

WTO TRADE FACILITATION AGREEMENT

A BUSINESS GUIDE FOR
DEVELOPING COUNTRIES

Abstract for trade information services

ID=43065

2013

F-09.07 WTO

International Trade Centre (ITC)

WTO Trade Facilitation Agreement: A Business Guide for Developing Countries

Geneva: ITC, 2013. xi, 30 pages (Technical paper)

Doc. No. BTP-13-239.E

The guide explaining the significance of the WTO Agreement on Trade Facilitation and the reasons why it was proposed – aims at helping business communities in developing countries understand the obligations that these countries have taken on or will do so in the future; gives an overview of the main provisions of the agreement; explains how it is intended to eas

Foreword

One of the m DLQ RXWFRPHV RI WKH :RUOG 7UDGH 2UJDQL]DWLRQ¶V WK 0L in December 2013 has been an Agreement on Trade Facilitation. Trade facilitation is important because it can have a major impact on bringing down trade transaction costs. It essentially concerns the cost of clearing goods for import and export. Despite the huge attention given to the cost of border controls over the last 10-15 years, goods continue to be delayed at the border for days (or even weeks), slowing trade flows and adding costs to business that are often passed on to consumers. Trade transaction costs are highest in developing countries, which are the least able to carry this additional burden.

Several elements of poor connectivity affect least developed countries (LDCs): many are remotely located, land-locked, or are small island states; transport infrastructure is often poor. As a result, the average cost of trading is higher in LDCs (for instance, 43% more to move a container across the border) than in other developing countries.

These costs affect small and medium-sized enterprises (SMEs) disproportionately. They often lack the means and capacity to comply with complex rules, and the high costs of compliance with customs and border procedures and other non-tariff measures (NTMs) represent significant charges in relation to their smaller volumes of trade. This makes them uncompetitive as suppliers and hampers their integration into regional and global value chains.

The trade facilitation agreement, which will be binding on all 159 WTO Member States at the level of all border agencies, and not just customs authorities, has been described as a classic 'win-win' outcome. But



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Abbreviations

The following abbreviations are used:

DDA	Doha Development Agenda
EAC	East African Community
EU	European Union
FDI	Foreign direct investment
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GFP	Global Facilitation Partnership for Transportation and Trade
IBRD	International Bank for Reconstruction and Development
ICC	International Chamber of Commerce
IFC	International Finance Corporation
ITC	International Trade Centre
JBC	Joint Border Committee
LPI	Logistics Performance Index
MFN	Most-favoured nation
OECD	Organisation for Economic Co-operation and Development
OSBP	One-stop border post
SADC	Southern African Development Community
SMEs	Small and medium-sized enterprises
TEU	Twenty-foot container equivalent unit
UNECE	United Nations Economic Commission for Europe
UN/CEFACT	United National Centre for Trade Facilitation and Electronic Commerce
UNCTAD	United Nations Conference on Trade and Development
WCO	World Customs Organization
WTO	World Trade Organization

Figure 1: UN/CEFACT Buy -Ship -Pay model



Source : Trade Facilitation Implementation Guide, UNECE, 2013.

(The Buy-Ship-Pay model developed by UN/CEFACT describes the main processes and parties in the international supply chain. The supply chain ensures that goods are ordered, shipped and paid for while complying with regulatory requirements and supporting trade security. The Buy-Ship-Pay model identifies the key commercial, logistical, regulatory and payment procedures involved in the international supply

figure 2. This has become an important indicator and stimulus for reforming border procedures and

WTO TRADE FACILITATION AGREEMENT:

Then in 2007, a list of common issues emerged from a study of business needs in East, West and Southern Africa. This initiative was carried out by the Business Action for Improving Customs Administration in Africa (BAFICAA), in response to the Commission for Africa Report in 2005. The issues identified are set out in box 1.

Box 1. Six key trade facilitation issues for the African private sector

1. The need for fast-track customs services for compliant and low risk taxpayers and traders.
2. The need for customs to work closely with, and consult regularly with the private sector to ensure support for the changes and reforms in customs administration.
- 3.

Not all of these are relevant for a WTO agreement, but those that are have been captured in some way in the agreement adopted at Bali.

