

CHAPTER 10

Trade Facilitation and Customs

E. Kieck

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E. Kieck

World Bank, Washington, DC, United States

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10.1. INTRODUCTION

The rapid growth in international trade over the past few decades is largely the result of technological developments and trade liberalization efforts at the multilateral, regional, bilateral, and national levels.¹ These efforts have mainly focused on the reduction of tariffs to promote economic development, although “... progress in trade facilitation is still slow in many countries – and [has been] hampered by high costs and administrative difficulties at the border.”²

In managing the movement of goods across their borders, countries apply controls that serve various public policy aims. These include policy objectives such as collecting duties and taxes, protecting the economy from illicit trade practices, and safeguarding society and the environment from dangerous goods.³ These controls are undertaken by various regulatory, fiscal, and border control agencies and are often outdated, with overly bureaucratic clearance processes that pose greater barriers to trade than tariffs.⁴ These constraints are often exacerbated by the uneven use of technology and procedures by agencies where some have automated systems and apply modern techniques such as risk management whilst others are paper-based and apply transactional, “total control/inspection” approaches. Inefficient organizational processes and weak administrative capacity, combined with little or no interagency coordination and inadequate infrastructure and equipment, increase compliance costs and add to delays and unpredictability when moving goods across borders.

As a result, countries have increasingly started to focus on facilitating legitimate trade through national reforms and international trade negotiations.

At the multilateral level, the Trade Facilitation Agreement (TFA) of the World Trade Organization (WTO) entered into force on February 22, 2017, following years of negotiations. The first multilateral trade agreement to be finalized since the establishment of the WTO in 1995, the TFA builds on the provisions in the General Agreement on Tariffs and Trade (GATT) related to freedom of transit, fees, and formalities, and the administration of trade regulations (Articles V, VIII, and X of GATT 1994).

In addition to the multilateral negotiations at the WTO, countries have also included trade facilitation provisions in their regional and bilateral trade agreements. These agreements commonly take the form of free trade agreements and customs union agreements.

¹ IMF 2001.

² McLinden et al. 2011.

³ World Customs Organization 2008.

⁴ Mustra 2011.

10.2. TRADE FACILITATION DEFINED

According to the OECD, “trade facilitation covers all the steps that can be taken to smooth and facilitate the flow of trade ... including product testing and impediments to labor mobility ...”⁵ For this chapter, the WTO definition of trade facilitation will be used; namely, the simplification, modernization, and harmonization of export and import processes.

The commonly accepted aim of trade facilitation is to “simplify and streamline international trade procedures to allow the easier flow of trade across borders and thereby reduce the costs of trade.”⁶ Countries introduce trade facilitation reforms to achieve various policy goals. These include attracting investment and manufacturing to create jobs; reducing trade costs for importers, exporters, and consumers of goods; and participating in global value chains. According to the WTO, full implementation of the TFA will reduce global trade costs by an average of 14.3 percent and will result in export gains of between US\$750 billion and US\$1 trillion per annum, depending on a number of factors.⁷

Trade facilitation is often associated with the activities of a national customs administration. The central role of Customs is recognized in the TFA, and most provisions in Section I of the TFA deal with customs matters. The TFA also recognizes that other government agencies, both at and away from the border, have an impact on international trade, and therefore introduces the concept of Border Agency Cooperation in Article 8, and the requirement to review formalities and documentation in Article 10. There are also other articles covering other regulatory and border agencies. In Article 4, for example, paragraphs 1 to 5 cover procedures for appeal or review applicable to Customs, and paragraph 6 encourages Members to apply the provisions of this Article to administrative decisions of “... a relevant border agency other than Customs.”

This chapter focuses on trade facilitation provisions in PTAs in the broader sense (more than customs) as well as provisions in PTAs that relate to customs matters. Prior to the emergence of the current concept and understanding of trade facilitation, contracting parties to PTAs included customs-related provisions in their PTAs, and these tended to focus on two main areas that were more focused on compliance than facilitation: the administration of preferential rules of origin (mainly through the issuing and processing of certificates of origin) to ensure that only qualifying goods receive preferential tariff treatment; and mutual administrative assistance to support customs enforcement. The TFA contains measures aimed at both facilitating trade (Articles 1 to 11) and promoting compliance and customs cooperation (Article 12).

⁵ OECD 2005.

⁶ Congressional Research Service 2017.

⁷ WTO 2015. Values for full implementation of trade data were applied for years 2003–2011.

10.3. METHODOLOGY

During negotiations and before its entry into force, the TFA had already influenced the inclusion of trade facilitation provisions in PTAs,⁸ and is continuing to be used by PTA negotiators to guide them on trade facilitation elements and content. This is resulting in greater convergence between the TFA and the trade facilitation provisions of PTAs.

The template for the trade facilitation dataset was therefore developed based largely on the TFA structure and elements, but as the dataset covers the trade facilitation provisions of PTAs, additional elements were included. For the elements related to the TFA, the template was largely informed by a working paper of the WTO Secretariat that reviews 217 preferential trade agreements and analyzes their trade facilitation provisions compared to the TFA, with specific reference to parallels, additions, and overlaps.⁹ The same paper was used to verify the findings of the dataset.

In addition to the WTO Secretariat working paper, the World Customs Organization (WCO) also produced a research paper that specifically identifies trends and patterns of customs-related trade facilitation measures in recent PTAs.¹⁰ In addition, two other studies, by UNCTAD and OECD, were also considered in preparing the template.¹¹ The template covers most of the elements of the TFA and, in some instances, goes into more detail than provided for in the TFA. For example, in relation to the TFA's single window provisions, the template adds two additional elements - the inter-operability of single window systems and the establishment of a common single window system.

The template consists of the following eight main sections, most of which are divided into subsections:

I. Transparency

- A. Publication and availability of information
- B. Opportunity to comment, information before entry into force, and consultations
- C. Advance rulings
- D. Procedures for appeal or review

⁸ WTO 2014. Also, the WTO defines PTAs as reciprocal trade agreements between two or more partners, including free trade agreements and customs union agreements.

⁹ WTO 2014.

¹⁰ WCO 2014.

¹¹ UNCTAD 2011; OECD 2002.

II. Fees and formalities

- A. Disciplines on fees and charges imposed on or in connection with importation and exportation and penalties
- B. Release and clearance of goods
- C. Border agency cooperation
- D. Movement of goods intended for import under Customs control
- E. Formalities connected with importation, exportation, and transit

III. Transit

- A. Freedom of transit

IV. Customs and other forms of trade facilitation cooperation

- A. Exchange of information
- B. Other

V. Customs union specific

VI. FTA specific

VII. Technical assistance and capacity building

VIII. Institutional arrangements

For each section or subsection, the template lists specific elements. These are then unpacked into individual items (bullet points), where relevant, in order to identify the scope of an element and the commitment of the parties in relation to a specific element or item.

