

Trade Facilitation in Regional Trade Agreements: Recent Trends in Asia and the Pacific

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Abstract

Provisions in some of the most recent bilateral and regional trade agreements - that either have yet to enter into force or entered into force in or after 2009 - are compared with each other and with those included in the WTO draft consolidated negotiating text on trade facilitation. The coverage of trade facilitation is found to have become very extensive, with the details of provisions in some agreements matching that in the draft WTO agreement on trade facilitation.

Trade facilitation provisions and principles are increasingly seen to apply not only to Customs procedures but more generally, as reflected in the number of recent agreements featuring separate Trade Facilitation and/or Transparency chapters (or equivalent). The way trade facilitation measures and provisions are incorporated into the agreements vary greatly, ranging from dedicating entire chapters (or frameworks) to trade facilitation in some cases to including trade facilitation-related Articles in various chapters. All agreements commit to increasing transparency, including through an obligation to publish laws and regulations affecting trade. The importance of using international standards is also recognized in all agreements. Other trade facilitation measures that seem to be increasingly common include those on Automation/Use of ICT, Risk Management, Advance Ruling and Single Window. Transit facilitation issues are not generally specifically covered. The ASEAN Trade in Goods Agreement (ATIGA) and its detailed commitment to implement a Trade Facilitation Work Programme stands out as it provides a concrete and specific way forward to ensure that progress is made towards actual implementation of the many trade facilitation measures mentioned in it.

Keywords: trade facilitation, regional trade agreements, free trade areas, customs, WTO

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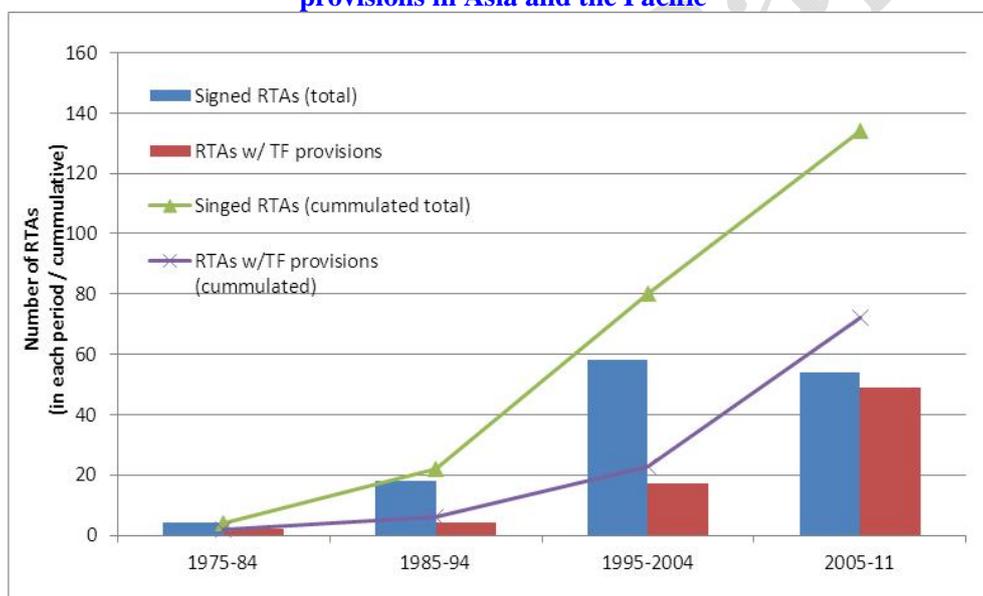
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Introduction

Nearly all of the 54 trade agreements signed since January 2005 by Asian and Pacific economies include trade facilitation provisions (49 of 54). In contrast, less than 25% of the agreements signed by them between 1975 and 2004 included trade facilitation measures (See figure 1). This increasing attention to trade facilitation may be attributed to the significant reduction in import tariffs achieved over the last two decades,¹ and to Governments realization that further trade expansion depends on whether non-tariff barriers can be effectively tackled, including cumbersome import and export procedures. While the impact of including trade facilitation provisions in trade agreements is difficult to measure, the willingness of Governments to systematically include commitments in this area is a welcome development, provided implementation of the provisions do not lead to discrimination against non-members.²

Figure 1 – Number of Bilateral/Regional Trade Agreements with Trade Facilitation provisions in Asia and the Pacific



Source: ESCAP Asia-Pacific Trade and Investment Agreement Database, March 2011.

<http://www.unescap.org/tid/aptiad/>

In line with the almost exponential increase in free trade agreements in Asia-Pacific and globally, comparative analysis and reviews of such agreements have become more common, providing insights and models for future negotiations. APEC (2008) reviews fourteen chapters of 30 RTAs/FTAs within Asia-Pacific and, in an inventory-like approach, provides a better understanding of the levels of commonality across trade agreements in the region.³ While Customs, TBT and SPS chapters are covered, the study does not specifically focus on trade facilitation provisions per se. Bin (2008) provides

¹ e.g. see Duval (2007).

² As noted in ADB/ESCAP (2009) and elaborated upon in Hammanaka (2010).

³ The inventory of provisions can be searched online at http://www.mincetur.gob.pe/apec_fta.

one of the most comprehensive reviews of trade facilitation in preferential trade agreements in Asia and the Pacific. Using ESCAP Asia-Pacific Trade and Investment Agreement Database (APTIAD),⁴ he analyzes provisions in over 34 preferential trade agreements signed by at least one economy of Asia and the Pacific and listed in that database as containing trade facilitation provisions. ESCAP (2008) compares the treatment of trade facilitation in various regional agreements and initiatives, including the Pacific Agreement on Closer Economic Relations (PACER) among Pacific Island countries and a number of Agreements in South Asia. In contrast to Bin (2008), who adopts a broader definition of trade facilitation,⁵ that analysis is made mainly on the basis of the trade facilitation measures classification developed by the WTO Secretariat as part of the on-going trade facilitation negotiations.⁶

The analysis presented in this paper complements earlier ones by focusing on a small number of very recent trade agreements involving a variety of Asian and partner countries, selected mainly on the basis of their particular emphasis of trade facilitation and related issues - but also because they are thought to be representative of the type of agreements being signed by various groups of countries.⁷ The six agreements considered in this paper, and their status, are presented in table 1. Five the agreements are free trade agreements, while one is an economic partnership agreement. One of the agreements is a specialized regional agreement specifically focused on trade facilitation, i.e., the recently signed Trade Facilitation Framework Agreement, although it is an “integral part of the Asia-Pacific Trade Agreement”.⁸ The WTO draft consolidated text on trade facilitation that is still under negotiation is also included in the analysis.

We adopt a narrow definition of trade facilitation in line with the on-going WTO trade facilitation negotiations, in which technical barriers to trade and sanitary and phytosanitary measures are not directly addressed.⁹ Following past literature, rules of origin are not included in the analysis, although we recognize that the complexity of these rules – and their implementation - may directly affect the extent to which an agreement

⁴ APTIAD is maintained by the United Nations ESCAP Secretariat. It is available at: <http://www.unescap.org/tid/aptiad/>.

