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Trade Facilitation

Teruo Ujiie

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TRADE FACILITATION

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FOREWORD

The ERD Working Paper Series is a forum for ongoing and recently completed research and policy studies undertaken in the Asian Development Bank or on its behalf. The Series is a quick-disseminating, informal publication meant to stimulate discussion and elicit feedback. Papers published under this Series could subsequently be revised for publication as articles in professional journals or chapters in books.

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LIST OF ABBREVIATIONS

ADB	Asian Development Bank
APEC	Asia-Pacific Economic Cooperation
CCC	Customs Cooperation Council
CIF	cost, insurance, and freight
DDA	Doha Development Agenda
EU	European Union
FOB	free on board
GATT	General Agreement on Tariffs and Trade
HS	Harmonized System
IT	information technology
MFN	most favored nation
NTM	nontariff measures
PSI	pre-shipment inspection
QR	quantitative restrictions
ROO	rules of origin
SITC	Standard International Trade Classification
SPS	sanitary and phytosanitary measures
TBT	technical barriers to trade
TRIPs	trade-related aspects of intellectual property rights
UNCTAD	United Nations Conference on Trade and Development
UNECE	United Nations Economic Commission for Europe
US	United States
WCO	World Customs Organization
WTO	World Trade Organization

ABSTRACT

The issue of trade facilitation has been increasingly highlighted among business and trading communities as they would like to reduce the costs of international transactions of goods and services. Trade facilitation is a broad term: there are a number of international agreements relating to trade facilitation, and a number of international organizations involved in this area. Recognizing the importance of trade facilitation and after several years of exploratory work on government trade facilitation measures, members of the World Trade Organization (WTO) agreed, in July 2004, to include trade facilitation in the multilateral trade negotiations of the Doha Development Agenda (DDA). This paper examines the issue of trade facilitation in a wider context, covering various articles in the General Agreement on Tariffs and Trade and WTO instruments, the World Customs Organization and other international conventions, and the state of play of DDA negotiations. Based on these discussions, conclusions are drawn and recommendations made as to structure, modality, and substance of an agreement on trade facilitation.

I. INTRODUCTION

The term “trade facilitation” is a broad one, including but not limited to administrative documentation requirements, and may contain any measures that contribute to trade. It implies many things, such as measures taken both by private and public sector, measures in contrast to trade liberalization, trade procedures including those required by customs authorities, other nontariff measures (NTMs), and so on.

The reasons why the issue of trade facilitation has been highlighted recently include:

- (i) The level of tariffs has been gradually lowered through a series of GATT rounds to 4% on average according to the World Trade Organization (WTO). Generally speaking, tariffs are not regarded as major barriers to trade although high-tariff items and tariff escalation still exist for certain sensitive products.
- (ii) With globalization of economic activities, business and trading communities—in particular, small and medium enterprises—pay greater attention to various government documentation requirements in order to reduce the cost of doing business.
- (iii) The studies by the United Nations Conference on Trade and Development (UNCTAD) and the Asia-Pacific Economic Cooperation (APEC) clearly show that such documentary requirements are burdensome to the trading community, and that trade facilitation efforts will produce more fruits than trade liberalization.

It is true that many government agencies require the trading community to go through trade procedures, including processing of various documents upon importation for specific policy objectives such as health and sanitary control, tariff quota, licensing, security, etc. It is well recognized that customs procedures are the core of such trade procedures, in particular, those relating to customs export/import clearance that leads to customs export/import permission. While General Agreement on Tariffs and Trade (GATT) articles and various WTO instruments provide a set of rules that minimize procedural requirements, WTO has insufficient provisions and disciplines on customs and border-crossing procedures. There is a need to minimize the complexity of import and export formalities and related documentation requirements.

The Asian Development Bank (ADB) has conducted a couple of economic studies including one on trade facilitation. One study (Brooks et al. 2005) says that trade policies are only one element of the overall costs of trade for modern international business. Logistical, institutional, and regulatory barriers are often more costly than tariffs. Trade costs are reflected not only in the direct monetary outlays associated with tariffs, freight, insurance, transport, etc., but also in indirect expenses such as time and uncertainties. It concludes that efforts to reduce trade costs will be critical for developing Asia to maximize growth and the benefit of regional trade integration. Another study (Holst et al. 2005) concludes that if trade within the Asian region can be made more efficient, even by small but continuing improvements in reducing distribution costs, the gains would be much greater than

those resulting from tariff or other trade policy reform. The issue of trade facilitation should also be seen in this context as it is of direct relevance to the Asian region.

The First WTO Ministerial Conference held in Singapore in 1996 added the issue of trade facilitation in the WTO's future agenda. It requested the Council for Trade in Goods to undertake a work program to assess the scope for WTO rules concerning the simplification of trade procedures. Against this background, together with the issues of trade and investment, trade and competition policy, and transparency in government procurement, the issue of trade facilitation formed the so-called "Singapore Issues."

The inclusion of trade facilitation in the Doha Development Agenda was decided at the Fifth WTO Ministerial Conference held on September 2003 in Cancun, Mexico. It was also agreed to ensure adequate technical assistance and capacity building in this area. Unfortunately, no such agreement was reached at the Cancun Conference.

In July 2004, WTO's General Council decided to include trade facilitation in the DDA as part of the "July Package", and set the date for the completion of DDA to 1 January 2007 (WTO 2004). The WTO's Sixth Ministerial Conference, held in Hong Kong, China in December 2005, aimed to agree on a basic framework on trade facilitation agreement. Annex D of the July Package states that trade facilitations aims to clarify and improve relevant aspects of Articles V, VIII, and X of the GATT 1994 with a view to further expediting the movement, release, and clearance of goods. In doing this, due account is taken of the relevant work of the WCO. The WCO is an independent specialized international organization for customs matters that provides a set of international standards on customs procedures to facilitate trade.

WCO's revised International Convention on Simplification and Harmonization of Customs Procedures, known as "Revised Kyoto Convention" (WCO 1999) provides international standards on customs procedures as well as modern customs techniques, such as use of information technology (IT), risk management, and postclearance audit system. To be put into force on 3 February 2006, it is expected to contribute to DDA since it may answer most of the concerns for the WTO DDA trade facilitation negotiations as examined below.

This paper first discusses the issue of trade facilitation in a broad context. It then examines various existing GATT Articles, WTO agreements and other instruments, and WCO conventions, focusing on the Revised Kyoto Convention, and finally refers to the state of play in trade facilitation negotiations in DDA. Based on the preceding discussions, conclusions are drawn and suggestions made as to structure, modality, and substance of a trade facilitation agreement.

II. TRADE FACILITATION IN DIFFERENT CONTEXTS

A. Trade Liberalization and Trade Facilitation

One of the goals of GATT is to expand the production and exchange of goods. To this end, GATT enters into reciprocal and mutually advantageous arrangements to substantially reduce tariffs and other trade barriers and to eliminate discriminatory treatment in international commerce. In other words the main purpose of the GATT/WTO trading system is to expand international trade. Reduction of tariffs, i.e., tariff measures, directly leads to it while reduction of other barriers to trade or NTMs indirectly leads to expansion of trade.

At the inception of GATT in the late 1940s, many trading nations maintained relatively high tariffs. Thanks to the series of GATT rounds, according to the WTO Secretariat, the average tariff level for industrial products in industrial countries remains at 4% by 1999 although high tariffs and tariff escalation still exist for certain sensitive products. The efforts by GATT to reduce customs tariffs have contributed to the expansion of international trade. In the past 50 years, merchandise exports grew on average by 6% annually, and total trade in 2000 was 22 times the 1950 level. It is pointed out that there is a definite statistical link between freer trade and economic growth.

There is a growing recognition among business and trading communities that the current level of tariffs is not a major obstacle to trade. Instead, they pay greater attention to NTMs, in particular, trade procedures or documentary requirements at the border regulated by various government agencies for specific policy objectives. For example, an entry into an open port is subject to notification requirements to customs, immigration, and port authorities; plant and animal products are subject to quarantine requirements; pharmaceutical products are subject to laboratory tests; automobiles are subject to safety standard requirements; and, of course, all imports and exports are subject to customs procedures. All of these require documentation. Particular attention is paid to customs procedures as they form the core of such trade procedures.

UNCTAD estimates that the average customs transaction involves 20–30 different parties, 40 documents, and 200 data elements. With the lowering of tariffs across the globe, the cost of complying with customs formalities has been reported to exceed in some instances the cost of duties to be paid. With the globalization of economic activities that are characterized by higher competition as well as a modern business environment of just-in-time production and delivery, trading communities need fast and predictable release of goods. It does not clearly show the proportion of these “costs” to the entire transaction costs. However, trading communities will surely benefit from the reduction of the costs associated with documentary requirements.

An APEC study on the impact of trade liberalization in APEC conducted in 1997 (APEC 1997b) estimated that trade facilitation programs would generate gains of about 0.26% of real gross domestic product to APEC economies, almost double the expected gains from tariff liberalization, and that the savings in import prices would be between 1–2% of import prices for developing countries in the APEC region.

B. Private and Public Measures

As mentioned earlier, the term trade facilitation is broad. Any measure aiming at facilitating trade can be included in this concept. Trade facilitation activities may be performed by individual private firms; trade-related associations; nonprofit organizations (e.g., chambers of commerce); governments; or international organizations (e.g., WTO). While WTO deals with government measures, individual private firms facilitate trade, for example, by enhanced marketing, cost-cutting efforts ranging from management to production to become more competitive, and sending new market development missions. Trade-related associations can do similar activities.