Sections V and VI of the template deal with trade facilitation provisions that are specific to the two main types of PTAs – customs unions and free trade areas – and are not covered in the TFA. These sections have been included since they cover elements that have a non-tariff impact on (a) the movement of goods across borders, and (b) the customs and border management activities of the parties to the PTAs.

For customs union agreements, the template focuses on three issues that are aimed at forming an impression of the level of integration of a customs union agreement, with the aim of determining how each issue contributes to the facilitation of trade. These issues are (a) the legal arrangements agreed to by the parties to apply a common external tariff and regulate other customs and cross-border trade matters (e.g., a supranational customs legal framework, as in the European Union and the East African Community, or separate national customs laws, as in the Southern African Customs Union); (b) the

point of collection of customs duties and taxes (at port of entry into the union or the final destination); and (c) customs revenue arrangements (does each party retain what it collects, or are customs a source of revenue for the union?). When looking at these issues in a customs union agreement, an impression can be formed about the level of integration envisaged by the contracting parties.

For free trade agreements, the template focuses on origin administration. The actual preferential rules of origin are not covered, as these, similar to customs duties, are related to trade, industrial, and fiscal policy matters. According to the International Chamber of Commerce (ICC), "... origin requirement procedures (e.g., supplier declarations) linked to PTAs are starting to form a behind-the-border barrier to trade."¹² For this reason, the actual administration of the rules of origin, such as the requirement to obtain and present a certificate of origin to customs, is closely related to trade facilitation and covered in the template and dataset. From a trade facilitation perspective, the elements of the FTA specific section aim to provide a sense of whether a PTA uses the traditional origin administration model¹³ or contains provisions that aim to reduce the administrative complexities associated with rules of origin and facilitate trade in goods. The latter include measures such as (a) using a commercial invoice declaration; (b) not requiring the issuing/endorsement of a certificate of origin by authorities in the exporting country or the submission of proof of origin to the Customs authority at import unless requested; and (c) waivers, approved exporter schemes and self-certification.

The template focuses on core trade facilitation and customs issues and does not include the following, even though they may directly or indirectly impact on the movement of goods across borders:¹⁴

- sanitary and phytosanitary measures and technical barriers to trade;
- common external tariff or tariff reduction issues;
- elements that have implications for customs control or trade facilitation, such as intellectual property rights enforcement, electronic commerce as well as prohibitions and restrictions; and
- legal and process-related provisions, such as dispute settlement, arbitration, and notification, which may also apply to trade facilitation provisions.

The WTO Secretariat paper notes that an analysis of trade facilitation provisions in PTAs is hampered by the absence of consistent trade facilitation terminology. The paper also mentions that some of the above-mentioned excluded issues "... are considered part of the TF chapter in several agreements whereas they are treated in separate sections elsewhere."¹⁵

¹² ICC 2017.

¹³ This usually requires that a paper certificate of origin has to be issued/certified by the exporting customs administration or another authority and submitted as part of the customs declaration to the importing customs administration on a transactional basis.

¹⁴ These issues are also covered by other WTO agreements.

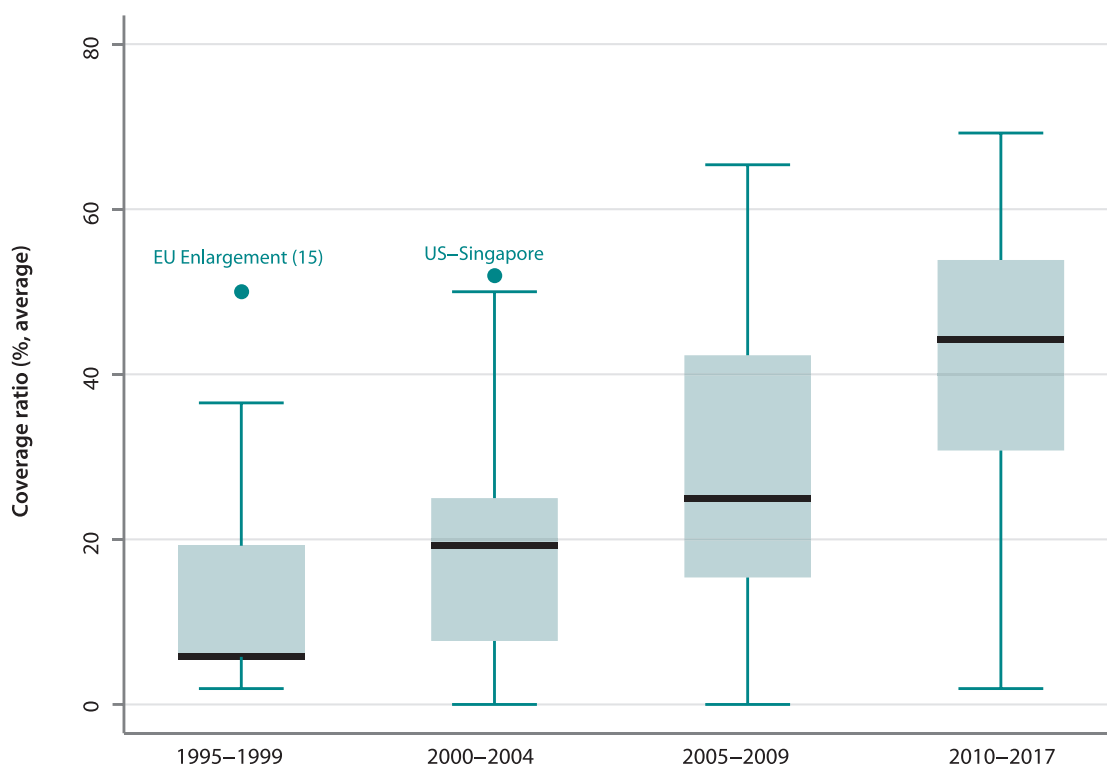
¹⁵ WTO 2014b.

10.4. TRENDS AND PATTERNS

10.4.1 General remarks

The inclusion of trade facilitation provisions in PTAs notified to the WTO has evolved over time. Earlier PTAs had no or narrow trade facilitation provisions, but over time the inclusion and the range of TF provisions in PTAs have expanded (Figure 10.1).¹⁶ The solid black line is the average number of TF provisions in PTAs, and the dots refer to specific PTAs that are above average for a period.

Figure 10.1: Average coverage ratio of TF provisions in new PTAs over time



Source: Deep Trade Agreements Database

Note: TF = trade facilitation. Solid black line shows average number of TF provisions in PTAs; dots refer to specific PTAs that are above average for a period.

