

## *The role of Regional Trade Agreements in implementing efficient market openness regulation principles to improve customs efficiency*

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Among the regulatory policies that are particularly relevant for the openness of national markets, perhaps the one that appears most obvious to the international trader is Customs and border procedures. As tariff levels have declined through successive GATT/WTO rounds and global supply chains have come to dominate production patterns growing attention has been directed to the remaining cost factors that are important for international competitiveness, in particular those incurred by trade formalities and procedures at the border. The importance of enhancing the efficiency of such procedures and formalities in order to facilitate international trade was acknowledged by WTO Members in the Singapore Ministerial meeting in 1996. In November 2001 in Doha, the WTO Members recognised “... *the case for further expediting the movement, release and clearance of goods, including goods in transit...*”.

Border procedures respond to a wide array of government objectives, such as revenue collection, health, safety, sanitary and environmental protection, control of illegal goods (drugs, counterfeit trade) or collection of statistical information. Estimates about the costs incurred by businesses due to inefficient border procedures range from 2 to 15% of the trade transactions value. Differences in costs incurred from country to country depend not only on the characteristics of traded goods and on factors such as the size and type of businesses but also on the efficiency and integrity of interacting businesses and administrations. These figures should be compared to the WTO estimate that the post Uruguay Round weighted average tariff of developed countries or industrial goods excluding petroleum is 3,8%.

Recent research conducted by the OECD showed that existing studies on the business benefits of trade facilitation suffer from methodological and data problems, in particular lack of original and up-to-date data and difficulties to perceive the relative importance of the different factors at the root of transaction costs. These information gaps have pushed the OECD to undertake the construction of a template in order to allow member and non-member economies to estimate more accurately the business costs that could be avoided through trade facilitation measures.

However, no-one denies that red tape and inefficiencies at the border represent a serious problem both for businesses and for the administration. More specifically elements relating to particular aspects of border procedures are available and can give evidence of their impact on the movement of goods. I will provide some examples:

- The Indian National Transport Policy Committee estimated that road hauliers wasted 30-46% of effective travel time on inspection formalities at various internal state borders.
- It has been argued that monopoly port service providers and inefficient regulation of port operations give rise to implicit tariffs ranging from 5 to 25% on exports in Latin America.

The International Road Transport Union estimated that 1 to 7% of total road transport costs in Western Europe and 8 to 29% of road transport costs in Central and Eastern European countries are attributable to time lost as a result of customs formalities.

Inefficient border procedures also strongly reduce the collection of import duties, a fact that is particularly penalising for developing countries which heavily depend on these revenues. The introduction of automated systems in Bolivian Customs raised duty collection by 11% (25% when taking into account the applied reduction in tariff rates) while in the Philippines the increase after introduction of the ASYCUDA system was more than US\$215 million annually.

In addition to enhanced revenue collection, trade facilitation measures may save on the costs born by governments to pursue Customs administration and enforcement. An increase in public sector efficiency may enable governments to cut redundant resources or move such resources from resource-sufficient activities (such as document format verification) to more labour intensive activities (such as physical inspection). This becomes particularly relevant in light of the increased security concerns following the September 11th events.

As for other aspects of regulatory policy, the implementation of the principles for efficient regulation described this morning is essential for addressing the problems I have just described. Particularly relevant in this context are the principles of

- **transparency** with respect to the implementation of applicable regulations and requirements;
- **avoidance of unnecessary trade restrictiveness** in enforcing these regulations and requirements; and
- **harmonisation** of procedures and formalities at the border.

The first two principles are reflected in GATT Articles X (for transparency), V (which calls for the avoidance of any unnecessary delays or restrictions for traffic in transit) and VIII (which calls for the simplification of import and export formalities). These articles are currently under review in the WTO with a view to deciding whether additional or enhanced provisions should be negotiated. WTO Members also undertook to identify the related needs and priorities of Members, in particular developing and least-developed countries.

These efficient regulation principles and corresponding WTO provisions obviously just set the stage for trade facilitation at the international level. They need to be given concrete expression in practice at the national level. Such national approaches will be presented to you by the following speakers. In the context of this presentation I would only like to draw your attention to the role played by regional initiatives in exemplifying the principles and providing a useful testing ground for advancing the trade facilitation agenda.

