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A Comparative Analysis of Trade Facilitation in Selected Regional and Bilateral Trade Agreement

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A Comparative Analysis of Trade Facilitation in Selected Regional and Bilateral Trade Agreement

How trade facilitation issues are addressed in ASEAN, APEC, SAFTA,
PACER and the Australia - Singapore Free Trade
Agreement



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Glossary

AEC	ASEAN Economic Community	MFN	Most Favoured Nation
AFTA	ASEAN Free Trade Area	MRA	Mutual Recognition Arrangement
AHTN	ASEAN Harmonised Tariff Nomenclature	OECD	Organisation for Economic Cooperation and Development
AMM	ASEAN Ministerial Meeting	PAC	Pacific Accreditation Cooperation
APEC	Asia Pacific Economic Cooperation	PACER	Pacific Agreement on Closer Economic Relations
APLAC	Asia Pacific Laboratory Accreditation Cooperation	PICTA	Pacific Island Country Trade Agreement
ASEAN	Association of South-East Asian Nations	PCA	Post-Clearance Audit
ASEAN-6	Indonesia, Malaysia, Philippines, Singapore, Thailand, Brunei Darussalam	PTA	Preferential Trade Agreement
ASFTA	Australia-Singapore Free Trade Agreement	RTA	Regional Trade Agreement
ASW	ASEAN Single Window	SAARC	South Asian Association for Regional Cooperation
ATA	Admission Temporaire / Temporary Admission	SAEU	South Asian Economic Union
CB	Capacity Building	SAFTA	South Asian Free Trade Agreement
CEPT	Common Effective Preferential Tariff	SAPTA	SAARC Preferential Trading Arrangement
COE	Committee of Experts	SMC	SAFTA Ministerial Council
DC	Developing Country	SPARTECA	South Pacific Regional Trade and Economic Cooperation Agreement
DDA	Doha Development Agenda	S&D	Special & Differential Treatment
EDI	Electronic Data Interchange	TA	Technical Assistance
EVSL	Early Voluntary Sectoral Liberalization	TF	Trade Facilitation
FIC	Forum Island Country	TFAP	Trade Facilitation Action Plan
GATT	General Agreement on Tariffs and Trade	TIFA	Trade and Investment Framework Agreement
GTAP	Global Trade Analysis Project	TIR	Transports Internationaux Routiers
HPA	Hanoi Plan of Action (1998)	UN/CEFACT	United Nations Centre for Trade Facilitation and Electronic Business
HS	Harmonized System (WCO)	UNCITRAL	United Nations Commission on International Trade Law
IAP	Individual Action Plan	UNCTAD	United Nations Conference on Trade and Development
ICC	International Chamber of Commerce	UNECE	United Nations Economic Commission for Europe
ICT	Information & Communication Technology	UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
HLTF	High Level Task Force on ASEAN Economic Integration	UN/EDIFACT	United Nations/Electronic Data Interchange For Administration, Commerce, and Transport
IAI	Initiative for ASEAN Integration (2000)	VAP	Vientiane Action Programme
ISO	International Standardisation Organization	WCO	World Customs Organization
LDC	Least Developed Country	WTO	World Trade Organization

Executive Summary

This study compares the treatment of trade facilitation in four selected regional trade agreements, AFTA, APEC, SAFTA and PACER, and in one bilateral free trade agreement being the Australia-Singapore Free Trade Agreement (ASFTA), with a view to determining model trade facilitation principles and measures which may be instructive for developing country negotiators and policy makers.

Given the varying degrees of progress in trade facilitation reform in the agreements, the comparative analysis reinforces the importance of clearly formulated, specific trade facilitation principles and measures if trade facilitation reform is to be successful. The effectiveness of specific measures implemented by parties to APEC and ASFTA and to a lesser extent in AFTA suggest that clearly designed trade facilitation principles and measures that are binding or that at least require a commitment to quantitative outcomes are more likely to succeed than more aspirational approaches.

That said, ASEAN, SAFTA and PACER have all made important steps toward trade facilitation reform and in some cases reflect a degree of flexibility and extended time periods that are necessary to build trust and consistency. In short each agreement appears to have played a positive role in accelerating the reform process and to some extent in driving reform at the multilateral level.

Some of the costs associated with trade can be reduced by bilateral initiatives but many current trade facilitation initiatives at bilateral or plurilateral levels are addressing essentially multilateral issues. Pressure from a major trading partner, promises of reciprocity or of commitments to trade related capacity building as in PACER may contribute to the attractiveness of implementing trade facilitation measures. However, as APEC members and others have recognized it is crucial to coordinate trade facilitation with multilateral trade facilitation negotiations or at least with the major regional trading partners.

The study outlines five model principles of trade facilitation highlighted throughout the regional agreements being: multilateral compliance, transparency, simplification, harmonisation and standardisation, and the principle of cooperation which also encompasses technical assistance and capacity building cooperation principles. These five principles are translated into seven categories of detailed model measures with a comparative table of estimated costs and prioritisation for the implementation of these measures.

This further analysis points to the importance of both prioritising and sequencing measures particularly for developing countries with limited resources. The study suggests that while some trade facilitation priorities will no doubt be based on cost and ease of implementation it equally stresses the need for each country to assess its particular needs, to harmonise and sequence reforms in cooperation with key trading partners and to link capacity building, technical assistance and special and differential needs with a specific and detailed trade facilitation reform program. While special and differential treatment should be harnessed to ensure that appropriate time-frames and flexibility are built into the reform process, it should not be used as a mechanism to defer compliance given the cost savings and benefits of trade facilitation reform to developing economies.

1. *Introduction*

Trade facilitation (TF) has become a major concern for policymakers wishing to increase the gains from trade. Reduction of trade barriers such as tariffs and quantitative restrictions, which had been achieved in the General Agreement on Tariffs and Trade (GATT) rounds of multilateral trade negotiations, raised the profile of the remaining behind and at the border trade costs. At the same time, technological developments have raised prospects for a paperless customs clearance environment and exchange of trade-related information, often discussed under the rubric of Electronic Data Interchange (EDI), which increases the potential gains from trade facilitation and suggests a need for common standards. The increased attention being paid to trade facilitation in recent years is evident in regional trading arrangements around the world but also in specific Asia Pacific regional agreements.

This paper analyses how trade facilitation issues are addressed in some of the principle trade agreements in the Asia-Pacific region in order to identify best practices and implications for the World Trade Organization (WTO) negotiations. The Association of South-East Asian Nations (ASEAN), the Asia Pacific Economic Cooperation (APEC), the South Asian Free Trade Agreement (SAFTA) and the Pacific Agreement on Closer Economic Relations (PACER) were chosen for their geographical spread across the region and for the diverse nature of measures incorporated in these agreements.

The comparative analysis seeks to identify model trade facilitation measures of relevance for future negotiations and the implications of these for developing countries, so it was decided to also include the Australia - Singapore Free Trade Agreement for its articulation of specific and effective trade facilitation measures.

Sections two and three of the paper reveal that few studies have dealt with any comprehensive comparative analysis of Regional Trade Agreements (RTAs) in the Asia Pacific region while noting the existence of valuable literature able to inform our analysis. It is also noted from the outset that trade facilitation is understood in slightly different ways according to the various trade agreements. The study analyses these differences but does not attempt to arrive at any new conclusions regarding definitional issues.

Preceding the more detailed analysis of the four regional agreements is an update on the current state of multilateral negotiations on trade facilitation in the WTO. The interaction between multilateral and regional TF negotiations is a theme that is revisited more closely later in the paper.

Sections five to eight serve to analyse and compare the various regional and bilateral trade agreements in order to develop a template of model measures for trade facilitation negotiators with an emphasis on issues and lessons for developing countries. The Institute for International Business, Economics and Law has also produced what we believe is a useful basis for a “template of best practice” on detailed trade facilitation measures, which are WTO consistent.

2. *Literature Review*

There are several papers analysing the general implications of major trade agreements in the Asia-Pacific region. In the more recent past a number of papers have been produced discussing specific aspects of trade facilitation. Most of these papers deal with

either the economic impact of trade facilitation, such as expected costs and benefits, or are case studies analysing the trade facilitation capacity building needs and initiatives of particular countries.

ENGMAN (2005) reviews the economic literature on the quantitative impact of trade facilitation on trade flows, investment and government revenue. His findings rely on surveys of businesspeople and, for the trade effects, on a series of papers by WILSON, MANN and OTSUKI (2003a, 2003b, 2004). They incorporate country-specific measures of trade facilitation (port efficiency, customs environment, regulatory environment, and e-business) into a gravity model.¹ Studies of the Organisation for Economic Cooperation and Development (OECD), which place these estimates in a general equilibrium context using the Global Trade Analysis Project (GTAP) framework estimate that a reduction in transactions costs equal to one percent of the value of world trade would yield aggregate welfare gains of about US\$ 40 billion.

Some empirical studies try to measure how time delays affect international trade. HUMMELS (2001) estimated that each day saved in shipping time is equivalent to about a 0.8% reduction in ad valorem tariffs.² Such work does not address the utility of specific trade facilitation measures, but shows that customs clearance measures and other trade facilitation initiatives have obvious time implications.

MOÏSÉ (2002) analyses the relationship between RTAs and the Multilateral Trading System regarding trade facilitation. He finds that the degree of facilitation in RTAs is influenced by various factors, such as the date of the conclusion of the agreement, the relative level of development of participating countries and the type of agreement reached.

FERIDHANUSETYAWAN (2005) gives a useful overview on the recent proliferation of Preferential Trade Agreements (PTAs) in the Asia-Pacific region and discusses key characteristics of some of these PTAs. However his observations regarding trade facilitation remain rather general and do not include PACER or SAFTA.

The legal framework and the scope of the APEC trade facilitation measures are discussed in a number of publications produced by APEC itself and by others³. Similarly there are several works addressing some trade facilitation initiatives in South Asia.⁴ There is scant literature analysing how trade facilitation is addressed in the context of PACER.⁵

Overall the existing literature is useful and important, however it does not provide a comprehensive comparison of how facilitation is addressed across major regional trade agreements (RTAs) in the Asia Pacific region.

¹ WILSON, MANN and OTSUKI (2004) estimates that trade facilitation could lead to a US\$ 377 billion increase in global trade in manufactured goods.

² See also FREUD, DJANKOV and PHAM (2006).

³ E.g. APEC (2002); ASSANIE, WOO and BROTHERSTON (2002); BAYSAN, PANAGARIYA and PITIGALA (2006); WOO (2004)

⁴ E.g. WILSON & OTSUKI (2004); WEERAKOON, THENNAKON and WEERARATNE (2005)

⁵ E.g. NARSEY (2004); MCMASTER (2003)

3. *Definition of 'Trade Facilitation'*

The aim of this paper is to show how different RTAs have understood and addressed trade facilitation. It is not the objective of this paper to provide any new discussion of definitional issues.

The term 'Trade Facilitation' (TF) has been defined in multiple ways by different organizations and trade agreements. For example, in the context of the WTO and the OECD trade facilitation means:

*“the simplification and harmonization of international trade procedures including the activities, practices and formalities involved in collecting, presenting, communicating and processing data and other information required for the movement of goods in international trade”*⁶

This definition excludes Non-Tariff Barriers (NTBs) to trade, such as sanitary and phytosanitary measures (SPS), or measures to protect social or environmental standards. According to the negotiation mandate of the 'July Package'⁷, the current WTO negotiations on trade facilitation are limited to the improving and clarifying of the GATT Articles V (Freedom of Transit), VIII (Fees and Formalities connected with Importation and Exportation), and X (Publication and Administration of Trade Regulations).

By comparison many bilateral and regional trade agreements have a broader understanding of trade facilitation, to include any procedures, processes or policies capable of reducing transaction costs and facilitating the flow of goods in international trade.⁸ Trade facilitation in this wider sense can affect a wide range of activities such as import or export procedures, transportation formalities, logistics services, payment, insurance and other financial requirements. However, trade facilitation even in its wider sense is generally distinguished from tariff negotiations and the development of physical infrastructure for trade (such as ports, roads, railways), that also influence the flow of traded goods.⁹

4. *History and State of Multilateral Trade Facilitation Negotiations*

Trade facilitation was introduced in the WTO context during the 1996 Ministerial Conference in Singapore¹⁰ and was explicitly included in the Doha Development Agenda (DDA). Paragraph 27 of the 2001 Doha Ministerial Declaration recognized “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”. The ministers also agreed to start formal negotiations on trade facilitation after the Fifth Session of the WTO Ministerial Meeting (Cancún 2003), limiting the specified actions until then to reviewing and clarifying the relevant GATT Articles, identifying the trade facilitation needs

⁶ OECD (2005)

⁷ See below p. 7

⁸ Impediments to international trade in particular complex and numerous formalities are also referred to as 'Red Tape'. Trade facilitation aims to cut such 'Red Tape'; see e.g. WOO & WILSON (2000)

⁹ UNESCAP (2002), pp. 1 ff.

¹⁰ There are four so-called 'Singapore Issues' introduced in 1996 and mentioned in the 2001 Doha Declaration: trade facilitation, relationship between trade and investment, interaction between trade and competition policy, and transparency in government procurement

and priorities of WTO members, and ensuring adequate technical assistance and support for capacity building in this area.

