

AGREEMENT ON TRADE FACILITATION:

IMPLICATIONS FOR SOUTH ASIA

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29-30 SEPTEMBER, 2016

BACKGROUND

- Trade facilitation became a topic of discussion at the WTO at the Singapore Ministerial Conference in December 1996, when members directed the Council for Trade in Goods “to undertake exploratory and analytical work . . . on the simplification of trade procedures in order to assess the scope for WTO rules in this area” (Singapore Ministerial Declaration (paragraph 21)).
- 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”. Under this mandate, 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).
- Hundreds of proposals made by members, individually or through groups or alliances, were submitted for consideration by the Negotiating Group. After months of painstaking streamlining and revisions, the proposals became part of the final text of the Trade Facilitation Agreement agreed by members at the Bali Ministerial Conference in December 2013

OBJECTIVE OF THE AGREEMENT

- It contains provisions for expediting the movement, release and clearance of goods.
- It sets out measures for effective cooperation between customs and other authorities
- It also contains provisions for technical assistance and capacity building in this area.

STRUCTURE OF THE AGREEMENT

The **Trade Facilitation Agreement** has three sections:

- **Section I** contains **provisions for expediting the movement, release and clearance of goods**, including goods in transit. It clarifies and improves the relevant articles (**V**, **VIII** and **X**) of the General Agreement on Tariffs and Trade (GATT) . It also sets out provisions for customs cooperation.
- **Section II** contains special and differential **treatment (SDT) provisions** that allow developing and least-developed countries (LDCs) to determine **when they will implement individual provisions** of the Agreement and to identify provisions that they will only be able to implement upon the receipt of technical assistance and support for capacity building.
- **Section III** contains **provisions for an institutional framework** Establish a permanent committee on trade facilitation at the WTO, require members to have a national committee to facilitate domestic coordination and implementation of the provisions of the Agreement. It also sets out a few final provisions.

STRUCTURE OF THE AGREEMENT (CONT'D)

To benefit from provisions of Special and Differential Treatment , a member must categorize each provision of the agreement into the following categories.

- **Category A:** provisions that the member will implement by the time the Agreement enters into force (or in the case of a least-developed country member within one year after entry into force)
- **Category B:** provisions that the member will implement after a transitional period.
- **Category C:** provisions that the member will implement on a date after a transitional period assistance and support for capacity building.

STRUCTURE OF REMAINING PRESENTATION

- Commitments made by India, Pakistan, Sri Lanka, and Nepal in schedule A
- Focus on four Articles of Section 1
 - Article 7: Release and clearance of goods
 - Article 8: Border agency cooperation
 - Article 10: Formalities connected with importation, exportation and transit
 - Article 11: Freedom of transit
- India and Pakistan (impediments, provisions and schedule A commitments)
- India and Nepal transit (impediments, provisions and schedule A commitments)

COUNTRY-WISE COMMITMENTS IN CATEGORY A

| Country | No. of Commitments under Category A | Proportion of Commitments |
|-----------|-------------------------------------|---------------------------|
| India | 88 | 37% |
| Sri Lanka | 66 | 28% |
| Pakistan | 63 | 26% |
| Nepal | 5 | 2% |

Note: Total number of commitments : 239

CATEGORY A COMMITMENTS UNDER ARTICLE 7: INDIA, SRI LANKA AND PAKISTAN

| ARTICLE 7: RELEASE AND CLEARANCE OF GOODS | | | |
|--|-------|-----------|---|
| | INDIA | SRI LANKA | PAKISTAN |
| 7.1: Pre-arrival Processing | | | |
| 7.1.1 | A | - | A |
| 7.1.2 | - | - | A |
| 7.2: Electronic Payment | | | |
| 7.2 | A | A | - |
| 7.3: Separation of Release from Final Determination of Customs charges | | | |
| 7.3.1 | - | - | A (maintaining procedures) |
| 7.3.2 | - | - | A (prior determination of charges and guarantees) |
| 7.3.3 | - | - | A (reasonable guarantee) |
| 7.3.4 | - | - | - |
| 7.3.5 | - | - | - |

CATEGORY A COMMITMENTS UNDER ARTICLE 7: INDIA, SRI LANKA AND PAKISTAN (CONT'D..)

| | INDIA | SRI LANKA | PAKISTAN |
|--|--|-----------|---------------------------|
| 7.3.6 | - | - | A(right to examine goods) |
| 7.4: Risk Management | | | |
| 7.4.1 | - | - | - |
| 7.4.2 | | | |
| 7.4.3 | - | - | - |
| 7.4.4 | - | - | - |
| 7.5: Post Clearance Audit (PCA) | | | |
| 7.5.1 | A(adopt PCA) | - | - |
| 7.5.2 | A(PCA in a risk based manner) | - | - |
| 7.5.3 | A(information obtained from PCA used for further administrative or judicial proceedings) | - | - |
| 7.5.4 | - | - | - |

CATEGORY A COMMITMENTS UNDER ARTICLE 7: INDIA, SRI LANKA AND PAKISTAN (CONT'D..)