Trade facilitation provisions are not contained in all Regional Trade Agreements and the degree of sophistication in them is influenced by a number of factors, such as

- the **date** when the agreement was concluded (recent regional initiatives focus much more strongly on trade facilitation);
- the **type** of the agreement (the common external tariff of *customs unions* is a considerable simplifying factor that *free trade areas* lack)
- the **number** and **relative level of development** of participating countries (noting that, all other things being equal, it is easier to simplify and harmonise procedures bilaterally, especially where concerned countries display similar levels of development).

Comprehensive facilitation endeavours seem to be at a relatively early stage within regional trade initiatives. With respect to the movement of goods in international trade, several older RTAs focus exclusively on lowering tariff barriers and do not contain any provisions to simplify and harmonise related procedures. RTAs which take some steps towards facilitation commonly aim at simplifying and harmonising certification procedures related to technical requirements and to sanitary and phytosanitary measures. There are very few RTAs in force that tackle more specifically import, export and border-crossing procedures in detail. In general, applicable procedures stay within the ambit of domestic regulation well after preferential tariff treatment has been established by means of an RTA.

APEC is an interesting exception to this observation: although Members' co-operation does not entail preferential provisions intended to facilitate trade between them, APEC Members have developed a set of principles on trade facilitation intended to be used on a voluntary basis and in a co-operative manner with the business sector. The principles are supplemented by illustrative examples of such initiatives that would contribute to putting them into practice. They are intended to encourage individual initiatives by APEC Members with a view to gradually suppressing procedural burdens and red tape, saving time and reducing costs for businesses, and more generally improving business conditions in the region.

Those RTAs that do contain trade facilitation provisions frequently go beyond, and complement, provisions in the WTO. They do so by promoting transparency, by harmonising and simplifying procedures and by fostering the use of new technology. In doing so, they are influenced by existing multilateral instruments, such as the WCO Kyoto Convention or Arusha Declaration, or the UN/EDIFACT initiative, to which they have usefully given concrete, practical expression. In this way, while often falling short of full harmonisation, they help foster convergence of modes of operation within regional groupings and beyond.

In "new-generation" RTAs, such as the Japan-Singapore Economic Partnership Agreement (JSEPA) or the Free Trade Area of the Americas (FTAA), trade facilitation is a major focus. Increasingly new generation RTAs adopt common approaches for risk management so as to facilitate the clearance of low-risk goods with minimal or no documentary verification and physical inspection; they elaborate differentiated, simplified procedures applicable to express shipments; they develop common data sets to be requested in the process of release and clearance. Moreover, one of the main factors stimulating facilitation initiatives in recent RTAs is the attention paid by negotiators to electronic commerce and the increased use of information and communication technologies. Electronic data interchange is an essential feature both in the JSEPA and in the FTAA.

I will provide below some examples on how the efficient regulation principles have found their way into RTA provisions on trade facilitation.

***Rules on transparency and due process.*** Transparency and due process are essential facilitating measures in most RTAs, especially in order to prevent persisting differences in implementation from jeopardising facilitation. The terms of these provisions parallel quite closely corresponding WTO provisions, such as GATT Article X, to which several RTAs refer explicitly. RTAs also promote transparency through the collection and dissemination of all relevant information through centralised inquiry points, publications and display on-line. ASEAN has established a Customs website, including information on ASEAN countries' practices for handling complaints and appeals from the trading community. Although still under negotiation, the FTAA already makes available on-line information on customs procedures, laws, regulations, guidelines and administrative rulings, namely through the publication of a *Hemispheric Guide on Customs Procedures*.

Consistency and predictability may be seen as corollaries of the principles of transparency and due process. In several RTAs they are not stated explicitly but only implied as objectives to be achieved through the implementation of other principles. In the APEC framework the principle is not limited to advocating the predictability necessary for informed business choices, but stresses the importance of uniform application and the restriction of discretionary interpretation and implementation for promoting integrity and combating corruption in customs services. Reference is made to the Arusha Declaration of the World Customs Organisation with respect to the management of operations and personnel in customs. The principle also recommends the introduction of commitments to the public with respect to targeted maximum processing times or other service standards.

***Harmonisation of procedures and formalities*** Full harmonisation of procedures and formalities is still limited in RTAs. It would be more appropriate to talk of convergence of the modes of operation of concerned administrations. Such convergence draws both on the momentum of regional integration and on the elaboration of best practices for customs and border procedures worldwide. RTAs commonly refer to relevant WTO provisions, such as GATT Article VII, but the most important reference is the WCO Kyoto Convention on the simplification and harmonisation of customs procedures. RTAs offer useful opportunities for testing those practices in reality. APEC principles reaffirm the importance of harmonisation and mutual recognition for reducing administrative and compliance costs for business not only in the area of customs procedures and customs tariff classification and valuation, but also with respect to data requirements for import and export procedures. The principles further call for the development of mutual recognition arrangements for standards and conformity assessment results, or for professional qualification and registration.