⁵ He adopts a broad definition of trade facilitation covering the following nine areas: 1. customs procedures and cooperation; 2. technical regulations, standards and SPS measures; 3. NTB especially administrative fees and charges; 4. transparency of laws, regulations and administrative rulings; 5. use of information and communication technology and E-commerce; 6. mobility of business people; 7. freedom of transit; 8. facilitation in transport and logistics; 9. facilitation in payment and trade finance.

⁶ The classification was used to compile WTO members proposals on trade facilitation (see WTO Document TN/TF/W/43/Rev.). In ESCAP (2008) Wille and Redden compare trade facilitation in ASEAN, APEC, SAFTA, PACER, and the Australia-Singapore Free Trade Agreement. Chaturvedi compares trade facilitation provisions of SAFTA, BIMSTEC, and three bilateral trade agreements (India-Sri Lanka, Pakistan-Sri Lanka; and India-Singapore).

⁷ For example, agreements between advanced economies (e.g., Korea and US), between developing countries (e.g., APTA), and between advanced and developing economies (e.g., Japan and Viet Nam).

⁸ Article 11 of the APTA framework on trade facilitation.

⁹ This in line with Moisé (2002), who identified four broad categories of trade facilitation provisions and measures in RTAs: (1) rules on transparency and due process, (2) harmonization of procedures and formalities, (3) simplification and avoidance of unnecessary restrictiveness, (4) modernization and the use of new technology.

may or may not facilitate trade. We also do not extend the scope of trade facilitation to mobility of business people, transport and logistics services liberalization, and trade finance in this analysis, although the data provided in APTIAD as well as our own reading of the selected agreements suggest that they are not directly and specifically covered under any of the agreements reviewed.

Table 1 – Status and Membership of Agreements Reviewed

Title / Abbreviation	Status	Country coverage
ASEAN Trade in Goods Agreement / ATIGA	In force since May 2010	Brunei Darussalam, Cambodia, Lao PDR, Indonesia, Malaysia, Myanmar, Philippines, Singapore, Thailand, Viet Nam (ASEAN 10)
ASEAN-Australia-New Zealand Free Trade Agreement / ASEAN-ANZ	In force since 2010	ASEAN 10, Australia, New Zealand
Asia-Pacific Trade Agreement Framework Agreement on Trade Facilitation / APTA ¹⁰	Negotiation concluded but not yet in force (signed in December 2009)	Bangladesh, China, India, Lao PDR, Rep. of Korea, Sri Lanka
China-Singapore Free Trade Agreement / CH-SING	In force since 2009	China, Singapore
Rep. of Korea United States Free Trade Agreement / KOR-US	Negotiation concluded but not yet in force (signed in August 2007)	Republic of Korea, United States
Japan Viet Nam Economic Partnership Agreement / JAP-VIET	In force since 2009	Japan, Viet Nam
WTO draft consolidated negotiating text on Trade Facilitation / WTO ¹¹	Under Negotiation	WTO members

Four different categories of trade facilitation related provisions are considered for the comparative analysis, adapting a categorization developed by APEC(2008) based on the typical structure of trade agreements in the APEC region at the time: (1) Transparency & Administration – often found under general provisions in the first chapter of FTAs; (2) Customs procedures – typically found in a specific Chapter on Customs Procedures; (3) Paperless trade – typically found in an E-commerce Chapter; and (4) Cooperation. Trade facilitation provisions are further separated into sub-categories, in particular in the case of customs-related trade facilitation measures given their numbers and variety. As a result of using this FTA-based categorization, not all the trade facilitation measures or provisions included in the draft WTO-TFA are covered. Most notably, and in contrast to the WTO trade facilitation agreement under negotiation, specific provisions on transit (e.g., related to GATT Article V on freedom of transit) are generally not covered in the preferential and free trade agreements reviewed, as transit

¹⁰ http://www.unescap.org/tid/apta/fa_tf.pdf

¹¹ TN/TF/W/165.Rev.2, 4 May 2010.

issues are still generally dealt with in separate transit agreements, as recognized in the WTO trade facilitation draft itself.¹²

A. Overview of trade facilitation coverage

Generally, trade facilitation provisions are found in different parts of the agreements, including Chapters or sections on customs, non-tariff measures, paperless trading, and cooperation. ATIGA and APTA are exceptions in the sense that they are the only agreements with a chapter (in the case of APTA, a Framework) dedicated solely to determining matters related to trade facilitation (Chapter 5).¹³ In contrast, all other agreements make no reference to trade facilitation in Chapter titles, except for the KOR-US that has a Chapter on “*Customs Administration and Trade Facilitation*” instead of the usual Chapter on “*Customs Procedures*”. The KOR-US is also unique in having a complete Chapter on “*Transparency*”.

The ATIGA trade facilitation chapter consists of provisions mandating implementation, and defining the objective and scope, of an ASEAN Trade Facilitation Work Programme, followed by Principles on Trade Facilitation, agreement to assess progress every 2 years, and a specific provision on establishment of a regional ASEAN Single Window. Interestingly, the scope of the Trade Facilitation Work Programme encompasses “*customs procedures, trade regulations and procedures, standards and conformance, sanitary and phytosanitary measures, ASEAN Single Window and other areas as identified by the AFTA Council.*” However, other than the ASW establishment, the chapter contains few specific trade facilitation measures. Instead, trade facilitation measures are, in line with what is found in many of the bilateral trade agreements reviewed, embedded in different chapters of the agreement, including the Chapter on Customs.

The APTA Framework Agreement on Trade Facilitation, although an integral part of APTA, is self-contained and separate from the APTA agreement signed in 1975 – Called the Bangkok Agreement at the time, this agreement was one of the very first regional preferential trade agreement ever concluded. The Framework was signed by APTA members in December 2009, and will enter into force as soon as ratified according to the prevailing national laws of APTA members. This approach of signing a separate framework agreement seem to have been preferred to the alternative, i.e., a revision of the APTA agreement to add trade facilitation provisions or a chapter on trade facilitation, which have involved more complicated review and approval procedures in the member

¹² The WTO draft indeed supports the establishment of regional transit agreements.

¹³ Both the APTA and the ATIGA trade facilitation chapters set out a number of trade facilitation principles: transparency, consistency, simplicity, efficiency, harmonization and standardization, and enhanced cooperation in APTA; (a) Transparency, (b) Communications and Consultations, (c) Simplification, practicability and efficiency, (d) Non-discrimination, (e) Consistency and predictability, (f) Harmonisation, standardisation and recognition, (g) Modernisation and use of new technology, (h) Due process and (i) Co-operation in ATIGA. This is generally in line with the classification of trade facilitation model measures in ESCAP (2008) and ADB/ESCAP (2009), which is based on the following principles: Transparency, Simplification, Harmonization, Cooperation, Use of Modern Technology, and Technical Assistance and Capacity building.

countries – possibly even putting existing commitments at risk. One clear advantage of this approach, however, is that implementation of trade facilitation provisions will not depend on whether or when the other frameworks under negotiations are concluded.¹⁴

An overview of the structure of the agreements reviewed from a trade facilitation perspective, as well as a summary of the trade facilitation provisions included in the agreements is provided in Table 2. Provisions in each of the 4 broad categories mentioned earlier are discussed in details in the following sections.