The Fifth Ministerial Conference in Cancún ended without agreement. On 1 August 2004 WTO members reached a decision in Geneva (so-called 'July Package'), which broke the Cancún deadlock¹¹, and agreed to start formal negotiations on trade facilitation¹². On 12 October 2004, the Trade Negotiation Committee established a Negotiating Group on Trade Facilitation. The Negotiating Group met eleven times and received more than 60 written contributions sponsored by more than 100 members before the December 2005 Hong Kong Ministerial Conference.

Up until 2005 a considerable part of the work within the Negotiating Group consisted of clarifying trade facilitation aspects of the relevant GATT Articles V, VIII and X. Many submissions addressed the issue of Technical Assistance (TA) and Capacity Building (CB) as well as the practical application of the principle of Special and Differential Treatment (S&D).¹³ The December 2005 Hong Kong Ministerial Conference also recalled and reaffirmed the mandate and modalities of the 'July Package', the need for further regarding S&D and implied the need to move towards text-based negotiations.¹⁴

The submissions and proposals of members (including the post-Hong Kong submissions TN/TF/W77-94) are compiled in the latest report by the Secretariat of the Negotiating Group (TN/TF/W/43/Rev. 7), released on 6 June 2006. The proposals are classified in terms of which GATT Article they mainly refer to. The proposals in context with GATT Article X (Publication and Administration of Trade Regulations) concern publication and availability of information, the time period between publication and implementation of rules, allowance for consultation and comment on new or amended rules, advance rulings, appeal procedures, and measures to enhance impartiality and non-discrimination.

The proposals regarding GATT Article VIII (Fees and Formalities connected with Importation and Exportation) concern the reduction of the number, diversity and amount of fees and charges, border agency coordination, reduction/limitation of formalities, procedures and documentation requirements (for instance by applying international standards and automation technology), simplified release and clearance of goods, and objective tariff classification. Disciplines regarding GATT Article V (Goods in Transit) include simplification and standardization of fees, formalities and documentation, as well as limitation of inspections and controls for goods in transit.

Multilateral negotiations on trade facilitation have guided and informed regional and bilateral free trade agreements over recent years, but increasingly because of their more immediate nature, specific principles and measures in some of the Free Trade Agreements, they are now impacting and arguably driving current multilateral negotiations. The study will now examine and compare the treatment of trade facilitation in the five selected Regional and Bilateral Trade Agreements in the Asia Pacific region and then in the section on

¹¹ According to the General Council's decision of 1 August 2004 all other three Singapore Issues (relationship between trade and investment, interaction between trade and competition policy, and transparency in government procurement) have been dropped from the Doha Development Agenda. Ironically, in the 1996 Singapore Ministerial Declaration trade facilitation was the most cursorily treated of the four issues.

¹² The modalities for the negotiations are set out in Annex D of the decision (WTO document WT/L/579)

¹³ Hong Kong Ministerial Declaration of 18 December 2005, Annex E, see WTO document WT/MIN(05)/DEC

¹⁴ See: Paragraph 33 of the Hong Kong Ministerial Declaration.

“implications for developing countries” revisit the issue of the relationship between RTAs and multilateral negotiations.

5. *Comparative Analysis of Trade Facilitation Measures in Regional and Bilateral Trade Agreements in Asia-Pacific*

This section analyses and compares how trade facilitation is addressed in the four regional agreements of ASEAN, APEC, SAARC/ SAFTA, PACER and then in Australia-Singapore Bilateral Free Trade Agreement (ASFTA). The following Table A gives a comparative overview of the membership, structure and scope of these agreements:

Table A: General Comparison of RTAs in the Asia-Pacific Region

Name of organization / agreement	ASEAN (Association of Southeast Asian Nations) / AFTA (ASEAN Free Trade Agreement)	APEC (Asia-Pacific Economic Cooperation)	SAARC (South Asian Assoc. for Regional Cooperation) / SAFTA (Agreement on South Asian Free Trade Area)	PACER (Pacific Agreement on Closer Economic Relations)/	ASFTA (Singapore-Australia Free Trade Agreement)
Members	Member countries: Brunei, Cambodia, Indonesia, Laos, Malaysia, Myanmar, Philippines, Singapore, Thailand, Vietnam	Member economies: Australia, Brunei Darussalam, Canada, Chile, China, Hong Kong, Indonesia, Japan, Malaysia, Mexico, New Zealand, Papua-New Guinea, Peru, Philippines, Russia, Singapore, South Korea, Chinese Taipei (Taiwan), Thailand, USA, Vietnam	Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan, Sri Lanka	Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua-New Guinea, Samoa, Solomon Island, Tonga, Tuvalu and Vanuatu	Singapore, Australia
Year of signing, entry into force	1992, 1993	1989	2004, (1 January) 2006	2001, 2002	17 February 2003, 28 July 2003
Type of agreement	Free Trade Agreement	Public sector, multilateral economic forum	Free Trade Agreement	Framework agreement for the gradual trade and economic integration	Comprehensive Free Trade Agreement (incl. goods, services, investment)
Integration	Currently sectoral integration, long-term goal: integrated single market by 2020	APEC supports trade and investment liberalisation through multilateral, and high-quality regional and bilateral trade agreements. Bogor Goals: free and open trade and investments by 2010 in developed and by 2020 in developing economies	Currently tariff reductions, long-term goal: free trade area by 2016. Early harvest programme: non-least developed countries (India, Pakistan, Sri Lanka) phase out tariffs for by 2009 while the least developed states will have time until 2016 to remove the impediments ^①	Currently framework only, various initiatives e.g. capacity building, technical assistance and trade facilitation programmes. Long-term goal: "eventual full and complete integration of all sectors of [member] economies"	
Legal base for economical integration & TF measures	Series of declarations, action plans and sectoral agreements (e.g. Bali Concord I+II, Vientiane Action Plan)	Set goals (e.g. Shanghai Goals), APEC TF Principles, TF Action Plan (TFAP), Individual Action Plans (IAPs)	SAFTA agreement, SMC agreements	Subsidiary agreements like PICTA, other FTAs have to be negotiated in the future; unilateral concessions	ASFTA including Annexes
Structure	Annual meeting of Heads of State and Government "ASEAN Summit"; ASEAN Ministerial Meetings (AMM); ASEAN Standing Committee; 29 committees of senior officials and 122 technical working groups; ASEAN Secretariat, headed by the Secretary-General of ASEAN	Annual summits "Leaders Meeting"; 2 standing committees: Committee for Trade and Investment (CTI), Economic Committee (EC); 10 working groups on: Trade and Investment Data, Trade Promotion, Investment, Industrial Science and Technology, Human Resource Development, Energy, Marine Resource Conservation, Telecommunications, Fisheries, Transportation, and Tourism; small APEC Secretariat	SAFTA Ministerial Council (SMC) consisting of the Ministers of Commerce/Trade; Committee of Experts (COE) on the level of senior economic officials; SAARC Secretariat as secretarial support to SMC and COE	No formal rules governing operations or the conduct of its meetings. Annual meetings of the Pacific Island Forum countries heads of government and ministerial level; Pacific Islands Forum Secretariat, headed by the Secretary General.	No institutionalised structure, biennial meetings of the ministers of trade to review the agreement
Enforcement	No institutionalised dispute resolution; bilateral dispute resolution procedures, ad hoc panels, appellate body (decisions enforceable)	No enforcement by APEC (agreements are non-binding)	Amicable dispute settlement by bilateral consultations, COE acts as Dispute Settlement Body, appeal against the COE recommendations to the SMC (SMC recommendation enforceable by [limited] withdrawal of concessions)	No enforcement (framework only requires future negotiations)	Consultations, conciliation or mediation, arbitral tribunal (binding recommendations)
Tariff reduction by	Negative list approach, Common Effective Preferential Tariff (CEPT)	Unilateral liberalization and tariff reduction according to Individual Action Plans (IAPs)	Tariff schedules, use of "Sensitive Lists" (exemption from tariff schedules)	No tariff concessions	Elimination of all tariffs
Tariff levels	93% of products included in CEPT list <5% tariff (2005), ASEAN-6 average tariff under CEPT 1.93% (2005) ^②	Average tariff between member economies 5.5% (2004) ^③	Maximum tariffs by 2008: non-least developed states (India, Pakistan, Sri Lanka) 20%, least developed states 30%	No tariff concessions	0%

TF = Trade Facilitation

^① As agreed by Commerce Ministers of the SAFTA member countries on 19 April 2006

^② ASEAN Annual Report 2004-2005, p. 25

^③ APEC Report: Mid-term Stock take of Progress towards the Bogor Goals

5.1. The Association of Southeast Asian Nations (ASEAN)

5.1.1. General remarks on ASEAN and AFTA

ASEAN is one of the oldest regional trading arrangements in the Asia-Pacific region. It was formed in 1967 by Indonesia, Malaysia, the Philippines, Singapore and Thailand, and joined by Brunei Darussalam in 1985. ASEAN had little impact on trade policy before the establishment of the ASEAN Free Trade Area (AFTA) in 1992. During the 1990s ASEAN expanded its membership to ten as Vietnam acceded in 1995, Laos and Myanmar in 1997, and Cambodia in 1998. ASEAN has a permanent Secretariat in Indonesia, but this supranational institution has relatively limited capacity at this stage. There is no separate supranational institution for AFTA.

In AFTA, members retain their national trade policies towards non-members and liberalize intra-ASEAN trade by reducing tariffs to 5% or less on goods with at least 40% ASEAN content. The original six members (ASEAN-6) committed to full implementation of AFTA by 2002, with exemptions until 2010 only for a small number of sensitive agricultural products, while the four newest members have extended transition periods (until 2006 for Vietnam, 2008 for Laos and Myanmar, and 2010 for Cambodia).

There is no institutionalized dispute resolution mechanism, and in practice (despite a 2004 ASEAN Protocol on Enhanced Dispute Settlement Mechanism) the process is bilateral.

Since the year 2000, the integrity of AFTA has been threatened by the willingness of some members, Singapore and Thailand in particular, to negotiate bilateral trade agreements with non-ASEAN countries, such as Japan, the USA and Australia.¹⁵

The ASEAN framework, like a number of other RTAs in Asia, has developed over a prolonged period of time and consists of several layers of agreements and declarations, each building on and reinforcing the trust gained by the previous one. A serious understanding of the current ASEAN trade facilitation efforts therefore requires awareness of the evolution of trade facilitation issues within ASEAN and justifies a brief summary of the background to this agreement.

5.1.2. Trade Facilitation within the ASEAN framework

a) AFTA and CEPT

Initially, the ASEAN Free Trade Agreement (AFTA) focussed on a reduction of tariffs by implementing a Common Effective Preferential Tariff (CEPT). Neither of the 1992 agreements explicitly referred to the issue of trade facilitation. However, some general provisions contain aspects that can be subsumed under a broad definition of trade facilitation. For instance, the Framework Agreement on Enhancing the ASEAN

¹⁵ Relations with the USA are especially hierarchical, as the USA has signed Trade and Investment Framework Agreements (TIFAs) with Brunei Darussalam, Indonesia, Malaysia and the Philippines. TIFAs, described by the USA as a prerequisite to a subsequent free trade agreement or bilateral investment treaty, are of lesser standing than the US-Singapore free trade agreement or the US agreement with Thailand, but a step ahead of US relations with the four newest ASEAN members.

Economic Cooperation establishing AFTA urges members to "reduce or eliminate non-tariff barriers between and among each other on the import and export of products"¹⁶ and the CEPT Agreement provides that members "shall explore further measures on border and non-border areas of cooperation to supplement and complement the liberalization of trade. These may include, among others, the harmonization of standards, reciprocal recognition of tests and certification of products (...)"¹⁷.

Accordingly most ASEAN countries made some efforts in the early/mid 1990's to simplify and harmonize trade procedures in accordance the GATT framework¹⁸, but progress has been slow and limited.

b) ASEAN Vision 2020

On 15 December 1997, the Heads of State and Governments of the ASEAN countries adopted in Kuala Lumpur the 'ASEAN Vision 2020' pledging a 'Partnership in Dynamic Development' and agreeing on the full integration of AFTA by 2010. It was also resolved, inter-alia, to undertake "work towards a world class standards and conformance system that will provide a harmonised system to facilitate the free flow of ASEAN trade while meeting health, safety and environmental needs (...) [and] to promote an ASEAN customs partnership for world class standards and excellence in efficiency, professionalism and service, and uniformity through harmonised procedures, to promote trade and investment and to protect the health and well-being of the ASEAN community (...)"¹⁹.

c) Hanoi Summit (1998)

One year later, at the Sixth ASEAN Summit 1998 in Hanoi, it was agreed to accelerate the implementation of AFTA and increased attention was given to the removal of technical barriers to trade.²⁰ The Summit adopted the Hanoi Plan of Action (HPA) as a first step to the realisation of the goals of the ASEAN Vision 2020. The HPA²¹ had a six-year timeframe (1999-2004) and the progress of its implementation was to be reviewed every three years to coincide with the ASEAN Summit Meetings.

