

Trade facilitation, logistics services and preferential trade agreements (PTAs): The case of the CARIFORUM EPA

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«There are no losers from trade facilitation reform,
only winners.»¹

¹ <http://www.nytimes.com/2006/07/05/opinion/05iht-edmandel.2123261.html>

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List of abbreviations

AfT	Aid for Trade
APEC	Asia-Pacific Economic Cooperation
ASEAN	Association of Southeast Asian Nations
CEPA	CARIFORUM Economic Partnership Agreement
CPC	Central Product Classification
CRS	Computer reservation system
CTG	Council for Trade in Goods
DDA	Doha Development Agenda
DFQF	Duty- and Quota-free Access
DSU	Dispute Settlement Understanding
EPA	Economic Partnership Agreement
GATT	General Agreement on Tariffs and Trade
GATS	General Agreement on Trade in Services
LDC	Least-developed countries
MFN	Most-favored nation
MMS	Model schedule on maritime transport services
NGTF	Negotiating Group on Trade Facilitation
PTA	Preferential trade agreement
RoO	Rules of Origin
S&D	Special and differential treatment
TBT	Technical barriers to trade
TPP	Trans-Pacific Strategic Economic Partnership
TR	Technical regulations
UNECE	The United Nation Economic Commission for Europe
WCO	World Customs Organization
WTO	World Trade Organization

1. INTRODUCTION

The unbundling of global manufacturing processes coupled with the globalization of international supply chains has led to an unprecedented growth in the volume of intermediate and final goods to be handled by customs authorities. Obviously, such a change in the business environment compels customs authorities to adapt. Yet many countries, in particular developing and least-developed countries (LDC) have failed to reform custom and border procedures accordingly. With a view to controlling the flow of both goods and services across borders and collecting customs revenues, countries have kept inefficient, duplicative, and uncertain custom procedures and often increased rather than reduced the amount of required documentation. For global traders, however, the existence of both burdensome red tape and a myriad of different national regulations constitute a significant barrier to trade.

Having realized that reforming customs procedures and thus reducing trade transaction costs is necessary, both multilateral and regional initiatives have stepped up their efforts to promote trade facilitation. Given the wide range of policies covered by trade facilitation, the ongoing WTO negotiations in this area are just one element. More importantly, trade facilitation has increasingly been included in preferential trade agreements (PTAs) and the relationship between regionalism and trade facilitation is said to be a «significant feature of the international economy in the years to come.»²

Unlike preferential tariff liberalization trade facilitation reforms, such as transparency or provision aimed at boosting trade by way of simplifying, upgrading, and harmonizing customs procedures, does not exhibit large (if any at all) trade distorting effects. Even better, many aspects of trade facilitation are claimed to be akin to public goods: once provided, any other trading partner, not just the PTA partners, may freely enjoy them. Trade facilitation thus has the potential «to be part of the toolkit for multilateralizing regionalism.»³

Viewed against this backdrop, this research paper will be devoted to the nexus between regional integration and trade facilitation. In doing so, it assesses the economic impact of trade facilitation and focuses on trade costs, the economics of

² Maur, J.C. (2011), *Trade Facilitation*, in: Chauffour, J.-P. & Maur, J.C. (eds.), *Preferential Trade Agreements – Policies for Development – A Handbook*, Washington, D.C: The World Bank.

³ http://www.wto.org/english/res_e/publications_e/wtr11_forum_e/wtr11_7jun11_e.htm

preferential trading schemes with respect to goods, services as well as trade facilitation activities and discriminatory potential of rules of origin (RoO). The research paper further evaluates the potential linkages between «shallow» trade facilitation (i.e. custom procedures) and «deep» trade facilitation (i.e. liberalization in logistics services) and its economic potential. It will be argued that trade facilitation efforts with respect to customs procedures and the liberalization of logistics services are complementary and thus two sides of the very same coin.

1.1 The research paper in a nutshell

The remainder of this research paper is organized in five parts. Part 1 defines the term trade facilitation. Part 2 is devoted to the ongoing WTO negotiations on trade facilitation. It provides an overview on the past and current efforts and will evaluate the possibilities to include trade facilitation as part of the so-called LDC-plus package, which is scheduled to be agreed upon at the WTO's ministerial conference in mid-December 2011. In short, it provides a summary of the current state-of-play. Part 3 turns to the economics of trade facilitation. It addresses the following issues: trade creation and trade diversion, the preferential liberalization of (logistics) services, static and dynamic effects, the provision of regional and global public goods, as well as positive and negative externalities. Part 4 moves beyond the GATT-centric trade facilitation mandate and analyses the liberalization of logistics services within the WTO as well as the Economic Partnership Agreement between the European Community and the CARIFORUM states. Part 5 critically concludes.

2. DEFINING TRADE FACILITATION

2.1 Preliminary remarks

There is no generally accepted definition of trade facilitation. Depending on the forum discussing it trade facilitation is defined differently. According to the WTO trade facilitation can be understood as «simplification and harmonization of international trade procedures, including activities, practices and formalities involved in collecting, presenting, communicating, and processing data required for the movement of goods in international trade.»⁴ As will be seen later the WTO takes a rather narrow border-centric approach. It mainly focuses on the revision of three different articles of the General Agreement on Tariffs and Trade (GATT), namely Article V of GATT (*Freedom of Transit*), Article VIII of GATT (*Fees and Formalities connected with Importation and Exportation*), and Article X (*Publication and Administration of Trade Regulations*).

Box 2.1 Trade facilitation at the WTO

«GATT Article V (*Freedom of transit*) provides a basis for creating an environment in which the transit of goods is free from barriers to transport and discrimination between suppliers, firms, and traders from different countries. GATT Article VIII (*Fees and formalities* connected with importation and exportation) relates in general to customs clearance procedures and includes general commitment of non-discrimination and transparency in fees and rules applied to goods crossing borders. GATT Article X (*Publication and administration of trade regulations*) contains general commitments to assist in ensuring timely publication of regulations regarding imports, including fees, customs valuation procedures, and other rules. It also provides general obligations to maintain transparent administrative procedures for review of disputes in customs.»⁵

Source: Bagai *et al.* (2004)

Predominantly, the emphasis lays on rules and regulations rather than procedural issues. Moreover, infrastructural aspects and services related to international trade «are either excluded or are dealt with in different negotiations.»⁶ The United Nation

⁴ Trade facilitation and the WTO, *ESCAP Paper*, ITD Trade Facilitation Seminar Series: Workshop on Trade Facilitation and the WTO, organized by the International Institute for Trade and Development, 21-22 October 2002.

⁵ Bagai, S., Newfarmer, R. & Wilson, J. (2004), Trade Facilitation: Using WTO Disciplines to Promote Development, *World Bank's Trade Note*.

⁶ Maur, J.C. (2011), *Trade Facilitation*, in: Chauffour, J.-P. & Maur, J.C. (eds.), *Preferential Trade*

Economic Commission for Europe (UNECE), on the other hand, refers to trade facilitation as a «comprehensive and integrated approach to reducing the complexity and the cost of trade transaction process, and ensuring the all activities can take place in an efficient, transparent, and predictable manner, based on internationally accepted norms, standards, and best practices.»⁷ Intuition does suggest that trade facilitation relates to a wide range of different activities both at and behind the border. It therefore becomes clear that the UNECE's definition comes closer to what is actually needed when dealing with trade facilitation reform efforts. As already outlined in the introduction of this research paper, a broad understanding of trade facilitation, including crucial backbone services such as logistics and transport services, will subsequently be used.

2.2 What definitions do PTAs use?

Not surprisingly, the definitions used within the purview of PTAs are numerous. Similar to what has been pointed out in sub-section 2.1 above, there is no commonly accepted definition in PTAs. As evidenced by a selective overview of trade facilitation provisions in different PTAs, the range of matters covered and their objective normally define the term rather by using a particular definition. Yet commonalities between different definitions do exist: many refer to a more efficient administration of customs procedures in connection with importation and exportation of goods (i.e. standards, technical barriers to trade, rules of origin), rapid release and clearance of goods, transparency with respect to required documentation, the use of advanced electronic technology and cooperation between different border agencies. By and large, the ambition and scope of commitment often goes further than what has been negotiated on the multilateral plane.

⁷ *Agreements – Policies for Development – A Handbook*, Washington, D.C: The World Bank, pp. 328. Bolhöfer, C. E. (2007), 'Trade Facilitation – WTO Law and its Revision to Facilitate Global Trade in Goods', *Global Trade and Customs Journal*, 2(11), pp. 32.

Box 2.2 Trade facilitation in certain preferential trade agreements (PTAs)

APEC, Principles on Trade Facilitation, 2002

«Trade facilitation generally refers to the simplification, harmonization, *use of new technologies* and other measures to address procedural and administrative impediments to trade.»

EU-Chile FTA, 2003

There is no general definition provided. However, the objective is stated as follows: «[t]he facilitation of trade in goods through, inter alia, the agreed provisions regarding customs and related matters, standards, technical regulations and conformity assessment procedures, sanitary and phytosanitary measures and trade in wines and spirit drinks and aromatized drinks.»

EU-CARIFORUM Economic Partnership Agreement (EPA), 2009

There is an entire chapter devoted to customs and trade facilitation issues (Chapter 4). No definition is given but «[p]arties agree to reinforce cooperation in this area with a view to ensuring that the relevant legislation and procedures, as well as the administrative capacity of the relevant administrations, fulfill the objectives of effective control and the promotion of trade facilitation, and help promote the development and regional integration of the CARIFORUM States.»

ASEAN-Australia-New Zealand FTA (AANZFTA), 2009

No definition is specified, but the objectives of the relevant provisions are as follows: «Ensure (i) predictability, consistency and transparency in the application of customs laws and regulations of the Parties; promote (ii) efficient, economical administration of customs procedures, and the expeditious clearance of goods; (iii) simplify customs procedures; and (iv) promote cooperation among the customs administrations of the Parties.»

US-Australia FTA, 2005

The US-Australia FTA does not provide for a definition of trade facilitation. Article 8.8, which is titled trade facilitation, stipulates the following: «The Parties shall work cooperatively in the fields of standards, technical regulations, and conformity assessment procedures with a view to facilitating trade between the Parties.»

US-Singapore FTA, 2004

The term trade facilitation is not defined. Amongst other measures «each Party shall ensure efficient clearance of all shipments, while maintaining appropriate control and customs selection. In the event that a Party's existing system does not ensure efficient clearance, it should adopt procedures to expedite express shipments.»

Trans-Pacific Strategic Economic Partnership Agreement Draft (TPP), 2010

«The objectives of this Chapter of the Agreement are to: (a) ensure predictability, consistency and transparency in the application of customs laws and other customs administrative policies of the Parties; (b) ensure efficient, economical administration of customs procedures, and the expeditious clearance of goods; (c) facilitate trade among the Parties; (d) apply simplified customs procedures; and (e) promote cooperation among the customs administrations.»

Source: Author's collection, Wilson *et al.* (2002).