Customs-related provisions in RTAs often provide for the development of a common understanding among concerned administrations on the daily management of applicable requirements and procedures in tariff classification, valuation procedures, clearance documentation and data transmission and storage. In NAFTA, the Customs administrations of the three countries decided to establish a "Trilateral Heads of Customs Conference" during the negotiations and implementation phase, in order to co-operatively address issues related to the conduct of business between them. One of these issues was the requirement of NAFTA Article 906 for enhancing the compatibility of standards and conformity assessment related measures and procedures so as to facilitate trade.

In ANZCERTA a *Memorandum of Understanding Regarding Mutual assistance between Customs Agencies* provides for co-operation to harmonise customs procedures and policies "to the maximum extent practicable". This entails *inter alia* closer alignment of national level tariff structures involving a minimum of national subdivisions and of national legal notes relating to tariffs, formats and phraseology; consultations on interpretations; or elaborating common bases for valuation. MERCOSUR has established a series of agreements ensuring co-operation between customs authorities, including the 1999 Asunción Programme on measures for simplifying foreign trade procedures and border procedures, setting goals relating to the streamlining of administrative procedures.

***Simplification and avoidance of unnecessary restrictiveness*** In a number of established RTAs simplification is limited to measures specifically related to products of preferential origin, such as customs fees or marking. The NAFTA Agreement provides that any measure relating to country-of-origin marking adopted and implemented by the Parties shall be designed so as to minimise the difficulties, costs and inconveniences that the measure may cause. Furthermore, although some merchandise processing fees are still applicable to imports and exports between NAFTA countries, customs user fees are no longer allowed for originating goods.

Other RTAs widen the scope of simplification to cover border inspections and formalities. APEC principles indicate that the streamlining of applicable rules and procedures in order to avoid unnecessary trade restrictiveness may be achieved by minimising documentation and procedural requirements and instituting one-stop-shopping services, expediting customs clearance, or gradually reducing the frequency of conformity assessment controls to match good compliance records. The ASEAN Framework Agreement on the Facilitation of Goods in Transit encourages joint customs inspection for goods in transit.

EFTA provides that border inspections and formalities must be carried out with the minimum delay necessary and be centralised at one place only to the extent possible. Parties are expected to promote the use of simplified procedures and data processing and transmission techniques. For instance, they are to allow for the different involved authorities to delegate their inspection powers to a service (preferably the customs service), which will carry out inspection on their behalf.

*Modernisation and the use of new technology* RTA provisions increasingly acknowledge that technological developments may render inefficient procedures that used to be well adapted to prevailing circumstances. APEC principles call for the regular updating of applicable rules and requirements to match changed circumstances, and for maintaining the efficiency of procedures through the introduction of modern techniques and new technology. Examples of such technology are advanced risk management and systematic cargo-profiling techniques which curtail the physical examination of shipments; or computerisation, electronic data interchange (EDI) and internet technology which provide an environment for paperless trading, including the use of secure on-line technology to facilitate certification procedures. Authorities should ensure the interoperability and/or interconnectivity of such technologies.

NAFTA countries are also in the process of developing a concept of trade automation (North American Trade Automation Prototype or NATAP) that implies introducing standardised trade data elements, harmonising customs clearance procedures and promoting the electronic transmission of standard commercial data using UN/EDIFACT MESSAGES and advance processing by governments. NATAP will use advanced technologies such as the internet for the transmission and receipt of data and Intelligent Transportation System transponder technologies to electronically identify conveyances.

New technologies are central in RTA endeavours to achieve a "paperless" clearance environment. Australian and New Zealand Customs have developed a common format to expedite cargo clearance, accessible either from client's own facilities, via community data networks or via facilities in Customs premises. In the framework of the JSEPA it is aimed to establish a paperless trading system allowing the electronic transfer of all trade-related information and documents (including invoices, bills of lading etc.) between importers and exporters in Japan and Singapore. A joint Committee on Paperless Trading will work to implement such a system by 2004 and ensure that electronic trade-related information exchanged between enterprises is used as supporting documentation by the trade regulatory bodies of the Parties.