

10th Anniversary Special Issue: Trade Facilitation

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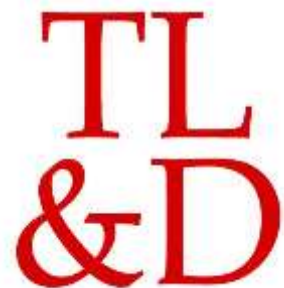
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INDIA'S PATH TO IMPROVED TRADE FACILITATION

STEPHEN CRESKOFF*

Mediocre trade facilitation is impairing India's trade in goods and its overall economic growth. Trade facilitation relates to reductions in the time and cost of trading goods internationally. The World Trade Organization has estimated that improvements in trade facilitation could increase world trade by as much as one trillion dollars annually. India is currently lagging behind developed economies such as the Netherlands, Germany, Korea, Japan and the United States, as well as middle income economies such as China, in measures of trade facilitation performance and in implementation of the provisions of the World Trade Organization's new Trade Facilitation Agreement. India's performance can be improved by developing an active public-private partnership dedicated to implementing trade facilitation improvements. This should result in regular and accurate measurements of India's trade facilitation performance, improved functioning of India's National Trade Facilitation Committee, legal reforms necessary to implement all measures required by the Trade Facilitation Agreement and the improved transparency and functioning of India's trade regime through the use of modern information technology.

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INTRODUCTION

Trade facilitation has been defined generally as “the simplification, harmonization and modernization of export and import processes”¹ or, more specifically, as reductions in the time and cost of trading goods internationally.² Narrow definitions of trade facilitation focus on improvements of customs and other administrative procedures at national borders, whereas broader definitions may also include behind the border non-tariff barriers and improvements in ports, roads and other infrastructure and information technologies.³

However, trade facilitation is defined - economic analysis and practical experience indicate that the benefits of improved trade facilitation are large. In fact, in today’s era of generally low tariff rates after more than seventy years of successive multilateral, regional and bilateral trade agreements, more economic benefits are likely to result from trade facilitation improvements than from further tariff rate reductions.

Historically, some smaller self-governing regions with limited natural resources, such as Singapore and Hong Kong, have driven rapid economic growth by a strong emphasis on trade facilitation improvements. These economies have parlayed trade facilitation efficiencies into becoming logistics hubs for regional trade in goods and as a consequence, their citizens now have some of the highest *per capita* incomes in the world. Larger economies such as the Netherlands, Germany, Korea and Denmark that rely heavily on export trade also have pioneered improvements in trade facilitation and they rank among the top countries today in measures of trade facilitation.

Significantly, China has become the world’s largest exporter of goods, in part through trade facilitation efficiencies realized by Hong Kong and China’s other

¹ WTO Secretariat, World Trade Report 2015 on Speeding up trade: benefits and challenges of implementing the WTO Trade Facilitation Agreement, https://www.wto.org/english/res_e/booksp_e/world_trade_report15_e.pdf.

² Simeon Djankov et al., *Trading on Time*, 92 REV. ECON. STAT. 166 (2010).

³ *Id.* at 35.

large coastal cities.⁴ Although today India is the fastest growing major economy, China's success in exporting goods has disadvantaged India's competitive standing regarding the manufacture and export of goods. In the future, India should use its comparative advantage in services, particularly in information and communication technologies combined with trade facilitation improvements to overcome this competitive disadvantage with China.

THE TRADE FACILITATION AGREEMENT

Recognizing the importance of trade facilitation improvements to the world trading system, in 2013 World Trade Organization (WTO) members concluded a Trade Facilitation Agreement (TFA) including many measures designed to improve trade facilitation in WTO member countries⁵ The TFA provided for delayed implementation and technical assistance to developing country and least developed country members.⁶The TFA entered into force in February 2017 after ratification by two-thirds of WTO membership.⁷Based upon computable general equilibrium simulations, the WTO estimated that full implementation of the provisions of the TFA may increase worldwide export of goods by as much as \$1 trillion/year.⁸ Gravity model estimates suggested that gains from trade in goods could be even larger depending on the extent to which TFA provisions are implemented.⁹

The TFA was preceded by over four decades of customs modernisation initiatives designed to improve trade facilitation in both developed and developing economies. The principles that evolved from this modernisation work, including regular consultations by border agency officials with traders and other private stakeholders, use of risk management and information and communications technologies, pre-arrival processing of goods, electronic payments, separation of

⁴ Hong Kong became part of China in 1997 but remains semi-autonomous. Large coastal cities, such as Shanghai, pioneered trade facilitation as part of large special economic zones, established in the 1980's to promote exports.