Table 2- Overview of Trade Facilitation coverage in selected FTAs

Trade facilitation coverage and provisions	APTA	ASEAN-ANZ FTA	ASEAN TIGA	CH-SING FTA	KOR-US FTA	JAP-VIET EPA	WTO Draft on TF
Specific Chapter (or equivalent) on Trade Facilitation	√		√		(√)		
1. TRANSPARENCY & ADMINISTRATION							
Need for transparency (general)	√	√	√	√	√	√	√
Specific Chapter on Transparency					√		
Reducing unnecessary fees and charges	√	√	√		√		√
Obligation to publish laws, regulations [...] affecting trade	√	√	√	√	√	√	√
<i>on internet</i>	(√)	(√)	√		√		√
<i>in English</i>	(√)						√
Consultations (general)	√	√	√	√	√	√	√
<i>during formulation of new regulations</i>	(√)		(√)		√	√	√

Trade Facilitation coverage and provisions	APTA	ASEAN-ANZ FTA	ASEAN TIGA	CH-SING FTA	KOR-US FTA	JAP-VIET EPA	WTO Draft on TF
2. CUSTOMS PROCEDURES							
Specific chapter on Customs procedures		√	√	√	√	√	
Customs Valuation (GATT Art. VII)	√	√	√		√	√	
Consistency with/Use of international standards	√	√	√	√	√	√	√
Facilitating Customs Clearance	√	√	√	√	√	√	√
<i>pre-arrival processing</i>	√	√			√		√
<i>automation / use of ICT</i>	√	√	√		√	√	√
<i>Specific release period</i>					√		√
Risk management	√	√	√	√	√		√
Advance Rulings	√	√	√	(√)	√		√
<i>Publication of rulings</i>					√		√
Review and Appeal	√	√	√	√	√	√	√

¹⁴ As part of the current round of APTA negotiations, framework agreements on investment and on services have been developed but have not yet been signed.

<i>Independent review and appeal</i>			√		√
Post Clearance Audit		√			√
Authorized Economic Operators		√			√
Express/expedited shipments			√		√
National Trade facilitation committee		√		√	√
Temporary Admission		√			√
Facilitating Transit (GATT Art. V)				√	√

Trade Facilitation coverage and provisions	APTA	ASEAN-ANZ FTA	ASEAN TIGA	CH-SING FTA	KOR-US FTA	JAP-VIET EPA	WTO Draft on TF
3. PAPERLESS TRADE							
Specific Chapter on E-Commerce and/or Paperless Trade		√			√		
Automation / use of ICT	√	√	√		√	√	√
Acceptance of electronic versions of trade documents	√	√			√		√
Single Window	√		√				√
<i>Regional single window</i>	(√)		√				
Domestic legislation regarding electronic authentication		√			√		
4. COOPERATION and CAPACITY BUILDING							
Specific Chapter on Cooperation		√	√*	√		√	
Customs Cooperation	√	√	√		√	√	√
Trade Facilitation Cooperation		√	√	√	√		√
<i>TF-related Capacity Building</i>	√	√	√		√		√
Differential treatment for less developed members	√	√	√				√

Notes: √ indicates existence of the chapter/measure/provision in the agreement. (√) indicates the measure is implied, or only applies in a very restricted manner.

* The Trade Facilitation Chapter may be considered a chapter dedicated to trade facilitation cooperation.

B. Transparency and administration related provisions

All agreements mention the principle of transparency in the text, either in a general provision on Transparency or in the text of a general provision on non-tariff measures. Some agreements have several Transparency provisions, e.g. under the Customs chapter, the TBT or/and SPS chapter(s) and other specific chapters (e.g., on trade in services or movement of natural persons). Transparency provisions typically specify at least the need to publish specific information and documents as well as the setting up of (national) enquiry points on Customs matter related to the agreement.¹⁵ APTA however does not specify establishment of enquiry points, only referring to the need to designate focal points “*to facilitate communications among [Participating States] on any matter covered by this Agreement*”.

All agreements examined, except for the CH-SING and the JAP-VIET agreements have a specific provision on reducing unnecessary fees and charges. Those who do, however, typically refer to the existing GATT articles VIII. For example, the Chapter 1 (General Provisions) of ASEAN Trade in Goods Agreements (ATIGA) urges governments to reduce unnecessary administrative fees and formalities in compliance with Article VIII:1 of GATT. The article reads “each Member State shall ensure, in accordance with Article VIII.1 of GATT 1994, that all fees and charges of whatever character...imposed on or in connection with import or export are limited in amount to the approximate cost of services rendered and do not represent an indirect protection to domestic goods or a taxation on imports or exports for fiscal purposes.”

APTA provisions on minimizing fees and charges, also calls for “Each Participating State shall periodically review its fees and charges with a view to consolidating them and reducing their number and diversity”, a commitment that is also made in several of the other agreements reviewed, as well as under the existing GATT article VIII. In the article of simplicity and efficiency, the agreement urges the member states to simplify and reduce the incidence and complexity of import and export formalities and data requirement by applying international standards such as the Revised Kyoto Convention and relevant recommendations of the World Customs Organization, to the extent possible.¹⁶

All of the agreements include provision(s) regarding obligation to publish laws and regulations affecting trade. ATIGA and ASEAN-ANZ explicitly refer to Article X of GATT 1994.¹⁷ Other agreements instead list specific types of documents to be made available, along with some restrictions. For example, Article 25 of the CH-SING Agreement on transparency indicates that “*Each Party shall ensure that its laws,*

¹⁵ E.g., Article 56 on Enquiry Points in ATIGA chapter on Customs.

¹⁶ APTA, Article 5: Measures for Simplicity and Efficiency

¹⁷ ATIGA, Chapter 1 General Provisions, Article 12 Publication and Administration of Trade Regulations; WTO, Section 1, Article 1 Publication and Availability of Information; Australia-ASEAN-New Zealand, Article 6 Publication and Administration of Trade Regulations.

regulations, guidelines, procedures and administrative rulings governing customs are promptly published” but also that “*nothing in this Article or in any part of this Agreement shall require any Party to publish law enforcement procedures and internal operational guidelines including those related to conducting risk analysis and targeting methodology.*”

The majority of the agreements encourages, or at least specifically mentions, the publication of trade regulations on the internet. For example, ASEAN-ANZ specifies that “*In accordance with its domestic laws and regulations and to the extent possible, each Party shall make laws, regulations, decisions and rulings [of the kind referred to in Paragraph 1] available on the internet.*” Internet publication of rules and procedures related to trade remains of a best endeavor nature in most cases.

The need to publish laws and regulations in the English language, as proposed in the WTO trade facilitation draft, is generally not mentioned. APTA is an exception, requesting that “*Participating States shall endeavour [...] to publish the outline of relevant domestic laws, regulations and administrative rules in English.*”

The need for consultations prior to implementation of new trade regulations, a measure discussed in the WTO trade facilitation draft, is not always specifically mentioned. Most agreements include provision(s) on “*Consultation*” in the Customs and TBT/SPS chapters, but they simply “*encourage consultation with each other regarding significant customs issues that affect goods traded among the Parties*”, as in the ASEAN-ANZ (Article 12). The ATIGA indicates that “*The authorities shall endeavour to facilitate and promote effective mechanisms for exchanges with the business and trading community, including opportunities for consultation when formulating, [...] rules and procedures relating to trade*” in its Trade Facilitation principles “*Communications and Consultations*”, while APTA provides for a similar measure under its “*Measures on cooperation*” section.

