Policies to facilitate international trade

8.1 The challenge of restrictions to cross border exchange of goods and services

The potential hinterlands for many ports in Asia traverse one or more borders. While there are many economic and social benefits to be derived from cross border transportation linkages, there are also a number of challenges, including the need to reconcile differences in political and legal systems.

There is a range of reasons why governments need to control the flow of goods across their borders, and it is generally accepted that there will always be a range of measures which, either by accident or design, impede the cross border movement of goods. These include legitimate restrictive practices, such as those related to quarantine and security, as well as increased application of a variety of other rules and regulations, for example, anti-dumping procedures such as the WTO safeguard rules.\(^1\)

However, it is in the interests of all concerned that these restrictions be the minimum required to achieve their social and environmental goals. The phenomenal post-1945 increase in international trade and the improvement in living conditions that has accompanied it, particularly in Asia, has been linked to and driven by the adoption of an open, liberal system of international economic relations under the auspices of the General Agreement on Tariffs and Trade (GATT)/World Trade Organization (WTO) regime.

While tariffs have been progressively reduced under the influence of GATT and the WTO, the same is not true of non-tariff measures. These are less transparent than tariffs, and far more difficult to define, identify and quantify. Furthermore, trade in services, including transport services, has not been subject to GATT/WTO rules.

A number of important reforms related to trade liberalization were planned for discussion at the Doha round of talks. However, the main

\(^1\) In 2003 the European Union has accused Australia of using its quarantine regulations as a barrier to trade and United States has restricted steel imports under the WTO Safeguard provisions.
stumbling block at the trade talks at Cancun in September 2003 was whether to commence negotiations on the four Singapore Issues: investment policy, competition policy, transparency in government procurement and trade facilitation. A number of developing nations, including ESCAP members, felt that there were significant national reasons for not wishing to negotiate on these items.

Comment on some of these issues by the secretariat of a WTO Trade Facilitation Symposium held in 1998, captures well the complexity of the challenges faced by cargo owners wishing to move their trade across borders in Asian countries:

> Innumerable documentation requirements and official regulations exist for the import and often also the export of goods. Approximately 60 documents are used in an average international trade transaction. Although these documents have different purposes, around 80 per cent of the information contained within them is the same. Frequently, documentation requirements are ill-defined and traders are not adequately informed on how to comply with them, thus increasing the potential for errors. The resulting lack of transparency of formalities creates an environment conducive to irregularities and malpractice. Non harmonized and excessive documentation requirements in certain countries increase paperwork four-fold, while the time lost waiting for border release in many regions accounts for up to 20 per cent of total transport time and up to 25 per cent of total transport costs. At the same time, it is questionable whether the large number of information requirements is effective in curtailing dishonest practices.

8.2 Facilitating cross border movement and the flow of goods

Governments can undertake a number of specific actions to facilitate efficient cross border flow of goods, including the mutual recognition of the standards and procedures used in the manufacture, handling and transportation of goods and the establishment of trade agreements.

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2 Named for the location of the discussions by a number of nations including India.

3 Comment made in WTO Council for Trade in Goods, 21 April 1998, checklist of issues raised during WTO Trade Facilitation Symposium, note by the Secretariat.

4 The WTO’s Agreement on Technical Barriers to Trade (TBT) includes the Code of Good Practice for the Preparation, Adoption and Application of Standards. The TBT Agreement recognizes the important contribution that International Standards and conformity assessment systems can make to improving efficiency of production and facilitating international trade.
8.2.1 Trade agreements

Countries often find that the benefits of trade agreements, be they multilateral, such as that exemplified by the WTO; regional, for example, ASEAN; or bilateral, such as a Singapore-United States agreement, produce significant increases in trade. Whilst multilateral trade agreements have been the most effective at increasing international trade, the slow pace of agreement and the significant impediments, such as the need for reform of agricultural subsidies and or the opening up national markets, have sometimes brought the pace multilateral trade talks to a standstill.

Trade agreements have both direct and indirect relevance to the issue of extending the effective hinterlands of Asian ports. Indirectly, all measures that increase the general level of trade between Asian countries, and hence the volume of cross border flows, expose and put pressure on traditional processes and practices that inhibit these flows and accelerate the need for their improvement. More directly, recent trade liberalization measures have extended to liberalization of trade in services, including transport services. Measures that allow transport operators to freely conduct their business across national boundaries directly facilitate the development of seamless intermodal services and the expansion of port hinterlands. The absence of restrictions on such operations has been a vital element in the development of intermodal services in both the European Union and in the United States; and, since NAFTA, within North America as a whole.