Chapter 3 The new WTO Agreement on Trade Facilitation

The overall shape of the agreement

The new WTO Agreement on Trade Facilitation (WTO, 2013b) comprises two sections: Section I, dealing with trade facilitation measures and obligations; and Section II, focusing on flexibility arrangements for developing and least developed countries.

This guide will focus mainly on Section I. It will, however, consider in Chapter 4 the implications for business arising from Section II.

The specific issues that have been agreed

The trade facilitating issues in Section I are set out in 12 articles, arranged as follows:

- Article 1: Publication and availability of information
- Article 2: Prior publication and consultation
- Article 3: Advance rulings
- Article 4: Appeal or review procedures
- Article 5: Other measures to enhance impartiality, non-discrimination and transparency
- Article 6:

Article 1: Publication and availability of information

The issues covered by this article are:

1. Publication
2. Information available through the Internet
3. Enquiry points
4. Notification

The main obligations here are that Member States are required to publish 'promptly' a wide range of specific information related to the requirements and procedures for clearing goods for import

be informed of any cases where the goods have been detained, and, if a first test proves negative, it obliges the Member State to carry out a second sample test if requested to do so.

Traders that import such goods know that the goods are subject to health controls that aim to protect consumers from products that may be unfit for consumption being placed on the market. Where any food which is unsafe is part of a batch, lot or consignment, control authorities often assume that the whole batch, lot or consignment is unsafe. This also applies to animal feed, which are subject to controls preventing the placement of unsafe feed on the market or being fed to any food-producing animals. Health risk analysis should be based on the available scientific evidence and is carried out in an independent, objective and transparent manner. Given the costs to traders of losing consignments deemed to be unsafe, they may wish to seek a second opinion. This article provides for such an opportunity to be provided by Member States.

Fees and formalities for import, export and transit

The next group of articles, Articles 6-12, are concerned mainly with fees, charges and formalities for import, export and transit, expanding on GATT Articles V and VIII.

Article 6: Disciplines on fees and charges imposed on or in connection with importation and exportation

The aim of this article is to limit the size of fees and charges to the approximate cost of the services rendered, in keeping with existing GATT obligations. A publication requirement has been included, together with a clause requiring Member States to review their fees and charges periodically and not to demand payment of revised charges before the information on them has been published. A series of disciplines has been included on the imposition of penalties. These ensure that penalties are imposed only on persons responsible for a breach of laws or regulations, and guard against conflicts of interest in the assessment and collection of penalties and duties. They also specify that penalties imposed should be proportionate to the breach, take ac(i)5(ec2-9(,)-203of)-8()-2234it ctcg ip(i)5(ecu4(m)-9(2s)-5()ta4(c)-5(er)-3(,)-1

Box 2. The Revised Kyoto Convention

The International Convention on the Simplification and Harmonization of Customs procedures (Kyoto Convention) entered into force in 1974 and was revised and updated to ensure that it meets the current demands of governments and international trade.

The WCO Council adopted the revised Kyoto Convention in June 1999 as the blueprint for modern and efficient customs procedures in the 21st century. Once implemented widely, it will provide international commerce with the predictability and efficiency that modern trade requires. The revised Kyoto Convention elaborates several key governing principles - chief among which are the principles of:

- Transparency and predictability of customs actions;
- Standardization and simplification of the goods declaration and supporting documents;
- Simplified procedures for authorized persons;
- Maximum use of information technology;
- Minimum necessary customs control to ensure compliance with regulations;
- Use of risk management and audit based controls;
- Coordinated interventions with other border agencies;
- Partnership with the trade.

The revised Kyoto Convention promotes trade facilitation and effective controls through its legal provisions that detail the application of simple yet efficient procedures. The revised Convention also contains new and obligatory rules for its application which all Contracting Parties must accept without reservation.

The revised Kyoto Convention entered into force on February 3, 2006.

Article 7 includes:

- Pre-arrival processing

The new agreement requires Member States to operate procedures that would allow documentation, including in electronic format, and other formalities to be dealt with prior to the arrival of imported goods, in order to speed up their release once they have arrived.