The WTO TFA negotiations have influenced the negotiation of trade facilitation provisions in PTAs. In fact, “... it can be reasonably assumed that many governments tended to implement certain TF measures negotiated at the WTO in bilateral or regional domains...”¹⁷

¹⁶ WTO 2014b; Congressional Research Service 2017.

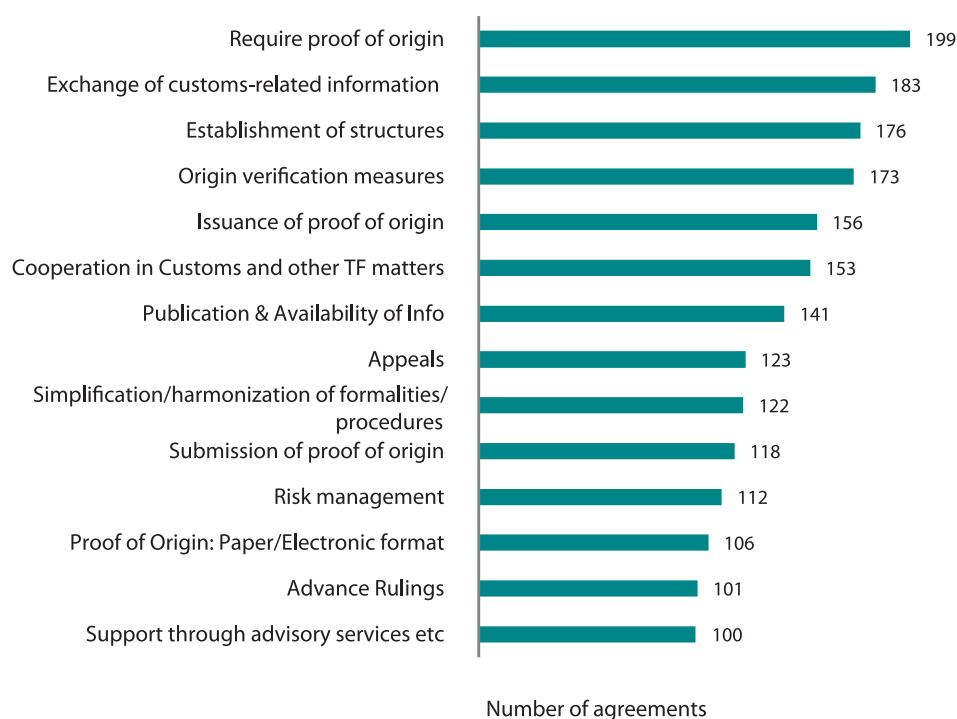
¹⁷ WCO 2014b.

The TFA negotiations began after the adoption by the WTO's General Council of the "July 2004 package," which mandated negotiations on trade facilitation based on the modalities set out in Annex D of the General Council decision.¹⁸

Of the 267 PTAs reviewed for this chapter, the vast majority (260) have at least one trade facilitation provision. The EU-Republic of Korea agreement contains the highest number of TF provisions, at 36. Overall, PTAs concluded by the EU, EFTA, Canada, the US, Korea, Chile, and Peru tend to have more TF provisions than others. All the PTAs with 30 or more trade facilitation provisions entered into force after 2005. Those that entered into force after 2010 have an average of 21.9 trade facilitation provisions, compared to an average of 14.5 provisions for PTAs concluded between 2005 and 2009, 9.6 for those concluded between 2000 and 2004, and 6.8 for those between 1995 and 1999.

Among the specific provisions used in the template, the most and least common are shown in Figures 10.2 and 10.3.

Figure 10.2: Trade facilitation provisions with highest frequency

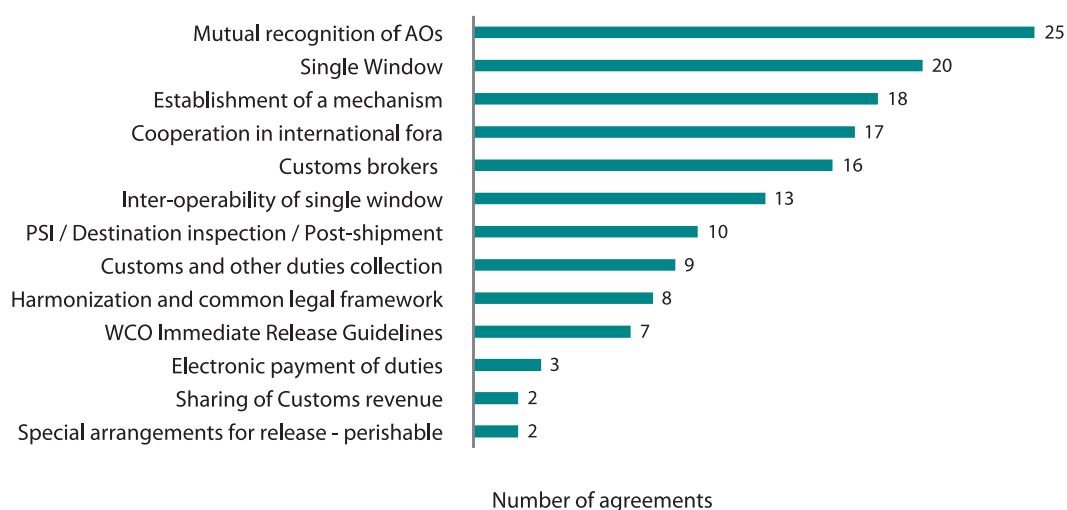


Source: Deep Trade Agreements Database.

Note: TF = trade facilitation.

¹⁸ Decision Adopted by the General Council on 1 August 2004, WT/L/579 dated 2 August 2004.

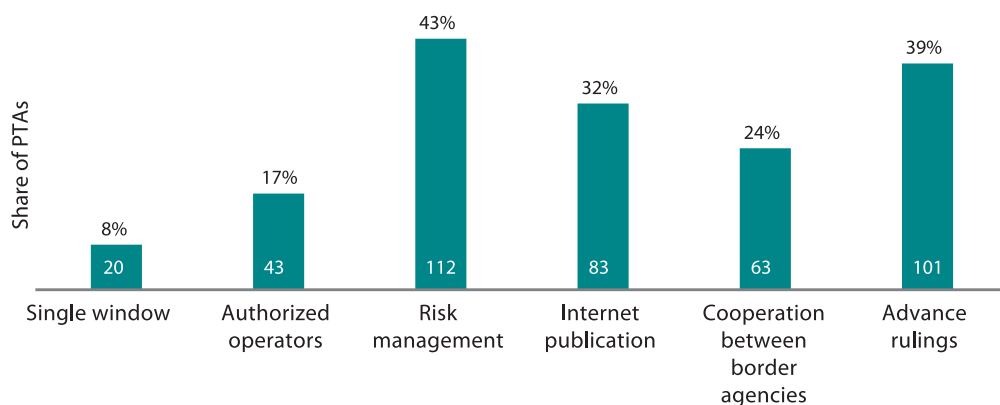
Figure 10.3: Trade facilitation provisions with lowest frequency



Source: Deep Trade Agreements Database.

