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TRADE FACILITATION IN THE WTO: IMPLICATIONS FOR INDIA

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Content

Foreword

At the follow up to the Cancun Ministerial Meeting on December 16, 2003, the Chairman of the General Council mentioned in his closing remarks that Members would continue to explore the possibilities of agreements on a multilateral approach on trade facilitation and transparency in government procurement. Thus a possible multilateral agreement on trade facilitation is likely to take into account the proposals and clarifications sought by Member countries following the Doha Development Agenda.

Focussing on the content of the significant proposals on Article X (Publication and Administration of Trade Regulations), Article VIII (Fees and Formalities connected with Importation and Exportation) and Article V (Freedom of Transit), this paper examines the current status in India corresponding to each of these proposals and suggests the level of obligation that India should take if such proposals are eventually accepted at the multilateral level.

A close examination of the proposals made reveals that India is autonomously pursuing most of the recommendations made as part of its reform agenda. For instance, India already has a fairly transparent system of publication of trade regulations and adopting the suggested measures will not pose any burden on India. Regarding streamlining of export and import procedures, India is already in the process of implementing measures suggested by member countries in the proposals, but meeting international standards would require enormous resources and an adequate time span to implement such measures. India could accept the proposals on a 'best endeavour basis'. On the issue of transit, the proposals recommend that the solution of transit can be found through regional co-operation. India already has a transit treaty with Nepal but not much headway has been made on this issue with Bangladesh.

India recognizes the fact that if it is unable to adopt effective and appropriate trade facilitation measures, it would be uncompetitive in the global trading environment on account of high transaction costs. India should continue to strive for better standards so that they are comparable with international standards. The inclusion of trade facilitation at the multilateral level, would enhance the pace of reforms in India, however, India would have to be careful in the level of obligation that it is willing to undertake given the financial and time requirement that trade facilitation measures are likely to entail.

The study is very timely, given that negotiations on trade facilitation are likely. We are very grateful to the Sir Ratan Tata Trust for funding our research on WTO issues.

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I Introduction[1]

Trade facilitation was first included in the WTO as one of the Singapore issues at the 1996 WTO Ministerial Conference following which the Council for Trade in Goods was directed to carry out exploratory and analytical work on the simplification of trade procedures. In December 1996 the Singapore Ministerial Declaration directed the Council for Trade in Goods "to undertake exploratory and analytical work, drawing on the work of other relevant organisations, on the simplification of trade procedures in order to assess the scope for WTO rules in this area". Until the launch of the Doha Development Agenda (DDA) in November 2001 work at the Council for Trade in Goods (CTG) had focused mainly on customs and border-crossing procedures. A Symposium on Trade Facilitation was held in 1998 to explore the main concerns of traders when moving goods across borders The key problems identified included excessive documentation requirements; insufficient use of information-technology; lack of transparency; unclear import and export requirements; and lack of co-operation among customs authorities. Other issues discussed included import and export procedures and requirements, transport and transit of consignments and payments, electronic facilities and technical co-operation and development issues. In November 2001 the Doha Ministerial Conference called for negotiations on trade facilitation after the 2003 WTO Ministerial and subject to agreement on the modalities of negotiation. Until then, "... the Council for Trade in Goods shall review and as appropriate, clarify and improve relevant aspects of Articles V (freedom of transit), Article VIII (fees and formalities connected with importation and exportation) and Article X (publication and administration of trade regulations) of the GATT 1994 and identify the trade facilitation needs and priorities of Members, in particular developing and least-developed countries." Following the Doha Development Agenda, the Secretariat has prepared background papers on GATT Articles V, VIII and X and on trade facilitation needs and priorities of members to facilitate deliberations in this

[1] I am grateful to Arvind Virmani for giving me an opportunity to work on the project. I am deeply indebted to Anwarul Hoda for giving me useful insights into the study and for providing a basic understanding of the WTO. I would also like to acknowledge useful interactions with Vijay Kumar, Waman Parkhi and Shashank Priya and several others from the Indian Customs. Thanks are also due to Teerna Khurana for useful inputs. I am extremely grateful to Sukanya Ghosh for providing valuable assistance throughout the study.

matter. Countries such as the European Commission, Japan, Korea, the US, Canada, Hong Kong and Colombia have also sought clarifications and made suggestions in their proposals regarding Articles V, VIII, and X.

Thus it was clear that till such time that negotiations begin, the agenda set out in the Doha Ministerial Declaration would continue. At the follow up to the Cancun Ministerial Meeting on December 16, 2003, the Chairman of the General Council mentioned in his closing remarks that Members would continue to explore the possibilities of agreements on a multilateral approach on trade facilitation and transparency in government procurement.[2] Thus a possible multilateral agreement on trade facilitation is likely to take into account the proposals and clarifications sought by Member countries.

Focussing on the content of the significant proposals this paper focuses on two key questions (i) what clarifications do these proposals seek and what improvements have been proposed? (ii) if such proposals are eventually accepted, would it indeed pose a burden on India?

Even though Trade facilitation was first included at the 1996 WTO Ministerial Conference, there are several GATT provisions that are related to trade facilitation. In addition to Article VII (Valuation for Customs Purposes) and Article X (Marks of Origin) a number of specific agreements have been negotiated during the Uruguay Round that are directly relevant to trade facilitation viz.,

1. Customs Valuation Agreement: It sets out rules and guidelines for customs valuation.
2. Agreement on Rules of Origin: It contains principles for origin determination in a neutral transparent, non-trade restricting manner. However actual origin rules are

[2] www.wto.org

yet to be finalized for which intense negotiations are going on for the last seven years.

3. Agreement on Pre-shipment Inspection (PSI). It provides for pre-shipment inspection to avoid delays and to resolve disputes.
4. Agreement on Import Licensing Procedures. It lays down rules for issuance of import licenses in respect of goods requiring license.
5. Agreement on Technical Barriers to Trade (TBT). It provides that product standards should be based on scientific information and evidence and should not be so applied as to cause unnecessary obstacles to trade.
6. Agreement on the Application of Sanitary and Phytosanitary (SPS) measures. It provides that sanitary and phytosanitary regulations are not so formulated and applied as to create unnecessary obstacles to trade.

Some of the common features of trade facilitation of these agreements are transparency by publication of laws and regulations prior to application (e.g., all agreements), non-discrimination through fair and equitable administration of procedure (e.g., import licensing, rules of origin, PSI), and judicial review through right to appeal administrative decisions (e.g., customs valuation, import licensing, PSI). Certain specific features of trade facilitation of these agreements are - simple procedures and forms (e.g., import licensing); advance rulings (e.g., rules of origin); basic single window concept (e.g., import licensing); release of goods upon posting guarantees (e.g., customs valuation); enquiry points (e.g., TBT, SPS); use of existing international standards (e.g., TBT, SPS).[3]

These definitions make it clear that trade facilitation relates to a variety of activities viz., such as import and export procedures (customs or licensing procedures, customs valuation, technical standards, health and safety standards, among others)

[3] Tang (2002)

including administrative procedures, transportation and shipping; insurance, payment and mechanisms and other financial requirements.

