

Chapter **II.1**

Challenges to the WTO and a Trade Facilitation Agreement

Zhang Yunling

Chinese Academy of Social Sciences (CASS)

November 2013

This chapter should be cited as

Yunling, Z. (2013), 'Challenges to the WTO and a Trade Facilitation Agreement', in Fukunaga, Y., J. Riady, and P. Sauvé (eds.), *The Road to Bali: ERIA Perspectives on the WTO Ministerial and Asian Integration*. ERIA Research Project Report 2012-31, Jakarta: ERIA, UPH and WTI. pp.29-37.

II. Contributions by ERIA Research Institute Network (RIN) Members

II.1 Challenges to the WTO and a Trade Facilitation Agreement

Zhang Yunling, Chinese Academy of Social Sciences (CASS)¹⁹

1. Introduction

The World Trade Organization (WTO), like the General Agreement on Tariffs and Trade (GATT) before it have both played a crucial role in creating an open and rules-based world market since the Second World War. Such a market environment facilitates economic integration and the long-term growth of the global economy. However, as more and more economies have joined the multilateral trading system, its structure has changed, and the interests of its Members have also diversified. When the Doha Development Round was launched in 2001, Members of WTO committed themselves to working hard on this new agenda. But the negotiating process has become very complex due to the diversity of interests of WTO Members. Originally, the deadline for conclusion of the Round was 2005, but little progress has been made so far. Pessimism about the successful conclusion of the negotiations seems to prevail. The reasons for such pessimism include a lack of political will to revive the negotiations, the difficulty in finding a balance across a range of complex issues, and the emerging trend towards preferential trade arrangements, among others. The Doha Round is a 'development round' aiming at creating a better global environment for global economic integration and reducing development gaps. Negotiations on eliminating or reducing heavy agricultural subsidies on agriculture offered in the developed economies show no progress. The failure of these negotiations has angered the developing countries since they consider such subsidies as reflecting the protectionist policy of the developed countries.²⁰ On the other hand, the developed countries, especially the United States (US) and the European Union (EU), have strongly urged the emerging economies, especially

¹⁹ Zhang Yunling, Professor, Director of International Studies, Chinese Academy of Social Sciences. E-mail: zhangyl58@163.com

²⁰ Leaders of 25 world farming organizations signed a letter to Pascal Lamy, then Director General of WTO criticizing the protectionist attitude of the US and EU. <http://viacampesina.org/en/index.php/actions-and-events-mainmenu-26/10-years-of-wto-is-enough-mainmenu>

China and India, to take a more pro-active stance on liberalization. Currently, it appears very difficult to provide sufficient impetus to the leaders of WTO Members to make a success of the Doha Round. Without active leadership, it is impossible to achieve a breakthrough, although there is increasing concern that the failure of the round will create a risk to the WTO system and to the world economy more broadly.

While the multilateral process has stagnated, preferential arrangements have proliferated. The major interests and efforts of the US, the EU, Japan and other developed economies such as Australia and Canada have shifted towards negotiating the Trans-Pacific Partnership (TPP), the Transatlantic Trade and Investment Partnership (TTIP), the Canada-EU Trade Agreement and the EU-Japan Economic Partnership Agreement (EPA). These so-called 'mega regional arrangements' are intended to increase trade and investment among the parties themselves and to lay down the new rules for a future new global agenda. Meanwhile, the East Asian economies have also been busy initiating new preferential arrangements. In addition to bilateral agreements, a mega-regional free trade agreement (FTA), namely the Regional Comprehensive Economic Partnership (RCEP) encompassing 16 members in East Asia was launched in 2012.²¹ Although PTAs have a role to play in deepening regional liberalization and cooperation and help create a regional trade and economic development environment, at the same time they turn attention away from the main efforts at multilateral negotiations and more seriously damage the credibility of the WTO while putting at risk the very future of the multilateral system.

