

Chapter II

Including landlocked developing countries: Trade facilitation potential of existing Asian transit agreements²⁸

Introduction

Freedom of transit is an issue particularly relevant to the ESCAP region. The region hosts 12 of the world's 31 landlocked developing countries, including four least developed countries (Afghanistan, Bhutan, the Lao People's Democratic Republic and Nepal).²⁹ Due mainly to their lack of direct access to the sea, these countries face higher costs of trade (figure 1), making it more difficult for them to maintain competitiveness in terms of both trade and investment. Freedom of transit is fundamental to the integration of landlocked countries into the international economy and their economic development; enabling them in particular to make the transition from landlocked to "land-linked".³⁰

Recognizing the fact that transit issues are of the utmost importance to many landlocked countries, during their sixty-seventh annual Commission session ESCAP member States endorsed the recommendation that transit facilitation should be addressed as part of an integrated approach to trade facilitation. In ESCAP Resolution 68/3 on "Enabling paperless trade for inclusive and sustainable intraregional trade facilitation", the ESCAP members also mandated the Secretariat to, inter alia, "continue and further strengthen [its] support for capacity-building activities related to trade facilitation [...], including transit facilitation, particularly with regard to least developed and landlocked developing countries [...]".

In line with these mandates, this paper examines how freedom of transit and transit facilitation are addressed in trade and transportation as well as transit specific agreements in the ESCAP region, with a view to identifying good practices and the extent to which existing agreements meet the transit facilitation provisions set out in the final agreed text of the WTO TFA. Section A provides an introduction to the concept of freedom of transit and how it has been addressed through various types of agreements, particularly in preferential trade agreements. An analysis of the trade facilitation potential of selected international transport and transit agreements involving Asian landlocked developing countries is presented in section B, followed by the conclusion and implications in section C.

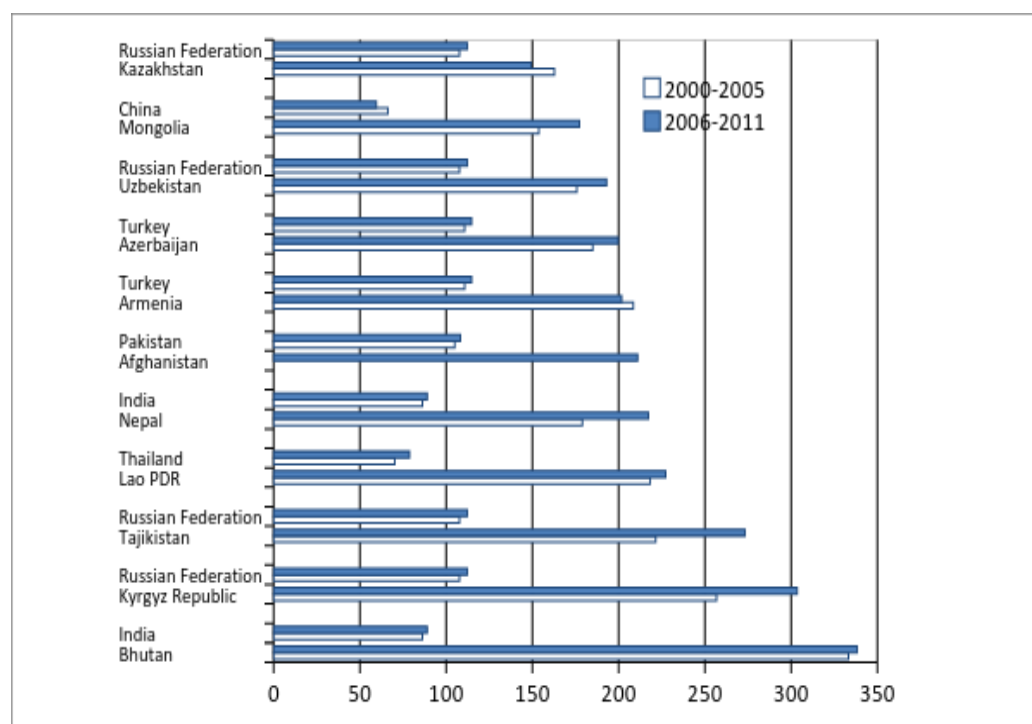
²⁸ This chapter is a shorter and updated version of an ESCAP working paper by Duval and Cousin (2014) available at <http://www.unescap.org/sites/default/files/swp114.pdf>

The original paper featured an analysis of the Draft Consolidated Negotiating Text of the World Trade Organization Trade Facilitation Agreement (WTO TFA) (rev. 17) as of July 2013. This analysis has been updated by A. Saggu in this chapter to reflect the final text of the WTO TFA as of July 2014.

²⁹ See www.unescap.org/media-centre/impact-story/new-vision-landlocked-development-countries

³⁰ Becoming "land-linked" is a development strategy adopted by some landlocked countries and which involves the provision of efficient international transit services through their own territories, thereby enhancing their strategic position and contribution to the development of international trade. See, for example, "Landlocked Developing Countries Series, No. 1: Transit Transport Issues in Landlocked and Transit Developing Countries", United Nations, New York, 2003.

Figure 1. Trade costs (excluding tariffs) of Asian landlocked countries and their main transit countries with the United States



Source: ESCAP-World Bank Trade Cost Database (August 2013 update).

A. Freedom of transit: A key component of trade facilitation

Trade facilitation is a notion of flexible and evolving scope, adaptable to the diversity of situations to which it is applied.³¹ The definition developed by the World Trade Organization (WTO) recognizes freedom of transit – Article V of the General Agreement on Tariffs and Trade (GATT) – as an integral component of trade facilitation, in addition to the disciplines concerning fees and formalities connected with importation and exportation (GATT, Article VIII) and transparency requirements (GATT, Article X).

The definition of transit in GATT (Article V) is limited to so-called through transit, involving at least three countries. Traffic is qualified as being “in transit when the passage across [the] territory [of a State] is only a portion of a complete journey beginning and terminating beyond the frontier” of that State.³² However, this definition, together with the WTO concepts of trade facilitation and freedom of transit, are prone to evolution as WTO seeks to “clarify and improve” related GATT provisions.

³¹ While trade facilitation is understood as broadly being “the simplification, standardization and harmonization of procedures and associated information flows required to move goods from seller to buyer and to make payments” by UN/CEFACT, a narrower definition was developed in the WTO context.

³² The UNCTAD Trust Fund for Trade Facilitation Negotiations, Technical Note 8 – “Freedom of Transit”, Rev2, February 2009, states that: “It should be noted that in the context of Customs transit regimes (see UNCTAD Technical Note on Customs Transit), other parts of a journey are also defined as constituting transit, notably inward transit (from a Customs office of entry to an inland Customs office), outward transit (from the inland Customs office to the Customs office of exit) and interior transit (from one inland Customs office to another in the same country).”

Freedom of transit is currently dealt with under Article 11 of the WTO TFA, and explained in detail in Article 11 of the WTO Agreement on Trade Facilitation Self-Assessment Guide Rev.8. Freedom of transit is a development of the right of the original landlocked countries to access to the sea. Although numerous international Conventions grant freedom of transit – especially for landlocked States – they also protect the rights and “legitimate interests” of the transit country; freedom of transit is thus balanced with national sovereignty. International treaties on transit aim to solve this tension, allowing the transit State to set the conditions under which the other member State’s traffic will be allowed to cross its territory.³³ In this paper, the term “freedom of transit” combines both GATT Article V and WTO TFA Article 11.

B. Transit facilitation: A complex system of legal instruments

Freedom of transit is addressed through a wide range of international legal instruments. These instruments vary in type as well as geographical scope. For example, transit is sometimes covered by international trade agreements, but also often by road transport agreements or even specific transit agreements. In addition, if global legal instruments (such as GATT) provide – usually broad – principles related to transit, these are usually coupled with more specific (sub)regional and bilateral treaties.