3. TRADE FACILITATION UNDER THE AUSPICES OF THE WTO

3.1 A brief historical overview

In December 1996, at the first Ministerial Conference (MC1) of the World Trade Organization (WTO) in Singapore, trade facilitation was added as a topic of discussion to the broader WTO agenda. Alongside government procurement, trade and investment as well as trade and competition trade facilitation became known as one of the so-called «Singapore issues». As stipulated in paragraph 21 of the Ministerial Declaration, Member states tasked the Council for Trade in Goods (CTG)

«to undertake exploratory and analytical work, drawing on the work of other relevant international organizations, on the simplification of trade procedures in order to assess the scope for WTO rules in this area.»⁸

Trade facilitation attracted renewed attention during the Doha Ministerial in December 2001 when Member states agreed to specify the somewhat vague mandate set out in the Singapore. Accordingly, paragraph 27 of the Ministerial Declaration lays out the work plan:

«Recognizing the case for further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that Session on modalities of negotiations. In the period until the Fifth Session, the Council for Trade in Goods shall review and as appropriate, clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 and identify the trade facilitation needs and priorities of Members, in particular developing and least-developed countries. We commit ourselves to ensuring adequate technical assistance and support for capacity building in this area.»⁹

After three years of exploratory work, negotiations on trade facilitation were finally launched in 2004. As part of the so-called «July Package», the General Council (GC) decided by explicit consensus to start formal negotiations on the basis of the modalities set forth in Annex D of the package. Members' states agreed that

⁸ Singapore Ministerial Declaration, WT/MIN(96)/DEC, para. 21.

⁹ Doha Declaration, WT/MIN(01)/DEC/1, para. 27.

«negotiations shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit.»¹⁰

At its first meeting after the July session the GC established the Negotiating Group on Trade Facilitation (NGTF) and negotiations started as planned in the second half of 2004. Throughout 2005 the NGTF met on a regular basis and worked out the possible shape of the future agreement. During the sixth MC in Hong Kong, the Member states reaffirmed their support for the ongoing negotiations on trade facilitation. Moreover, a report summarizing the progress made has been annexed to the Ministerial Declaration.¹¹ In this regard, it is interesting to note that the proposed measures to improve and clarify the meaning of Articles V, VII, and X of GATT are in terms of the issue coverage very close to the latest draft negotiating text.¹² Putting this point differently, consensus on the overall outline of an agreement on trade facilitation has already been achieved as early as 2005. Yet in July 2006 the Doha trade talks collapsed and the DDA itself was suspended. Given that trade facilitation was part of the single undertaking further negotiations were postponed as well.

Prior to the upcoming eighth Ministerial Conference (MC8), taking place in Geneva from December 15 until December 17 2011, the inclusion of trade facilitation as part of the so-called «LDC-plus» package is still pending at the time of the writing. As of now, consensus seems to be emerging among Member states that the prime focus of the December mini-package should be devoted to issues for least-developed countries (LDCs): duty- and quota-free access (DFQF) for goods originating in LDCs, relaxing rules of origin (RoO), a waiver that allows Member states to discriminate in favour of services export coming from LDCs, and a step forward on cotton.¹³ Whether trade facilitation is part of a larger «LDC-plus» package is yet to be decided. Further informal talks were scheduled after the August recess. Apart from trade facilitation an indicative list of possible additional items has been circulated. It includes: disciplines on fisheries subsidies, an S&D monitoring mechanism, provisions on preferential trade agreements (PTAs), agricultural export support, and liberalized trade in environmental goods and services.

¹⁰ Doha Work Programme, WTL/579, Annex D, para. 1.

¹¹ Hong Kong Ministerial Declaration, TN/MIN(05)/DEC, Annex E.

¹² See Draft Consolidated Negotiating Text, TN/TF/W/165/Rev.8.

¹³ Doha Plan B Hits Early Roadblock, *BRIDGES Weekly Trade News Digest*, 15(21), 8 June 2011; Doha: Difficult Road Ahead for December Mini-Package, *BRIDGES Weekly Trade News Digest*, 15(23), 22 June 2011.

In summing up this subsection it has to be noted that the WTO's reform agenda on trade facilitation primarily focuses on the clarification of the already mentioned GATT Articles. Yet other WTO rules do play an important role as well and, therefore, warrant special mention. The subsequent section will briefly elaborate on them.

3.2 Other relevant WTO rules

Many of the other WTO rules relating to trade facilitation deal with various bureaucratic or legal issues that may inhibit trade. Evidently, such non-tariff barriers often hinder rather than facilitate the free flow of goods and services and should thus ideally be part of a broader trade facilitation agenda. Given the space constraints this subsection only touches upon the most important legal frameworks, notably Article VII of GATT («Valuation for Customs Purposes») and the Customs Valuation Agreement, the Agreement on Rules of Origin and the Agreement on Import Licensing Procedures, the Agreement of Pre-shipment Inspection.

Article VII of GATT («Valuation for Customs Purposes») and the Customs Valuation Agreement¹⁴ spell out the key governing principles as to how Member states should determine the value of imports in order to calculate customs duties and other charges. By and large, the Agreement on Customs Valuation aims at harmonizing the different valuation methodologies and thereby creating a predictable and transparent system for both exporters and importers. Crucially, the Customs Valuation Agreement provides for the establishment of a legal as well as judicial appeals system in order to ensure due process.

Article IX («Marks of Origin») stresses the difficulties and inconveniences that regulations relating to marks of origin may cause to the commerce and industry of exporting countries. In order to lessen trade-distorting effects Member states should reduce the need to adopt and enforce marks of origin to a minimum.

When it comes to the administration of non-preferential rules of origin the Agreement on Rules of Origin (RoO) plays an important role. RoO are the criteria used to determine where a good was produced. Within the ambit of PTAs they are critical to evaluate whether a product is eligible for preferential tariff treatment or not. As Maur

¹⁴ Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (hereafter Agreement on Customs Valuation).

(2008) rightly points out the proliferation of PTAs has «contributed to create new impediments to trade which require more sophisticated trade facilitation measures as administration of border formalities becomes more complex because of the need to discriminate between preferential and non-preferential trade.»¹⁵ In other words, PTAs, in particular the provisions regulating the administration of RoO, may and in fact often do create new hindrances to trade.

In a nutshell, the Agreement on Rules of Origin requires Member states to ensure that transparency with respect to their rules of origin is provided; that rules of origin do not restrict or distort international trade or amount to a disguised form of protectionism; that their administration is conducted in a consistent, uniform, impartial, reasonable and neutral manner; and that they should follow a positive list approach. Interestingly, the preamble recognizes that clear and predictable rules of origin and their application *facilitate* the flow of international trade.

From a long-term perspective, the Agreement on Rules of Origin mainly aims at harmonizing non-preferential rules of origin among all Member states. However, preferential rules of origin are exempted from this harmonization agenda. That is to say, countries signing PTAs are free to use their own rules of origin for products traded within the preferential trade scheme. Article 2 of the Agreement on Rules of Origin sets out the disciplines WTO Members should adhere to until a complete harmonization is achieved: swift publication of newly enacted rules and regulations, advance binding evaluation of origin, a prohibition to apply changes regarding rules of origin retroactively, an obligation to establish a system of judicial review, and a non-disclosure requirement for confidential information.

The Agreement on Import Licensing Procedures aims at streamlining the administrative procedures applied for granting import licenses, making them (more) transparent, predictable and fairly administered and applied. The agreement also, at least in part, deals with the procedural properties of fees and formalities levied in connection with the importation or exportation. In addition, it sets out maximal time limits and requires the provision of simple and easy-to-understand forms.

The Agreement on Pre-shipment Inspection sets out to harmonize those rules that regulate how pre-shipment inspections are being carried out. Crucially, it discourages

¹⁵ Maur, C. J. (2008), Regionalism and Trade facilitation – A Primer, *Worldbank Policy Research Working Paper*, No. 4464, pp. 21.

WTO Members from using pre-shipment inspections in the first place and elaborates different ways to abandon pre-shipment inspections.

3.3 The current shape of the agreement on trade facilitation

The draft consolidated negotiating text reflects the current state-of-play when it comes to the potential shape of an agreement on trade facilitation.¹⁶ It consists of two sections encompassing 15 carefully crafted articles. The first section clearly draws upon the World Customs Organization's Revised Kyoto Convention (RKC) and lays out disciplines for customs agencies. Many of the provisions relate to one of the three GATT Articles (Articles V, VIII, X of GATT), while other provisions address issues such as cooperation between different border agencies (Article 9), the use of international standards (Article 10.3), customs compliance (Article 12), and cross-cutting issues (Article 15). As of now, the cross-cutting issues are the least elaborated articles. They include the relationship between the agreement on trade facilitation and other WTO Agreements, implementation schedules and transition periods, exceptions and thus a reference to Articles XX and XXI of GATT, and the question whether Articles XXII and XXIII of GATT and the Dispute Settlement Understanding (DSU) should apply or not. It is well-worth mentioning that provisions dealing with both exceptions and dispute settlement is still bracketed, which underscores the fact that they appear to be rather contentious.

With respect to Article X of GATT – arguably the broadest of the already mentioned three GATT Articles – Member states envision the following: First, enhanced transparency and availability of the relevant information through online publication (Article 2.1). Second, the establishment of a single enquiry point (Article 3.1). Such one-stop shops simplify the process traders currently have to go through since they would have to turn to one government agency only as a result of such a reform. Also, single inquiry points may potentially be created in an e-environment and thus further increase efficiency. Conceivably, the clearance of goods itself becomes a service, which could potentially be outsourced to non-governmental bodies and even private companies. Third, Member states wish to set concrete timeframes between the publication and entry into force of newly enacted or amended trade-related laws and regulations. Further, interested parties should have the right to comment on new regulations prior to their enactment. Such a provision is very similar to Article 2.9.1 of

¹⁶ See Draft Consolidated Negotiating Text, TN/TF/W/165/Rev.8.

the Agreement on Technical Barriers to Trade (TBT Agreement), which stipulates that amendments ought to be published at an early stage in order to enable interested parties to comment on and get acquainted with a newly introduced regulation. Fourth, binding advanced rulings are up for discussion (Article 3). And fifth, due process provisions are part of the draft proposal. They include the right to appeal and a mechanism to monitor and ultimately enforce administrative decisions (Article 4).

When it comes to Article V of GATT the draft proposal extends the principle of non-discrimination to different forms of transport, types of carriers, categories of consignments. Interestingly, freedom of transit may be applied to oil and gas shipments through pipelines and power through electricity grids (Article 11.1). Given the far-reaching ramification of a reference to pipelines and electricity grids it is very likely that such wording will be dropped if the agreement on trade facilitation materializes. Furthermore, the monopoly power of state enterprises within the realm of traffic in transit may possibly be curtailed (Article 11.2). More importantly, transit fees and charges, which are covered by Article X:1 of GATT, should be published, unpublished ought to be prohibited, and reasonable time periods between the enactment and the entry into force should be set. The draft proposal does not exclude the right to resort to the exceptions already stipulated in the WTO Agreements and, therefore, includes Article XX and XXI of GATT and Article 2.2 of the TBT Agreement (Article 11.4). Also, charges, regulations and formalities should be subject to a periodical review in order to reduce excess charges.

For fees and formalities connected with the importation and exportation (Article VIII of GATT) the proposals put forward are very similar. They should be published and notified (Article 10.1(a)) and the compendium of unpublished ones ought to be prohibited. With a view of reducing costs the fees and formalities are subject to a periodical review (Article 10.1). Finally, the draft proposal encourages Member states to use standardized documents such as the UN layout key, UN Trade Data Elements Directory, and the WCO Data Model. It also urges Member states to adhere to the relevant international standards (Article 10.3).

Section two turns to less economically developed countries and lists a number of S&D treatment provisions for developing and least developed countries (LDC). Chief amongst them are longer implementation periods, specific carve-outs taking into account a Member's level of economic development and technical support and

assistance. Many of the proposed reform measures mentioned in section one of the draft proposal compel developing countries and LDCs to undertake investments in infrastructure projects and revamp customs procedures. However, such reform efforts are costly and usually go beyond the financial means of most developing countries. Not surprisingly, much of the current debate revolves around increased funding commitments by developed countries.