Nonprofit organizations can also facilitate trade by providing services on various private legal aspects of international transactions. These include assistance to business and trading communities in model contracts for the international sale of goods, including the concepts of International Rules

for the Interpretation of Trade Terms, modes of payment and securing payment, transport contracts, insurance, and settlement of disputes.

Governments can do many things. First of all, they can provide basic infrastructure to trade facilitation, namely, port facilities such as public warehouses, water, roads from factories, and telecommunications. A second aspect is public law. Domestic public laws set conditions for imports and exports administered by various government agencies for specific policy objectives. Typical public laws relating to international trade are external trade laws (trade control measures: import prohibitions and quantitative restrictions including quota system, import monitoring, licensing, certification); customs-related laws (procedures, customs valuation, nomenclature, rules of origin); plant and animal quarantine laws; pharmaceutical law; laws concerning intellectual property rights; laws relating to drugs, national security law, etc.

These public laws can be grouped into two categories. One category has direct trade-restricting effects such as quantitative restrictions (QRs). The other does not intend to affect trade such as health and sanitary regulations, but may potentially do so (e.g., excessive documentary requirements, discretionary import licensing). However, there is room for trade facilitation. While a government cannot abolish procedures to attain a specific policy objective, it is possible to improve such procedures. The key word for trade facilitation in terms of documentary requirements is "simplification and harmonization."

Likewise, international organizations can do many things. They can provide international standards and rules. WTO and WCO are good examples. UNCTAD has developed a computerized customs clearance and procedures processing system called Automated System for Customs Data (ASYCUDA) and installed it in more than 80 customs administrations in developing countries under its technical assistance program. Regional financial institutions like ADB can provide technical assistance and capacity building activities on trade facilitation.

C. Trade Facilitation and Nontariff Measures

Like the term trade facilitation, NTM is also a broad term, which may contain all possible measures other than tariff measures affecting trade. In an extreme case, culture or language can be an NTM. While this term is frequently used, WTO has no legal definition for it.

In WTO discussions, the terms trade facilitation and NTMs seem to mean those governmental measures that, actually and potentially, affect the flow of international transactions that a government has authority to control or administer.

WTO members focus on procedural aspects or trade procedures in the discussion of trade facilitation. Many government agencies administer various domestic laws that may affect imports and exports. There are instances where a particular authority is delegated to customs authorities from another agency since, for international transaction of goods, it is effective and efficient if customs authorities at the border check goods for conformity with requirements under a particular domestic law. For this reason, in terms of trade procedures, customs can play a key role. At the same time, customs is criticized for complexity of rules and regulations, delay in customs clearance, etc. Business and trading communities often claim this as a typical example of NTMs.

Article XI of GATT (General Elimination of Quantitative Restrictions) stipulates that tariff measures are the sole instrument to regulate trade. However, there are exceptions that include "Import and

export prohibitions or restrictions necessary to the application of standards or regulations for the classification, grading or marketing of commodities in international trade.” This means that these standards and regulations are NTMs, and that the WTO/GATT trading system allows maintaining these NTMs.

Quarantine requirements apply to animal (live and meat, etc.); and plant products (vegetables, fruits, etc.). Trading nations prohibit the importation of contaminated products and set conditions and formalities to import, in order to protect the lives of humans, animals, and the environment. It should be noted that these quarantine requirements apply to any person who imports listed products; even diplomats are not exempt under the international treaty concerning diplomatic relationships.

This example shows the objective (i.e., protection of life) and the means (i.e., formalities). In other words, it implies that while the objective remains unchanged, simplified and effective means, for example, to reduce the time required for testing or to develop more effective testing devices, can facilitate trade. This is the core idea in the discussion on trade facilitation to reduce and eliminate “red tape.”

III. VARIOUS GATT/WTO INSTRUMENTS AND OTHERS

A. GATT Articles

There are a couple of articles in the 1994 GATT relating to customs operations although they are not detailed enough. Other NTMs falling partly under customs are addressed in a different context (as through WTO instruments).

1. Article V (Freedom of Transit)

GATT articles set out rules to ensure trade facilitation, and this provision is one of them. Article V provides the rules on freedom of transit subject to formalities, on the basis of most-favored-nation treatment (MFN) (in other words, no discrimination among nations).

While this article goes beyond the customs competence in a normal sense, it establishes requirements for customs authorities for traffic in transit.

Paragraph 3 of the Article states, in essence, traffic in transit coming from or going to the territory of other contracting parties shall not be subject to unnecessary delays or restriction, and shall be exempt from customs duties except for charges to recover the cost of services rendered.

The reasons for creating this article are based on the following background: customs duties were historically collected for goods in transit, but there emerged a growing trend not to collect them; there was a need, after World War II, to expand trade by facilitating trade for goods in transit; and it would considerably affect international transaction of goods if freedom of transit were not assured, in particular, for countries in the same continent.

The Revised Kyoto Convention and other WCO instruments that relate to transit procedures are aligned with these GATT rules. In fact, they provide for additional facilitative measures and simplified documentary requirements for goods in transit.

2. Article VIII (Fees and Formalities Connected with Importation and Exportation)

Article VIII basically provides for four rules:

- (i) All fees and charges in connection with importation or exportation shall be limited to the appropriate cost of services rendered (Paragraph 1 [a]).
- (ii) It needs to reduce the number and diversity of fees and charges (Paragraph 1 [b]).
- (iii) It also needs to minimize the incidence and complexity of import and export formalities and to decrease and simplify documentation requirements (Paragraph 1 [c]).
- (iv) No substantial penalties for minor breaches of customs regulations or procedural requirements (Paragraph [3]).

These provisions are applicable to consular certificates; QRs; licensing; exchange control; statistical services; documentation and certification; analysis and inspection; and quarantine, sanitation, and fumigation (Paragraph 4).

Since GATT stipulates that customs tariffs are the sole instrument to regulate trade instead of QRs, it allows maintaining customs tariffs. These tariff rates are set through GATT multilateral trade negotiations if they are bound rates.

However, in relation to import and export, if the level of fees and charges other than customs duties is set at high, or formalities are excessively complicated or too rigid, the fruit of tariff reduction would be undermined. They may act as indirect protection of domestic products, or as a disguised form of duty, which hinders the goals of GATT.

A single WCO instrument that covers all the customs procedures and formalities related to importation and exportation of goods as well as other procedures is the "International Convention on the Simplification and Harmonization of Customs Procedures" (Kyoto Convention). This convention was revised in 1999 by WCO (Revised Kyoto Convention), which is fully aligned with the requirements set out in GATT Article VIII.

3. Article X (Publication and Administration of Trade Regulations)

This article describes two elements, namely (i) publication of trade regulations, and (ii) remedy measures (appeal procedures) through a judicial system for the prompt review and correction of administrative action relating to customs matters. In addition, it says that (i) no measure of general application in imposing new, or more burdensome requirements, restriction or prohibition of imports etc. shall be enforced before such measure has been officially published; and (ii) no provisions in the article requires to disclose confidential information.

The publication requirements are applicable to a wide range of elements in international transactions of goods, such as classification or valuation of products for customs purposes; rates of duty, taxes or other charges; requirements, restrictions, or prohibitions on imports or exports; transfer of payments; affecting sale, distribution, transportation, insurance, warehousing, inspection exhibition, processing, mixing or other use (Paragraph 1).

With regard to the remedy measures or appeal procedures, Paragraph 2(b) says that a contracting party shall maintain, or institute as soon as practicable, judicial, arbitral, or administrative tribunals or procedures, and that such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement.

These provisions were created in order not to cause damages by sudden changes of rules and regulations on trade, and to ensure the interest of the parties concerned through findings, rulings, and decisions by a separate and independent body from the original governmental agency that took action. Like the case of the GATT Articles V and VIII, the Revised Kyoto Convention is compatible with GATT Article X.

B. WTO Instruments

There is a set of WTO instruments pertaining to the issue of trade facilitation, which, in some instances, goes beyond the competence of customs authority. However, this does not decrease the value of customs administrations in international trade. It should be noted that these WTO instruments are normally based on or originated in the GATT articles by clarifying and elaborating the GATT rules concerned.

1. Three Basic Customs Rules or Laws on Substance (Rules of Origin, Commodity Classification System, and Customs Valuation)

There are three basic customs rules or laws on substance. They are (i) rules of origin (ROO) to determine a country of origin, (ii) commodity classification system or nomenclature, and (iii) assessment of value on imported goods for customs purposes (customs valuation). In other words, a customs authority can collect duties when the following three factors are known: Where is the product produced (ROO), what product is produced (classification), and how much does it cost (customs valuation). Of course, customs clearance involves a set of procedures.

While the WCO guidelines and the WTO Agreement on Rules of Origin exist, there is no set of detailed ROO at the international level in a strict sense. Rules of origin is administered by national laws on ROO. There are basically two types of ROO: (i) nonpreferential ROO, which is applicable to MFN trade, trade statistics, antidumping actions and so on; and (ii) ROO for bilateral or multilateral trade agreements, which has more characteristics of “conditions” or “requirements” in granting preferential treatment on customs duties.