⁵ Some of the most important measures are pre-arrival processing (TFA Art. 7(1); electronic payments (TFA Art. 7(20); separation of release of imports from customs control from the final determination of customs duties, taxes, fee and charges (TFA Art. 7(3); the application of risk management (TFA Art. 7(4); post-clearance audits (TFA Art. 7(5); and trade facilitation measures for authorized operators (TFA Art. 7(7).

⁶ See Agreement on Trade Facilitation, Section II, 22 Feb. 2017. Section II contains Special and Differential Treatment Provisions for Developing Country Members and Least-Developed Country Members.

⁷ India formally accepted the TFA on April 22, 2016.

⁸ *Supra* note 1, at 73. World merchandise exports amounted to \$16 trillion in 2016. See WTO International Trade Statistics Sections, World Trade Statistical Review (2017), https://www.wto.org/english/res_e/statis_e/wts2017_e/wts_e.htm.

⁹ *Id.*

the release of goods from the determination of duties and taxes owed, use of financial guarantees to assure payment of duties and taxes, post clearance audits, and trade facilitating measures for “authorized operators”, were first set forth in the World Customs Organization’s (WCO’s) Revised Kyoto Convention¹⁰ and subsequently in the WCO’s SAFE Framework of Standards¹¹ and then also incorporated in some regional and bilateral free trade agreements.¹²

From the perspective of a large lower middle income developing economy, such as India, national trade facilitation improvements enhance trade competitiveness *vis-à-vis* other competing developing economies, such as China, Indonesia, Vietnam and Brazil, and better position India to participate in the constantly evolving complex global supply chains that constitute global trade in goods today.¹³ But what specific steps will enable India to realize trade facilitation improvements and related economic growth? The WTO’s TFA sets forth many different measures for improving trade facilitation without guidance regarding which are most important and which are less significant. This leaves policy officials designing trade facilitation improvements for India without specific direction on how to proceed to maximize results. In addition, special interest groups advocating improvements that benefit their constituencies (that do not necessarily result in the greatest benefits for the overall economy) may sway policy officials to adopt their proposals. Policy officials may proceed by implementing measures that are the quickest and least expensive to adopt – conflating progress with the number of TFA procedures adopted - without a strategic vision on how trade facilitation can be improved in the long term.

In July 2017, the Finance Ministry of India released a 76-point National Trade Facilitation Action Plan 2017 – 2020 (Plan) designed to implement the TFA.¹⁴ The Plan recognizes and discusses the key measurements of trade facilitation, discussed below, and establishes a work plan for further implementation of TFA provisions in India. However, the Plan appears to be completely government focused, with

¹⁰The International Convention on the Simplification and Harmonization of Customs Procedures, Feb. 3, 2006, 2370 UNTS 27.

¹¹ *Id.*

¹² *See, e.g.*, Free Trade Agreement, U.S.-Republic of Korea, Mar. 15, 2012.

¹³ *See* SUSAN LUND ET AL., MCKINSEY GLOBAL INSTITUTE, GLOBALIZATION IN TRANSITION: THE FUTURE OF TRADE AND VALUE CHAINS (2019), <https://www.mckinsey.com/~media/mckinsey/featured%20insights/innovation/globalization%20in%20transition%20the%20future%20of%20trade%20and%20value%20chains/mgi-globalization%20in%20transition-the-future-of-trade-and-value-chains-full-report.ashx>.

¹⁴ CENTRAL BOARD OF INDIRECT TAXES & CUSTOMS, NATIONAL TRADE FACILITATION ACTION PLAN 2017-2020 (2017), <http://www.cbic.gov.in/resources//htdocs-cbec/implmntin-trade-facilitation/national-trade-facilitation.pdf>.

little or no input from private sector stakeholders. Moreover, it appears to be missing a strategic vision to maximize trade facilitation improvements and a monitoring mechanism for tracking improvements.

MAXIMIZING TRADE FACILITATION

This article makes specific recommendations regarding how India can maximize trade facilitation improvements, using key TFA provisions as a template. The recommendations in this article are based upon the author's experience as a trade facilitation consultant in more than 50 countries.