The Hanoi Summit also adopted, amongst other things, a framework for Mutual Recognition Arrangements (MRAs)²² and a framework on the Facilitation of Goods in Transit.²³ The only ratified Mutual Recognition Arrangements has targeted the duplication in testing and certification of products. This has been achieved by allowing any

¹⁶ See Article 2(A) Section 3 of the Framework Agreement on Enhancing ASEAN Economic Cooperation, signed in Singapore on 28 January 1992

¹⁷ See Article 5(C) of the Agreement on the Common Effective Preferential Tariff Scheme for the ASEAN Free Trade Area, signed in Singapore on 28 January 1992

¹⁸ Regarding Myanmar see e.g. Oo, Myo (2005); regarding Cambodia, Laos, Myanmar and Vietnam see UNESCAP (2002), chapter 9, pp. 65-73; regarding Indonesia, Singapore, Philippines and Thailand see the corresponding case studies in APEC (2001)

¹⁹ 'ASEAN Vision 2020' adopted at the Second Informal ASEAN Summit in Kuala Lumpur, 14 - 16 December 1997, available at: <http://www.aseansec.org/5408.htm>

²⁰ See Section 11 of the Ha Noi Declaration of 16 December 1998 and the Ha Noi Plan of Action (in particular Sections 2.1.2, 2.1.3, 2.1.4)

²¹ The full text of the Ha Noi Plan of Action (HPA) is available at: www.aseansec.org/8754.htm

²² As per 23 of January 2006 the ASEAN Framework Agreement on Mutual Recognition Arrangements (full text available at: www.aseansec.org/8134.htm) did not enter into force, as the Lao People's Democratic Republic has not yet ratified the agreement.

²³ The ASEAN framework agreement on the Facilitation of Goods in Transit entered into force on 2 October 2002; full text available at: www.aseansec.org/12463.htm; see also ASEAN (2001)

product meeting harmonized standards automatic access to other ASEAN markets, however at this stage products are restricted to electronic²⁴, and cosmetic products only.²⁵ The e-ASEAN agreement, which provides trade facilitation measures for Information and Communications Technology (ICT) products, has not yet entered into force.²⁶

The Framework Agreement on Facilitation of Goods in Transit reflects common international principles like the Most Favoured Nation Treatment and aims to simplify and harmonize transport, trade and customs regulations for goods in transit by applying principles like consistency, simplicity, transparency and efficiency. However, out of the nine Protocols²⁷ detailing the framework agreement, only the ASEAN Scheme of Compulsory Motor Vehicle Third-Party Liability Insurance (Protocol 5) has been ratified and entered into force.

d) Initiative for ASEAN Integration (IAI)

In November 2000 at Fourth Informal Summit in Singapore, the ASEAN Leaders launched the Initiative for ASEAN Integration (IAI), which gave direction to and sharpened the focus of collective efforts in ASEAN to narrow the development gap among its Member States.²⁸ The subsequent 2001 Hanoi Declaration on Narrowing the Development Gap called for conclusion of the remaining protocols necessary to implement the 1998 Agreement on Goods in Transit in order to facilitate land transport in Southeast Asia and lower its cost²⁹ and contained other declarations that could be considered as trade facilitation measures, such as the facilitation of trade and investment in the ICT sector.³⁰ However, once again the 2001 Hanoi Declaration remained largely aspirational.

In 2002, ASEAN further acknowledged the importance of trade facilitation³¹ and made an ASEAN Customs Partnership based on the principles of the Revised Kyoto Convention on customs processes, procedures and practices a high priority.³²

²⁴ see: ASEAN Sectoral Mutual Recognition Arrangement for Electrical and Electronic Equipment, adopted in Bangkok and entered into force on 5 April 2002

²⁵ see: Agreement on the ASEAN Harmonized Cosmetic Regulatory Scheme, adopted in Phnom Penh and entered into force on 2 September 2003

²⁶ see: e-ASEAN Framework Agreement, signed in Singapore on 24 November 2000

²⁷ According to Article 25 various Working Group shall be established to conclude the following protocols, which form an integral part of the agreement: Protocol 1-Designation of Transit Transport Routes and Facilities, Protocol 2 - Designation of Frontier Posts, Protocol 3 - Types and Quantity of Road Vehicles (signed in Hanoi on 15 September 1999), Protocol 4 - Technical Requirements of Vehicles (signed in Hanoi on 15 September 1999), Protocol 5 - ASEAN Scheme of Compulsory Motor Vehicle Third-Party Liability Insurance (signed in Kuala Lumpur on 8 April 2001, entered into force on 16 October 2003), Protocol 6 - Railways Border and Interchange Stations, Protocol 7 - Customs Transit System, Protocol 8 - Sanitary and Phytosanitary Measures (signed in Phnom Penh on 27 October 2000) and Protocol 9 - Dangerous Goods (signed in Jakarta on 20 September 2002)

²⁸ see: Hanoi Declaration On Narrowing Development Gap For Closer ASEAN Integration, 23 July 2001

²⁹ Ibid. para. 20

³⁰ Ibid. para. 16

³¹ The Final Report of the East Asia Study Group presented during the Eighth ASEAN Summit in Phnom Penh in November 2002 recommended to quickly move beyond AFTA and to accelerate the implementation by, amongst others adopting common trade facilitation standards and practices.

³² See: ASEAN Annual Report 2002-2003, p. 21

e) Bali Concord II (2003)

On the Ninth ASEAN Summit in Bali on 7/8 October 2003, the ASEAN leaders agreed on the Declaration of ASEAN Concord II (also called Bali Concord II)³³ establishing, amongst others, the ASEAN Economic Community (AEC). To realize the AEC it was decided to implement the recommendations of the High Level Task Force on ASEAN Economic Integration (HLTF), which included facilitation measures for the trade of goods, in particular regarding non-tariff barriers, customs and standards.³⁴ The customs facilitation matters include the adoption of the green lane system for CEPT products; adoption of the WTO/GATT Agreement on Customs Valuation and developing implementation guidelines appropriate for ASEAN; service commitment (client charter) by ASEAN customs authorities; and a single window approach including the electronic processing of trade documents at national and regional level.

To further facilitate trade, the Protocol Governing the Implementation of the ASEAN Harmonised Tariff Nomenclature (AHTN) was signed by the ASEAN Finance Ministers in Manila on 7 August 2003. The AHTN aims at increasing consistency and transparency in tariff application, uniformity and simplicity in the classification of goods in ASEAN³⁵, and at creating a nomenclature which conforms to international standards.

f) The Vientiane Action Programme (VAP)

At the Tenth ASEAN Summit in Vientiane on 29 November 2004 the head of States and Governments adopted the Vientiane Action Programme (VAP) to be implemented in the period 2004-2010. Integrating towards a single market is the strategic goal of the AEC and consistent with that goal the VAP aims to remove barriers to the free flow of goods, services and skilled labour, and freer flow of capital by 2010³⁶. To achieve this the VAP demands the implementation of measures like "improving trade and business facilitation" and "reducing trade transaction costs" and the accelerated integration of eleven priority sectors such as automotive, electronics, rubber or wood-based products.

The framework agreement for the integration of these priority sectors contains in Part III several provisions regarding trade facilitation and should enter into force by 31 August 2005, but was – like the protocols regarding the priority sectors – only ratified by Thailand³⁷.

On the Eleventh ASEAN Summit in Kuala Lumpur in December 2005 the leaders agreed to implement an ASEAN Single Window (ASW) by December 2006, which enables a single submission of data and information, the single and synchronous processing of data and information; and a single decision-making for customs release and clearance.³⁸ The initial implementation is, however, on a bilateral basis. Thailand

³³ Full text can be found at: www.aseansec.org/15160.htm

³⁴ The HTLF recommendations are available at: www.aseansec.org/hltf.htm

³⁵ See also: the Understanding on the Criteria for Classification in the AHTN, signed by the ASEAN Customs Directors-General on 20 December 2003

³⁶ The removal of barriers is limited to the "extent feasible and agreeable to all Member Countries"; the full text of the VAP is available at: www.aseansec.org/VAP-10th%20ASEAN%20Summit.pdf

³⁷ ASEAN Framework Agreement for the Integration of Priority Sectors, signed in Vientiane on 29 November 2004, available at: www.aseansec.org/16659.htm

³⁸ Agreement to Establish and Implement the ASEAN Single Window, Kuala Lumpur, 9 December 2005, available at: www.aseansec.org/18005.htm. This agreement followed seven years of *ad hoc* initiatives

and the Philippines are establishing a pilot ASW program while Thailand and Malaysia are negotiating on specific measures to reduce customs clearance times.

5.1.3. How Trade Facilitation is addressed in ASEAN

ASEAN has a fairly wide and sometimes inconsistent understanding of trade facilitation that includes issues such as customs valuation and aspects of non-tariff barriers to trade, which would not normally fall under the WTO definition of trade facilitation. Nevertheless ASEAN trade facilitation initiatives are designed to comply with WTO/GATT rules.

The ASEAN approach is based on a framework of declarations and action plans that aim at a single market in the long run, but currently only a limited number of priority sectors are integrated. Accordingly, trade facilitation measures within ASEAN are based on a variety of agreements and remain sectoral and implementation is largely dependent on progress at the national level. When it comes to trade facilitation, the ASEAN framework agreements and declarations tend to be more general or aspirational.

However, it should be acknowledged that ASEAN countries have made significant progresses in recent years in particular with regard to custom procedures, namely the standardization of information for customs purposes adopting best practices and provisions as set forth in the Revised Kyoto Convention,³⁹ as well as the harmonization of practices related to customs valuation, which are now in most ASEAN countries in accordance with the WTO/GATT Agreement on Customs Valuation⁴⁰. Most ASEAN countries have implemented the ASEAN Harmonized Tariff Nomenclature (AHTN) and procedures for Post-clearance Audit (PCA)⁴¹.

From our initial analysis it would appear that a number of the initiatives and measures of the Vientiane Action Programme are being processed or implemented. Further research is necessary to determine the exact implementation status of trade facilitation implementation in each of the ASEAN member countries.

5.2. Asia-Pacific Economic Cooperation (APEC)

5.2.1. General remarks on APEC

The Asia-Pacific Economic Cooperation (APEC) agreement was constituted in 1989 in Canberra. APEC's current membership consists of Australia, Brunei Darussa-

sponsored by the ASEAN Secretariat but implemented unilaterally (eg. the Gold Card Program in Indonesia, the Super Green Lane in the Philippines, and the Single Window in Singapore), which reduced customs clearance times from several days to several hours

³⁹ The majority of ASEAN members adopted the ASEAN Customs Declaration Document, which contains 48 information parameters and which was developed on the basis of the Single Administrative Document recommended by the World Customs Organization.

⁴⁰ ASEAN has published its own 'ASEAN Customs Valuation Implementation Guide' to provide uniform understanding and interpretation of the WTO Agreement on Customs Valuation for operational application by frontline customs officers

⁴¹ See: ASEAN Annual Report 2004-2005, p. 29

lam, Canada, Chile, China, Hong Kong, Indonesia, Japan, Malaysia, Mexico, New Zealand, Papua New Guinea, Peru, Philippines, Russia, Singapore, South Korea, Chinese Taipei (Taiwan), Thailand, USA and Vietnam.

APEC's distinguishing feature is its commitment to open regionalism, rather than the reciprocal exclusive arrangements characteristic of most RTAs. As such, APEC is not a typical trade agreement. In fact, APEC is the only inter governmental grouping in the world operating on the basis of non-binding commitments.

It operates as a cooperative, multilateral economic and trade forum without requiring its members to enter into legally binding obligations. Decisions made within APEC are reached by consensus and commitments are undertaken on a voluntary basis. APEC does not aim to establish a free trade area or customs union, but aims in a coordinated regional manner to liberalize trade on a Most Favoured Nation (MFN) basis.

APEC Member Economies take individual and collective actions to open their markets and promote economic growth. APEC maintains a small Secretariat in Singapore that essentially provides coordination and information services and has a project management role in overseeing some APEC projects. But there are no supranational institutions or structures in APEC and there is no institutionalised dispute settlement mechanism.

APEC members strongly support WTO multilateral negotiations and the successful conclusion to the Doha Development Agenda. Accordingly APEC initiatives always seek compatibility with multilateral approaches.

5.2.2. Trade Facilitation within the APEC framework

Trade facilitation has been explicitly on the APEC agenda since the mid-1990s. The APEC Committee on Trade and Investment was established in 1993 and the 1995 Osaka Action Agenda expanded its scope. The Committee's four priority areas are: support for the multilateral trade system, trade facilitation, transparency and anti-corruption, as well as digital economy and intellectual property rights (IPR).

In 1994, APEC economic leaders committed in Bogor, Indonesia, to "strengthening the open multilateral trading system" and set the Bogor Goals of "free and open trade and investment in the Asia-Pacific by 2010 for developed economies and 2020 for developing economies."⁴² The ultimate nature "free and open trade and investment", however, was not fully defined either in the Bogor Declaration or the Osaka agenda.⁴³

Two years later, the Manila Action Plan for APEC (MAPA) was adopted, outlining the trade and investment liberalisation and facilitation measures to reach the Bogor Goals. In 1997, APEC leaders supported a proposal for Early Voluntary Sectoral Liberalization in 15 sectors.