| | INDIA | SRI LANKA | PAKISTAN |
|---|--|-----------|----------|
| 7.6: Establishment and Publication of Average Release Time | | | |
| 7.6.1 | A(measure and publish) | - | - |
| 7.6.2 | A(share experiences with the Committee) | - | - |
| 7.7: Trade Facilitation Measures for Authorized Operators | | | |
| 7.7.1 | A(providing additional TF measures) | - | - |
| 7.7.2 | A(publish criteria to qualify for AEO's) | - | - |
| 7.7.3 | A(at least 3 TF measures) | - | - |
| 7.7.4 | A (AEO schemes based on international standards) | - | - |
| 7.7.5 | A(mutual recognition of AEO schemes) | - | - |
| 7.7.6 | A(exchange of info within the Committee) | - | - |

CATEGORY A COMMITMENTS UNDER ARTICLE 7: (CONT'D..)

| 7.8: Expedited Shipments | | | |
|---------------------------------|---|-----------|----------|
| | INDIA | SRI LANKA | |
| 7.8.1 | A (adopt procedures for expedited release at least for air cargo) | A | - |
| 7.8.2 | A (faster release; tariffs for de-minimus shipments) | A | - |
| 7.8.3 | - | A | - |
| 7.9: Perishable Goods | | | |
| 7.9.1 | A (faster release) | - | - |
| 7.9.2 | A(priority) | - | - |
| 7.9.3 | A(arrange for storage) | - | - |
| 7.9.4 | - | - | - |

CATEGORY A COMMITMENTS UNDER ARTICLE 8: INDIA, SRI LANKA AND PAKISTAN

| ARTICLE 8: BORDER AGENCY CO-OPERATION | | | |
|--|------------------------------|------------------|-----------------|
| PARAGRAPH | INDIA | SRI LANKA | PAKISTAN |
| 8.1 | A(cooperate and coordinate)) | - | - |
| 8.2 | - | - | - |

- 8.2 Alignment of working days
Alignment of procedures and formalities)
Development and sharing of common facilities
Joint control
Establishment of one stop border post control

CATEGORY A COMMITMENTS UNDER ARTICLE 10: CONTD

| ARTICLE 10: FORMALITIES CONNECTED WITH IMPORT, EXPORT AND TRANSIT | | | |
|---|---|-----------|----------|
| | INDIA | SRI LANKA | PAKISTAN |
| 10.1: Formalities and Documentation Requirements | | | |
| 10.1.1 | A(review formalities and documents) | - | - |
| 10.1.2 | A(sharing of information with members) | - | - |
| 10.2: Acceptance of Copies | | | |
| 10.2.1 | A(accept paper or electronic copies) | - | - |
| 10.2.2 | - | - | - |
| 10.2.3 | A(no requirement of original copy of export declaration) | - | A |
| 10.3: Use of International Standards | | | |
| 10.3.1 | A(use international standards) | - | - |
| 10.3.2 | A(preparation and review of international standards) | - | - |
| 10.3.3 | A(sharing of information between members) | - | - |

CATEGORY A COMMITMENTS UNDER ARTICLE 10: (CONTD.)

| PARAGRAPH | INDIA | SRI LANKA | PAKISTAN |
|--------------------------------------|--|-----------|--|
| 10.4: Single Window | | | |
| 10.4.1 | - | - | - |
| 10.4.2 | - | - | - |
| 10.4.3 | - | - | - |
| 10.4.4 | - | - | - |
| 10.5: Pre-shipment Inspection | | | |
| 10.5.1 | A(no pre-shipment inspection related to tariff classification and customs valuation) | - | A |
| 10.5.2 | - | - | A(no new requirement for pre shipment inspection) |
| 10.6: Use of Customs Brokers | | | |
| 10.6.1 | A(| A | A |
| 10.6.2 | A | A | A |

CATEGORY A COMMITMENTS UNDER ARTICLE 10: INDIA, SRI LANKA AND PAKISTAN (CONT'D..)

| PARAGRAPH | INDIA | SRI LANKA | PAKISTAN |
|---|-------|-----------|---|
| 10.6.3 | A | A | A |
| 10.7: Common Border Procedures and Uniform Documentation Requirements | | | |
| 10.7.1 | A | A | -(common customs procedures throughout territory) |
| 10.7.2 | A | A | A |
| 10.8: Rejected Goods | | | |
| 10.8.1 | A | A | - |
| 10.8.2 | - | A | - |
| 10.9: Temporary Admission of Goods and Inward and Outward Processing | | | |
| 10.9.1 | A | A | - |
| 10.9.2 | - | A | - |

CATEGORY A COMMITMENTS UNDER ARTICLE 11:

| ARTICLE 11: FREEDOM OF TRANSIT | | | |
|--------------------------------|---|-----------|----------|
| | INDIA | SRI LANKA | PAKISTAN |
| 11.1 | A(transparent , regulations only if circumstances exist) | A | - |
| 11.2 | A(reasonable fees) | A | A |
| 11.3 | A (no voluntary restraints) | A | A |
| 11.4 | A (same treatment through another territory as not going through another territory) | A | A |
| 11.5 | A (make available infrastructure) | A | A |
| 11.6 | A(no burdensome documentation) | A | A |
| 11.7 | A (no charges or delays after entry and before exit) | A | A |
| 11.8 | A (no TBT or SPS measures for transit goods) | A | A |
| 11.9 | - (advance filing and processing of transit documents) | A | A |
| 11.10 | -termination of transit operation after traffic exits territory) | A | A |

