” of overlapping customs procedures and trade facilitation measures. When and where this happens, it produces highly counterproductive effects, in terms of administrative inefficiency, through a maze of different procedures applied to respective trading partners under different RTAs. It may also bring discriminatory treatment towards non-members of RTAs, and create potential conflicts with future WTO trade facilitation rules.

A multilateral rule solution will provide not only a common standard but also enable greater internal efficiency in the administration of trade related rules in participating countries and regions. However, and until such a universal answer can materialize, national policymakers and negotiators should make every effort to adopt and keep a coherent approach to the negotiation and implementation of bilateral, regional and multilateral trade facilitation commitments.

In such a process, countries and regions will face two main challenges: avoiding unnecessary complexities and incompatibilities derived from multiple rules, and maintaining the spirit and primary goal of trade facilitation, which is to ease trade with all partners without discriminating against any country. Both challenges may be jointly addressed through a cohesive multi-level approach that is discussed below.

4.2 Remedies to multiplicity

The review of the measures contained in trade facilitation related components of 118 RTAs shows that multiple RTAs concluded by individual countries and groupings have, over the years, adopted different approaches to the rules on substantive measures relating to trade facilitation. While RTAs concluded separately by countries and regional groupings (for instance, RTAs concluded by Japan, EU, EFTA, the United States or ASEAN) have in essence usually followed a similar pattern, they sometimes differ in their scope, depth, as well as in the level of details and precision.

This has often been translated into varying degrees of undesired administrative operational difficulties. Remedies for this may be found by policymakers and administrative reform planners at two levels.

Practical harmonization at national level

This requires national administrations to design, adopt and apply harmonized procedures which will be compliant with different requirements, based on the most demanding commitments and the most efficient processes. The obvious benefit is that it is administratively more efficient to apply the trade facilitation measures equally across all trading partners than to tailor them to different trading partners arranged by preferential and non-preferential groupings.

When confronting new negotiations, a thorough analysis of existing texts in previously adopted instruments will ensure that future commitments can actually build on current procedures and improve them but not be hampered by existing rules and procedures. For instance, if current advance ruling issuance is established at 90 days and existing practices internally enforced are designed to comply within a 60-day deadline, then the new commitment would not improve current practices, but would be acceptable, knowing that prevailing internal practice of 60 days will ensure compliance with the agreed 90 days. Conversely, in a situation

where the newly negotiated text would require shorter time than established previously, even when this may lead to an improvement for administrative efficiency, it will require arrangements that existing practices may prevent.

A cost–benefit analysis of the introduction of the new measure will lead to the decision to stick to existing procedures and counter the proposals of other parties to the negotiation, or to accept them and engage in corresponding reforms. In such cases, the strategic intent rests in seizing the opportunity for trade transactions process to become more manageable and administrations to improve their efficiency. It is also more predictable and clearer for traders to lower transaction costs through predictable and clearer procedures and process times.

Raising the ambition of the multilateral rule formation process

It is now established that existing customs and other trade facilitation measures adopted in RTAs have enabled the creation of an environment conducive to the development of trade facilitation implementation capacities in countries and regions. This is a most relevant factor for RTAs' trade facilitation content and the practical aspects of raising the ambition of the final outcome of negotiations in WTO.

Most of the provisions existing in RTAs actually go deeper and broader in terms of trade facilitation benefits than the current WTO provisions under the GATT Articles V, VIII and X. Thanks to their depth and width, they are “WTO–consistent” and have in fact inspired certain measures proposed at the multilateral level.

The November 2001 mandate, adopted in Doha, established that discussions on trade facilitation would take into account needs and priorities of WTO members. When the negotiations started in 2004, such a mandate had turned into a design process based on exiting realities as opposed to considered necessities. This came as a result of proposals having been over the years presented by members in Geneva as successful experiences in implementing trade facilitation measures. Thus, in 2011, the current content of the consolidated text reflects 37 of these existing solutions, or what are commonly known as best practices.

Trade facilitation needs and priorities of WTO members went, therefore, from being a potential source of content to become part of the conditions to be met to reach a target: the capacity to implement relevant best practices. This de facto change of approach made the whole negotiation both easier and less ambitious. The objective was no longer to develop a suitable rule from scratch but rather to “not reinvent the wheel” and agree that not-yet-compliant countries should “align” their administrative operating modes with best practices already in place in more advanced WTO members.