The four most important steps toward improving trade facilitation are to:

- (1) Accurately measure trade facilitation as it currently exists and then regularly measure improvements over time.
- (2) Actively involve traders and other key private sector stakeholders in designing and implementing improvements to trade facilitation. Major improvements in trade facilitation in developed economies have resulted from making private sector stakeholders full partners in designing and implementing improved import and export and logistics systems.
- (3) Review the legal basis for trade facilitation reforms and make changes to laws where necessary to authorize new procedures.
- (4) Provide complete transparency regarding existing international trade laws and regulations, including non-tariff barriers, so that problems can be identified and corrected. Improved transparency for traders and investors will also improve trade facilitation.

If You Can't Measure It, You Can't Improve It

Accurate measurements are key to assessing trends in trade in goods and trade facilitation and to planning improvements. Reasonably accurate measures of trade in goods, derived from import statistics compiled by customs administrations and other border agencies compared with "mirror image" statistics of corresponding exports have existed for many years.¹⁵ However, recognized regular measurements of trade facilitation have only been developed over the last 15 years. The leading trade facilitation assessments are the World Bank's Doing Business Trading across Borders annual survey¹⁶, the World Bank's Logistics Performance Index biennial

¹⁵See, e.g., UN COM TRADE DATABASE, www.comtrade.un.org.

¹⁶WORLD BANK DOING BUSINESS, www.doingbusiness.org.

survey¹⁷, the OECD's Trade Facilitation Indicators¹⁸, the World Economic Forum's Enabling Trade Index,¹⁹ and on a "micro" level, individual time-release studies. These assessments are summarized below.

The **Trading Across Borders** annual survey, currently of 190 economies, records the time and cost associated with exporting and importing goods.²⁰ Documentary compliance and border compliance are measured and scores for an economy are the simple average of the scores for the time and cost for exporting and importing. Data on the time and cost for domestic transport is also collected but are not used for ranking because of the many extraneous variables such as geography and physical infrastructure. Data is collected through an annual questionnaire completed by local freight forwarders, customs brokers, port authorities and traders.

Data from Trading across Borders Survey's most recent rankings (May 2018) ranked India 80th out of the 190 economies surveyed with a score of 77.46.²¹ Selected comparison economies follow in the table.

Selected Trading across Borders Rankings, 2018 Data²²

Country	Score	Rank
Netherlands	100	1
Hong Kong	95.04	27
Singapore	89.57	45
China	82.59	65
India	77.46	80
Indonesia	67.27	116
Pakistan	60.12	142

India's score of 77.46 represents a substantial improvement from the prior year's score of 58.56 but nonetheless is still average for worldwide trade facilitation performance. What this means is that India's traders and other businesses involved in the international trade of goods are operating at a disadvantage *vis-à-vis*

¹⁷*Logistics Performance Index*, WORLD BANK, www.lpi.worldbank.org/.

¹⁸ *Trade Facilitation Indicators*, OECD, <http://www.oecd.org/trade/facilitation/indicators.htm>

¹⁹ WORLD ECONOMIC FORUM, *THE GLOBAL TRADING REPORT (2016)*, <http://reports.weforum.org/global-enabling-trade-report-2016>.

²⁰*Trading Across Borders Methodology*, WORLD BANK DOING BUSINESS, <http://www.doingbusiness.org/en/methodology/trading-across-borders>.

²¹ *Id.*

²² *Id.*

economies in Europe, North America and East Asia that are much more efficient in the logistics of importing and exporting goods. Improvements in trade facilitation sufficient to move India into the top ranked economies could have a major positive impact on future economic development in the country.

The **Logistics Performance Index (LPI)** biennial survey, currently of 163 economies, was most recently completed in 2018. The LPI asks logistics professionals to rank economies based upon six factors:

- (1) the efficiency of customs and border clearance;
- (2) the quality of trade and transport infrastructure;
- (3) ease of arranging competitively priced shipments;
- (4) the competence and quality of logistics services;
- (5) the ability to track and trace consignments; and
- (6) the frequency with which shipments reach consignees within scheduled or expected delivery times. Each factor is rated from very low (a score of 1) to very high (a score of 5).

As the table below indicates, the LPI results are generally consistent with the Trading across Borders results, although LPI score and rank is higher for India than the comparable Trading across Borders results, placing India in the top 30% of economies surveyed.

Selected Logistics Performance Index Rankings, 2018 Data²³

Country	Score	Rank
Netherlands	4.02	6 ²⁴
Singapore	4.00	7
Hong Kong	3.92	12
China	3.61	26
India	3.18	44
Indonesia	3.15	46
Pakistan	2.42	122

In contrast to the methodologies employed by the Trading across Borders and LPI surveys, the **OECD** has developed 11 trade facilitation indicators (**TFIs**), including 133 variables that correspond to key provisions in the TFA.²⁵ These are:

²³*Supra* note 17.