As trade facilitation is a broad concept, many different parties are involved in one or more aspects of trade facilitation. UNESCAP (2002) lists some of these parties

- Importers and exporters of traders who buy and sell internationally;
- Banks providing letters of credit that ensure the exporter is paid when the importer receives the goods;
- Insurance companies that indemnify for loss or damage to goods;
- Freight forwarders that organize and arrange transport and warehousing services;
- Transporters or carriers that move the goods;
- Terminal operators and stevedoring companies that load and unload vessels and shift goods from one mode of transport to another;
- Sea and airport authorities that provide and manage essential transportation infrastructure;
- Inspection companies that verify that safety, quality, quantity and performance standards or contractual commitments are met;
- Customs brokers that assist importers in clearing goods through customs;
- Customs authorities that protect against import or export of illegal ggods and collect taxes and duties for governments ; and
- Other governmental organisations responsible for providing safe navigation aor involved in the inspection of goods entering or exiting a country.

As a result of a large number of participants, as well as the wide range of trade facilitation instruments, several organisations - private, public, regional and multilateral

are involved in discussion and implementation of trade facilitation. Some of the private international organisations which deal with trade facilitation include the international Chamber of Commerce, the International Maritime Organisation, International Civil Aviation Organisation, International Air Transportation Organisation, International Express Carriers Conference, International Chamber of Shipping, International Road Transport Union and the International Federation of Freight Forwarders Association. In almost all member countries, government and public agencies are involved with customs, standards and inspection. Some regional organisations include the UN/ECE (economic Commission for Europe) and the APEC. Multilateral organisations that oversee aspects of trade facilitation include the World Customs Organisatiion (WCO), the IMF, World Bank, UNIDO, OECD, UNCTAD, UNCITRAL, and the WTO.[4]

The most important multilateral public organisation dealing with trade facilitation is the World Customs Organization that provides principles for simple, effective and modern procedures that are compatible with and complementary to the three GATT Articles referred to in the context of trade facilitation in the Doha Ministerial Declaration. The WCO offers solutions that allow countries to meet their legitimate goals of revenue collection and protection to society, while at the same time delivering practical trade facilitation dividends. The uniform, predictable and transparent application of these instruments facilitates international trade, while also ensuring compliance with national laws and regulations. These modern principles for simplification of procedures to provide trade facilitation were later incorporated in a single instrument as "The Convention on the Simplification and Harmonization of Customs Procedures", or the "Kyoto Convention" adopted in 1973. As the WCO continuously updates its instruments to keep abreast of developments in information technology in Customs techniques such as risk management, and to take account of the highly competitive business environment. As a result of years of deliberation among Members, the revised Kyoto Convention of 1999 contains international standards that provide the predictability and efficiency that modern trade and commerce require. The revised Kyoto Convention through its legal provisions

[4] Sohn and Yang (2003)

and implementation guidelines provide the basis for principles set out in GATT Articles V, VIII, and X.

The revised Convention addresses a major failing of the Kyoto Convention of 1973 namely the widespread use of reservations and the small number of parties that contracted to individual annexes. The Revised Kyoto Convention is set out in three parts.-

(i) The Preamble and Articles to the Convention,

(ii) The General Annex deals with the core principles for all procedures and practices to ensure that these are uniformly applied by Customs Administrations. The General Annex containing Standards and Transitional Standards[5] (in ten chapters) which are obligatory for accession and implementation by Contracting Parties and no reservations can be entered against these Standards and Transitional Standards.

(iii) The Specific Annex in its 10 specific annexes and 25 chapters covers individual Customs procedures and practices. Contracting parties may accept all or a number of Specific Annexes and Chapters upon accession. Specific annexes include Standards and Recommended Practices.[6]

The Convention also provides guidelines which are a set of explanations of the provisions of the General Annex and the Specific Annexes.

The structure of the Convention ensures through its General Annex, harmonization of the procedures in all countries that will become contracting parties at the same time it allows flexibility to its members in choosing the specific annexes that it

[5] Standards must be implemented within 36 months of ratification, while transitional standards have a 60 month implementation period.

[6] "Recommended Practice" means a provision in a Specific Annex, which is recognized as constituting progress towards the harmonization and simplification of Customs procedures, the widest possible application of integrity.

wants to adopt. Thus the General Annex is the basic trunk and roots, whereby the Specific Annexes are branches that can be added depending on desires of the Customs Administrations. The Convention in its Standards and Transitional Standards enables members to meet their obligations in different time limits.

II Importance of Trade Facilitation

Trade facilitation has become an issue of significant importance in the non-tariff barriers agenda, as tariff rates of protection have fallen after the Uruguay Round, along with availability of advanced information technology that can speed goods transfer across borders. According to a recent study carried out by the OECD the cost of poor border procedures could vary between 2% to 15% of the total transaction value. This highlights the wasteful costs involved considering that the average post-Uruguay tariffs on industrial goods amounts to a mere 3.8%. Trade Facilitation has been recognized as being significant for several reasons:[7]

1. More and more industrial products sold throughout the world are assembled in one country from components manufactured in several others. As complexity in the supply chain increases, the delays and costs caused by slow and inefficient border procedures are multiplied.
2. Increased reliance on just-in-time production and just-in-time delivery make just-in-time customs clearance a major issue for business.
3. Customs needs to modernize to manage the exponential growth in volumes of cross-border trade in goods.
4. Small and medium business particularly in developing countries who as a whole stands to suffer more as the burden of cumbersome procedures tends to fall disproportionately on them.

[7] Cattaui (2000) UNECE Forum on Trade Facilitation

5. Cumbersome customs procedures pose a major impediment to trade liberalization and need to be overcome to fully realize the benefits of negotiated agreements.
6. Most important for investment decision makers are to ensure a reliable, low cost flow of raw materials and components into and out of a manufacturing facility. Efficient customs procedures have become a national competitive advantage, specially in terms of attracting foreign direct investment.

UNCTAD estimates that the average customs transaction involves 20-30 different parties, 40 documents, 200 data elements (30 of which are repeated at least 30 times) and the re-keying of 60-70% of all data at least once. An APEC study estimated that trade facilitation programs would generate gains of about 0.26% of real GDP to APEC, almost double the expected gain from tariff liberalisation, and that the savings in import prices would be between 1-2% of import prices for developing countries in the region.

There is no widely agreed upon definition for trade facilitation. The WTO defines trade facilitation as "the simplification and harmonization of international trade procedures, where international trade procedures" are defined as the "activities, practices, and formalities involved in collecting, presenting, communicating, and processing data required for the movement of goods in international trade." In the end, the objective of trade facilitation is to reduce the cost of doing business for all parties by eliminating unnecessary administrative burdens associated with bringing goods and services across the borders.

While both developed and developing countries agree that focusing on trade facilitation would indeed reduce transaction costs of exports and imports, remove uncertainties in trade and lead to increased trade and investment, developing countries cite several reasons for their limitations to reducing and harmonizing trade procedures. First, there are significant differences between developed and developing countries in terms of stage of economic and social development of a country, availability of technology, administrative traditions and capacities, etc. Second, in the case of developing countries customs duties continue to account for a fairly high proportion of

total revenue unlike most developed countries. Third, in developing countries there is a greater incidence of customs related malpractices, smuggling, under-valuation, mis-classification of goods etc.[8] Fourth, governments may not want to spend scarce resources on trade facilitation. Nevertheless, most developing countries are committed to improving trade facilitation as part of their reform agendas but have reservations about whether there should be any 'bindings' by the WTO in this regard.