In the TFA, some of the most common category C measures notified by countries include the single window, authorized operators, risk management, internet publication, border agency cooperation, and advance rulings. These are more “complex provisions” because many WTO members require technical assistance and capacity building to implement them. The figure below demonstrates the extent to which they have been incorporated into PTAs (Figure 10.4).

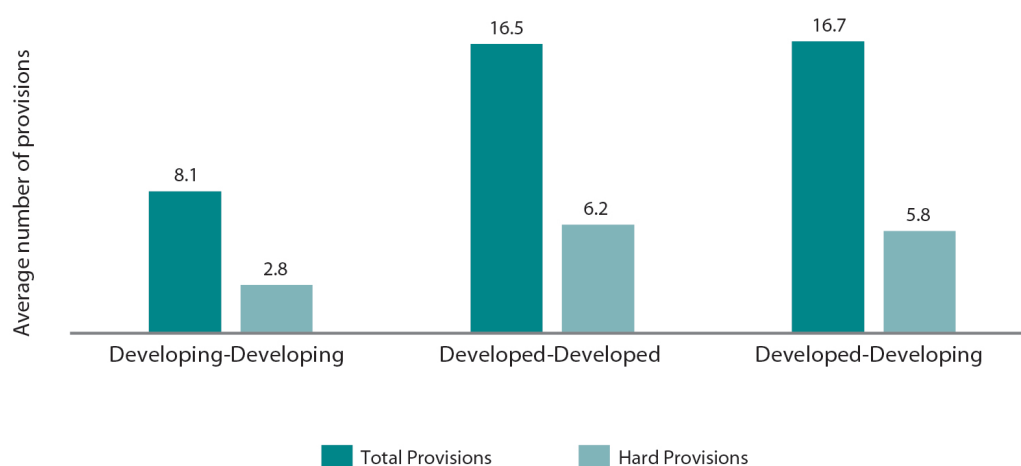
Figure 10.4: Share of PTAs with more “complex” provisions



Source: Deep Trade Agreements Database.

Note: Figures at bottom of each bar represent the number of PTAs with complex provisions.

The past few decades has seen an increase not only in the number of trade facilitation provisions included in PTAs, but also in the diversity of countries that include them. The average number of trade facilitation provisions in PTAs by contracting group is shown in Figure 10.5.

Figure 10.5: Average number of trade facilitation provisions in PTAs, by level of development

Most of the trade facilitation provisions found in PTAs relate to customs matters, but this is changing. There appears to be a recognition of the need to also include the activities of other agencies that impact trade. These include enforcement agencies at borders, such as the police, standards, veterinary, and phytosanitary authorities, as well as agencies that regulate cross-border trade through permits, licenses, and certificates.

Trade facilitation provisions are found either in the general text of an agreement (usually in chapters dealing with trade in goods and rules of origin) or in a separate chapter, annex, or appendix. The trend in recent PTAs is to deal with trade facilitation separately.¹⁹ For the United States, earlier PTAs such as the US-Chile agreement contained a chapter on “Customs Administration” while more recent agreements such as US-Korea contain a chapter on “Customs Administration and Trade Facilitation.” The first EFTA free trade agreements contained customs provisions in the context of rules of origin and mutual administrative assistance; however, most EFTA agreements concluded after 2008 contain an annex on all aspects of trade facilitation.²⁰ This trend is most likely the result of a combination of triggers such as the commencement of TFA negotiations and the recognition that measures other than tariffs and rules of origin also require special attention to expand trade and reduce costs between the contracting parties.

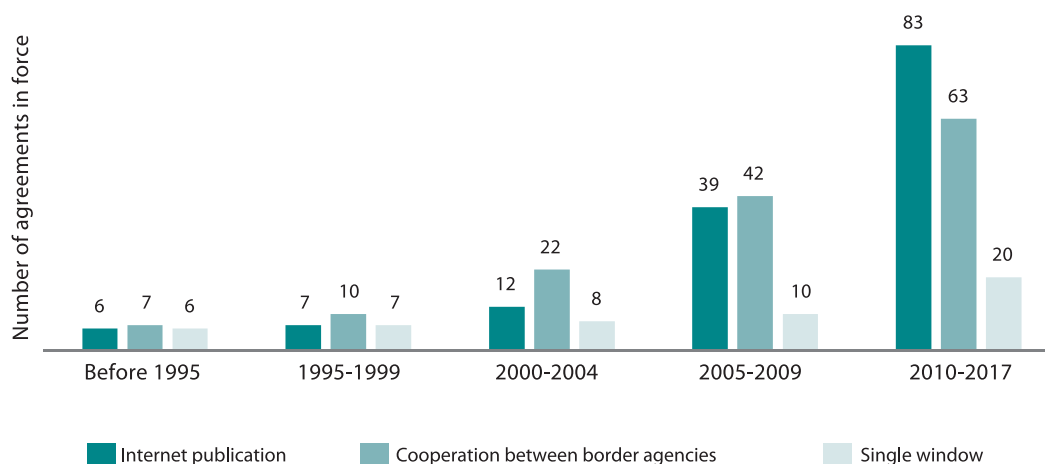
Some of the trade facilitation provisions that cover more than customs matters are the requirement to publish all trade-related laws and regulations on the internet, coordination among border

¹⁹ WCO 2014b.

²⁰ An exception is EFTA-Peru, signed in 2010, which contains an annex on customs procedures and trade facilitation.

management agencies, and electronic trade single window provisions. As of 2017, 114 PTAs contain at least one of the three provisions, and 9 contain all three provisions (Figure 10.6).

Figure 10.6: Key provisions other than customs, over time



Source: Deep Trade Agreements Database.

Most PTAs that commit the parties to use specific international standards refer to WCO instruments such as the Revised Kyoto Convention (RKC),²¹ the SAFE Framework of Standards, and the Harmonized System (HS).²² The influence of the World Customs Organization can also be seen in references to “authorized economic operator” (AEO) in some PTAs, as opposed to the “authorized operator” concept of the TFA. As a matter of interest, national customs laws, in addition to these two expressions, also use concepts such as “trusted trader” or “preferred trader.”²³

Some trade facilitation measures, such as those relating to fees and charges, are dealt with in a very similar manner in different PTAs. This demonstrates the influence of longstanding GATT obligations (such as Article VIII) in informing the commitments of the contracting parties. In other cases, the same issue is dealt with very differently in different PTAs. In the case of expedited shipments, for example, the provisions of PTAs tend to vary.²⁴ This can be attributed to the absence of these provisions in the WTO before the TFA entered into force. This variability contributes to the complexity

²¹ International Convention on the Simplification and Harmonization of Customs Procedures (as amended).