The JAP-VIET agreement has a specific provision on “*Public Comment procedures*” (Article 4) to “*make public in advance regulations of general Application*” and to “*provide a reasonable opportunity for comments by the public and give consideration to those comments*”. The Korea-US agreement is even more specific as it specifies that both governments should “*in most cases publish the proposed regulations not less than 40 days before the date public comments are due...and include in the publication an explanation of the purpose of and rationale for the proposed regulations.*”¹⁸

One of the most far reaching and concrete provision found in the bilateral/regional agreements reviewed related to transparency is the commitment of ASEAN members to establish an ASEAN Trade Repository “*containing trade and customs laws and procedures of all Member States [...] and made accessible to the public through the internet.*”, including “*national trade and customs procedures and documentary requirements, best practices in trade facilitation applied by each Member State; and list*

¹⁸ Korea-US, Art. 21.1 Publication

of authorised traders of Member States” (See General Provisions Article 13 in ATIGA, Annex 1). It is noteworthy that the text of this provision suggests that the repository will be made available in a non-discriminatory manner to non-ASEAN members.¹⁹

As noted previously, the KOR-US is the only agreement among those reviewed that has a separate Chapter on Transparency. Interestingly, in addition to a detailed publication on the need to publish trade related laws, regulations and procedures, it includes a specific and relatively detailed provision on anti-corruption reaffirming The Parties “*resolve to eliminate bribery and corruption in international trade and investment*”.

C. Customs related trade facilitation provisions

Many of the trade facilitation measures under negotiations at the WTO are customs procedures and therefore often found in the Customs Chapter of preferential trade agreements. Among the agreements reviewed, ATIGA, KOR-US, and the ASEAN-ANZ, stand out in terms of the specificity and details of the customs facilitation provisions included, often on par with the level of details of the provisions of the draft WTO trade facilitation agreement.

Customs valuation, an issue not covered under the draft WTO trade facilitation agreement, is addressed specifically in all other agreements reviewed except the CH-SING. These agreements however simply refer to the WTO Agreement on Customs Valuation (or GATT 1994 Article VII) generally indicating that it applies *mutadis mutandis*.

Use of international standards for trade facilitation is promoted in all agreements on a best endeavor basis. All agreements but the JAP-VIET make specific references to the World Customs Organization standards and practices.²⁰ Unlike in the draft WTO agreement, UN/CEFACT recommendations are not specifically referred to in any of the agreements reviewed.

While all agreements discuss release and clearance of goods and call for facilitating these procedures to the extent possible, the KOR-US is found to be the most detailed and specific of the preferential trade agreement reviewed on this issue, e.g., specifying that release of good should normally take place with 48 hours of arrival.

Korea-US Free Trade Agreement – Article 7.2: Release of Goods

1. In order to facilitate bilateral trade, each Party shall adopt or maintain simplified customs procedures for the efficient release of goods.
2. Pursuant to paragraph 1, each Party shall ensure that its customs authority or other competent authority adopts or maintains procedures that:

¹⁹ In APTA, participating states are required to notify other states and the secretariat of ESCAP of the introduction of any new trade laws or regulations or the amendment of existing laws at the earliest possible stage (Article 4 Measures for Transparency and Consistency).

²⁰ E.g., Article 24.2 of , CH-SING (Customs chapter).

- (a) provide for the release of goods within a period no greater than that required to ensure compliance with its customs laws and, to the extent possible, within 48 hours of the goods' arrival;
- (b) provide for customs information to be submitted and processed electronically before goods arrive in order for them to be released on their arrival;
- (c) allow goods to be released at the point of arrival, without temporary transfer to warehouses or other facilities; and
- (d) allow importers to withdraw goods from customs before, and without prejudice to, its customs authority's final determination of the applicable customs duties, taxes, and fees.

Availability of pre-arrival processing of documents is a requirement in KOR-US. APTA also commit to introducing such practice. In contrast, other agreements do not mention this measure or make it a best endeavor. Even in the ATIGA, while there is a specific Article (55) on "Pre-arrival Documentation", it reads "Member States shall endeavour to make provision for the lodging and registering or checking of the goods declaration and its supporting documents prior to the arrival of the goods."

The application of risk management - "*to facilitate the clearance of low-risk goods and focus on high-risk goods*"²¹ - is provided for in all agreements except the JAP-VIET. In the case of KOR-US, "*each Party shall adopt or maintain electronic or automated risk management systems*". In contrast, other agreements do not require that the risk management system be electronic or automated. APTA provides additional flexibility indicating that such risk management system may be established "*in a phased manner*".

Except for the CH-SING, all the agreements also specifically promote the use of ICT and development of automated and/or electronic customs systems. This is discussed in more details in the next section on paperless trade.

Transit facilitation is not specifically covered in any of the preferential trade agreements, except in JAP-VIET where "*Each Party shall continue to facilitate customs clearance of goods in transit from or to the other Party in accordance with paragraph 3 of Article V of the GATT 1994*" (Article 42).²² This contrasts with the draft of the WTO trade facilitation agreement, in which transit issues are prominent and dealt with along with other trade facilitation issues. As recognized in the WTO draft itself, countries have indeed so far addressed transit facilitation issues in separate transit-specific bilateral or regional agreements. For example, ASEAN countries signed an ASEAN Framework Agreement on the Facilitation of Goods in Transit in December 1998 "*to support the implementation of the ASEAN Free Trade Area*".²³ In fact, there exist a large number of bilateral, subregional and regional transit or transport agreements in Asia and the Pacific, many of which contain trade facilitation measures and provisions under discussion at the

²¹ ASEAN-ANZ Article 9, Customs Chapter.

²² Similarly, temporary admission is only specifically mentioned in the ATIGA (Article A52.j), where temporary admission means customs procedures under which certain goods can be brought into a customs territory conditionally relieved totally or partially from payment of import duties and taxes; such goods must be imported for a specific purpose and must be intended for re-exportation within a specified period and without having undergone any change except normal depreciation due to the use made of them.

²³ See Article 1 (Objectives) of the Agreement. <http://www.aseansec.org/7377.htm>

WTO. Such agreements are at times signed by transport ministries (e.g., GMS Cross-Border Transport Agreements), and at other times by trade ministries (e.g., ASEAN transit agreement), with possible overlap and inconsistencies. Unlike for preferential trade agreements, for which global and regional online databases exist, text of transit agreements are databases remain less easily accessible, possibly explaining the more limited analysis available of these agreements and their trade facilitation provisions.

Review and appeal of Customs matters are provided for in all agreements, although only KOR-US requires that the administrative review be “*independent of the employee or office that issued the determinations*” and that the “*an exporter or producer to provide information directly to the Party conducting the review and to request that Party to treat that information as confidential.*” APTA also indicate that “*non-discriminatory procedures at reasonable cost and time for administrative and legal appeal against the decisions by customs and other relevant agencies affecting international trade*” will be established by members, although this is again on a best endeavor basis only. Other agreements generally simply note that the review and appeal procedure to be provided be in accordance with the Party’s laws and regulations.