III Analysis of Proposals and Implications for India

Countries that have sought clarifications and made suggestions in their proposals are the European Commission, Japan, Korea, the US, Canada, Hong Kong and Colombia. At the request of Members, the WTO Secretariat prepared background papers which give a factual outline of the coverage on Articles X, VIII and X. The papers also look at how the three Articles have been applied in the GATT/WTO jurisprudence so far. In addition, the WCO, in its Communications in G/C/W/392, G/C/W/407 and G/C/W/426 lays out all the legal provisions, and principles that are compatible with and complementary to the three GATT Articles referred to in the context of trade facilitation in the Doha Ministerial Declaration.

III.1 Article X : Publication and Administration of Trade Regulations

Article X requires Members to publish all laws, regulations, judicial decisions and administrative rulings relevant to importing and exporting in a manner as to enable governments and traders to become acquainted with them. The text of Article X further elaborates that the laws, regulations, judicial decisions and administrative rulings could pertain to. These include classification or valuation of products, rates of duty, taxes or other charges; requirements, restrictions or prohibitions on import or export; on transfer of payments related to imports or exports and on sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing and others related to

[8] Satpathy (2002)

export or import. Article X also requires Members should publish all trade agreements affecting international trade policy.

Measures that impose a new or more burdensome requirement, restriction, or prohibition on imports, or on the transfer of payments are to be published before enforcement. With regard to Appeal procedures, Article X requires Members to maintain or institute judicial, arbitral or administrative tribunals or procedures for review and correction of administrative action relating to customs matters.

III.1.1 Analysis of Proposals

Countries that have given proposals on Article X include the European Communities (G/C/W/363), Japan (G/C/W/376), Korea (G/C/W/377) and Canada (G/C/W/379). The key issues in the proposals are related to advance rulings, use of electronic media, enquiry points, consultative mechanism and appeals.

III.1.1.1 Advance Rulings

Canada, EU, Japan and Korea have suggested the inclusion of binding advance rulings. This provision enables traders to get advance information on tariff classification and applicable duties.

III.1.1.2 Use of Electronic Media

A new dimension in the proposals relates to how information relating to exports and imports can be made available. This assumes considerable significance in the light of the changes that have been made in the use of the electronic media. Clearly this aspect did not appear in the GATT Article X at the time of its inception. However it is important to note that the proposals made in this context by the EC, Canada and Korea do not lay any emphasis on making the use of the electronic media mandatory by members, but simply recommends its usage.

III.1.1.3 Enquiry Points

The EC and Korea have suggested the establishment of enquiry points/trade disks for providing trade related information while Korea has suggested the establishment of a single national focal point by Members to respond to inquiries related to information directly related to the customs procedures, importation and exportation.

III.1.1.4 Consultative Mechanism

Another important submission made by the EC, Canada and Korea is that all stakeholders/interested parties i.e., government and private sector bodies including importers exporters, carriers, chambers of commerce should get an opportunity to comment on prospective rules and procedures through a consultative mechanism before they are implemented. Such a mechanism allows the regulatory party to have inputs on how a regulation is formed to reduce the costs to the regulated party while increasing the efficiency of implementation.[9]

III.1.1.5 Appeal

While Article X requires the establishment of an administrative or legal review procedures, submissions were made on making the provisions of Article X more concrete. Canada and the EC suggested that in cases where the initial appeal is not satisfactory, traders should have recourse to an appeal by a separate judicial or administrative body to ensure fairness.

III.1.1.6 Relevance of Revised Kyoto Convention to Article X

The WCO addresses the requirements of Article X in the Kyoto Convention. Chapter 9 of the General Annex to the Kyoto Convention relates to Information, Decisions, and Rulings Supplied by Customs. All the requirements of Article X and the proposals made by Members, including binding rulings are provided for in the

[9] Sohn and Yang (2003)

Convention. The guidelines to Chapter 9 provide detailed information for administrations to set up their procedure for publication of information. The guidelines also contain information on provision of information through electronic media but recommend its usage where possible. Interestingly, the Convention also has provisions for a consultative mechanism between traders and customs, binding advance rulings and enquiry points. There is **no** recommendation for a Single National Focal Point of enquiry as has been suggested by Korea. Chapter 10 of the General Annex sets out principles for Appeals in Customs matters. The provisions provide for a transparent and multi-staged appeal process with the availability of an independent judicial review as a final avenue of appeal.

III.1.2 Current Status in India

It is important to first examine if India is publishing all trade related information as is required by the existing Article X. All trade related information is published by the relevant official authorities, the three key institutions involved are the Central Board of Excise and Customs, the Director General of Foreign Trade under the Ministry of Commerce, and the Reserve Bank of India. Information is made available both in print and through the electronic media. Interestingly, the private sector is playing an important role in making information more accessible to traders both through published material and through hosting of websites. Traders in India tend to use private sources as they disseminate information faster.

The Central Board of Excise and Customs (CBEC) under the Ministry of Commerce publishes all the relevant Acts, tariffs, rules, regulations, forms, notifications and circulars relating to customs, central excise and service tax both on the website and in print form as well. The main Acts are the Customs Act of 1962 and the Customs Tariff Act 1975. All Regulations and rules come into effect through a notification, which is published in the official Gazette of India. The notifications are published under two broad subject headings namely tariff and non-tariff related. All requirements, restrictions or prohibitions on import and export are regulated through the Foreign Trade Development

and Regulation Act 1992, which falls under the purview of DGFT. The Act provides the Government with the authority to put restrictions or prohibitions on import or export. Under Section 5 of the Act, the EXIM Policy is issued which is valid for a period of 5 years, but, amendments are made in the policy every year. All regulations related to payments are published by the reserve bank of India.

Decisions passed by the Tribunal, Supreme Court and High Court are public documents and can be obtained at a nominal fee. Several private publishers have collated such information to make it easily available to customers.

III.1.2.1 Advance Ruling

A notable development that lends greater transparency and predictability in trade is the setting up of up of the Authority for Advance Ruling by the Finance Act 1999, which is a statutory quasi-judicial body under the Customs Act, 1962 and the Central Excise Act, 1944. The scheme of advance ruling became fully operational only from 4th February 2004. Since then, decisions have been announced on 6 cases.[10] The ruling by the Authority can be on classification, valuation and applicability of duty exemption in respect of export, import, production and manufacture. However, only foreign firms which want to invest in India through joint ventures or wholly owned subsidiaries, or Indian who are getting into joint ventures with foreign firms can ask for advance ruling. Thus the scope of the Authority for Advance Ruling is quite limited as such a provision is not made available to a solely-Indian owned company. In view of the rigid eligibility criteria it is not surprising that the number of cases admitted so far is very limited.

III.1.2.2 Use of Electronic Media

The electronic media is being used very widely for dissemination of information by the CBEC, the DGFT and the Reserve Bank of India. The electronic media is also being used by several private companies/individuals.

[10] As of 1st March 2004

III.1.2.3 Enquiry Point

As of now there is no officially designated inquiry point for traders. India should consider it as it would make it easier for member countries to access information. However, a single national focal point is not recommended by the Kyoto Convention and need not be adopted by India.

III.1.2.4 Consultative Mechanism

At present there is no provision for consultation between interested groups. However, the recent Kelkar Committee, recognizing the importance of regulatory transparency, has recommended that "An institutional mechanism, namely Standing Committee on Procedures chaired by Chairman CBEC and including trade and industry representatives, should be established to identify and resolve the problem areas in present procedures and evolve new procedures on a need basis" Such a consultative and feedback mechanism between the regulator and the other participants in trade, if implemented, would help in evolving more efficient and cost reducing procedures.