Normally, a trading nation provides three different rates for the same imported goods. Statutory rate, the highest among all rates at 50%, is applicable to trade with non-WTO members, or to trading partners without any bilateral trade agreement. Concessional rate of duty or WTO rate of duty is lower than a statutory rate at 20%, and is applicable to trade with WTO members, or with non-WTO members that concluded bilateral trade agreement that provides the MFN treatment. Preferential rate of duty, or free rate of duty at 0%, is applicable to members of a free trade area such as the Association of Southeast Asian Nations Free Trade Area, and North American Free Trade Area. Thus, ROO plays a vital role in applying the actual rate of duty on the basis of country of origin.

The WTO’s ROO Agreement, reached at the Uruguay Round, provides a separate set of principles and disciplines for nonpreferential and preferential ROO. The agreement states that development

of a detailed set of ROO applicable to all tradable goods will be referred to a Technical Committee on ROO to be established at WCO under the agreement, and the WCO will develop it 3 years from the date of such referral. Although the referral was made in July 1995, and WCO had developed a detailed set of rules with some options for certain products, it has not been adopted by WTO yet.

The main purpose of ROO is to ensure that the benefits of MFN are confined to a bonafide product that has been taken from, harvested, produced, or manufactured in a WTO member. A country of origin is given to a product wholly obtained from the county where it is produced, or from the last substantial production country. Products that originate in third countries (non-WTO members), and merely pass through in transit, or undergo only a minor or superficial process in a WTO member country are not entitled to benefit from MFN treatment. There are two categories of imported goods: (i) "wholly obtained products" in a single WTO member, or (ii) products with imported inputs. While the former does not create any problem as it is 100% made in a WTO member, it is required in the latter that the processing or working must undergo "substantial transformation" to a finished product from materials, parts, or components including third country inputs. The issue is how to determine the concept of substantial transformation.

Apart from documentary evidence (certificate of origin and possibly consignment conditions), the core of ROO is origin criteria. There are basically two criteria to determine a country of origin. One is process criterion, and the other is percentage or value-added criterion. In some cases, either the process or value-added criterion, or a combination of both, is used when appropriate and necessary. The value-added criterion is often used where a wide variety of inputs is involved such as processed foods, chemicals, machinery, and automobile industries.

Under the process criterion, as a general rule, nonoriginating inputs or imported inputs are considered to have undergone sufficient working or processing (in other words, substantial transformation has taken place), when the product obtained is classified in a heading of the Harmonized System (HS) at a given digit level different from those in which all the nonoriginating inputs are classified. This is called a "change in HS heading." When a change in HS heading takes place, the product normally qualifies for country of origin. It requires an enormous description of processing or working for all tradable goods and a sound knowledge of the HS. In economic terms, it seems more justifiable to determine the concept of substantial transformation because the HS has been created in such a way that when one process takes place, it is given a new HS heading or subheading number. In addition, there must be a list of definitions of "wholly obtained" products, and "minor or superficial" processing that is not granted the substantial transformation status.

Under the value-added criterion, in order to be given a country of origin status, a given percentage must be added to imported inputs. There are two ways to define the criterion in terms of "numerator." One is that the value of imported inputs must not exceed a given percentage (say, 40%) of the price of the product obtained. In other words, there must be a minimum of 60% local inputs. The other is that the value of local inputs must exceed a given percentage (for example, 40%) of the price of the product obtained, limiting the use of imported inputs up to 60%. A "price" or denominator can be ex-factory cost; ex-factory-price; free on board (FOB) price; or cost, insurance, and freight (CIF) price.

It would be easier to determine the country of origin under the value-added criterion since once the numerator and denominator have been identified it is a matter of calculation of percentage. However, a couple of difficulties are claimed. One is exchange rates. While the requirement in

percentage is fixed, an exchange rate is floating. This implies that today's production that meets the requirement does not guarantee tomorrow's even if exactly the same processing continues, which is beyond the control of manufacturers. Another claim is that the criterion does not respond to borderline cases. A difference of only 1% denies conferring an origin criterion. The second point is that there is always an argument on the elements of numerator and denominator between customs authorities and traders.

Next is a commodity classification system or nomenclature. In order to specify rates of customs duty, a list known as nomenclature that describes all tradable products is necessary. This list is called "schedule" in GATT articles. Unless trading nations have a common unified nomenclature, a complicated way to negotiate reductions of customs duties both bilaterally and multilaterally is required when preparing a text of agreement on such reductions. Until 1988, key trading nations used different commodity classification systems. For example, the United States (US) relied on Tariff Schedule of the US, and Canada used Canadian Tariff Schedule; while European Union (EU), Japan, and others used Customs Cooperation Council's Nomenclature (CCCN). The Customs Cooperation Council (CCC) is now known as WCO. It took WCO 13 years to develop a new commodity classification system based on CCCN called the International Convention on the Harmonized Commodity Description and Coding System, also known as the Harmonized System, or simply HS.

Since 1988, major trading nations have used the HS, and now the international trade coverage of HS accounts for more than 95%. WCO keeps HS under constant review. It was revised twice to cope with new developments in international trade. The review takes place when a new product appears in the market, and its trade becomes sizable, for example, artificial cigarettes. HS is a multifunction commodity classification system, and is used not only for customs purposes as nomenclature or schedule, but also for trade statistics, transport, insurance, and so on. The Standard International Trade Classification (SITC) is another leading commodity classification tool that is widely used for economic analysis. There is one-to-one matching between HS and SITC rev.3 while the structure of classifying goods differs.

HS is a systematic commodity classification system, and all tradable goods (all tangible—except for human beings—and one intangible good, electricity) are classified in 96 chapters at 2-digit level; more than 1,240 headings at 4-digit level; and more than 5,000 precise codes or subheadings at 6-digit level. For example, Chapter 8 is for edible fruit; Heading Number 08.05 is for edible citrus fruit; and Code number 0805.10 is for fresh oranges. While HS binds signatories to use it at 6-digit level, signatories have discretion to subdivide further to meet their own needs. For example, Japan uses 9 digits, while the EU and the US use 10 digits. However, the product coverage at HS 6-digit level is the same among signatories.

HS has two basic principles in classifying goods. One is to classify goods from agricultural to industrial goods. Agricultural products fall under HS Chapters 1 to 24 while industrial products are classified in HS Chapters 25–97. Chapter 77 is left blank for future use, resulting in 96 Chapters. The other is to classify goods from raw-form to processed form products in the same chapter. For example, HS Chapter 18 is for cocoa and its preparations. The structure of this chapter in its heading numbers is: 18.01, cocoa beans; 18.02, cocoa husks; 18.03, cocoa paste; 18.04, cocoa butter; 18.05, cocoa powder; and 18.06, chocolate. Matters are not always simple like the cocoa case. Reflecting the sensitiveness of the products in question, classification for textiles and clothing is more complicated. Commodity classification, however, has an international standard that is totally harmonized.

The third basic customs rule is customs valuation. Customs duties can be divided into three categories: (i) ad valorem rate of duty, expressed in percentage, e.g., 5%, 10%; (ii) specific rate of duty, expressed using various kinds of measurements and normally used for grains, sugar, beverages, e.g., \$10/kg, \$5/sqm; and (iii) compound rate of duty or combination of the two, e.g., 10% plus \$5/kg, 10% or \$5/kg, whichever is lower or higher. Customs valuation is required for cases (i) and (iii) above but not in the case of specific rate of duty where assessment of a customs value is not required. The ad valorem rate of duty is widely used since it can quickly respond to price fluctuations, while the specific rate of duty is of limited use when a unit value is relatively low, e.g., sugar, maize.

Before the GATT Tokyo Round (1973–1979), the situation surrounding the customs valuation at the international level was similar to the commodity classification system. To some extent, the basis for customs valuation in the US was the American selling price that resulted in a higher assessment price in customs value. Canada also relied on a similar system as the US. The EC, Japan, and others used the so-called Brussels Definition of Value developed by CCC. The latter was criticized by business and trading communities as it allows certain discretions to customs authorities, and consequently, unpredictable. It was difficult to implement the system since domestic sales prices after importation were often fixed before importation by sales contracts while the amounts of customs duty were often known only at the time of importation.

As a fruit of the Tokyo Round, an Agreement on Implementation of Article VII of the GATT known as Customs Valuation Code was established. While GATT Article VII (Valuation for Customs Purposes) provides principles governing customs valuation, it lacks detailed rules, giving some discretionary power to customs authorities in GATT contracting parties. However, this code was implemented by industrial countries only since the code was an independent international agreement from GATT. Developing-country contracting parties to GATT did not accede to it as many developing countries maintained the so-called “minimum pricing” system wherein regardless of actual imported prices, authorities preset certain values for imported goods that are often higher than the actual prices, in order to increase national revenue. At the Uruguay Round, in coping with this lesson, all the agreements including this code are annexed to the main body—the Marrakech Agreement Establishing the World Trade Organization (WTO 1994)—and no discretion was given to acceding nations under the concept of “single undertakings.”

The Customs Valuation Code was renamed Agreement on Implementation of Article VII of the GATT 1994 (the Customs Valuation Agreement). The agreement provides a set of precise methods in assessing value for customs purposes. The basic principle is shown in Article 1 of the Agreement, which states “the customs value of imported goods shall be the transaction value, that is the price actually paid or payable for the goods when sold for export to the country of importation....” This transaction value is normally shown in a commercial invoice. This principle provides transparency and predictability to business communities.

