



WORLD CUSTOMS ORGANIZATION

*WCO Research Paper No. 1*

# **A preliminary study on the impacts of the WTO Doha Development Agenda Ne- gotiations on Customs**

(June 2009)

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## **Abstract**

The conclusion of the DDA negotiations would most probably have an impact on Customs revenue collection, as tariff cuts are an essential element in some of the negotiations. The eventual effect would, though, depend on various factors. Revenue losses might, for example, be offset to a certain extent by an increase in global trade (resulting in a wider revenue base) following a successful outcome of the negotiations. However, as a result of the negotiations and their potential impact on the fiscal significance of Customs, Customs administrations might need to review their predominantly fiscal role to embrace wider functions (protection of society, security and trade facilitation, etc.) as envisaged by the high-level strategic document on Customs in the 21<sup>st</sup> Century.

From a policy point of view, the analysis suggests that the ongoing negotiations and the potential conclusion of the DDA demand a more active engagement and involvement from Customs administrations in the WTO negotiation process, both nationally and in Geneva.

The resolution of the trade facilitation negotiations is dependent on a robust WTO technical assistance and capacity building (TA&CB) program. Such a program would benefit the Customs modernization process being undertaken by many Customs administrations. It would garner political support and most likely raise donor support, which could be used by least-developed and developing country Customs administrations in their modernization efforts.

Most of the individual measures tabled in the trade facilitation negotiations which refer to Customs would not create any overwhelming implementation difficulties. The proposed measures are, as far as Customs is concerned, compatible with WCO instruments, and most of them are already being implemented by Customs administrations through WCO instruments.

## **Key words**

Doha Development Agenda, Trade Facilitation, Customs, capacity building

## **Acknowledgements**

This paper was written by Stefan Aniszewski of the WCO's Compliance and Facilitation Directorate. The author is grateful to Allen Bruford and Thierry Piroux for their suggestions.

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## List of abbreviations

<b>AD</b>	Anti-Dumping
<b>CBD</b>	Convention on Biological Diversity
<b>DDA</b>	Doha Development Agenda
<b>GATT</b>	General Agreement on Tariffs and Trade
<b>GI</b>	Geographical Indication
<b>HS</b>	Harmonized System
<b>IMF</b>	International Monetary Fund
<b>IPR</b>	Intellectual Property Rights
<b>MEA</b>	Multilateral Environmental Agreement
<b>NAMA</b>	Non-Agricultural Market Access
<b>PC</b>	Policy Commission
<b>RAM</b>	Recently Acceded Member
<b>RTA</b>	Regional Trade Agreement
<b>SCM</b>	Subsidies and Countervailing Measures
<b>S&amp;DT</b>	Special and Differential Treatment
<b>SSM</b>	Special Safeguard Mechanism
<b>SVE</b>	Small and Vulnerable Economies
<b>TA&amp;CB</b>	Technical Assistance and Capacity Building
<b>TRIPS</b>	Agreement on Trade Related Aspects of Intellectual Property Rights
<b>WB</b>	World Bank
<b>WCO</b>	World Customs Organization
<b>WTO</b>	World Trade Organization

## **Executive Summary**

At its last meeting, the Policy Commission requested a preliminary analysis of the potential impacts of the World Trade Organization's (WTO) Doha Development Agenda (DDA) negotiations on Customs. Consequently, the Secretariat has prepared a study which analyses the different negotiations against a simple typology of impacts.

The conclusion of the DDA negotiations would most probably have an impact on Customs revenue collection, as tariff cuts are an essential element in some of the negotiations. The eventual effect would, though, depend on various factors. Revenue losses might, for example, be offset to a certain extent by an increase in global trade (resulting in a wider revenue base) following a successful outcome of the negotiations. However, as a result of the negotiations and their potential impact on the fiscal significance of Customs, Customs administrations might need to review their predominantly fiscal role to embrace wider functions (protection of society, security and trade facilitation, etc.) as envisaged by the high-level strategic document on Customs in the 21<sup>st</sup> Century.

From a policy point of view, the analysis suggests that the ongoing negotiations and the potential conclusion of the DDA demand a more active engagement and involvement from Customs administrations in the WTO negotiation process both nationally and in Geneva.

A resolution to the trade facilitation negotiations is dependant on a robust WTO technical assistance and capacity building (TA&CB) program. This program would benefit the Customs modernization process being undertaken by many Customs administrations. It would bring about political support and most likely raise donor support, which could be used by least-developed and developing Customs administrations in their modernization efforts.

Most of the individual measures tabled in the trade facilitation negotiations which refer to Customs would not create any overwhelming implementation difficulties. The proposed measures are, as far as Customs is concerned, compatible with WCO instruments and most of them are already implemented by Customs administrations through WCO instruments.