Advance ruling provisions are most detailed in the KOR-US and the two ASEAN related agreements, but are also promoted in APTA and the CH-SING. Such provisions are absent in the case of JAP-VIET. Advance rulings in the ASEAN related agreements are to be provided on tariff classification, Customs Valuation and/or origin of goods only “*to the extent permitted by its domestic laws, regulations and administrative determinations*”, and there is no provision on the publication of the rulings. In KOR-US, both parties fully commit to providing advance rulings on an extensive set of issues and within set timeframes within 90 days of a request. Parties are also encouraged to publish the rulings, to remain valid for 2 years unless revoked. In CH-SING, scope of advance rulings is unclear but seems limited to origin of goods only, with requests to be submitted at least three 3 months before the date of importation, determinations provided within sixty 60 days, and rulings remaining valid for 2 years. No specific time frames are provided for application and determination of rulings in ASEAN related agreements, but rulings normally remain valid for 3 years. It is noteworthy that the time frames proposed in the WTO draft trade facilitation agreements are less accommodating (150-180 days to respond to a request; validity of 30-60 days).

Interestingly, ATIGA uniquely includes a provision specifying that members should endeavor to established authorized economic operator (AEO) programmes and work toward mutual recognition (Art. 59), in line with the proposed provisions on Authorized Traders or Operators in the WTO draft – and those in the WCO SAFE framework. ATIGA also specify that signatories have to establish Post-Clearance Audit, a trade facilitation measure not mentioned in other preferential trade agreements reviewed. Provisions on express shipments are included only in KOR-US, in line with the WTO draft text (on Expedited Shipments).

ATIGA is the only agreement that specifically call for establishment of a “*Trade Facilitation Coordinating Committee [...] at the national level*”, as part of the institutional arrangement for implementation of an ASEAN trade facilitation work programme. APTA features the establishment of an APTA Working Group on Trade Facilitation (WGTF) comprising officials from Customs and/or other relevant agencies of

member States. Other preferential trade agreements have no specific institutional arrangements to address trade facilitation issues, although a number of agreements set up bilateral/regional committees, working bodies or sub-committees on issues related to trade facilitation, e.g., customs, TBT or SPS.²⁴

D. Provisions related to paperless trade

Provisions related to paperless trade found in the agreements reviewed include general provisions on the use of Information and Communications Technology (ICT), as well as more specific ones on customs automation, making available and accepting electronic versions of trade administration documents, creating a single entry point for trade documentation requirements (i.e., a single window) and adopting domestic legislation regarding electronic authentication. Depending on how specific they are and the structure of each agreement, these measures may be found in e-commerce, customs or trade facilitation chapters.

ATIGA urges that member governments, *“where applicable, shall apply information technology in customs operations based on internationally accepted standards for expeditious customs clearance and release of goods”* (Chapter 6, Article 58). It also has a unique and very ambitious provision for establishment of regional Single Window system – which pre-supposes establishment of national single windows in all countries. The provision reads *“Governments shall undertake necessary measures to establish and operate their respective National Single Windows and the ASEAN Single Window in accordance with the provisions of the Agreement to Establish and Implement the ASEAN Single Window and the Protocol to Establish and Implement the ASEAN Single Window.”*²⁵

The KOR-US has a special emphasis on electronic commerce. The agreement reads that both governments *“shall endeavor to accept trade administration documents submitted electronically as the legal equivalent of the paper version of those documents and make trade administration documents available to the public in electronic form”*.²⁶ Interestingly, the agreement has a special provision for domestic legislation regarding electronic authentication. According to the agreement, neither governments may adopt or maintain legislation for electronic authentication that would prohibit interested parties from mutually determining the appropriate authentication methods for a transaction or deny a signature legal validity solely on the basis that the signature is in electronic form.²⁷ In area of release procedures, both governments are required to use information technology that expedites procedures for the release of goods and develop a set of common data elements and processes in accordance with the WCO Customs Data Model and related WCO recommendations and guidelines. In addition, the agreement mandates

²⁴ E.g., the JAP-VIET agreement (Chapter 4.44.4) establishes the Sub-Committee on Customs Procedures to determine issues related to customs.

²⁵ ATIGA Chapter 5 Trade facilitation, Article 49 Establishment of the ASEAN Single Window

²⁶ Korea-US, Chapter 15.6.2; 15.6.1

²⁷ *Id.* Chapter 15.4.1

that customs information to be submitted and processed electronically before goods arrive in order for them to be released on their arrival.

In the ASEAN-ANZ, the contracting parties are expected to cooperate to enhance acceptance of electronic versions of trade administration documents and make them available to the public.²⁸ Moreover, the agreement encourages the establishment of a single entry point for documents related to the clearance of goods.²⁹ In the same way as the provision in the KOR-US, the member states are obliged to permit participants in electronic transactions to determine the appropriate authentication technology.³⁰

In contrast, APTA provides a fairly general provision regarding paperless trade. For instance, the agreement, without formulating specific measures, commits the member states to promote, to the extent feasible, the use of automation and information technology in customs procedures.³¹ Yet, as in ATIGA, the member states are obliged to work towards establishment of a single window to allow the one-time submission of import or export data and documentation requirements.³²

E. Cooperation and capacity building provisions

Provisions in this category include Customs Cooperation provisions, Chapters on Economic Cooperation that include trade facilitation, as well as provisions on Capacity Building and special and differential treatments for least developed members. The nature and content of provisions vary significantly across the agreements reviewed. This may be explained by the different needs of country groupings involved in each agreement, i.e., more emphasis on capacity building and technical assistance is given in agreements involving members at different stages of economic development.

The JAP-VIET puts significant emphasis on cooperation, although cooperation on trade facilitation is not specifically mentioned. The JAP-VIET has an entire Chapter on “Cooperation” (Chapter 14) with possibility to create sub-committees on “Trade and Investment Promotion” as well as “Transport”, in addition to the numerous other sub-committees created under other chapters (e.g., Customs). The relatively complex cooperation framework proposed is not fully surprising given that the JAP-VIET agreement is an “economic partnership” agreement rather than a trade agreement, although it does raise questions about the availability of resources for its implementation and sustainability.

The ASEAN-ANZ agreement, whose title suggests it is “only” a free trade agreement, is actually of similar scope and depth than the JAP-VIET, and includes an entire chapter on Economic Co-operation. Although that cooperation chapter does not

²⁸ Australia-ASEAN-New Zealand, Chapter 10, Article 8; Chapter 10, Article 5

²⁹ *Id.* Chapter 4.9.2.

³⁰ *Id.* Chapter 10, Article 5

³¹ APTA, Article 5 Measures for Simplicity and Efficiency

³² APTA, Article 5 Measures for Simplicity and Efficiency

specifically mentioned trade facilitation, capacity building on that issue is clearly covered by it. The CH-SING also has a separate Chapter on economic cooperation but it is rather general with no mention of trade facilitation issues – even when broadly defined. KOR-US has no separate chapter on Cooperation, nor do APTA or ATIGA, although the Trade Facilitation chapter of the later, with its emphasis on implementation of a joint work programme, could be considered as one in the context of this analysis.