These countries, parties to most advanced RTAs in terms of trade facilitation, find themselves now in a position to convince other WTO members of the advantages of higher ambition and of the possibility for them to cooperate with less prepared countries. This important cooperation issue is part of the special and differential treatment aspects, extremely relevant in the WTO framework.¹⁴ Such higher ambition would also translate in detailed common rules which would also contribute to stronger harmonization of administrative practices at all levels, including nationally.

4.3 Remedies to discrimination

Future WTO rules built on existing best practices may be a guarantee for effectiveness and solidness of the proposed disciplines. They are also an assurance that, when properly

¹⁴ For a complete coverage of the question see: Reflections on a Future Trade Facilitation Agreement, implementation of WTO obligations. a comparison of existing WTO provisions (UNCTAD/DTL/TLB/2010/2) Geneva 2011

implemented and if not subject to preferential treatment in RTAs, they will benefit all trading nations without discrimination.

However, it should not be forgotten that many of these solutions were designed mainly by and for developed members. They were created and applied in the 1960s at the national and regional levels in Europe with partners in North America and Japan. They were later adopted in the 1970s and 1980s by multilateral standard-setting organizations, such as UNECE, WCO and ISO and, through RTAs and technical assistance provided by international organizations and bilateral cooperation. They quickly spread to all regions of the world in the 1990s and 2000s.

4.4 Cooperation in implementing best practices

Some of the most recent trade facilitation and customs automation solutions require institutional capacities that may still not exist in some developing countries and will have to be created or strengthened as appropriate. Through cooperation, trade facilitation measures may be applied in a standard and consistent manner that would not differentiate among preferential and non-preferential trading partners.

Countries which have a measure currently proposed in the WTO draft text already embedded in their respective national legislations might be a step ahead when it comes to the implementation of this commitment under WTO. As mentioned already, this is a significant contribution of RTAs to current trade facilitation implementation capacities among WTO members. It is also an opportunity to cooperate with other multilateral partners to eliminate existing discriminatory practices through compliance with common rules and practices. Like the national harmonization process mentioned above, such a process at the international level may actually be eased in the framework of existing RTAs, provided policy makers and reform planners agree to conform to widely accepted best practices.

4.5 Use of international standards

Among these universal references, international standards and conventions on customs and other trade facilitation measures appear the most relevant. Adherence to such international instruments ensures that countries align their procedures and documents to the same internationally agreed benchmarks. The use of international instruments also decreases the risk of discriminatory commitments against non-members of RTAs through preferential standards and practices. Many RTAs, that show a clear preference to conform with relevant international standards, have contributed significantly to increase the compatibility between divergent RTAs.

By adhering to and applying these international standards, as foreseen in the ongoing WTO negotiations on trade facilitation, policymakers and administrative reform planners pave the way towards the use of most effective standards for non-discriminatory best practices.

All in all, the trade facilitation content in existing RTAs came from the need of certain trading partners to grant themselves privileged conditions to ease their commerce. It remains certainly the consequence of the lack of a robust multilateral framework providing all required facilities and guarantees. When the time comes, the WTO Trade Facilitation Agreement will have benefited from all the positive experiences, and actual capacities developed in the context of RTAs. It will also bring a final solution to both the problem of current unnecessary superposition of multiple rules and redundant preferences with discriminatory effects contradicting the essence of trade facilitation.

Annex 1. RTAs containing trade facilitation measures

RTA Name	Coverage	Type	Notification
Armenia–Moldova	Goods	FTA	GATT Art. XXIV
Armenia–Ukraine	Goods	FTA	GATT Art. XXIV
Asia Pacific Trade Agreement (APTA) – Framework Agreement on Trade Facilitation	Goods	PSA	Enabling Clause
Australia–Chile	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Brunei Darussalam–Japan	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
CAFTA–United States–Dominican Republic	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Canada–Chile	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Canada–Costa Rica	Goods	FTA	GATT Art. XXIV
Canada–Israel	Goods	FTA	GATT Art. XXIV
Canada–Peru	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Chile–China	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Chile–Colombia	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Chile–Costa Rica (Chile–Central America)	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Chile–El Salvador (Chile–Central America)	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Chile–India	Goods	PSA	Enabling Clause
Chile–Japan	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Chile–Mexico	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
China–Hong Kong, China	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
China–Macao, China	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
China–New Zealand	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Common Market for Eastern and Southern Africa (COMESA)	Goods	FTA	Enabling Clause
Costa Rica–Mexico	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
East African Community (EAC)	Goods	CU	Enabling Clause
EC–Albania	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
EC–Andorra	Goods	CU	GATT Art. XXIV
EC–Chile	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
EC–Croatia	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V