⁴² See: APEC Economic Leaders' Declaration of Common Resolve, adopted in Bogor, Indonesia, on 15 November, 1994; full text available at: www.apec.org/apec/leaders__declarations/1994.html

⁴³ ELEK (2005) calls this lack of definition a "constructive ambiguity" and suggest that APEC leaders should clarify this term.

In 2001, APEC adopted the Shanghai Accord, which focuses on broadening the APEC Vision, clarifying the roadmap to Bogor and strengthening implementation. The Shanghai Accord stresses the significance of trade facilitation and endorses a (voluntary) set of principles on trade facilitation as part of the Collective Action Plan (APEC Principles on Trade Facilitation).⁴⁴ The APEC leaders agreed to reduce cross-border trade transaction costs by 5% by 2006. In addition, an APEC Business Travel Card scheme and a Mutual Recognition Arrangement on Electrical Equipment were approved.

In Mexico in 2002, APEC adopted a Trade Facilitation Action Plan (TFAP), which should identify suitable trade facilitation measures, estimate the cost of implementing such measures and provide capacity building programs. Starting in 2002, each APEC member was expected to submit annual Individual Action Plans (IAPs), which would achieve the 5% target, and report on their progress. By 2004, around 1,300 items had been selected in the IAPs, mainly in the sub-category of customs procedures, and over half of these had been completed and a further quarter were in progress.⁴⁵

5.2.3. How Trade Facilitation is addressed in APEC

APEC's trade facilitation principles are similar to those of ASEAN. There is a common emphasis on simplifying customs procedures, promoting transparency, and on alignment with international standards, but there is a distinctive emphasis in APEC on paperless trading, e-commerce and on facilitating and promoting business people's mobility.⁴⁶

a) *The APEC Principles on Trade Facilitation (2001)*

The APEC Trade Ministers adopted at their 2001 Shanghai meeting the following nine Trade Facilitation Principles that are applicable for the trade of goods and the trade of services⁴⁷:

- Transparency,
- Communication and consultation,
- Simplification, practicability and efficiency,
- Non-discrimination,
- Consistency and predictability,
- Harmonization, standardization and recognition,
- Modernization and the use of new technology,

⁴⁴ See: Section 18 of the Joint Statement of the 13th Ministerial Meeting in Shanghai on 17/18 October 2001; Section 21 and Annex B (containing the APEC Principles on Trade Facilitation) of the Chair's Statement of the Meeting of APEC Ministers Responsible for Trade, 6/7 June 2001

⁴⁵ This is the "Overall Quantitative Assessment" in WOO (2004). However, WOO (2004) advises "great caution" in interpreting such data, because "the quality and effectiveness of these initiatives is not clear" from the national reports (p. 17) and spends the vast majority of the report on qualitative assessments.

⁴⁶ Seventeen of APEC's twenty-one members participate in, or have announced their intention of participating in, the APEC Business Travel Card scheme. Qualified businesspeople can obtain in their home country the Travel Card, which facilitates issue of multiple short-term entry visits from other APEC member countries and provides entitlement to fast-track procedures for entry and exit at participating international airports.

⁴⁷ Full text of APEC Trade Facilitation Principles (Annex B) is available at: www.apec.org/apec/ministerial_statements/sectoral_ministerial/trade/2001_trade/annex_b.html

- Due process, and
- Cooperation

The transparency principle targets the availability and accessibility of information relevant to trade of goods and services. This comprises laws and regulations, as well as information on licensing, certification, qualification and registration requirements, technical standards, guidelines and procedures. According to APEC, these rules and procedures relating to trade should be made available to all interested parties, consistently, in a timely manner, through widely available medium at no or at a reasonable cost (e.g. by publishing information on the Internet).⁴⁸

The communication and consultations principle embraces mechanisms for exchanges between authorities and stakeholders, especially between government, business and the trading community.

The simplification of rules and procedures seeks to ensure that the rules are no more trade-burdensome or restrictive than necessary to achieve their legitimate objectives. APEC principles also state that rules and procedures relating to trade should be applied in a consistent, predictable, uniform and non-discretionary manner to minimize uncertainty (e.g. by establishing codes of conducts).

APEC's harmonization and standardization principle aims at the acceptance of international standards like the Revised Kyoto Convention, the WTO Custom Valuation agreement or ISO norms. The recognition of standards is fostered by sectoral Mutual Recognition Arrangements (e.g. the MRA for electrical and electronic equipment).

APEC is open to new business practices and new technology. Member economies are urged to implement the use of internet technology, electronic data interchange and e-commerce, not only for the publication of information (e.g. The APEC Electronic Individual Action Plan [e-IAP]) but also as a means to submit documents for payment. APEC recommends the implementation of risk management techniques, pre-arrival and post clearance audits.

The cooperation principle acknowledges that trade facilitation measures are best implemented through a working partnership between government authorities and business communities and that trade facilitation requires technical assistance, capacity building and the sharing of best practices between governments.

b) Implementation of APEC Trade Facilitation Principles

The development and implementation of trade facilitation measures compliant with the rather general APEC trade facilitation principles are left to the member economies, although as stated earlier APEC has set a goal of reducing transaction costs by 5% by 2006 and plans to reduce those costs by a further 5% by 2010. Accordingly, there are a variety of trade facilitation measures at different stages of implementation. There is not a uniform set of measures which have to be implemented within a specific time frame.⁴⁹

⁴⁸ See: Leader's Statement to Implement APEC Transparency Standards, Los Cabos, Mexico, 27.10.2002

⁴⁹ E.g. for a status of implementation see the case studies of Indonesia, Singapore, Philippines and Thailand in APEC (2001) and APEC (2006), which states that in total 62% of the TFAP initiatives are completed and 24% of the initiatives are in progress.

It should also be noted that there is considerable overlap of membership between APEC and other RTAs like ASEAN, NAFTA or the CER. The issue of diverse commitments has become more acute in the last few years, with most APEC members having negotiated bilateral and plurilateral preferential trading arrangements, which increases the potential for spaghetti bowl effects, including conflicting trade facilitation arrangements.⁵⁰

However, APEC and its member economies have contributed significantly to WTO trade facilitation negotiations by establishing an inventory of trade facilitation measures⁵¹ and by developing some useful examples of best practice⁵².

5.3. The South Asian Association for Regional Cooperation

5.3.1. General remarks on SAARC

The South Asian Association for Regional Cooperation (SAARC) was established in 1985 by Bangladesh, Bhutan, India, Maldives, Nepal, Pakistan and Sri Lanka. The SAARC Preferential Trading Arrangement (SAPTA) was signed in 1993 and introduced in 1995, but in four rounds of trade negotiations progress in product-by-product agreements has been slow.

In 1995, the SAARC Council of Ministers agreed on the need to establish a South Asian Free Trade Area. In January 2004 during the Twelfth SAARC Summit in Islamabad it was agreed to move towards a more integrated South Asian Economic Union (SAEU) and the Agreement on a South Asian Free Trade Area (SAFTA)⁵³ was signed. SAFTA entered into force on 1 January 2006. The first round of tariff reductions is scheduled for July and August 2006 and with completion of the free trade area by January 2016.

5.3.2. Trade Facilitation within the SAARC framework

In SAPTA the contracting parties agreed under Article 6 (Additional Measures) to consider trade facilitation measures to support and complement SAPTA to reduce tariffs and para-tariffs and to liberalize trade generally.

In 1996, a Group on Customs Cooperation has been established with a mandate to harmonize customs rules and regulations, simplify documentation and procedural requirements, upgrade infrastructure and provide training. In 1998, a Standing Group on standards, quality control and measurements was established. The Standing Group agreed on the Key Elements of Regional Action Plan on standards, quality control and measurement.

⁵⁰ SCOLLAY & GILBERT (2001) have highlighted the cost-increasing potential of the Spaghetti Bowl Phenomenon, which were popularized by BHAGWATI in the 1990s (e.g. BHAGWATI 1995; BHAGWATI, GREENAWAY & PANAGARIYA 1998). Spaghetti Bowl diagrams of the regional and bilateral trade agreements in the Asia-Pacific region can be found in FERIDHANUSTYAWAN (2005), pp. 10-11.

⁵¹ See contributions in TN/TF/W/6-15, 17-26, 28, 30-34, 36, 38, 42, 44, 47, 49, 62, 67, 70, 80, 83-94

⁵² See national experience papers TN/TF/W/50, 53, 55, 58, 61, 66

⁵³ SAFTA text is available at: www.saarc-sec.org/data/agenda/economic/safta/safta%20agreement.pdf

A draft Regional Agreement on Promotion and Protection of Investment within the SAARC Region is under the consideration of Member States and is meant to create conditions favourable for promoting and protecting investments in Member States by investors from other Member States. In 2004, an Inter-Governmental Expert Group was constituted to consider the agreement on Promotion and Protection of Investment, the establishment of SAARC Arbitration Council, and a Multilateral Tax Treaty with a scope limited to Avoidance of Double Taxation. The SAARC Secretariat list all these initiatives on their website under the heading "Trade Facilitation Measures"⁵⁴, which indicates that SAARC has a very broad understanding of trade facilitation.

One of the main objectives of SAFTA is the elimination of barriers to trade and the facilitation of cross-border movement of goods; to achieve this SAFTA has indicated its commitment to adopt trade facilitation and related measures⁵⁵. However, despite some institutional developments in trade facilitation areas within the SAARC framework, it is still early days in terms of implementing specific measures.

5.3.3. How Trade Facilitation is addressed in SAARC

As stated above, the SAFTA agreement only *suggests* possible trade facilitation measures. These suggestions touch on a variety of issues without being specific. Unlike APEC, there are no consistent trade facilitations principles or action plans like in APEC that would help to clarify and implement the SAFTA trade facilitation measures.

However, even if trade facilitation is not yet addressed in a binding form, the focus on trade facilitation clearly signals SAFTA's intentions with respect to the simplification and harmonization of customs procedures and product standards in accordance with international standardisation and as in APEC, on the simplification of procedures for business visas.

5.4. The Pacific Agreement for Closer Economic Relations (PACER)

5.4.1. PACER in general

The Pacific Island Forum countries have had duty-free access to the markets of Australia and New Zealand since the 1981 non-reciprocal South Pacific Regional Trade and Economic Cooperation Agreement (SPARTECA).

The Pacific Agreement on Closer Economic Relations (PACER) was signed in Nauru on 18 August 2001 and entered into force on 3 October 2002. PACER is a trade

⁵⁴ See SAARC website: www.saarc-sec.org

⁵⁵ See SAFTA Articles 3.1.a, 3.2.e and 8. Article 8 lists as possible trade facilitation measures harmonization of standards, reciprocal recognition of tests and product certification, simplification and harmonization of custom clearance procedures, harmonization of customs classification, customs cooperation, simplification and harmonization of import licensing, simplification of banking procedures, transit facilities, removal of barriers to intra-SAARC investments, macroeconomic consultations, rules on fair competition, development of communication systems and transport infrastructure, exceptions to foreign exchange restrictions and simplification of procedures for business visas.

and economic cooperation umbrella agreement applying to all 16 Forum members⁵⁶ with the objective to establish a framework for the gradual trade and economic integration of its members in a way that is supportive of sustainable development the Pacific Island Countries. The framework allows the establishment of subsidiary agreements for the creation of free trade areas between members, such as the Pacific Island Country Trade Agreement (PICTA).

However, the initial and primary focus of PACER is on development, cooperation and trade facilitation, with a current work program in the areas of customs, quarantine, standards and conformance.

A significant proportion of the PACER document (Part 3 of the Agreement and Annex 1) addresses trade facilitation. For the small Pacific island countries a distinctive element, beyond the usual trade facilitation goals, is the issue of technical assistance (TA) and capacity building (CB). Australia and New Zealand agreed to partially fund a trade facilitation programme, and all signatories agreed that their national programmes should be consistent with other regional and international agreements.

5.4.2. How Trade Facilitation is addressed in PACER

PACER Article 9 requests all Parties to establish detailed programmes for the development, establishment and implementation of trade facilitation measures, which must be consistent with other regional and international agreements and must account for the special needs and resource constraints of the Least Developed Countries and Small Island States.

PACER Article 10 obliges Parties that are WTO members to apply at least the same favourable treatment to all other Parties in relations to custom procedures, standards and conformance than they are required to provide to WTO members.⁵⁷

PACER Article 11 deals with financial and technical assistance to develop and implement – amongst others – trade facilitation measures. The Pacific Island Forum Secretariat shall administer the work programme. Australia and New Zealand pledged to support technical assistance by an adequate level of funding to make sure that the Secretariat doesn't have to divert resources from its other programmes.⁵⁸

PACER also provides that each trade facilitation programme contains objectives, a detailed action plan, a timeframe and a sufficient annual budget. To avoid any unnecessary duplication of work, the trade facilitation programmes have to be coordinated and integrated with the work of other regional and international organizations and use the expertise and standards of such organizations and their members.⁵⁹ The Forum

⁵⁶ The sixteen are: Australia, Cook Islands, Federated States of Micronesia, Fiji, Kiribati, Marshall Islands, Nauru, New Zealand, Niue, Palau, Papua New Guinea, Samoa, Solomon Island, Tonga, Tuvalu and Vanuatu.