III.1.2.5 Appeal

The rights of Appeal procedures are published in the Customs Act 1962. Under the Foreign Trade Development and Regulation Act 1992, an appeal can be made by any party against the decision of the DGFT.

Any party can make an appeal first before the Commissioner (appeals). Appeals against Commissioner's orders go the Appellate Tribunal (CEGAT) which is constituted of judicial and technical Members. An appeal in the Supreme Court can be filed (Section 130F, Customs Act 1962) against the orders passed by CEGAT on matters relating, among other things, to the rate of duty or to the value of goods for purposes of assessment. The Foreign Trade (Development and Regulation) Act, 1992, allows for an appeal procedure whereby an appeal can be made against the decision of the Director

General, to the Central Government. In case the decision or order has been made by an officer sub-ordinate to the Director General, an appeal can be made to the Director General or to any officer superior to the Adjudicating Authority[11] authorised by the Director General. The order made in Appeal by the Appellate authority (Central Government or Director General or officer superior to the Adjudicating authority) is final. (Act 15, Customs Act 1962).

III.1.2.6 Relevance of Revised Kyoto Convention to Article X

The Revised Kyoto Convention relates to information, decisions and rulings supplied by Customs. In India, publication of information is related to other agencies as well.

III.2 Article VIII: Fees and Formalities Connected with Importation and Exportation:

Article VIII is the primary Article of GATT dealing with administrative aspects of trade, and is perhaps the most technical, wide-ranging and difficult of the three articles under examination. Article VIII basically requires contracting parties to impose fees and charges in relation to import and export in a manner that it is limited to the cost of service provided. It also requires its Members to recognize the need for reducing the number and diversity of fees and charges and the incidence and complexity of import and export formalities. In addition it requires members to review its operations, upon request by others, not to impose substantial penalties for minor breaches of customs regulations or procedural requirements. Article VIII also provides an illustrative list of the types of fees and charges, formalities and requirements relating to consular transactions, statistical services, analysis and inspection, and licensing which are imposed by governmental authorities beyond Customs.

[11] Any penalty may be imposed or any confiscation may be adjudged under this Act by the Director General or , subject to such limits as may be specified, by such other officer as the Central Government may by notification in the official Gazette, authorize in this behalf. (Section 13, Customs Act, 1962)

III.2.1 Analysis of Proposals

Proposals regarding fees and formalities were made by Canada (G/C/W/397), Colombia (G/C/W/425), European Communities (G/C/W/394), Hong Kong, China (G/C/W/398), Japan (G/C/W/401) and Korea (G/C/W/403).

The key proposals relate to the levy of fees and charges, injecting GATT principles , provisions to reduce documentation requirements, standard processing times and the use of international standards.

III.2.1.1 Levy of Fees and Charges

In the submissions EU has interpreted Article VIII:I (a) (See Appendix) to imply that fees and charges levied must refer to the approximate cost of service rendered and should therefore not be charged on an *ad valorem* basis. This aspect had already been clarified by the Panel Report –US-Customer User Fee which found that ad valorem fee was not compatible with the plain meaning of the text or with the objective of the GATT. It further held that the term "cost of services rendered" referred "to the approximate cost of customs processing for the individual entry in question". This issue has also been clarified in the background paper submitted by the Council for Trade in Goods .

III.2.1.2 Injecting GATT Principles

In their submissions, EC, Hong Kong and Korea have pointed out that in Article VIII Members simply 'recognize' but undertake no explicit obligations with respect to the need to reduce the number and diversity of the fees and charges and the need to minimize the incidence and complexity of import and export formalities. Suggestions have been made by these countries on making Article VIII more operational by imposing GATT principles of non-discrimination, transparency and predictability in the design, application and effect of export and import procedures and formalities on all Members. Other important GATT principles to be considered are the principle like least trade restrictiveness and review whereby Members should ensure that import and export

formalities and documentation requirements are not more trade restrictive than necessary to meet a legitimate objective. In this context the EC has suggested that Members should specify an illustrative list of such requirements. Review is a concept closely linked to the principle of necessity /least trade restricetiveneess which suggests that Members should not maintain measures if the circumstance or the objective giving rise to its adoption no longer exists.

III.2.1.3 Provisions to Reduce Documentation Requirements

To reduce documentation requirements, suggestions made by the EC included, using a single administrative data set for export and import, introduction of a single one-time presentation to one agency and the adoption of a uniform domestic customs code.

The EC and Korea have suggested the use of risk assessment methods based on international standards and practices and the introduction of a system of authorised traders. Such systems would grant to compliant traders with simplified or other premium procedures for their import and export activities. The EC, Hong Kong, Japan and Korea suggest automation of customs and other agency procedures for simplifying export and import. This is discussed again in the sections on use of international standards and the relevance of the revised Kyoto Convention.

III.2.1.4 Standard Processing Times

The EC has suggested that Members should establish, notify and within reasonable targets, progressively reduce standard processing times should be published and then efforts should be made to reduce them progressively.

III.2.1.5 Use of International Standards

Perhaps the most important suggestion by the EC, Hong Kong, and Japan is the use of agreed international standards by Members for (a) simplifying and reducing documentation and data requirements and (b) streamlining import and export procedures.

This would in turn improve transparency and predictability, and lower costs for traders. The standards and instruments suggested are those developed by the WCO such as the revised Kyoto Convention as well as other WCO initiatives and instruments provided by UNCTAD, the UN regional economic commissions, the IMO, and ICAO.

The EC suggests that Members should base their import and export procedures on agreed international standards and instruments, except where such international standards would be an ineffective or inappropriate means to fulfill the legitimate objectives sought." Hong Kong has stated that Members should be required to "adopt formalities and documentation requirements with reference to international standards, or follow guidelines, and recommendations in their import and export formalities and requirements where they exist and as appropriate." Japan has stated that "adoption of internationally accepted standards and instruments, if any, as a basis for setting and implementing trade procedures" would contribute to simplifying trade procedures.

Parallels can be drawn from the TBT and SPS Agreements. However it is important to point out that these two Agreements require a higher level of obligation than is being proposed under Article VIII. This is reflected in the usage of the terms 'shall' in the TBT Agreement and the SPS Agreement and the usage of the term 'should' in the proposals. Article 2.4 of the TBT Agreement states that Members 'shall' use international standards as a basis for their technical regulations. Article 3.1 of the Agreement on SPS Measures also requires that Members 'shall' base their SPS Measures on international standards. It is also important to point out that in the SPS Agreement Article 3.1 lays down that a country may introduce or maintain a higher level of SPS protection than that achieved by an international standard if there is scientific justification or when a country determines that a higher level of protection would be appropriate.