4. THE ECONOMICS OF TRADE FACILITATION

4.1 General remarks

A feasible way of approaching the economics of trade facilitation is to start with the notion of trade costs. Anderson and Wincoop (2004) broadly define trade costs as «all costs incurred in getting a good to a final user other than the production costs of the good itself.»¹⁷ Chief amongst them are: transportation costs (both freight costs and time costs), policy barriers (tariff and non-tariff barrier), information costs, contract enforcement costs, costs associated with the use of different currencies, legal and regulatory costs, and local distribution costs (both wholesale and retail).¹⁸ Given such a definition, trade costs essentially amount to what is commonly referred to as transaction costs and trade facilitation aims at reducing those costs. Crucially, it has been noted that the effective rate of protection of the transaction costs as a whole is in many cases higher than the one imposed by classical trade barriers (e.g. tariffs and quantitative restrictions).

Regarding the scope of trade facilitation there is an important caveat however. As previously pointed out the WTO's definition of trade facilitation is narrower in scope than, for instance, the definition of the UNECE. In operational terms, the multilateral trade facilitation agenda boils down to the clarification of the already mentioned three GATT Articles – essentially omitting countless measures, which should ideally be part of the overall trade facilitation activities. From an economic perspective the use of the broadest scope possible makes perfect sense since efficiency gains and thus the reduction of transaction costs are larger. Messerlin and Zarrouk (2000), for example, consider technical regulations (TRs), such as mandatory norms and voluntary standards, as significant impediments to trade and should as a result of that fall within the scope of the general headline trade facilitation. They argue that both TRs and excessive border procedures raise very similar challenges, notably «how to reduce the unnecessary costs of the application and enforcement of national laws and regulations.»¹⁹ It is well documented that TRs have been sprawling for the past 50 years and, therefore, the following points seem to warrant mention: TRs

¹⁷ Anderson, J. & van Wincoop, E. (2004), 'Trade costs', *Journal of Economic Literature*, 42(3), pp. 691.

¹⁸ Ibid., pp. 691.

¹⁹ Messerlin, P. & Zarrouk, J. (2000), 'Trade Facilitation: Technical Regulations and Customs Procedures', *The World Economy*, 23(4), pp. 577.

impinge on very sensitive issues such as health, food safety, consumer and environmental protection. Much of their prominence lately can be traced back to an increased public awareness of health and environmental concerns and changing attitudes «toward the level of acceptable risks.»²⁰ On the other hand, TRs may be seen as a substitute for border measures, such as tariffs, quantitative restrictions or other instruments – and thus an alternative policy tool to keep things out. Without going into further details the economic ramifications are straightforward: TRs will continue to incur additional costs, for example, through the multiplication of duplicative requirements and, therefore, considerably inhibit cross-border trade. It is worthwhile mentioning that duplication not only results from the fact that similar standards have to be satisfied repeatedly, but also because national laws vary. Hence, both the diversity of national regulatory requirements and the need for compliance with them brings about duplication. Baldwin (2000) refers to compliance costs that are incurred because two different standards have to be met at the same time.²¹ Solutions to lower the cost of duplication could encompass harmonization of requirements or the mutual recognition of different standards.

According to Sengupta (2008) trade facilitation should ideally deal with the following components: (i) transportation related costs; (ii) costs due to non-tariff barriers; (iii) information costs; (iv) contract enforcement costs; (v) costs associated with the use of different currencies; and (v) legal and regulatory costs.²²

The nexus between transportation, shipping or freight costs, which may amount to substantial transaction costs, and logistics services will be discussed next. Similar to what has been said above the focus will be on the economics transportation cost, in particular their reduction. Generally, due to improvements in technology and higher investments in transportation infrastructure transportation costs have sharply decreased over the course of the past 50 years. For example, technological innovation in air transportation, which constitutes about 35 per cent of world merchandise trade in terms of value, has cut the average revenue per ton-kilometer by a factor 10 between 1994 and 2004.²³ In a similar vein, the costs of maritime shipping, which amounts to more than 90 per cent of international trade by weight,

²⁰ Ibid., pp. 579.

²¹ Baldwin, R. (2000), 'Regulatory Protections, Developing Nations and a Two-Tier World Trade System', *Brookings Trade Forum*, pp. 237-280.

²² Sengupta, N. (2008), *The Economics of Trade Facilitation*, Oxford: Oxford University Press, pp. 13-18.

²³ Hummels, D. (2007), 'Transportation Costs and International Trade in the Second Era of Globalization', *The Journal of Economic Perspectives*, 21(3), pp. 132-33.

have been reduced predominantly due to containerization by between 3 and 13 per cent.²⁴ Yet obstacles and unharvested efficiency gains remain to exist. In particular, sizeable trade transaction costs stemming from underdeveloped logistics infrastructure are still widespread. It has been estimated, for instance, that each extra day of delay in shipment lowers trade by at least 1 per cent.²⁵ What are the causes of such impediments? First, similar to what has been elaborated above uneven regulatory frameworks force transportation operators to meet a myriad of different requirements, which tends to inflate compliance costs and thus the cost of cross-border trade. Taking the example of railway transport, a country may, for safety reasons, impose more stringent rules as to how hazardous cargo should be transported. Now, each time the consignment crosses a national border different regulatory constraints may necessitate unloading, possibly repackaging, and reloading. The economic ramifications are obvious: complying with the more strict rules adds costs to the shipment and, therefore, increases the transportation costs. Second, poorly maintained and managed border controls may hamper the efficient clearance of goods. Moreover, the lack of regulatory interconnections between different modes of transport may disrupt vertically integrated supply chains. Third, the transport sector is by and large characterized by high sunk costs, inhibiting the entry of new service providers and thus new competitors. In other words, many transport companies have monopolistic power and, therefore, charge above-market rates for their services. Similarly, Guerrero *et al.* (2010) state that markets for logistics services «are rarely competitive and are usually owned by the state (in the case of seaport and airport infrastructure) or by large international companies (for transport services).»²⁶ With respect to international maritime services Fink *et al.* (2002) raise similar concerns. They state that anticompetitive business practices, such as collusive pricing, are rampant and that the failure of the post-Uruguay services negotiations «implied an unfortunate loss of political momentum for reform of domestic policies and, less obviously, a lost opportunity to develop precompetitive rules.»²⁷ At the aggregate level, the lack of competitive pressures and the inability of regulatory agencies to curb monopolistic behavior may disincentive investments in transportation infrastructure projects and thus hamper the development of new transportation arrangements.

²⁴ Ibid., pp. 140.

²⁵ Djankov, S., Freund, C. & Pham, S. (2006), 'Trading on Time', *Worldbank Policy Research Working Paper*, No. 3909.

²⁶ Guerrero, P., Lucenti, K. & Galarza, S. (2010), 'Trade Logistics and Regional Integration in Latin America and the Caribbean', *Asian Development Bank Institute Working Paper Series*, No. 233.

²⁷ Fink, C., Mattoo, A. & Neagu, C. (2002), 'Trade in International Maritime Services: How Much Does Policy Matter?', *The World Bank Economic Review*, 16(1), pp. 83.

Competition in transportation services – or more accurately – the lack thereof is an important aspect of trade facilitation and the relationship between economic integration, market enlargement, and pro-competitive pressures warrant further explanation. Economists usually refer to scale and competition effects.²⁸ As previously pointed out, the transport sector is in many countries characterized by very limited competition. As a result, national transport firms have a dominant position and are thus able to charge relatively high prices for their services rendered. Worse, the lack of competition keeps too many (small) companies in business. Essentially, the result is an industrial structure that «is marked by too many inefficient small firms that can get away with charging high prices to cover the cost of their inefficiency.»²⁹ Preferentially liberalizing services markets would theoretically exhibit the following effects: First, it would lead to the defragmentation of markets, which, in turn, produces more competitive pressures. Second, more competition squeezes the least efficient firms out of the market and results in an industrial structure where «fewer, bigger, more efficient firms compete more effectively with each other.»³⁰ And third, overall the prices fall and the output of production increases.

4.2 The economics of preferential trade agreements (PTAs)

4.2.1 Preliminary remarks

Trade facilitation measures are increasingly part of PTAs that go beyond the mere extension of preferential tariff concessions. Strictly speaking, a broad understanding of trade facilitation includes both at-the-border (i.e. customs procedures) as well as behind-the-border (e.g. differences in regulatory requirements) issues. Yet for the purpose of this research paper trade facilitation is treated as a classical behind-the-border issue. Like preferential tariff liberalization trade facilitation measures under a PTA carry a number of economic effects. In order to get a grasp of the economic ramification of preferential liberalizations and, therefore, an idea of how the economics of preferential trade facilitation play out the following subsection sets out to explain the so-called «standard analysis of preferential trade agreements».

²⁸ Mattoo, A. & Fink, C. (2002), 'Regional Agreements and Trade in Services – Policy Issues', *Policy Research Working Paper*, No. 2852.

²⁹ Baldwin, R. and Wyplosz, C. (2005), *The Economics of European Integration*, 2nd ed., Maidenhead: McGraw-Hill Education, pp. 141.

³⁰ *Ibid.*, pp. 141.

4.2.2 The standard economics of PTAs – trade creation and trade diversion

Much of the current debate about the economic impact of PTAs can be traced back to the seminal work of Jacob Viner.³¹ In the late 1950s he wanted to find out whether a PTA is beneficial for all countries involved or not. According to Viner, preferential – or discriminatory – liberalization exhibits two basic effects: trade creation and trade diversion. Importantly, the net balance of both effects establishes whether a PTA increases or decreases the welfare for all countries involved. Consider the following example: Country A and B form a preferential trading scheme and mutually grant each other duty-free market access. As a result of that, some local imports replace production in Country A coming from the more efficient companies located in Country B. That said, trade is being created (i.e. trade creating) and the overall welfare rises. Yet any preferential trading scheme also discriminates against third countries or non-members. Hence, since goods from Country B get a competitive edge through the elimination of tariffs or quotas, exports from the most efficient non-member country are negatively affected. Put differently, the preferential reduction of trade barriers (both tariffs and quotas) induce both consumers and producers to source from the partner country at the expense of both locally produced goods as well as imports from third countries (i.e. non-member countries). More importantly, both Country A and B end up paying more for the very same goods they previously sourced from a more efficient outside producer. This harms the overall welfare of members of the preferential trading scheme and is, therefore, referred to as trade diversion. Both effects run in opposite directions, making it difficult to gauge the welfare impact of preferential liberalization as a whole. With regard to the latter, economist also refer to the so-called <Viner ambiguity>.

4.2.3 Extending the analysis to the preferential liberalization to trade in services

Until now, the focus of preferential liberalization was devoted to trade in goods. Yet the following research paper also deals with the potential effects of preferential services liberalization, in particular logistics services, and it is thus worthwhile asking

³¹ Viner, J. (1950), *The Customs Union Issue*, New York: Carnegie Endowment for International Peace.

whether the former analysis is helpful to understand the impact of PTAs in services trade.