However, there may be instances where the transaction value actually paid or payable for the goods cannot be used as the basis for customs valuation due mainly to the conditions being made by sales contracts that influence transaction values, or to the fact that a particular transaction is made between related parties. For these cases, another set of methods is used, such as the transaction value of identical goods, the transaction value of similar goods, the deducted value, or the constructed value.

In actual calculation of a customs value, given elements—for example, commissions and brokerage, cost of containers and packages, royalties and license fees—are added to the transaction

value. In addition, a signatory has discretion to add the elements of ocean transport cost and ocean insurance. In other words, the choice to use either FOB or CIF price is allowed under the agreement. While Australia, Canada, New Zealand, and US use FOB as basis, EU, Japan, and others use CIF price. Roughly speaking, when 10% is added to an FOB price, it becomes a CIF price.

As a special and differential treatment to developing members, the agreement allows them to delay its implementation by 5 years from the date of entry into force for a signatory, in order to provide time to transfer the current system to the new system for which the agreement provides. Roughly, 50 developing members notified the WTO Secretariat of their delayed implementation.

2. Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement)

GATT Article XX (General Exceptions) allows contracting parties to take measures “necessary to protect human, animal or plant life and health” (Paragraph [b]). This provision provides the basis for quarantine measures for animal and plant products. With increased trade in animal and plant products, problems in quarantine measures occurred. While exporting countries claimed that such measures were used as protection and were against expansion of trade, importing countries replied that they were necessary legitimate measures under GATT. There is a growing need to clarify GATT: SPS aims to facilitate SPS measures in a harmonized manner that minimizes their negative effects on trade, and which is in accordance with international standards and guidelines. The essence of the SPS Agreement is:

- (i) SPS measures are applied only to the extent necessary to protect human, animal, or plant life or health.
- (ii) SPS measures are based on scientific principles and are not maintained without sufficient scientific evidence.
- (iii) SPS measures do not arbitrarily or unjustifiably discriminate between members where identical or similar conditions prevail.
- (iv) SPS measures shall not be applied in a manner that would constitute a disguised restriction on international trade.
- (v) International SPS standards are to be adopted.
- (vi) SPS measures taken by an exporting country may be accepted as equivalent in an importing country even if they are different from each other, provided that such measures achieve the importing member’s appropriate level of SPS protection.

3. Agreement on Technical Barriers to Trade (TBT Agreement or Standards Agreement)

There are a wide range of domestic laws on technical regulations and standards including packaging, labeling requirements, and procedures for assessment of conformity with technical regulations and standards. For example, safety standards apply to parts and components for automobiles, such as bumpers. While the SPS Agreement is for animal and plant products, the TBT Agreement is mainly for industrial products.

The TBT Agreement aims to remove unnecessary obstacles to international trade, thereby further expanding international trade. Main provisions of the TBT Agreement are:

- (i) With respect to the adoption and application of technical regulations, MFN treatment is provided.
- (ii) Technical regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective.
- (iii) Legitimate objectives include national security requirements; prevention of deceptive practices; protection of human health or safety, animal or plant life or health, or the environment.
- (iv) To the maximum extent possible, make use of the relevant international standards.

4. Agreement on Pre-Shipment Inspection (PSI Agreement)

On behalf of the government or central bank of an importing developing country, a private inspection firm inspects the site of an exporting country mainly for goods in question as to (i) whether or not they comply with the contract (quality, quantity) and/or the regulations of the importing country, and (ii) whether or not the export price is appropriate. Upon inspection, the firm issues a certificate necessary for customs clearance and allocation entitlement of foreign currencies of the importing country.

Importing developing countries use a PSI firm to (i) avoid low declared customs values at the customs clearance, hence contribute to national revenue by collecting an appropriate amount of customs duties, and at the same time (ii) avoid high declared customs values, thereby save scarce foreign reserves of the importing developing countries. At present, some 30 developing countries have contracts with such firms. In some cases, customs authorities may not always get a correct customs value for imported goods.

There are instances where (i) shipments were delayed due to inspections by such a PSI firm; (ii) it took extra time and money to obtain a certificate; (iii) a PSI firm did not accept the export price, or the shipment was cancelled; and (iv) there was no arbitration body to settle disputes between an exporter and a PSI firm. Since PSI might work against smooth international transaction of goods, there is a need to establish certain rules on PSI practices.

The PSI Agreement ensures fair inspection process, prevents unnecessary delay, ascertains transparency in inspection, protects confidential business information, and implements independent review procedures when a dispute occurs.

5. Agreement on Import Licensing Procedures (Licensing Agreement)

Import licensing procedures require the submission of an application and other documentation to the relevant administrative body as a prior condition for importation into the customs territory of the importing member. As it involves documentation, there is room for trade facilitation.

There are two types of import licensing. One is automatic import licensing where approval of the application is granted in all cases. It is used to monitor import quantities for a specific

product under a “watch” list. The second is nonautomatic import licensing, which is more trade-restrictive. Licensing Agreement provides separate rules for the two types of import licensing.

In essence, in automatic licensing, the agreement requires that the procedures shall not be administered in such a manner that restricts imports. In the case of nonautomatic licensing, in addition to the requirement above, more rules are applied:

- (i) Nonautomatic licensing shall not have trade-restrictive or trade-distorting effects on imports additional to those caused by the imposition of the restriction.
- (ii) Nonautomatic licensing procedures shall correspond in scope and duration to the measure they are used to implement, and shall be no more burdensome than necessary to administer the measure.
- (iii) Members shall publish sufficient information on licensing requirements.
- (iv) The period for processing applications shall not be longer than 30 days.
- (v) The duration of license validity shall be reasonable, not so short as to preclude imports.
- (vi) When administering quotas, members shall not prevent importation from being effected in accordance with the issued licenses, and shall not discourage the full utilization of quotas.
- (vii) In allocating licenses, members should consider the import performance of the applicant.

C. Other Instruments

There are other systems and schemes other than those of GATT/WTO that intends to facilitate trade. The following are examples:

(i) TIR Convention of United Nations Economic Commission for Europe (UNECE)

The trend of “containerization” as a means for ocean transport brought about the system of faster, safer, and a greater number of transportation. To maximize its benefits, a legal framework has to be created.

Any container meeting the size and seal equipment requirements is cleared at customs in a simplified manner with a special “carnet” that is considered as an import declaration. No additional documentation is required at transit third countries.

(ii) Customs Convention on the ATA Carnet for the Temporary Admission of Goods of 1961 (the ATA Carnet Convention)

Samples of goods are an effective tool for marketing. If simplified procedures in the form of “carnet”, which is considered an import declaration equivalent, were granted to such samples at customs, and if a temporary duty exemption treatment were granted subject to reexportation, trade facilitation can be expected. The convention allows these treatments to sample importation

under certain conditions. Since samples are often carried by a person by air, customs clearance is done at the airport facilities. Precious stones (diamonds) are a good example.

(iii) Customs Convention concerning Facilities for the Importation of Goods for Display or Use of at Exhibitions, Fairs, Meetings or Similar Events of 1961

The convention was created under the auspices of WCO in collaboration with UNECE and the United Nations Educational, Scientific, and Cultural Organization in order to facilitate events such as exhibitions and trade fairs relating to technology, culture, education, science, and commerce.

Duty exemption for imported items for display is granted up to 180 days, subject to reexportation. Similar treatment is also provided to importation of professional equipment, welfare materials for seafarers, and scientific equipment under separate WCO conventions.

As seen from above, there are international agreements that facilitate trade. In particular, WTO as a trade-rule-making international organization provides various instruments, some of which are embodied in GATT Articles and other separate agreements.

One will note that there is no detailed separate agreement on customs procedures at WTO agreements and GATT articles. However, the Agreement on Implementation of Article VI of the GATT 1994—an implementing agreement with detailed rules such as the Customs Valuation Agreement—has been established at WTO.

One major reason is the existence of WCO, an independent, specialized international organization on customs matters, which has 168 members and a 98% trade coverage. There is a good working relationship between WCO and WTO. For example, in the case of the Customs Valuation Agreement, at WCO, there is a Technical Committee on Customs Valuation, which examines cases referred to by WTO; while at WTO there is also a Committee on Customs Valuation that examines cases referred to by WCO. The situation is the same for cases of ROO Agreement.

Nevertheless, the work program under DDA shall review and, as appropriate, clarify and improve relevant aspects of Articles V, VIII, and X of the GATT 1994 and identify the trade facilitation needs and priorities of members.

The next chapter examines the issues customs administrations face, and what WCO is doing in the area of trade facilitation.

IV. WCO AND ITS REVISED KYOTO CONVENTION

A. Background

WCO has been working since 1952 as an intergovernmental body whose mission is to enhance customs cooperation. WCO has 168 member administrations worldwide, accounting for 98% of world trade. To fulfill its mission, WCO develops and maintains instruments and recommendations for the standardization and simplification of customs systems and procedures governing the cross-border movement of goods.

WCO recognizes that, with gradual but substantial reductions in tariff levels through the series of GATT rounds, it is natural that the focus of the trading community has shifted to nontariff barriers. These include ineffective and expensive procedural and documentary requirements that have to be completed at national borders, and which act as a disincentive to development of industry, commerce, and trade. These requirements may result in the cost of complying with trade procedures becoming higher than the duties and taxes that are to be paid.