²⁴ Germany was ranked 1st in the 2018 LPI.

²⁵OECD Trade Facilitation Indicators: An Overview, OECD, <http://www.oecd.org/tad/policynotes/oecd-trade-facilitation-indicators-available-tools.pdf>.

1. Information availability	Enquiry points, publication of trade information, including on Internet
2. Involvement of the trade community	Structures for consultations; established guidelines for consultations; publications of drafts; existence of notice and comment framework
3. Advance rulings	Prior statements by the administration to requesting traders concerning the classification, origin, valuation method, etc. applied to specific goods at the time of importation; the rules and process applied to such statements
4. Appeal procedures	The possibility and modalities to appeal administrative decisions by border agencies
5. Fees and charges	Disciplines on the fees and charges imposed on imports and exports; disciplines on penalties
6. Formalities-documents	Acceptance of copies, simplification of trade documents; harmonization in accordance with international standards
7. Formalities-automation	Electronic exchange of data; use of automated risk management; automated border procedures; electronic payments
8. Formalities-procedures	Streamlining of border controls; single submission points for all required documentation (single windows); pre-arrival processing; release of goods separated from final determination and payment of Customs Duties; treatment of perishable goods; post-clearance audits; authorized operators
9. Internal co-operation	Control delegation to Customs authorities; institutionalized mechanism supporting cooperation between various border agencies of the country; coordination/harmonization of data requirements and documentary controls; coordination of inspections; coordinated/shared infrastructure and equipment use
10. External co-operation	Cooperation with neighbouring and third

	countries; alignment of procedures and formalities; coordination/harmonization of data requirements and documentary controls; risk management cooperation; joint controls
11. Governance and impartiality	Customs structures and functions; accountability; ethics policy

The data on the OECD TFIs are gathered through a questionnaire replied to by the relevant national administrations and by carriers with worldwide presence, and then cross-checked against publicly available sources. Data are then verified through each concerned country's WTO and Customs administrations. Variables follow a scoring from 0 (lowest performance) to 2 (highest performance) (percentile ranking is used where no "natural" thresholds can be identified, i.e. where variables are numerical in nature). The indicators are the simple average of the scores for each variable comprising them.²⁶

The OECD TFIs currently rank India's average trade facilitation performance at 1.25, ranging from external border agency cooperation of 0.40 to 1.56 for appeals procedures.²⁷ This is well below the top performing economies and China. This means that India is lagging behind developed economies and China in implementation of the provisions of the WTO's Trade Facilitation Agreement. As noted above, this disadvantages India's businesses selling goods in international markets and impairs its economic development.

Selected OECD TFI, 2018 Data²⁸

Country	Score	Rank (rankings unavailable except for the Netherlands)
Netherlands	1.86	1
Singapore	1.75	
Hong Kong	1.72	
China	1.36	
India	1.25	
Indonesia	1.13	

²⁶ UN ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC, INDICATORS FOR TRADE FACILITATION: A HANDBOOK (VERSION 1.0) (2015), https://www.unescap.org/sites/default/files/FINAL%20V1.0_Indicators%20for%20Trade%20Facilitation-ESCAP-OECD%20Handbook_0.pdf.

²⁷ *Trade Facilitation Overview*, COMPARE YOUR COUNTRY, www.compareyourcountry.org/trade-facilitation/.

²⁸ *Id.*

Pakistan	1.17	
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The World Economic Forum Enabling Trade Index (ETI)²⁹ is published biennially. The Index is designed to assess the extent to which economies have put in place institutions, policies, infrastructures and services that facilitate the free flow of trade in goods. The ETI comprises of four indices: Sub-index A: market access (domestic and foreign market access); Sub-index B: border administration (efficiency and transparency); Sub-index C: infrastructure (availability and quality of transport infrastructure; availability and quality of transport services; availability and use of ICTs); and Sub-index D: operating environment (level of protection of property rights; public institutions; contract enforcement; availability of finance; openness to FDI; public safety).