RTA Name	Coverage	Type	Notification
EC–the former Yugoslav Republic of Macedonia	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
EC–Israel	Goods	FTA	GATT Art. XXIV
EC–Jordan	Goods	FTA	GATT Art. XXIV
EC–Mexico	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
EC–Montenegro	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
EC–Morocco	Goods	FTA	GATT Art. XXIV
EC–Tunisia	Goods	FTA	GATT Art. XXIV
EC–Turkey	Goods	CU	GATT Art. XXIV
Economic and Monetary Community of Central Africa (CEMAC)	Goods	CU	Enabling Clause
Economic Community of West African States (ECOWAS)	Goods	CU	Enabling Clause
EFTA–Canada	Goods	FTA	GATT Art. XXIV
EFTA–Chile	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
EFTA–Croatia	Goods	FTA	GATT Art. XXIV
EFTA–Egypt	Goods	FTA	GATT Art. XXIV
EFTA–the former Yugoslav Republic of Macedonia	Goods	FTA	GATT Art. XXIV
EFTA–Israel	Goods	FTA	GATT Art. XXIV
EFTA–Jordan	Goods	FTA	GATT Art. XXIV
EFTA–Korea, Republic of	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
EFTA–Mexico	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
EFTA–Morocco	Goods	FTA	GATT Art. XXIV
EFTA–SACU	Goods	FTA	GATT Art. XXIV
EFTA–Singapore	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
EFTA–Tunisia	Goods	FTA	GATT Art. XXIV
Egypt–Turkey	Goods	FTA	Enabling Clause
EU–Cameroon	Goods	FTA	GATT Art. XXIV
EU–CARIFORUM	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
EU–Côte d'Ivoire	Goods	FTA	GATT Art. XXIV
Faroe Islands–Norway	Goods	FTA	GATT Art. XXIV
Georgia–Armenia	Goods	FTA	GATT Art. XXIV

RTA Name	Coverage	Type	Notification
Georgia–Ukraine	Goods	FTA	GATT Art. XXIV
India–Singapore	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
India–Sri Lanka	Goods	FTA	Enabling Clause
Israel–Mexico	Goods	FTA	GATT Art. XXIV
Japan–Indonesia	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Japan–Malaysia	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Japan–Mexico	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Japan–Philippines	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Japan–Singapore	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Japan–Switzerland	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Japan–Thailand	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Japan–Viet Nam	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Jordan–Singapore	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Korea, Republic of–Chile	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Korea, Republic of–Singapore	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Kyrgyz Republic–Armenia	Goods	FTA	GATT Art. XXIV
Kyrgyz Republic–Moldova	Goods	FTA	GATT Art. XXIV
Kyrgyz Republic–Ukraine	Goods	FTA	GATT Art. XXIV
Mexico–El Salvador (Mexico–Northern Triangle)	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Mexico–Guatemala (Mexico–Northern Triangle)	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Mexico–Honduras (Mexico–Northern Triangle)	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Mexico–Nicaragua	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
New Zealand - Singapore	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Nicaragua and the Separate Customs Territory of Taiwan Province of China, Penghu, Kinmen and Matsu	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
North American Free Trade Agreement (NAFTA)	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Pakistan–China	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Pakistan–Malaysia	Goods & Services	FTA & EIA	Enabling Clause & GATS Art. V
Pakistan–Sri Lanka	Goods	FTA	Enabling Clause