At the same time, there has been a growing recognition of the role that customs can play in economic and social development through the promotion of trade and investment. How customs functions to expedite the movement of goods across borders has a significant impact on the economic competitiveness of nations: it encourages investment and the development of industry. It also increases the involvement of small- and medium-size enterprises in international trade. In fact, the effectiveness and expeditiousness of border measures have been one of the major factors in the determination of foreign direct investments by multinational corporations.

The role of customs is not limited to trade facilitation—other functions such as revenue collection and protection of society are also highly important. Many least developed and developing countries still heavily depend on customs duties to ensure their national revenue. Customs also assumes the role of protection of society against the inflow of hazardous goods, such as illegal drugs. The terrorist attacks of 11 September highlighted the role of customs in protecting national security. In addition, customs also plays an important role in other areas such as collection of trade statistics, which serves as the basis for WTO market negotiations; and protection of intellectual property rights by prohibiting the importation of counterfeit and infringing goods such as fakes, pirated goods, and so on. With its multipurpose role, customs is a critical institution to good governance, prosperity, and protection of society.

Customs has long faced the dilemma of making a proper or right balance between facilitation and control. If control were too rigid, even a legitimate flow of trade would be undermined. On the other hand, if facilitation were too much, customs would not work its expected role of protection of society from unlawful trade of drugs. Another big issue is that while trade volumes keep growing, the number of staff at customs cannot be increased and remains almost constant due mainly to budget constraints. Unless an innovative technique is developed in customs operations, it would be difficult to perform expected roles.

WCO has nevertheless developed instruments that provide principles for simple, effective, and modern procedures. They offer solutions that allow countries to meet their legitimate goals of revenue collection and protection of society, while at the same time deliver practical trade facilitation dividends. The uniform, predictable, and transparent applications of these instruments facilitate international trade, while also ensuring compliance with national laws and regulations. These modern principles for simplification of procedures to provide trade facilitation were later incorporated in a single instrument in 1973 as the “International Convention on the Simplification and Harmonization of Customs Procedures” known as the Kyoto Convention.

WCO continuously updates the instruments to keep abreast of developments in information technology and in customs techniques such as risk management, and to take account of the highly competitive business environment. As a result, the Revised Kyoto Convention of 1999 contains international standards that provide the predictability and efficiency that modern trade and commerce require. Many customs administrations have already incorporated the principles of the

Revised Kyoto Convention in their national legislation even without waiting for its formal entry in force.

In conclusion, the Revised Kyoto Convention was developed to ensure the following benefits to the parties concerned, creating a “win-win” situation:

- (i) Benefits to the national economy
 - (a) lowered costs of imported goods
 - (b) increased production
 - (c) increased economic competitiveness of national goods in the world market
 - (d) increased foreign direct investment
 - (e) lowered costs to consumers
 - (f) increased national revenue
- (ii) Benefits to customs administrations
 - (a) enhanced customs control
 - (b) more efficient use of customs resources
 - (c) increased trade facilitation
 - (d) reduced integrity problems
- (iii) Benefits to the trading community
 - (a) faster, predictable, and efficient customs clearance
 - (b) transparent procedures
 - (c) greater facility for compliant traders
 - (d) lowered business cost
 - (e) enhanced competitiveness
 - (f) clear information concerning rights and obligations

B. Outline of the Convention

The key principles of the Revised Kyoto Convention are set out in three parts: (i) the Preambles and Articles to the Convention, (ii) the General Annex containing the core principles, and (iii) the Specific Annexes dealing with each separate operation that goods may be subject to.

The Preamble of the Revised Convention contains the key principles of modern customs administrations and includes:

- (i) application of customs procedures and practices in a predictable, consistent, and transparent manner;

- (ii) provision of information on customs laws, regulations, procedures, and practices;
- (iii) adoption of modern techniques such as risk management;
- (iv) maximum practicable use of information technology;
- (v) cooperation where appropriate with other national authorities, other customs administrations, and trading community;
- (vi) implementation of relevant international standards; and
- (vii) provision of easily accessible administrative and judicial review to affected parties.

The Articles of the Convention provide for clear rules for accession and administration of the Convention.

The convention contains a general annex and ten specific annexes. The provisions of these annexes reflect modern procedures and address the requirements of both the trade and customs administrations. They also incorporate modern methodologies to ensure that customs is able to carry out its responsibilities more efficiently and effectively, and to facilitate the international movement of goods while ensuring full compliance with national laws.

The general annex contains the core procedures and practices that are the basis for all procedures for the movement and clearance of goods for import and export, including goods in transit. The general annex also contains standards and transitional standards that are obligatory for accession and implementation by contracting parties, and no reservation can be entered against these standards and transitional standards.

The general annex includes standards—for the clearance of goods, payment of duties and taxes, customs and trade cooperation, information to be supplied by customs and appeals in all customs matters—areas that concern both customs administrations and trade. It also includes standards that set out the principles of modern customs control, including risk management, audit-based controls, mutual administrative assistance between customs administrations and external organizations, and use of information technology, thus ensuring both effective controls and trade facilitation.

There are 10 specific annexes dealing with different customs procedures that contain standards and recommended practices. The latter is not obligatory.

Comprehensive implementation guidelines have been developed for all standards and recommended practices in the annexes to the Convention. There are a set of explanations of the provisions of the general annex, specific annexes, and chapters therein that indicate some of the possible courses of action to be followed in applying the standards, transitional standards, and recommended practices; in particular, describing best practices and recommending examples of greater facilities. These guidelines ensure that the principles and simplified customs procedures contained in the Convention are applied effectively by customs administrations. The guidelines are periodically updated to provide information on new and modern practices, which in the future will form the best of legal texts in the annexes to the Convention.

As to the present level of implementation of the Revised Kyoto principles, though the Revised Kyoto Convention is yet to enter into force, a large number of WCO members have already revised

or are in the process of revising and modernizing their customs legislation based on the Revised Kyoto Convention.

C. Entry into Force

As seen from above, the Revised Kyoto Convention is a comprehensive and integrated single document covering all aspects of customs operations. Consequently, it may take some time to amend the existing national customs-related laws, and to accede to it. Since the Revised Kyoto Convention is based on the original Kyoto Convention with certain amendments, a protocol has been prepared for signature and ratification, as appropriate.

The Protocol of Amendment to the International Convention on the Simplification and Harmonization of Customs Procedures in its Article 3.3 states that “this Protocol, including Appendices I and II, shall enter into force three months after forty Contracting Parties have signed this Protocol without reservation of ratification or have deposited their instrument of ratification or accession.” In this paragraph, “contracting parties” means those contracting parties to the original Kyoto Convention (61 countries plus EU). This protocol contains three appendices: Appendix I for the Preamble and Article of the Convention, Appendix II for the General Annex, and Appendix III for the Specific Annexes.

In November 2005, WCO announced that the Revised Kyoto Convention will enter into force on 3 February 2006 since the signatories to it exceeded the requirement. Major signatories are Australia, Canada, EU, India, and Japan. WCO also stated that the entry into force of the Revised Kyoto Convention will strengthen the hand of WCO and ensure international recognition for customs as an essential player at world trade facilitation negotiations.

V. TRADE FACILITATION AND WTO

A. Trade Facilitation and WTO

As mentioned earlier, the issue of trade facilitation formed one of the so-called Singapore Issues in 1996. In the Council for Trade in Goods under the General Council, members agreed that simplification of trade procedures can result in considerable savings in time, money, and human resources that would benefit each economy. Many members favor a WTO agreement on trade facilitation aimed at reducing administrative barriers on import and export transactions in order to expedite the passage and release of goods. Such an agreement would support customs reform and modernization efforts, and ensure that the same principles are applied all over the world.

While agreeing on the benefits of trade facilitation, other members state their concern on the need for a binding WTO agreement in this area, which is subject to dispute settlement rules. Such an agreement will further add to implementation burdens of developing countries, which lack resources to modernize customs facilities. They call for a comprehensive technical assistance program in trade facilitation.

B. Trade Facilitation and the Doha Development Agenda

In November 2001 in Doha, Qatar, a new WTO round of multilateral trade negotiations known as the Doha Development Agenda was launched. The following is the relevant paragraph in the Doha Ministerial Declaration:

Trade Facilitation. Recognizing the case for further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations. In the period until the Fifth Session, the Council for Trade in Goods shall review and as appropriate, clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 and identify the trade facilitation needs and priorities of members, in particular developing and least developed countries. We commit ourselves to ensuring adequate technical assistance and support for capacity building in this area.

The Fifth Ministerial Conference, held on September 2003 in Cancun, Mexico failed to reach the explicit consensus to commence negotiations on trade facilitation that the Doha Declaration requires. However, in July 2004, the explicit consensus was formed to start negotiations on trade facilitation as part of the July Package agreed on at the General Council meeting. Annex D of the July Package describes modalities for negotiations on trade facilitation. Key elements of Annex D are: to clarify and improve Articles V (Freedom of Transit), VIII (Fees and Formalities connected with Importation and Exportation), and X (Publication and Administration of Trade Regulations); to cooperate on customs compliance issues; to take fully into account the principle of special and differential treatment for developing countries; to provide technical assistance and to support capacity building on trade facilitation; to identify trade facilitation needs and priorities; and to take into account the relevant work of WCO and other relevant international organizations.

