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INTERNATIONAL ARCHITECTURE ON TRADE FACILITATION THE WTO AND INTERNATIONAL ORGANIZATIONS AND FRAMEWORK

Communication from Japan

The attached communication, dated 6 June 2003, has been received from the Permanent Mission of Japan.

1. Introduction

This is the fourth paper prepared by Japan, which aims at contributing to the discussions of the Council for Trade in Goods. This paper attempts to set out a lot of activities done by international organizations in the field of trade facilitation¹, and to indicate the reasons why the WTO needs to engage in. Japan recognizes the importance of trade facilitation when considering its merits in terms of the expansion of trade and investment, of improving government efficiency in collecting revenue and in controlling cargoes, all of which have been presented in the previous Japanese contribution paper². Any approach which improves trade procedures and their efficiency should be taken seriously to realize the benefits of trade facilitation.

2. Three pillars of approach

One can find several different approaches to materialize the merits of trade facilitation. Yet, when looking more closely, it seems possible to sort them into three separate pillars of approach, namely (a) the action programme; (b) capacity building; and (c) rule setting.

These three pillars are specifically distinct from each other. Each pillar has its advantages and disadvantages, which are also different from one another.

The first pillar is action programme, which is non-binding approach that enables participants to promptly set out fairly idealistic objectives without any serious concerns of failure. This approach needs to keep motivations of participants alive throughout the whole process. Otherwise, due to a lack of binding obligations and high level objectives, the realization of objectives could become seemingly long-term, and one may even result in frequently witnessing a continual failure to meet the objectives. In short, whatever the achievements may be, they will no doubt be fragile since participants are free to withdraw them at any time.

The second approach is capacity building, which could contain both technical assistance and other forms of assistance. This would indeed help countries to improve their trade procedures and

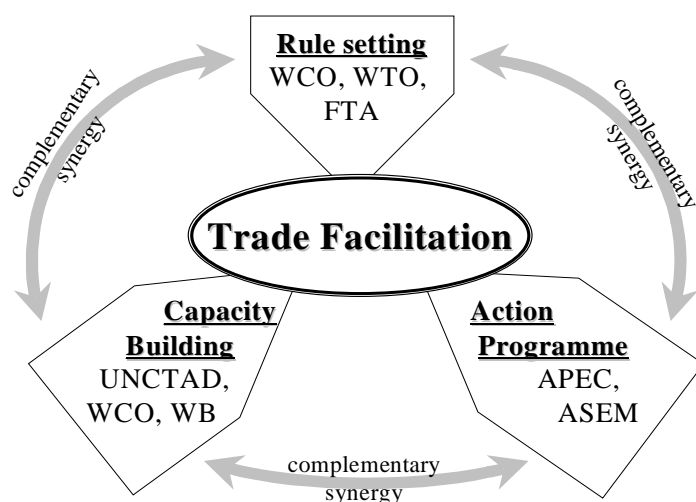
¹ G/C/W/80 and G/C/W/80/Add.1 present several activities pertinent to trade facilitation conducted by other international organizations.

² G/C/W/401 "Improvements of GATT Article VIII" was submitted to the July 2002 meeting of the Council for Trade in Goods for discussion.

expand their capacity. The efficiency of capacity building might, however, be low if there is no motivation or any benchmark, as explained in the previous Japanese contribution³.

The third pillar is rule setting which provides legal stability and predictability. As one always faces the risk of a lack of capacity for complying with the rules, the objectives tend to be limited to the challenging but achievable ones, and the process of agreeing upon the rules tends to be lengthy. Due to the binding nature of rule setting, a follow-up framework to ensure that participants are in conformity with the rules would be necessary.