There are a number of concerns that bilateral and regional trade agreements can undermine the idea of a most favoured nation (MFN) approach to global trade. The MFN principle of the GATT stipulates that all member nations must be treated equally by each other. Bilateral and regional trade agreements undercut that concept because countries that secure free trade with neighbours may be less motivated to seek broader based liberalization in its own right or to reduce their preferential ties with the neighbours with whom they do not have a trade agreement.

On the other hand, there are views that bilateral and regional trade agreements actually help the multilateral approach. For example, bilateral and regional trade agreements among countries can encourage others to pursue multilateral progress in order to level the playing field of trade benefits in a region. Moreover, sometimes countries have no choice but to enter those agreements. Singapore, for example, turned to bilateral agreements following the failure of the WTO meeting in Seattle in 1999 and completed bilateral trade agreements with New Zealand in 2000, Japan in 2002, and the United States and Australia in 2003. The recent failure of the Doha round of trade talks at Cancun may see a rise in the number of bilateral trade agreements.
8.2.2 Streamlining of documentation

As well as harmonizing international cargo movement requirements, governments can enhance the overall efficiency of trade flows by agreeing to look for ways of reducing the number of documents related to international movement of cargo by road, rail and waterways between ports and their hinterland markets. Improvements could be achieved by:

- harmonizing export and import documents, or using commercial documents already used for export purposes for import clearance as well;
- adopting a single format for documents in line with the United Nations Layout Key for Trade Documents and other UN standards, including UN/EDIFACT;
- replacing the compulsory presentation of some documents for low risk consignments at borders with post clearance audits and self assessment for some trusted traders;
- adopting standardized wording on compulsory labelling and using the languages of both the importing and the exporting countries; and
- introducing electronic systems for filing, processing and communication of data and payment of fees related to border crossing.

8.2.3 Harmonization of rules and standards

The challenge

Increased economic interdependence, arising not only from the liberalization of international trade and investment regimes, but also from technological change, has expanded international market opportunities for a diverse range of firms, in transport no less than in goods markets.

However, as firms providing transport services have moved into new markets, they have increasingly encountered barriers to entry arising from country specific rules and regulations rather than from tariffs or quotas. These measures can range from the legal restriction on the operations of foreign firms because of government policies for the selection and use of transport services to the lack of recognition for the standards and protocols used in other countries.

A common method to restrict the operations of foreign firms is to establish a technical barrier to trade, including a wide variety of environmental, security and safety measures that may have their origin in genuine concerns over the deleterious effects of particular technologies, products or practices, but which operate in a way that restricts trade in goods or services.

There has also been a rise in the use of security protocols to impede the flow of goods. The recent unilateral moves by the United States to impose
greater levels of security have seen the development of a two standard approach to the handling of United States bound cargos depending on the point of origin or transit of both the cargo and crew. This is likely to restrict the flow of goods from a number of non-Western countries.

**Pointers to the way forward**

As a means of facilitating national and international land transportation in the ESCAP region, twenty-eight of its member countries adopted resolution 48/11 at the 48th Commission of UNESCAP. The resolution recommended that the countries accede to seven international conventions in the area of national and international road and rail transportation facilitation. Progress is gradually being made towards the achievement of the goal of complete accession to the targeted conventions.

A number of subregional framework agreements focused on improving the movement of goods, people and vehicles across borders are also being developed by countries in the ESCAP region. These agreements include:

- the ASEAN Framework Agreement on the Facilitation of Goods in Transit;
- the Greater Mekong subregion Agreement for Facilitation of Cross border Transport of Goods and People;
- the Basic Multilateral Agreement on International Transport for Development of the Europe-the Caucasus-Asia Corridor (TRACECA); and
- the Economic Cooperation Organisation (ECO) Transit Transport Framework Agreement.

**Policy guidelines**

The current delays resulting from the difficulties of dealing with a plethora of complicated requirements for the movement of goods could be reduced if governments were to establish a common set of requirements and a common process for completing inbound and outbound clearances of goods. Taking existing international agreements that relate to individual modes of transport and translating these into a single multimodal, multilateral code would enhance efficiency of cross border movement of cargo.