In line with the July Package, more than 50 proposals, aimed at simplifying and harmonizing procedures and documentation as well as reducing costs of doing business, were submitted by a number of WTO members in the following 14 broad categories, which could be candidates to form elements for an agreement on trade facilitation:

- (i) Publication and availability of information (publication of trade regulations, publication of penalty provisions, internet publication, notification of trade regulations, establishment of enquiry points/single national focal points/information centers, and other measures to enhance the availability of information)
- (ii) Time period between publication and implementation (interval between publication and entry into force)
- (iii) Consultation and comment on new and amended rules (prior consultation and commenting on new and amended rules; and information on policy objectives sought)
- (iv) Advance rulings (provision of advance ruling)
- (v) Appeal procedures (right of appeal; release of goods in event of appeal)
- (vi) Other measures to enhance impartiality and nondiscrimination (uniform administration

- of trade regulations; maintenance and reinforcement of integrity and ethical conduct among officials)
- (vii) Fees and charges connected with importation and exportation (general disciplines on fees/charges imposed on or in connection with importation and exportation; reduction/minimization of the number and diversity of fees and charges)
 - (viii) Formalities connected with importation and exportation (disciplines on formalities/procedures and data/documentation requirements connected with importation and exportation):
 - (a) nondiscrimination
 - (b) periodic review of formalities/procedures and requirements
 - (c) reduction/limitation of formalities/procedures and data/documentation requirements
 - (d) use of international standards
 - (e) uniform customs code
 - (f) acceptance of commercially available information and copies
 - (g) automation (computerized customs procedure processing system)
 - (h) single window/one-time submission
 - (i) elimination of preshipment inspection
 - (j) phasing out mandatory use of customs brokers
 - (ix) Consularization (prohibition of consular transaction requirement)
 - (x) Border agency coordination (coordination of activities and requirements of all border agencies)
 - (xi) Release and clearance of goods (expedited/simplified release and clearance of goods; establishment and publication of average release and clearance time):
 - (a) prearrival clearance
 - (b) expedited procedures for express shipments
 - (c) risk management/analysis, authorized traders
 - (d) postclearance audit
 - (e) separating release from clearance procedures
 - (f) other measures to simplify customs release and clearance
 - (xii) Tariff classification (objective criteria for tariff classification)
 - (xiii) Matters relating to goods in transit (strengthened nondiscrimination, disciplines on fees and charges, disciplines on transit formalities and documentation requirements, improved cooperation and coordination, operationalization and classification of terms)

- (xiv) Information exchange mechanism (multilateral mechanism for the exchange and handling of information)

As seen above, a number of proposals were made for two areas: formalities and clearance of goods. This is natural and logical since importers have the most interest to obtain an import permit for free circulation of the goods in question from customs authorities. As it seems that almost all ideas have been put forward, as a next step, in-depth examination and analysis for each of the proposals should take place.

C. Possible Structure, Modality, and Substance of an Agreement on Trade Facilitation

At DDA, WTO remains at the stage where members are submitting various ideas about different aspects of trade facilitation, and real negotiations have not yet taken place. As a result, the possible structure and modality of an agreement on trade facilitation is not clear. As discussed above, one can point out a couple of peculiarities. Firstly, trade facilitation is a broad term, and consequently, covers a wide range of international transaction aspects in goods and services even if it is limited to governmental measures. Secondly, as examined above, there is a set of agreements and conventions on trade facilitation both within and outside WTO. Thirdly, as a result, a number of international organizations are involved in trade facilitation activities. WCO, being the key international organization on trade facilitation, provides a strong trade facilitation tool through the Revised Kyoto Convention. The following is a preliminary analysis on some key points.

With regard to possible basic structure and modality of an agreement on trade facilitation, WTO provides us with two precedents, taking account the peculiarities that trade facilitation has, mentioned in the preceding paragraph. One is the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) Agreement, and the other is the Agreement on Technical Barriers to Trade (TBT Agreement). The former is an agreement to secure an appropriate protection of seven different intellectual property rights, such as patents, copyrights, trademarks, and so on. There are a number of international agreements that have been agreed before the TRIPs Agreement. In the case of the TBT Agreement, certain disciplines are provided for technical regulations and standards, including packaging, marking, and labeling requirements in order for procedures for assessment of conformity with technical regulations and standards not to create unnecessary obstacles to international trade. National, regional, and international bodies have been establishing various technical regulations and standards. However, there is a distinct difference between the two agreements when it comes to structure.

While both were agreed at the Uruguay Round, the TRIPs Agreement specifically mentions key international agreements subject to TRIPs Agreement, such as "Paris Convention" (the Paris Convention for the Protection of Industrial Property); "Berne Convention" (the Berne Convention for the Protection of Literary and Artistic Works); and "Rome Convention" (the International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations). In addition, the TRIPs agreement also cites the World Intellectual Property Organization, the competent international organization on this area. On the contrary, TBT Agreement does not specify any concrete agreement nor competent international bodies like UNECE and

International Organization for Standardization (ISO). It only refers to the United Nations system and international standardizing bodies.

Possible structure of a trade facilitation agreement could basically cover: scope of trade procedures and documentation; application of GATT principles (e.g., MFN treatment, national treatment); and in-depth provisions for procedures and documentation. However, the style and structure would be different when the TRIPs or TBT style is used for the trade facilitation case. In the case of the TRIPs style, it would be a detailed and lengthy agreement. Since the Revised Kyoto Convention, to be put in force on 3 February 2006, provides (i) maximum use of information technology, (ii) a partnership between customs and trade, (iii) application of a risk management techniques, (iv) coordination of interventions with other agencies, and (v) provision of system of appeal in customs matters; and further, that in most cases it answers GATT Articles V, VIII, and X, the Revised Kyoto Convention should be specifically mentioned in the trade facilitation agreement. For other agreements and conventions developed by various organizations other than WTO, only those with direct relevance to the purposes of trade facilitation should be selected and quoted in the agreement in order to avoid complication, as there are a number of such agreements and conventions.

Another point would be whether the existing WTO agreements—such as Agreement on Customs Valuation, PSI Agreement, TBT Agreement (mentioned in Section III B)—will be integrated into a single agreement on trade facilitation. As discussions on trade facilitation at DDA focus mainly on technical issues like the simplification and harmonization of customs procedures and documentation requirements, it would not create a political issue even if they are combined. The single undertaking obligation will apply to all agreements reached at DDA, including agreement on trade facilitation. It means that any WTO member government must clear domestic procedures required, such as approval or ratification for such agreements. As long as the agreement on trade facilitation must be cleared, it would be of secondary importance if the agreement on trade facilitation covers the existing WTO agreements. It could be “user-friendly” to both public and private sector if relevant rules on a specific field be integrated into a single agreement.

A concern is repeatedly expressed by developing countries that a minor breach to the agreement on trade facilitation could be brought to the WTO dispute settlement procedures for possible sanction. WTO has established a committee each for WTO Customs Valuation Agreement and Agreement on Rules of Origin, while WCO has also formed a technical committee for each of these technical areas. When a particular issue on customs valuation arises at WTO, its Committee on Customs Valuation refers the case to WCO’s Technical Committee on Customs Valuation for its technical opinion. At the beginning of the implementation of Customs Valuation Agreement, there were several such cases, but there has been rare recourse to the dispute settlement procedures. Following the precedent, a technical committee on trade facilitation should be established at WCO to which the WTO committee on trade facilitation can refer particular cases for technical opinion.

One of the distinctions of DDA from any other previous round of multilateral trade negotiations is that “enhanced technical assistance and capacity building” is repeatedly mentioned in the DDA documents in response to requests of developing and least developed countries. Technical assistance and capacity building are expected to be provided both during DDA negotiations and at the implementation stage. Since trade facilitation issues, in particular, customs procedures, are one of the highly technical areas, this request is well justified. In view of the above, one provision should

be created in the agreement so that interested international and regional organizations can provide technical assistance and capacity building on trade facilitation.

With regard to possible substantive provisions in the agreement, firstly, in line with the mandate given by the Doha Ministerial Declaration, the trade facilitation agreement should also include provisions to clarify the GATT Articles V (Freedom of Transit), VIII (Fees and Formalities Connected with Importation and Exportation) and X (Publication and Administration of Trade Regulation) while a question is left as to how detailed the clarification provisions should be. This poses the question on how the WTO DDA negotiators would need a precise and detailed agreement such as Agreement on Implementation of Article VI of the GATT 1994 (known as Anti-Dumping Agreement) where a provision on antidumping is specified in Article VI of GATT.