RTA Name	Coverage	Type	Notification
Panama–Chile	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Panama–Costa Rica (Panama–Central America)	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Panama–El Salvador (Panama–Central America)	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Panama–Singapore	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Panama and the Separate Customs Territory of Taiwan Province of China, Penghu, Kinmen and Matsu	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Peru–China	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Peru–Singapore	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Singapore–Australia	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Southern African Customs Union (SACU)	Goods	CU	GATT Art. XXIV
Southern African Development Community (SADC)	Goods	FTA	GATT Art. XXIV
Thailand–Australia	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Thailand–New Zealand	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Trans-Pacific Strategic Economic Partnership	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
Turkey–Albania	Goods	FTA	GATT Art. XXIV
Turkey–Croatia	Goods	FTA	GATT Art. XXIV
Turkey–the former Yugoslav Republic of Macedonia	Goods	FTA	GATT Art. XXIV
Turkey–Georgia	Goods	FTA	GATT Art. XXIV
Turkey–Israel	Goods	FTA	GATT Art. XXIV
Turkey–Montenegro	Goods	FTA	GATT Art. XXIV
Turkey–Morocco	Goods	FTA	GATT Art. XXIV
Turkey–Serbia	Goods	FTA	GATT Art. XXIV
Turkey–Tunisia	Goods	FTA	GATT Art. XXIV
Ukraine–the former Yugoslav Republic of Macedonia	Goods	FTA	GATT Art. XXIV
Ukraine–Moldova	Goods	FTA	GATT Art. XXIV
United States–Australia	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
United States–Chile	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
United States–Colombia	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V

RTA Name	Coverage	Type	Notification
United States–Jordan	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
United States–Morocco	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
United States–Oman	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
United States–Peru	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
United States–Republic of Korea	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
United States–Singapore	Goods & Services	FTA & EIA	GATT Art. XXIV & GATS V
West African Economic and Monetary Union (WAEMU)	Goods	CU	Enabling Clause

Annex 2. Detailed trade facilitation provisions in selected RTAs by region

(a) Americas

Canada-Costa Rica RTA¹⁵

This RTA was signed in December 2001 and entered into force in 2002. In addition to covering customs procedures, this is one of the first RTAs that specifically address trade facilitation in a separate article, Article IX.

Article IX.1 states the overall objective of “facilitating trade under this Agreement and cooperating in pursuing trade facilitation initiatives on a multilateral and hemispheric basis, [the parties] agree to administer their import and export processes for goods traded under this Agreement...” Article IX.2 of the RTA confirms the parties’ rights and obligations under GATT Articles VIII and X. It further covers areas including the release of goods, advance rulings, electronic exchange of information, and the use of international standards wherever possible.

Additionally, Article IX.4 is particularly heartening in its commitment to establishing a future work program for the purpose of improving trade facilitation (see box A.1).

Box A.1

Example of the future work programme on trade facilitation, under Art. IX.4 of Canada-Costa Rica RTA

• • •

1. With the objective of developing further steps to facilitate trade under this Agreement, the Parties establish the following work program:

(a) To develop the Cooperation Program referred to in Article IX.3 for the purpose of facilitating compliance with the obligations set forth in this Agreement; and

(b) As appropriate, to identify and submit for the consideration of the Commission new measures aimed at facilitating trade between the Parties, taking as a basis the objectives and principles set forth in Article IX.1 of this Chapter, including, *inter alia*:

- (i) Common processes;
- (ii) General measures to facilitate trade;
- (iii) Official controls;
- (iv) Transportation;
- (v) The promotion and use of standards;
- (vi) The use of automated systems and Electronic Data Interchange (EDI);
- (vii) The availability of information;
- (viii) Customs and other official procedures concerning the means of transportation and transportation equipment, including containers;
- (ix) Official requirements for imported goods;
- (x) Simplification of the information necessary for the release of goods;
- (xi) Customs clearance of exports;
- (xii) Transshipment of goods;
- (xiii) Goods in international transit;
- (xiv) Commercial trade practices; and
- (xv) Payment procedures.

Source: Canada–Costa Rica RTA.

North America Free Trade Agreement

The North American Free Trade Agreement (NAFTA) between Canada, Mexico, and the United States came into force in 1994. NAFTA has served as a model for some subsequent RTAs entered into by its parties. While NAFTA does not contain separate provisions on trade facilitation, it does address customs procedures and transparency.

¹⁵ <http://www.international.gc.ca/trade-agreements-accords-commerciaux/agr-acc/costarica/CR-back.aspx?lang=en&view=d>.