Kunaka and others (2013)³⁴ found several reasons that explain this tendency for countries to negotiate and conclude such a diversity of agreements addressing transit. The first is political in nature: formally expressing through one – or more – treaty their will to cooperate and improve their relations makes it easier to implement reform. Others stem from economic considerations and include: (a) needs for setting the conditions under which transit can be performed across respective territories in an equitable manner; (b) detailing bilaterally the implementation of broader commitments, such as the ones contained in multilateral treaties; or (c) sending a positive signal to markets.

This diversity of instruments raises a number of issues, which can have positive or negative impacts in terms of trade facilitation. On the one hand, the ability of countries to negotiate and conclude various bilateral transit-related treaties can constitute a quicker and more flexible way for cooperation than multilateral instruments, due to a smaller number of individual interests to conciliate. Initiation and gradual improvement of varied transit mechanisms on a smaller scale may also facilitate the emergence of best-practice models to be transposed at a multilateral level. Inclusion of transit facilitation provisions, both in trade agreements and in transport agreements may also in principle provide for more broad-based support for implementation of freedom of transit.

On the other hand, there is no guarantee that provisions related to transit are consistent across the different agreements signed by a given country, particularly since the line ministries in charge of negotiating often differ according to the type of agreement being signed. The multiplicity of bilateral instruments also inherently creates a legal environment that is difficult to apprehend and analyse comprehensively. This is particularly true with regard to transit facilitation. Apart from the Vienna Convention Article 80³⁵ – which is only

³³ UNCTAD Trust Fund for Trade Facilitation Negotiations, Technical Note 8: “Freedom of Transit”, Rev2, February 2009.

³⁴ See Kunaka and others, “Quantitative Analysis of Road Transport Agreements (QuARTA)”, World Bank, 2013.

³⁵ Vienna Convention on the Law of the Treaties, 1969, Article 80(1): “Treaties shall, after their entry into force, be transmitted to the Secretariat of the United Nations for registration or filing and recording, as the case may be, and for publication.”

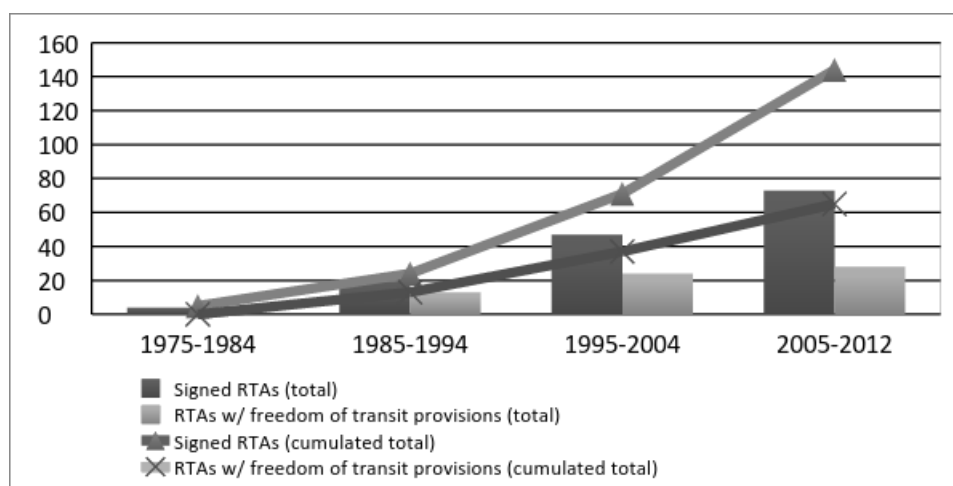
partially implemented – and the WTO transparency mechanism for regional trade agreements (RTAs),³⁶ countries are not committed to publishing their international transit-related treaties. Importantly, bilateral agreements tend to reflect the relative bargaining power of the negotiating partner, leading to transit-related provisions and agreements that provide for differential amounts of freedom of transit and transit facilitation, which may ultimately conflict with multilateral commitments.

C. Transit provisions in preferential trade agreements

Freedom of transit is an important component of the WTO TFA. However, analysis of bilateral and regional trade agreements in the ESCAP region suggests that only a few such agreements include provisions on transit facilitation.³⁷ In a first attempt to understand the extent to which preferential trade agreements (PTAs) entered into by ESCAP countries may facilitate transit, a search of the Asia-Pacific Trade and Investment Agreement Database (APTAD) was undertaken for transit-related provisions in PTAs involving countries of the Asia-Pacific region. International transit was found to be only marginally addressed in PTAs, with just a minority of these agreements covering international transit directly (i.e., by specifying their own rules on transit) or indirectly (i.e., by referring to another agreement, e.g., GATT Article V).

Of 153 agreements, 66 grant freedom of transit for all contracting parties. Among those, 32 refer explicitly to GATT Article V. Although the number of PTAs covering transit has continued to grow in absolute terms, such agreements have become proportionally less prevalent (figure 2).

Figure 2. Relatively fewer PTAs include freedom of transit



In the agreements where it is mentioned, freedom of transit is essentially considered from a broader trade facilitation viewpoint. It is generally granted, but its technical aspects related to implementation are not covered. A detailed review of the 66 agreements with transit-related provisions showed that none of them

³⁶ GATT Article XXIV (7).

³⁷ ESCAP, Asia-Pacific Trade and Investment Report 2011, United Nations, 2011. See also, Duval, "Trade facilitation in regional trade agreements: Recent trends in Asia and the Pacific", ESCAP Trade and Investment Division Working Paper, No. 02/1125, March 2011.

mentioned anything about key underlying transit facilitation measures, such as those related to recognition of customs seals, escort fees or transit guarantees.

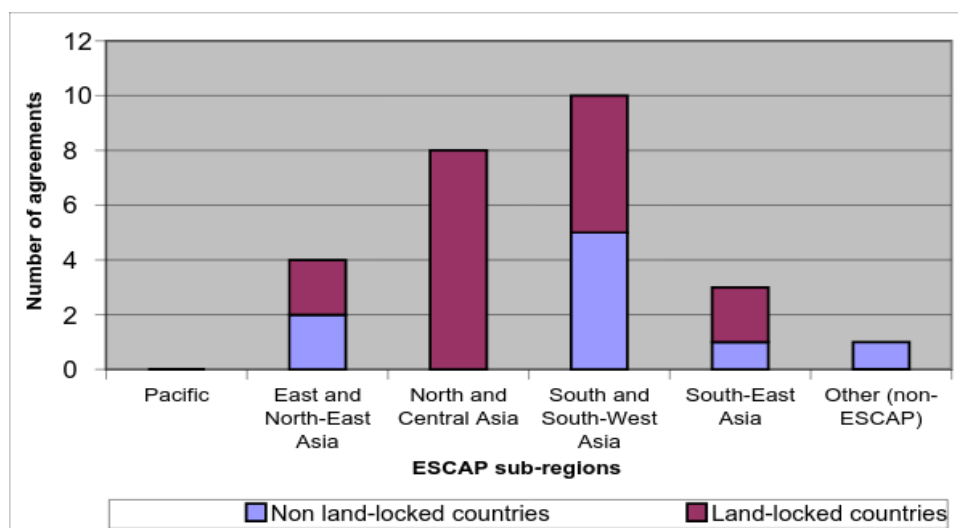
In fact, no PTAs were identified that featured transit provisions which clearly exceeded those of GATT Article V or the WTO TFA. To the extent that they specify that WTO rules prevail in the case of inconsistencies between the PTA and the WTO agreement, as in the case of the Japan-Philippines agreement (Article 11), PTAs covering transit may have, at best, a potential to facilitate transit similar to the WTO TFA.

D. Trade facilitation potential of selected transport and transit agreements

1. Sample and analytical template

The methodology followed in this analysis was inspired by the Quantitative Analysis of Road Transport Agreements (QuARTA) approach taken by Kunaka and others (2013), including the selection of a sample of agreements and development of an analytical template. A sample of 19 international transport and transit agreements was selected with a view to ensuring adequate representation across ESCAP subregions (figure 3).³⁸ Given the importance of international transit for landlocked countries, priority is given to agreements to which at least one landlocked State is a member – all 12 ESCAP landlocked States are represented at least once. The sample is also representative of the diversity in the types of agreements: bilateral and multilateral, “transit” and “road transport” agreements, and “water transit” agreements. Table 1 provides a detailed list of agreements selected.