# 1. Introduction

## 1.1 Background

1. At the 111<sup>th</sup>/112<sup>th</sup> sessions of the WCO Council in June 2008, the Directors General of Customs adopted a policy document “*Customs in the 21<sup>st</sup> Century - Enhancing Growth and Development through Trade Facilitation and Border Security*”. According to the document, the role of Customs is to control the movement of goods and thereby secure state’s interests and safeguard revenue collection. In addition to this, Customs also ensures compliance with state policies and laws applicable to the cross-border movement of goods, combats smuggling, and secures borders, whilst ensuring at the same time facilitation of legitimate trade. Although the document envisages much of this role remaining the same, it also foresees that the responsibilities in relation to the international movement of goods have broadened, and will continue to broaden, from the traditional role of collecting duties and taxes on international trade in support of the fiscal, to include executing controls and other activities that serve a wider set of government objectives<sup>1</sup>.
2. The mentioned document also outlines that one of the goals underpinning the mission of Customs in the 21<sup>st</sup> Century relates to the support of the international trading system by creating level playing fields for business at global, regional and national levels. Customs administrations play a major role in meeting this objective by implementing the high-level rules of the multilateral trading system. As a consequence, a close link between WTO negotiations and Customs has been established.
3. After the launch of the Doha Development Agenda (DDA) negotiations, some new Customs related items have been emerging into the WTO agenda. Thus, the Customs community and the WCO have been closely following and even contributing to the WTO negotiations. The Policy Commission (PC) discussed the WTO negotiations in its 60<sup>th</sup> Session in Buenos Aires, from 9 to 11 December 2008, and as part of the discussion some Delegates raised the need to analyze the possible impacts of the DDA negotiations on Customs more thoroughly. As a conclusion, the PC instructed the Secretariat to carry out a preliminary analysis on the subject and to report the results back to the Policy Commission in its June 2009 sessions<sup>2</sup>.
4. It can be argued that the need for this kind of a study is well-founded at least from three different perspectives. Firstly, the conclusions of the study will reveal important information on the effects the DDA might have on Customs, and give national administrations tools to prepare for the possible implementation of the commitments. Secondly, while the DDA negotiations are still ongoing, the conclusions drawn from this study can assist Customs administrations to better follow and contribute to the negotiations. Thirdly, the impacts of the DDA negotiations have been studied from many

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<sup>1</sup> WCO (2008), p. 5.

<sup>2</sup> At the time of analysis the DDA negotiations were still ongoing and there were no final negotiation products available. The analysis does not reflect any developments witnessed in the negotiations after May 2009.

different angles<sup>3</sup>, but a more comprehensive analysis from Customs perspective is still missing. Thus, the analysis can be seen to address the shortage in this regard.

## 1.2. Framework of analysis

5. The implications of the DDA negotiations and their conclusion on Customs can be analyzed from many different perspectives. In order to analyze the effects in a structured way, it is useful to formulate a simple typology of impacts to facilitate the analysis. On a general level, there are at least four broad categories of effects that can be defined.
6. First and foremost, the conclusion of the DDA would most probably have an *economic and fiscal* impact on Customs revenue collection as some of the negotiation modalities propose tariff cuts. When taking into account that trade taxes form a significant share of total government revenue in some parts of the world, it would be important to analyze what kind of an effect the conclusion of DDA would actually have on trade taxes and revenue collection. The negotiations and their conclusion might also have some *legal* implications as certain negotiation items are closely related to Customs and might, if adopted, imply some amendments to national legislation. In addition to the fiscal and legal effects, Customs administrations might also face different *policy* implications from the conclusion of the DDA. For example, there might be a need to review the national and international positioning of Customs vis-à-vis the WTO negotiation process. On a more technical level, there might also be certain *procedural, operative and capacity* impacts as some of the negotiations might imply effects on customs procedures, working methods and Customs administrations' capacity.
7. The outlined typology can be seen to form a framework against which the DDA negotiations are reviewed and analyzed in the study. The established typology of impacts is by no means exhaustive and the conclusion of the negotiations might also have other kinds of impacts. For example, the outcome of the negotiations might have certain strategic implications on Customs functions. However, as the negotiations are still ongoing and there are no final negotiation outcomes on the table, it would be too early to address the strategic implications at this stage. The aim of the current analyses is to give technical and background information on the WTO negotiations and their potential impacts, whereas the strategic effects of the negotiations might need to be looked at more carefully at a later stage.
8. The study report at hand consists of three main parts. After the introductory chapter the second section includes the actual analysis on the different impacts. The scope of the analysis covers non-agricultural market access (NAMA), agriculture, trade facilitation,

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<sup>3</sup> See for example WCO (2007) on the consistency of the WTO members' legal proposals in the trade facilitation negotiations vis-à-vis WCO instruments; WB (2006) on the needs, priorities and costs associated with TA&CB for implementation of a WTO Trade Facilitation Agreement; OECD (2004) on the costs of introducing and implementing trade facilitation measures; OECD (2005) on the economic impact of trade facilitation; OECD (2006a) and (2006b) on targeting TA/CB initiatives for trade facilitation; OECD (2009) on the development of a series of indicators for model based analysis in the area of trade facilitation; and Decreux and Fontagné (2009) on the economic impact of the potential outcome of the DDA negotiations on global economy.

rules, intellectual property rights (IPR), and trade and environment negotiations. Even though the study concentrates on the DDA negotiations, certain sub-chapters also briefly touch upon other WTO negotiations which might include potential impacts on Customs. The third chapter summarizes and concludes the results of the analysis.