As the conclusion of the Doha Round becomes ever more difficult to achieve, efforts at negotiating the plurilateral agreements have been given more emphasis. It is widely considered that concluding more plurilateral agreements based on "coalitions of the willing" among WTO Members is a way to deal with a host of new trade-related

²¹ ASEAN 10 plus China, Japan, Republic of Korea, India, Australia and New Zealand.

issues within the framework of the existing world trade system. Plurilateral agreements that include only a fraction of WTO Members are, however, considered as no more than a second-best option.²² The Information Technology Agreement (ITA) is considered a good example in this respect, since it achieved duty free access on 97% of world trade in information technology products.²³ The ITA operates on a 'critical mass basis and this applied to all on a non-discriminatory basis.²⁴

At the same time, calls for reforming the WTO system have also been increasing. Views on WTO reform are varied, including the need to adjust current practices to ensure a more equitable sharing of responsibility for the leadership, with a greater role for emerging economies.²⁵ Other proposals would turn the WTO into a more modest, flexible, and equitable organization; rather than focusing on further liberalization, the WTO rather focus on building its institutional capabilities in order to serve as the global governance structure for world trade.²⁶

However, it is vital to keep the multilateral trading system working and effective since no the other institution can serve the needs of both the developed and developing economies. As a single undertaking, agreement under the WTO Doha Round seems to be difficult to achieve, a trade facilitation agreement should be sought by the end of the year. Such an agreement could produce significant gains for all WTO Members and impart needed dynamism to the global economy.

2. A trade facilitation agreement

Trade facilitation (TF) forms an integral part of the Doha Round and the negotiation

²² James Bacchus proposed to negotiate the Anti-counterfeiting Trade Agreement going beyond TRIPS, A sustainable energy agreement aiming at eliminating the barriers to trade and investment in the green energy area, TPP opening to all WTO Members. See *A way forward for WTO*, in Ricardo Meléndez-Ortiz (ed.), *Global challenges and the future of WTO*, pp.7–8, www.ictsd.org

²³ The expanding agenda for ITA, i.e. ITA2, is under discussion.

²⁴ The GPA is only applied to the Members.

²⁵ *A way forward for WTO*, in Ricardo Meléndez-Ortiz (ed.), *Global challenges and the future of WTO*, p.9, www.ictsd.org

²⁶ Kevin P. Gallagher, *Challenging opportunities for the Multilateral Trade Regime*, in Ricardo Meléndez-Ortiz (ed.), *Global challenges and the future of WTO*, p.16, www.ictsd.org

was launched in 2004. Various definitions of trade facilitation have been used. TF not only includes at-the-border issues but also beyond-the-border issues, dealing for instance with the business environment, the quality of infrastructure, transparency, and domestic regulations.²⁷ According to both the WTO and the OECD, trade facilitation involves the simplification and harmonization of procedures including ‘the activities, practices and formalities involved in collecting, communicating and processing data and other information required for the movement of goods in international trade.’²⁸ For measurement of trade facilitation, there are four major indicators: port efficiency, customs environment, regulatory environment and e-commerce.²⁹ The negotiations on trade facilitation are aimed to facilitate trade transactions and reduce the business costs by eliminating non-tariff barriers (NTBs) which hinder trade transactions, enhancing technical assistance, supporting capacity building and also developing provisions for effective cooperation between customs and any other appropriate authorities. TF action plans should clearly define the objectives and framework for implementation so as to encourage the broadest participation by Members. It is important for all economies to take timely policy actions to facilitate progress. In the spirit of developed and developing economies complementing each other, it is essential to support the engagement of all key stakeholders, in particular, the establishment of partnerships between government, business, academic and training institutions. The importance of well-targeted assistance to help developing economies make progress towards greater openness and transparency cannot be underestimated. This in turn will help developing members improve their capability to implement their trade facilitation commitments.

Customs procedures lie at the core of trade facilitation measures, since effective trade facilitation depends upon effective customs measures to simplify import, export

²⁷ Alberto Portugal-Perez and John S. Wilson, *Export Performance and Trade Facilitation Reform: Hard and Soft Infrastructure*, *World Development*, Vol. 40, No. 7, p. 1295, 2012.

²⁸ Christopher Findlay (ed.), *ASEAN+1 FTAs and Global Value Chains in East Asia*, ERIA Research Project Report 2010 No.29, p.55.

²⁹ John S. Wilson, Catherine L. Mann & Tsunehiro Otsuki, *Trade facilitation and Economic Development: a new approach to quantifying the impact*, *The World Bank Economic Review* Vol. 17, No.3, p. 368, 2003.

and transit procedures for trade operators and to make information about those procedures readily available to trade operators and their agents. Trade logistics, i.e. effective leverage of the hard infrastructure and streamlined border formalities, requires the parallel development of the logistics value chain.