As the GATT Articles V and X do not represent the customs export/import clearance procedures—the core customs procedures—GATT Article VIII and the identification of the “trade facilitation needs and priorities” is an important mandate. As mentioned earlier, various proposals were made for almost all of the customs procedures. Among these proposals, the following seem important and effective, and therefore, should form elements in the agreement:

- (i) **Maximum use of automation or introduction of a computerized customs procedure processing system.** This can apply to various notifications, declarations, and entries to customs authorities. Automation can be applied to customs export/import clearance procedures. The UNCTAD-developed ASYCUDA system is widely used by more than 80 developing countries. Developed countries have developed their own system. The key is to ensure compatibility among different systems. Since the use of automation significantly reduces physical contacts to customs brokers, importers, and exporters, it is expected to reduce corruption.
- (ii) **Introduction of a single window system or one-time submission of documents is required.** It is the established practice that when a foreign vessel arrives at an open port, various government agencies, including port authorities, quarantine office and customs authorities are notified. If such government agencies are connected to a computer system, a single entry enables all necessary submissions. The basic idea of a single window system is not to repeat the submission of similar notification to various government agencies. This is closely linked to the use of automation.
- (iii) **Pre-arrival clearance.** An examination by customs for imported goods starts when an import declaration is lodged. It mainly consists of examinations of the declaration and its supporting documents to determine country of origin, right nomenclature and customs value, and if necessary, physical check of the imported goods. If this prearrival clearance system is introduced, documentary checks can be done even before the actual arrival of the imported goods; if no physical check is required, such imported goods can be immediately released.
- (iv) **Introduction of special and simplified clearance procedures for authorized persons.** This system provides simplified clearance procedures to those importers/exporters who (i) regularly import/export same goods; (ii) have no violation records of customs related laws and regulations for a certain period of time; and (iii) make proper bookkeeping. The simplified procedures may include reduction of declaration entry items; clearance

of the goods at the declarant's premises; single goods declaration for all imports/exports in a given period; and deferred payment of customs duties.

- (v) **Introduction of risk management/analysis system.** As trade grows, customs cannot perform expected functions and missions with limited personnel. An efficient resource allocation device should be in place to sort high-risk and low-risk cargo and traders so that customs can mobilize limited personnel to the high-risk cargo and traders and release low-risk cargo in a short time. Risk management/analysis system is an effective and powerful tool that many customs authorities use.

In the context of customs, the term "risk" normally means import/export prohibitions (drugs) and restrictions (endangered species); public health (pharmaceuticals, plant and animal quarantine); environment (hazardous substances); commercial policy measures (intellectual property rights, generalized system of preferences); quotas (goods under Agreement on Agriculture), and duty and tax fraud. Selectivity, profiling, and targeting methods are used in risk management. If necessary information is stored in a computerized customs clearance system—such as specific commodities, countries of origin, countries where goods are consigned, value, traders, and all the offence records by vessel, route, and persons and firms—and if one of such entries is made for an import declaration, the computer automatically shows the appropriate action customs should take.

- (vi) **Introduction of a postclearance audit system.** One of the basic functions of customs is to collect customs duties and value-added taxes at the border. In general in developing countries, such collection significantly contributes to national revenue. Except for those goods subject to specific duties, customs must determine the customs value of imported goods in question subject to ad valorem rate of customs duty. Historically, customs tended to take time on this aspect despite complaints by trading and business communities. Recently, customs authorities in developed and advanced developing countries have introduced a system where customs accepts self-assessed customs value declared by an importer for goods that are not prohibited or restricted and gives import permission in order to facilitate trade. However, close examinations of customs value and other necessary items are made by visiting such importers' premises to see whether they comply with customs-related laws and regulation. This system is a postclearance audit system, and in fact expedites customs clearance.

It may be difficult for customs authorities to show the real effects of the trade facilitation measures mentioned above to the public and interested parties such as business and trading communities. However, a number of customs administrations have done a time release study, and WCO has established a guideline. This study measures the average time between the arrival and the release of goods, and between each step. It is a useful tool to identify problems and bottlenecks caused by customs and other border agencies and the trade, to measure performance of IT and other facilitative measures (such as introduction of prearrival declaration); and to stimulate efforts to improve the efficiency and effectiveness over time. The Appendix shows two cases. The first case is the Japan Customs, which has done the time release study for six times since 1991. It compares the six studies; indicates the time required under major laws other than customs related laws; and shows the lead time when prearrival system is used. The second case shows the reduced time required for customs clearance when the pre-arrival system is used by Kenya Customs.

VI. CONCLUSION

Recently, business and trading communities have focused on the issue of trade facilitation as they would like to reduce costs of doing business, and this area is a good candidate for it. However, trade facilitation is a broad term, and may cover measures taken by both the public and private sector. Procedures and documentation requirements imposed by customs authorities and other government agencies are the core issue of trade facilitation discussed at WTO DDA and classified under NTMs. There are international agreements on NTMs both within and outside WTO.

The central element of trade facilitation at DDA is, however, customs procedures. WCO provides a set of conventions to contribute to trade facilitation. The Revised International Convention on Simplification and Harmonization of Customs Procedures is the international standards for customs procedures and systems. This convention answers most to GATT Articles V, VIII, and X. It seems logical that the Revised Kyoto Convention should be fully taken into account in developing an agreement on trade facilitation.

At this stage, it is premature to discuss possible structure and modality of an agreement on trade facilitation as in-depth examination and analysis have not started yet at DDA. However, the agreement should include the scope of trade procedures and documentary requirements under the agreement, application of GATT principles to them, and in-depth provisions for each element under the scope as key elements of the agreement.

There is a basic question pertaining to the existing valid agreements that contribute to trade facilitation, i.e., how will such agreements both within and outside WTO be treated in the agreement on trade facilitation. Such agreements can be divided into two categories: (i) those agreements developed by organizations other than WTO, and (ii) those agreements developed by WTO.

It would be desirable to refer to the Revised Kyoto Convention and a few other agreements and conventions that directly contribute to trade facilitation in the agreement on trade facilitation. The existing WTO agreements relating to trade facilitation should constitute an element in the agreement. Provisions concerning (i) technical assistance and capacity building, (ii) establishment of a technical committee on trade facilitation at WCO, and (iii) introduction of a modern customs techniques should also be created.

APPENDIX TIME RELEASE STUDY FOR EFFICIENT CUSTOMS ADMINISTRATION

A. Japan Customs

The average lead time from port arrival to granting an import permit for all imported cargo in Japan has largely been reduced over the past 10 years (Figure I). This reduction in the port distribution lead time has resulted in higher efficiency of operations for cargo owners, shipping companies and shipping forwarders, etc.

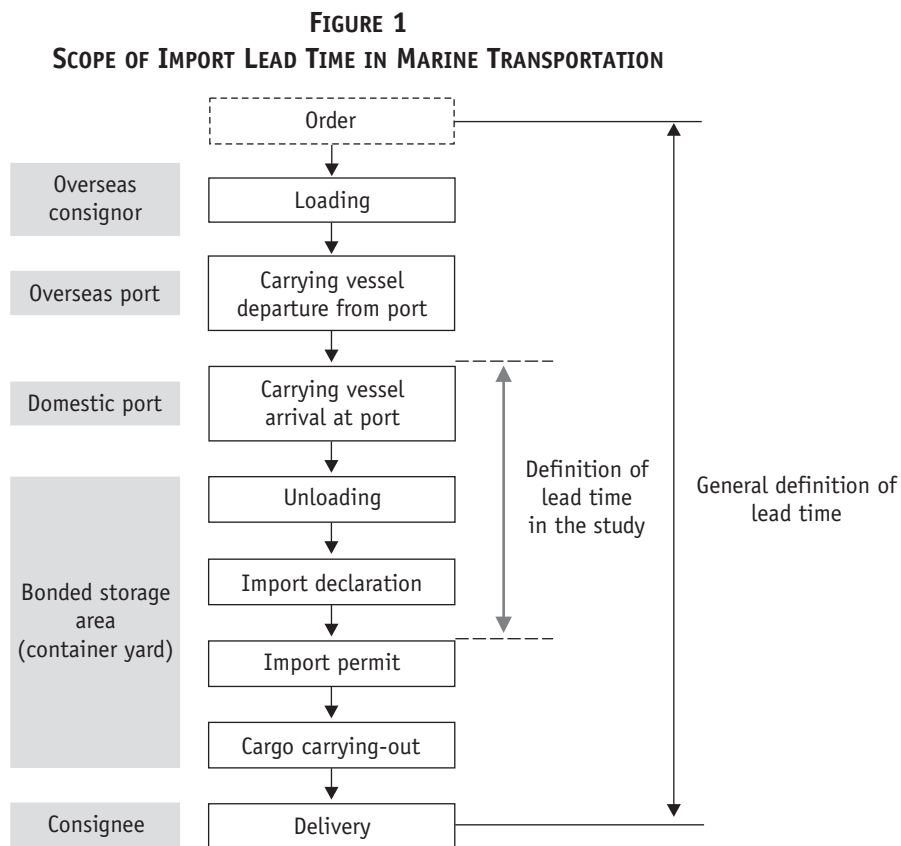
The Customs and Tariff Bureau, Ministry of Finance of Japan, has so far implemented six time release surveys. According to the latest survey conducted in 2001, the average requisite time from port arrival to permit issuance for all imported cargo was 73.8 hours or 3.1 days, representing a major reduction compared with the lead time in the first survey in 1991 of 168.2 hours or 7.0 days (Figure 2).

Importation of goods often requires approval under a number of laws other than customs-related laws that are administered by other government agencies. In Japan, typical laws are those relating to public health such as plant and animal quarantine laws, and the food sanitation law. Importation under these laws takes longer. In the case of the food sanitation law, the average lead time is 97 hours or 4.0 days (Figure 3).

As mentioned earlier, Japan Customs has shortened the time required for customs clearance. Introduction of a computerized customs clearance system, single window, simplified clearance procedures for authorized persons, risk management system, and prearrival clearance have contributed to the reduction. Figure 4 shows that when the prearrival system is used, it takes 54.1 hours or 2.3 days, and if not used, it takes longer at 79.4 hours or 3.3 days. This means that the prearrival system shortens the time required for customs clearance by more than 30% on average.