Figure 3. Distribution of selected transit agreements, by ESCAP subregion



³⁸ Unlike the case of trade agreements, existing databases on transit-related agreements are few and far from exhaustive. The collection by ESCAP Trade and Investment Division of texts of international transport and transit agreements through the United Nations Treaties website and other relevant online sources, and through collaboration with the WTO Secretariat, resulted in an initial database of 116 bilateral agreements involving countries in the ESCAP region; Many more agreements exist but their text could not be located.

Table 1. List of agreements selected for analysis

	Agreement's short name	Agreement's title	ESCAP contracting parties	Date of signature
1	AFAFGIT	ASEAN Framework Agreement on the Facilitation of Goods in Transit	Brunei Darussalam, Indonesia, Lao, Malaysia, Myanmar, Philippines, Singapore, Thailand, Viet Nam	1998
2	Afghanistan - Pakistan	Afghanistan - Pakistan Transit Trade Agreement	Afghanistan, Pakistan	2010
3	Bangladesh - India	Trade Agreement Between the Government of the Republic of Bangladesh and the Government of the Republic of India - Protocol on Inland Water Transit and Trade	Bangladesh, India	
4	Cambodia - Vietnam	Agreement on the transit of goods between the Government of the Kingdom of Cambodia and the Government of the Socialist Republic of Vietnam	Cambodia, Viet Nam	2000
5	ECO TTFA	ECO Transit transport framework agreement	Afghanistan, Turkmenistan, Tajikistan, Pakistan, Iran, Turkey, Kazakhstan, Kyrgyzstan	
6	GMS - CBTA	Agreement between and among the governments of the Lao's People Democratic Republic, the Kingdom of Thailand, and the Socialist Republic of Viet Nam for facilitation of cross-border transport of goods and people	Cambodia, China, Lao, Myanmar, Thailand, Viet Nam	1999
7	India-Bhutan	Agreement on Trade, Commerce and Transit between the Government of the Republic of India and the Royal Government of Bhutan	Bhutan, India	2006
8	Irak - Turkey	Transit Agreement Between the Government of the Republic of Turkey and the Government of the Republic of Irak	Irak, Turkey	1968
9	Iran - Turkey	International Road Transport Agreement Between the Government of the Republic of Turkey and the Government of the Islamic Republic of Iran	Iran, Turkey	1980
10	Iran - Uzbekistan	International Road Transport Agreement Between the Government of the Republic of Uzbekistan and the Government of the Islamic Republic of Iran	Iran, Uzbekistan	
11	Kazakhstan - China	Agreement Between the Government of the Republic of Kazakhstan and the Government of the People's Republic of China on International Road Transport	China, Kazakhstan	1992
12	Kazakhstan - Kyrgyz Republic	Agreement Between the Government of the Republic of Kazakhstan and the Kyrgyz Republic on International Road Transport	Kazakhstan, Kyrgyz Republic	
13	Kazakhstan - Mongolia	Agreement between the Government of the Republic of Kazakhstan and the Government of Mongolia on the International Transport of Passengers and Goods by Road	Kazakhstan, Mongolia	1993
14	Kazakhstan - Tajikistan	Agreement Between the Government of the Republic of Kazakhstan and the Government of the Republic of Tajikistan on International Road Transport	Kazakhstan, Tajikistan	
15	Kazakhstan - Turkmenistan	Agreement between the Government of Kazakhstan and the Government of Turkmenistan on International Road Transport of Passengers and Cargo	Kazakhstan, Turkmenistan	1997
16	Mongolia - Russia	Agreement Between the Government of Mongolia and the Government of the Russian Federation Concerning Access to the Sea and Transit Transport for Mongolia Across the Territory of the Russian Federation	Mongolia, Russia	1992
17	Nepal - Bangladesh	Transit Agreement Between His Majesty's Government of Nepal and the Government of the People's Republic of Bangladesh	Bangladesh, Nepal	1976
18	Nepal - India	Treaty of Transit Between His Majesty's the Government of Nepal and the Government of India	India, Nepal	1999
19	TRACECA	Basic Multilateral Agreement on International Transport for Development of the Europe - the Caucasus - Asia corridor	Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Tajikistan, Turkey, Uzbekistan	1998

Since the analysis in this chapter is aimed at determining the potential trade-facilitating effect of Asian transit agreements by comparing the requirements of the selected agreements with those provided in WTO rules and WTO TFA art. 11, the QuARTA analytical template is both simplified as well as completed with transit-related requirements specified in GATT Article V and the WTO TFA text. The analyse template generally follows the structure provided for in WTO TFA Article 11 as detailed in the WTO Trade Facilitation Agreement Self-Assessment Guide: (a) charges, regulations and formalities; (b) non-discrimination principle; (c) transit procedures and controls; (d) guarantee-related provisions; and (e) cooperation and coordination.³⁹ In each case, the present analysis determines whether the transit agreement provisions are generally consistent with, more restrictive than, or more facilitative than the WTO TFA requirements.

It is worth noting that the final WTO TFA text agreed on at the Bali Ministerial is arguably more facilitating than earlier drafts known as the Draft Consolidated Negotiating Texts (DCNTs). Indeed, significant portions of the DCNT texts were ultimately deleted including, for example, paragraphs 1-2 on “Scope” in Article 11 and two of the three provisions on strengthening non-discrimination (see annex).

E. Findings and discussion

It is important to remember that this chapter provides an analysis of the scope and potential facilitation effect of agreements, and specific provisions within them, from a legal point of view. It does not reflect the actual environment for goods in transit. Indeed, depending on practical constraints faced during implementation of the agreements as well as the willingness and intent of the parties, even identical provisions in two different agreements can, in practice, lead to different levels of facilitation.

The findings, which are summarized in table 2, show the scope of each of the 19 agreements in the sample and the extent to which they feature various transit facilitating provisions. The provisions reviewed are introduced and discussed in turn below, in the light of WTO rules and the WTO TFA text, with a view to identifying good practices.

As mentioned above, WTO rules⁴⁰ require that “contracting parties shall grant freedom of transit through their territories to goods (including baggage) and vessels and other means of transport [...] via the routes most convenient for international transit, for traffic in transit to or from the territory of other contracting parties”. Traffic in transit includes passage across a territory “with or without trans-shipment, warehousing, breaking bulk or change in the mode of transport”.

1. Definitions of “international transit”

Definitions of “international transit” were found in 14 agreements of the sample. The form of transit covered then is systematically through transit, i.e., “when the passage through [the] territory [of a Contracting Party] is only a portion of a complete journey starting and ending beyond the frontiers of a Contracting Party

³⁹ See WTO Document TN/TF/W/143/rev.8 for the WTO TFA text and its explanation. Available at the WTO website as well as at https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=128650,122575,118877,116022,115125,91612,78895,108141,95823,64673&CurrentCatalogueIdIndex=0&FullTextSearch=.

⁴⁰ GATT Article V:1 and V:2.

across whose territory the traffic passes”.⁴¹ However, a certain disparity appears in several regards. Two agreements provide additional geographical restrictions, mainly in relation to the goals and purposes of the agreements: Bangladesh-India limits its definition of transit to the “passage of goods between two places in one country through the territory of the other”⁴² contracting party – thereby excluding transit to a third country. However, Kazakhstan-Turkmenistan⁴³ excludes transit between two places of the same territory, specifying that traffic in transit must reach a third country.