When it comes to assess the preferential liberalization of trade in services the conventional analysis needs to be extended in two ways: one, unlike trade in goods, which involves the reduction or even the elimination of tariffs, the liberalization of trade in services is mainly concerned with changing the different domestic regulatory system; and two, preferential market access can only be granted through «discriminatory restrictions on the movement of labor and capital (e.g. in terms of quantity or share of foreign ownership), and a variety of domestic regulations, such as technical standards, licensing and qualification requirements.»³² Furthermore, services are by and large regulated domestically and are thus a classical example of a behind-the-border measure. Therefore, preferential liberalization will lead to little (if at all) losses in fiscal revenues levied as tariffs at the border. Relating to the previous point, while preferential liberalization will carry little trade diversion costs, it will – if adjustments are needed – incur costs to change and manage the domestic regulatory regime. Furthermore, the dynamic scale effects (i.e. effects of increased competition and industrial restructuring) will certainly yield significant benefits. Services are embodied in virtually every part of the industrial production and therefore a very important (intermediary) input into many production processes. Therefore, preferential service liberalization will have significant knock-on effects. As Francois and Hoekman rightly put it:

«The competitiveness of manufacturing in open economies is determined in part by access to low-cost and high-quality producer services – telecommunication, transport and distribution services.»³³

Lastly, by exploiting economics of scale (i.e. reduce the cost of production) significant benefits may be derived from preferential liberalization. Among those service sectors that exhibit scope for economics of scale are various international transport and financial services³⁴ – sectors of paramount importance for the manufacturing industry as a whole.

³² Mattoo, A. and Fink, C. (2002), *Regional Agreements and Trade in Services: Policy Issues*, *Worldbank Policy Research Working Paper*, No. 2852, pp. 6.

³³ Francois, J. and Hoekman, B. (2010), 'Services Trade and Policy', *Journal of Economic Literature*, 48(3), pp. 642.

³⁴ Sauve, P. (2009), *Trade and Investment in Services. An ADB-ITD Training Module for the Greater Mekong Subregion*, Mandaluyong, Philippines: Asian Development Bank, pp. 51.

4.2.4 The economic impact of preferential trade facilitation

The following subsection reviews the economics of (preferential) trade facilitation, drawing largely on Maur (2011).³⁵ Under the assumption that trade facilitation reforms are conducted preferentially (i.e. between two trading partners or within a regional trading scheme) two basic effects can be identified: static efficiency effects, that is one-off efficiency gains due to a better allocation of production factors; and dynamic effects, that is the realization of economics of scale as a result of enhanced competition and a reduction of costly duplication requirements as well as the creation of positive and/or the prevention of negative externalities respectively.

Static effects rest on the logic of trade diversion and its associated welfare losses.³⁶ Negative welfare outcomes occur when «the loss of domestic rents to exporters is not compensated by the benefits from lower prices resulting from liberalizations.»³⁷ Given that in many instances there are no such domestic rents, and if so they are rather small, the impact of preferential trade facilitation efforts will unavoidably be welfare augmenting. In essence, trade facilitation results in a reduction of trade costs (i.e. transaction costs) and domestic consumers benefit due to the availability of a larger quantity of cheaper products. At first blush there is some truth to this argument – yet trade facilitation activities may also create some losers: excluded non-member countries (e.g. through the application of preferential origin administration or fee exemptions for PTA partners); those private companies that were protected due to high trade (i.e. transaction) costs and those who benefited from a lack of international competition; and those economic actors that managed to reap rents as a result of an intransparent and complex trading environment. For a selective overview of potential and actual negative implications on excluded trading partners see Hamanaka *et al.* (2010), in particular pages 6-14.

Dynamic effects are primarily based upon the (economic) benefits of international – or more accurately – regional cooperation. In this regard two effects stand out: One, the realization of economics of scale (i.e. distribute the production costs over a larger quantity produced and thus reduce the production costs as a whole) through, for instance, removal of duplicative and thus costly requirements or enhanced

³⁵ Maur, J.C. (2011), *Trade Facilitation*, in: Chauffour, J.-P. & Maur, J.C. (eds.), *Preferential Trade Agreements – Policies for Development – A Handbook*, Washington, D.C: The World Bank, pp. 331.

³⁶ For a detailed analysis see sub-section 4.2.2.

³⁷ *Ibid.*, see supra note 35.

competition. And two, the creation of positive and/or the prevention of negative externalities respectively.

Economics of scale. In today's international trade landscape, which is characterized by globally sliced-up supply chains and an increasing trade in tasks rather than final products, goods have to cross several borders before they reach their final destination. It is evident that traders may therefore face cost duplications throughout the whole process of production. Often these costs are fixed (usually, economist refer to sunk costs) and the reduction or even elimination yields considerable efficiency gains. Duplication costs arise not only because similar requirements have to be met recurrently but also due to the fact that they differ from one jurisdiction to another. In operational terms, methods to reduce duplication may include, among others, the formation of a common market, harmonization (i.e. the use of identical documents and templates as well as regulatory convergence), cooperation between different agencies (e.g. mutual exchange of information and data as well as information sharing among the relevant experts), mutual recognition of certificates. Another aspect of the realization of economics of scale relates to the presence of fixed or even sunk costs. If such costs are high full economics of scale can possibly not be realized at the country level, making it economically feasible to put bilateral or regional schemes in place. In other words, it may be more cost-effective to share (large) fixed costs among a (larger) number of regional trading partners rather than bear the costs alone.

A very similar argument can be raised with respect to the conformity assessment of regulatory standards and the provision of services, such as transport and logistics as well as finance and insurance. Setting up bilateral or regional certification and testing agencies may reduce the cost each country faces. Moreover, regional approaches may thus provide cheaper testing and increase the overall quality thereof. It is commonplace to argue that the availability of some services is crucial for the well functioning of cross-border trade. Put differently, the lack of reasonably cheap backbone services constraints international trade. Yet in many cases domestic markets are too small to provide a sufficient amount of these services. Hence, in order to reduce the prices of backbone services a scale of production beyond the national market is required. Against this backdrop it becomes obvious that the integration of formerly fragmented services markets enables economic operators to reap the benefits of the economics of scale.

Positive and negative externalities. Broadly speaking, regional cooperation schemes are a useful policy tool to address externality problems. In many cases the lack of coordination between neighbors or trading partners may lead to the adoption of national policy strategies that fail to produce the optimal global result.

4.2.5 Rules of origin, discriminating origin administrations and trade diversion

A very specific aspect of trade facilitation relates to the discriminatory administration and application of rules of origin (RoO), in particular those that relate to the granting of preferential tariff treatment. The administration of RoO figures prominently within the ambit of PTAs. Many of them aim at easing the procedure for the establishment of the origin of different goods. It has already been mentioned that the administration of RoO itself may create new impediments to trade since the administration of border formalities turns out to be more complex.³⁸ What is even more troubling is the fact that preferential rules of origin are excluded from any multilateral attempts to harmonize them.

How may rules of origin (RoO) can be a source of trade diversion? And more importantly, what are the implications for the trade facilitation agenda? To get an idea, consider the following example:³⁹ Country A and B are both part of a production sharing network. That is to say, both countries are part of a transnational supply chain. Country A exports final products to Country C using intermediate products coming from Country B. Further, suppose that Country C also produces the same intermediate products yet the cost of production (relative to Country B) is higher. Now, Country C signs a PTA with both Countries A as well as Country B. As a result of that, goods originating in Country A are granted preferential access to Country C's market, as much as preferential access is accorded to goods coming from Country B. One would assume that both PTA partners would receive equal treatment. Under the PTA, however, Country C may impose rigid rules of origin on Country A, which could have the effect that the final product from Country A does not satisfy the origin requirements – possibly because the content of intermediate goods sourced from Country B is too large – and thus does not get preferential market access. In such a

³⁸ See supra note 16.

³⁹ The following analysis is based on the chapter on rules of origin and trade diversion of the *World Trade Report 2011*, pp. 108-109.

situation Country A has two options: it either keeps importing intermediate products from Country B and thus forgoes preferential access or it starts sourcing from Country C in order to be granted the preferential access on the exports to Country C.

Obviously, the substance (i.e. what steps of production and what quantity as well as quality of inputs are required to be eligible for preferential market access) matters. Yet what is equally important, in particular from a trade facilitation perspective, is *how* rules of origin are administered. As a matter of fact, origin administration provisions in PTAs aim at easing the procedure for figuring out the origin and thus the eligibility for preferential tariff treatment. As evidenced by a selective overview of origin administration provisions (see box below) this is not always conducted on a non-discriminatory basis.

While some provisions may streamline the process as a whole and benefit all trading partners other provision may only benefit the PTA partner(s). Given that both the issuance of an origin certificate as well as the search for relevant information exhibit costs preferential origin administration may cause the very same supply-switch elaborated in subsection 4.2.2 («The Standard Economics of PTAs – Trade creation and trade diversion»).

Box 4.1 Preferential Origin Administration in selected PTAs

A so-called «self-certificate» is by far the most liberal approach. Crucially, it is less difficult and time-consuming than when origin certificates are issued by government authorities.

US–Singapore FTA, Chapter 3, Article 3.13 («Claims for preferential treatment»)

«Each Party shall provide that an importer may make a claim for preferential treatment under this Agreement based on the importers knowledge or on information in the importer's possession that the good qualifies as an originating good.»

Malaysia–New Zealand FTA, Annex 3, Article 1 («Declaration of Origin»)

«A claim that goods are eligible for preferential tariff treatment shall be supported by a declaration as to the origin of a good from the exporter or producer.»

ASEAN FTA, Annex 8, Chapter 3, Rule 5 («Application for Certificate of Origin»)

«At the time of carrying out the formalities for exporting the products under preferential treatment, the exporter or his authorized representative shall submit a written application for the Certificate of Origin.»

Some PTAs even renounce the need to apply for a certificate of origin below a certain threshold.

Japan–Singapore FTA, Article 29 («Claim for Preferential Tariff Treatment»)

«[...] the importing Party shall not require a certificate of origin from importers for: (a) an importation of a consignment of a good whose aggregate customs value does not exceed JPY 200'000 or its equivalent amount.»

Source: Hamanaka et al. (2010).

5. GOING BEYOND THE GATT-CENTRIC TRADE FACILITATION MANDATE

5.1 Setting the stage

Much of what has been outlined in the previous chapters suggests that trade facilitation requires a holistic approach. That is to say, the GATT-centric approach, which focuses largely on customs operations and related issues, is a necessary yet not sufficient condition to reap the full benefits emanating from trade facilitation. From an economic standpoint the availability of competitive logistics services are a crucial component for overall reduction of transportation and hence trade costs. Even more so since transportation costs constitute a large part of the overall production costs economic operators face. It comes as no surprise that this essentially amounts to a significant trade barrier. As estimated by the World Bank, for example, logistics costs constitute about 20 per cent of total production costs in industrialized countries, while freight costs can reach up to 40 per cent of costs for certain landlocked developing countries.⁴⁰ This clearly underscores another aspect of trade facilitation which has yet to move center stage: trade facilitation and its development implications, most notably enabling small-scale exporters from developing countries and least-developed countries (LDC) to become a part of the international production networks. In this regard it is worthwhile mentioning that logistics services are very often underdeveloped in most of the developing countries and do effectively not exist in least-developed countries (LDCs). To tackle this situation it is also important to evaluate the extent to which Article IV of the GATS can effectively be implemented.⁴¹ That being said, trade facilitation also carries an important Aid for Trade dimension, which is all too often disregarded by the multilateral trade talks.

In what follows chapter V shifts the focus of trade facilitation beyond the GATT-centric mandate and discusses the importance of logistics services. In this regard a number of questions beg analytical attention: Can the WTO services negotiations usefully complement the GATT-centric trade facilitation mandate? With respect to that, what is the current state-of-play of liberalization as reflected in existing GATS

⁴⁰ Communication from Australia, Canada, Chile, Djibouti, the European Communities, Hong Kong (China), Iceland, Japan, Korea, Lichtenstein, Mauritius, New Zealand, Nicaragua, Norway, Panama, Peru, Singapore, Switzerland, The Separate Customs Territory of Taiwan, Penguh, Kinmen and Matsu, and the United States, 18 February 2005, TN/S/W/34.