Chapter 5 on Customs outlines the procedures and legal measures an importer must follow in order to obtain duty free treatment for goods originating from another NAFTA State.¹⁶ Under this umbrella, the chapter outlines rules of origin requirements, harmonized advance rulings procedures, and the general customs appeal process.¹⁷ Article 513 also establishes a Working Group on Rules of Origin and Customs Subgroup for the effective implementation and administration of customs-related issues.

Chapter 18 addresses transparency requirements on the publication, notification, and administration, review, and appeal of the relevant laws of all the parties. These obligations expand on those required under GATT Article X, including an addition of a “contact point” requirement that allows private actors whose interests may be affected to know the identity of an officer or official responsible.

Two other initiatives under NAFTA that have an impact on trade facilitation are the Canada–United States Shared Border Accord,¹⁸ and the Heads of Customs Conference, which was established during the negotiation and implementation stage of NAFTA and provides the parties with a forum through which to further cooperate on common customs issues and improvement of cross border movement of goods.¹⁹

Dominican Republic–CAFTA–United States

This free trade agreement came into force in 2006 is between the Central American countries of Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua, the United States and the Dominican Republic.

The CAFTA– United States–Dominican Republic agreement specifically addresses trade facilitation in chapter 5. The scope of this chapter reflects the spirit of GATT Article X obligations; it encompasses parties’ commitments relating to publication of customs laws and regulations, requirements for administrative and judicial hearings, automation, risk management, and advance rulings. It also addresses express shipments, capacity–building and an implementation schedule concerning these provisions. In addition to the detailed set of goals provided in 5.3, Article 5.11 on Implementation provides a specific timeframe for the automated systems compatible among the parties to be put in place.

(b) Economic partnership agreements by EU and ACP countries

The Economic Partnership Agreements by the European Union (EU) can be described as a framework to develop a free trade area between the EU and the African, Caribbean and Pacific (ACP) Group of States.²⁰ The African ACP countries are comprised of five groups – West Africa, CEMAC, SADC, Eastern and Southern Africa, and EAC. The Caribbean countries and

¹⁶ Gantz, 2009, at p. 115

¹⁷ Ibid.

¹⁸ First announced in 1995, this Accord provides a platform for the United States and Canadian Governments to cooperate on joint initiatives aimed at increasing and streamlining trade between them. One example of a joint initiative program is the Free and Secure Trade (FAST) Program. As relevant to trade facilitation, the FAST Program includes measure such as the provision of expedited clearance processes to carriers and importers enrolled in the United States Customs – Trade Partnership Against Terrorism (C-TPAT) or Canada’s Partners in Protection (PIP) programs. A potential challenge to both countries is that all carriers must be pre-authorized by both countries, but authorization requirements in each country are not necessarily in harmonization with each other. Other concerns include the insufficiency of resources at border agencies during times of heavy tourism and transit, and the lack of a single system of import and export reporting requirements. See A Canada-US Border Vision, The Canadian Chamber of Commerce (2008), available at: <http://www.chamber.ca/images/uploads/Reports/a-canada-u.s.border-vision.pdf> (last accessed: 29 November 2011).

¹⁹ See The Relationship Between Regional Trade Agreements and The Multilateral Trading System, OECD Publication TD/TC/WP(2002)17/FINAL, at 9, available at: www.oecd.org/trade (last accessed: 29 November 2011).

²⁰ Currently, 48 African, 16 Caribbean, and 15 Asian States.

the Dominican Republic together form the CARIFORUM group, while the Pacific countries are joined as the Pacific Islands Group in negotiations with the EU.

(i) The comprehensive regional EPA with the CARIFORUM was signed in 2008 (with Haiti signing on at the end of 2009). While negotiations continue to finalize regional EPAs in Africa and the Pacific, the EU has already entered into a signed interim EPA with Côte d'Ivoire as of November 2008, and Cameroon as of January 2009.

EU-CARIFORUM, EU-Cameroon and EU-Côte d'Ivoire

All three EPAs address the area of Customs and Trade Facilitation in separate chapters. In structure, all three agreements are very similar, however some differences can be found in the level of details of certain measures. With regard to customs and trade standards, all three Agreements call for the closest possible harmonization of their legislation, regulations and procedures in Customs with international standards and instruments specified by international agreements (such as the revised Kyoto Convention).