Disparity is also observable in the transport operations encompassed under the definition of transit. Most of the agreements are less extensive than WTO rules, sometimes not evoking such operations (e.g., the Islamic Republic of Iran-Uzbekistan) or only some of the operations (e.g., Afghanistan-Pakistan includes the passage of goods “with or without transshipment, or change in the mode of transport”,⁴⁴ but it does not refer to warehousing nor breaking bulk). However, two of the agreements actually appear to be more extensive than GATT Article V in this regard – “the assembly, disassembly or reassembly of machinery and bulky goods” is included in the definition of transit in the Nepal-Bangladesh and Nepal-India agreements.⁴⁵

2. Freedom of transit

All the agreements selected in this analysis cover transit of goods. Furthermore, a majority go beyond GATT requirements (limited to goods), encompassing passengers in their scope (e.g., Kazakhstan-Kyrgyz Republic: Freedom of transit for passengers⁴⁶). Freedom of transit is also almost always granted to vessels, in accordance with GATT Article V. Yet, additional restrictions appear to be generally imposed in this regard, as many of the agreements require the vessels to be registered in one of the contracting parties to benefit from freedom of transit. A few marginal exceptions to that requirement can be found; e.g., the Kazakhstan-Tajikistan agreement⁴⁷ states that while motor vehicles in transit have to be registered in a contracting party, trailers may be registered in a third country.

3. Modes of transport and trade routes

Although GATT Article V suggests that traffic should be allowed to transit freely via any available route, agreements selected show that traffic in transit can face different conditions depending on the mode of transport or route used. First, most agreements apply to some specific modes of transport only. Eight of the 19 agreements in the sample only cover one mode of transport (i.e., one inland water transit and seven international road transport agreements). As for the other 11 agreements, while all of them deal with road transport, only some of them also provide freedom of transit for rail transport (seven), inland water transport (four), maritime transport (six) and air transport (four).

Second, it appears that agreements covering different modes of transport apply different treatments among them. For example, the Afghanistan-Pakistan agreement (covering road, rail and sea) institutes two

⁴¹ GMS-CBTA Article 3(u).

⁴² Protocol on inland water transit and trade, Préambule.

⁴³ Article 2(8).

⁴⁴ Article 2.

⁴⁵ Article 2.

⁴⁶ Article 1.

⁴⁷ Article 6(2).

different types of permits: (a) “permit A” for goods imported or exported by sea, valid for 15 days; and (b) “permit B” for goods not imported or exported by sea, valid for 30 days.⁴⁸ In this particular case, this differentiated treatment is more favourable to goods transiting by road and rail than to goods transiting by sea.

Third, an obvious limitation to the freedom of transit principle is prescription of designated trade routes and/or of designated exit and entry points. Although such measures may be contradictory to GATT Article V, they were found in a majority of treaties from the sample. Such a limitation could fall under some exceptions listed in the GATT agreement, such as security exceptions (GATT Article XXI). However, these exceptions are specific to certain circumstances and require justifications (e.g., “protection of its essential security interests”). From the sample, it appears that only one agreement specifies the criteria used to determine these routes (Kazakhstan-China – prescribed routes for oversized and overweighted vehicles, and transport of dangerous goods⁴⁹).

4. Charges, regulations and formalities

(a) Exemption from charges and reasonableness principles

WTO law⁵⁰ states that traffic in transit “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.” Moreover, all charges imposed on traffic in transit “shall be reasonable.”

From the sample studied, it appears that the exemption of traffic in transit from customs duties, fees and charges principle is generally granted. Likewise, the reasonableness principle is present in a majority of agreements – although a significant number do not stipulate anything in this regard.

(i) Transit traffic quotas

According to WTO TFA, this reasonableness principle also applies to regulations. “Any regulations or formalities in connection with traffic in transit imposed by a Member shall not be: (a) maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a reasonably available less trade-restrictive manner; and (b) applied in a manner that would constitute a disguised restriction on traffic in transit.”⁵¹

If quotas are not expressly mentioned in this provision, such restrictions to international transport can safely be qualified as a regulation “in connection with traffic in transit”. Consequently, a highly facilitative agreement would ideally prohibit the use of quotas. When such restrictions are considered as being necessary, an international agreement authorising quotas would preferably explicitly limit their use to the circumstances justifying their allowance, in order to prevent unnecessary or disguised restrictions to traffic in transit. Quotas are mentioned in 10 agreements in the sample. Half of them prohibit the use of quotas, allowing transit in an open-ended manner. Among the five other agreements authorizing transport quotas, two different situations can be found:

⁴⁸ Protocol Article 25(2).

⁴⁹ Article 7(1).

⁵⁰ GATT Article V.3 and V.4.

⁵¹ WTO TFA Article 1.

Agreements justifying quotas or restricting the use of quotas to specific situations – two agreements of the sample fall under this category. The Afghanistan-Pakistan agreement stipulates that the parties may agree to set up a quota system for the issuance of transit permits “to respect a fair share of traffic between the two Contracting Parties”. Likewise, Bangladesh and India agreed to respect “as far as practicable” an equitable share of transit cargo on an equal tonnage basis. Agreements allowing quotas without justification or limits – the Islamic Republic of Iran-Turkey agreement, for example, simply states that the carriage of goods in transit “shall be subject to prior permit based on quota”.

(ii) Periodical review

An earlier draft of the WTO TFA (DCNT rev. 17) required States to “periodically review [their] charges on traffic in transit with a view to reducing them”.⁵² This requirement – which rarely features in international transit agreements – was deleted from the final WTO TFA text. The WTO TFA text now requires that Members “promptly publish...information in a non-discriminatory and easily accessible manner [for]...fees and charges imposed by or for governmental agencies on, or in connection with, importation, exportation or transit.” This is a more diluted form of the negotiated explicit requirement prior to finalization.

(iii) Transparency

New rules related to transparency were also required in the draft agreement (DCNT rev. 17), “[e]ach member shall notify the Committee on the objective and duration of all charges, regulations or formalities in connection with traffic in transit on a regular basis”⁵³. This requirement – mentioned in only a minority of agreements – was also removed from the final WTO TFA text.

Obligations related to transparency can vary considerably from one agreement to another. In some instances, they are worded in broad and flexible terms; e.g., the Kazakhstan-Kyrgyz Republic agreement’s⁵⁴ transparency requirement consists of an obligation to exchange information about changes in national laws that affect implementation, without explicitly clarifying the types of regulations covered under this statement. However, some of the other agreements’ obligations are more extensive. For example, the TTFA stipulates that the parties “shall give due advance notice [...] of any additional requirement or modification in prescribed documentation and procedures to be introduced in regard to traffic in transit”.⁵⁵ In principle, this allows those agencies and operators to anticipate upcoming modifications to transit regulations and procedures. In some instances, countries also commit to providing transport operators with additional and operational tools designed to facilitate transit operations. These include, among others, the publication of transit regulations and procedures in English⁵⁶ and the establishment of enquiry points where transporters can acquire information on relevant measures.⁵⁷

(b) Non-discrimination

The principle of non-discrimination is a key aspect of general WTO law. The WTO TFA transposes this principle to traffic in transit, requiring that members not treat goods passing in transit to another member’s territory or final destination any differently to domestic traffic. The requirement is known as ‘Treatment

⁵² Idem.

⁵³ WTO TFA Article 11(4).

⁵⁴ Article 17(1).

⁵⁵ TTFA Article 31.

⁵⁶ GMS-CBTA Article 1.

⁵⁷ Afghanistan-Pakistan Article 29(b).

Preceding Transit' and states that "Each Member shall accord to products which will be in transit through the territory of any other Member treatment no less favourable than that which would be accorded to such products if they were being transported from their place of origin to their destination without going through the territory of such other Member."⁵⁸ It is important to note that DCNT (rev. 17) also contained provisions on non-discrimination and national treatment, however, these were deleted from the final WTO TFA.⁵⁹

The general idea of non-discrimination with regards to traffic in transit was found in a majority of agreements. However, only two of them actually cover the three main aspects of non-discrimination as generally provided by WTO law. The non-discrimination sub-principle is the most usually referred to, with 10 agreements granting it, followed by treatment preceding transit (five agreements) and national treatment (four agreements).