⁵⁷ PACER Article 10 includes the same provision regarding sanitary and phytosanitary matters, which together with some provisions in Annex 1 suggests that PACER has a broader understanding of Trade Facilitation than the WTO.

⁵⁸ The amount actually contributed by Australia and New Zealand has been criticised as insufficient by some observers; e.g. Kelsey (2005)

⁵⁹ See PACER Annex 1, Article 1

Secretariat should review the trade facilitation programmes and prepare reports to identify the most beneficial areas for trade facilitation and to ensure consistency.⁶⁰ The trade facilitation programmes have to be revised in periodical meetings, which should lead to a formalisation of the trade facilitation programmes and the conclusion of Memoranda of Understanding between Parties.⁶¹ However, the Forum Island Countries (FICs) have the option to not participate in particular trade facilitation programmes or certain aspects of such programmes if they would be "unduly onerous or potentially disadvantageous" to them.⁶²

There is a consultation process for Parties that feel an obligation of a trade facilitation program has not been, or is not being, fulfilled.⁶³ Further Dispute Resolution procedures though are only applicable in so far as they are contained in a formal Memorandum of Understanding between Parties.

To sum up, PACER emphasises the interrelationship between trade facilitation and the need for technical assistance and capacity building. To what extent national trade facilitation measures and programmes have been implemented is difficult to assess at this stage, because the PACER secretariat has not yet electronically published reviews of such trade facilitation programmes. PACER also has members with very different levels of economic development. Therefore, it is understandable that PACER follows a flexible approach to trade facilitation, which includes Special and Differential Treatment (S&D) for the least developed members as well as technical assistance and capacity building. Time will tell to whether this flexible, capacity building approach to trade facilitation reform proves to be a success.

5.5. Singapore – Australia Free Trade Agreement (ASFTA)⁶⁴

The RTAs discussed so far address a number of trade facilitation measures in rather a general or non-binding manner. All of the RTAs face the challenge of bridging significant differences regarding the economic development of their members. In order to gain additional insights into how trade facilitation could be addressed, it is also useful to compare the more flexible approach of regional trade agreements with a more binding and comprehensive bilateral agreement between two countries in the Asia-Pacific region.

Negotiations for a Free Trade Agreement between Singapore and Australia were launched in November 2000. After 10 formal rounds of negotiations, Singapore and Australia successfully finalised in November 2002 a Free Trade Agreement (ASFTA) that came into force on 28 July 2003.⁶⁵

⁶⁰ See PACER Annex 1, Article 2.1. The website of the Forum's Secretariat (www.forumsec.org) currently doesn't show any such report or other documents on trade facilitation.

⁶¹ PACER Annex 1, Article 2 in conjunction with PACER Article 16

⁶² PACER Annex 1, Article 3

⁶³ PACER Annex 1, Article 4

⁶⁴ Australia and Singapore normally use the abbreviation "SAFTA" for their FTA. However, to avoid any confusion with the South Asia Free Trade Area this paper uses the abbreviation "ASFTA" for the Singapore-Australia FTA in accordance with the UNESCAP Online PTA Database.

⁶⁵ The full text of ASFTA is available at: www.fta.gov.sg/fta/pdf/FTA_SAFTA_Agreement.pdf

ASFTA is a comprehensive agreement covering areas such as trade in goods, trade in services, investment, telecommunication, financial services, movement of business persons, government procurement, intellectual property rights, competition policy, e-commerce and education cooperation.

Although ASFTA does not mention the term "trade facilitation", it contains a series of detailed provisions that fall under either the WTO definition of trade facilitation and/or the wider understanding as previously discussed. Due to the nature of a bilateral agreement the implementation of trade facilitation measures contained in ASFTA are binding and (at least theoretically) enforceable by the dispute settlement mechanism of the agreement.

Chapter 4 of ASFTA deals with customs procedures and aims at their simplification by embracing the practices of the WCO including the Revised Kyoto Convention and adopting measures like paperless trading, risk management and sharing of best practices. Chapter 5 on technical regulations and sanitary and phytosanitary measures aims at the harmonization of technical regulations taking into account relevant international standards and guidelines, using mutual recognition agreements and sectoral annexes for the implementation of harmonization arrangements.

ASFTA promotes transparency regarding applicable laws and government regulation not only in the context of tariffs and customs but also most other fields like telecommunication, competition law, government procurement, trade in services and investment. Chapter 11 of ASFTA contains measures facilitating movement of business people and chapter 14 (Electronic commerce) promotes paperless trading, for example by requiring the parties to make available electronic versions of all existing versions of trade administration documents by 2005.

Generally speaking, the trade facilitation measures of ASFTA are implemented in the different parts of the agreement (customs, trade in goods, trade of services). Wherever possible, trade facilitation measures refer to multilateral agreements and recognised international standards. The underlying principles are transparency, simplification, harmonisation, cooperation and consultation. The trade facilitation measures themselves are formulated concisely, are binding and have a time-frame for implementation. As both parties are well-developed economies there was no need for provisions regarding technical assistance or capacity building. However, cooperation between governments and their agencies is highlighted in several parts of the FTA.

5.6. Result of the Comparative Analysis

ASFTA is the only agreement of a binding nature; its trade facilitation measures are clearly stated and have been implemented.

APEC sets quantitative goals for trade facilitation (lower trade transaction costs by 5% between 2001 and 2006 and a further 5% between by 2010) and addresses trade facilitation in the form of the (non-binding) APEC principles on trade facilitation and in action plans (for example the 2002 TFAP, CAP and IACs). Although APEC members have by and large achieved the first quantitative goal for the period 2001-2006, the reasons for the success cannot necessarily be ascribed to this particular regional agreement or even be attributed to specific trade facilitation measures, as the implementation

of trade facilitation remains at the discretion of the member economies and can be inconsistent and/or limited to specific sectors (e.g. electrical and electronic equipment).

In ASEAN, trade facilitation efforts have remained limited to specific sectors and are generally aspirational. The implementation of framework agreements (for example the ratification of sectoral protocols) and various trade facilitation measures are not regionally coordinated and depend on the specific efforts of each member country. SAFTA is even less binding and only *suggests* possible trade facilitation measures without being specific. In PACER trade facilitation is also addressed in a flexible manner leaving it to the contracting parties to develop specific Trade Facilitation Programmes. The formalised and binding Memoranda of Understanding on Trade Facilitation have not yet been finalised. However, PACER's emphasis on linking trade facilitation reform with specific technical assistance and capacity building program may be instructive for other developing economies.

The successes of ASFTA (significant increase in trade between Australia and Singapore and in more harmonised trade facilitation procedures) and APEC (reaching its 5% goal) suggest that clearly formulated trade facilitation principles and measures that are binding or at least require a commitment to quantitative outcomes are more effective than the more aspirational approaches of other agreements like ASEAN, SAFTA and PACER. However, this assertion needs to be complemented by further research which examines the 'spaghetti bowl effects' of other agreements on members to the ASFTA and APEC agreements and which seeks to take account of an individual nation's own trade reform agenda regardless of various trade agreements.

The following Table B gives a comparative overview of specific trade facilitation measures addressed in the agreements analysed above. To allow ease of comparison we have categorised TF measures according to GATT Articles V, VIII and X.

Table B: Trade Facilitation Measures Comparison Chart*

Main Areas covered	TF Measures or Groups of TF Measures	AFTA	APEC	SAARC/SAFTA	PACER	SAFTA
Publication & availability of information	Publication of trade regulation	No	- Publish customs and other trade-related laws, regulations & guidelines in paper form & electronically	No	No	- Incorporation of GATT Art. X - Prompt publication of laws & regulation
	Internet publication	No	Yes	No	No	- No explicit provision
	Notification of trade regulation	- Notification to ASEAN Secretariat of regulation, which affect the facilitation of transit transport of goods	No	No	- Notification to Forum Secretariat of new trade arrangements between Parties & of trade negotiations with third parties - Notification to Forum Secretariat of any substantive changes affecting trade among Parties	- Notification of any changes to mandatory requirements
	Establishment of enquiry points/ Single National Focal Points (SNFP)	No	- Establish inquiry points for customs and other trade procedures	No	No	- Contact points to exchange information on mandatory requirements
	Other measures to enhance availability & exchange of information	No	- Develop APEC TF database - Compile information on NTMs - Voluntary peer review - Reports on members' TF efforts - National websites accessible through common web portals such as APEC website	No	- Annual review of implementation efforts	- Request for consultation
Time between publication & implementation	Interval between publication and entry into force	No	No	No	No	- Publication before or by entry into force of measures with affect to trade in services
Consultation	Prior consultation and commenting on new and amended rules	No	- Provide opportunities for consultation with stakeholders	No	No	- Consultation regarding rules of origin
Advance rulings	Provision of advance rulings	No	- Advanced rulings for classification of goods, determination of value, marking & labelling, quotas & any other admissibility requirement	No	No	No
Appeal procedures	Right of appeal	- Right of appeal in customs and transit matters	- Establish appeal system	No	No	- Right of appeal for matters relating to eligibility for preferential tariff treatment
	Release of goods in event of appeal	No	No	No	No	No
	Appeal mechanism	- Ensure an effective mechanism for the review of decisions (regarding transit only)	- Transparent review and/or judicial process - Publish appeal rulings	No	No	No
Other measures to enhance impartiality, non-discrimination &	Uniform administration of trade regulations	- "Parties shall ensure the consistent application"	- Implement customs & other trade rules in consistent & uniform manner - Avoid discretion by customs & other administration officers	No	No	No

* This chart lists trade facilitation measures and principles contained in the compared agreements. The structure of the chart ('Main Areas') follows the system used by the WTO Secretariat in their Compilation of Members' Trade Facilitation Proposals (TN/TF/W/43/Rev.7). Although some agreements go beyond the scope of WTO TF we decided not to list all trade facilitation initiatives in order to facilitate comparability. The chart gives no indication to what extent the measures are implemented by the parties of the agreement, except for the Singapore-Australia FTA, which has been successfully implemented

Main Areas covered	TF Measures or Groups of TF Measures	AFTA	APEC	SAARC/SAFTA	PACER	SAFTA
	Maintenance/ reinforcement of integrity and ethical conduct among officials	No	- Draw from the Arusha Declaration of WCO - Implement codes of conduct	No	No	No
Fees & charges connected with importation & exportation	General discipline on fees & charges	No	No	No	- Indirectly by urging parties to simplify & liberalize trade	- Limitation to approximate cost of services rendered
	Reduction of number & diversity of fees & charges	No	No	No	No	- No explicit provision
	Publication/notification of fees & charges	No	- Publication of all trade related rules	No	No	- Publication of all trade related rules
	Prohibition of collection of unpublished fees & charges	No	No	No	No	No
	Periodic review of fees & charges	- General review of implementation of liberalisation regarding transit transport	No	No	- Indirectly by periodic reviews of work programmes	- Periodic review of customs procedures
Other measures	No	No	No	No	- No indirect protection by or fiscal purposes of fees & charges - Abolition of export duties for specific goods	
Formalities connected with importation & exportation	Discipline on formalities/procedures & data/documentation requirements	- Simplification of customs procedures & requirements	- "Simplify procedures"	- Agreement to consider simplification & harmonization of customs clearance procedure	No	- Principle of simplification, no explicit measures
	Reduction of formalities & documentation requirements	- Simplification of customs procedures & requirements	- "Reduce requirements for paper documentation in customs"	Use standard forms for customs declarations	No	- Principle of simplification, no explicit measures
	Use of international/ regional standards	- ASEAN Customs Declaration Document complies with international standards - Kyoto Convention	- Revised Kyoto Convention	- Progressive implementation of Revised Kyoto Convention	- "...use their best endeavours to follow international best practice..." - Cooperation with regional & international organizations in the development & implementation of agreements on harmonised Procedures	- WCO practices and standards including Revised Kyoto Convention
	Acceptance of copies & commercially available information	No	No	No	No	No
	Automation	- Use of ICT - ASEAN e-customs	- Use of common data elements - Paperless trading - Electronic certificates	- Implement automated Customs clearance procedures & electronic data interchange	No	- Use of paperless trading taking into account methodologies agreed in APEC and WCO - Electronic means for all reporting requirements
	Single Window (one-time submission)	Yes	- "Establish single-window and web-based electronic access to trade-related documentation and data transmission"	No	No	No (Singapore has Single Window facilities)
Other measures	- Client Charter	No	No	No	No	
Consularization	Prohibition of consular transaction requirements	No	- Eliminate "counselorization" and/or certification by chambers of commerce	No	No	No
Border agency cooperation	Coordination of border activities	- Physically adjacent frontier posts to check requirements	No	- Arrangements for undertaking of customs formalities at juxtaposed customs offices	No	No
Release & clearance of	Pre-arrival clearance	Yes (Vision 2020)	Not explicitly mentioned	No	No	Not explicitly mentioned
	Expedited procedures for express shipments	No	Yes	No	No	Not explicitly mentioned