⁴¹ Article IV of the GATS addresses the increasing participation of developing countries. It calls on WTO Members to facilitate the integration of developing countries in world trade through negotiated specific commitments.

commitments and GATS offers in the context of logistics services? Are liberalization efforts replicated in PTAs? Do PTAs even move beyond the WTO services negotiation commitments both in terms of sector coverage as well as additional ambition?

A lot of what follows is also rooted in the political economy of PTAs. The following bullet points summarize a number of important rationales why countries opt to form PTAs:⁴²

- There seems to be a shared discomfort by many developed countries with the slow pace of the multilateral talks on progressive service liberalization. Ridden by consensus-based decision making and faced with a myriad of diverging interests service liberalization within the WTO is currently not moving forward. Viewed against this backdrop PTAs allow countries to move on and thus respond to many governments quest for greater expediency.
- In this respect, PTAs allow countries to expand both the sectoral coverage (i.e. the breath) and the depth of commitments. In moving beyond current GATS commitments countries try to extract the economic gains from deep integration (i.e. convergence of domestic regulatory regimes) and increased factor mobility.
- PTAs may be a vehicle to tackle the rule-making leftovers inherited from the Uruguay Round (UR), namely subsidies, emergency safeguards, government procurement, and domestic regulation.
- PTAs exclude the possibility of free riding, making bargaining processes much more effective. Negotiating with a limited number of parties also significantly decreases transaction costs.
- PTAs may be concluded to lock in domestic regulatory reforms, such as breaking up cartels or monopolies or fighting the prohibition of certain service industries.
- PTAs serve as experimental laboratories of enhanced liberalization. That is to say, PTAs enable countries to familiarize themselves with new rules and related developments, which might in turn be multilateralized at a later stage.
- PTAs are the optimal forum for regulatory convergence – an aspect, which is even more important when it comes to trade, services, including logistics

⁴² This part largely draws on the author's written assignment handed in for the services class taught by Pierre Sauve during the MILE 11.

services. Generally, regulatory cooperation may be perceived more desirable and reliable among a small subset of like-minded countries.

This list is arguably a selective list yet it does reflect the most important driving forces. For the purpose of this research paper it is important to note that given the above-mentioned rationales one would expect to find traces of a broad trade facilitation understanding in newly formed PTAs. Or put differently, given the unease shared by many WTO Members to extend logistics services commitments on an MFN basis they are more inclined to accord preferential treatment on a bilateral – or even regional – basis.

5.2 The logistics services industry

The logistics industry has been subject to huge transformation in the past twenty years. Key for this development are innovations in technology, for instance the emergence of containers and the information technology (IT), advances in the quality of infrastructure and the geographical fragmentation of production coupled with the globalization of international supply chains.

Nothing has changed the logistics industry, in particular the maritime shipping industry, more than the containerization of merchandised trade. Using the same container from origin to destination not only reduced the danger of theft and damage, it also facilitated the interchange among different means of transport, which brought about significant efficiency gains. In addition to this the logistics industry is being increasingly influenced by the advances in the field of information technology (IT). E-commerce, to name one example, enabled consumers to place and pay their orders electronically while those companies delivering these goods can track and optimize the distribution operations.

The globalization of manufacturing processes has led to a considerable expansion of trade flows in intermediate goods. According to the WTO, trade in intermediate products accounts for more than 50 per cent of non-fuel world merchandise trade in 2009.⁴³ The trend of trade in parts and components is paralleled and thus reinforced by the growing significance of intra-industry – or intra-firm – trade, which is estimated

⁴³ WTO and IDE-JETRO (2011), *Infrastructure services in global value chains*, in: *Trade patterns and global value chains in East Asia: From trade in goods to trade in tasks*, Geneva: World Trade Organization, pp. 4.

to represent between 30 and 40 per cent of this trade.⁴⁴ As one could expect, these developments compelled logistics operators to adapt. There is an increased demand for just-in-time production and delivery of both inputs and final goods in order to reduce the costs of storage and free up capital for other activities. As a result of that, many companies outsourced their logistics activities to so-called third party logistics providers – or 3PLs.

5.3 Logistics services within the WTO

Trade in services in general and trade in logistics services in particular are dealt with under the auspices of the General Agreement on Trade in Services (GATS). The GATS entered into force in January 1995 as a result of the conclusion of the Uruguay Round. Broadly speaking the GATS applies to any service in any sector. There is, however, one sector-specific carve-out to the GATS' otherwise comprehensive coverage. As set out in the *Annex on Air Transport Services* only measures affecting aircraft repair and maintenance services, the selling and marketing of air transport services, and computer reservation system (CRS) services fall within GATS' scope of application. Given this rather limited coverage air transport services are mainly outside the scope of the GATS. Another exemption is provided for in Article I:3(b) of the GATS. It stipulates that services «supplied in the exercise of governmental authority» are not covered by the GATS. Rail transport and telecommunication are typically cited in this regard. Due to their infrastructural significance and the existence of natural monopolies both sectors are deemed to be classical domains of government ownership and control. Both carve-outs are related to the subject of this research paper and, therefore, warrant special mention. With regard to maritime transport services decision S/L/24 sets out a special regime: as a result of the slow progress in terms of binding commitments during the Uruguay Round the negotiations on maritime transport services were suspended in 1996 and WTO Members agreed to resume them once comprehensive negotiations are being re-launched.⁴⁵ In order to retain the progress achieved in the previous round (i.e. the Uruguay Round) the decision S/L/24 also stipulates that negotiations in maritime transport services, once re-launched, should be conducted on the basis of best offers tabled until 1996. In the current Doha Round, negotiations have restarted in

⁴⁴ UNCTAD (2005), *Negotiations on Transport and Logistics Services: Issues to Consider*, UNCTAD/SDTE/TLB/2005/3.

⁴⁵ Decision on Maritime Transport Services, adopted by the Council for Trade in Services, 28 June 1996, S/L/24.

accordance with the *Guidelines and Procedures for Negotiations on Trade in Services*.⁴⁶ Paragraph 5 of the Guidelines states that «there shall be no a priori exclusion of any sector or mode of supply and special attention should be given to sectors and modes of supply of export interest to developing countries.»

Analyzing logistics services in the WTO context is not an easy task. Perhaps one of the single most important difficulties is that logistics services are not captured under a distinct category under the W/120 classification list.⁴⁷ In spite of this, many elements of the generic term logistics services can be found in the W/120 classification list under different – and at time unrelated – sectors and sub-sectors. Hence, before analyzing PTA commitments there is a need to do some technical ground clearing.

According to the W/120 classification list transport services are divided up in the following modes of transport: maritime, air, rail, road and other modes (internal waterway transport, space and pipeline transport). Additionally, the W/120 classification list provides for a category (services auxiliary to all modes of transport), which relates to all the above-mentioned modes of transport. Throughout the negotiations on services many WTO Members have tabled different – and at times conflicting – proposals as to what sectors and sub-sectors should be included under the generic term logistics services. Some WTO Members have only focused on one particular mode of transport while others have adopted «an all-encompassing vision whereby negotiations on transport services are addressed in the broader context of *door-to-door transport* and from a logistics chain perspective.»⁴⁸ Overall, two important trends have been emerging during the current round of negotiations: first, the revision of the concept of multimodal transport; and second, the extension of transport services negotiations coupled with the inclusion of logistics services on a generic basis. It has to be noted, however, that multimodal transport is not entirely new to the services negotiations while logistics services have indeed surfaced as a novel area of negotiations within the purview of GATS.

⁴⁶ Guidelines and Procedures for Negotiations on Trade in Services, adopted by the Special Session of the Council for Trade in Services, 28 March 2001, S/L/993, pp. 3.

⁴⁷ WTO Secretariat Services Sectoral Classification List, MTN.GNS.W/120.

⁴⁸ UNCTAD (2006), Negotiations on transport and logistics services: issues to consider, UNCTAD/SDTE/2005/3, pp. 5.

Under the current GATS negotiations, Switzerland and Hong Kong were the first WTO Members expressing their interest to include logistics services as a whole.⁴⁹ In 2004, a group of eight WTO Members (Australia, Hong Kong, Lichtenstein, Mauritius, New Zealand, Nicaragua, Switzerland and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu) tabled a joint proposal and provided a checklist of services sectors that should ideally be part of the generic term logistics services.⁵⁰ The logistics checklist is intended as a tool to assist and facilitate the negotiations of specific commitments, in particular the scheduling thereof. In doing so, the checklist suggests three broad categories of logistics services: core freight logistics services, related freight logistics services and non-core freight logistics services. It also provides a definition of each category and the relevant W/120 and CPC⁵¹ code respectively. It has to be noted, however, that this checklist is non-binding and whether WTO Members use it or not is ultimately their own decision.

Core freight logistics are defined as services auxiliary to all modes of transport (subsection H of the transport services section in the W/120 list). It includes, among others, cargo handling services, storage and warehousing services, transport agency services and other auxiliary services, such as container leasing as well as rental services. *Related freight logistics services* cover all modes of transportation services (subsection A, B, C, E and F of the transport services section in the W/120 list; air, maritime, rail and road transport services) as well as *other related logistics services*, such as technical testing and courier services. This category therefore lists a number of highly politically sensitive services sectors, which have also been addressed in other services negotiations. Finally, non-core freight logistics services include computer and related services, packaging services as well as management consulting services. In addition to these three pillars the proposal lists a number of accompanying additional commitments as set out in Article XVIII of the GATS. Chief amongst them is a reference to prevent anti-competitive practices.

In February 2005, a group of 20 WTO Members submitted a joint statement, urging WTO Members to actively participate in the negotiations with a view to achieving substantial liberalization commitments in logistics services.⁵² The *Friends of Logistics*

⁴⁹ Communication from Hong Kong (China), 28 March 2001, S/CSS/W/68; Communication from Switzerland, 4 May 2001, S/CSS/W/78.

⁵⁰ Communication from Australia, Hong Kong, China, Lichtenstein, Mauritius, New Zealand, Nicaragua, Switzerland and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, 25 June 2004, TN/S/W/20.

⁵¹ CPC refers to the United Nations Provisional Central Classification list.

⁵² Communication from Australia, Canada, Chile, Djibouti, the European Communities, Hong Kong

Group, as the group became known, essentially represents the most active and vocal *demandeurs* with respect to logistics services and thus those WTO Members that shape the agenda of the negotiations. More importantly, the *Friends of Logistics Group* endorsed the above-mentioned logistics checklist and used it as the basis for their joint statement.

In the run-up to the sixth WTO Ministerial Conference (MC6), taking place in Hong Kong in 2005, there was a lot of discussion on the possibility of plurilateral approaches, which was an issue of special interest for all the different groups of friends, including the *Friends of Logistics Group*. The possibility to conduct services negotiations on a plurilateral request-offer basis was subsequently taken up in the Hong Kong Ministerial Declaration. Paragraphs 25 and 27 of the Ministerial Declaration jointly with paragraphs 7 and 11(b) of Annex C provide for the possibility to negotiate on the basis of plurilateral as well as collective requests.⁵³

As could be expected, various WTO Members have furnished a number of plurilateral requests in all relevant services sectors, including maritime, air, postal and courier transport services. In addition to these sector-specific plurilateral requests there is also a collective request specifically on logistics services presented on behalf of Australia, Chile, Hong Kong, Japan, New Zealand, Switzerland, and the Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu.⁵⁴ It invites the recipients of the collective request to provide new or improved commitments with comprehensive services coverage with respect to core freight logistics, related freight logistics services as well as non-related freight logistics services. Those new or improved commitments should particularly encompass mode 1 (cross-border supply), mode 2 (consumption abroad) and mode 3 (commercial presence), without any substantial limitations.