Chart 1: Three pillars

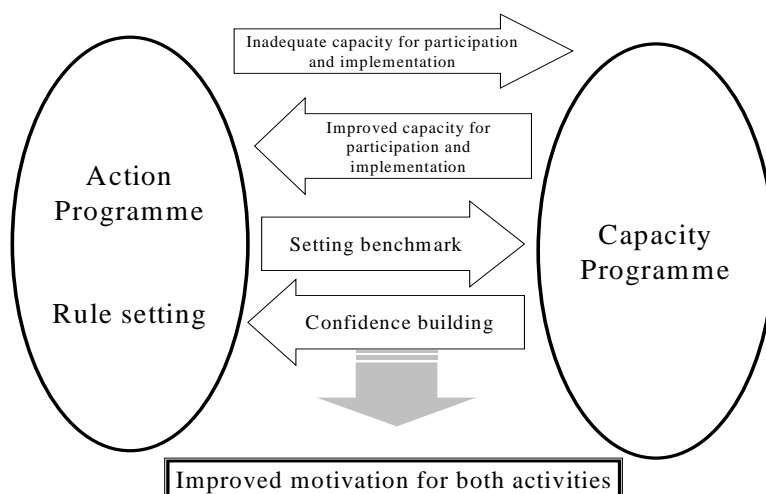


3. Complementarity and synergy

As mentioned above, the three pillars have both their advantages and disadvantages, one pillar could complement others, and a synergy effect can be expected when the pillars are to work together. For example, the achieved and achievable objectives in the action programme could be strengthened by adding legal stability and predictability when set as the rules. As for capacity building, this would build up a participant's capacity to observe the rules and its motivation to set objectives. High objectives, such as long-term objectives in the action programme, might indicate a future set of rules to be established. The objectives in the action programme and in the rules would become tangible benchmarks to improve the efficiency of capacity building and the motivation of participants to build up their capacity. The expected synergy effects are wide; therefore the lack of one pillar would undermine the fruit of the benefits of trade facilitation.

³ G/C/W/420 "Technical Assistance – Trade Facilitation" was submitted to the October 2002 meeting of the Council for Trade in Goods for discussion.

Chart 2: Examples pillars



4. Comparative advantages of international organizations

Every international organization or framework has its own establishment agreement, or terms of reference, that characterizes the organizational expertise and *raison d'être*. When considering the complementarity and synergy effects, it is quite important to emphasize that the relevant international organizations and frameworks should work within their expertise in a cooperative manner. With regard to the WTO's expertise, it is to set multilateral rules on trade regulations and the institution, and it is less likely that it has comparative advantages in the action programme or in capacity building (besides capacity building on the participation of negotiations). When considering complementarity and synergy, it is hardly appropriate to argue that improvements in infrastructure, technical assistance or computerization/EDI alone would be sufficient to fully realize the benefits of trade facilitation. The absence of rule setting might lessen the efficiency and output of the action programmes and capacity building. In this context, the WTO must contribute its own expertise. The relationship between the WTO, the APEC, the UNCTAD and the World Bank could thus be sorted among the three pillars.

5. Sectoral approach and horizontal approach

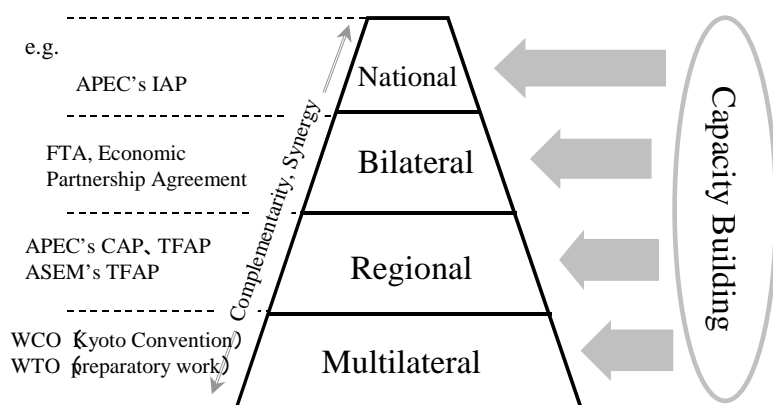
The rule setting approach could cover the technical rules and standards that are set by international specialized organizations, such as those in the field of customs procedures, port procedures, or electronic messages. It could also cover the cross sectoral rules, such as those contained in the WTO provisions. In this context, the division of labour, based on the organization's expertise, is vital. International specialized organizations, such as the WCO and the UN/ECE, could establish, maintain and diffuse (including the providing of technical assistance) sector-specific technical rules and standards. The WTO could provide those international specialized organizations with a common direction for their work, as well as a framework to address cooperation and coordination, such as through a single-window, among the different sectors and international specialized organizations. By specializing themselves in an area where they have to be (i.e. where they have expertise), the work of trade facilitation will become efficient. In this context, the work of the WTO on trade facilitation should not narrowly limit the scope to customs procedures alone. Members should recall that Article VIII of the GATT 1994, for example, carefully uses a general terminology, such as formalities connected with importation and exportation. This has been rightly