Clearly the ETI is a much broader measure than Trading across Borders and the LPI and the OECD's TFI, as various behind-the-border factors such as transport infrastructure, openness to FDI and use of ICTs are included in the ETI. The 2016 edition of the ETI covered 136 economies, ranked from 1 (low) to 7 (high). An ETI table follows for the economies ranked previously using the Trading across Borders and the LPI methodologies:

Selected Enabling Trade Index Rankings, 2016 Data

Country	Score	Rank
Netherlands	5.70	2
Singapore	5.97	1
Hong Kong	5.66	3
China	4.49	61
India	3.91	102
Indonesia	4.30	70
Pakistan	3.51	122

While the ranking order is similar, with the Netherlands, Singapore and Hong Kong at the top and Pakistan at the bottom, the ETI rankings appear to penalize India for behind-the-border factors such as transport infrastructure and services and operating environment, ranking China and Indonesia, competing large developing economies, significantly higher than is the case for the more narrowly focused measures of trade facilitation, Trading across Borders and the LPI. This may indicate that India has more infrastructure issues than comparable developing countries.

²⁹WORLD ECONOMIC FORUM, GLOBAL ENABLING TRADE REPORT (2016), http://www3.weforum.org/docs/WEF_GETR_2016_report.pdf.

Time Release Studies (TRS),³⁰ developed by the WCO, are designed to quantify the time taken by customs administrations when processing imports and exports. In contrast to the previously discussed assessments of trade facilitation, TRS are not surveys based upon the opinions of trade and logistics professionals. Rather, they are performance measurement systems that record the actual time taken to perform certain tasks. This may be, variously, the best measurement method of all time to complete the importation and exportation of goods, or the time for goods to move through ports or transit corridors, or other elements of the process for importing and exporting goods. TRS can be used to identify bottlenecks and constraints; to assess newly introduced technologies and procedures; to establish a baseline for performance; and to provide an overall assessment of trade facilitation.

Time-release studies are currently used in India to assess and improve trade facilitation. One example is a time release study conducted in 2018 by Kolkata Customs Port Commissionerate.³¹ That study concluded that overall release time was 8.5 days and that 90% of all bills of entry were facilitated (imports were not inspected). The clearance time, however, was considerably longer than India's National Trade Facilitation Agreement Plan's goal of 72 hours.

All the above measurements of trade facilitation should be actively used by India's National Trade Facilitation Committee, Customs and other public and private stakeholders to track improvements in trade facilitation and to inform public and private stakeholders regarding the areas where changes must be made. The approach suggested is essentially the methodology used by well-managed businesses that are regularly informed by a whole range of data regarding sales, consumer preferences, and raw materials, labour and other manufacturing costs and govern their business decisions accordingly. While most international trade facilitation indicators are only available annually or biennially, these can be supplemented by national surveys and time release studies that track trade facilitation trends on a much more frequent basis. These indicators can be designed to measure the effect of reforms that have been introduced and to highlight continuing problem areas. Thus, improvements in trade facilitation can be managed in the same manner as a well-run business would manage its affairs – by a thoughtful and scientific application of appropriate metrics to guide management decisions.

³⁰ WORLD CUSTOMS ORGANIZATIONS, GUIDE TO MEASURE THE TIME REQUIRED FOR THE RELEASE OF GOODS (VERSION 2) (2011), http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/time-release-study/time_release-_study.pdf?db=web.

³¹ See KOLKATA CUSTOMS PORT COMMISSIONERATE, TIME RELEASE STUDY (2018), http://www.kolkatacustoms.gov.in/admin/uploads/pdf/KC_Port_time-release-study_1057_24_09_2018_12_32_17.pdf.

Consultations with Traders and Other Stakeholders are Essential for Designing and Implementing Trade Facilitation Improvements

Historically, traders and border officials have had an adversarial relationship, with customs and other border officials focusing on a 100% inspection of all goods to detect contraband and determine duties and other charges and collecting all duties, taxes and other assessments before goods are imported or exported. On the other hand, traders have chafed at long delays, accused border officials of corruption and complained about the uncertainties relating to lengthy border inspections and non-transparent assessments.

This adversarial relationship began to change around four decades ago in developed economies when the rapidly increasing volume of international trade required new approaches to be developed to improve enforcement and collection of revenue and speed the movement of goods. In order to meet these objectives, there was an increasing need for customs and other border agencies and the business community to cooperate with each other to meet their respective needs and objectives. This required constructive, ongoing two-way communications between customs and other border officials and traders and the business community.

