

WTO Agreement on Trade Facilitation

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Department of Commerce

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Part A: Background

What is 'Trade Facilitation'

- Simplifying, rationalizing, modernizing and harmonizing trade procedures with a view to
 - ▣ expediting release and clearance of goods under import, export and transit;
 - ▣ reducing transaction cost; and
 - ▣ bringing greater transparency and predictability to traders.
- World Bank recommends a multi-dimension approach to trade facilitation – infrastructure improvement; customs modernization; streamlining of documentary requirements and information flows; automation and EDI; Port efficiency ... etc.
- With the lowering of tariffs and removal of QRs, focus of policy makers have shifted to trade facilitation

Trade Facilitation in WTO

Important Landmarks:

- 1996 – included as a “Singapore Issue”
- 2001 – Para 27 of Doha Ministerial Declaration
- 2004 – Annex D of the July Package
- 2005 – Annex E of Hong Kong Ministerial Declaration
- 2013 – Bali Package on Trade Facilitation

TF Negotiating Mandate

(the July 2004 package)

- **Pillar 1:** With a view to further expediting the movement, release and clearance of goods, clarify and improve relevant aspects of:
 - ▣ GATT Article V: Freedom of Transit;
 - ▣ GATT Article VIII: Fees and Formalities connected with Importation and Exportation
 - ▣ GATT Article X: prompt publication of trade laws and regulations and their uniform, impartial and reasonable administration
- **Pillar 2:** Enhancing technical assistance and support for capacity building in this area for developing countries and LDCs
- **Pillar 3:** Cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues.

TF negotiations in brief

- NGTF constituted in Oct 2004
- Members tabled about 80 proposals – about 40 selected
- First Draft Consolidated Negotiating Text issued in Dec 2009
- Negotiations accelerated Dec 2010 onwards
- Member-driven process mostly in facilitator-led meetings
- In Dec 2013, Members endorsed a TF Agreement at Bali
- The Agreement is yet to attain finality ... It is subject to legal review



**Part B:
Trade Facilitation
Agreement**

Structure of Trade Facilitation Agreement

□ **Preamble:**

- Refers to DMD, HKMD and July 2004 Framework Agreement and reiterates the three pillars of the negotiating mandate

□ **Section I:**

- About 35 substantive disciplines on Trade Facilitation (Articles 1-11)
- One Article on Customs Cooperation (Article 12)
- One Article on Institutional Arrangements (Article 13)

□ **Section II:**

- Implementation flexibilities
- External support and assistance
for developing countries and LDCs for implementing the Agreement

□ **Final Provisions:**

- Implementation matters such as binding nature of the Agreement; interaction with other Agreements; applicability of DSU etc.

1.1 Publication

- Prompt publication of relevant trade-related information in a non-discriminatory and easily accessible manner ...
- ... in order to enable governments, traders and interested parties to become acquainted with them.
- Some of the subjects listed for publication –
 - ▣ Importation, exportation and transit procedures;
 - ▣ Required forms and documents;
 - ▣ Applied rates of duties and taxes;
 - ▣ Rules of classification, valuation and origin;
 - ▣ Fees and charges imposed by customs and other agencies;
 - ▣ Penalty provisions;
 - ▣ Appeal procedures;
 - ▣ Trade agreements; and
 - ▣ Import, export and transit restrictions and prohibitions etc.

1.2 Information Available Through Internet

- Each Member shall, to the extent possible, make available and update through internet
 - ▣ description of import, export and transit procedures, including appeal procedures;
 - ▣ forms & documents required for imports, exports and transit; and
 - ▣ Contact information on enquiry points.

- Members are encouraged to upload further information such as relevant trade-related legislation

1.3 Enquiry Points

- Each Member shall, within its available resources, set up one or more enquiry points to answer reasonable enquiries of governments, traders and other interested parties ...
 - ... on matters covered by paragraph 1.1.
- The enquiry points shall answer enquiries and provide the forms and documents within a reasonable time period set by each Member.
- Members are encouraged not to require the payment of a fee for this purpose.

1.4 Notification

- Each Member shall notify the Committee of:
 - ▣ The official places where items under Article 1.1 have been published;
 - ▣ The URL of websites where the information under Article 1.2 has been uploaded; and
 - ▣ Contact information of the enquiry points.