III.2.1.6 Relevance of Revised Kyoto Convention to Article VIII

The WCO in its submission G/C/W/407 clarifies, how the requirements of Article VIII of GATT 1994, on fees and charges and procedures and formalities for importation

and exportation and penalties for minor breaches of Customs requirements, are dealt with in the Revised Kyoto Convention and other WCO instruments. The issue of fees and charges being limited to the approximate cost of service rendered has not been specifically addressed in either the Revised Kyoto Convention or other WCO instruments as no single Standard could be agreed on this issue. The requirements of Article VIII:I (c)[12] are addressed through principles laid out in the General Annex. Standards are laid out for simplification of procedures at - common border crossings, for goods declaration and supporting documents, for release of goods, for authorized persons, and for co-ordination of customs inspections with other competent authorities.[13] The Revised Kyoto Convention has recognized the importance of the use of risk management techniques by setting out the Standards for application of Risk Management, which comprises of a series of technical processes intended to identify and quantify individual risks. [14] The system uses information in its database to determine the level of risk. Thus risk consignments are identified, while cargo that belongs to complaint traders is allowed with minimum or no inspection. The Convention also recognizes the use of information technology and sets standards for application of information and communication technology in Customs.[15] The Convention specifies that information technology should be used where it is cost effective and efficient for the Customs and for trade. Further it specifies that Members should use relevant internationally accepted standards. The Convention also contains the legal provisions relating to security.[16] Most notable of the other WCO initiatives includes the development of the WCO Customs Data model, which will establish a standard, international harmonized data set that will meet governments' requirements for international trade. This model will also be used to develop the concept of a Single Window.

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[12] See Annex

[13] General Annex, Chapter 3.

[14] General Annex, Chapter 6 accompanied by extensive implementation Guidelines.

[15] General Annex, Chapter 7 accompanied by extensive implementation Guidelines.

[16] General Annex , Chapter 5

The Executive Summary of Chapter 6 in the General Annex on Guidelines on Customs captures the essence of the Kyoto Convention. "The Guidelines contained in the Chapters in the General Annexe contain a comprehensive overview of best practices which a modern Customs administration's control programme **should** address. The application of these Guidelines is highly recommended to achieve the simplification and effectiveness envisaged by the Kyoto Convention." ….. "Risk management is the key element in achieving this objective and should therefore be integral to the Control programme of a modern Customs administration". …… "Customs administration **should** make extensive use of information technology and electronic commerce, particularly in their clearance procedures. This is critical for effective and efficient control as well as trade facilitation."

III.2.1.7 Relevance of TBT Agreement, SPS Agreement and IL Agreement

Most of the suggestions made on improvements in Article VIII emanate from the existing WTO Agreements like Technical Barriers to Trade, the Agreement on Sanitary and Phytosanitary Measures and the Agreement on Import Licensing Procedures. In fact the EC and Hong Kong have suggested that it is important to consider the applicability of these agreements to import and export documentation requirements. For instance in the TBT Agreement Article 2.1 refers to non-discrimination, Article 2.2 refers to least trade restrictiveness, Article 2.3 requires review of procedures and Article 2.4 requires Members to use international standards as a basis for their technical regulations.

III.2.2 Current Status in India

Indian exports and import procedures continue to be quite cumbersome. In order to export, an exporter needs to obtain 258 signatures, make 118 copies of the required information, keypunching of which take 22 hours.[17] Transaction costs related to imports are equally high. Even though there has been a reduction in the number of tariff lines since the onset of the reform process, there continues to be a multiplicity of tariff rates leading

[17] Roy (2003)

to ambiguities about classification and hence valuation.[18] Further, on the export front, the multiplicity of export promotion schemes leads to additional procedural requirements. Also, there is duplication of work between the Customs and the Ministry of Commerce, which needs to be addressed. The Kelkar Committee has pointed out sources of such transaction costs and has also suggested remedial measures.

III.2.2.1 Levy of Fees and Charges

Regarding fees and charges the main proposal, which is actually no different from what is contained in the original GATT text, requires members to levy fees and charges in connection with importation and exportation on the basis of cost of service provided and not on an *advalorem* basis. In India, while some fees and charges appear to be nominal, for instance, a fee of Rs. 1000 is charged in the case of application for an importer-exporter code number, in other cases, such as, the case of applications for an import license, the amount of fees is based on the c.i..f. value of goods. For instance, for a c.i.f value of greater than Rs. 50,000 the fee charged is Rs. 2 per thousand subject to a minimum of Rs. 200 and a maximum of Rs. 1,50,000.[19] This also raises the issue of what a 'reasonable' fee would be. As this practice is clearly a violation of the existing GATT Article VIII, it is important to correct this anomaly.

III.2.2.2 Injecting GATT Principles

The proposals regarding injecting GATT principles to make Article VIII more operational are very valid. India is already following such principles in the context of the TBT Agreement, the SPS Agreement and the IL Agreement. India should have no objections to extending the same level of commitment to all trade related activities.

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[18] See Mukhopadhya (2002)

[19] Ministry of Commerce (2002)

III.2.2.3 Provisions to Reduce Documentation Requirements

At present India does not have a single administrative data set for export and import, or a single one-time presentation to one agency. Perhaps the most significant step that has been taken is on the harmonisation of the customs code. Since February, 2003, classification codes at the eight digit level used by the Central Board of Excise and Customs (for purposes of tariff), the Directorate General of Foreign Trade (for purposes of determining importability/exportability) and DGCI&S (for statistical purposes) have been unified to evolve a Combined Nomenclature based on the HS classification.

III.2.2.4 Standard Processing Times

Standard processing times are laid out by the CBEC and the DGFT. The CBEC lays out standard processing times in its Citizen's Charter, which is a declaration of the CBEC's mission, values and standards and commitment to achieve excellence in the formulation and implementation of policies and procedures for the benefit of trade and industry. Similarly the DGFT lays out in its Exim Policy, a time schedule to be followed to dispose of the applications regarding- Import-Export Code number, advance license etc. However, such standards are only an intent. It may be kept in mind that India has several customs stations and the level of infrastructure varies considerably between them. Consequently, uniform standard processing times for all customs stations is not very meaningful.

III.2.2.5 Use of International Standards

To simplify and reduce procedures, two notable changes have been made in the automation of customs through the use of Electronic Data Interchange (EDI) and the use of risk assessment methods. The EDI became operational in 1996. Since then, the EDI has been introduced in 23 locations, but only in 11 of them EDI declarations are more then 80% of the total declarations (2002-03). There continues to be a large proportion of manual declarations. In some stations only a part of the data has been computerized,

leaving ample room for unscrupulous parties to take advantage of the loopholes.[20] Another problem with the EDI is that at present it is operative only at the Customs. A major drawback with the current EDI system is that it has a distributed architecture and is modular in nature. Thus each EDI location is a standalone structure. Each time the EDI facility has to be extended to a new customs location, additional costs have to be incurred. The Customs are gradually moving to a centralized architecture through the implementation of the EDI Gateway. The ongoing Customs Gateway Project is expected to facilitate connectivity between EDI centres and with trading partners. The Gateway will also enable remote filing of customs declarations. The project is expected to be completed by end 2005 when it would connect all customs locations with all trading partners. It will also make it possible for traders to make Regulatory agencies such as DGFT and RBI will also be able to exchange online information with major Customs houses.

Indian Custom authorities are gradually progressing towards the usage of modern risk assessment methods. A codified risk management module has been tested recently in 2003 for import consignments at ICD Tughlakabad. The computerized module assesses import consignments through 21 risk factors and analyses 11,640 items, identifying sensitive consignments and indicating the rest for immediate release. This model will be gradually applied to all Customs Houses. The use of risk management techniques through a Trust Based System has been strongly recommended by the Kelkar Committee.

III.2.2.6 Relevance of International Standards:

The current situation reveals that the Indian Customs is committed to modernization of customs based on international standards. While several changes being carried out are based on the revised Kyoto Convention, only an exact mapping of the existing procedures with those recommended in the revised Kyoto Convention would reveal the extent of deviation, if any, from those mentioned in the Convention.