Considering the diversity of WTO Members, the TF negotiations must take fully into account the principle of special and differential treatment for developing and least-developed countries. In fact, many developing WTO Members raised concerns about the impact of trade facilitation negotiations since they are worried that they do not possess sufficient capacity to implement such commitments and that the needed technical assistance would not materialize. Thus, developing countries have repeatedly stressed the importance of special and differential treatment and technical assistance provisions for a successful outcome to the negotiations. As former WTO Deputy Director General Alejandro Jara pointed out recently, to achieve balance is the key to agreement in the talks on trade facilitation.³⁰

Studies have shown that the reduction in trade transaction costs through trade facilitation can bring significant gains, and that the TF talks could produce greater benefits than tariff reductions.³¹ In fact, trade facilitation plays a crucial role in reducing costs and promoting regulatory reforms as the character of international trade is increasingly becoming one of trade in intermediate products and value chains. The expansion of regional and global value chains means that most products are assembled with inputs from many countries and products cross borders frequently during various stages of assembly. Trade in intermediate goods has become the most dynamic and dominant sector of international trade. Reducing supply-chain barriers can thus generate considerable benefits. . Reforms relating to trade facilitation, such as the simplification and harmonization of customs procedures,

³⁰ The balance means the legal obligations of the implementation and capacity building and assistance to the developing countries. See Balance key to Bali trade talks, Jakarta Post, 6 May 2013.

³¹ Christopher Findlay (ed.), ASEAN+1 FTAs and Global Value Chains in East Asia, ERIA Research Project Report 2010 No. 29, p. 57.

the improvement of border infrastructure and management systems would enhance the capacity to trade and would assist traders to compete with or better integrate into global supply chains. Thus, trade facilitation measures will significantly reduce the cost of supply-chain activities.

The cost of non-tariff barriers to trade is much greater than that of tariff barriers. Thus, trade facilitation measures become a broad policy-based subject, encompassing a range of administrative, financial, transportation, security, business-model and e-commerce concerns, and with implications for trade's potential for economic development. Across-the-border or behind-the-border barriers to trade facilitation come in many forms, covering aspects of the institutional and regulatory framework. Among the most important barriers to trade and investment are: excessive regulation, inconsistent standards, undisclosed information related to trade and investment rules, policy uncertainty, weak legal systems, poor protection of property rights and ineffective contract enforcement, regulatory barriers to market entry, corruption, policies that suppress competition and allow anti-competitive behavior, poorly functioning financial markets and poor infrastructure.

Removing such barriers requires capacity building, especially the capacity of trade facilitation, and improvements in infrastructure, human resources and TF-related institutions. Lowering NTMs requires the political will of the governments concerned. Despite widespread consensus on desirability of a TF agreement and some significant progress in the negotiations, more efforts are needed to clinch a deal in Bali in December, as important gaps between developed and developing Members continue to prevail.

3. APEC and Asia's experience

APEC has made important strides to facilitate trade by identifying obstacles that hinder trade and by implementing activities and actions to address these obstacles.

As a non-rules-based institution founded on the principle of voluntary co-operation and compliance, APEC's role is to encourage its members to commit collectively to reducing barriers to trade and investment. It provides an environment for member economies to consider innovative ways to address similar problems. In 2001, APEC members committed to achieve a reduction in trade transaction costs of 5 per cent across the APEC region between 2002 and 2006. They drew up a menu of actions and measures to reduce transaction costs and simplify administrative and procedural requirements over a specified period of time. Actions were taken in the priority areas of customs procedures, standards and conformity assessment, business mobility and electronic commerce. By 2006, the 5 per cent reduction target was achieved. Starting in 2007, another trade facilitation action plan was initiated for a reduction of trade transaction costs by a further 5 per cent over the 2007–2010 period based on new actions and measures added to the elements of the previous plan. To monitor compliance, key performance indicators (KPIs) were introduced.