All three agreements call for improved transparency and harmonization of the publication of trade regulations and interaction with the business community.²¹ Similarly, all of them encourage improving the public availability of information, laws, and duties and taxes through electronic means wherever possible, as and also using international standards such as those of the WCO. This call for improved transparency is very much in line with GATT Article X, and would be relevant to multilateral negotiations on this issue.

The EPAs also contain freedom of transit provisions.²² While the EU-Côte d'Ivoire transit requirements are somewhat more detailed than those in the other two EPAs, all EPAs call for the use of international standards and instruments relevant to transit, and promote cooperation and coordination between all relevant agencies in their territories to facilitate the transit of goods. The provisions on cross-agency cooperation are particularly important in trade facilitation, to involve customs agencies and trade related authorities. All EPAs also recognize the importance of customs and trade facilitation, and resolve to maintain, wherever possible, customs standards in line with those of the WTO and WCO. More specifically, they refer to the use of the revised Kyoto Convention, the WCO Framework of Standards to Secure and Facilitate Global Trade, the HS Convention, and the WCO data set as the international standards upon which to mould their respective trade and customs legislation.

(c) Bilateral FTAs concluded by the European Free Trade Association

The European Free Trade Association (EFTA) reaffirms its commitment to trade facilitation which appears in most of its bilateral RTAs. In particular, bilateral FTAs concluded with Albania, Canada, Colombia, Peru and Serbia trade facilitation can be found in a separate article of individual FTAs with the specific principles and measures further detailed in dedicated annex.

Most of the these FTAs put forward the set of following principles: (a) transparency, efficiency, simplification, harmonization and consistency of trade procedures; (b) promotion of international standards; (c) consistency with multilateral instruments; (d) the best possible use of information technology; (e) high standard of public service in the interest of their respective business communities; (f) governmental controls based on risk management principles; (g) cooperation within each party among customs and other border authorities; and (h) consultations

²¹ CEPA Article 32; EU-Côte d'Ivoire EPA Article 30; EU-Cameroon EPA Article 37.

²² EU-Côte d'Ivoire EPA Article 29 ; EU – Cameroon EPA Article 36.

with their respective business communities (see EFTA–Albania, Article 1; EFTA–Canada, Article 1; and EFTA–Serbia, Article 1). As regards the substantive trade facilitation measures, commitments are made a number of WTO-like measures such as international conventions and standards, publication and information, risk management, fees and charges, advance rulings and cooperation.

(d) Africa

Common Eastern Market for Eastern and Southern African States

First formed in 1981, the Common Eastern Market for Eastern and Southern African States (COMESA) launched its free trade area in 2000 and became a Customs Union in 2009 among 19 African countries, including landlocked developing countries.²³ COMESA attaches great importance to trade facilitation, transit and transport policies, as well as infrastructure development. The relevant measures can be found in the following provisions of the COMESA Treaty:

Chapter IX, Simplification and Harmonization of Trade Documents and Procedures, dealing with the reduction of trade documents, including their number, a number of copies and their information content to a minimum, while aligning them to international standards (Article 69). Specific provision on “trade facilitation” (Article 70) of the chapter stipulate for adopting of common standards for trade procedures, where international standards do not suit the needs of COMESA. This article also provides for ensuring adequate coordination between trade and transport facilitation within the Common Market and promoting the development and adoption of common solutions to problems in trade facilitation among the member States. Measures dedicated to standardization of trade procedures and documents (Article 71), among others, provide for the “simplification, harmonization and standardization of customs regulations, documents and procedures and their computerization will be facilitated by the regional Automated System for Customs Data Centre at the Headquarters of the Common Market”.

This might not come as a surprise, since the majority of COMESA’s member countries applies the Automated System for Customs Data (ASYCUDA), developed and maintained by UNCTAD.

Chapter XI, Cooperation in the Development of Transport and Communication, Article 85 on Roads and Road Transport and Article 86 on Railways and Railways Transport, stipulating for adoption of measures for the facilitation, harmonization and rationalization of road and railway transport, including documents and charges.

The Protocol on Transit Trade and Transit Facilities, contained in Annex 1 containing measures related to facilitation of both physical movement of goods as well as customs transit procedures (further details are provided in Part 2.1, section (I) Transit).