[20] Sengupta and Bhagabati (2003)

III.3 Article V: Freedom of Transit

Article V of the GATT sets out the basic requirement of freedom of transit through the most convenient route and further requires that no discrimination be made on the basis of flag of vessel, place of origin, departure, entry, exit or destination. It also calls on parties not to discriminate on the basis of ownership of goods or means of transport. Further, Article V stipulates the obligation not to impose any unnecessary delays or restrictions on transit. It also requires Members to impose reasonable fees and charges that would be non-discriminatory and limited to the cost of service provided.

III.3.1 Analysis of Proposals

Proposals on Article V were made by three countries namely Canada G/C/W/424), European Communities (G/C/W/422) and Korea (G/C/W/423). The proposals relate to simplification of procedures for transit, exceptions to the principle of non-discrimination for sensitive items, regional trade arrangements and use of international standards.

III.3.1.1 Simplification of Procedures for Transit

Members have made suggestions on facilitating transit through simplification of documentary requirements and procedures required for transit. As simplification of procedures for transit purposes bears a close resemblance to provisions of Article VIII, the EC has pointed out that submissions made by Members to the Council on Article VIII automatically apply to transit. In this context, EC, Korea and Canada have suggested that specific guidelines are needed on how unnecessary procedures can be reduced/simplified. In addition, EC and Korea have stated that requirements and procedures for transit should be less onerous than those for importation. Other suggestions by Korea such as introduction of mechanisms that would institutionalize cooperation among the Member countries and harmonizing transit policies between members and sharing of information among custom authorities could further facilitate this.

III.3.1.2 Exceptions to the Principle of Non-discrimination for Sensitive Items and Goods Requiring Trans-shipment

The EC has pointed out that it may not always be possible to apply the principle of non-discrimination to all types of consignments. Certain goods may be subject to special provisions. However, Members should consider the publication of the list of such 'sensitive items'. Similarly Korea has pointed out that in cases where there is a possibility of illegal release of transit goods (as in the case of land-locked countries), more sophisticated risk management techniques may be required. Korea has suggested that goods in transit that require trans-shipment may need additional inspection (in relation to those that do not require trans-shipment) to prevent the smuggling of goods in transit into the transit country.

III.3.1.3 Regional Transit Arrangements

The EC has pointed out that the existing Article V requires Members to operate national transit schemes but does not recognize the issue of transit at a regional level. The EC has pointed out that the solution to transit can be found through regional-cooperation as can be witnessed in some of the existing international and regional transit instruments, such as, the TIR Convention, the European Convention on common transit; the ASEAN Framework agreement on the facilitation of goods in Transit and UN instruments relating to transit. Thus, Members could consider the establishment of regional transit regimes within the framework of Article V.

III.3.1.4 Use of International Standards

EC and Canada have suggested the use of international standards for transit. Canada has suggested that Members could consider the possibility of accession to various instruments relating to transit such as The Customs Convention on the International Transport of Goods under cover of TIR Carnets (TIR Convention), Geneva, 14 November 1975; and The Customs Convention on the ATA Carnet for the Temporary Admission of Goods (ATA Convention), Brussels, 6 December 1961.The Convention on

Temporary Admission (done at Istanbul, 26 June 1990) (as per Annex A as it relates to ATA Carnets).

The TIR Carnet is a road transport document which allows containerized and in some cases bulk cargo to move through simplified and harmonized administrative formalities. The ATA Carnet is designed to facilitate the importation, irrespective of the means of transport, of goods, which are granted temporary duty-free admission (including transit, importation for home use and temporary admission).

The TIR Carnet protocol has four basic requirements (i) goods should travel in secure vehicles or containers; (ii)duties and taxes "at risk" during the journey should be covered by an internationally valid guarantee; (iii) goods should be accompanied by an internationally accepted carnet taken into use in the country of departure serving as a control document in the countries of departure, transit, and destination; and (iv) Customs control measures taken in the country of departure should be accepted by the countries of transit and destination.

The TIR Carnets simplifies transit considerably. The TIR Carnets are issued by the International Road Transport Union (IRU) of Geneva to associations in participating countries who act as guarantors for the duties and taxes “at risk” during the journey. Each association issues TIR Carnets to approved national carriers who meet the requirements set by the IRU, for instance, every road vehicle as regards to its construction, equipment and customs sealing device have to conform to the specifications laid out in the Convention. The association also notifies the IRU with names of approved TIR carriers and provides a TIR plate, which is placed on each authorized vehicle. Because the TIR Carnet provides Customs with a means to collect charges not paid by the consignee, TIR Carnet cargo is subject to fewer delays.

III.3.1.5 Relevance of the Revised Kyoto Convention

The WCO in its submission G/C/W/426 has pointed out that the principles of the Customs Transit Procedures are covered in detail in Specific Annex E, Chapter EI of the Revised Kyoto Convention and provide for a safe, secure and standard transit procedure.

The WCO encourages its Members to accede to international Conventions relating to transit such as the TIR Convention and instruments provided by the WCO on Customs transit that facilitate transit procedures for temporary admission of goods. They suggest further that if Members are not in a position to accede to these Conventions, while drawing up multilateral/bilateral agreements they should take into account Customs transit, standards and recommended practices mentioned in the Revised Kyoto Convention.

III.3.2 Current Status in India

In the Indian context, India requires transit facilities from Bangladesh for transporting goods to the North Eastern region while Nepal, being a land-locked country requires transit facilities from India for trading with the rest of the world. It is important to note that goods to the northeastern region are transported along the circuitous route around Bangladesh. Movement of cargo through Bangladesh is likely to reduce the distance significantly. Also, there are considerable delays at the cross-border processing at the two borders. In fact, it has been estimated that such costs would offset any potential benefits from the reduced distance.[21] If border-crossing procedures are significantly reduced and if transit access for Indian vehicles is allowed, (which under the current transit arrangement is not allowed) there will be significant savings in time and cost.

India has preferred to deal with transit issues at a bilateral level. Not much headway has been made on this issue with Bangladesh. However, with Nepal the issue of

[21] Subramanian and Arnold (2001)

transit has always been a key feature of the bilateral protocols and Agreements. The main features of the Indo-Nepal transit treaty are listed below:

III.3.2.1 Simplification of Procedures

Recognizing the need for simplification of transit procedures, the 'Indo-Nepal Treaties of Trade, of Transit, and Agreement for Co-operation to Control Unauthorised Trade' was revised in 1996 in which new procedures were to be applied in the clearance of Nepalese containerised traffic in transit to and from Nepal. India should accept the suggestion of simplified procedures for transit As India is already adopting measures under Article VIII to simplify procedures for trade, it could accept the proposal to adopt similar measures for transit purposes.

III.3.2.2 Exceptions to the Principle of Non-discrimination for Sensitive Items and Goods Requiring Trans-shipment

While India allows Nepal transit facilities, it has faced the problem of leakage of third country goods into its markets. This issue has come up time and again with the Indian authorities. In fact the issue of unauthorized trade has been addressed in the bilateral agreements between India and Nepal signed since 1961. The Indian customs maintain a list of sensitive items so that such goods are under closer scrutiny during transit from Indian soils. However, such a list, though circulated within Customs, is not made publicly available. Similarly, goods requiring trans-shipment require additional inspection to prevent smuggling of goods. A large proportion of goods in transit from India to Nepal, first arrive by sea to the Indian port of Calcutta and are then trans-shipped by road to Nepal. India could accept the proposal that goods in transit requiring trans-shipment may need additional inspection.