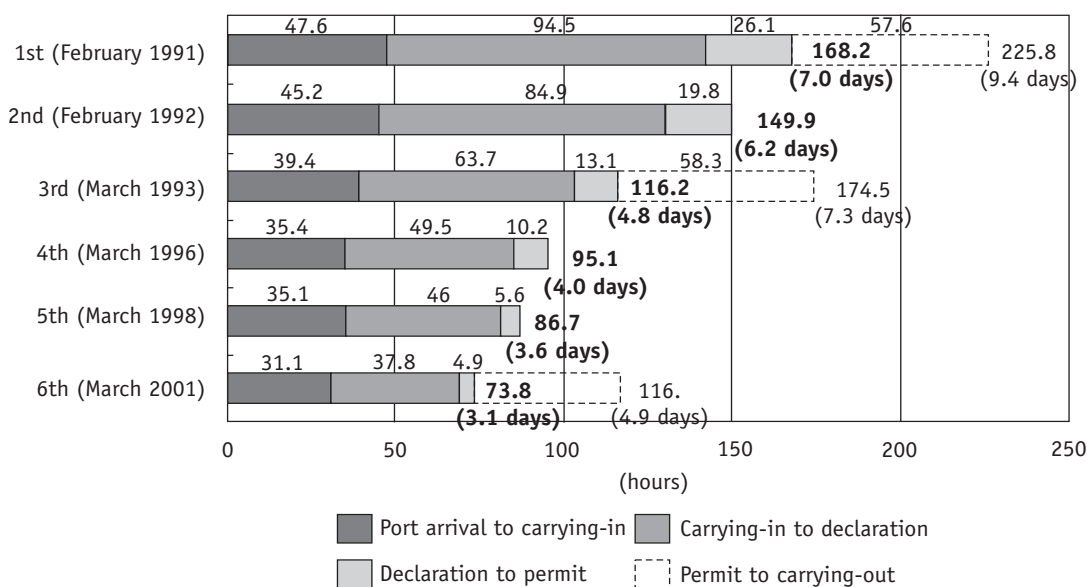
B. Kenya Customs

Figure 5 shows that prearrival system significantly reduces the time required for customs clearance. If the system is not used, it takes slightly more than 400 hours; when used, it only takes some 130 hours on average.



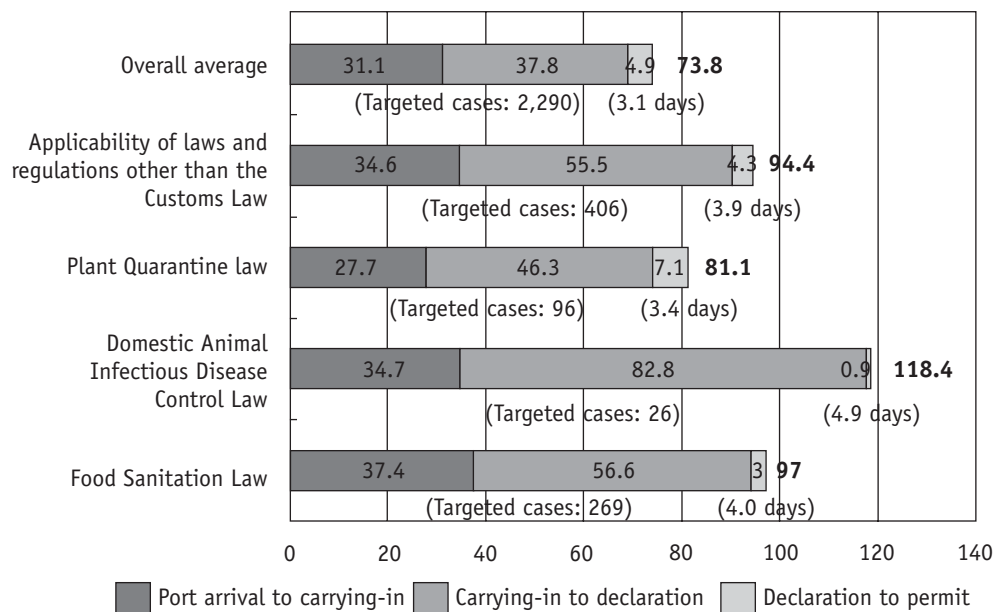
Source: *Sixth Time Release Survey* (Customs and Tariff Bureau, Ministry of Finance 2004).

FIGURE 2
CHANGES IN LEAD TIME SINCE 1991



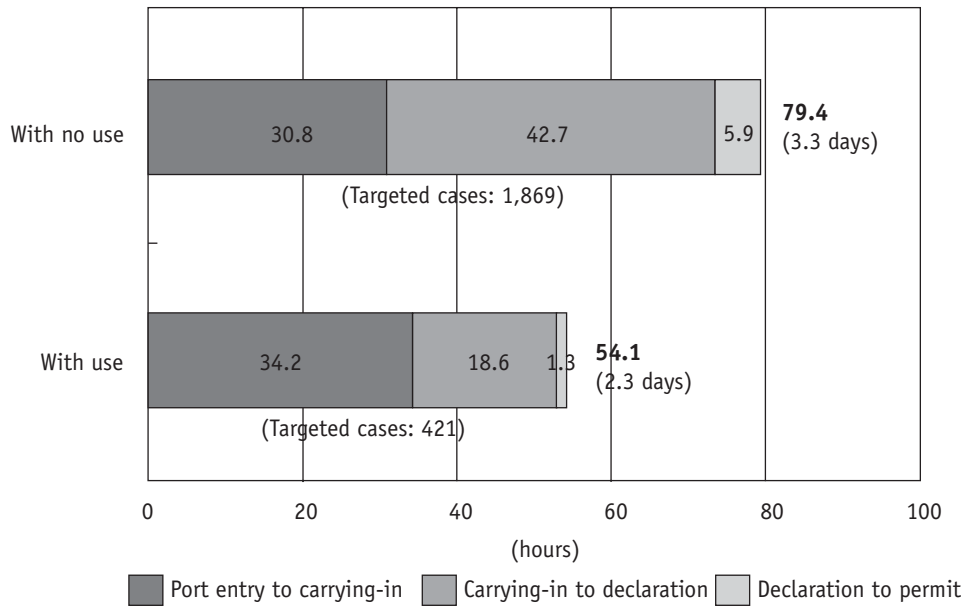
Source: Sixth Time Release Survey (Customs and Tariff Bureau, Ministry of Finance 2004).

FIGURE 3
CHANGES IN LEAD TIME DEPENDING ON APPLICABILITY OF LAWS AND REGULATIONS OTHER THAN THE CUSTOMS LAW



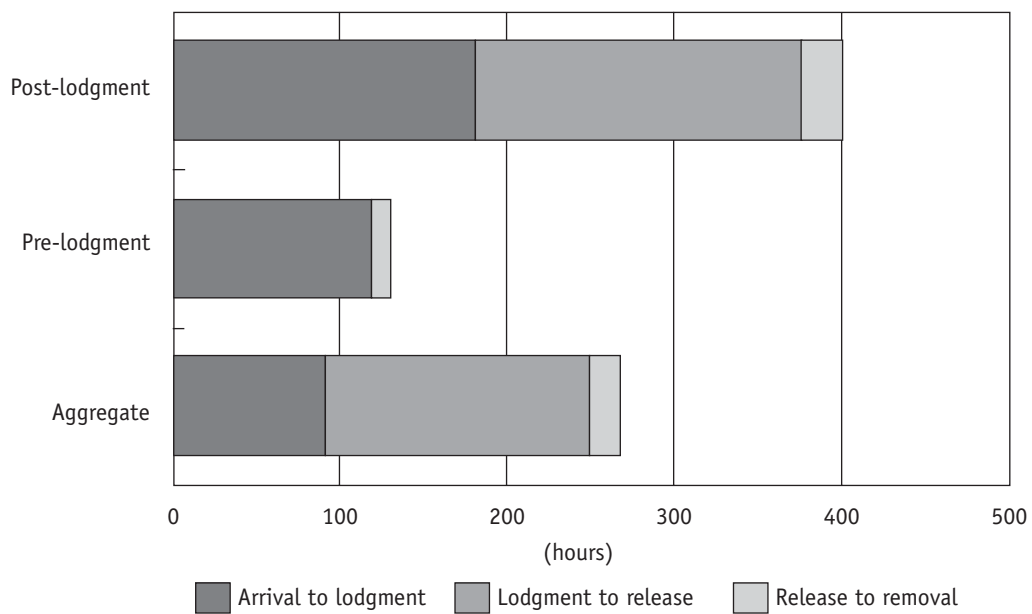
Source: Sixth Time Release Survey (Customs and Tariff Bureau, Ministry of Finance 2004).

FIGURE 4
CHANGES IN LEAD TIME DEPENDING ON WHETHER
PRE-ARRIVAL EXAMINATION SYSTEM IS IMPLEMENTED



Source: *Sixth Time Release Survey* (Customs and Tariff Bureau, Ministry of Finance 2004).

FIGURE 5
TIME RELEASE STUDY: PRE-ARRIVAL LODGMENT OF DECLARATION



Source: *Time Release Study* (World Customs Organization 2004).

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