## 2. Impacts of the WTO DDA negotiations on Customs

### 2.1 Non-agricultural market access (NAMA)

#### Box 1 - NAMA negotiations

The non-agricultural market access (NAMA) negotiations are taking place in the Negotiating Group for Market Access. The aim of the negotiations is to “*reduce or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries*”. The negotiations shall take fully into account the special needs and interests of developing and least-developed countries, and recognize that these countries do not need to match or reciprocate in full tariff-reduction commitments by other participants. The latest revision of the draft modalities text was issued by the Chairman of the negotiation group on Non-Agricultural Market Access on 8 December 2008.

9. From Customs perspective, the main impact from the NAMA negotiations would occur through the effects on revenue collection as the current NAMA modalities propose wide ranging tariff cuts in industrial products. The proposed cuts would be steeper in the developed world, where the proportional share of trade revenue from total revenue is significantly smaller than in the developing world<sup>4</sup>. The LDCs would be exempted from making any cuts. However, their contribution to the DDA would come through the increase in the binding tariff coverage<sup>5</sup>.
10. The proposed tariff cuts in the current modalities would be done on bound and not on applied rates (see Box 2 on the difference between these two terms). In developed countries the potential adoption of the proposed modalities would mean that the maximum bound tariff rates would be below 8 per cent with the average bound tariff rates being below 3 per cent. In the developing countries the majority of bound tariff lines would be less than 12 - 14 per cent and the average bound tariff rates would be between 11 - 12 per cent<sup>6</sup>. When taking into account that the average post-Uruguay Round bound rates were 4 per cent in the developed countries and 20 per cent in the developing countries, the adoption of this type of modalities would lead to a substantial reduction in the difference between bound and applied tariff rates leaving less space for countries to

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<sup>4</sup> See, for example, Baunsgaard and Keen (2005), p. 7.

<sup>5</sup> The modalities also envisage that there would be special provisions for Small and Vulnerable Economies (SVA) and Recently Acceded Members (RAM). For more information, see WTO (2008e).

<sup>6</sup> WTO (2008e).

raise applied tariff rates and operating at the same time as an insurance policy against any potential protectionist measures.

11. A comparison between the estimated post-DDA average<sup>7</sup> applied tariff rates and the post-Uruguay applied tariff rates gives an indication of the potential impact the NAMA negotiations might have on Customs revenue collection on industrial goods. The average post-Uruguay Round applied tariff rates for the developed countries were around 3 per cent, whereas the same figure for the developing countries was around 13 per cent<sup>8</sup>. As the proposed tariff cuts would limit the average bound rates (tariff ceilings) in the developed countries below 3 per cent and in the developing countries to 11 - 12 per cent, the post-DDA average bound rates would go below the post-Uruguay applied average levels implying that there would de facto be a decrease in the applied tariff rates. Nonetheless, without knowing the average post-DDA applied levels, it is rather difficult to estimate the effect the DDA negotiations might have on Customs revenue collection.

#### Box 2 - Bound and applied tariff rates and tariff binding

A **bound** tariff level is a ceiling level above which tariffs may not be raised without compensation to affected WTO Members. An **applied** tariff is the tariff actually applied. **Binding** is a form of concession under WTO rules in which a Member or Members agree to 'bind' their maximum tariff levels for a product or products by placing that tariff level on record in Geneva. These bound tariff rates become part of the Members' schedule of concessions. In practice, many Members do not apply their bound tariff rates, but much lower duties. The difference between applied and bound rates is sometimes referred to as a binding overhang or 'water'.

12. Even though the adoption of the proposed modalities would most probably include revenue effects (excluding LDCs), there are many different factors which would affect the magnitude of the eventual impact. A successful conclusion of the DDA will most likely lead to increased international trade through lowered tariffs and simplified procedures. Thus, although tariff rates will be lowered, the increase in trade might mitigate the revenue losses. Any potential revenue losses could also be recovered to certain extent from other domestic tax revenue sources as has been shown by existing studies<sup>9</sup>. As recovery from other domestic revenue sources might be a viable alternative to offset some of the potential losses, countries should try to incorporate and implement the tariff cuts as a part of a wider trade and economic policy (see Box 3).

<sup>7</sup> Averages are used in this context instead of individual tariff rates to illustrate the general tariff level.

<sup>8</sup> IMF and WB (2001), p. 18.

<sup>9</sup> See for example Baunsgaard and Keen (2005).

13. In addition to the horizontal negotiations, NAMA negotiations also include some sectoral initiatives<sup>10</sup>. A successful result in the sectoral negotiations would mean that tariffs in the particular sector would be further reduced or even brought down to zero. The participation in the sectoral initiative is voluntary, which has affected negatively the commitment shown in the negotiations. There is still no consensus on how and when to define the commitment of members to participate in sectorals without altering the non-mandatory character of the negotiations<sup>11</sup>. Thus, the sectorals would require a substantial amount of countries joining the initiative for them to take off. At this stage, as it remains to be seen which proposals will eventually materialize, it would be too early to draw conclusions on the effect of the sectorals.
14. The tariff reductions in the NAMA and other WTO negotiations together with the increasing use of regional trade agreements might also have some strategic implications on Customs. If the fiscal significance of Customs is affected following the conclusion of the WTO negotiations, Customs administrations might need to review their role from predominantly fiscal to include wider functions such as protection of society, security and trade facilitation. This kind of conclusion is also reached by the Customs in the 21<sup>st</sup> Century high-level strategic document, which envisages Customs role to broaden from fiscally oriented to include other activities that serve a wider set of government objectives<sup>12</sup>.
15. On a procedural and operational level the NAMA negotiations might affect Customs administrations' work in the field of classification with regard to defining the scope of goods that might fall under the reduction or elimination of tariffs. From a legal point of view, the scheduled concessions in the negotiations are based on the Harmonized System 2002 and a successful negotiation outcome might lead to a work on transposition of the concessions to be in line with the HS version introduced under national tariff schedules.