²² Harmonized Commodity Description and Coding System.

²³ These types of designations generally aim to reward high levels of compliance (or compliance with the country’s standards), although the requirements and benefits may differ.

²⁴ WCO 2014b.

of analyzing trade facilitation provisions across PTAs. Therefore, the actual content of the commitments, and not just the headings, should be scrutinized. All of this is further complicated by the depth and specificity of the commitments made by contracting parties on the same measure across PTAs.

An interesting feature of trade facilitation provisions in PTAs is that they are mostly non-discriminatory.²⁵ They tend to benefit not only the contracting parties but also third parties, mainly because of the impracticality of maintaining two (or more) separate trade facilitation regimes. For example, it makes little sense to apply risk management techniques only to goods imported from PTA contracting parties. There are, of course, notable exceptions such as the exchange of information for the purpose of mutual administrative assistance or the commitment to work towards the mutual recognition of each other's AEO/AO arrangements.

As with the TFA, PTA commitments on trade facilitation can be classified as either best endeavor or binding. In some instances, even the binding commitments are tempered with conditions (such as subject to national laws/available resources, provided all regulatory requirements are met or to be negotiated and agreed at a later stage). Any analysis should be careful to identify the actual commitments of the contracting parties. This is another complicating factor that hampers analysis.

The trade facilitation provisions in some PTAs are general while others contain comprehensive and detailed commitments. Again, using the example of expedited shipments, PTAs to which the United States is a party tend to contain detailed provisions on expedited shipments,²⁶ while PTAs to which the EU is a contracting party are more general.²⁷

A further factor to keep in mind when analyzing the trade facilitation provisions of PTAs is that some PTAs commit the contracting parties to putting in place an indicative work program or empowering an institution or body such as a customs committee to develop trade facilitation measures. For example, the Southern African Customs Union Agreement (SACU) commits the parties to developing arrangements on customs cooperation in the form of annexes to the agreement. It is not always possible to locate these instruments as they are developed after the PTA enters into force. Some of these instruments, such as in

²⁵ Duval et al. 2019, page 19.

²⁶ Congressional Research Service 2017.

²⁷ WTO 2014b.

the SACU example, form part of the PTA once they are finalized (signed or ratified, as the case may be), but others may take the form of, for example, Memoranda of Understanding (MoUs) and not be, in treaty terms, part of the PTA. This is another factor that hampers a comprehensive analysis of trade facilitation provisions.

The types of trade facilitation provisions in PTAs are determined by a range of factors. These include the overall aims and objectives of the contracting parties (including intentions on level of integration); the type of PTA; the number of contracting parties; the practical facilitation challenges that need to be addressed (for example, issues identified as bottlenecks by traders); and levels of development of the contracting parties. The WTO working paper elaborates on these factors.²⁸

It is also necessary, when comparing the trade facilitation provisions of PTAs, to consider particular issues such as geography. By way of example, it may make sense for countries sharing a land border to agree to implement a one-stop border post. But where countries do not have a common border, then this will (most likely) not be found in the agreement. This equally applies to transit provisions. It has also been noted that customs union agreements mostly tend to be entered into by countries next to or in close proximity to each other.²⁹

Related to this point is that the dataset should not only be looked at in a numerical sense (for example, PTA A contains 10 trade facilitation provisions while PTA B contains 5 provisions, and therefore PTA A is “deeper”). The variation in the number of provisions can be explained by some of the above-mentioned factors, such as geography. For a deeper analysis of trade facilitation provisions, there is a need to consider context, quality, level of commitment, and other factors. Some provisions make more of a difference than others. In other words, some trade facilitation provisions “weigh” more than others in a specific context and have a bigger impact on the actual facilitation of legitimate trade between the contracting parties. The challenge for contracting parties that are committed to a deep PTA is to identify the most important provisions and garner the political will and resources to implement them. These provisions are not easy to identify; therefore, it may be useful for the parties to agree to prior analyses such as time release studies and close consultation with importers, exporters, brokers, and logistics service providers. This will enable the contracting parties to identify particularly important provisions as well as the specificity required to address concerns and challenges. It is not always the most complex and expensive solutions that make the biggest difference; measures related to transparency are often regarded as more effective in reducing costs than measures related to fees and formalities.³⁰

²⁸ WTO 2014b.

²⁹ Andriamananjara 2011.

³⁰ Duval et al. 2016.

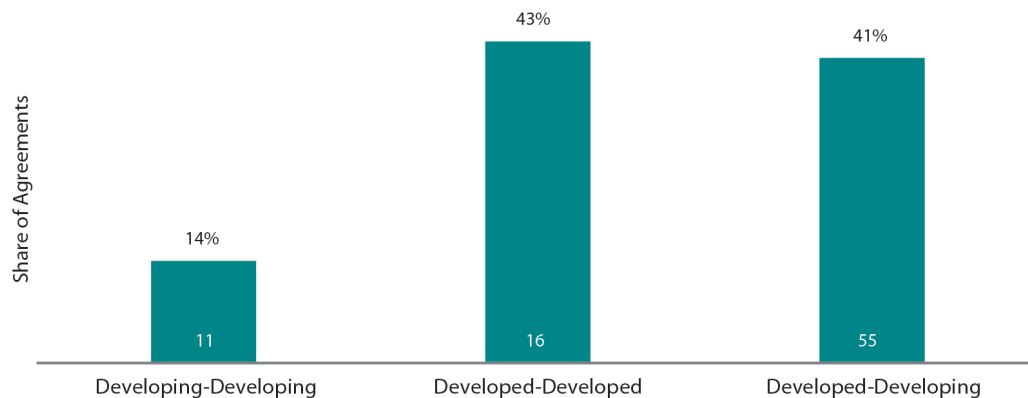
In the same vein, the extent to which provisions are binding and enforceable, and the implementation will and capacity of the parties, also determine the impact of trade facilitation measures, and are therefore also important factors in trade analysis. Enforceability generally depends on the inclusion of dispute settlement (DS) provisions in the PTA. The TFA is subject to the Dispute Settlement Understanding (DSU) of the WTO, which is stronger and more binding than dispute settlement provisions had been under the GATT. The TFA also creates a committee to review the operation and implementation of trade facilitation measures. In contrast, most PTAs do not have similar mechanisms to ensure implementation. The absence of such mechanisms may have resulted in an increased willingness of parties to commit to some TF measures, knowing there is little or no risk of a sanction.

The rest of the chapter focuses on a number of selected trade facilitation provisions.