KOR-US features one of the most specific Customs Cooperation provision (Article 7.5) in particular indicating that “*Where a Party has a reasonable suspicion of unlawful activity related to its laws or regulations governing importations, the Party may request the other Party to provide specific confidential information normally collected in connection with the importation of goods*” and then providing a detailed definition of “*reasonable suspicion of unlawful activity*”. In contrast, the CH-SING agreement has no specific provision on Customs cooperation or exchange of information.³³

There is a provision on Customs Cooperation in ATIGA but it is short and does not address specifically the issue of exchange of confidential information. The provisions on Customs Cooperation in the ASEAN-ANZ also do not address the issue of exchange of information emphasized in KOR-US, and to a lesser extent in APTA. They focus instead -and specifically mention- capacity building and technical assistance targeted at ASEAN Customs personnel as well as for Single Window development.³⁴

**ASEAN-ANZ FTA, Chapter on Customs Procedures, Article 5
-Customs Co-Operation-**

1. To the extent permitted by its domestic law, the customs administration of each Party may, as deemed appropriate, assist the customs administration of each other Party, in relation to:
 - (a) the implementation and operation of this Chapter;
 - (b) developing and implementing customs best practice and risk management techniques;
 - (c) providing, where possible, prior notice of changes to laws, regulations, and relevant procedures and guidelines that would affect the operation of this Agreement;
 - (d) simplifying and harmonising customs procedures;
 - (e) advancing technical skills and the use of technology; and
 - (f) application of the Agreement on Customs Valuation.

2. Subject to available resources, the customs administrations of the Parties may, as deemed appropriate, explore and undertake co-operation projects, including:
 - (a) capacity building programmes to enhance the capability of customs personnel of ASEAN Member States; and
 - (b) technical assistance programmes to facilitate the Parties’ development and implementation of Single Windows.

³³ All regional trade agreements reviewed have a specific provision on Confidentiality, typically indicating that “*Nothing in this Agreement shall be construed to require a Party to furnish or allow access to confidential information...*”.

³⁴ The divergence in content of these “Customs Cooperation” provisions is interesting as it implies that such a simple if not standard term as “Customs cooperation” still mean very different things to different countries and/or groups of countries.

Most of the agreements acknowledge that trade facilitation measures require cooperation among governments to strengthen capacity to implement commitments and make trade as efficient and simple as possible. In the Article on Capacity Building (Article 17 in general provisions), ATIGA urges the contracting parties to implement programs to strengthen individual Member States' domestic capacity, efficiency and competitiveness, such as the Work Programme under the Initiative for ASEAN Integration (IAI) and other capacity building initiatives.³⁵ More generally, the specific and detailed provisions on the implementation of an ASEAN Work Programme on Trade Facilitation set the stage for concrete progress to be made across the ASEAN membership – currently at clearly different stages of trade facilitation reform. The principle of special and differential treatment among members is also recognized in Article 16 on “*Participation Enhancement of Member States*” which indicates that “*Enhancing participation of Member States shall be facilitated through a negotiated pre-agreed flexibility on provisions under this Agreement*”.

APTA has a detailed provision on assistance for the least developed participating states with adequate technical assistance and cooperation arrangements in building their trade facilitation capacity. This is fully consistent with the modalities agreed upon by the WTO members to commence negotiations on trade facilitation in 2004. The draft WTO agreement on trade facilitation indeed explicitly refers to the 2004 “July Package” and states that “*support and assistance should also be provided to help Developing and least-developed countries implement the commitments resulting from the negotiations, in accordance with their nature and scope*”.³⁶ Practical measures specified in APTA include, but are not limited to, training programs, courses and seminars for information sharing.³⁷ APTA also specifies that “*Least developed country Participating States shall be required to apply this [Trade Facilitation Framework] Agreement after their acquisition of the necessary capacity to implement this Agreement*”.

Conclusions

A detailed review of trade facilitation (WTO definition) in 6 recent trade agreements involving a variety of Asian countries was conducted. The coverage of trade facilitation in recent free trade agreements has become very extensive, with the details of provisions in some agreements matching that in the draft WTO agreement on trade facilitation. Trade facilitation provisions and principles are increasingly seen to apply not only to Customs procedures but more generally, as reflected in the number of recent agreements featuring separate Trade Facilitation and/or Transparency chapters (or equivalent). This is welcome news, as trade facilitation – and the attendant reduction in trade transaction costs – can only be achieved by involving other stakeholders.

³⁵ ATIGA Chapter 1 General Provisions, Article 17 Capacity Building

³⁶ WTO, Section 2 Special and differential treatment provisions for developing country members and least developed country members, Article 9 Provision of Technical Assistance, [financial assistance] and Capacity Building]

³⁷ APTA, Article 10: Assistance for the Least Developed Country Participating States

The way trade facilitation measures and provisions are incorporated into the agreements vary greatly, ranging from dedicating entire chapters (or frameworks) to trade facilitation in some cases to including trade facilitation-related Articles in various chapters, and sometime doing both - as in the case of ATIGA. It is not uncommon to see trade facilitation measures repeated throughout an agreement, e.g. in separate Articles on Transparency calling for timely publication of regulations in 3 distinct Chapters (e.g., on Customs procedures, TBT, and SPS). The WTO trade facilitation negotiations, while not concluded, seem to have influenced both the extent to which trade facilitation has been included in regional trade agreements (the number of RTA/FTAs that include trade facilitation increased sharply since 2004) as well as the manner in which it has been included. APTA appears to have been clearly influenced by the work of the WTO Negotiating Group on Trade Facilitation, in particular in terms of its capacity building and differential treatment provisions. The WCO recommendations and standards also appear to influence the drafting of customs facilitation provisions, e.g., the inclusion of an Authorized Economic Operator and Post-clearance Audit articles in the ATIGA. This is welcome news, as it suggests that future free trade agreements may continue to/increasingly refer to these international standards and texts, thus leading to harmonized trade facilitation provisions – in substance if not in structure.

All agreements commit to increasing transparency, including through an obligation to publish laws and regulations affecting trade. The importance of using international standards is also recognized in all agreements. Other trade facilitation measures that seem to be increasingly common include those on Automation/Use of ICT, Risk Management, Advance Ruling and Single Window. Transit facilitation issues are not generally specifically covered.

Trade facilitation provisions remain of a “*best endeavor*” nature in most agreements (with the exception of the KOR-US among the agreements reviewed). As could be expected, the flexibilities regarding implementation of these provisions are greater in agreements that involve less developed countries. However, the increased emphasis on trade facilitation cooperation – over and above Customs cooperation - and the specific mention of trade-related capacity building and technical assistance in the agreements reviewed is promising. ATIGA and its detailed commitment to implement a Trade Facilitation Work Programme stands out as it provides a concrete and specific way forward to ensure that progress is made towards actual implementation of the many trade facilitation measures mentioned in the agreement.

In fact, one may argue that, short of making trade facilitation measures unconditional, advancing trade facilitation through an FTA may best be done by setting a strong institutional mechanism through which procedural issues will be identified and addressed after the agreement comes into force on a regular basis. Action plans and peer reviews would then be part of the institutional framework put in place, as would be the establishment or designation of a national trade facilitation body/committee – which would ideally be the same for all FTAs a given country enters into. However, one question that arises is, as the number of bilateral economic partnership agreements grow, whether countries can cope in maintaining so many sub-committees and economic cooperation mechanisms, and how partners may share the costs associated with the

mechanisms, particularly when mechanisms already exist at the multilateral level (e.g., on TBT and SPS matters).