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<sup>10</sup> Currently there are 14 different sectoral negotiations. These relate to automotive and related parts, bicycles and related parts, chemicals, electronics/electrical products, fish and fish products, forestry products, gems and jewelry products, raw materials, sports equipment, healthcare, pharmaceutical and medical devices, hand tools, toys, textiles, clothing and footwear, and industrial machinery.

<sup>11</sup> See WTO (2008e).

<sup>12</sup> WCO (2008), p. 5.

### Box 3 - Impacts of tariff reductions and tax recovery

There are different studies addressing the impact of trade liberalization and tariff reductions on economy. A recent study from Decreux and Fontagné (2009) used a dynamic computable general equilibrium model of the world economy to simulate the impacts of the July 2008 drafts circulated by the WTO. The liberalisation of tariffs was implemented at the granular level of 5113 products in order to take into account exceptions, flexibilities as well as the non-linear design of formulas. A reduction in domestic support and the phasing out of export subsidies were taken into account. The researchers identified a USD 57 bn world GDP gain when agriculture and industry would be liberalized.

Tariff reductions have also been argued to affect economy positively through domestic manufacturing. According to an article in the Economist (7<sup>th</sup> May 2009) citing a study made by Penny Goldberg, Amit Khandelwal, Nina Pavcnik and Petia Topalova on “*Multi-product Firms and Product Turnover in the Developing World: Evidence from India*” (forthcoming in the Review of Economics and Statistics), tariff rate reductions on imports would improve domestic manufacturing and result in growing import and export with possible increase in tax and customs revenue.

A study by Baunsgaard and Keen (2005) assessed the effect of trade liberalization on tax revenue. The study used panel data for 111 countries over 25 years to ask whether countries have in fact recovered from other sources the revenues they have lost from past episodes of trade liberalization. According to the results, the high-income countries were able to offset the revenue losses well. The results for high-income countries pointed to a negative relationship between revenues from domestic and trade taxes, and recovery was well in excess of a dollar per dollar. The excess recovery of lost trade tax revenues in this group seems best interpreted as signaling that for them the revenue impact of trade taxes is a very secondary consideration in their design. In the middle-income countries, recovery was in order of 45-60 cents of additional domestic tax revenue for each dollar of trade tax revenue, whereas in low-income countries the average recovery was around 30 cents of each lost dollar.

## 2.2 Agriculture

### Box 4 - Negotiations on Agriculture

The WTO DDA agriculture negotiations are conducted in the Special Sessions of the Agriculture Committee. The long-term objective of the negotiations is already agreed upon in the present WTO Agreement: to establish a fair and market-oriented trading system through a program of fundamental reform. The program encompasses strengthened rules, and specific commitments on government support and protection for agriculture. The purpose is to correct and prevent restrictions and distortions in world agricultural markets.

Without prejudging the outcome, member governments have committed themselves to comprehensive negotiations aimed at:

- market access: substantial reductions
- exports subsidies: reductions of, with a view to phasing out, all forms of these
- domestic support: substantial reductions for supports that distort trade

The special and differential treatment for developing countries is integral to the negotiations, both in countries' new commitments and in any relevant new or revised rules and disciplines.

The latest revised draft “modalities” text, which spells out how to achieve the negotiation goals, was circulated by the chairperson of the negotiation group on 6 December 2008. After the “modalities” have been agreed, each country would use them to cut export subsidies, domestic support, and bound tariff rates on thousands of products (for more information, see WTO (2008b)).

16. The latest negotiation modalities in agriculture propose wide ranging tariff cuts. If adopted at their current form, the modalities would have an effect on Customs revenue collection from agricultural products both in developed and in developing countries. According to the proposed modalities, developed countries would experience tiered cuts<sup>13</sup> ranging from 50% for tariffs below 20%, to 70% for tariffs above 75%, subject to a 54% minimum average, with some constraints on tariffs above 100%. For developing countries the cut in each tier would be two thirds of the equivalent tier for developed countries, subject to a maximum average of 36%. However, the general formula would not apply to all products and there would be a number of flexibilities designed to take into account various national concerns. For example, some sensitive (available to all countries) and special products (for developing countries, for specific vulnerabilities) would have smaller cuts. The eventual cuts would also depend on issues such as the chosen tariff quota expansion etc. As in case of the NAMA negotiations, the tariff cuts would not apply to LDCs. Their contribution to the negotiations would come through the increase in

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<sup>13</sup> Cuts would be made on bound rates.

binding tariff coverage. SVEs and RAMs as well as some individual developing countries would also have special terms.