10.4.2 Internet publication

Many PTAs initially contained provisions committing the parties to publish trade-related laws and procedures. Over time, this commitment was expanded to include publication either in print on the internet; and more recently, it has narrowed to publication only on the internet. Eighty-two PTAs - 55 North-North, 16 North-South, and 11 South-South - now have this internet-only provision.

Figure 10.7: Share of agreements including provisions on internet publication by level of development



Source: Deep Trade Agreements Database.

Note: The figures listed at the bottom of each bar represent the number of PTAs with these provisions.

10.4.3 Prior publication and opportunity to comment

The requirements to (a) consult stakeholders and provide opportunity to comment and (b) publish laws and regulations before implementation often appear together in PTAs such as the

EU-Chile agreement. Other PTAs include a prior publication requirement but do not require consultation on laws and regulations. Still others that predate the TFA specifically refer to Article X of GATT 1994. This article not only deals with transparency but provides that rules can only be enforced if they were published prior to application.³¹ Article X does not require an opportunity to comment. The ASEAN-India Framework Agreement and Canada-Israel FTA are examples of PTAs that incorporate Article X by reference. These two requirements are also not always dealt with in a similar manner in PTAs.

As noted above, most trade facilitation provisions in PTAs also benefit third parties, and this is the case when the contracting parties commit to publish trade-related requirements and provide an opportunity for comment before implementation. Article 73 of the China-Chile FTA illustrates an exception to this and provides that a party will provide a reasonable opportunity to the other party and interested persons of that contracting party to comment before implementation.

10.4.4 Designation of enquiry points

The provisions of the TFA on enquiry points are broad in their coverage as they, amongst others, have to answer reasonable answer enquiries from “governments, traders, and other interested parties” on all matters mentioned in Article 1 (paragraph 1.1). In the PTAs that provide for enquiry points or contact points, their role is often limited to communication between the contracting parties; 76 PTAs now have this requirement.

10.4.5 Advance rulings

Of the 267 PTAs in the World Bank’s Deep Integration database, 101 provide for advance rulings. Of these, the majority specify the matters on which advance rulings may be issued, and the language used tends to be binding. EFTA-Peru and Australia-Thailand take a narrow approach to advance rulings and provide for them on only one issue—tariff classification.³² Other PTAs, such as ASEAN-Australia-New Zealand, extend this requirement to all traditional customs areas; namely, tariff classification, customs valuation, and origin. A number of PTAs, while identifying the specific issues on which rulings may be issued, also create the space for the parties to agree on additional issues at a later date. In the case of US-Korea, a list of seven items is provided on which advance rulings can be requested, and other items can be added upon agreement of the parties. Of interest in this PTA is that the right to request an advance ruling is limited to importers of

³¹ UNECE, n.d.

³² However, the EFTA-Peru PTA commits the parties to endeavor to extend advance rulings to origin and others matters.

the importing party and exporters and producers of the exporting party. Similar approaches are followed in a number of other PTAs. In China–New Zealand, for example, “any person with a justifiable cause” may also request an advance ruling. This PTA also prescribes the time periods within which an advance ruling should be requested and issued, respectively. In other cases, the prescribed time periods are left to the applicable national laws of the parties.

10.4.6 Appeal or review

The requirement to provide for appeal or review of Customs and other administrative decisions is one of the most common trade facilitation provisions, appearing in 123 of the PTAs reviewed. As with advance rulings, the provisions on appeal and review found in different PTAs vary in specificity. While some PTAs provide for review of customs decisions specifically, others provide more generally for an appeal/review mechanism regarding not only customs and trade facilitation, but other matters covered by the agreement. An example of an PTA with an appeal/review provision specific to customs matters is CAFTA–Dominican Republic; an example of a PTA with general review/appeal provisions is the Economic Partnership Agreement between Japan and Brunei Darussalam.

10.4.7 Disciplines on fees and charges, and penalties

Eighty-seven of the 267 PTAs contain provisions on fees and charges, and 50 (about 20 percent) contain a provision on penalties. These agreements tend to either refer directly to GATT Article VIII or use Article VIII as a template. Only a handful of PTAs go beyond Article VIII.³³

10.4.8 Release and clearance

Pre-arrival processing is not a common measure and is mostly found in PTAs that entered into force after 2003. Fifty-five PTAs have pre-arrival processing.

One hundred twelve of the 267 PTAs require parties to adopt or maintain risk management. Ninety percent (100 of the 112 PTAs) entered into force in 2002 or later. Thirty PTAs provide for post-clearance audits.

On Authorized Operators (AOs), six of EFTA’s agreements provide for the negotiation of mutual recognition of AEO systems under the broader heading of release and clearance.³⁴

³³ WTO 2014b, page 23.

³⁴ These are the PTAs concluded with Albania, Bosnia and Herzegovina, Georgia, Montenegro, Serbia, and Ukraine.

10.4.9 Border agency cooperation

The requirement for cooperation between national border agencies is found in only a limited number of PTAs. Recently concluded EFTA agreements provide for either (a) cooperation among all border authorities within each party, and among the authorities of the different parties; or (b) simultaneous inspection by national border authorities when goods are imported or exported.

10.4.10 Formalities

Of the 267 PTAs reviewed, 122 require periodic review of formalities and documents. Of these 122, 106 (88 percent) entered into force in 2003 or later. According to the WTO, more than half of PTAs provide for the simplification and/or reduction of formalities, and this is mostly stated in general terms.³⁵

The use of international standards as the basis for import, export, or transit formalities and procedures is one of the most common TF provisions in PTAs that entered into force after 2003. Where specific standards are mentioned, they tend to be WCO instruments. Ninety of the 267 PTAs reviewed refer to the use of international standards.

Only 20 PTAs have been found to contain a provision on establishing or maintaining a single window.

Ten PTAs contain provisions regarding the use of pre-shipment inspection services, 16 contain provisions on customs brokers, and 72 contain provisions on temporary admission.

10.4.11 Transit

Eight-five PTAs provide for freedom of transit. Of these, the European Union is a party to 27 (32 percent).

10.4.12 Exchange of information

One of the first customs-related provisions included in PTAs related to the exchange of information between the customs agencies of the contracting parties. As a result, these provisions are found in more than 70 percent of PTAs. As with most other trade facilitation provisions, exchange of information provisions ranges from comprehensive and specific to more general and vaguer. The aim of these provisions is mostly to support customs enforcement.

³⁵ WTO 2014b, page 29.

The shift towards a paperless clearance environment and the use of electronic data to support selectivity in customs clearance (i.e., focusing on high-risk goods and facilitating the release of low-risk goods) has led many customs administrations to consider how information and communication technology can be used to create “a global Customs network in support of the international trading system. [T]his implies the creation of an international e-Customs network that will ensure seamless, real-time and paperless flows of information and connectivity.”³⁶

The Japan-Singapore PTA was the first to introduce the concept of paperless trading. It commits the parties to work towards the introduction of paperless trading between themselves as well as their respective private sector entities.