Main Areas covered	TF Measures or Groups of TF Measures	AFTA	APEC	SAARC/SAFTA	PACER	SAFTA
	Application of risk management techniques	- To apply risk management techniques & check smaller percentage of consignments (Vision 2020)	- "Green Channel": swift customs procedures for low risk cargo - Cargo profiling and/or computerized risk management	No	No	- Low-risk/ high-risk goods - Develop further risk management techniques - Sharing of best practices
	Post-clearance Audit (PCA)	- ASEAN customs PCA guidelines & best practices	Yes	No	No	Not explicitly mentioned
	Separating release from clearance procedures	Yes (Vision 2020)	No	No	No	No
	Publication of average release & clearance times	- Establish accounting & statistical reporting to expedite customs clearance (Vision 2020)	- Clearance time studies	No	No	No
	Other measures	No	- Establish a surety bond system (similar to ATA Carnet of ICC but for all goods)	- Agreement to consider simplification & harmonization of customs clearance procedure	No	No
Tariffs & tariff classification	Schedules	- CEPT	- Voluntary concessions according to IAP	Yes	- Voluntary tariff liberalisation - Periodical review of tariff schedules	- Elimination of tariffs/ customs duties
	Objective criteria for tariff classification	- ASEAN Harmonized Tariff Nomenclature (AHTN) complies with international standards	- HS Convention	- Agreement to consider harmonization of national customs classification based on HS Convention	No	- Application of HS Convention
	Other measures	No	- Make available precedent-based rulings in electronic format	No	No	- No export duties on certain goods
Matters related to goods in transit	Non-discrimination	Yes (for goods on CEPT list)	No	No	No	No
	Discipline on fees & charges	No	No	No	No	No
	Discipline on transit formalities & documentation requirements	- "Parties shall endeavour to ensure the simplification of all transit transport procedures & requirements"	No	- Introduction of simplified procedures for transit movement of exempted or perishable goods or other goods requiring such clearance	No	No
	Coordination & cooperation	- "Parties shall ensure efficient & effective administration of transit transport" - Adjacent frontier posts with coordinated working hours - Coordinate examination to avoid repeated unloading & reloading	No	- Agreement to consider the development of transport infrastructure	No	- Provisions regarding consignment
Exchange & handling of information	Mechanism for the exchange & handling of information	- Use of state-of-the-art information technology compliant with UN/EDIFACT (Vision 2020)	- Use ICT to facilitate movement of goods & people - Remove barriers to and promote use of e-commerce	- Exchange information - Implement automated customs clearance procedures and electronic data interchange	No	- Exchange of information between customs administrations to assist investigation and prevention of infringements of customs law
Customs Valuation	Use of international standards	- WTO Customs Valuation Agreement - ASEAN Customs Valuation Implementation Guide	- Implement WTO Customs Valuation Agreement	- WTO Customs Valuation Agreement - Exchange information on & assist with the implementation of WTO CV	No	- Customs Value determined according to GATT Art. VII and WTO Customs Valuation Agreement
Harmonisation/ Standardisation	Harmonisation of technical standards	- Sectoral harmonisation: until now only standards on safety and electromagnetic compatibility (EMC) implemented - Technical requirements for vehicles used in transit transport - Use UN/EDIFACT standard	- Adopt UN/EDIFACT or other standard electronic formats - Align regulation, rules & procedures affecting acceptance of goods on the basis of international standards (e.g. ISO standards)	- Agreement to consider the harmonization of standards based on international standards - Encouragement to accede HS Convention	- Cooperation with regional & international organizations in the development & implementation of agreements on harmonised standards	- Harmonisation of mandatory requirements taking into account international standards and guidelines - Harmonised requirements for certificates of origin

Main Areas covered	TF Measures or Groups of TF Measures	AFTA	APEC	SAARC/SAFTA	PACER	SAFTA
	Mutual recognition of test facilities/certifications	<ul style="list-style-type: none"> - Sectoral recognition: until now only ASEAN Sectoral Mutual Recognition Arrangement for Electrical and Electronic Equipment (ASEAN EEMRA) implemented - Mutual recognition of vehicle inspection certificates & driving licences 	<ul style="list-style-type: none"> - Sign on to global MRA on measurement by BIPM - Implement APEC Electrical & Electronic Mutual Recognition Arrangement (APEC EEMRA) 	<ul style="list-style-type: none"> - Agreement to consider the reciprocal recognition of tests & accreditation of testing laboratories 	Yes	<ul style="list-style-type: none"> - Mutual recognition of electronic signatures & digital certificates - Accept equivalence of mandatory requirements, conformity assessments & approval procedures in certain sectors
	Other measures	<ul style="list-style-type: none"> - Harmonization of road traffic regulations in accordance with the Vienna Conventions on Road Traffic & Road Sign & Signals 	<ul style="list-style-type: none"> - Participate in Asia Pacific Laboratory Accreditation Cooperation (APLAC) & Pacific Accreditation Cooperation (PAC) - Participate in global MRA on Metrology 	<ul style="list-style-type: none"> - Exchange information on the promotion of good classification work infrastructure 	<ul style="list-style-type: none"> - Integrate TF programmes that "...to the extent practicable, be consistent with other regional & international trade facilitation agreements & initiatives..." 	<ul style="list-style-type: none"> - Adoption of UNCITRAL Model Law on Electronic Commerce
Cooperation/assistance	Training and HR development	<ul style="list-style-type: none"> - Training to promote regional uniformity, coordinated action, equivalent treatment & homogeneity (Vision 2020) 	<ul style="list-style-type: none"> - Workshops on customs-related issues 	<ul style="list-style-type: none"> - Identify national training institutions and training instructors to undertake training programs in customs administration 	No	No
	Technical Assistance	<ul style="list-style-type: none"> - TA to promote equal levels of development amongst customs administration so as to enhance regional efficiency, effectiveness & uniformity (Vision 2020) 	<ul style="list-style-type: none"> - TA e.g. regarding: <ul style="list-style-type: none"> - Evaluation & implementation of TF measures, assessment of TF costs - WTO Customs Valuation 	<ul style="list-style-type: none"> - (Implicit) TA e.g. regarding: <ul style="list-style-type: none"> - Kyoto Convention - Customs valuation - Customs administration - Tariff classification 	<ul style="list-style-type: none"> - Develop a programme of work for financial & technical assistance in areas like TF - Mutual assistance in international fora 	<ul style="list-style-type: none"> - Cooperative activities, TA & CB to address sanitary & phytosanitary matters
	Capacity Building	<ul style="list-style-type: none"> - No specific details 	<ul style="list-style-type: none"> - CB e.g. regarding: <ul style="list-style-type: none"> - Document examination - Development & implementation of standards - Legal infrastructure 	<ul style="list-style-type: none"> - (Implicit) CB e.g. regarding: <ul style="list-style-type: none"> - Kyoto Convention - Customs valuation - Tariff classification - Training 	<ul style="list-style-type: none"> - Development of CB programmes 	<ul style="list-style-type: none"> - Cooperative activities, TA & CB to address sanitary & phytosanitary matters
	Cooperation	<ul style="list-style-type: none"> - Mutual assistance to enhance the effectiveness of customs compliance and to control & reduce smuggling (Vision 2020) 	<ul style="list-style-type: none"> - Cooperative initiative on regulatory reform 	<ul style="list-style-type: none"> - Promotion of bilateral or plurilateral agreements on customs cooperation to prevent & investigate customs offences 	<ul style="list-style-type: none"> - Cooperation deemed "appropriate" 	<ul style="list-style-type: none"> - Cooperative activities, TA & CB to address sanitary & phytosanitary matters - Consultation & cooperation regarding rules of origin
Relationship government-business	Customs/business partnership	<ul style="list-style-type: none"> - Encouraging the cooperation and consultation with private sector - Establish close relationship with business community for the mutual benefit of customs control & trade 	<ul style="list-style-type: none"> - Build open, transparent and cooperative partnerships with stakeholders (e.g. custom brokers, shippers, warehouses) - Surveys on customs transparency 	No	No	Not explicitly
	Improve business mobility	No	<ul style="list-style-type: none"> - Streamlining temporary entry (APEC business travel card) - Internet publication of visa information & forms 	<ul style="list-style-type: none"> - Agreement to consider the simplification of procedures for business visas 	No	<ul style="list-style-type: none"> - Short-term business visitor visa ("single immigration formality") - Long-term visa for intra-corporate transferees

6. *A Template for Trade Facilitation in Future Agreements*

Based on the comparative analysis of trade facilitation in RTAs, a template for trade facilitation for future agreements (best practice) should encompass two parts: a definition of the underlying trade facilitation principles and a set of specific, binding and enforceable trade facilitation measures.

6.1. Trade Facilitation Principles

6.1.1. Integration and application

As we have seen, trade facilitation principles can either be listed in a catalogue like APEC or be integrated in an agreement as in ASFTA. If there are several parties to an agreement with different levels of economic development and different cultural backgrounds, it is advisable to define the underlying trade facilitation principles separately. Either way the principles should be limited in number and comprise general understandings and intentions.

To be effective the principles have to be translated into concrete measures. In disputes regarding such measures, the principles should be the accepted guidelines to interpret or apply specific trade facilitation measures.

6.1.2. Model Trade Facilitation Principles

The following trade facilitation principles are recurring in most modern RTAs and are therefore potentially instructive as model trade facilitation principles for future trade agreement negotiations:

a) Compliance with multilateral agreements

As a general rule, any trade facilitation action should be designed to comply with existing and future multilateral agreements. The WTO framework already addresses various aspects of trade facilitation in the wider sense.⁶⁶ A WTO agreement on trade facilitation⁶⁷ is still under negotiation and depends on a successful conclusion of the negotiations on the Doha Development Agenda. However, RTAs can achieve compliance by making reference to the WTO. Other important multilateral agreements like the Revised Kyoto Convention of the World Customs Organization⁶⁸ should be considered to avoid a multitude of contradictory standards.

Initiatives to comply with multilateral agreements can be found in AFTA (e.g. Bali Concord II and VAP) and APEC; SAFTA aims at harmonizing standards in accordance with international standards without explicitly referring to multilateral agree-

⁶⁶ E.g. WTO Agreements on Sanitary and Phytosanitary Measures, Technical Barriers to Trade, Customs Valuation, Preshipment Inspection, Rules of Origin and on Import Licensing Procedures

⁶⁷ To clarify and further develop GATT Articles V, VIII and X

⁶⁸ The International Convention on the Simplification and Harmonization of Customs Procedures (Revised Kyoto Convention) signed in 1999 entered into force on 3 February 2006 and is currently ratified by 46 Contracting Parties

ments and PACER request programmes for TF measures that are consistent with other international agreements.

b) *Transparency*

The principle of transparency is probably one of the most essential tools to build trust and to facilitate trade.⁶⁹ It calls not only for the publication and accessibility of laws, regulations and decisions affecting international trade (trade regulations)⁷⁰, but also for a uniform, consistent and impartial application of such trade regulations and a judicial, arbitral or administrative mechanism to review the application.

Transparency is one of the 2001 APEC trade facilitation principles; it is not mentioned explicitly in the other agreements, however ASFTA refers to GATT Article X and AFTA and PACER require that new or changed trade regulations are notified to the respective secretariat.

c) *Simplification*

Simplification of trade regulations and procedures is not limited to the clearance of goods. The principle of simplification aims in general to reduce the number and diversity of laws, regulation and guidelines relating to trade and to make trade rules and their administration simpler, more practicable, consistent and efficient. It is a common understanding, that trade regulations and procedure should not be more restrictive than necessary.⁷¹

Simplification is another APEC TF principle, but also emerges clearly from TF measures of AFTA, SAFTA and ASFTA (generally in the context with customs formalities, fees and charges). PACER does not mention simplification, but one could argue that the intention to follow international best practice implies some degree of simplification.

d) *Harmonisation and standardisation*

Most crucial for international trade is the harmonisation of regulations and procedures, which should go hand in hand with overall simplification. Again, to achieve the full benefits harmonisation should not be limited to customs⁷². The implementation of uniform classifications⁷³, the harmonisation of trade regulations in general, the harmonisation and recognition of standards all allow a higher level of automation and use of computer technology, which therefore reduces transaction costs.

Harmonisation and standardisation is a trade facilitation principle of APEC and emanates from AFTA, SAFTA and ASFTA TF measures regarding customs (e.g. Kyoto Convention etc.) and sectoral harmonisation of technical standards. In the case of PACER standardisation and harmonisation can again only be implied indirectly ("... follow international best practise...").

⁶⁹ See: AZHARI (2004)

⁷⁰ See e.g. GATT 1994 Article X

⁷¹ The APEC Trade Facilitation Principles use the phrase "no more burdensome or restrictive than necessary to achieve their legitimate objectives" to clarify that trade rules or their complexity should not be used as covert protectionist measures.

⁷² E.g. WTO Customs Valuation Agreement, WCO Revised Kyoto Convention

⁷³ E.g. ASEAN Harmonized Tariff Nomenclature (AHTN), WCO Harmonized System Nomenclature (HS 2002, HS 2007)

e) Cooperation, technical assistance and capacity-building

Cooperation between governments and between government and the trade community are essential to design and implement efficient trade facilitation measures. Cooperation includes consultation about plans for new or amended trade regulations, the identification of international best practices regarding regulations and their implementation, communication of information and data relevant to trade.