17. The average bound post-Uruguay tariff rates in the developed and developing countries for agricultural products were 27 (developed) and 52 (developing) per cent.<sup>14</sup> The respective average applied rates were 27 (developed) and 18 (developing) per cent. When comparing these rates against the current modalities, it can be seen that the conclusion of the negotiations would lower significantly the current tariff ceilings leaving less space for countries to raise applied rates and operating as an insurance policy against any protectionist measures. The adoption of the current modalities would also lead to significant cuts in the average applied tariff levels in developed countries.
18. However, when considering the fiscal effect of the tariff cuts, there are several factors, which would affect the size of the revenue losses. As in the case of the NAMA negotiations, the increase in the amount of agricultural trade following a successful negotiations outcome could balance and offset some of the revenue losses through a wider revenue base.
19. Besides the fiscal effects, the potential conclusion of the negotiations might also imply certain legal implications. The scheduled concessions in the agriculture negotiations are based on the Harmonized System 2002 and a successful negotiation outcome might lead to a work on transposition of the concessions to be in line with the HS version introduced under national tariff schedules. From a more operational perspective, the latest modalities also include additional texts dealing with the selection of sensitive products, creating new tariff quotas (affecting the selection of products as sensitive by country), and the special safeguard mechanism (SSM)<sup>15</sup> for developing countries. Even though these are trade policy related issues, they might eventually also have some indirect effects on Customs administrations' work at an operational level.

## 2.3 Trade Facilitation

### Box 5 - Trade Facilitation negotiations

After several years of exploratory work, WTO Members formally agreed to launch negotiations on trade facilitation in July 2004, on the basis of modalities contained in Annex D of the so-called "July package" (WTO General Council Decision on 1 August 2004). Under the mandate, WTO Members are directed to clarify and improve GATT Article V (Freedom of Transit), Article VIII (Fees and Formalities connected with Importation and Exportation), and Article X (Publication and Administration of Trade Regulations). The negotiations also aim at enhancing technical assistance and capacity building in this area and improving effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues. To date WTO Members have submitted many proposals, providing the basis for the current negotiations. The submitted proposals are contained in a compilation paper TN/TF/W/43/Rev.18 produced by the WTO Secretariat.

<sup>14</sup> Excludes processed agricultural products.

<sup>15</sup> Safeguards in the WTO context allow countries to raise tariffs or restrict import quantities when there is a surge in imports which threatens domestic industry.

and the WCO instruments shows that most of the proposed measures are addressed and well in line with the WCO instruments. More importantly none of the proposals in the latest WTO compilation paper (TN/TF/W/43/Rev.18) appears to contradict any of the WCO instruments. As many WTO proposals are based on WCO instruments, it can be argued to be easier to be in line with the proposed WTO measures, if countries implement WCO instruments properly.

#### **Box 6 - Trade facilitation proposals and WCO instruments**

According to a recent WCO study (see reference WCO (2009)) on the WTO Members' 3rd generation proposals, most of the proposed measures as regards Customs are well in line with WCO instruments. There are also some measures that go beyond Customs and are thus not addressed by the existing WCO instruments. However, two of the proposals, which are not addressed by the WCO instruments, could also have some effect on Customs. These relate to the elimination of pre-shipment inspection and to the prohibition of consular transaction requirements.

The elimination of pre-shipment inspection is not addressed by any of the existing WCO instruments. The proposal (TN/TF/W/108 in section J6 of the WTO compilation text TN/TF/W/43/Rev.18) envisages the elimination of the use of pre-shipment inspections or their equivalent. The proposal could have a considerable impact on the operations of certain countries, given that many Members still use this type of service. However, the potential elimination of pre-shipment inspections or their equivalent would most probably be subjected to a phased approach, with technical assistance and capacity building made available for those countries needing it in this regard.

The prohibition of consular transaction requirements (TN/TF/W/104 in section H1) could also have an impact on the work of certain Customs administrations as there are few countries which require the use of this kind of service. According to the current proposal "*A Member shall not require a consular transaction, including any related fee or charge, in connection with the importation of any good.*"

21. Existing studies on the implementation of the WTO trade facilitation measures suggest that many proposed measures having the most significant positive impact would not be difficult or expensive to implement (see Box 7). In addition to this, the developing and least-developed countries would not be required to implement any of the measures for which they do not have adequate capacity. According to the proposals relating to special and differential treatment (S&DT), the extent and timing of entering into commitments for developing countries and LDCs would relate to the implementation capacity of a country. Developing and least-developed Members would also be entitled to TA&CB in order to receive sufficient implementation capacity with regard to those measures in which they do not possess it.

### Box 7 - WTO 3<sup>rd</sup> generation proposals and their implementation

A WB (2006) study on “*the needs, priorities and costs associated with technical assistance and capacity building for implementation of a WTO trade facilitation agreement*”, concluded that although some additional technical assistance and capacity building support are required, many of the measures that have the most significant impact on improving the trade facilitation environment in Member countries are neither necessarily expensive nor technically difficult or complex to implement, if the necessary high level vision and political will are present. Only a small number of measures, such as the introduction of an electronic single window etc., would be more problematic and would entail significant costs in both technical assistance and infrastructure. Similar conclusions were reached by an OECD (2004) study on “*the costs of introducing and implementing trade facilitation measures*”. The study affirmed that the most significant costs were incurred in the technically demanding areas, whereas the costs involved in other areas were in general minor.