According to the WCO, the benefits of border agency – business regular communication and partnership include the following:³²

Benefits to border agencies	Benefits to traders and other businesses
Designing, pilot testing and implementation of new regulations	Increased transparency, predictability and integrity of border agencies
Proactive, informed policy-making resulting in more effective and acceptable regulations	Improved trade facilitation resulting in reduced shipping time and lower costs
Enhanced voluntary compliance by businesses	Improved access to information
Fewer disputes with businesses and more efficient dispute resolution	Fewer disputes with border agencies and more efficient dispute resolution
Enhanced supply chain security	Reduced costs
Improved understanding of business	Increased role in border agency

³² See WORLD CUSTOMS ORGANIZATION, CUSTOMS-BUSINESS PARTNERSHIP GUIDANCE (2015), <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/facilitation/instruments-and-tools/tools/customs-business-partnership-guidance/customs--business-partnership-guidance.pdf>.

requirements	modernization programs
Regular feedback about changes in the business environment	Better understanding and appreciation of border agencies missions and requirements
Better utilization of limited resources	Improved communication with border agencies
Improved revenue collections	A more positive environment for investment

Private sector stakeholders in border management include traders, transport and related services (airlines, shipping lines, trucking firms, logistics providers, freight forwarders, etc.), seaports, airports, warehouse operators and other facilities and infrastructure providers. Public sector stakeholders include border agency administrators (revenue and customs, food safety, standards, immigration, plant health, police, etc.).

Regular collaborative consultations with private sector stakeholders are critical for border agencies and other public sector stakeholders to identify operational problems and develop efficient solutions that meet the requirements of all stakeholders.³³ A common approach for collaborative consultations at the highest policy level is the establishment of a national trade facilitation committee. This is required by the TFA, which provides in pertinent part:

Each Member shall establish and/or maintain a national committee on trade facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of the provisions of this Agreement.

This is encapsulated in Article 23 (2) of the TFA.³⁴

The WCO's Revised Kyoto Convention goes further, providing in its General Annex, Chapter 1.3 that:

Customs shall institute and maintain formal consultative relationships with the trade to increase co-operation and facilitate participation in establishing the most effective methods of working commensurate with national provisions and international agreements.

³³See Andrew Grainger, *The Role of the Private Sector in Border Management Reform*, in BORDER MANAGEMENT MODERNIZATION 160 (Gerard McLinden et al. eds., 2011), <http://documents.worldbank.org/curated/en/986291468192549495/pdf/588450PUB0Bo rd101public10BOX353816B.pdf>.

³⁴See also Protocol Amending the Marrakesh Agreement establishing the World Trade Organization (Agreement on Trade Facilitation) art. 2, Feb. 22, 2017, 1867 U.N.T.S. 154 [hereinafter Trade Facilitation Agreement].

This mandates not merely a national trade facilitation committee but regular consultations at all levels of border administration. The Revised Kyoto Convention further elaborates requirements for collaborative consultations in General Annex Standards 6.8, 7.3 and 8.5.

Needless to say, the establishment of a national trade facilitation committee is of little value unless the committee (1) includes the relevant private and public sector stakeholders (with appropriate technical expertise); (2) meets frequently to discuss border administration issues; (3) actively develops and monitors trade facilitation improvement programs; and (4) has a reliable source of funding for the committee's operations. As an example of a national trade facilitation committee that was ineffective, in 2009 a national trade facilitation committee was established in Nigeria. Unfortunately, the committee met infrequently, its members did not have the requisite technical expertise and did not seriously pursue trade facilitation issues, and the committee disbanded as soon as the source of the committee's funding (from a European aid agency) ended.

Formal consultative groups are also important in the administration of ports, land borders and transit corridors. As one example, Joint Border Committees (JBCs) consisting of key public and private sector stakeholders were formed at eight key inland border crossings between five East African countries. At the important Malaba border post between Kenya and Uganda the JBC reportedly reduced transit time from 4 days to as little as two hours. "This reduction is estimated to have saved \$44.2 million to \$58.3 million per year in truck operators' compliance costs on the Northern Corridor alone."³⁵

In addition to formal consultative measures, from national trade facilitation committees to formal consultative groups at ports, border crossings and transit corridors, informal consultations between public and private stakeholders can also facilitate trade. These meetings can foster good relations between border agencies and key private sector stakeholders and allow concerns to be identified more rapidly. The informal nature of these consultations may allow concerns to be addressed promptly and protect the public disclosure of confidential information. The conclusions and recommendations section of the recently conducted Kolkata Customs Time Release Study³⁶ observed that delays in clearance resulted from

[L]ate payment of duty (70 hours approx.), late registration of goods (101-

³⁵See UNITED STATES AGENCY ON INTERNATIONAL DEVELOPMENT, EAST AFRICA TRADE HUB FINAL REPORT 16 (2014), https://www.eatradehub.org/east_africa_trade_hub_final_report.

³⁶*Supra* note 31, at 34.