- Electronic payment

The agreement obliges Member States, to the extent practicable, to allow traders the option of making payments electronically for duties, fees and other customs charges.

- Separation of release from final determination of customs duties, etc

Member States are required to operate procedures that will allow goods to be released for import or export before a final determination has been made of the customs fees and charges, provided that all other regulatory requirements have been met. A guarantee in the form of a surety or other payment instrument may be required, but any such guarantee should be no greater than the amount ultimately to be required and should be discharged as soon as it is no longer required.

- Risk management

Each Member State is required, to the extent possible, to operate an appropriate risk management system, under which customs controls would be focused on the highest-risk consignments, thus allowing low-risk consignments to enjoy faster release. Random customs controls may still be applied to any consignment, however, in keeping with best customs practice for risk management.

- Post-clearance audit

Member States are also required to operate a post-clearance audit system, under which traders would be obliged to subject their records to customs authorities to demonstrate compliance with customs controls and to allow verification of compliance with other regulatory requirements.

- Average release times

Member States are encouraged to publish average release times, in order to demonstrate to traders that goods are not being held up unduly.

A particular tool recommended by the agreement is the WTO Time Release Study.² Writing in the World Customs Journal, Matsuda explains that as part of the efforts by customs administrations to streamline interagency procedures at borders and ensure that trade facilitation measures are being applied effectively, a Time Release Study (TRS) has been used to improve the performance of the functions being measured. He describes this as a unique tool for measuring the performance of border activities, and customs procedures in particular, as they relate directly to trade facilitation at the border (Matsuda, 2011).