22. If the final outcome of the trade facilitation negotiations were to include similar S&DT measures as currently tabled, a WTO TA&CB program in the field of trade facilitation would be foreseeable. Such a program could be argued to benefit Customs as it would bring political support for Customs modernization process and raise donor support, which could be used by developing and LDCs in their modernization efforts. From a human resource point of view, the WTO TA&CB program would most probably increase the need for competent customs experts to assist in the delivery of the Customs related TA&CB measures – a task, which, as regards Customs, would most probably be left to the Customs community and to the WCO.
23. From a legal point of view, the conclusion of the trade facilitation negotiations might imply certain obligations. For example, some of the proposed WTO measures are currently stipulated in non-binding WCO instruments (Guidelines, Recommendations etc.) and implemented by Customs administrations on voluntary basis. A potential WTO Trade Facilitation agreement would mean that these measures would become legally binding obligations and countries would need to introduce them as part of their legislation.
24. Trade facilitation negotiations might also mean some new institutional arrangements in the field of trade facilitation. The WTO proposals on institutional arrangements would envisage a WTO Committee on trade facilitation to be established as a part of the trade facilitation agreement. Because of the technical nature of many of the trade facilitation measures, there might also be a discussion on establishing a technical committee under the WTO trade facilitation committee. Taking into account the current relationship between the WTO Committees and Technical Committees in the fields of Rules of Origin and Valuation, the issue might require further consideration (see Box 8).

### Box 8 - Technical committees on valuation and rules of origin

According to the WTO Agreement on Rules of Origin and to the WTO Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Customs valuation), the technical work in relation to these agreements is delegated by the WTO Committees to Technical Committees established under the auspices of the WCO (Article 4 and Annex 1 of the Rules of Origin Agreement, Article 18 paragraph 2 and Annex 2 of the Valuation Agreement). The WTO Committees have a general responsibility in relation to the agreements as well as serve as forums for Members to consult on matters relating to the administration of the agreements, whereas the Technical Committees under the auspices of the WCO maintain and report on the technical issues falling under the scope of the agreements, serve as the consultative and advisory bodies, facilitate technical assistance, carry out examinations of matters referred to them by the dispute settlement panel, and exercise other responsibilities assigned to them by the WTO Committees.

25. The important question from Customs perspective in relation to the establishment of the potential WTO Trade Facilitation Committee relates to the participation in the work of the Committee. The WTO negotiations have traditionally been within the competence of trade and foreign ministries, and some Customs administrations have found it difficult to make their voice heard in the negotiations and in the process of national decision making. As the majority of issues in trade facilitation negotiations are related to Customs, it is of the utmost importance to have Customs interests represented in the negotiations and in the work of the WTO Committee. Thus, Customs administrations need to engage and commit increasingly both at national and international level in order to secure that its interests are taken into account in the WTO negotiations. In practice this will mean increased efforts to influence national negotiators and other relevant national bodies responsible for WTO negotiations.
26. In addition to the active participation of national Customs administrations in the WTO negotiations, it is also important that the WCO would have access to the work of the possible WTO Trade Facilitation Committee. The participation of the WCO would most probably bring plenty of added value into the work of the Committee, especially when taking into account the rather technical nature of some of the measures. The current WTO proposal (TN/TF/W/157 and Add.1) states that *“the Committee shall maintain close contact with other international organizations in the field of trade facilitation. Representatives of such organizations may be invited to meetings of the Committee”*. Even though the wording of the proposal might leave the door open for international organizations to participate in the work of the Committee, it would still be important for Customs administrations to further stress the value added from WCO’s participation to their national negotiators.
27. From an economic perspective, the conclusion of the trade facilitation negotiations and the adoption of their final outcome might have some indirect impact on Customs revenue collection. Existing literature on the economic effect of trade facilitation suggests that

trade facilitation has a positive effect on global trade (see Box 9). Increased global trade in turn widens the revenue collection basis for trade taxes and might thus further balance and offset some of the revenue losses potentially occurring from tariff cuts in other DDA negotiations.

#### **Box 9 - Economic impact of trade facilitation**

According to an OECD (2005) paper on the economic impact of trade facilitation, improved and simplified customs procedures would have an impact on trade flows. A review of existing business surveys and quantitative estimates uniformly indicates that there is a significant and positive link between trade facilitation and trade flows. It shows that even fairly modest reductions in trade transaction costs have a positive impact on trade in both developed and developing countries.

The study by Decreux and Fontagné (2009) elaborated that in total USD 167 bn gains, identified in a scenario combining liberalization of trade in goods and services with trade facilitation, would be added to the world GDP every year in the medium term as compared with a situation without agreement.