2.1 Opportunity to Comment and Information before Entry into Force

- To the extent practicable and in a manner consistent with domestic law and legal system:
 - ▣ Traders and other interested parties shall be provided opportunities and an appropriate time period to comment on the proposed introduction or amendment of laws and regulations related to movement, release and clearance of goods.
 - ▣ New and amended laws and regulations related to movement, release and clearance of goods shall be published, or information on them shall be made publically available, as early as possible before their entry into force.
- Changes to duty rates or tariff rates, and a few similar sensitive measures are excluded

2.2 Consultations

- Each Member shall, as appropriate, provide for regular consultations between border agencies and traders or other stakeholders within its territory

3. Advance Rulings

- Each Member shall issue an advance ruling ... in a reasonable, time bound manner ... to an applicant that has submitted a written request containing all necessary information.
- Advance Ruling is a written decision, prior to importation of a good covered by the application, that sets forth the treatment that shall be provided to the good at the time of importation
- Advance Rulings shall be issued on tariff classification and origin of goods
- In addition, Members are encouraged to provide AR on other issues such as appropriate methods for customs valuation; and application of requirements for quotas including tariff quotas.
- Who can apply - an exporter, importer or any other person with a justifiable cause.

4.1 Right of Appeal

- Persons adversely affected by administrative decision of Customs shall have the right to administrative appeal or review and/or judicial appeal or review of the decision
- Where the decision on appeal/review is not given either within a set periods of time provided under domestic law, or without undue delay, the petitioner shall have right to further appeal/review or any other recourse to judicial authority
- Reasons of administrative decision to be provided to the person affected so as to enable recourse to appeal/review
- Members are encouraged to apply this Article on relevant border agencies other than customs

5. Other measures to enhance impartiality, non-discrimination and transparency

- 5.1 Notification for enhanced controls or inspections in for protecting life or health - Provide transparency and non-discrimination in issuance and withdrawal of such notifications
- 5.2 Detention - Inform the carrier or importer promptly when the goods are detained by authorities for inspection
- 5.3 Test Procedures - Provide an opportunity for a second test in case the first test of import goods shows an adverse finding

6.1 Disciplines on Fees and Charges

- This article applies to all fee and charges imposed on or in connection with importation or exportation, other than – (i) import/export duties, and (ii) taxes covered under GATT Article III
- Information on fees and charges shall be published in accordance with Article 1- i.e. nature, reason, responsible authority and payment modalities.
- An adequate time period shall be accorded between the publication of new or amended fees and charges and their entry into force
- Periodic review of fees and charges

6.3 Penalty Disciplines

- Each Member shall ensure that penalties for a breach of a customs law, regulation, or procedural requirement are imposed only on the person(s) responsible for the breach under its laws.
- The penalty imposed
 - shall depend on the facts and circumstances of the case, and
 - shall be commensurate with the degree and severity of the breach.
- A Member shall maintain measures to avoid conflict of interest in the assessment and collection of penalties and duties.
- An explanation in writing shall be provided to the person(s) upon whom the penalty is imposed specifying the nature of the breach and the applicable law, regulation etc. under which the amount or range of penalty is prescribed.
- Members are encouraged to consider voluntary disclosures prior to the discovery of breach by customs.

7.1 Pre-arrival Processing

- Members shall allow submission of import documentation and other required information prior to arrival of goods
- The documents/information so submitted shall be processed by customs and other relevant agencies prior to arrival of goods
- This will expedite release of goods upon arrival

7.2 Electronic Payment

- To the extent practicable, traders shall be allowed the option of electronic payment of duties, taxes, fees and charges collected by customs incurred upon importation and exportation

7.3 Separation of Release from Final Determination of Duty

- Each Member shall adopt or maintain procedures for
 - ... release of goods prior to final determination of duties, etc.
 - ... on the basis of a guarantee,
 - ... if such a determination is not done prior to or upon arrival, or as rapidly as possible after arrival
- Guarantee shall be discharged when no longer required

7.4 Risk Management



- Each Member shall, to the extent possible, adopt or maintain a risk management system for customs control
- RMS will focus controls on high risk consignments and expedite the release of low risk consignments
- Selectivity criteria for risk management may include, *inter alia*, HS Code, nature and description, country of origin, value of goods, trader's compliance record etc.