Plurilateral request for maritime transport service. This request stipulates that the model schedule on maritime transport services (MMS) should form the basis for making commitments on maritime transport services. It further asks for improved commitments or the removal of existing limitations with respect to international freight

(China), Iceland, Japan, Korea, Lichtenstein, Mauritius, New Zealand, Nicaragua, Norway, Panama, Peru, Singapore, Switzerland, The Separate Customs Territory of Taiwan, Penghu, Kinmen and Matsu, and the United States, 18 February 2005, TN/S/W/34.

⁵³ Doha Work Programme, Ministerial Declaration, WT/MIN(05)/DEC.

⁵⁴ Note that this group is not identical to the group of eight WTO Members that proposed the logistics checklist. Yet the logistics checklist is annexed to their communication.

transport, maritime auxiliary services, and access to as well as use of port services, and additional commitments relating to multimodal transport operations.

Plurilateral request for air transport services. This request essentially focuses on further liberalization of aviation ground handling services. In doing so, it aims at boosting the overall competitiveness of the air transport sector. Along the lines of the *Annex on Air Transport Services* requesting Members ask for improved or new commitments with regard to aircraft repair and maintenance services, the selling and marketing of air transport services, and computer reservation system (CRS) services.

Plurilateral request for postal and courier including express delivery services. Key objectives of this request include the following: The clarification of issues related to the description as well as the scope, increased market access and national treatment commitments, rules to reduce the negative effects of dominant suppliers as well as provisions that regulate the market access under competitive conditions.

5.4 Multimodal transport services within the WTO

While the Doha Round saw the emergence of logistics services as a new area of services negotiations, the notion of multimodal transport services is not an entirely novel concept. It refers to a transport system typically operated by one carrier with more than one mode of transport. Multimodal transport involves the use of more than one means of transport and thus a combination of road, rail, air or maritime transport in succession to each other.

From an economic standpoint multimodal transport offers a number of distinct advantages.⁵⁵ First, given that multimodal transport is planned and coordinated as a single operation it minimizes both the loss of time and cargo. Second, multimodal transport speeds up the transit of goods and thus decreases the disadvantages of distance. Third, it reduces the burden of satisfying multiple customs requirements and therefore reduces the costs associated with issuing various documentation or other formalities. All this taken together significantly decreases trade costs.

⁵⁵ UNESCAP Training Module, Multimodal Transport Operations, <http://www.unescap.org/ttdw/CapBuild/Module%20-Multimodal%20Transport%20Operations.pdf>.

Throughout the Doha Round WTO Members have repeatedly stressed the importance of multimodal transport and put forward different proposals that reflect this. Some of them note that «when international transport involves a sea leg, international services suppliers should be able to supply multimodal door-to-door transport services across the supply chain.»⁵⁶ Further, it has been proposed to allow such activities without implying or prejudging the complete liberalization of rail, road or any other internal transport.⁵⁷ In complementing individual proposals by WTO Members, the *Friend of Maritime Transport Group* tabled a checklist, which lists those services areas where WTO Members may consider making new or improved commitments in order to ensure effective door-to-door transport.⁵⁸

5.5 Trade facilitation, logistics services and Aid for Trade

It seems to be generally accepted that, driven by the recent industry trends, improving logistics services commitments and extending the negotiation mandate to multimodal transport are aimed at addressing the new market realities and business practices. While private business in general and the logistics industry in particular has been subject to significant changes, the GATS rules and commitments remain largely underdeveloped. After many years of unsuccessful negotiations, WTO Members still grapple to provide the appropriate regulatory framework most supportive for further efficiency gains. This is not entirely surprising given the reactive nature of services negotiations. What is surprising, however, is the fact that the GATT-centric trade facilitation mandate is entirely disconnected from logistics and transport services. Scholars have yet to address this important discrepancy.

As pointed out earlier, PTAs offer one possible avenue for tackling this shortcoming and this chapter sets out to analyze whether traces of a holistic trade facilitation approach can be discovered in the recently concluded Economic Partnership Agreement between the European Community and the CARIFORUM⁵⁹ states (henceforth: the CARIFORUM EPA, or CEPA). Given the complexity of logistics services, the focus will be placed on those services proposed by the previously

⁵⁶ UNCTAD, *Negotiations on Transport and Logistics Services: Issues to Consider*, 2005, UNCTAD/SDTE/TLB/2005/3.

⁵⁷ Communication from the European Communities and their Member States: GATS 2000 – Transport Services, 22 December 2000, S/CSS/W/41.

⁵⁸ Communication from Norway: The Negotiations on Trade in Services, 21 March 2001, S/CSS/W/59.

⁵⁹ The CARIFORUM includes the members of the Caribbean Community (CARICOM) plus the Dominican Republic.

mentioned logistics services checklist. Provisions that relate to multimodal transport (if available) will also be assessed.

To this end, this chapter takes a closer look at both the services chapter of the CEPA as well as the corresponding schedule of specific commitments annexed to the agreement, using the following approach: to assess the CEPA commitments, the emphasis will be put on both *logistics sector coverage* and *depth of logistics services commitments*. Logistics services coverage captures the breadth of commitments across all crucial sectors and sub-sectors identified in the logistics services checklist, highlighting how many sectors/sub-sectors are subject to carve-outs or have been left unbound. It becomes clear that this analysis requires a detailed line-by-line reading of the treaty text as well as an assessment of the schedule of specific commitments. The depth of logistics services commitments reflects the concrete level of access bound for those sectors/sub-sectors committed.

Apart from this rather technical and quantitative examination, this chapter also sheds light on yet another aspect of trade facilitation: Aid for Trade and the «services software agenda». What does this mean?

In 2005 WTO Members have launched the global initiative on Aid for Trade (AfT), which is aimed at strengthening trade capacity and improving trade-related infrastructure of developing countries. The key rationale for setting up the AfT agenda was that companies in many developing countries lack the ability to profit from market access opportunities and thus reap the benefits emanating from international trade. Among the different types of support, infrastructure is the leading category of aid for trade: more than 50 per cent of the global aid-for-trade spending is allotted to trade-related infrastructure projects.⁶⁰ In terms of impact, however, leveraging investments in infrastructure does not seem to be enough. As argued by Hoekmann, infrastructure spending «must be accompanied by measures that reduce trade costs and by appropriate regulation – for instance, policies that promote competition in transport services.»⁶¹ Hence, the infrastructure – or «hardware agenda» – needs to be complemented by a services software agenda. As evidenced by various studies, being able to compete on global markets increasingly depends on low-cost and high-quality services inputs, such as logistics, trade finance, distribution

⁶⁰ Hoekman, B. & Wilson, S. (2010), 'Aid for Trade: An Action Agenda Looking Forward', *Economic Premise*, No. 25, pp. 1.

⁶¹ *Ibid*, note 59.

and telecommunication.⁶² Yet, albeit some minor progress in the recent years many developing countries still tend to be more restrictive towards international trade and investment in services, which is why policy reforms meant to increase the contestability of services markets might have a positive aid-for-trade effect. Concluding PTAs is undoubtedly one way to trigger such policy reforms.

With respect to the latter, the CEPA may be an interesting case in point. It has been hailed as a high-quality 21st century PTA and the «avant-garde of a trend the European Commission aims to set for the EC's bilateral trade agreements.»⁶³ Those EPAs, as articulated by the EC, generally set out to help developing countries «to integrate into the world economy and share in the opportunities offered by globalization.»⁶⁴ It remains to be seen whether the CEPA is as development-friendly as it claims to be and whether it truly facilitates the availability of crucial backbone services.

5.6 Assessing the CEPA

Before starting the detailed analysis three technical points stand out: given the size of the task the analysis places its focus on mode 1 (cross-border supply) and mode 3 (commercial presence) commitments. Mode 2 (consumption abroad) commitments generally tend to be more liberal and the analysis of PTAs solely provides limited extra insights. Mode 4 (movement of natural persons) is politically (and socially) sensitive and thus follows somewhat different drafting parameters. Given that both mode 1 and mode 3 account for about 80 per cent of world services trade, such a focus seems to be justified. Second, the CEPA is based on a positive-list modality. That is to say, liberalization commitments only apply to those sectors listed in the schedule of sector-specific commitments. Moreover, these liberalization commitments are still subject to limitations. Third, the CEPA does not include any commitments for the Bahamas and Haiti. Both countries were given a later deadline to complete their schedules of commitments.

⁶² For an overview see Francois, J. and Hoekman, B. (2010), 'Services Trade and Policy', *Journal of Economic Literature*, 48(3), pp. 642.

⁶³ Schloemann, H. & Pitschas, Ch. (2009), 'Cutting the Regulatory Edge? Services Regulation Disciplines in the CARIFORUM-EU Economic Partnership Agreement', in: GTZ, *How to Ensure Development Friendly EPAs*.

⁶⁴ European Commission, DG Trade, Economic Partnership Agreements – <http://ec.europa.eu/trade/wider-agenda/development/economic-partnerships>.

5.6.1 The structure of the CEPA

Title II («Investment, Trade in Services and E-commerce») of the CEPA generally sets out the rules and disciplines for trade in services and hence also for (potential) trade in logistics services. Note that the e-commerce – a relatively new yet thriving service sector – figures prominently in the services and investment chapter. For the purpose of this research paper Chapter 2 and 3 are of particular importance because they regulate commercial presence (Chapter 2) and cross-border supply of services (Chapter 3) respectively. Both chapters use the same template, which includes, among others, a definition of the scope of application (Article 66 respectively Article 75) and a reference to the lists of commitments (Article 69 and Article 78 respectively).

The scope of application and thus the list of exemptions is where the analysis starts. It has to be noted that the carve-outs with respect to both commercial presence and cross-border supply are almost identical. Both chapters generally exempt national maritime cabotage.⁶⁵ Cabotage arguably represents one sub-sector of the logistics industry that is politically sensitive. Yet preserving those monopoly rights does increase the price of transport services and it is questionable – certainly from an economic perspective – whether such a carve-out facilitates the availability of cheaper and more efficient transport services. Furthermore, national and international air transport services do not fall within the scope of application of the CEPA except aircraft repair and maintenance services, the selling and marketing of air transport services, and computer reservation system (CRS) services. Hence the provisions relating to national and international air transport services follow *verbatim* Paragraph 3 of the *Annex on Air Transport Services*. Again, the reluctance to go beyond the GATS liberalization commitments is evident.

Apart from the chapters on commercial presence and cross-border supply the CEPA comprises an additional chapter specifically dedicated to the «Regulatory Framework» (Chapter 5). In Section 1 («Provision of general application») it addresses three separate issues, namely mutual recognition (Article 85), transparency (Article 86) and some aspects that relate to procedures (Article 87), all of which do not warrant further mention. On the other hand, Section 3 («Courier

⁶⁵ Cabotage is the transportation – or trade – of goods within a country by a aircraft or boat registered in another country. Hence, it essentially sets out the exclusive right of a country to operate different modes of transportation within its borders.

services») and Section 6 («International maritime transport services») of Chapter 5 are essential with respect to logistics services and thus a detailed look will be provided below.