(c) *Transit procedures and controls*

The WTO TFA completes GATT Article V with a new set of requirements designed to simplify transit procedures and controls applied to traffic in transit. Interestingly, these requirements find few, if any, direct equivalence in the treaties from the sample. Thus, the analysis here proposes to group the different requirements under broader topics.

(i) *Preferential facilitation measures for the goods*

Several WTO TFA provisions fall under this category. First, WTO TFA Article 11(6) states that "formalities, documentation requirements and customs controls in connection with traffic in transit shall not be more burdensome than necessary to: (a) identify the goods; and (b) ensure fulfillment of transit requirements."

Second, WTO TFA Article 11(7) requires that goods in transit that have been authorized at the border be exempted from "any customs charges nor unnecessary delays or restrictions until they conclude their transit", such as en-route controls.

Third, WTO TFA Article 11(8) prohibits "technical regulations and conformity assessment procedures ... for goods in transit."

Fourth, WTO TFA Article 11(9) provides an obligation of "advance filing and processing of transit documentation and data prior to the arrival of goods."

A small minority of selected treaties provide such facilitative measures (8 out of 19). Moreover, requirements provided can be very different from one treaty to another, and few match WTO TFA requirements; international treaties deal with these issues whether in a broader way, or through other obligations having a facilitative effect on the transit procedures. Some treaties provide specific provisions that affect procedures and customs controls. These include provisions concerning: (a) simplification of customs formalities; (b) exemption from physical inspections; (c) exemption from en route inspections; and (d) advance clearance of goods. While such provisions individually contribute to the general preferential facilitation measures for goods in transit, they must be cumulated to reach the level of facilitation envisaged in the WTO TFA.

⁵⁸ Definition of transit, Article 11(4), (5) and (6).

⁵⁹ The non-discrimination requirement stated that a Member shall not discriminate against goods in transit or transport means of other Members except as permitted by other WTO agreements and for justified reasons, and the national treatment requirement stated that a Member shall not treat goods that will pass in transit through another Member's territory to the final destination less favourably than if the goods were shipped to the destination without passing through that other Member's territory.

Obligations to exempt traffic in transit from physical customs inspections are the most commonly specified. The Mongolia-Russian Federation agreement is a pertinent illustration: “The cargo and means of transport of the State lacking access to the sea shall as a rule be subject only to external customs inspection unless, for reasons of ordre public and, in particular, public security, morals and health, or with a view to protecting the environment, cultural heritage or industrial, commercial and intellectual property, it is necessary to conduct a full or partial internal inspection.”⁶⁰

Even though the definition of “ordre public” provides a large interpretation margin to the Russian administration, this article broadly covers obligations from both WTO TFA Articles 11(6) and 11(8). External inspection is a particularly non-burdensome customs control – WTO TFA Article 11(6) – and quality controls or controls of compliance with technical standards do not seem to fall under the “reasons of ordre public”, allowing internal inspection (WTO TFA art. 11(8)). However, this obligation does not provide for simplification of formalities and document requirements – WTO TFA Article 11(6)) – or exemption from en-route controls (WTO TFA Article 11(7)).

In the same way, prohibition to imposing formalities, procedures and controls “more burdensome than necessary” is addressed in some of the agreements through the broader obligation of periodical review of formalities mentioned above. For example, the Greater Mekong Subregion Cross-Border Transport Agreement (GMS-CBTA) provides an obligation to “review periodically the need for and usefulness of all documents and procedures required for cross-border traffic”,⁶¹ and to “reduce, to the extent possible, procedures and formalities required for cross-border traffic”.⁶² It is noteworthy that the only one non-binding provision on advance clearance of goods in transit in the sample was found in GMS-CBTA.⁶³ With regard to the other three requirements, they are punctually evoked in several treaties – but none of the agreements studied covers them all.

However, some agreements provide facilitation measures that arguably go beyond the WTO TFA’s requirements, such as Single Window inspection, single-stop inspection or establishment of a Customs Transit System.⁶⁴ In this regard, GMS-CBTA clearly represents a best-practice example as it not only cumulates most of the WTO TFA requirements, but also provides for Single Window inspection and single-stop inspection measures (box 3).

(ii) Immigration formalities

Immigration formalities are not specifically covered by WTO rules. However, some – mainly multilateral – agreements in the sample do include provisions to facilitate delivery of visas to drivers and persons engaged in international transit operations.

The modalities vary from one agreement to another, but some common features include: a multiple-entry visa for a minimum validity period ranging from six months (Afghanistan-Pakistan⁶⁵) to one year (ECO,

⁶⁰ Mongolia-Russian Federation Article 7(2).

⁶¹ Article 35(b)(v).

⁶² Article 35(b)(i).

⁶³ Article 4(d).

⁶⁴ A Customs Transit System is established in the Afghanistan-Pakistan agreement. However, this measure would need to be clarified so as to be able to assess its legal – and facilitative – effects.

⁶⁵ Article 20.

TTFA⁶⁶). Requirements in terms of length of stay can be flexible (GMS-CBTA: “multiple entry/exit visa for a minimum validity period of one year”)⁶⁷ or more specific (ECO-TTFA: “multiple entry and transit visas valid for a period of one year with a right of staying on the territory of each Contracting Party for 15 days in transit for each trip, and for up to five more days in place of loading and discharge”).⁶⁸

(iii) Customs seals

Customs sealing is another aspect not raised in WTO texts but is found in several bilateral or multilateral agreements on transit. Customs-sealing regulations can be grouped under two categories: (a) mutual recognition of customs seals; and (b) unilateral recognition of customs seals. Mutual recognition means that customs authorities of each country will recognize seals opposed by the other country’s customs authorities. This potentially facilitates transit by exempting sealed cargoes from physical inspections and double-checks.

From the sample, mutual recognition of customs seals appears to typically belong to multilateral agreements (ECO-TTFA and GMS-CBTA), but some bilateral treaties also provide such provisions: “If the lead seals affixed by the customs authorities of one of the Contracting Parties [...] are found intact [...], vehicles will be inspected by the customs authorities of the other Contracting Party externally; be sealed off and be permitted to enter and leave the country.” (Iraq-Turkey⁶⁹).

In contrast, unilateral recognition is found exclusively in bilateral agreements. In some instances, one party has exclusivity on the recognition of customs seals (Nepal-Bangladesh⁷⁰). For example, in the Nepal-Bangladesh agreement, the coastal State (Bangladesh) unilaterally grants the right of transit to the State lacking access to the sea (Nepal). Generally, mutual recognition is agreed on when both countries believe they have a clear reciprocal interest in facilitating transit through the other’s territory.

(d) Guarantees and escorts

(i) Guarantees (limitations of)

The WTO TFA adds new requirements to WTO rules regarding transit guarantees; guarantees imposed by customs “shall be limited to ensuring that requirements arising from such traffic in transit are fulfilled”⁷¹, “shall be discharged without delay”⁷² and allow “renewal of guarantees without discharge for subsequent consignments.”⁷³

Few of these requirements were found in the sample, as guarantees are rarely invoked. Only three treaties provide a limit on guarantees. The limits in two of the agreements are expressed in absolute terms (GMS-CBTA – “The amount of security to be provided [...] shall be a maximum of SDR 70,000”;⁷⁴ and Iraq-Turkey – “Enterprises and companies of transport [...] will, as custom guarantee, deposit a sum equivalent to US\$ 12,000 in

⁶⁶ Article 12.

⁶⁷ Annex 5 Article 2(b)(ii).

⁶⁸ Article 12(1).

⁶⁹ Protocol art. 3.

⁷⁰ Protocol art. 3.

⁷¹ WTO TFA Article 11(11).

⁷² WTO TFA Article 11(12).

⁷³ WTO TFA Article 11(13).

⁷⁴ Annex 6 Article 11(c).

local currency, which can be either in cash or in letter of credit”⁷⁵), and in one of the agreements in relative terms (Nepal-India – goods “shall be covered by an insurance company or a bank guarantee, at the option of the importer, for an amount equal to the Indian customs duties on such goods”⁷⁶).