pointed out by the European Communities⁴. In addition, as the sector-specific issues tend to be technical and the expertise belongs to international specialized organizations, they are unlikely to generally exist in the WTO; thus the establishment of a WTO Trade Facilitation Technical Committee, which could be comprised of all Members and the international specialized organizations, might be an appropriate framework to review the technical aspects of the possible WTO rules.

6. Regional initiatives and multilateral initiatives

The evolution of a regional trade framework, either binding or non-binding, attracts much more attention than before, and trade facilitation is not an exception in this movement. The recent binding of regional agreements, such as bilateral free trade agreements, tends to have provisions on trade facilitation. Non-binding regional frameworks, such as the APEC and the ASEM have a strong record of commitment to trade facilitation initiatives. Some of the reasons for evolving towards a regional approach might also be applicable to trade facilitation, namely, a regional framework enables participants to establish faster a higher quality of rules. However, regional approaches always contain a risk of comparative discrimination to non-participants and a possible discrepancy among the different regional approaches. The WTO, as the international organization setting universal rules applicable to different regions, can complement the deficiencies of regional approaches by indicating a common direction. Regional approaches would, in turn, provide the WTO with several valuable experiences, which could act as bases for possible multilateral common disciplines in the future.

Chart 3: Regional and Multilateral initiatives



7. Consideration of possible WTO rules and existing international commitments

The idea of simply picking out pieces of existing international commitments should be carefully addressed. This approach can be observed in the TRIPs Agreement when addressing some of the provisions of the WIPO agreements. The reason for this is as follows: firstly there should be a division of labor between the WTO and the international specialized organizations, the former addressing universal disciplines and the latter addressing technical rules and standards. Secondly,

⁴ G/C/W/394 (the relevant part is also reproduced on page 11 of the Secretariat's compilation paper G/C/W/434).

there is a risk that if the WTO picks out some pieces of an agreement to be incorporated in a new rule, countries would have less motivation to subscribe to the full existing agreement in question. The importance of using internationally-accepted standards is commonly recognized, in order to reduce the business trader's burden to comply with trade procedures. The EC also points this out in its previous contribution⁵. One of appropriate approaches is to address a soft relationship between the possible WTO rules on trade facilitation and the existing international commitments. An example of such relationship can be found Article 2.4 of the TBT Agreement which is reproduced as follows:

"TBT Agreement

"Article 2: Preparation, Adoption and Application of Technical Regulations by Central Government Bodies

"With respect to their central government bodies:

...

"2.4 Where technical regulations are required and relevant international standards exist or their completion is imminent, Members shall use them, or the relevant parts of them, as a basis for their technical regulations except when such international standards or relevant parts would be an ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued, for instance because of fundamental climatic or geographical factors or fundamental technological problems."

8. Concluding remarks

As described above, WTO Members should recall the WTO's characteristics and expertise. The key words are: rule setting, cross sectoral and multilateral, which are not to replace the terms capacity building or action programme, but rather, are to strengthen them. As such, the WTO has a unique role and it is unlikely that there exists much room for duplication with other organizations.

⁵ G/C/W/394 (the relevant part is reproduced on page 12 of the Secretariat's compilation paper G/C/W/434).