Courier (and postal) services are part and parcel of the logistics services checklist and arguably a key intermediate input. Until recently the courier (and postal) sector was among the few services sectors where no or only limited attempts were made to increase the involvement of private businesses. As pointed out by Guislain and Lee «many incumbent post offices in the developing world remain postal administrations, often departments of a ministry that may also include communications, telecommunications or transport. [...] Political interference tends to be high with political appointees managing the organizations. There is frequently a lack of management accountability or objectives, over-employment, inefficient operations, and tariffs (at best) cover only operating costs leading to no investment.»⁶⁶ Section 3 of Chapter 5 sets out a number of disciplines that aim at increasing the competition in the courier (and postal) services sector. This is noteworthy since regulatory disciplines in this sub-sector do not exist within the current WTO framework. The approach taken is very similar to that of the *Reference Paper on Telecommunication Services*, yet by far less broad. Article 90 («Prevention of anti-competitive practices in the courier sector») stipulates that «appropriate measures shall be maintained or introduced by the EC Party or the Signatory CARIFORUM States for the purpose of preventing suppliers who, alone or together, have the ability *to affect materially the terms of participation (having regard to price and supply) in the relevant market for courier services* as a result of use of their position in the market, from engaging in or continuing anti-competitive practices.» [Emphasis added] Clearly, such a provision represents a «GATS-plus» and may, if implemented and enforced properly, increase the competition and thus yield efficiency gains in the courier (and postal) services market.

Section 6 of Chapter 5 sets out specific disciplines for international maritime transport services. Maritime transport is by far the most important means of international merchandise trade. As estimated by the Maritime International Secretariat Services (Marisec) seaborne trade accounts for about 90 per cent of

⁶⁶ Guislain, P. & Lee, G. (2005), *Reinventing the Post Office*, in: Guislain, P (eds.), *The Postal Sector in Developing and Transition Countries – Contributions to a Reform Agenda*, The World Bank: Washington, pp. 7.

global trade in terms of volume.⁶⁷ Interestingly, Section 6 does include multimodal transport – or door-to-door transport – and contains a definition thereof. Accordingly, multimodal transport is understood as «the carriage of goods using more than one mode of transport, involving a sea-leg, under a single transport document.»⁶⁸ Crucially perhaps, it also stipulates the right «to directly contract with providers of other modes of transport.»⁶⁹ Such a far-reaching obligation does certainly enable logistics firms to enter new markets or at least broaden their services portfolio by joining forces with other (local) business partners. Furthermore, as stipulated in Article 109 (6) access to a number of listed port services⁷⁰ shall be granted «on reasonable and non-discriminatory terms».

Further, the CEPA partners have agreed not to put in place new cargo-sharing agreements with other countries with respect to maritime transport services and to abolish existing ones. Article 109 (4) lit. b) also requires the CEPA parties to abstain from introducing new measures that discriminate or constitute a disguised obstacle to international trade in maritime transport services.

5.6.2 Analyzing the CEPA's schedule of sector-specific commitments

The following analysis is based on the CARIFORUM's schedule of sector-specific commitments. It solely looks at mode 1 and mode 3 with respect to market access as well as national treatment limitations.

Core freight logistics services

Core freight logistics services are deemed to be an essential component of the logistics operation and significant liberalization efforts are thus required.

Regarding core freight logistics services the CEPA's overall ambition in terms of binding market access and national treatment commitments turns out to be rather

⁶⁷ WTO and IDE-JETRO (2011), *Infrastructure services in global value chains*, in: *Trade patterns and global value chains in East Asia: From trade in goods to trade in tasks*, Geneva: World Trade Organization, pp. 31.

⁶⁸ Article 109 (2) lit. a).

⁶⁹ Ibid., note 66.

⁷⁰ They include pilotage, towing and tug assistance, provisioning, fuelling and watering, garbage collecting and ballast waste disposal, port captain's services, navigation aids, shore-based operational services essential to ship operations, including communications, water and electrical supplies, emergency repair facilities, anchorage, berth and berthing services.

low. Only transport agency services are subject to some liberalization commitments. Under mode 1, six CARIFORUM states have furnished full commitments (i.e. none) whereas the number of states establishing full commitments is being reduced to four under mode 3. With respect to both container handling and auxiliary services 10 out of 13 CARIFORUM states have not made any commitments at all, neither under mode 1 nor under mode 3. Seven CARIFORUM states have reserved the right to apply market access limitations (i.e. unbound) with regard to storage and warehousing services. Interestingly, CARIFORUM states provided significant liberalization commitments with regard to storage and warehousing services under mode 3. 10 CARIFORUM states established full commitments (i.e. none) while only three made no commitments. A very similar picture emerges when analyzing national treatment commitments. In order to save space and avoid duplications readers of this research paper should consult Annex 2 for a detailed overview.

Freight transport services

Freight transport services are considered to be crucial yet not essential. They facilitate the supply of integrated logistics services and provide an enabling environment.

Unlike core freight logistics services, freight transport services are subject to substantial liberalization commitments. That is to say, the overall ambition in terms of binding market access commitments turn out to be much higher. Maritime freight transport services and rail freight transport services stand out as those sub-sectors with the greatest number of binding commitments. With respect to the former 12 CARIFORUM states provided full commitments under mode 1. Under the same sub-sector heading 10 CARIFORUM states fully liberalize their maritime freight transport service industry with regard to commercial presence (mode 3). This is noteworthy for two reasons: first, seaborne shipping is by far the most important means of transport. Maritime transport is possibly even more important for the CARIFORUM states, all of which – except Guyana – are small islands and thus heavily dependent on seaborne trade. Second, the liberalization of maritime freight transport not only facilitates access to the European Market it also reduces the cost of transportation between the CARIFORUM states, enabling them to source from each other. As for market access commitments related to rail freight transport services 11 CARIFORUM states made full commitments under mode 1 and 10 under mode 3 respectively. Given the limited importance of rail transport in the CARIFORUM states such a result is not really

surprising. The stakes to liberalize this transport sector do not appear to be high and thus liberalization encounters little resistance. With respect to the other transport industries (internal waterway transport and road transport) the overall level of ambition is somewhat moderate. With regard to internal waterways transport services seven CARIFORUM states have not made any bindings, neither under mode 1 nor under mode 3. Regarding road freight transport services two CARIFORUM states reserve the right to apply market access limitation under mode 3 and seven CARIFORUM states did not provide any bindings. Furthermore, six CARIFORUM states have submitted bindings under mode 1 while seven CARIFORUM states do not include any liberalization commitment (i.e. no commitment).

The national treatment commitments – again – paint a very similar picture, exhibiting only minor differences. Given that space is scarce readers of this research paper should consult Annex 2 for a detailed overview.

For freight transport services the overall level of ambition remains moderate. Maritime freight transport services stand out as an exception and – given their importance – may display positive aid for trade facilitation effects.

Other related logistics services

Other related logistics services are deemed to be critical yet may play an important auxiliary role when it comes to logistics services.

With respect to courier services all but two (the Commonwealth of Dominica, St. Vincent and the Grenadines) submitted full market access commitments (i.e. none) under mode 1. Commercial presence, however, remains less liberalized. Only five out of the 13 CARIFORUM states provided full market access commitments while 6 CARIFORUM states retain the full discretion to apply market access limitation (i.e. unbound). As for the national treatment commitments the result is almost identical (see Annex 2.). At first blush, the level of binding commitments – at least for mode 1 – seems remarkable. It seems that courier services – possibly provided by private third party operators – does not encounter stiff resistance. Arguably, courier services, as a way of transport low-volume items, may be seen as a complement to air transport and the relatively liberal CEPA commitments reflect such a trend. The other two services sectors (commission agents' services and wholesale trade services) remain poorly liberalized (see Annex 2).

6. CONCLUSION

While logistics services – at least from an economic perspective – should ideally part of a holistic trade facilitation approach this research paper failed to find compelling evidence thereof in the CEPA. Some further liberalization steps could be discovered with regard to maritime transport services as well as courier services. In spite of this, the overall level of ambition remains somewhat moderate if not low.

With respect to those services sectors that are subject to increased liberalization commitments, namely maritime transport and courier services, it is interesting to note that both are among those sectors, which are specifically mentioned in CEPA. As elaborated under sub-section 5.5.1 («The Structure of the CEPA») the CEPA's regulatory framework chapter not only defines the scope of either services sector it also sets out very detailed principles and key disciplines. That being said, both parties to the CEPA have a very clear understanding of what they signed on to and what the legal and practical business consequences might look like in the near future. Based on that one important conclusion emerges: detailed treaty provisions are likely to increase the confidence level for binding services commitments. Looking ahead this may be a way how future economic partnership agreements between developed and developing countries might be structured.

As for future negotiations, whether to review and thus expand existing PTAs or conclude new ones, another important point begs special attention. Much of what has been discussed in this research paper is rooted in the assumption that opening up services, in particular logistics services, markets is beneficial for either PTA partner. Logistics operators, which are predominantly based and incorporated in developed countries, could expand their business activities whereas developing countries would gain access to low-cost logistics services inputs. Yet this simple – some might say simplistic – view is not widely shared among potential PTA partners. The liberalization of services markets, which requires more encompassing regulatory reforms, is still perceived as a threat rather than a possible path to increase competitiveness, particularly for developing countries. Viewed against this backdrop, a key challenge is to see what might be done to bring about a change of perception. One option would be to encourage greater linkages between technical assistance on regulatory issues and services liberalization.⁷¹ That is to say, services logistics

⁷¹ Marchetti, J. A. & Roy, Martin (2009), *Services liberalization in the WTO and in PTAs*, in: Marchetti,

commitments within the ambit of PTAs may be conditioned upon the receipt of technical assistance.⁷² Such a strategy may enable PTA partners to extract more bindings on the one hand and provide funding for critical (logistics) infrastructure projects as well as capacity building.

In summing up the discussion on trade facilitation, logistics services and PTAs three final issues warrant mention.

First, this research paper has solely looked at one case (the CEPA) and thus is limited in terms of its analytical weight. In that sense, the research conducted is more an agenda for further research than a complete quantitative study. The questions raised, however, do seem important: can and do PTAs really move beyond the GATT-centric trade facilitation mandate? And does it help to increase the availability of crucial backbone services and thus enable WTO Members to effectively participate in world trade? For developing countries – and possibly also for emerging countries – a holistic trade facilitation approach carries a reservoir of «Aid for Trade» potential. Echoing this, the World Bank has launched its new Trade Strategy 2011-2021 in June 2011.⁷³ Trade facilitation, transport logistics and trade finance is one of the strategy's four pillars. This pillar aims at reducing «the costs associated with moving goods along international supply chains.»⁷⁴

Second, preferential liberalization – be it with respect to goods, services or trade facilitation measures – is always only the second-best solution. Some scholars have argued that trade facilitation measures can be seen as akin to public goods. While this is certainly true for some measures the danger to favor PTA partners at the expense of non-parties remains to exist.

And finally, a holistic view on trade facilitation may offer new possibilities of partnerships between the public and private sector. Aid for trade facilitation efforts, which include the provision of low-cost logistics services, may ideally be complemented by private business activities. Multinational business has always

J. A. & Roy, Martin (eds.), *Opening markets for trade in services: countries and sectors in bilateral and WTO negotiations*, Cambridge: Cambridge University Press, pp. 100.

⁷² Sauve, P. (2006), *Been There, Not (Quite) (Yet) Done That: Lessons and Challenges in Services Trade*, Working Paper, National Center of Competence in Research (NCCR), University Berne, No. 06/08.