110 hours) by the importers. Importers are seen to be poorly organized and lacking in proper planning and strategy for early release of their cargo.

India's Central Board of Indirect Taxes and Customs maintains a website called "Stakeholder Consultation".³⁷ However, the website appears to be a mechanism for notifying stakeholders about impending actions rather than obtaining comments and suggestions from private sector stakeholders.

In India, the National Committee on Trade Facilitation (NCTF) has a three-tiered structure consisting of the Committee, representing all stakeholders; a steering committee with a core group of public and private sector members; and four working groups of experts. The four groups are (a) legislative changes; (b) infrastructure improvements; (c) time release studies; and (d) outreach (to publish information about trade facilitation improvements).³⁸ The NCTF is housed in the Central Board of Excise and Customs and its Secretariat is supported by India Customs.

While formation of the NCTF and promulgation of the National Trade Facilitation Action Plan 2017 – 2020 were good first steps, much remains to be done in India to improve consultations and communications between customs and other border officials the traders and the business community. Regular consultations should take place not just at the National Trade Facilitation Committee but also at all ports and border crossings. This will serve to develop a true partnership between border agencies and the business community.

Trade Facilitation Reforms Require a Strong Legal Foundation

Many of the innovations required by the TFA, such as the separation of the release of merchandise from the determination of duties and taxes due, the use of risk management and post entry audits, authorized economic operator programs, the maximum use of information and communications technology, including electronic documents and payments, may require the adoption of new enabling legislation. This was the case in the United States, where the Customs Modernization Act of 1993, which among other things authorizes the electronic submission of customs data and the separation of the release of merchandise from determination of duties and taxes, replaced antiquated customs laws dating back to

³⁷See *Stakeholder Consultation*, CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS, http://cbic.gov.in/htdocs-cbec/home_links/stakeholder_consultation.

³⁸See WORLD CUSTOMS ORGANIZATION, CASE STUDY: NATIONAL COMMITTEE ON TRADE FACILITATION, INDIA, <http://www.wcoomd.org/-/media/wco/public/global/pdf/topics/wto-atf/national-committees-on-trade-facilitation/case-study-india.pdf?la=en>.

the 18th century.³⁹

More recently, economies ranging from the European Union to the Russian Federation to Botswana to Vanuatu have modernized their customs laws to authorize procedures required by the TFA and the Revised Kyoto Convention. However, legislative reform is not always easy to accomplish as vested interests may oppose change. This was the case in 2011 in Nigeria where, after several years of legislative initiatives, modern legislation to replace a colonial era customs law was enacted by Parliament but never became law. Nigeria remains near the bottom of all economies ranked for trade facilitation.⁴⁰

In India, existing customs legislation dates to the Customs Act, 1962.⁴¹ This predates the trade facilitating procedures mandated by the TFA and the Revised Kyoto Convention. It may therefore be necessary to review existing legislation and consider revisions to India's laws in order to provide clear legal authority for some of the new procedures designed to improve trade facilitation, such as the release of goods prior to the payment of duties and taxes, post-entry audits and a requirement for traders to provide financial guarantees.⁴²

Transparency is a Necessary Precondition to Trade Facilitation Reforms

A frequent frustration of international traders is the inability to obtain accurate information about duties, taxes and other restrictions and requirements in a foreign market. Even importers and exporters that work in and are native to a particular country may be vexed by the lack of transparency and absence of information regarding a country's trade regime. Lack of transparency increases the cost of doing business and creates an environment that may foster corruption.

The TFA addresses the need for greater transparency, particularly in Article 1, Publication and Availability of Information and Article 10.4, the establishment of a "single window" for traders. India's Central Board of Indirect Taxes & Customs does maintain a website that provides a range of information for traders, including much of the information required to be made available by TFA Article 1.⁴³ However, the degree of transparency provided is less than what has been achieved

³⁹ Customs Modernization Act, Pub. L. No. 103-182, 107 Stat. 2057 (1993).

⁴⁰ For example, the World Bank's trading across borders survey ranked Nigeria 182nd out of 190 economies surveyed in its most recently published survey.