#### **Box 10 - Negotiations on Rules**

WTO Members agreed at the Doha Ministerial Conference to launch negotiations in the area of “WTO Rules”. These negotiations relate to the following subject matters: the Agreement on Implementation of the Article VI of GATT 1994 (better known as the Anti-dumping Agreement); the Agreement on Subsidies and Countervailing Measures; and the WTO provisions applying to regional trade agreements. The aim of the Anti-Dumping (GATT Article 6) and Subsidies agreements is to clarify and improve disciplines while preserving the basic concepts and principles of these agreements taking into account the needs of the developing and least-developed countries. In the sphere of Regional Trade Agreements the negotiations are aimed at clarifying and improving disciplines and procedures under the existing WTO provisions applying to regional trade agreements. The negotiations are to also take into account the developmental aspects of regional trade agreements.

28. From Customs perspective, negotiations on anti-dumping (AD) and subsidies and countervailing measures (SCM) would most probably not have any significant fiscal or legal implications. However, there might be some procedural and operational impacts as a successful negotiation outcome might, for example, lead to the need to address potential circumventing practices etc. The AD and SCM negotiations also include provisions on investigation and might thereafter include effects on those administrations to whose competence AD and SCM related investigations tasks belong.
29. The core challenge with regard to RTAs occurs through rules of origin as RTAs complicate Customs administrations’ work in relation to determining origin of goods. Thus, a successful conclusion, which would lead to clarified and improved disciplines and procedures with regard to the RTAs, would most probably facilitate the work of

individual Customs administrations in interpreting these agreements. The General Council of the WTO approved in December 2006 a new transparency mechanism for all RTAs, which was implemented on a provisional basis. WTO Members are to review, and if necessary modify, the decision, and replace it by a permanent mechanism adopted as a part of the overall results of the DDA.

30. While it is outside the scope of the DDA negotiations, the harmonization of the non-preferential rules of origin foreseen in the WTO Agreement on Rules of Origin is currently negotiated under the WTO Committee on Rules of Origin. The conclusion of the negotiations on the harmonization of the non-preferential rules of origin will have implications on different WTO agreements and some of the WTO Members have not been willing to proceed in the negotiations before knowing what the implications of the harmonized rules of origin would be. On the other hand, other parties have argued that they can not progress with the negotiations on harmonization of the non-preferential rules of origin before knowing the impacts of the conclusion of the other WTO negotiations on the mentioned negotiations. The dilemma – often being referred to as the “implication issue” – has been leading to a slow progress also in the DDA negotiations on Rules. To overcome the deadlock in the negotiations, certain core policy issues with, amongst others the implication issue, have been submitted to the WTO General Council for guidance how to take these issues forward.

## 2.5 International Property Rights (IPR)

### Box 11 - Special Sessions of the TRIPS Council

IPR is negotiated as a part of the DDA at the Special Sessions of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Council. The scope of the negotiations has been somewhat unclear in the negotiation process and the negotiation mandate has been a widely disputed issue. The negotiations handled by the TRIPS Council “special sessions” deal with the multilateral system of notification and registration of the geographical indications for wines and spirits, which is currently the only subject on the “special sessions” agenda accepted by consensus for full negotiations in the DDA. The two other issues, which some Members would like to link to the talks on the register and add to the “special sessions” work, are the extension of the higher level of protection currently given to wines and spirits to other geographical indications, and the TRIPS/Convention on Biological Diversity (CBD) relationship.

31. While countries remain divided over the scope of the mandate, the analysis of this study concentrates on the multilateral system for geographical indications (GI), which has been accepted by consensus as a full negotiation item in the DDA. The establishment of the mentioned multilateral system and database would most probably not have any significant impact for Customs. However, the establishment of such multilateral system might facilitate the control related work done by some Customs administrations according to their national law in relation to the protection of GIs of wines and spirits. The fact that the system might be open to everyone would make it a potential instrument to be used in IPR

protection. Especially, when taking into account the increased amount of IPR violations regarding wines and spirits as well as the challenges involved in detecting these kinds of infringements, the mentioned database could be useful.

32. Outside the DDA negotiations the TRIPS Council negotiates on issues relating to border measures. Since Customs administrations are the main authorities responsible for controlling the cross-border movement of goods and many Customs administrations have according to their national legislation control responsibilities in relation to IPR, the negotiations on border measures might include effects on Customs and should be followed carefully by national Customs administrations. The WCO has also received a number of requests for assistance in relation to border measures, which means that there might be a need to organize additional training and to have more capable IPR experts to deliver “on the spot” assistance.

## 2.6 Trade and Environment

### Box 12 - Special Sessions of Trade and Environment Committee

The Special Sessions of Trade and Environment Committee negotiate mainly around three different issues. The first is the relationship between existing WTO rules and specific trade obligations set out in the multilateral environmental agreements. The aim of the mentioned negotiations is to address the question how WTO rules are to apply to WTO Members that are parties to environmental agreements, and in particular to clarify the relationship between trade measures taken under the environmental agreements and the WTO rules. The second issue under negotiation deals with the procedures for regular information exchange between the Secretariats of multilateral environmental agreements and the WTO. The third negotiation item relates to the reduction or elimination of tariff and non-tariff barriers on environmental goods and services. There is currently no consensus on the scope of the definition of an environmental good or service. This has prevented the negotiations on the actual reduction or elimination of tariff and non-tariff trade barriers on these goods.