III.3.2.3 Regional Transit Arrangements

India plays a dual role in transit, both as a provider of transit facilities to Nepal and as a seeker of transit facilities from Bangladesh. Currently India has a bilateral treaty

on transit with Nepal. It is in India's interest to enter into a similar bilateral transit arrangement with Bangladesh so that it can access the remote areas of the Northeastern region. However, Bangladesh has been reluctant to offer transit facilities to India as it fears leakage of Indian goods into Bangladesh. As the proposals on transit address the issue of leakage of goods by allowing Members to implement additional inspection on such goods and requesting Members to publish a list of sensitive items, India and Bangladesh could take into account the suggested measures in framing a bilateral treaty on transit.

III.3.2.4 Use of International Standards

The use of international standards such as the ATA Carnets or the TIR Carnets, is absent in the South Asian countries. India, Bangladesh and Nepal do not accede to the TIR Convention or the ATA Convention India uses the ATA Carnet, for a very limited purpose, mostly for duty free temporary admission of imports. The requirements of the TIR Convention (in terms of specifications for vehicles and procedures) would be extremely difficult to adhere to for countries like India, Nepal and Bangladesh. Also, it is difficult to envisage at present the possibility of the IRU recognizing an association in a Member country that would accept the obligations and conditions set out by the IRU. At this stage these countries would be unable to meet the rigorous requirements of the Convention as it would require enormous resources and a fairly large timespan. India could however accept these international standards on a 'best endeavour basis'.

IV Conclusion and Recommendations

There is little question that pursuing trade facilitation by itself is something that most Members find advantageous. There is no doubt that any country that is unable to adopt effective and appropriate trade facilitation measures would be uncompetitive in the global trading environment on account of high transaction costs.

While several countries have reservations about beginning negotiations on a multilateral agreement on trade facilitation within the WTO, India should agree to having

the negotiations. If trade facilitation is pursued in the context of the WTO, then India needs to focus on issues relating to the time schedule, details and level of obligation and coverage .

Analysing the key proposals made in the context of Articles X, VIII and V by Members this paper examines the current status in India and suggests which of the proposed measures India could accept. (See Table 1 for proposals and recommendations for India).

A close examination of the proposals made reveals that India is autonomously pursuing most of the recommendations made as part of its reform agenda.

In the context of Article X, the proposal on establishment of an enquiry point could be accepted by India as this would enable interested parties in other member countries to get relevant information and documents related to trading. In principle, India has accepted the proposal on Advance Ruling. However, in its present form, the Authority on Advance Ruling has limited scope and offers this facility only to joint ventures and wholly owned subsidiaries in India. India could consider extending the facility of Advance Ruling to solely Indian owned companies. India could accept the proposal on disseminating trade-related information through electronic media. The electronic media is already being used widely (by both government and private agencies) for dissemination of all trade-related information. The suggestion to have a consultative mechanism between trade and government, could be accepted as well, as such a process would take into account the problems faced by various stakeholders. This suggestion has already been made by the Kelkar Committee. The main suggestion regarding Appeals requires that there should be a legal right of appeal against customs and other agency rulings and decisions, initially to a higher authority within the same agency or another body and subsequently to a separate judicial body. While the Customs allow India should accept the suggestions made on Appeals. There is a multi-layered Appeal procedure within Customs where an Appeal can be taken to the level of the Supreme Court. Regarding an appeal made against the decision of the DGFT, the Appeal procedure laid

down in the Foreign Trade Development and Regulation Act 1992, allows the Central Government to make the final decision against an appeal. An appeal procedure similar to that in Customs could be followed by the DGFT.

In the context of Article VIII it is quite clear that the existing provisions do not allow fees and charges related to exports and imports to be charges on an *ad valorem* basis. India's current practice of fees and charges on an *ad valorem* basis is clearly not compatible with the current provisions of Article VIII. As the proposal envisages a codification of existing interpretations, India should accept it. Compliance on this count should not be viewed as loss in government revenue as Article VIII clearly states that fees and charges should not be levied for fiscal purposes.

India should accept the proposals on making Article VIII more operational by injecting GATT principles such as non-discrimination, transparency and predictability in the design, application and effect of import and export procedures. Suggestions on the application of the principle of least trade restrictiveness to import and export procedures should also be accepted by India. India is already following such principles in the context of the TBT and SPS Agreement, and should accept the proposal to extend the same level of Commitment to export and import procedures as well. However, accepting the suggestion of the Principle of least trade restrictiveeness would involve an effort in the area of identifying unnecessary procedures. Unnecessary requirements include- requesting information that is already available to the authorities, requesting for the same information more than once, or requesting documents specifically prepared for the administrative process when the same information can be found in commercial documents.[22]

The suggestion of a single, one-time presentation to one agency for clearance of goods, using a single administrative data set for export and import and the adoption of a uniform domestic custom code are important suggestions for reducing transaction costs of traders. So far India has made an attempt to adopt a uniform domestic customs code.

[22] OECD (2002b)

Adopting the other measures would involve connectivity between various agencies involved in the trading process. India is already in the process of connecting various agencies. To adopt a single data set, the current procedures would have to be changed substantially. India should accept the proposals suggesting single one time presentation to a single agency and a single administrative data set on a 'best endeavour basis', as they are important components of modern customs procedures.

The suggestions on the use of risk assessment methods and automation are also key elements of modern customs practices. India has recently introduced the use of risk assessment in one Customs location in Delhi. This module will be gradually replicated to other customs locations. India introduced automation (EDI) as early as 1995, and considerable changes have taken place since then. The ongoing Customs Gateway Project, on completion, will enable connectivity between all customs locations and will link customs with all its partners such as banks, licensing authorities, export promotion agencies, freight forwarders, customs brokers, and the directory general of commercial intelligence and statistics. While significant progress has been made in computer connectivity, much ground still remains to be covered. However, given the economic importance of such procedures in reducing costs and delays India should continue with these practices. Since adoption of risk assessment methods and automation involves enormous resources and an adequate time period, India could accept these proposals on a 'best endeavour basis'.

An important suggestion relates to standard processing times. EC has suggested that standard processing times should be established, notified and progressively reduced. The standard practice of measuring transaction costs of trading is in terms of the time taken for release of goods. The Revised Kyoto Convention does set standards for quick release of goods in minimum time but at no stage does it require Members to establish and notify the time limits. Several countries are however serious about establishing standard processing times. For instance the U.K. Customs and Excise Charter provides that the expected procedural times for cargo release is within 4 hours for electronically submitted declarations; within 12 working hours for manually submitted declarations;

and within 24 hours for declarations selected for documentation and physical examination. The Australian Customs Service Standards provide that possible physical examination for air cargo should be scheduled within one working day and for sea cargo within two working days; or that refund applications should be processed within 30 calendar days of receipt of all necessary documentation.[23] In India information regarding timing of release of goods is mentioned in the Citizen's Charter but it is not put out in a public notice. Time limits specified in the Charter are a statement of intent or endeavor of the Customs authorities and are hence of limited use to traders. India should continue to strive for better standards by reducing the time limits for release of goods so that they are comparable with international standards. Achieving such an objective would require resources and time India should accept the proposal on a 'best endeavour basis'.