⁷³ World Bank (2011), *Leveraging Trade for Development and Inclusive Growth: The World Bank Group Strategy 2011-21*.

⁷⁴ *Ibid*, pp. vii.

played an important role in global trade. Many multinational firms are established in multiple countries and dealt with issues of supply-chain management on a daily basis. Such expertise can create positive spillovers and should therefore be harnessed.

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ANNEX

Annex 1: Types of market access commitments

Core Freight Logistics Services	CPC	Market access	
		Mode I	Mode III
Container handling services	741	None: DOM, LCA, VCT (3) Unbound: – Partial: – No commitment: ATG, BRB, BEL, DMA, GRD, GUY, JAM, KNA, TTO, SUR (10)	None: DOM, LCA (2) Unbound: – Partial: VCT (1) No commitment: ATG, BRB, BEL, DMA, GRD, GUY, JAM, KNA, TTO, SUR (10)
Storage and warehousing services	742	None: BRB, JAM, VCT (3) Unbound: ATG, DMA, DOM, GRD, GUY, LCA, TTO (7) Partial: – No commitment: BEL, SUR, KNA (3)	None: ATG, BRB, DMA, DOM, GRD, GUY, JAM, LCA, VCT, TTO (10) Unbound: – Partial: – No commitment: BEL, SUR, KNA (3)
Transport agency services	748	None: BEL, DMA, DOM, GUY, JAM, TTO (6) Unbound: – Partial: – No commitment: ATG, BRB, GRD, LCA, KNA, SUR, VCT (7)	None: DMA, DOM, GUY, JAM (4) Unbound: BEL, TTO (2) Partial: – No commitment: ATG, BRB, GRD, LCA, KNA, SUR, VCT (7)
Other auxiliary services	749	None: DMA, DOM, TTO (3) Unbound: – Partial: – No commitment: ATG, BRB, BEL, GRD, LCA, KNA, JAM, SUR, TTO, VCT (10)	None: DOM, TTO (2) Unbound: DMA ⁷⁵ (1) Partial: – No commitment: ATG, BRB, BEL, GRD, LCA, KNA, JAM, SUR, TTO, VCT (10)
Related Freight Logistics Services	CPC	Mode I	Mode III
Maritime freight transport services	11.A 7212	None: ATG, BRB, BEL, DMA, DOM, GRD, GUY, JAM, KNA, LCA, VCT, SUR (12) Unbound: TTO (1) Partial: –	None: BRB, BEL, DMA, DOM, GRD, GUY, JAM, KNA, LCA, VCT (11) Unbound: ATG (1) Partial: SUR (1) No commitment: TTO

⁷⁵ None from 1. January 2022.

		No commitment: –	
Internal waterways transport services	11.B	None: ATG, BRB, DOM, GRD, GUY, LCA (6) Unbound: – Partial: – No commitment: BEL, DMA, JAM, KNA, SUR, TTO, VCT (7)	None: ATG, BRB, GRD, GUY, LCA (5) Unbound: – Partial: DOM (1) No commitment: BEL, DMA, JAM, KNA, SUR, TTO, VCT (7)
Air freight transport services	732	None: ATG, BEL, BRB, DMA, GRD, GUY, KNA, LCA, VCT (9) Unbound: TTO (1) Partial: – No commitment: DOM, JAM, SUR (3)	None: DMA, KNA, LCA (3) Unbound: ATG, BRB, BEL, GRD, GUY, VCT (6) Partial: TTO ⁷⁶ (1) No commitment: DOM, JAM, SUR (3)
Rental of aircraft with crew	734	None: ATG, BEL, BRB, GUY, LCA (5) Unbound: KNA (1) Partial: – No commitment: DMA, GRD, JAM, KNA, TTO, SUR, VCT (7)	None: BRB, GUY (2) Unbound: – Partial: ATG, BEL, LCA ⁷⁷ , KNA (4) No commitment: DMA, GRD, JAM, KNA, TTO, SUR, VCT (7)
Rail freight transport services	7112	None: ATG, BRB, BEL, DMA, DOM, GRD, GUY, JAM, LCA, SUR, VCT (11) Unbound: KNA (1) Partial: – No commitment: TTO (1)	None: ATG, BRB, BEL, DMA, DOM, GRD, GUY, JAM, LCA, SUR (10) Unbound: KNA (1) Partial: VCT (1) No commitment: TTO (1)
Road freight transport services	7123	None: BRB, DOM, JAM, GUY, SUR, TTO (6) Unbound: – Partial: – No commitment: ATG, BEL, DMA, GRD, JAM, LCA, KNA (7)	None: BRB, DOM, JAM, GUY (4) Unbound: SUR, TTO (2) Partial: – No commitment: ATG, BEL, DMA, GRD, JAM, LCA, KNA (7)
Rental of commercial vehicles	7124	None: BRB, JAM (2) Unbound: – Partial: – No commitment: ATG, BEL,	None: BRB, JAM (2) Unbound: – Partial: – No commitment: ATG, BEL,

⁷⁶ Subject to an economic needs test.

⁷⁷ Joint venture required.

		DMA, DOM, GRD, GUY, JAM, LCA, SUR, TTO, VCT (11)	DMA, DOM, GRD, GUY, JAM, LCA, SUR, TTO, VCT (11)
Courier services	7512	None: BRB, DOM, KNA, SUR, ATG, BEL, GRD, GUY, JAM, LCA, TTO Unbound: – Partial: – No commitment: DMA, VCT (2)	None: BRB, DOM, KNA, SUR, JAM Unbound: DMA ⁷⁸ , ATG, BEL, GRD, LCA, TTO Partial: VCT (1) No commitment: GUY (1)
Commission agents' services	621	None: BRB, DOM, GUY, SUR (4) Unbound: – Partial: – No commitment: (7)	None: BRB, DOM, GUY, SUR (4) Unbound: – Partial: – No commitment: (7)
Wholesale trade services	622	None: BRB, DOM, SUR (3) Unbound: GUY, TTO (2) Partial: – No commitment: KNA, ATG, BEL, GRD, JAM, LCA, DMA, VCT (8)	None: GUY, BRB, DOM, SUR, TTO (4) Unbound: – Partial: – No commitment: KNA, ATG, BEL, GRD, JAM, LCA, DMA, VCT (9)

Annex 2: Types of national treatment commitments

Core Freight Logistics Services	CPC	National treatment	
		Mode I	Mode III
Container handling services	741	None: DOM, LCA, VCT Unbound: – Partial: – No commitment: ATG, BRB, BEL, DMA, GRD, GUY, JAM, KNA, TTO, SUR	None: DOM, LCA, VCT Unbound: – Partial: – No commitment: ATG, BRB, BEL, DMA, GRD, GUY, JAM, KNA, TTO, SUR
Storage and warehousing services	742	None: BRD, JAM, VCT Unbound: ATG, DMA, DOM, GRD, GUY, LCA, TTO Partial: –	None: BRB, DOM, TTO Unbound: ATG, DAMA, GRD, GUY, JAM, LCA, VCT Partial: –

⁷⁸ None from 2018.

		No commitment: BEL, SUR, KNA	No commitment: BEL, SUR, KNA
Transport agency services	748	None: DOM, GUY, JAM, TTO Unbound: BEL Partial: DMA No commitment: ATG, BRB, GRD, LCA, KNA, SUR, VCT	None: DOM, GUY, JAM, TTO Unbound: BEL Partial: DMA No commitment: ATG, BRB, GRD, LCA, KNA, SUR, VCT
Other auxiliary services	749	None: DMA, DOM, TTO Unbound: – Partial: – No commitment: ATG, BRB, BEL, GRD, GUY, JAM, LCA, KNA, SUR, VCT	None: DOM, TTO Unbound: DMA (None:2022) Partial: – No commitment: ATG, BRB, BEL, GRD, GUY, JAM, LCA, KNA, SUR, VCT
Related Freight Logistics Services			
Maritime freight transport services	11.A 7212	None: ATG, BRB, BEL, DMA, DOM, GRD, GUY, JAM, KNA, LCA, VCT, SUR Unbound: TTO Partial: – No commitment: –	None: ATG, BRB, BEL, GRD, GUY, JAM, KNA, LCA, VCT Unbound: – Partial: DMA, TTO, DOM No commitment: SUR
Internal waterways transport services	11.B	None: ATG, BRB, DOM, GRD, GUY, LCA Unbound: – Partial: – No commitment: BEL, DMA, JAM, KNA, SUR, TTO, VCT	None: ATG, BRB, DOM, GRD, GUY, LCA Unbound: – Partial: – No commitment: BEL, DMA, JAM, KNA, SUR, TTO, VCT
Air freight transport services	732	None: BEL, BRB, DMA, GRD, GUY, KNA, LCA, VCT Unbound: TTO, Partial: – No commitment: ATG, DOM, JAM, SUR	None: BEL, BRB, DMA, GRD, GUY, KNA, LCA, VCT Unbound: TTO Partial: – No commitment: ATG, DOM, JAM, SUR
Rental of aircraft with crew	734	None: BRB, GUY, ATG, BEL, LCA Unbound: KNA Partial: – No commitment: DMA, DOM, GRD, JAM, TTO, SUR, VCT	None: BRB, GUY, KNA Unbound: ATG, BEL, LCA Partial: – No commitment: DMA, DOM, GRD, JAM, TTO, SUR, VCT
Rail freight transport services	7112	None: ATG, BRB, BEL, DMA, DOM, GRD, GUY,	None: ATG, BRB, BEL, DMA, DOM, GRD, GUY,

		JAM, LCA, SUR, VCT Unbound: KNA Partial: – No commitment: TTO	JAM, LCA, SUR Unbound: KNA, VCT Partial: – No commitment: TTO
Road freight transport services	7123	None: BRB, DOM, JAM, GUY, SUR, TTO Unbound: – Partial: – No commitment: ATG, BEL, GRD, JAM, LCA, KNA, VCT	None: BRB, DOM, JAM, GUY Unbound: SUR, TTO Partial: – No commitment: ATG, BEL, GRD, JAM, LCA, KNA, VCT
Rental of commercial vehicles	7124	None: BRB, JAM Unbound: – Partial: – No commitment: ATG, BEL, DMA, DOM, GRD, GUY, JAM, LCA, SUR, TTO, VCT	None: BRB, JAM Unbound: – Partial: – No commitment: ATG, BEL, DMA, DOM, GRD, GUY, JAM, LCA, SUR, TTO, VCT
Courier services	7512	None: BRB, KNA, TTO, ATG, BEL, DOM, GRD, DMA, GUY, JAM, LCA, VCT, SUR Unbound: – Partial: – No commitment: –	None: BRB, KNA, TTO, BEL, DOM, SUR Unbound: ATG, GRD, GUY, JAM, LCA, VCT Partial: DMA No commitment: –
Wholesale trade services	622	None: BRB, DOM, SUR, TTO Unbound: GUY Partial: – No commitment: ATG, BEL, DMA, GRD, JAM, LCA, KNA, VCT	None: BRB, DOM, SUR, TTO Unbound: GUY Partial: – No commitment: ATG, BEL, DMA, GRD, JAM, LCA, KNA, VCT

DECLARATION

«This master thesis has been written in partial fulfilment of the Master of International Law and Economics Programme at the World Trade Institute. The ideas and opinions expressed in this paper are made independently, represent my own views and are based on my own research. I confirm that this work is my own and has not been submitted for academic credit in any other subject or course. I have acknowledged all material and sources used in this paper.»

Tim Kaeser, MILE 11