There are often significant discrepancies regarding the economic development of member states to an RTA and the resources available through an RTA for technical assistance. There is a need in many developing countries and small economies to build capacities by training government officials and members of the trade community to enable them to administer and take advantage of new trade facilitation measures.

To set up appropriate computer systems and databases for the exchange of custom data or the publication of trade regulations, are essential but costly and commitments to assist developing countries and least developed countries on such matters needs to be as clearly established in the principles of any agreement.

PACER emphasizes the general importance of CB and TA, the other agreements also promote cooperation and technical assistance in the context of customs control. APEC, SAFTA and ASFTA also provide for CB measures.

6.2. Trade Facilitation Measures

6.2.1. Trade Facilitation Measures in General

In the RTAs examined, a large number of trade facilitation measures have been proposed. Most of these measures and proposals are quite general and leave - where necessary - the details to separate (lower ranking) agreements or specialist bodies. For instance, in SAFTA, a Committee of Experts (COE) at a senior official level monitors, reviews and facilitates the implementation of the provisions of the agreement.

This is reasonable as it ensures the flexibility required to adapt to new technologies or improved practices.

6.2.2. Model Trade Facilitation Measures

Table A shows a general comparative analysis of the treatment of trade facilitation in the agreements discussed above, whereas Table B is a more detailed comparison of specific TF measures identified. Table C overviews the proposed model measures based on key principles, relative cost, level of prioritisation and current likely outcome of multilateral negotiations on these measures.

As part of the analysis of the RTAs in Asia-Pacific and of the proposals submitted in WTO trade facilitation negotiations,⁷⁴ considerable efforts have been made to identify best practice measures. Some of the suggested model measures can be sub-

⁷⁴ As guide to the proposed WTO trade facilitation measures we refer to the latest compilation of the WTO Secretariat TN/TF/W/43/Rev.6 of 8 May 2006

sumed under more than one trade facilitation principle. To avoid double counting we have used cross-referencing.

The cost and time required to implement the suggested measures depend of course on the relevant pre-existing conditions in each country. Accordingly, it is very difficult to provide general recommendations on how to prioritise and time the implementation of specific measures. However, Table C makes some attempt to do this.⁷⁵

Publication and information dissemination via the internet can normally be achieved quickly and at a limited cost (although it might be that not all documents are available in an official WTO language). The implementation of international standards and procedures (foremost customs standards and procedures) are more costly and require some technical assistance and capacity building. Probably the most expensive and time-consuming measures to implement concern the implementation of due process, right of appeal, advance ruling, consultation prior to regulation, code of conducts and cooperation between government agencies and private sector, as these measures not only require technical assistance and extensive capacity building and training programs, but may often involve value and cultural changes within government authorities.

Prioritisation and timing aside, the following lists key model trade facilitation measures, which should be examined in conjunction with the three tables in this text. The italics reflect the wording proposed by the authors of this study; it draws from several proposals of WTO members (see WTO Secretariat Compilation TN/TF/W/43/Rev.7) and proposed APEC Model measures.⁷⁶

a) Transparency

1) Publish trade regulations

Suggested model measure: *"To publish in at least one of the official WTO languages⁷⁷ all relevant laws, regulations, administrative guidelines, rulings and decisions affecting international trade, including custom procedures, fees and charges to cross-border trade, by making this information widely available and easily accessible (where possible on-line) in a non-discriminatory fashion to any interested party at no cost or at a minimal charge commensurate with the cost of the services rendered."*

2) Ensure dissemination of information relevant to trade

Suggested model measures:

- i) *"To notify to other countries and the WTO Secretariat in one of the official WTO languages the introduction of new or the amendment of exist-*

⁷⁵ For a summary table see Table C

⁷⁶ See APEC (2005): In the context of the Busan Roadmap towards the Bogor Goals (promotion of high-quality RTAs and FTAs), APEC Leaders committed to developing model measures for RTAs/FTAs for as many commonly accepted chapters as possible by 2008. Also the development of APEC model measures on RTAs/FTAs has not been finalised, detailed proposals for trade facilitation model measures have been submitted.

⁷⁷ The official WTO languages are English, French and Spanish. For some developing and least-developed countries a translation and/or publication of all trade regulations could be too demanding. Special and differential treatment could therefore allow to only publish summaries of relevant regulations, see Turkey's contribution to the WTO trade facilitation negotiation (TN/TF/W/45)

ing trade regulations that may have a significant impact on trade at the earliest⁷⁸ possible stage."

- ii) *"To allow an adequate time period between the publication and the implementation or entry into force of new or amended regulations, except in cases where advance notice is precluded or not practical due to extraordinary circumstances like imminent threats to national security."*
- iii) *"To establish a national enquiry point responsible for providing all relevant trade-related information or documents to the trading community on a non-discriminatory basis and within an adequate time period"*

3) Provide advance rulings in custom matters

Suggested model measure: *"To issue upon written request by an applicant with justifiable cause (e.g. importer, exporter or producer) and containing all relevant facts and supporting documents a binding advance ruling on the main elements of importation, such as tariff classification, customs valuation, applicable duties and taxes."*⁷⁹

4) Establish a mechanism to review decisions

Suggested model measure: *"To establish non-discriminatory procedures for administrative and legal appeal against customs and other agency decisions at reasonable cost. The appellant should have the right to be represented at all stages of appeal procedures by an agent or a lawyer and goods subject of an appeal should normally be released provided an adequate guarantee for duty payment, such as a deposit, is provided by the appellant."*

5) Apply trade regulations consistently and in a non-discriminatory manner, and guarantee due process

Suggested model measures:

- i) *"To establish a mechanism to review decisions" (see above measure 4).*
- ii) *"To develop, implement and enforce a code of conduct for customs officials and staff based on international best practice"*
- iii) *"To establish a centralized government body in charge of interpreting and providing training in the application of customs regulations (e.g. regarding customs classification and valuation)."*
- iv) *"To introduce computerized systems to reduce the discretion exercised by customs officials and staff with respect to basic customs decisions."*

b) Simplification

6) Minimize/reduce fees and charges in connection with import or export

Suggested model measures:

- i) *"To consolidate, reduce and minimize the number, diversity and amount of fees and charges in connection with importation and exportation."*

⁷⁸ This would imply that changes are notified whenever possible before they enter into force. The advance notice should be long enough in order for the trade community to adapt to the changes; see also next suggest model measure.

⁷⁹ The WTO proposal of Singapore regarding advance rulings is very detailed and gives elaborates how long a ruling should be valid and under which conditions it can be revoked (TN/TF/W/38)

- ii) *"To ensure that fees and charges are only imposed for services provided in direct connection with the specific importation or exportation in question"*
 - iii) *"To ensure that fees and charges do not exceed the approximate costs of the services provided and are not calculated on an ad valorem basis."*
- 7) Establish a 'Single Window' / one-time submission procedure
Suggested model measure: *"To establish a 'Single Window' allowing the one-time electronic or paper-based submission of import or export data and documentation requirements."*
- 8) Implement pre-arrival examination
Suggested model measure: *"To introduce procedures for filing and examining documents prior to the arrival of goods, enabling the importers to claim their goods immediately after importation unless the goods are subject to a physical examination⁸⁰ or the submitted documents have to be reviewed."*
- 9) Implement post-clearance audit
Suggested model measure: *"To introduce procedures that allow customs authorities to first release all or most of the imported goods, and then conduct a thorough review of the documents regarding selected goods."⁸¹*
- 10) Application of risk management techniques:
Suggested model measure: *"To conduct examinations and inspections of goods by using established risk assessment and risk management procedures⁸², in particular by classifying importers/ exporters into different risk levels based on their compliance record and by simplifying formalities for authorized traders."*
- 11) Elimination of Pre-Shipment Inspection (PSI) and use of Customs Brokers
Suggested model measures:
 - i) *"To eliminate any requirement for the mandatory use of pre-shipment inspections."*
 - ii) *"To eliminate any requirement for the mandatory use of customs brokers."*
- 12) Simplify and reduce customs procedures and documentary requirements:
Suggested model measure:
 - i) *"To simplify and reduce the incidence and complexity of import and export formalities and data requirement to the necessary minimum to en-*

⁸⁰ A risk assessment should determine whether incoming goods are subject to an examination and how thorough the examination shall be (see also suggested measure 10) and the proposal of Chile, TN/TF/W/70)

⁸¹ The selection of goods to be thoroughly examined depends on the risk assessment, see suggested measure 10)

⁸² E.g. as defined in the WCO Revised Kyoto Convention Guidelines

force legitimate policy objectives⁸³ by the using international standards⁸⁴ to the extent possible."

- ii) *"To try to agree on a minimum number of documents required for import and export."*

13) Simplify procedures for goods in transit:

Suggested model measure: "To simplify and reduce formalities, documentation requirements, fees and charges⁸⁵ and controls of goods in transit to a minimum necessary to ensure national security and health by applying international standards⁸⁶ and by promoting bilateral and regional transit agreements."

c) Harmonisation

14) Harmonize customs procedures, documents and custom valuation methods:

Suggested model measure: see above measure 12)

15) Adopt international standards:

Suggested model measure: see below measure 17)

16) Use harmonized tariff classification

Suggested model measure: "To apply objective criteria for tariff classification of good by adopting the WCO Harmonized Commodity Description and Coding System (HS Convention 2002/2007)."⁸⁷

d) Standardization

17) Align national standards with or to adopt international standards:

Suggested model measure: "To align national standards with or to adopt internationally established standards for quality management and product safety⁸⁸ to the extent practicable".

18) Recognize standards of other countries:

Suggested model measure: "To recognize based on mutual recognition agreements product standards and/or classifications of other countries"

19) Recognize certification and testing facilities of other countries or international organizations:

⁸³ E.g. assessment and collection of duties and taxes, compilation of statistics, ensuring conformity with sanitary and phytosanitary or technical barriers to trade requirements (see: proposal of New Zealand, Norway and Switzerland, TN/TF/W/36)

⁸⁴ E.g. WTO Customs Valuation Agreement, HS Conventions (2002 and 2007), UN Layout Key Guidelines, WCO Revised Kyoto Convention, UN/CEFACT Recommendations etc.

⁸⁵ The majority of proposals in the WTO negotiations aim to eliminate all fees and charges for goods in transport (see documents TN/TF/W/39, TN/TF/W/70 and TN/TF/W/79)

⁸⁶ E.g. Annex E of the WCO Revised Kyoto Convention, the TIR Convention, the ATA Convention, the Istanbul Convention

⁸⁷ This measure intersects with the principle of transparency (see measure 5) and the measures to simplify custom procedures (see measure 12)

⁸⁸ E.g. ISO standards

Suggested model measure: *"To recognize based on mutual recognition agreements the certification bodies and test facilities of other countries and/or international organizations and to recognise goods approved by such bodies as compliant with safety and quality requirements without further testing."*

e) Cooperation

20) Prior consultation on new and amended rules

Suggested model measure: *"To provide interested parties including the private sector with an opportunity to comment on prospective new or amended trade-related laws and regulations before implementation or entry into force of the changes."*

21) Ensure cooperation and effective exchange of information between custom authorities

Suggested model measures:

- i) *"To provide for compatible import/ export data requirement and data processing systems."*
- ii) *To converge official controls in a 'one-stop shop' to the extent possible for instance by alignment of working hours and the development of common customs facilities."*

22) Improve relationships between custom authorities and trading community

Suggested model measure: see above measures 2)iii), 3) and 20)

23) Improve mobility of Business People

Suggested model measure: *"To enhance the mobility of business people engaged in the conduct of trade by facilitating temporary business entry and establishing streamlined immigration clearance procedures for highly qualified business people."*

f) Use of Modern Technology

24) Use of automation and automated systems for customs cargo processing

Suggested model measure: *"To establish a mechanism⁸⁹ and a as far as possible automated system that facilitates cooperation between customs authorities by exchanging specific information such as customs valuation, tariff classification, accurate description, quantity and origin of goods etc. and - where appropriate - supporting documentation such as commercial invoice, packing list, certificate of origin etc."*

25) Use of electronic communication (e-customs, submission of documents, payment of duties)

Suggested model measure: *"To establish an electronic communication system that allows importers and exporters to submit required data and documentation in standardised form, to pay duties and fees, to communicate with customs authorities and to receive documents and decisions from customs authorities."*

⁸⁹ E.g. built on the WCO Customs Data Model

g) Technical Assistance and Capacity Building

26) Provide technical assistance (TA) to LDC and other countries with special needs by:

- i) *"Offering assistance to develop and maintain of official websites."*
- ii) *"Providing translation services to LDC that have difficulties in publicizing their trade regulations in an official WTO language"*
- iii) *"Providing information on previous experiences regarding trade facilitations (best practise, lessons learned)"*
- iv) *"Offering support to build computerized databases for national trade regulations"*
- v) *"Offering assistance to establish advance ruling regimes"*
- vi) *"Offering assistance to review current customs procedures and documentation requirements and to implement international standards"*
- vii) *"Providing resources and assistance to implement and maintain a 'Single Window'."*
- viii) *"Offering assistance to implement risk management systems"*

27) Establish international training programs:

- i) *"Training of customs officers (e.g. regarding applying harmonized customs procedures or drafting advance rulings)"*
- ii) *"Exchange of customs staff for training purposes and to gain (international) experience"*

28) Build capacity (CB) within LDC and other countries with special needs by:

- i) *"Training government official in developing and maintaining official websites and databases for national trade regulations."*
- ii) *"Training customs officials in operating a 'Single Window'."*
- iii) *"Training customs officials in assessing and managing risks."*
- iv) *"Organize courses and seminars to train and enable government official to implement trade facilitation measures."*

While there are no doubt other specific measures of merit, these are put forward as a substantive guide to developing country negotiators for their consideration. As noted earlier, some attempt at prioritisation of these measures is given in Table C, while some further generic implications for developing countries are highlighted in the next section.