The rules on guarantees also can differ within the same treaty according to the means of transportation. For example, in the Nepal-India agreement, a distinction is made between goods moving by rail and goods moving by road in trucks belonging to listed companies on the one hand, and goods moving by road in trucks of other companies on the other hand⁷⁷. None of the treaties analysed provide a time limit on the discharge of guarantee. In addition, the possibility of renewable guarantees was found only once, in the Afghanistan-Pakistan treaty – “Persons who regularly carry out Customs transit operations shall be entitled to lodge a revolving guarantee, acceptable to customs, valid for at least one year”.⁷⁸

(ii) Escorts (limitation of)

Based on the WTO TFA, future international trade law may also limit escorts: “Each Member may require the use of customs convoys or customs escorts for traffic in transit only in circumstances presenting high risks”.⁷⁹ The issue of escorts is actually addressed only by a small minority of treaties. A few are consistent with the WTO TFA, limiting mandatory escorts on traffic in transit to some exceptional circumstances (Afghanistan-Pakistan – escorts required “in very exceptional cases, where goods are precious and highly susceptible to diversion en route”⁸⁰) or on some specific routes. One treaty, GMS-CBTA,⁸¹ goes further than the WTO TFA by exempting all traffic in transit from mandatory escorts.

(e) Cooperation and coordination

The WTO TFA provides additional facilitative measures through cooperation between the parties. This includes a general obligation to “cooperate and coordinate with one another with a view to enhancing freedom of transit”,⁸² and an incentive to “appoint a national transit coordinator”.⁸³

Cooperation measures are provided by a large number of treaties, mainly through an obligation to exchange information related to transit. In most cases, they consist of a transposition of GATT Article X, with an obligation of transparency on procedures and regulations (ASEAN Framework Agreement – “The Contracting Parties shall ensure transparency of its respective laws, regulations and administrative procedures which affect the facilitation of transit transport of goods under this Agreement. [...] Parties shall deposit with the ASEAN Secretariat [their] laws, regulations and procedures”⁸⁴). However, they also include an obligation to exchange operational information designed to improve enforcement of national transit regulations: “The Customs authorities [shall] communicate to each other, as promptly as possible, (a) information relating to goods declarations, completed and accepted in their territory which are suspected to be false; (b) information to enable

⁷⁵ Exchange of letters I, a.

⁷⁶ Memorandum, Import procedure par. 9(b).

⁷⁷ Memorandum, Import procedure par. 9.

⁷⁸ Afghanistan-Pakistan Protocol 3 Article 9(3) and (4).

⁷⁹ WTO TFA Article 11(15).

⁸⁰ Protocol 3 Article 16(a).

⁸¹ Article 7(a).

⁸² WTO TFA Article 11(16).

⁸³ WTO TFA Article 11(17).

⁸⁴ Article 27(1) and (2).

the authenticity of seals claimed to have been affixed in their territory to be verified”,⁸⁵ and (c) “any serious inaccuracy in a goods declaration or of any other serious irregularities discovered”⁸⁶ (ECO-TTFA).

Obligation to designate a “national transit coordinator”, although rarely invoked, was found in two treaties: the ASEAN Framework Agreement⁸⁷ and GMS-CBTA.⁸⁸ This can be seen as an encouraging sign from a WTO prospective.

Table 2. Scope and provisions of selected Asian transport and transit agreements for trade facilitation

2.A. Scope

	Afghanistan - Pakistan	Nepal - India	Iran - Turkey	GMS - CBTA	ECO TTFA	TRACECA	Nepal - Bangladesh	Iran - Uzbekistan	Iran - Turkey	Mongolia - Russia	Bangladesh - India	Kazakhstan - Kyrgyz Republic	Kazakhstan - Tajikistan	Kazakhstan - Mongolia	AFAGIT	Kazakhstan - Turkmenistan	Cambodia - Vietnam	India-Bhutan	Kazakhstan - China	GATT / DNCT
Explicit allowance of transit for vehicles	X	X	X	X	X	X	X		X	X	X	X	X			X	X	X	X	X
Traffic types																				
Goods	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X	X
Passengers			X	X	X	X			X			X	X	X		X			X	
Transport modes																				
Roads	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X	X	X	X	X
Railways	X	X			X	X	X							X			X			X
Inland waters					X	X				X	X						X			X
Sea	X	X			X	X	X											X		X
Air		X				X	X											X		X
Pipelines						X														X
Prescribed routes																				
No prescribed routes for transit						X		X	X	X		X	X			X		X		X
<i>If routes prescribed, criteria used for route specification are indicated</i>																			X	

(cont'd)

⁸⁵ ECO TTFA Annex 7 Section 2 Article 10.

⁸⁶ ECO TTFA Annex 7 Section 2 Article 11.

⁸⁷ Article 29.

⁸⁸ Article 28.

2.B. Charges, regulations and formalities - Non-discrimination

		Afghanistan - Pakistan	Nepal - India	Iran - Turkey	GMS - CBTA	ECO TTFA	TRACECA	Nepal - Bangladesh	Iran - Uzbekistan	Iran - Turkey	Mongolia - Russia	Bangladesh - India	Kazakhstan - Kyrgyz Republic	Kazakhstan - Tajikistan	Kazakhstan - Mongolia	AFAGIT	Kazakhstan - Turkmenistan	Cambodia - Vietnam	India-Bhutan	Kazakhstan - China	GATT / DNCT
Charges, regulations and formalities	Duties, fees and charges																				
	Exemption from charges	X	X	X	X	X	X	X	X	X	X		X	X	X	X	X		X	X	X
	Reasonableness and cost-related fees principles	X	X	X	X	X	X	X	X		X						X				X
	Quotas																				
	Transit allowed in an open-ended manner, unless WTO-consistent justification	X			X	X			X				X	X							X
	Periodical review																				
	Obligation of periodical review of formalities and/or elimination of superfluous procedures	X			X	X															X
Non-discrimination	Transparency																				
	Obligation to publish/make publicly available transit requirements	X			X											X					X
	Non-discrimination obligations																				
	Non-discriminatory treatment of goods, vehicle and driver	X	X		X	X	X	X		X	X	X				X			X		X
	Most-Favoured Nation principle	X	X		X	X	X	X		X	X					X			X		X
	National treatment principle	X									X	X				X					X
	Treatment preceding transit principle	X	X			X				X						X					X

(cont'd)

2.C. Transit procedures and controls – Guarantees and escorts – Cooperation

		Afghanistan - Pakistan	Nepal - India	Iran - Turkey	GMS - CBTA	ECO TTFA	TRACECA	Nepal - Bangladesh	Iran - Uzbekistan	Iran - Turkey	Mongolia - Russia	Bangladesh - India	Kazakhstan - Kyrgyz Republic	Kazakhstan - Tajikistan	Kazakhstan - Mongolia	AFAGIT	Kazakhstan - Turkmenistan	Cambodia - Vietnam	India-Bhutan	Kazakhstan - China	GATT / DNCT
Cooperation	Transit procedures and controls	Preferential facilitation measures for goods																			
		- Simplification of customs formalities	X		X	X	X														X
		- Exemption from physical routine customs inspection	X	X	X			X			X										X
		- Exemption from en route inspections	X			X	X														X
		- Single-window inspection				X															
		- Single-stop inspection				X															
		- Advance clearance of goods																			X
		- Establishment of a Customs Transit System	X				X														
		Expedition treatment of special cargoes	X			X								X	X	X		X		X	
		Immigration formalities & Customs seals																			
	Guarantees and escorts	Simplified immigration formalities for the drivers	X			X	X	X				X								X	
		Mutual recognition of customs seals	X		X	X	X													X	
		Guarantees & Escorts																			
		Disciplines on the amount of guarantees		X	X	X															X
		Time limit on discharge of guarantee																			X
		Renewal of guarantee allowed	X																		X
		Exemption from customs escorts				X															X
		Conditional allowance of customs escorts	X	X																	X
		Prescribed means of cooperation																			
	Cooperation	Obligation to exchange information on transit	X			X	X						X	X		X					X
		Designation of national transit coordinators				X										X					X