In the context of Article V, India allows transit facilities to Nepal under the bilateral treaty with Nepal. India has simplified transit procedures, however, India and its neighbouring countries face an acute problem of weak infrastructure at the border areas, which require enormous resources. India should accept the proposal of simplifying procedures further on a 'best endeavour basis'. In view of the large amount of leakage of goods in transit, India should accept the proposal that a *carte-blanche* freedom to all consignments is not always possible or desirable and in this context India could consider the publication of a list of 'sensitive items'. India could also accept the proposal that additional inspection may be required in case of goods requiring trans-shipment. Adopting international standards such as the TIR Convention would impose an enormous financial burden not only on India but on the other South Asian countries as well. India could accept the proposal of following international standards for transit on a best endeavour basis.

[23] See OECD (2002)

Table 1

Summary of Proposals and Recommendations: Article X

Proposal	Recommendation
1. Advance Rulings	Scope of existing regime limited/Accept
2. Use of Electronic media	In existence/Accept
3. Enquiry points	Accept
4. Consultative mechanism	Already recommended/Accept
5. Appeal	Existing in Customs/Accept for DGFT

Summary of Proposals and Recommendations: Article VIII

Proposal	Recommendation
1. Levy of fees and charges	Proposal envisages codification of existing interpretation/Accept
2. Injecting GATT Principles	-
Non-discrimination, transparency and predictability	Accept
Unnecessary procedures	Accept
3. Provisions to reduce documentation procedures	-
Single administrative data set	Accept on best endeavour basis
One time presentation to single agency	Accept on best endeavour basis
Adoption of a uniform domestic customs code	Existing
Risk assessment methods	Accept on best endeavour basis
Automation	Accept on best endeavour basis
4. Standard processing times	Accept on best endeavour basis

Summary of Proposals: Article V

Proposal	Comment
Simplification of procedures	Accept on best endeavour basis
Additional inspection for sensitive items	Accept
Additional inspection for goods requiring trans-shipment	Accept
Publication of list of sensitive items	Accept
Regional transit arrangements	In existence with Nepal/ Accept for other countries
International standards	Accept on best endeavour basis

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Text of Article X: Publication and Administration of Trade Regulations

1. Laws, regulations, judicial decisions and administrative rulings of general application, made effective by any contracting party, pertaining to the classification or the valuation of products for customs purposes, or to rates of duty, taxes or other charges, or to requirements, restrictions or prohibitions on imports or exports or on the transfer of payments therefor, or affecting their sale, distribution, transportation, insurance, warehousing, inspection, exhibition, processing, mixing or other use, shall be published promptly in such a manner as to enable governments and traders to become acquainted with them. Agreements affecting international trade policy which are in force between the government or a governmental agency of any contracting party and the government or governmental agency of any other contracting party shall also be published. The provisions of this paragraph shall not require any contracting party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

2. No measure of general application taken by any contracting party effecting an advance in a rate of duty or other charge on imports under an established and uniform practice, or imposing a new or more burdensome requirement, restriction or prohibition on imports, or on the transfer of payments therefor, shall be enforced before such measure has been officially published.

3. (a) Each contracting party shall administer in a uniform, impartial and reasonable manner all its laws, regulations, decisions and rulings of the kind described in paragraph 1 of this Article.

   (b) Each contracting party shall maintain, or institute as soon as practicable, judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review and correction of administrative action relating to customs matters. Such tribunals or procedures shall be independent of the agencies entrusted with administrative enforcement and their decisions shall be implemented by, and shall govern the practice of, such agencies unless an appeal is lodged with a court or tribunal of superior jurisdiction within the time prescribed for appeals to be lodged by importers; Provided that the central administration of such agency may take steps to obtain a review of the matter in another proceeding if there is good cause to believe that the decision is inconsistent with established principles of law or the actual facts.

   (c) The provisions of sub-paragraph (b) of this paragraph shall not require the elimination or substitution of procedures in force in the territory of a contracting party on the date of this Agreement which in fact provide for an objective and impartial review of administrative action even though such procedures are not fully or formally independent of the agencies entrusted with administrative enforcement. Any contracting party employing such procedures shall, upon request, furnish the CONTRACTING PARTIES with full information thereon in order that they may determine whether such procedures conform to the requirements of this sub-paragraph.

Text of Article VIII: Fees and Formalities connected with Importation and Exportation

1. (a) All fees and charges of whatever character (other than import and export duties and other than taxes within the purview of Article III) imposed by contracting parties on or in connection with importation or exportation shall be limited in amount to the approximate cost of services rendered and shall not represent an indirect protection to domestic products or a taxation of imports or exports for fiscal purposes.

   (b) The contracting parties recognize the need for reducing the number and diversity of fees and charges referred to in sub-paragraph (a).

   (c) The contracting parties also recognize the need for minimizing the incidence and complexity of import and export formalities and for decreasing and simplifying import and export documentation requirements.*

2. A contracting party shall, upon request by another contracting party or by the CONTRACTING PARTIES, review the operation of its laws and regulations in the light of the provisions of this Article.

3. No contracting party shall impose substantial penalties for minor breaches of customs regulations or procedural requirements. In particular, no penalty in respect of any omission or mistake in customs documentation which is easily rectifiable and obviously made without fraudulent intent or gross negligence shall be greater than necessary to serve merely as a warning.

4. The provisions of this Article shall extend to fees, charges, formalities and requirements imposed by governmental authorities in connection with importation and exportation, including those relating to:

   (a) consular transactions, such as consular invoices and certificates;
   (b) quantitative restrictions;
   (c) licensing;
   (d) exchange control;
   (e) statistical services;
   (f) documents, documentation and certification;
   (g) analysis and inspection; and
   (h) quarantine, sanitation and fumigation.

Text of Article V: Freedom of Transit

1. Goods (including baggage), and also vessels and other means of transport, shall be deemed to be in transit across the territory of a contracting party when the passage across such territory, with or without trans-shipment, warehousing, breaking bulk, or change in the mode of transport, is only a portion of a complete journey beginning and terminating beyond the frontier of the contracting party across whose territory the traffic passes. Traffic of this nature is termed in this article "traffic in transit".

2. There shall be freedom of transit through the territory of each contracting party, via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties. No distinction shall be made which is based on the flag of vessels, the place of origin, departure, entry, exit or destination, or on any circumstances relating to the ownership of goods, of vessels or of other means of transport.

3. Any contracting party may require that traffic in transit through its territory be entered at the proper custom house, but, except in cases of failure to comply with applicable customs laws and regulations, such traffic coming from or going to the territory of other contracting parties shall not be subject to any unnecessary delays or restrictions and shall be exempt from customs duties and from all transit duties or other charges imposed in respect of transit, except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.

4. All charges and regulations imposed by contracting parties on traffic in transit to or from the territories of other contracting parties shall be reasonable, having regard to the conditions of the traffic.

5. With respect to all charges, regulations and formalities in connection with transit, each contracting party shall accord to traffic in transit to or from the territory of any other contracting party treatment no less favourable than the treatment accorded to traffic in transit to or from any third country.*

6. Each contracting party shall accord to products which have been in transit through the territory of any other contracting party treatment no less favourable than that which would have been accorded to such products had they been transported from their place of origin to their destination without going through the territory of such other contracting party. Any contracting party shall, however, be free to maintain its requirements of direct consignment existing on the date of this Agreement, in respect of any goods in regard to which such direct consignment is a requisite condition of eligibility for entry of the goods at preferential rates of duty or has relation to the contracting party's prescribed method of valuation for duty purposes.

7. The provisions of this Article shall not apply to the operation of aircraft in transit, but shall apply to air transit of goods (including baggage).