Table C: Overview of proposed Trade Facilitation Model Measures*

TF Principle	TF Model Measure [●]	Cost [●]	Priority [●]	Main GATT Article concerned	Expected outcome WTO
Transparency	1. Publish trade regulations	low (if translation: medium-high)	1	Art. X (Publication & Administration of Trade Regulation)	Internet publication
	2. Ensure dissemination of information relevant to trade	low	1	Art. X (Publication & Administration of Trade Regulation)	Internet publication, notification to WTO secretariat
	3. Provide advance rulings in custom matters	medium	2	Art. X (Publication & Administration of Trade Regulation)	Advance rulings regarding tariff classification and customs valuation
	4. Establish a mechanism to review decisions	high	2	Art. X (Publication & Administration of Trade Regulation)	Right of appeal
	5. Apply trade regulations consistently and in a non-discriminatory manner, and guarantee due process	medium	2	Art. X (Publication & Administration of Trade Regulation)	Right of appeal, code of conduct
Simplification	6. Minimize/reduce fees and charges in connection with import or export	medium	1	Art. VIII (Fees & Formalities)	Urge for discipline regarding fee & charges
	7. Establish a 'Single Window' / one-time submission procedure	Medium-high	2	Art. VIII (Fees & Formalities)	Single Window
	8. Implement pre-arrival examination	medium	1	Art. VIII (Fees & Formalities)	Provide pre-arrival examination
	9. Implement post-clearance audit	medium	2	Art. VIII (Fees & Formalities)	Provide post-clearance audit
	10. Application of risk management techniques	low	1	Art. VIII (Fees & Formalities)	Trusted trader, green line etc.
	11. Elimination of Pre-Shipment Inspection and use of customs brokers	low	1	Art. VIII (Fees & Formalities)	No custom brokers & pre-shipment inspect.
	12. Simplify and reduce customs procedures and documentary requirements	medium	2	Art. VIII (Fees & Formalities)	Standard custom document, e-custom
Harmonisation	13. Simplify procedures for goods in transit	medium	1	Art. V (Freedom of Transit)	Non-discriminatory access for landlocked countries
	14. Harmonize customs procedures, documents and custom valuation methods	medium	1	Art. VIII (Fees & Formalities), Art. VII (Customs Valuation)	Application of WCO standards
	15. Adopt international standards	low-medium	3	Art. VIII (Fees & Formalities)	WCO
	16. Use harmonized tariff classification	low	1	Art. VIII (Fees & Formalities)	HS 2002 or HS 2007
	17. Align national standards with or to adopt international standards	medium-high	2	Art. VIII (Fees & Formalities)	No result
Cooperation	18. Recognize standards of other countries	medium	3	Art. VIII (Fees & Formalities)	No result
	19. Recognize certification and testing facilities of other countries or international organizations	medium	3	Art. VIII (Fees & Formalities)	No result
	20. Prior consultation on new and amended rules	low	3	Art. X (Publication & Administration of Trade Regulation), Art. XXII (Consultation)	Consultation "recommended" (non-binding)
	21. Ensure cooperation and effective exchange of information between custom authorities	medium	2	Art. X (Publication & Administration of Trade Regulation)	Electronic data exchange
	22. Improve relationships between custom authorities and trading community	medium	3	-	No result
Use of modern technology	23. Improve mobility of Business People	medium-high	2	-	No result (outside mandate)
	24. Use of automation and automated systems for customs cargo processing	high	1	Art. VIII (Fees & Formalities)	Use of automated systems
Technical Assistance & Capacity Building	25. Use of electronic communication systems	high	1	Art. VIII (Fees & Formalities)	Use of electronic communication
	26. Provide technical assistance to least developed countries	medium	1 [●]	Doha Development Agenda	TA for LDC
	27. Establish international training programs	medium	2	-	No explicit, included in TA & CB
	28. Build capacity within least developed countries	Low	1	Doha Development Agenda	CB for LDC

* All statements regarding cost, priorities and expected WTO outcome represent estimations by the author based on the analysis performed in context with this paper. The actual cost and priorities will vary from country to country. Similarly the WTO outcomes depend on the ongoing negotiations. The author and the IIBE&L do not take any responsibility for the accuracy of these estimates and refuse any liability for action taken based on these estimates.

● TF Model Measures are described in detail above in 6.2.2

● Estimated cost for implementation assuming there is no pre-existing measure of that kind (scale: low-medium-high); see also cost estimates in DUVAL (2006, p. 15) and MOÏSÉ (2004)

● Suggested priority based on cost/effect considerations (scale: 1 to 3, 1 being the highest priority); see also priority of TF measures in DUVAL (2006), p. 20

● Developing countries should request the necessary TA & CB as early as possible

7. *Some Implications for Developing Countries*

7.1. **Harmonisation of Trade Facilitation Measures**

Trade facilitation can involve national, bilateral and multilateral action. A significant part of trade transaction costs are imposed directly or indirectly by national governments that desire to control trade in some cases so strictly that traders are strangled by red tape and the associated cost. In such cases, trade facilitation requires national actions and often a change in political attitudes⁹⁰.

Some of the costs associated with trade can be reduced by bilateral initiatives (e.g. coordination of opening times of border crossings), but many current trade facilitation initiatives at bilateral or plurilateral levels are addressing essentially multilateral issues. Pressure from a major trading partner, promises of reciprocity or of cost underwriting (as in PACER) may contribute to the attractiveness of implementing trade facilitation measures. However, as APEC members and others have recognized it is crucial to coordinate trade facilitation with multilateral trade facilitation negotiations or at least with the major regional trading partners.

7.2. **The Importance of Capacity Building and Technical Assistance**

Trade facilitation is beneficial to countries at any level of development insofar as it reduces the costs of doing trade. There are, however, the costs of introducing some trade facilitation measures, whether in terms of assessing and changing national legislation and regulation, training officials who will implement the measures, hiring new staff or buying equipment.

Ideally cost considerations should not deter any country from implementing trade facilitation measures as there is broad consensus among many economists that trade is beneficial for development and for poverty alleviation in developing countries.⁹¹ For the same reason there is a strong case for developed countries, multilateral institutions and aid donors to fund and staff technical assistance and capacity building in this area.

A successful assistance program, however, requires a very careful assessment of the specific capacities, limitations and needs of each country⁹², which allows it to better estimate the costs of trade facilitation and to tailor the necessary technical assistance. The PACER Agreement is seen as a model in this regard as it demonstrates the importance of aligning capacity building needs with trade facilitation reform programs.

⁹⁰ Positive examples for such changes in the recent past are e.g. China or India, whereas countries as Myanmar, Uzbekistan or North Korea still have to make internal adjustments to reap the benefits from international trade facilitation

⁹¹ See DUVAL (2006) at p. 7, ENGMAN (2005), MOÏSÉ (2006)

⁹² MOÏSÉ (2006) at p. 4

7.3. Prioritisation and sequencing of trade facilitation measures

Cost and time considerations as well as limited technical and human resources justify prioritising trade facilitation measures. DUVAL (2006) found that experts rank adoption and use of international standards, establishment of enquiry points, trade facilitation committees, online publication of trade regulations and procedures and the establishment of risk management systems as the 5 top priority measures.

Developing countries have and should use the flexibility during (extended) transition periods to assess what are the most appropriate measures for their economies. This should not mean postponing the implementation of measures. Developing countries should commence their efforts by quickly implementing those trade facilitation measures that require little time and other resources. As just stated above, developing countries should try to identify the resources and assistance required for the implementation of more complex or costly measures and draft a national roadmap for implementation including a self-binding time frame. If the assessment or the national roadmap indicates the need for technical assistance or support in capacity building, developing countries should request such assistance from international organizations or more advanced economies as early in the process as possible. Politically it may be worthwhile to prioritise the implementation of those measures, which will show some immediate benefits to business and the economy.

The estimation of time and costs involved in the implementation of trade facilitation measures depends on how these measures are sequenced.⁹³ Accordingly each country should assess not only its priorities regarding measure implementation but also analyse whether particular sequencing offers greater efficiencies.⁹⁴

7.4. Special and differential treatment

Special and Differential Treatment (SDT) has been advocated for less developed countries, and especially for some landlocked or island economies.⁹⁵ These types of economies have much to gain from trade facilitation, so it is important that any special treatment should not allow any obstacles to trade facilitation to block desirable measures. Accordingly, such economies should be permitted extended, but finite, transition periods to implement trade facilitation measures rather than being granted exemptions from compliance. Extended transition periods should not be used as a reason to postpone the implementation to the last possible minute. The sooner trade facilitation measures are implemented, the sooner the benefits can be harvested. Implementing trade facilitation measures as negotiated under the WTO is a complex task that affects all levels of government and often requires cultural changes. Such changes are normally easier to introduce gradually.

MOÏSÉ (2006) proposes a more sophisticated approach to SDT, which takes into account the individual needs and priorities of each country by making reference to specific terms for each trade facilitation measure considering the relative complexity of

⁹³ DUVAL (2006), at p. 21

⁹⁴ However, experts are still arguing how to best sequence different types trade facilitation measures, see DUVAL (2006), pp. 21 ff.

⁹⁵ See Annex D of the July Package indicating that SDT should allow linking the extent and timing of commitments to the implementation capacities of developing and least developed countries

implementation. Categorising each trade facilitation measure for each country according to MOÏSÉ requires a great analytical effort before concluding a multilateral agreement, but it would certainly create more efficient SDT provisions than a "one-size-fits-all" solution and promote tailored and therefore more cost effective capacity building and technical assistance programs.

7.5. Implications for multilateral negotiations

A large number of WTO members have been actively committed to negotiations on trade facilitation and have proposed a variety of measures.⁹⁶ Trade facilitation initiatives in RTAs in the Asia-Pacific set instructive examples for multilateral negotiations and have arguably been responsible for driving member commitment to multilateral trade facilitation negotiations in the WTO.

The analysis of Asian-Pacific RTAs in this study shows that there are several ways to address trade facilitation issues in plurilateral and multilateral treaties. Whether trade facilitation is addressed by general non-binding principles or in specific binding measures depends on a multitude of considerations, like trust, cultural background, level of economic development, available resources or the number of participating parties.

To make trade facilitation successful in general it seems to be important to set clear and specific targets that are ambitious but achievable, well understood by business and able to significantly reduce the cost of international trade.⁹⁷ Furthermore, too much flexibility regarding trade facilitation measures in a multilateral environment can undermine the objectives of simplification and harmonization. This is particularly the case for customs procedures, which are most efficient when intensely supported by modern Information and Communication Technologies (ICTs). Purely aspirational provisions or measures that cannot be enforced are likely to remain paper measures and the actual practice at the border continues to inhibit trade.⁹⁸

On the other hand, very specific and detailed binding rules in some other areas could be interpreted – in particular in some Asian countries – as lack of trust and disregard for national sovereignty, or too costly and complicated to implement for developing countries. It is the difficult task of the negotiators to balance these diverging approaches.

Multilateral trade facilitation negotiations should to the extent possible take advantage of the pre-existing work and experiences of organizations like WCO, UN-ECE or UNCTAD and refer to internationally established standards like the ISO standards of the International Organization for Standardization or consider – where appropriate and feasible – established regional standards. These standards are widely accepted and represent established best practice

⁹⁶ See latest Compilation of Members' Proposal on WTO Trade Facilitation of 8 May 2005 (TN/TF/W/Rev. 6)

⁹⁷ See ELEK (2005), Annex 1, p. 17

⁹⁸ Such an assessment largely applies to SAARC's trade facilitation efforts. The trade facilitation efforts of PACER still remain at the proposal stage.

Trade facilitation is likely to be non-preferential, as reductions in transaction costs or increases in customs clearance efficiency generally benefit all trade. In practice, however, governments should avoid possible discrimination for technical reasons. For example, the introduction of electronic customs clearance facilities in a country may only benefit exporters to that country that has access to computers. Accordingly trade facilitation measures have to provide for traders of small volumes or with limited resources (for example, limited or no access to the Internet) by implementing simplified paper-based procedures.

Overall the key implications that this study would highlight for developing countries seeking to drive successful trade facilitation reform is to ensure consistency with multilateral negotiations in setting clear, achievable and where possible enforceable objectives whether they be set in a bilateral or regional context. While some trade facilitation priorities will no doubt be based on cost and ease of implementation, it is important for each country to assess its particular needs, to harmonise and sequence reforms in cooperation with the business sector and key trading partners and to link capacity building, technical assistance and special and differential needs with a specific and detailed trade facilitation reform program.

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