F. Conclusion and implications

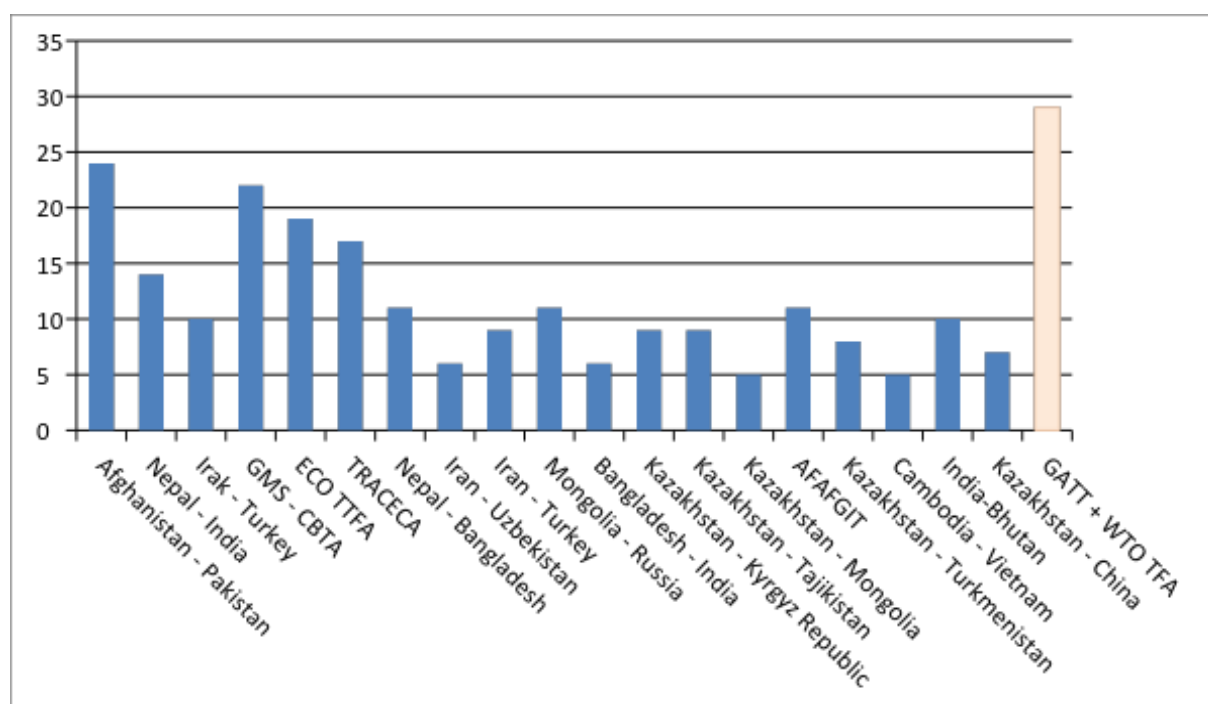
The importance of transit facilitation for the development of landlocked developing countries cannot be overstated as effective participation by these countries in global trade is likely to remain elusive without freedom of transit. The negotiations on trade facilitation at WTO identified transit as a key component of the trade facilitation agenda and provided a unique opportunity to clarify and strengthen the rules in this area.

The analysis of selected Asian transit-related agreements presented in this chapter suggests that little attention has been given to transit facilitation matters in preferential trade agreements, with many countries dealing with these matters through a variety of other bilateral and regional instruments, notably international transport or transit specific agreements. In fact, it appears that PTAs and international transit agreements do not play the same role with regard to transit facilitation. The first type tends to provide general political support for freedom of transit without providing extensive implementation tools. The second type also has political implications, but often goes far deeper into concrete implementation aspects. As such, the use of the two types of instruments may be seen as complementary.

At the same time, the analysis in this chapter highlights some of the challenges arising from addressing transit issues through a variety of separate trade, transport, and/or transit specific treaties and instruments, rather than through a more integrated approach. Such an approach can indeed lead to legal contradictions and inconsistencies, possibly best illustrated by the fact that WTO rules grant freedom of transit through the most convenient routes, while a large number of bilateral transport and transit specific agreements reviewed prescribe specific trade routes for traffic in transit, some of which may or may not be most convenient. Addressing such legal inconsistencies would be important in ensuring the continuing credibility of the multilateral trading system.

As illustrated by figure 4, with the notable exception of the Afghanistan-Pakistan transit trade agreement, “good practices” and innovative transit facilitating measures were found in multilateral rather than bilateral agreements. This confirms the general superiority of such instruments over bilateral ones for achieving a more balanced outcome and inclusive growth. In bilateral agreements, international transit is addressed through each party’s interest, and a balanced outcome may therefore be particularly difficult to achieve when the treaty is being negotiated between a landlocked and a coastal country. On the contrary, multilateral agreements may reflect a common interest at the regional or global level. An integrated approach, granting freedom of transit as a regional common interest, would thus allow transit facilitation to be considered as part of an overall regional development strategy as it was considered, in the context of the WTO negotiations, as part of a global development agenda.

Figure 4. Trade facilitation potential of selected transport and transit agreements



Source: Authors' estimation.

Note: score calculated as the sum of X marks in table 2 for each agreement. Higher score indicates wider scope and higher overall trade facilitation potential. Maximum score possible is 38.

In referring to figure 4, the WTO TFA – as of July 2014 – included particularly ambitious and innovative measures that are not, or rarely, found in the bilateral or regional transport or transit agreements reviewed in this chapter. Some of these measures included, for example, advance clearance of goods in transit (found in one treaty only), renewal of guarantees (one treaty) and designation of national coordinators (three treaties). At the same time, however, some measures widely found in bilateral and multilateral treaties were found to be absent from WTO rules and the WTO TFA, e.g., mutual recognition of customs seals (five treaties), simplified immigration formalities for drivers (five treaties) and freedom of transit for passengers (10 agreements).

In general, the differences found in the transit facilitation measures included in trade agreements and those included in international transport and transit specific agreements suggest a need for closer collaboration and coordination between: (a) the agencies responsible for trade (who lead trade negotiations); (b) those responsible for transport (who lead transport agreement negotiations); and (c) the various control agencies and private sector operators at the relevant border crossings and along transit corridors. Closer, and earlier, collaboration would contribute not only to more transparent and less conflicting rules on transit; they would also increase the chance that transit facilitation measures would be effectively applied and implemented on the ground. The WTO TFA is promising in this regard, as it mandates the establishment of national transit coordinators in addition to requiring Members to “establish and/or maintain a national committee on trade facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of the provisions of this Agreement.”⁸⁹

⁸⁹ WTO TFA Article 23.2

The WTO TFA – used as the benchmark for the trade facilitation potential analysis of bilateral and regional transit agreements in this chapter – looks particularly promising for transit countries, as Article 11 on Freedom of Transit then contained (albeit in brackets) many specific provisions, particularly with regard to broadening the scope of GATT Article V and the strengthening of non-discrimination. A number of these provisions did not find their way into the final text of Article 11 agreed by WTO members in Bali on 8 December 2013. Nonetheless, the Bali text clearly enhances the freedom of transit of WTO members, with specific provisions on guarantees and institutional aspects having been agreed upon. This should be welcoming news for WTO landlocked developing economies in particular, as it may provide a unique opportunity for them to further advance freedom of transit through the new WTO Committee on Trade Facilitation, established to afford “Members the opportunity to consult on any matters related to the operation of this Agreement or the furtherance of its objectives”.⁹⁰

It is worth pointing out again that the analysis presented in this chapter only provides a preliminary assessment of the trade facilitation “potential” of various transit-related agreements based on the legal provisions they contain. However, it remains to be established whether the agreements with the highest “potential” actually lead to the highest level of transit facilitation in practice. For example, while the Afghanistan-Pakistan transit agreement was found to have the highest legal potential among other bilateral agreements reviewed, informal discussions with officials from both countries suggest that implementation has been very challenging. Similarly, discussions with cross-border logistics service providers in the Greater Mekong Subregion suggest that the GMS-CBTA, while featuring leading edge transit facilitation measures, may not as yet have facilitated transit more than some of the existing and much simpler bilateral transit treaties among GMS countries.