CATEGORY A COMMITMENTS UNDER ARTICLE 11: (CONT'D..)

| | INDIA | SRI LANKA | PAKISTAN |
|-------|--|-----------|----------|
| 11.11 | A(guarantee limited to reqts arising from traffic) | A | A |
| 11.12 | A (guarantee discharged without delay) | A | A |
| 11.13 | -(comprehensive guarantees) | A | A |
| 11.14 | -(information on setting guarantees) | A | A |
| 11.15 | A (customs convoys) | A | A |
| 11.16 | -(cooperation and coordination) | A | - |
| 11.17 | -(national transit coordinator) | A | - |

TFA: COMMITMENTS BY INDIA AND PAKISTAN

| Provisions in Trade Facilitation Agreement (TFA) | Impediments | Category A Commitments | |
|--|---|---|--|
| | | India | Pakistan |
| Article 1: Publication and Availability of Information | Practice of adhoc procedures followed by different agencies, causing difficulty for traders due to: <ul style="list-style-type: none"> - Non-availability of trade related information on procedures and practical steps - Absence of enquiry points for traders | √ (except applied rates of duties and taxes) | √ (except applied rates of duties and taxes) √ (only at regional level) |
| Article 2: Opportunity to Comment, Information before Entry into Force and Consultations | Absence of consultations between traders and border agencies: <ul style="list-style-type: none"> - Need to have consultative mechanism | √ | × |
| Article 7: Release and Clearance of Goods | Absence of electronic systems for facilitating trade at land borders that may allow for: <ul style="list-style-type: none"> - Pre-arrival processing of documents - Risk Management System | × × | √ × |
| Article 8: Border Agency Cooperation | Lack of cooperation and coordination between the border agencies of India and Pakistan | | × |

TFA: COMMITMENTS BY INDIA AND PAKISTAN (CONT'D..)

| Provisions in Trade Facilitation Agreement (TFA) | Impediments | Category A Commitments | |
|--|--|---|---|
| | | India | Pakistan |
| Article 11: Freedom of Transit | <p>Transshipment of goods at border:</p> <ul style="list-style-type: none"> - Repeated unloading and loading of cargo - Poor infrastructure at land ports - Monopoly enjoyed by certain logistics operators - Absence of a comprehensive land transport policy | <p>√ (except advance filing, processing of transit documents, comprehensive guarantees, information on setting of guarantees)</p> | <p>√ (except cooperation and coordination on charges, formalities, practical operation of transit regimes, appointment of national transit coordinator)</p> |
| | | | |

INDIA – NEPAL: TRANSIT PROVISIONS UNDER TFA

| Provisions in Article 11 of Trade Facilitation Agreement (TFA) | Impediments | Category A Commitments by India |
|--|---|---------------------------------|
| Para 1 (regulations only if circumstances exist) | <p>Existence of sensitive list:</p> <ul style="list-style-type: none"> - Basis of arriving at the sensitive list is not clear and neither is the list made available in a timely manner. - Indian customs duties have fallen considerably, reducing the difference between Indian and Nepali tariffs. | √ |
| Para 5 (make available infrastructure) | <p>Poor infrastructure:</p> <ul style="list-style-type: none"> - Draft limitations at Kolkata and Haldia ports. - Lack of adequate warehouses and container yards for Nepal bound cargo/containers. - Poor quality of roads on transit route, and congestion at border points. | √ |

INDIA – NEPAL: TRANSIT PROVISIONS UNDER TFA (CONT'D..)

| Provisions in Article 11 (TFA) | Impediments | Category A India |
|---|---|------------------|
| Para 6 (no burdensome documentation) | Transit related documentation: - A large number of documents are required in original in support of transit cargo by road and rail. | √ |
| Para 7 (no charges or delays after entry and before exit) | Collection charges for goods en-route to Nepal while crossing different states in India. | √ |
| Para 9 (advance filing and processing of transit documents) | No pre-arrival processing of documents: - Processing of transit documents at ports takes place only after the arrival of original documents - Delays in release and clearance of goods for onward movement. | × |

INDIA – NEPAL: TRANSIT PROVISIONS UNDER TFA (CONT'D)

| Provisions in Article 11 (TFA) | Impediments | Category A Commitments by India |
|--|--|---|
| Para 11 – 15 (guarantees) | <p>Guarantees:</p> <ul style="list-style-type: none"> - Furnishing an insurance or bank guarantee for goods transiting through India is burdensome for Nepali importers, especially when an inflated market value of goods is affixed, and a high premium is charged due to the monopoly enjoyed by the only two insurance companies having the authority to issue such guarantees. | <p>√</p> <p>(except comprehensive guarantees, information on setting of guarantees)</p> |
| Para 17 (national transit coordinator) | No point of contact for enquiries related to functioning of transit operations | √ |