10.4.13 Customs unions

Article XXIV of the GATT 1994 defines a customs union as an arrangement wherein the parties remove customs duties on goods originating in their respective territories and apply the same duties and regulations on goods from third parties. A customs union agreement represents “... a deeper form of integration than a free trade agreement, generally requiring ... a greater loss of autonomy.”³⁷ The vast majority (239, excluding 3 additional accessions) of PTAs notified to the WTO are free trade agreements, while only 17 are customs union agreements.³⁸

Among the TF provisions specific to customs unions, legal harmonization and standardization are the most common, appearing in 8 agreements. These provisions, however, have different aims. The EU, Gulf Cooperation Council (GCC), and East African Community (EAC) agreements provide, respectively, for a Union Customs Code, a Common Customs Law, and a Customs Management Act,³⁹ which have direct application in the territories of the contracting parties. Mercosur has developed a Common Customs Code which members have to incorporate into their national customs laws to ensure implementation. SACU, on the other hand, does not have a common customs legal framework with either direct application or incorporation into national law, but provides for the application of similar legislation related to customs and excise duties.

One of the key issues in negotiating a customs union agreement relates to the collection and allocation of customs duties imposed on goods imported from third parties. The

³⁶ World Customs Organization 2008.

³⁷ Andriamananjara 2011.

³⁸ These figures exclude various enlargement and accession agreements.

³⁹ Yasui 2014b.

outcome of this is indicative of the level of integration envisaged by the contracting parties. In the case of the EU, customs duties collected on imports belong to the EU (“own resources”) and are collected by members on behalf of the EU. In other customs unions, customs duties are revenues that belong to the members. A unique arrangement exists in SACU, where customs duties (and excise duties) are shared according to a revenue-sharing formula. Other customs union agreements provide for the “final destination” principle, according to which the duties belong to the country of destination of the goods.⁴⁰ Most of the 8 agreements contain a provision specifying where customs and other duties and taxes are to be collected; these include the EC Treaty and Enlargement instruments, as well as the Common Economic Zone (CEZ).

The final destination principle and other measures such as the collection of value-added taxes and excise duties require (with the exception of the EU) that customs union members still maintain a level of physical customs controls for goods moving between their territories.⁴¹ As a result, some customs unions have developed specific trade facilitation measures to expedite the movement of goods between them. The Mercosur countries have agreed on a number of intra-union border posts where integrated controls are to be applied. The Andean Community has a high-level working group that oversees the Community Policy for Border Integration and Development.⁴² The EAC has adopted a Single Customs Territory policy, which aims to increase the interconnectivity of the customs systems used by EAC members and includes a payment system to manage the transfer of revenues among members.

10.4.14 Origin administration

As with customs unions, Article XXIV of GATT 1994 also defines a free trade area. This is an arrangement whereby the parties eliminate customs duties and other restrictive regulations of commerce. However, in contrast to a customs union, the parties in a free trade area maintain their respective tariffs on goods imported from third parties. To ensure that the benefits of this arrangement are not extended to third parties, the contracting parties negotiate provisions related to rules of origin. The application of origin rules is supported by provisions related to the administration of rules of origin. These measures are often cited as non-tariff barriers. The most common method of substantiating a claim of origin is a certificate of origin issued by a specified competent authority of the exporter. Most free trade agreements require that this certificate be presented to the customs

⁴⁰ Andriamananjara 2011, page 117.

⁴¹ Yasui 2014b.

⁴² Kieck and Maur 2011.

administration of the importing country upon request. Most agreements provide that a competent authority will issue certificates of origin and sometimes this is a specific entity or it is left to the contracting parties to notify each other of the details of their respective competent authorities or authorized bodies. These are mostly customs administrations, chambers of commerce, and the like. In support of the origin administration requirements, FTAs usually have origin verification measures or mutual administrative assistance provisions, which allow the importing party to send a request for verification of origin to the competent authority of the exporting party.

The proliferation of free trade agreements has resulted in a significant increase in the issuing of certificates of origin, which has added to the cost of doing business. This has compelled some countries to look at various options from a trade facilitation perspective to simplify origin administration systems. The WCO issued its “Guidelines on Certification of Origin” in July 2014 and mentions four systems that have been introduced through FTAs to move away from certification by competent authorities to self-certification, namely approved exporter, registered exporter, fully exporter-based, and importer-based systems. Examples of each are provided below.

The EU-Korea PTA provides that an exporter can issue an origin declaration after being granted approved exporter status by its respective national customs administration. In the case of the Comprehensive Economic and Trade Agreement between the EU and Canada, EU exporters can apply to be a registered exporter, in which case the origin status of their goods is evidenced by an invoice statement. The US-Korea PTA provides that an exporter can issue a certification of origin, either written or electronically. There is no prescribed format for the certificate and it will be recognized by the importing party as long as it contains certain elements that are specified in the agreement. The most liberal form of self-certification is the importer-based system, such as the US-Australia PTA. In this agreement, the importer claiming a duty preference for imported goods does not have to submit a certificate of origin. However, the importing customs administration may request the importer to provide a statement setting out the reasons for the qualification of the goods.

In some cases, the trade agreements of a country can have different origin administration systems in place, depending on a number of factors, including (a) the date when the agreement entered into force (older agreements tended to require a certificate of origin issued by an export competent authority); and (b) the ability and “comfort” of the import customs administration to apply a risk-based approach to identify non-compliance. For example, Australia’s free trade agreements cover three different origin administration systems, and one of these can be further divided into four sub-systems (Table 10.1).

Table 10.1: Origin administration systems in free trade agreements to which Australia is a party

METHOD	AGREEMENT
Importer-based, knowledge by the importer	<ul style="list-style-type: none"> • Australia-US FTA
Written declaration / declaration of origin filled out by the exporter or producer	<ul style="list-style-type: none"> • Australia-New Zealand Closer Economic Relations Trade Agreement • Australia-Chile Free Trade Agreement • South Pacific Trade and Economic Cooperation Agreement • Malaysia-Australia Free Trade Agreement
Certificate of origin <ul style="list-style-type: none"> • can be used for multiple shipments supplemented by written declaration for each shipment • for each shipment or written declaration for each shipment • for each shipment, but a written declaration can be used in case of an advance ruling on the origin of the good 	<ul style="list-style-type: none"> • for each shipment • Singapore-Australia Free Trade Agreement • Korea-Australia Free Trade Agreement • Japan-Australia Economic Partnership Agreement • China-Australia Free Trade Agreement • Thailand-Australia Free Trade Agreement • ASEAN-Australia-New Zealand Free Trade Area

Source: Adapted from Tramby 2017, page 5.