Another issue that may deserve further attention is the relationship between the multilateral trade and transport instruments and how to enhance linkages between them. Indeed, instruments such as the Convention on International Transport of Goods under Cover of TIR Carnets (TIR Convention),⁹¹ while not mentioned in the WTO TFA, provide for very concrete and detailed mechanisms for transit facilitation.⁹² As WTO TFA implementation begins, incorporating these existing instruments into implementation plans may be an effective way of furthering the objectives of the new WTO Agreement.

⁹⁰ WTO TFA Article 23.12

⁹¹ As of May 2013, there were 68 parties to the Convention, including 67 States and the European Union. See www.unece.org/tir/welcome.html.

⁹² See also ESCAP (2007), Towards a Harmonized Legal Regime on Transport Facilitation in the ESCAP Region, ST/ESCAP/2489, for a list of other relevant transport instruments and useful guidelines on legal frameworks for transport facilitation.

Annex

Differences between the DCNT and WTO TFA

The final WTO TFA text agreed at the Bali Ministerial is arguably more flexible than earlier drafts (known as the Draft Consolidated Negotiating Texts). Indeed significant portions of the draft text were ultimately deleted. This annex highlights differences between the Draft Consolidated Negotiating Text of the World Trade Organization Trade Facilitation Agreement (rev. 17) as of July 2013 and the final text of the World Trade Organization Trade Facilitation Agreement as of July 2014. Strikeouts and underlining of text are used to indicate removals and additions to the text, respectively.

Article 11. Freedom of Transit

1. [Goods subject to the provisions on Freedom of Transit of GATT 1994 and of this Agreement include those moved [via fixed infrastructure] [, inter alia pipelines and electricity grids].] [1bis For greater certainty, nothing in Article V of the GATT 1994 or this Agreement shall be construed to require a Member:
 - (a) to build infrastructure of any kind in its territory, or to permit the building of infrastructure by others, in order to facilitate the transit of goods;
 - (b) [to provide access to any infrastructure for transit unless such infrastructure is open to general use by third parties. For the purpose of this Agreement, the term "general use by third parties" does not include access to infrastructure granted on a contractual basis.]]
2. [Each Member undertakes that if it establishes or maintains a State enterprise or if an enterprise has, formally or in effect, exclusive or special privileges, such enterprise shall, in its regulations, formalities [fees] and charges – including transportation charges –, on or in connection with traffic in transit, comply with the provisions on traffic in transit of this Agreement [and otherwise act solely in accordance with commercial considerations.]]²⁵
3. ~~[[Any charges, regulations or formalities in connection with traffic in transit imposed by a Member shall not be:~~
 - (a) Member in accordance with Article V of GATT 1994:
 - (a) shall not be more restrictive on traffic in transit than necessary [to fulfil a legitimate objective].
 - ~~(b) shall not be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a reasonably available less trade-restrictive manner;~~
 - ~~(b)(c) shall not be applied in a manner that would constitute a disguised restriction on traffic in transit.~~
2. Traffic in transit traffic.] [Except as otherwise provided in Article V of GATT 1994, no Member shall not be conditioned upon collection impose charges for reasons of any fees or charges kind, including for allowing transit through its territory.] [Any charge imposed by a Member consistently with Article V of GATT 1994, shall: (a) Only be imposed for the administrative procedures entailed or transit services provided in connection with the transit movement in question; respect of transit, except the charges for transportation or those commensurate with (b) Not exceed the approximate administrative expenses entailed by transit or with the cost of services the transit service rendered.; and
3. (c) Not be calculated on ad valorem basis.] [Each Member shall periodically review its charges on traffic in transit with a view to reducing them, where practicable.] 3bis [Each Member shall notify the Committee on the objective and duration of all charges, regulations or formalities in connection with traffic in transit on a regular

basis.] [Members may draw the Committee's attention to examine any measure that under their judgement should have been notified by another Member.] [3ter Members shall not seek, take, or maintain any voluntary restraints or any other similar measures on traffic in transit. This is without prejudice to existing and future national regulations, bilateral or multilateral arrangements related to regulating on traffic in transit.]

4. [Members shall not apply discriminatory measures to goods in transit, or to vessels or other means of transport, consistent with of other Members, for reasons of any kind. This does not exclude the right to resort to the exceptions already laid down in WTO rules, Agreements, for valid reasons and provided that the measure concerned does not constitute a disguised restriction on international trade.]

5. [With respect to all regulations and formalities imposed on or in connection with traffic in transit, including charges for transportation, traffic regulations, safety regulations and environmental regulations, Members shall accord to traffic in transit treatment no less favourable than that accorded to [export or import traffic/domestic traffic/traffic which is not in transit]. This principle refers to like products being transported on the same route under like conditions.]

Each Member shall accord to products which will be in transit through the territory of any other Member treatment no less favourable than that which would be accorded to such products if they were being transported from their place of origin to their destination without going through the territory of such other Member.

Members are encouraged to make available, where practicable, physically separate infrastructure (such as lanes, berths and similar) for traffic in transit.

~~68.~~ Formalities, documentation requirements, and customs controls, in connection with traffic in transit, shall not be more burdensome than necessary to: (a) identify the goods; ~~and an~~ (b) ensure ~~fulfilment~~ fulfillment of transit requirements.

~~79.~~ Once goods have been put under a transit procedure and have been authorized to proceed from the point of origination in a Member's territory, they will not be subject to ~~any further~~ customs charges nor unnecessary delays , ~~formalities~~ or restrictions ~~customs inspections~~ until they conclude their transit at the point of destination within the Member's territory.

~~810.~~ Members shall not apply technical regulations and conformity assessment procedures within the meaning of the Agreement on Technical Barriers to Trade to ~~on~~ goods in transit.

~~911.~~ Members shall allow and provide for advance filing and processing of transit documentation and data prior to the arrival of goods.

~~1012.~~ Once traffic in transit has reached the customs office where it exits the territory of a ~~the~~ Member, that office shall promptly terminate the transit operation if transit requirements have been met.

~~13-11.~~ Where a Member requires ~~Members may require~~ a guarantee in the form of a surety, deposit or other appropriate monetary or non-monetary¹³ instrument for traffic in transit, such guarantee ~~which~~ shall be limited to ensuring ~~reasonable and shall not be applied in a manner that requirements arising from such would constitute a disguised restriction on traffic in transit are fulfilled~~.

~~12~~14. Once the Member has determined that its transit requirements have been satisfied, the guarantee shall be discharged without delay.²⁶

~~13.~~ Each Member shall, in a manner consistent with its laws and regulations ~~15. [Members shall, where practicable,~~ allow comprehensive guarantees which include multiple transactions for same operators or renewal of guarantees without discharge for subsequent consignments. ~~once a previous one is proved to have~~

14. Each Member shall make publicly available the relevant information it uses to set the guarantee, including single transaction and, where applicable, multiple transaction guarantee.

15. Each Member may require the use of customs convoys or customs escorts for traffic in transit only in circumstances presenting high risks or when compliance with customs laws and regulations cannot be ensured through the use of guarantees. General rules applicable to customs convoys or customs escorts shall be published in accordance with Article 1

~~16~~17. Members shall endeavour to cooperate and coordinate with one another with a view to enhancing ~~enhance~~ freedom of transit. Such cooperation and coordination may include, but is not limited to, an understanding on:

- (~~a~~) charges;
- (~~b~~) formalities and legal requirements; and
- (~~c~~) the practical operation of transit regimes.

~~17~~18. Each Member shall endeavour to appoint a national transit coordinator to which all enquiries and proposals by other Members relating to the good functioning of transit operations can be addressed.