ASEAN has also registered forward movement on trade facilitation. In 2009, ASEAN adopted a Trade in Goods Agreement that made significant progress on trade liberalization and trade facilitation, especially on eliminating TF-impeding NTMs. The chapter on trade facilitation sets out actions and measures to be implemented in areas such as custom procedures, trade regulations and procedures, standards, conformity assessments, SPS measures and the ASEAN single window.³² ASEAN adopted an ASEAN harmonized tariff nomenclature (AHTN) and product-specific mutual recognition arrangements on conformity assessment so that product-related standards and regulations no longer hold the potential of technical barriers to trade. In order to help the newer ASEAN member countries, a series of trade-facilitation-related technical assistance training and advisory programs have also been organized and conducted.

³² Marn-Heong Wong and Marie Isabelle Pellan, Trade facilitation: the way forward for ASEAN and its FTA partners, ERIA Policy Brief, No. 2012-04, p. 3.

Recent PTAs in East Asia have also made efforts on trade facilitation since they all include trade and investment facilitation measures. Table 1 below shows that the ASEAN FTA (AFTA) and five ASEAN+1 FTAs include substantive provisions relating to trade facilitation.

Table 1. Trade facilitation provisions in ASEAN and ASEAN+1 FTAs

	ASEAN	ASEAN-Australia & New Zealand	ASEAN-China	ASEAN-India	ASEAN-Japan	ASEAN-Korea
Trade facilitation coverage	※	※	※	※	※	※
Customs procedure and cooperation	※	※	※	※	※	※
Technical regulation, standards, SPS	※	※		※	※	※
NTBs, especially administrative fees and charges	※	※	※	※	※	※
Transparency of laws, regulations and administrative rulings	※	※	※		※	※
Use of ITC and E-commerce	※	※	※		※	※

※ Indicates the presence of provisions.

Source: Marn-Heong Wong and Marie-Isabelle Pellan, Trade facilitation: the way forward for ASEAN and its FTA partners, ERIA Policy Brief, No. 2012-04, p. 3.

Trade facilitation in the Great Mekong Sub-region (GMS) has achieved remarkable progress. The measures taken on TF cover wider areas than other arrangements, including the development of physical transport and trade infrastructure, efficient clearance procedures at border crossings, improved trade administration systems and institutions, and the active and extensive application of information technology to promote transparency and efficiency in trade transactions. The most important trade facilitation initiative in the GMS program is the Framework Agreement on Facilitating Cross-Border Transport of Goods and People (CBTA), which covers all the relevant aspects of cross-border transport facilitation, including single-stop inspection, cross-border movement of persons, transit traffic regimes (such as exemptions from

physical customs inspection, bond deposit, escort, and phyto-sanitary and veterinary inspection, and requirements that road vehicles have to meet for expedited border crossings, exchange of commercial traffic rights, infrastructure, including road and bridge design standards, road signs and signals etc. For customs procedures, GMS countries committed to simplifying customs laws, regulations and procedures by aligning them with international standards and developing harmonized procedures, forms and formats among all GMS partners. For inspection and quarantine measures, the aim is to enhance the compliance of GMS countries with the WTO's TBT and SPS Agreements, technical regulations, and standards in line with their current or future WTO commitments, and to improve cooperation and exchange of information among enquiry points or the national notification authority. For trade logistics, measures include reviewing, simplifying and harmonizing GMS cross-border transport regulations by accelerating the finalization of the Cross-Border Transport Agreement (CBTA) and carrying out its initial implementation at the pilot border-crossing points along GMS economic corridors, improving and developing facilities to support the development of an efficient and integrated GMS trade logistics network, as well as upgrading and building capacity within the logistics/freight forwarding industry through human resource development. As for the mobility of business people, the measures include streamlining and simplifying the formalities for visa application, deferral and temporary stay for GMS citizens conducting business activities in the sub-region and considering and developing a GMS business visa scheme allowing multiple entry for GMS citizens in the sub-region and improving the transparency of relevant laws and regulations for business travellers.³³

Although PTAs have made some progress in the area of trade facilitation, the WTO's role at the multilateral level remains essential since the global market needs an integrated and non-discriminatory global trading system.

³³ Susan Stone and Anna Strutt, "Transport infrastructure and trade facilitation in the Greater Mekong Sub-region", in Douglas H. Brooks & Susan F. Stone (eds), *Trade Facilitation and Regional Cooperation in Asia*, ADB Institute and Edward Elgar, 2010, p. 170.