South African Customs Union

The South African Customs Union (SACU) is comprised of South Africa, Botswana, Lesotho, Swaziland and Namibia. Botswana, Lesotho and Swaziland are all landlocked countries that depend very heavily on South Africa for transit of imports and exports. Therefore, provisions on freedom of transit have always been an integral part of the SACU operational and institutional framework.

In 2004, in order to reduce transactions costs and create a more transparent and predictable environment to better facilitate trade within the SACU region, the Council adopted a programme for customs initiatives. This program effectively covers the following areas:

²³ Members of COMESA include Burundi*, Comoros, the Democratic Republic of the Congo, Djibouti, Egypt, Eritrea, Ethiopia*, Kenya, Libya, Madagascar, Malawi*, Mauritius, Rwanda*, Seychelles, Sudan, Swaziland, Uganda*, Zambia* and Zimbabwe* (countries marked with “*” are landlocked developing countries (LLDCs)).

- Introduction of a Single Administrative Document (SAD) as a common Customs Declaration form;
- Establishment of one-stop border arrangements;
- Introduction of joint border controls;
- Use of electronic data interchange by Customs authorities; and,
- Implementation of a capacity enhancement programme.²⁴

(e) Asia–Pacific

Framework Agreement on Trade Facilitation under the Asia-Pacific Trade Agreement

The Asia–Pacific Trade Agreement (APTA) was originally entered into in 1975 as the Bangkok Agreement, with the amended and renamed version coming into force in 2006. APTA is a preferential trade agreement between Bangladesh, China, India, the Republic of Korea, the Lao People’s Democratic Republic and Sri Lanka.

In 2009, the APTA countries concluded a Framework Agreement on Trade Facilitation. This Framework Agreement addresses the areas of transparency and consistency, simplicity and efficiency, as well as harmonization, standardization, and cooperation. It includes additional provisions for institutional arrangements and assistance to LDCs members.

The scope of the Agreement is quite broad, although there remains room for improvement in some of the provisions. For example, Article 5.1(b) provides that Participating States “*shall consolidate, rationalise and minimize the number and diversity of fees and charges imposed in connection with importation and exportation, and shall periodically review these fees and charges with a view towards reducing their number and diversity*”, but does not specify a timeframe for these activities. Article 5.2 also specifies that the participating States shall work towards the establishment of a single window allowing a one-time submission of import or export data and documentation requirements, although it lacks any time frame or specific commitments on this objective.

The view taken towards harmonization with international standards and a potential multilateral system seems positive. Article 6 on Harmonization and Standardization shows a clear indication that APTA strives to synchronize its practices with international systems and keep in line with a multilateral system in the future. At the same time, Article 8 on Institutional Arrangements is promising. It sets up a detailed system for review of the Agreement’s implementation, and also sets up a Working Group on Trade Facilitation that reports to the Standing Committee and has, as secretariat, the UNESCAP secretariat.

ASEAN and bilateral RTAs of ASEAN

One of the most advanced regional integration blocs in Asia, ASEAN is increasingly deepening its intraregional integration in advancement of its goal of creating the ASEAN Economic Community in 2015. ASEAN was originally geared towards the reduction of tariff barriers, but subsequently broadened to cover non-tariff barriers to trade, harmonization of standards, and transparency, amongst other things. Trade facilitation has become an important part of these efforts. In the context of the ASEAN Free Trade Agreement (AFTA), the related focus has generally been on customs modernization and standards, as well as technical regulations.

²⁴ SACU website (<http://www.sacu.int/tradef.php?include=about/tradef/5customs.html>).

ASEAN has also taken several independent measures to increase trade facilitation. These efforts include the ASEAN Customs Agreement, the ASEAN Framework Agreement on the Facilitation of Goods in Transit, the ASEAN Framework Agreement on Multimodal Transport, the implementation of the ASEAN Framework Agreement on Mutual Recognition Arrangements, and the ASEAN Single Window Agreement. The last is aimed at establishing a regional single window system for the electronic exchange of trade related information among ASEAN countries. It relies on the establishment of national single windows before the regional one can be made operational in 2012.