The provisions reviewed were found to be generally non-exclusive. It is correct that regional trade agreements are intrinsically discriminatory, as the preferential (or zero) tariff rates at the core of most of regional trade agreements indeed only apply to members. The original purpose of preferential rules of origins specified in all regional trade agreements (including their administration) is in fact to ensure that discrimination between members and non-members is effective – although they may also be used as non-tariff barriers to trade between members of an agreement as well. Fortunately from a trade efficiency point of view, the transparency and customs provisions increasingly included in the agreement under (or for) trade facilitation do not seem to be intended to further discriminate between members and non-members, but rather to promote or provide an incentive for more efficient trade procedures.

The non-exclusive nature of the trade facilitation provisions is not entirely surprising as developing new and improved trade and customs procedures as part of a free trade agreement, but then applying them only to FTA members while maintaining the old less efficient procedures for non-members would likely be a rather costly endeavor.³⁸ However, to ensure that the non-discriminatory intent is made clear, addressing trade facilitation in a separate chapter (or framework) may indeed be the most pragmatic approach – even if it may lead to some amount of repetition in an agreement.³⁹

As trade facilitation related provisions and measures specified in the trade agreements become more detailed, a key issue for a given country is to ensure that these remain consistent across the various trade agreements in enters into. Not doing so could indeed lead to a more complicated and less transparent regulatory environment. Our review suggests that this issue may indeed become a problem, as detailed commitments (e.g., on application process and validity of advance rulings) vary significantly from country to country. The WTO Trade Facilitation Agreement could serve a useful purpose in addressing this issue, by providing internationally agreed standard text (rules) on a significant number of trade facilitation measures. The text for specific measures of interest could then be specifically referred to and made to apply *mutatis mutandis* in an FTA. Given that the current draft of the WTO agreement provides significant flexibility for developing countries in implementing trade facilitation measures - by scheduling them under Category C -, the above purpose would best be served by making the text

³⁸ This issue was also raised by Finger (2011), noting that reforms by countries unilaterally targeted by the United States under Section 301 of US trade law were applied more often on a multilateral than on a unilateral basis. That said, as witnessed during actual regional trade negotiations, some negotiators are still of the view that discrimination between members and non-members to the agreement is the “raison d’être” of a bilateral/regional free trade agreement and therefore expect that most provisions and measures should be exclusive to members, including those on trade facilitation.

³⁹ It is worth noting that many agreements have a separate chapter on Rules of Origins and on Customs Procedures, with the former focusing on ensuring that preferential treatment is not accessed by non-members, and the later often quite specifically aimed at facilitating trade in a rather non-discriminatory manner.

describing the trade facilitation measure in the WTO agreement as detailed and specific as possible.⁴⁰

It is very difficult to assess whether the trade facilitation measures mentioned in the agreement will lead to actual improvements in trade facilitation. The devil is in the details. Just ticking whether a measure is or not mentioned in an agreement may not be good enough to capture how “trade facilitating” an agreement really is. More detailed assessment of provision related to each trade facilitation measure would be needed in terms of (i) the level of commitment (e.g., “shall endeavor to” or “shall”), (ii) the conditionality attached to its implementation (e.g., “to the extent that its national law permit”), as well as (iii) the level of details would be needed. This may be attempted in future analysis.

This analysis was essentially limited to the narrow WTO trade facilitation definition, focusing essentially on transparency and customs issues. It has been increasingly recognized, however, that significantly reducing trade transaction costs entails addressing a variety of other non-tariff barriers, many of which lie behind the border.⁴¹ The fact that a number of the agreements reviewed in this paper include separate chapters on, inter alia, Technical Barriers to Trade (TBT), Sanitary and Phytosanitary Measures (SPS), the Business Environment, as well as on Services and the Movement of Natural Persons is very much promising, as they open the way to a more integrated and effective approach to trade facilitation reform. Analysis of trade facilitation related provisions in these chapters would certainly provide useful additional insights.

⁴⁰ As pointed out recently by Hammanaka (2010), this may be addressed by introducing an automatic MFN clause for trade facilitation measures and provisions.

⁴¹ See, among others, Duval and Uthoktham (2011).

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ANNEX 1– Trade facilitation chapter in the ASEAN Trade in Goods Agreement

CHAPTER 5 - TRADE FACILITATION

Article 45 Work Programme on Trade Facilitation and its Objectives

1. Member States shall develop and implement a comprehensive ASEAN Trade Facilitation Work Programme, which sets out all concrete actions and measures with clear targets and timelines of implementation necessary for creating a consistent, transparent, and predictable environment for international trade transactions that increases trading opportunities and help businesses, including small and medium sized enterprises (SMEs), to save time and reduce costs.
2. The ASEAN Trade Facilitation Work Programme shall set out actions and measures to be implemented at both ASEAN and national levels.

Article 46 Scope of the ASEAN Trade Facilitation Work Programme

The ASEAN Trade Facilitation Work Programme referred to in Article 45 shall cover the areas of customs procedures, trade regulations and procedures, standards and conformance, sanitary and phytosanitary measures, ASEAN Single Window and other areas as identified by the AFTA Council.

Article 47 Principles on Trade Facilitation

Member States shall be guided by the following principles in relation to trade facilitation measures and initiatives at both ASEAN and national levels:

- (a) **Transparency:** Information on policies, laws, regulations, administrative rulings, licensing, certification, qualification and registration requirements, technical regulations, standards, guidelines, procedures and practices relating to trade in goods (hereinafter referred to as “rules and procedures relating to trade”) to be made available to all interested parties, consistently and in a timely manner at no cost or a reasonable cost;
- (b) **Communications and Consultations:** The authorities shall endeavour to facilitate and promote effective mechanisms for exchanges with the business and trading community, including opportunities for consultation when formulating, implementing and reviewing rules and procedures relating to trade;
- (c) **Simplification, practicability and efficiency:** Rules and procedures relating to trade to be simplified to ensure that they are no more burdensome or restrictive than necessary to achieve their legitimate objectives;
- (d) **Non-discrimination:** Rules and procedures relating to trade to be applied in a non-discriminatory manner and be based on market principles;
- (e) **Consistency and predictability:** Rules and procedures relating to trade to be applied in a consistent, predictable and uniform manner so as to minimise uncertainty to the trade and trade related parties. Rules and procedures relating to trade to provide clear and precise procedural guidance to the appropriate authorities with standard policies and operating procedures and be applied in a non-discretionary manner;
- (f) **Harmonisation, standardisation and recognition:** While accepting the need of each Member State to regulate or set rules for legitimate objectives such as protection of health, safety or public morals and conservation of exhaustible natural resources, regulations, rules and procedures affecting the acceptance of goods between Member States to be harmonised as far as possible on the basis of international standards where appropriate. The development of mutual recognition

arrangements for standards and conformity assessment results, and continuing co-operation on technical infrastructure development, are encouraged;

(g) Modernisation and use of new technology: Rules and procedures relating to trade to be reviewed and updated if necessary, taking into account changed circumstances, including new information and new business practices, and based on the adoption, where appropriate, of modern techniques and new technology. Where new technology is used, relevant authorities shall make best efforts to spread the accompanying benefits to all parties through ensuring the openness of the information on the adopted technologies and extending co-operation to authorities of other economies and the private sector in establishing inter-operability and/or inter-connectivity of the technologies;

(h) Due process: Access to adequate legal appeal procedures, adding greater certainty to trade transactions, in accordance with the applicable laws of Member States; and

(i) Co-operation: Member States shall strive to work closely with private sector in the introduction of measures conducive to trade facilitation, including by open channels of communication and co-operation between both governments and business. Member States shall continue to work in partnership to focus on opportunities for increased co-operation including integrated technical assistance and capacity-building; exchanges of best practices critical to implementing trade facilitation initiatives and the co-ordination of positions concerning topics of common interest discussed in the framework of regional and international organisations.