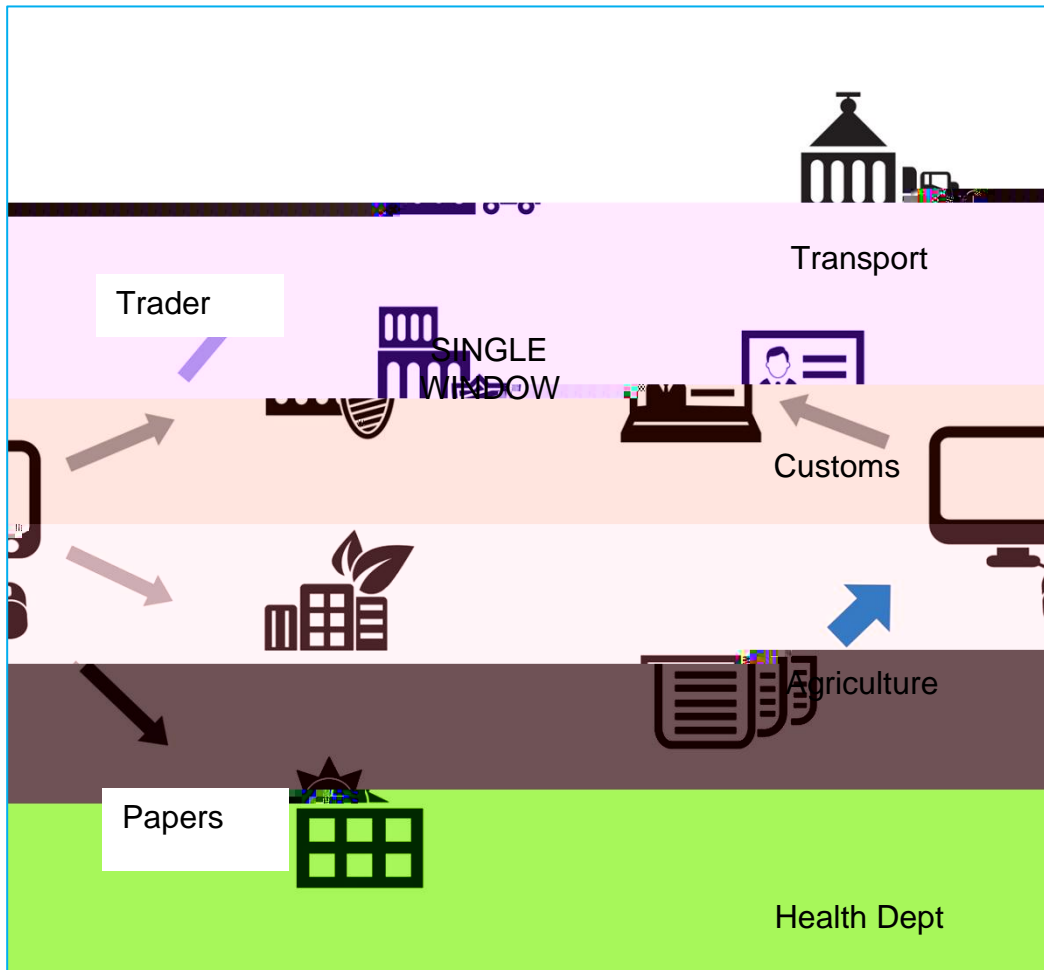
- Authorised operators

Member States are obliged to provide additional trade facilitation measures to operators who meet specified criteria, otherwise referred to as 'authorised operators'.

In recent years, there has been a growing trend among customs authorities to develop programmes that allow certain traders to benefit from additional trade facilitation measures, such as rapid release, reduced documentation and data requirements, and fewer physical inspections. Such traders may be regarded as 'trusted', in having a track record of full compliance that supports the assumption that they will continue to comply with border requirements, and that they therefore constitute a low risk. Trusted trader programmes have been offered in both developed and developing countries. In the EU these traders are referred to as 'authorised economic operators', and are granted recognition when they have been approved against specified criteria, such as history of compliance, records management, financial solvency and supply chain security – criteria that are referred to specifically in the WTO Agreement.

Responding to these global developments, the WCO adopted in June 2005 the SAFE Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework). The SAFE Framework is a set of standards and guidelines that aim to improve the efficiency and security of international trade. It is based on the principle of 'trust but verify' and is designed to be implemented in a way that is consistent with the WTO Agreement.

Figure 4: Single window concept



Source : UNECE, UN/CEFACT

Box 5. MOZAMBIQUE SINGLE WINDOW

The Mozambique Single Window is a web-based platform to streamline and simplify the operation of customs and other government agencies involved in border control. Implementation was not easy. Mozambique had to overcome infrastructure weaknesses at land borders in remote areas and resistance from certain stakeholders. Today, the system is able to handle up to 400,000 customs declarations per year, or about 1,500 per day, bringing many benefits to both clients and participating agencies. The system is the subject of continuous improvement. Future plans include the incorporation of additional services and new features in relation to international data exchange. The Mozambique Single Window was designed to conform to international recommendations and standards. The design was based on the Singapore model, also deployed in Ghana and Madagascar. The system has two main components: Customs Management System (CMS), and TradeNet electronic data interchange.

Source : Trade Facilitation Implementation Guide, UNECE, 2012.

7. Common border procedures and uniform documentary requirements

Under a broad new obligation, each Member State is to apply common customs procedures and uniform documentation requirements for the release and clearance of goods throughout its territory. This is to ensure common standards that will improve predictability for traders over how procedures are applied, and at the same time to improve compliance for border authorities.

8. Rejected goods

Member States are required under the agreement to allow an importer to re-consign or return goods that have been rejected for import due to their failure to comply with sanitary, phytosanitary or technical regulations.

9. Temporary admission for goods including inward/outward processing

A provision requires Member States to allow goods to be imported under temporary admission procedures or to be imported or exported under inward or outward processing procedures that provide full or partial exemption from payment of duties and taxes.

Article 11: Freedom of transit

The expanded provisions on freedom of transit, which are the subject of GATT Article V, are covered in a single article in the new Agreement, Article 11.

The article repeats the provision in GATT Article V that each Member State is to treat products in transit no less favourably than if they were being transported to their destination without going through the territory of

Other provisions

A number of other issues, not found in the existing GATT, are included in Articles 12-13. These include customs cooperation, institutional arrangements and national trade facilitation committees.

Article 12: Customs cooperation

A detailed article sets out the terms and requirements for improving customs cooperation. The broad aim is to establish a framework for cooperation that obliges Member States to share information in order to ensure orderly coordination of customs control, while respecting the confidentiality of information held.