33. There are currently over 250 multilateral environmental agreements (MEAs) in force dealing with various environmental issues. About 20 of these include provisions that can affect trade by, for instance, containing measures that prohibit trade in certain species or products, or that allow countries to restrict trade in certain circumstances<sup>16</sup>.
34. From Customs perspective, the challenge in relation to the MEAs relates to the complex regulatory network these agreements create with trade rules. Especially the interpretation of the overlapping MEAs and WTO trade rules pose a challenge for Customs administrations. Since the negotiations are to address, and in particular to clarify, the

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<sup>16</sup> See for example WTO webpage explaining the Doha mandate on multilateral environmental agreements ([http://www.wto.org/english/tratop\\_e/envir\\_e/envir\\_neg\\_mea\\_e.htm](http://www.wto.org/english/tratop_e/envir_e/envir_neg_mea_e.htm)).

relationship between trade measures taken under the environmental agreements and the WTO rules, a successful conclusion of the negotiations would most probably facilitate the work of individual Customs administrations in this regard.

35. The elimination of tariffs and non-tariff barriers on environmental goods and services would have impact on Customs revenue collection. However, at this stage there is no consensus on the definition of “environmental good” and the negotiations on the actual modalities on the elimination of the tariffs have not yet started. Thus, it would be rather difficult to estimate the actual effect these negotiations might have on Customs revenue collection. The definition of environmental good and its scope would be the decisive factor on how significant these tariff cuts would eventually be from the perspective of Customs revenue collection.
36. From procedural and operational perspectives, Customs administrations might also phase certain potential new tasks following the conclusion of the trade and environmental negotiations. For example, a need for a Customs verification of an environmental good, such as additional requirement to submit a proof for environmentally friendly good, might rise following the potential conclusion of the negotiations.

### **3. Conclusion**

37. The Policy Commission, at its last meeting, requested a preliminary analysis on the potential impacts of the WTO’s DDA negotiations on Customs. Consequently, the Secretariat has prepared a study which analyses the different negotiations against a simple typology of impacts. The main results of the study are summarized in the following paragraphs.
38. From an economic and fiscal perspective, the conclusion of the DDA negotiations might affect customs revenue collection as the negotiation modalities in some of the negotiations propose wide ranging tariff cuts. In case of developed and developing countries (those applying the proposed formula), the conclusion of the negotiations would substantially reduce the difference between the applied and bound tariff rates leaving less space to raise applied rates and operating at the same time as an insurance policy against protectionist measures. The LDCs would not be obliged to make any tariff cuts, but their contribution to the DDA would occur through the increase in the binding tariff coverage.
39. When assessing the potential revenue losses following the tariff cuts, it is necessary to take into account the fact that losses might be balanced to a certain extent through different factors. The conclusion of the DDA negotiations would most probably increase global trade and lead to a larger revenue base offsetting to some extent any potential revenue losses. If there would, however, eventually be revenue losses, existing studies show that recovery could be done, for example, through increased revenue collection from other domestic revenue sources. Thus, possible tariff cuts should be incorporated and implemented as a part of a wider trade and economic policy.

40. As the fiscal significance of Customs functions might be affected by the conclusion of the WTO negotiations, Customs administrations might need to review their role from predominantly fiscal to include wider functions (protection of society, security and trade facilitation etc.) as envisaged by the Customs in the 21<sup>st</sup> Century document. As the current analyses can be seen to give technical information and background on the WTO negotiations and their impacts, there might at a later stage be a need to do more thorough research on the strategic effects that the WTO negotiations might have on Customs.
41. From a legal perspective, some of the negotiations might imply certain legal implications for countries. The scheduled concessions in the NAMA and agriculture negotiations are based on the Harmonized System 2002 and a successful negotiation outcome might lead to a work on transposition of the concessions to be in line with the HS version introduced under national tariff schedules. In the case of trade facilitation, the conclusion of the negotiations might also include legal impacts as some of the measures currently stipulated by non-binding WCO instruments (Guidelines, Recommendations etc.) would become legally binding obligations through the WTO agreement.
42. From a policy perspective, the analysis indicates that there is an increasing need for Customs administrations to review their national and international positioning in relation to the WTO negotiations. Since many individual negotiation items deal closely with Customs related issues in a way or another, Customs administrations need to engage and commit increasingly to the WTO work both at national and international level. Customs administrations should, for example, create closer relationship with their national bodies responsible for WTO negotiations and try to influence their national negotiators in order to secure a beneficial outcome from the negotiations.
43. From modernization's perspective, Customs community in general would be able to gain from the potential WTO TA&CB program that is intrinsic to the resolution of the trade facilitation negotiations. Such a resolution would bring political support for customs modernization and increase donor support, which could be used by the LDCs and developing countries in their modernization efforts. From human resource perspective, a potential WTO TA&CB program would most probably increase the need for capable customs experts, who would be able to assist in the delivery of the TA&CB program. Particularly developed countries' administrations would be affected as their contribution would be of the utmost importance in this regard.
44. The potential conclusion of the DDA would also have procedural and operational impacts on Customs as conclusion of some of the negotiation items might have impact on customs procedures and working methods. However, besides trade facilitation, the procedural and operational impacts would most probably not be significant. Also in the case of trade facilitation many administrations are already implementing most of the measures outlined in the WTO proposals through WCO instruments and would thus not face any major impacts.

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