7.5 Post Clearance Audit

- Each Member shall adopt or maintain Post Clearance Audit to ensure compliance with customs and other related laws and regulations
- Each Member shall select a person or a consignment for PCA in a risk based manner, which may include appropriate selectivity criteria
- PCA shall be conducted in a transparent manner
- Results of PCA, rights & obligations, and reasons for results shall be notified to the person whose record is audited

7.6 Establishment and Publication of Average Release Times

- Members are encouraged to measure and publish their average release time of goods periodically and in a consistent manner ...
- ... using tools such as WCO Time Release Study (TRS)
- Members are encouraged to share experiences in this regard with the Committee

7.7 Authorized Operators

- Provision of simplified import, export and transit formalities for operators who meet specified criteria such as a high level of compliance with trade-related laws and regulations.
- Eligibility criteria may also include – record based internal controls, financial solvency and supply chain security
- Simplified import, export and transit formalities, including
 - ▣ Low documentary and data requirements,
 - ▣ Low rate of physical inspections and examination
 - ▣ Rapid release time
 - ▣ Deferred payment of duties
 - ▣ Comprehensive guarantees or reduced guarantees ... etc.
- Possibility to negotiate mutual recognition of AO Schemes with other Members

7.8 Expedited Shipments

- This proposal recognizes the time-sensitive nature of certain shipments
- It seeks to provide expedited release of at least those consignments that enter through air cargo facilities
- It contains a list eligibility criteria, such as the applicant
 - shall provide adequate infrastructure and payment of expenses
 - shall be assessed fees limited in amount to the approximate cost of services rendered
 - is required to maintain a high-degree of control over expedited shipments from pick up to delivery
- Facilitation measures – minimize documentation, allow release as rapidly as possible, *de minimis* procedure etc.

7.9 Perishable Goods

Definition:

- Goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.

Basic Thrust:

- Prevent avoidable loss or deterioration of perishable goods

Basic Provisions:

- Release within the shortest possible time
- Release outside business hours in exceptional circumstances
- Give priority when scheduling any examination
- When needed, allow storage facility outside customs area, and allow procedures for release to take place from those facilities

8. Border Agency Cooperation

- A Member shall ensure that its authorities and agencies responsible for border controls and procedures cooperate with one another and coordinate their activities

- To the extent possible and practicable, Members sharing common border shall cooperate and coordinate procedures at border crossings to facilitate trade, on matters such as
 - ▣ Alignment of working days and hours
 - ▣ Alignment of procedures and formalities
 - ▣ Development and sharing of common facilities ... etc.

9. Movement of Goods under Customs Control intended for Import

- Each Member shall, ...
 - ... to the extent practicable, and ...
 - ... provided all regulatory requirements have been met ...
 - allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where goods will be released or cleared

10.1 Review of Formalities and Documentation Requirements

Basic Thrust:

- Minimize formalities and simplify documentation

Basic provisions:

- Each Member shall review its formalities and documentation requirements relating to import, export and transit and ensure that
 - ▣ they are adopted/applied with a view to rapid release and clearance
 - ▣ they aim at reducing the time and cost of compliance
 - ▣ they are not maintained if no longer required
- In the process of review, a Member shall take into account factors such as legitimate policy objectives, changed circumstances, availability of techniques and technology, and international best practices.

10.2 Acceptance of Copies

- Each Member shall, where appropriate, endeavour to accept paper or electronic copies of supporting documents required for import, export or transit formalities
- Where a government agency of a Member already holds the original of such a document, any other agency of that Member shall accept a paper or electronic copy from the agency holding the original in lieu of the original document
- A Member shall not ask for submission of export declaration as a requirement for importation

10.3

Use of International Standards

- Members are encouraged to
 - ▣ Use relevant international standards as a basis of their importation, exportation or transit formalities and procedures
 - ▣ Take part in the preparation and periodic review of relevant international standards
- The Committee shall develop procedures for sharing of relevant information and best practices in this matter

10.4 Single Window

- Members shall endeavour to establish or maintain a Single Window
- Submission, once only and to a single authority, of all documentation and data relating to import, export or transit procedures.
- This authority shall undertake onward distribution of this information to all the relevant authorities or agencies for examination.
- The results of the examination shall be notified to the applicant through the single window in a timely manner

10.5 Pre-shipment Inspections

- Members shall not require the use of pre-shipment inspections in relation to tariff classification and customs valuation
- Members are encouraged not to introduce or apply new requirements regarding use of pre-shipment inspections