These clearance requirements and the accompanying processes should cover the border crossing and should extend across the whole intermodal journey of the cargo between point of departure and point of destination. This means that they should include a common set of regulations and reporting requirements for:

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5 A number of shipping lines have recently reassigned or removed non western crews from United States destinations.
the efficient movement of vessels in and out of ports;
- improved access of foreign transport companies;
- road traffic, driver licensing and vehicle standards;
- fees related to the border crossing;
- visas needed by drivers; and
- the carriage of hazardous goods.

These could be based on the IMO Convention on the Facilitation of International Traffic (FAL). Also, the leading body for the development of international standards has been the ISO (International Organization for Standardization), which is the world’s largest developer of standards.

ISO standards contribute to making the development, manufacturing and supply of products and services more efficient, safer and cleaner. They make trade between countries easier and fairer. They provide governments with a technical base for health, safety and environmental legislation.6

The use and acceptance of ISO or other international standards could reduce the barriers to foreign goods and speed up or even obviate many customs procedures.

8.2.4 Liability regimes

The challenge

The lack of suitable and affordable liability insurance cover for multimodal transport operators in the region has been a serious constraint on the growth of multimodal transport. Many countries in the ESCAP region still need to determine whether liability rules and limits should be established through a mandatory or voluntary regime of liability.

Pointers to the way forward

ASEAN countries have opted for a mandatory regime and are in the process of finalizing an ASEAN framework agreement on multimodal transport, which incorporates the basis of liability in the UNCTAD/ICC rules.

In Nepal, the Nepal Multimodal Transport and Trade Facilitation Project supported the development of an appropriate legal regime defining clearly the carrier’s liability and the insurance coverage, whereby all the stakeholders are assured of their respective rights and obligations:

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6 www.iso.org
For the purpose, the project has been instrumental in drafting the legislation for, (a) rail carriage of goods, (b) carriage of goods by road, and (c) multimodal transportation of goods. Moreover, the project proposed revision of the existing insurance act, and drafted a separate marine insurance act. The project has come up with recommendations for eliminating unnecessary documents, merging of documents, cutting down lengthy procedures and standardizing some documents according to the United Nations Layout Key (UNLK).7

Policy guidelines

In order to facilitate the expansion of port hinterlands governments can promote the development of a legal framework clearly defining the liability rules that apply to parties moving cargo across borders. As far as possible, the framework should mirror established international standards and conventions, and UNCTAD/ICC rules.

8.2.5 Industry standards and the legal status of intermediaries

The challenge

The lack of mandatory standards for the multimodal transport industry can also inhibit the development of an active and effective multimodal sector. With ESCAP, there is at a present a complex mix of emerging subregional standards, nationally enforced standards and no standards at all. Several countries, including India, the Philippines, the Republic of Korea and Viet Nam have standards imposed by Government. National associations established in the majority of ESCAP member countries play an important role in the self-regulation of the sector.

Pointers to the way forward

The draft ASEAN framework agreement on multimodal transport will provide legislative support for establishing minimum qualifications and certification for multimodal operators, in terms of asset requirements, skills and liability cover. Recognition of appropriate industry associations is also essential, and the majority of countries have moved to embrace registered associations of freight forwarders and multimodal transport operators.

Policy guidelines

Governments can promote appropriate industry standards among intermodal operators by establishing international agreements among trading nations on:

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- definitions of responsibilities that fall to the operators and to consignors of cargo;
- the use of an agreed multimodal transport document as *prima facie* evidence of the multimodal transport operator having taken charge of cargo specified in the document;
- the information that is required on cargo consignments, including the nature, weight and apparent condition of goods, and details about the consignee, the intended journey route and mode of transport and places of transhipment and place of delivery of the goods;
- the assignment of the legal responsibility to the multimodal operator for the actions and omissions of any person acting on his behalf and making multimodal operators legally liable for any loss or damage resulting from these acts or omissions;
- the establishment of a time period after which goods not delivered would be deemed lost and the consignee would be entitled to claim for loss on the basis of the current commodity exchange basis or according to the current market price; and
- mechanisms for resolving disputes between consignors, consignees and the multimodal operator, as well as giving the plaintiff the option of initiating action in a court which, according to the law of the country where the court is located, is competent and within the jurisdiction of the place of business, the plaintiff, the multimodal operator or the consignee or the consignor.

As well as these elements of a legal framework for multimodal operators and their customers, Asian country governments can provide a range of supports for national and international forwarder organizations in the form of sponsorship of educational programmes and research and development.