Article 48 Progress Monitoring of Trade Facilitation

1. Member States, individually and collectively, shall undertake assessments once in every two (2) years, on implementation of the trade facilitation measures set out in this Agreement and in the ASEAN Trade Facilitation Work Programme to ensure effective implementation of trade facilitation measures. For this purpose, an ASEAN Trade Facilitation Framework shall be agreed by Member States within six (6) months after entry into force of this Agreement, to serve as a guideline to further enhance trade facilitation in ASEAN.
2. The ASEAN Work Programme on Trade Facilitation shall be reviewed based on the results of the regular assessment pursuant to paragraph 1 of this Article. The ASEAN Trade Facilitation Work Programme and the ASEAN Trade Facilitation Framework and any revisions thereto shall be administratively annexed to this Agreement and serve as an integral part of this Agreement.

Article 49 Establishment of the ASEAN Single Window

Member States shall undertake necessary measures to establish and operate their respective National Single Windows and the ASEAN Single Window in accordance with the provisions of the *Agreement to Establish and Implement the ASEAN Single Window* and the *Protocol to Establish and Implement the ASEAN Single Window*.

Article 50 Implementation Arrangement

1. The progress in the implementation of the ASEAN Work Programme on Trade Facilitation and the outcomes of its assessment shall be reported to the AFTA Council. The SEOM, assisted by the CCA, shall be the main co-ordinator in monitoring the progress of the implementation of the ASEAN Work Programme on Trade Facilitation, in close co-ordination with the various ASEAN Committees in charge of the implementation of the measures under the Work Programme.
2. Each Member State shall establish a Trade Facilitation Coordinating Committee or relevant focal point at the national level.

ANNEX 2 – Selected provisions of the APTA Framework Agreement on Trade Facilitation

Article 1 - Scope

This Agreement shall apply to all Participating States and all goods traded within Participating States in accordance with their domestic laws, regulations and administrative rules.

Article 2 - Objective

The objective of this Agreement is to improve the efficiency of the processes associated with trading in goods across national borders by simplifying and harmonizing trade procedures and practices.

Article 3 - Principles

Under this Agreement Participating States will be guided by the principles of transparency, consistency, simplicity, efficiency, harmonization and standardization, and enhanced cooperation.

Article 4 - Measures for Transparency and Consistency

Participating States shall endeavor to:

Make available their relevant domestic laws, regulations, administrative rules and technical information by officially designated or accepted sources relating to international trade in a non-discriminatory manner to any interested Participating State at no or a minimal cost, and publish the outline of relevant domestic laws, regulations and administrative rules in English;
Notify other Participating States and the ESCAP secretariat of the introduction of new or the amendment of existing trade regulations that may have a significant impact on trade at the earliest possible stage;
Introduce the issuance of advance rulings on the main elements of importation, such as tariff classification in accordance with domestic laws, regulations and administrative rules;
Establish non-discriminatory procedures at reasonable cost and time for administrative and legal appeal against the decisions by customs and other relevant agencies affecting international trade.

Article 5 - Measures for Simplicity and Efficiency

Participating States shall:

Consolidate, rationalize and minimize the number and diversity of fees and charges imposed in connection with importation and exportation;

1-1. Fees and charges shall only be imposed for services provided in direct connection with the specific importation or exportation in question and shall not exceed the approximate cost of the services provided.

1-2. Each Participating State shall periodically review its fees and charges with a view to consolidating them and reducing their number and diversity.

Work towards establishment of a single window allowing the one-time submission of import or export data and documentation requirements;

Introduce procedures for filing and examining documents prior to the arrival of goods, in particular, goods of perishable nature, enabling importers to claim their goods immediately after importation unless the goods are subject to a physical examination or the submitted documents need to be reviewed;

Establish in a phased manner, risk assessment and risk management procedures;

Simplify and reduce the incidence and complexity of import and export formalities and data requirements in accordance with domestic laws, regulations administrative rules to the necessary minimum for enforcing legitimate policy objectives, by applying international standards such as Revised Kyoto Convention and relevant recommendations of the WCO, to the extent possible;

Promote, to the extent feasible, use of automation and information technology in customs procedures and establish electronic communication system to facilitate their importers and exporters for electronic submission of documents, payment of duties and communication with the customs authorities.

Article 6 - Measures for Harmonization and Standardization

Participating States shall:

Use for tariff purpose a tariff nomenclature based on the updated Harmonized Commodity Description and Coding System (HS) elaborated under the auspices of the WCO;

To the extent possible, apply the standards and recommendations of the Revised Kyoto Convention for Simplification and Harmonization of Customs Procedures;

Apply the WTO Agreement on Implementation of Article VII of the GATT 1994.

Article 7 - Measures for Cooperation

Participating States shall:

Endeavor to provide interested Participating States, including the private sector, with an opportunity to comment on prospective new or amended trade-related laws and regulations prior to implementation or entry into force of the changes;

Endeavor to cooperate on effective exchange of customs information and data to improve customs compliance and to facilitate legitimate trade;

Article 8 - Institutional Arrangements

The Ministerial Council shall review the implementation of this Agreement every two years.

The Standing Committee shall supervise and coordinate the implementation of this Agreement and submit its recommendations for review to the Ministerial Council.

For the purposes of implementing Article 8.2, the Standing Committee shall establish a Working Group on Trade Facilitation (WGTF) comprising officials from Customs and/or other relevant agencies, which shall review the implementation of this Agreement and report to the Standing Committee for deliberation.

Each Participating State shall designate a focal point(s) to facilitate communications among them on any matter covered by this Agreement, including the exchange of information relevant to the implementation and operation of this Agreement. Any change in a focal point(s) shall be promptly informed.

The ESCAP Secretariat shall be the secretariat to the Working Group on Trade Facilitation.

Article 9 - Settlement of Disputes

[...]

Article 10 - Assistance for the Least Developed Participating States

Participating States shall assist with special consideration in providing the least developed Participating States with adequate technical assistance and cooperation arrangements in building their trade facilitation capacity to implement this Agreement and thereby enabling to take advantage of potential benefits, by developing practicable measures such as training programmes, courses and seminars for information sharing, and any relevant activities to the extent possible. LDCs shall be required to apply this Agreement after their acquisition of the necessary capacity to implement this Agreement.