10.6 Use of Customs Brokers

- From entry into force of TF Agreement, Members shall not introduce the mandatory use of Customs Brokers
- Each Member shall notify and publish its measures on the use of customs brokers
- With regard to licensing of customs brokers, Members shall apply rules that are transparent and objective

10.7 Common Border Procedures and Uniform Documentation Requirements

- Each Member shall apply common customs procedures and uniform documentation requirements for release and clearance of goods throughout its territory
- Exception is allowed, based on
 - ▣ nature and type of goods and their means of transport
 - ▣ risk management
 - ▣ need to provide duty exemption
 - ▣ need to apply electronic filing/processing
 - ▣ SPS Agreement

10.8 Rejected Goods

- Where the goods presented for import are rejected by the competent authority on account of failure to meet prescribed SPS or technical regulations, the importer shall be allowed to re-consign or return such goods to the exporter or another person designated by the exporter
- This provision is subject to and consistent with Member's laws and regulations

10.9 Temporary Admission/ Inward and outward processing

- Each Member shall allow
 - a) temporary admission of goods for a specific purpose, with total or partial exemption from payment of duties and taxes, subject to certain conditions such as the goods will be re-exported within a specified period, and will not undergo any changes except normal depreciation;
 - b) inward processing and outward processing of goods with total or partial exemption on duties and taxes. The word “processing” includes “manufacturing, processing or repair.”

11. Freedom of Transit

- Fees and charges may only include charges for transportation or those commensurate with the administrative expenses or approximate cost of services
- Formalities, documentation requirements and customs controls shall not be more burdensome than necessary to identify the goods, and ensure fulfilment of transit requirements
- In-transit goods shall not be subject to any customs charges or unnecessary delays or restrictions
- Technical regulations and conformity assessment procedures will not apply on goods in transit
- Disciplines on transit guarantee – limited to ensuring requirements arising out of transit, comprehensive guarantees
- Members' mutual cooperation and coordination on transit

12. Customs Cooperation

- This Article sets up a mechanism for exchange of information between Members for the purpose of verifying an import or export declaration in identified cases where there are reasonable grounds to doubt truth or accuracy
- The requested Member shall provide
 - the specific information as set out in import/export declaration, or the declaration, to the extent it is available.
 - the specific information as set out in the documents, or the documents, submitted in support of import/export declaration (e.g. Invoice, packing list, B/L).
- A request for information can be made only after the requesting Member has conducted appropriate verification
- Elaborate provisions on protection and confidentiality of information

13. Institutional Arrangements

- Committee on Trade Facilitation
 - ▣ Shall develop procedures for sharing relevant information and best practices among Members
 - ▣ Shall maintain close contact with other international organizations
 - ▣ Shall review operation and implementation of TFA four years after EiT, and periodically thereafter
 - ▣ Shall facilitate ad hoc discussion on specific issues under this Agreement

- National Committee on Trade Facilitation

Section II: S&D Provisions

- Special & Differential Treatment provisions for developing countries and LDCs –
- Categories of Commitments:
 - **Category A** – implementation upon EiF (or within 1 year after EiF for LDC Members)
 - **Category B** – require transitional time to implement
 - **Category C** – require transitional time, assistance and support
- Self designation of categories
- Members' notifications under categories –A, B & C will become integral part of the Agreement
- Early Warning Mechanism
- Grace Period

Final Provisions

- All provisions of TFA are binding on all Members
- A developing or LDC Member, if so chooses, shall implement TFA in accordance with Section II
- Members of Customs Union/ Regional Economic arrangements may adopt regional approaches
- Precedence of provisions under GATT 1994, SPS Agreement and TBT Agreement
- Exceptions and exemptions under GATT 1994 shall apply to provisions under TFA
- Application of DSU and related GATT provisions



Part C: Implications on DgCs and LDCs

Implications on the developing countries and LDCs

- TF provisions would reduce process inefficiencies involved in movement of goods across borders.
- However, easier imports may adversely affect trade balance
- All TF provisions are binding – any slippage may invite WTO dispute
- **Cost of implementation** – Enquiry Points; Advance Rulings; Expedited Shipments; Electronic Payments, Average Release Time, Risk Management, Single Window etc. ... no clear commitment on financial assistance
- **Policy space restrictions** – Release of goods on guarantee; time interval between publication and entry into force etc.
- **Market access issues** – temporary admission, inward/outward processing; *de minimis* provision etc.
- **Clash with services commitments** – Expedited shipments



THANK YOU