In addition, ASEAN has concluded or is in the process of negotiating a number of RTAs with trading partners in the region such as Australia, China, India, Japan, the Republic of Korea and New Zealand, which can be referred to as the “ASEAN-plus”. The RTAs with Japan, the Republic of Korea and Australia–New Zealand contain detailed provisions related to customs procedures or other trade facilitation measures, but these provisions greatly diverge between each other. In addition, one has to keep in mind a maze of customs and other trade facilitation measures arising from the other bilateral and plurilateral RTAs concluded by individual members of ASEAN either within the Asian region or cross-regionally.

Bilateral RTAs by Japan and its Asian trading partners

Although the Japanese RTAs with Asian trading partners are broad in scope, they are all deep in coverage. Trade facilitation provisions are mostly limited to customs clearance, temporary admission and goods in transit, exchange of information and establishment of the Joint Committee on Customs procedure. Some RTAs contain additional provisions on paperless trading.

These RTAs are a clear example of widely varying differential scope and language used across different trading partners. For instance, the Japan–Malaysia RTA is the only one that contains a provision on capacity–building, and only three of the Japanese RTAs analysed (with the Philippines, Singapore, and Thailand) contain sections on e-commerce. Transparency provisions also vary between the RTAs, and the Japan–Philippines RTA stands alone in its requirement to translate customs laws into mutually understandable languages.

(f) Cross-regional arrangements

Trans-Pacific Strategic Economic Partnership

The Trans-Pacific Strategic Economic Partnership agreement (known as “Trans-Pacific Partnership or TPP”, or as “P4”)²⁵ is a plurilateral RTA aimed at integrating the economies of the Asia-Pacific region. It is a comprehensive agreement that covers customs procedures and cooperation, transit and transport of goods, harmonization through the use of international standards, paperless trading, as well as a separate section on trade facilitation. It was originally entered into between Brunei-Darussalam, Chile, New Zealand and Singapore in 2005, and came into force in May, 2006. Countries currently negotiating to join the Agreement include Australia, Malaysia, Peru, the United States, and Viet Nam.

While the Article on Trade Facilitation is itself broad and without specific obligations, the areas identified in this section are dealt with in greater depth in other parts of the Agreement. For example, Article 8.7 on International Standards specifies:

“the Parties shall use international standards, or the relevant parts of international standards, as basis for their technical regulations and related conformity assessment procedures where relevant international standards exist or their completion is imminent, except when such

²⁵ The acronym “TPP” is also used in this study.

international standards or their relevant parts are ineffective or inappropriate to fulfill legitimate objectives...”, and

Article 5.14 on the Release of Goods states:

“Each party shall adopt or maintain procedures allowing, to the greatest extent possible, goods to be released (a) within 48 hours of arrival, and (b) at the point of arrival, without temporary transfer to warehouses or other locations.”

Bilateral RTAs between the United States and its trading partners in Asia Pacific, Africa and the Middle East

The majority of bilateral RTAs between the United States²⁶ and its trading partners in Asia Pacific, Africa and the Middle East contain provisions on Customs Procedures or Customs Administration and Trade Facilitation in separate chapters. Facilitation measures contained in these chapters usually follow the same structure (see box A.2). Language and precision of the measure, however, somewhat differs. For example, the United States–Morocco and the United States–Oman RTAs are very similar to the CAFTA–United States–Dominican Republic agreement. These agreements also contain e-commerce and transparency provisions that serve both to improve trade facilitation, but are relatively shallow in scope.

The United States–Singapore and Republic of Korea–United States FTAs contain even more detailed provisions of trade facilitation. One influencing factor could be that, at the time the United States entered into FTA negotiations with Singapore, the latter was already in the process of negotiating and ratifying trade agreements with Japan, Canada, China, and the Republic of Korea. The United States–Singapore FTA was accordingly modeled with more detailed provisions. In addition to strong commitments on customs administration it also specifies commitments related to transparency measures.

Box A.2. Bilateral RTAs by the United States – Example of unified approach to customs procedures chapters with broad and deep commitments

The bilateral RTAs by the United States with the majority of its trading partners contain a uniform “model” type of customs and other trade facilitation provisions under chapters “Customs Procedures” or “Customs Administration and Trade Facilitation”. They usually cover the following measures: Publication, Release of goods, Automation, Risk management, Cooperation, Confidentiality, Express shipment, Review and appeal, Penalties, Advance rulings, Implementation.

Source: Legal texts of various bilateral RTAs, to which the United States is party.

²⁶ <http://export.gov/FTA/index.asp>.

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