The article sets out the procedures that Member States must follow when a customs authority needs information from the authority in another Member State to verify an import or export declaration, because of suspicions over the truth or accuracy of the declaration. Such information must be requested in writing, and the authority to which the request is made must promptly supply the information requested, to the extent that it is available. Information must be held in strict confidence and not disclosed without specific written permission. There are provisions for postponement or refusal of a request, including for reasons of lack of reciprocity in meeting a similar request in the opposite direction. The article also makes clear that Member States may enter into or maintain bilateral, plurilateral or regional agreements for sharing or exchanging customs information and data.

An important provision for business in this article is that Member States are encouraged to develop voluntary compliance systems that would allow importers to self-correct without penalty, while initiating stronger measures for non-compliant traders. Traders have long argued that a strong commitment to compliance, backed up by a track-record, should be recognized by customs authorities, and benefit from fewer penalties for minor, technical infringements, while the risk management process focuses resources on other traders. Voluntary compliance of this sort would inevitably result in a closer relationship between such traders and customs authorities.

Article 13: Institutional arrangements

The Negotiating Group on Trade Facilitation will, in effect, be replaced by a permanent forum – the Committee on Trade Facilitation – to oversee the operation of the agreement and further its objectives. Member States have agreed that there should be an initial review of the operation of the agreement four years after it has entered into force, and this will in all probability take place within this new committee.

Business should be interested in how the agreement is taken forward. Business communities will have to find ways of engaging with their respective governments through national consultation mechanisms. This is recognized in a simple provision in this article, which obliges each WTO Member State to form or maintain a national committee on trade facilitation, or designate an existing mechanism. Amongst the functions that such bodies may fulfil, the agreement stipulates that they are to facilitate domestic coordination and implementation of the agreement. This echoes a recommendation of UN/CEFACT that countries should form national trade facilitation committees (Recommendation 4).

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- It may be possible to implement the consultation and dialogue obligations earlier than other commitments that are more technical or that require changes in national laws or regulations. This would enable business to discuss implementation within national committees, and raise the possibility for business to contribute technical assistance or capacity-building support.

Appendix I Modalities for Negotiations on Trade Facilitation
(Annex D o I W K H μ - X O \) S D F N D J H ¶

1.

Appendix II Revised KII

Appendix III UN/CEFACT recommendations

No.	ISO	Name	Description
1	6422	United Nations Layout Key for Trade Documents	Provides standardization of international trade document layout including the visual representation of such documents.
3	3166	ISO Country Code: Code for Representation of Names of Countries	AKA the 'ISO ALPHA-2 Country Code', containing country codes, names, dependencies, and other areas of special geopolitical interest for purposes of international trade.
4		National Trade Facilitation Organs: Arrangements at the National Level to Coordinate Work on Facilitation of Trade Procedures	Recommends that governments establish and support national trade facilitation bodies.
5		Abbreviations of INCOTERMS; Alphabetic Code for INCOTERMS 2000	International Chamber of Commerce's trade terms, known as INCOTERMS. Used in cross-border trade to help define transport contracts.
6		Aligned Invoice Layout Key For International Trade	Applies to the design of commercial invoices for international trade in goods.
7	8601 2000	Numerical Representation of Dates, Time and Periods of Time	Establishes a standardised and unambiguous all-numerical date, time of day and period of time.
9	4217	Alphabetic Code for the Representation of Currencies	Codes for the representation of currencies and funds, for application in international trade and their use in commercial transactions when currencies are expressed in coded or abbreviated form.
12		Measures to Facilitate Maritime Transport Documents Procedures	Aims at the simplification, rationalization and harmonization of procedures and documents used to 0.48001 re f*71 0 g [-(ti)7(o)-:

No.	ISO	Name	Description
24		Trade and Transport Status Codes	Provides transport status codes to satisfy requirements for

WTO (2005). Notes on the scope and application of Articles V, VIII and X, document references TN/TF/W/2, 3 and 4, Geneva, 12 January 2005.

WTO (2010). Trade Policy Review of Malawi, document no WT/TPR/S/231, Geneva, 5 May 2010.

WTO (2013a). Speech by Pascal Lamy to Chitt(P)4-12((a)-1Ee)/U0h mbeAr o/eTc iBagMladesFry



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