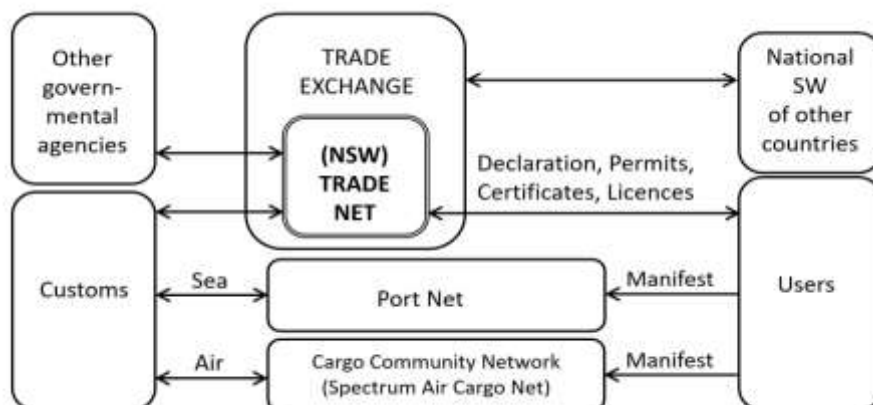
⁴¹ Customs Act, No. 52 of 1962.

⁴² See Stephen Creskoff & Robert Kielbas, *Improving Trade Facilitation in Developing Countries: the Role of Affordable Customs Guarantees*, 10 GLOBAL TRADE CUSTOMS J. 8 (2013).

⁴³ CENTRAL BOARD OF INDIRECT TAXES AND CUSTOMS (India), cbic.gov.in/.

by India's LDC neighbour, Myanmar, which in addition to its customs website⁴⁴ has created a trade portal that permits a detailed search by commodity (using Harmonized Nomenclature numbers) regarding import and export requirements, provides general guides to importing and exporting, and includes a trade repository including information about free trade agreements, rules of origin, and lists of authorized traders.⁴⁵

Ultimately, as required by TFA Article 10.4, India should develop an easy to navigate single window that will enable the business community to obtain information, submit documentation and conduct transactions with border agencies at one Internet site.⁴⁶ Singapore was an early developer of a single window and has incorporated various business services, such as trade finance and insurance, into its single window architecture.⁴⁷ A schematic of Singapore's single window architecture follows:



Singapore's trade community system⁴⁸

As previously noted, Singapore frequently ranks at the top of trade facilitation

⁴⁴ MYANMAR CUSTOMS DEPARTMENT, myanmarcustoms.gov.mm.

⁴⁵ MYANMAR MINISTRY OF COMMERCE, NATIONAL TRADE PORTAL, myanmartradeportal.gov.mm.

⁴⁶ See UNITED NATIONS ECONOMIC AND SOCIAL COMMISSION FOR ASIA AND THE PACIFIC, SINGLE WINDOW FOR TRADE FACILITATION: REGIONAL BEST PRACTICES AND FUTURE DEVELOPMENT (2018), https://www.unescap.org/sites/default/files/Regional%20Best%20Practices%20of%20Single%20Windows_updated.pdf.

⁴⁷ *Id.* at 11-14.

⁴⁸ *Id.*

measurements of global economies and has driven its impressive economic development through trade facilitation improvements.

CONCLUSION

Trade facilitation measurements indicate that India has much to improve before it can compare to top economies such as the Netherlands, Hong Kong and Singapore, or to China. The preconditions for meaningful improvements include:

- (1) accurately measuring trade facilitation and monitoring changes over time;
- (2) actively involving private sector stakeholders in designing and implementing improvements in all aspects of border management;
- (3) reviewing the current legal basis for trade facilitation measures and making changes where necessary; and
- (4) providing complete transparency regarding border administration measures and India's trade regime, culminating in the development and implementation of a single window.

After meeting these preconditions, the TFA's specific measures for trade facilitation improvements should then be prioritized for full implementation, with particular emphasis on measures that may have the greatest impact on improvements in trade facilitation. In other economies these have included the maximum use of risk management and ICT (India is now in the process of implementing a single window interface for facilitating trade, or "SWIFT"); separation of the entry of goods from the collection of duties and taxes (with reliable traders being permitted to pay assessments on a bi-weekly or monthly basis); post entry audits of traders to verify compliance; wide-spread use of authorized economic operator programs providing benefits to both traders and border agencies; and required financial guarantees for traders.

According to the World Bank, India is already the world's third largest economy in purchasing parity terms and is expected to grow well over 7% per year for the foreseeable future.⁴⁹ However, "levels of private investment and exports continue to be relatively low, undermining prospects for longer-term growth."⁵⁰ Trade facilitation improvements should substantially improve the exports of goods and investment and play an important role in India's economic development in the next decade.

⁴⁹*The World Bank in India*, WORLD BANK, <https://www.worldbank.org/en/country/india/overview>.

⁵⁰ *Id.*