10.4.15 Technical assistance and capacity building

One hundred of the 267 PTAs provide for the parties to support each other in general and specific ways to facilitate trade. These include technical assistance, advisory services, training, study visits, and exchange or secondment of officials to strengthen cooperation or partnerships between the contracting parties. While most of the PTAs that provide for specific technical assistance are concluded between developed and developing nations, a few are between developing countries. These include Pakistan-Malaysia, Peru-Chile, and Dominican Republic-Central America.

10.4.16 Institutional

With regard to institutional arrangements, 176 of the 267 PTAs contain provisions for the establishment of a structure such as a working group or committee to achieve specified goals. Goals may include, for example, developing a customs or trade facilitation work program, preparing an instrument or activity provided for in the agreement, or monitoring the implementation of relevant provisions.

Only 18 of the 267 PTAs provide for a mechanism to consult the private sector, of which one entered into force before 1995 and one between 2000 and 2004.

10.5. CONCLUSIONS

The concept of trade facilitation in PTAs has evolved over time, from only limited provisions on customs matters to the inclusion of more comprehensive provisions on regulatory and border matters that have an impact on the cross-border movement of goods. This shift includes an expansion in scope, to encompass not only cooperation between the contracting parties to ensure proper application of the agreement, but also issues of concern to the private sector, such as increasing transparency, promoting certainty and predictability, and simplifying official processes and requirements. The latter are aimed at reducing the complexity, cost, and time required to comply with international trade rules. This holds true for contracting parties from both developed and developing countries. Increasingly, there is a recognition of the need to include trade facilitation provisions to optimize the gains from PTAs.

The expansion of the concept of trade facilitation and the number of trade facilitation provisions included in PTAs have resulted from a number of factors. These include the negotiation of the WTO Trade Facilitation Agreement, which increased the awareness and understanding of trade facilitation. This agreement, even before its entry into force, has influenced and will continue to influence the negotiation of trade facilitation provisions in PTAs.

Expansion of the concept of trade facilitation has been accompanied by an increase in the average number of provisions included in the agreements. Further, as a result of the influence of the WTO TFA, there is an increasing convergence of these provisions, in terms of both their subject matter and language in the PTA, although significant divergence remains.

Technological advancements have also influenced the design of trade facilitation provisions in PTAs, such as the inclusion of trade information portals, single window systems, and the advance electronic processing of declarations. This is expected to continue. The use of technology supports the modernization of customs and other regulatory and border agencies and expands the range of trade facilitation provisions. A number of countries are looking into the use of new technologies such as blockchain to support their international trade and border management activities.

In the case of free trade agreements, interesting developments are taking place to modernize and simplify the administration of preferential rules of origin. Business practices will continue to evolve as customs administrations increasingly make better use of automation and build their risk management and post-clearance audit capacity.

The modernization of customs administrations will most likely also impact customs unions, especially the collection of duties and taxes, and hopefully will result in further simplification of processes, declarations, and documentary requirements.

Finally, the ultimate test of the trade facilitation provisions that contracting parties include in their PTAs is the extent of implementation. In this regard, most PTAs fall short of the dispute settlement provisions that govern the WTO TFA, and there is usually very little legal recourse in case of a lack of implementation. Very often, this is as a result of limited capacity or resources. As most PTAs do not provide for technical assistance and capacity building, this is an area where WTO members can play a significant role in supporting the efforts of less developed countries to introduce the reforms necessary to facilitate legitimate trade.

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REFERENCES

- Andriamananjara, Soamiely. 2011. Customs unions. In *Preferential trade agreement policies for development: A handbook*. Washington, DC: World Bank.
- Congressional Research Service. 2017. WTO Trade Facilitation Agreement R4477 (March 3).
- Duval, Yann, Nora Neufeld, and Chorthip Utoktham. 2016. Do trade facilitation provisions in regional trade agreements matter? Impact on trade costs and multilateral spillovers. ARTNet Working Paper Series 164. Economic and Social Commission for Asia and the Pacific (ESCAP), Bangkok.
- ICC (International Chamber of Commerce). 2017. Business recommendations on rules of origin in preferential trade agreements: Policy statement. Document 104-89, ICC, Paris.
- IMF (International Monetary Fund). 2001. Global trade liberalization and the developing countries. Issues Brief 01/08, November.
- Kieck, Erich, and Jean-Christophe Maur. 2011. Regional integration and customs unions. In *Border management modernization*, edited by Gerard McLinden, Enrique Fanta, David Widdowson, and Tom Doyle. Washington, DC: World Bank.
- McLinden, Gerard, Enrique Fanta, David Widdowson, and Tom Doyle (eds.). 2011. *Border management modernization*. Washington, DC: World Bank.
- Moise, Evdokia. 2002. The relationship between regional trade agreements and the multilateral trading system. Document TD/TC/WP(2002)17/FINAL. Organisation for Economic Co-operation and Development, Paris.
- Mustra, Monica Alina. 2011. Border management modernization and the trade supply chain. In *Border management modernization*, edited by Gerard McLinden, Enrique Fanta, David Widdowson, and Tom Doyle. Washington, DC: World Bank.
- OECD (Organisation for Economic Co-operation and Development). 2002. The relationship between regional trade agreements and the multilateral trading system. Chapter on trade facilitation. Working Party of the Trade Committee. Document TD/TC/WP(2002)17/FINAL (April 11).
- . 2005. The costs and benefits of trade facilitation. Policy Brief.
- Tramby, Gabrielle. 2017. Administration of rules of origin. Presentation delivered at the WCO Origin Conference, Department of Immigration and Border Protection, Government of Australia, Canberra.
- UNCTAD (United Nations Conference on Trade and Development). 2011. *Trade facilitation in regional trade agreements*. Trade and Transport Facilitation Series 3, UNCTAD/DTL/TLB/2011/1. Geneva: UNCTAD.
- UNECE (United Nations Economic Commission for Europe). No date. Trade facilitation implementation guide, Article X. <http://tfig.unece.org/>.
- WCO (World Customs Organization). 2008. Customs in the 21st century. WCO, Brussels.
- . 2014a. Customs administrations operating under customs union systems. WCO Research Paper 29, WCO, Brussels.
- . 2014b. Trade facilitation in regional trade agreements. WCO Research Paper 30, WCO, Brussels.
- . 2014c. Guidelines on certification of origin, WCO, Brussels.
- WTO (World Trade Organization). 2014a. Agreement on trade facilitation: Decision of the General Council WT/L/940. WTO, Brussels.
- . 2014b. Trade facilitation provisions in regional trade agreements: traits and trends. WTO Staff Working Paper ERSD-2014-01, WTO, Brussels.
- . 2015. *World Trade Report*. https://www.wto.org/english/res_e/booksp_e/world_trade_report15_e.pdf.