The WTO Trade Facilitation Agreement

WTO SPS COMMITTEE THEMATIC WORKSHOP ON CONTROL, INSPECTION AND APPROVAL PROCEDURES (ANNEX C) - Geneva, 2018

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Objectives

1. Why a new Agreement?
2. How does the TF Agreement affect the operation of customs, businesses and other agencies overseeing import and export operations?
3. The substantive provisions of the Agreement (sample related to the SPS Agreement, Annex C)
4. How will the Agreement be implemented?
WHY AN AGREEMENT ON TRADE FACILITATION?

BACKGROUND
What is trade facilitation?

ROADMAP

- Simplification
  - Mainstreaming
  - Harmonization
  - Reduction

- Procedures
  - Documents
  - Agencies
  - “Red tape”

- Import / Export
  - Movement
  - Release
  - Clearance
  - Goods only

- Facilitate international trade
  - Reduce delays
  - Reduce costs
  - Improve compliance
Inefficient and duplicative procedures

National capacity to connect to global value chains and international markets
Trade Facilitation reforms

• Ease to import / export and distribute goods are the backbone of international trade - [http://lpi.worldbank.org/](http://lpi.worldbank.org/)

• Trade facilitation reforms did not start with the WTO TFA and can be broader than the Agreement only: continuous improvements - [http://www2.compareyourcountry.org/trade-facilitation](http://www2.compareyourcountry.org/trade-facilitation)

• No “legal” definition

• Several international agencies have their own standards, instruments and programmes
Average reduction of trade costs: 14.5%
Benefits of TFA implementation

- Greater benefits for more ambitious TF agenda
- Reduction of trade costs higher for developing countries
- Export diversification (products)
- Export diversification (markets)
- Enhanced participation in GVCs
- Improved environment for SMEs
- More FDI
- Greater customs collection
- Lower incidence of corruption
Trade facilitation reforms: cut the costs of trading and doing business

Potential reduction of trade costs from the implementation of the TFA (OECD 2015)
WHY AN AGREEMENT AT THE WTO?

BACKGROUND
TRADE FACILITATION ROADMAP

NATIONAL

REGIONAL

MULTILATERAL

COMPLEMENTARY
TF in the WTO

- Common rules for all 164 Members
- Build on existing provisions (in particular Articles V, VIII, and X) but also SPS, TBT, ILP, RoO, etc.
- Enforcement: Binding on all Members + dispute settlement
Large number of key stakeholders

**Policy making entities**
- Ministry of Trade
- Ministry of Foreign Affairs
- Ministry of Transport
- Ministry of Finance

**External donors**
- International organisations
- Regional banks
- Donor countries

**Private sector**
- Exporters and importers
- Chamber of commerce
- Business associations
- Foreign investors
- Consumers
- Civil society

**Implementing agencies**
- Customs
- Port authority
- Airport authority
- Board patrol
- Coast guard
- Post offices

**Border-control agencies**
- Sanitary and phytosanitary
- Standards
- Environment

WHAT DOES THE TF AGREEMENT CONTAIN?

THE SUBSTANTIVE PROVISIONS (SPS Agreement, Annex C)
Section I
12 Articles with approximately 40 “technical measures”
## TFA: several links with SPS

<table>
<thead>
<tr>
<th>Article</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Art. 1</td>
<td>Publication; information available through the internet, enquiry points, notification</td>
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<td>Art. 2:</td>
<td>Opportunity to comment, information before entry into force and consultation</td>
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<tr>
<td>Art. 5:1</td>
<td>Enhanced controls or inspections: risk, uniformity, transparency</td>
</tr>
<tr>
<td>Art. 5:2</td>
<td>Detention of goods (inspection)</td>
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<tr>
<td>Art. 5:3</td>
<td>Test procedures (offer second test)</td>
</tr>
<tr>
<td>Art. 6</td>
<td>Fees and charges in connection with imp. &amp; exp. and penalties</td>
</tr>
<tr>
<td>Art. 7</td>
<td>Release and clearance of goods (incl. pre-arrival processing, electronic payment, perishable goods)</td>
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</tbody>
</table>
### TFA: several links with SPS

<table>
<thead>
<tr>
<th>Article</th>
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<tbody>
<tr>
<td>Art. 8</td>
<td>• Border Agency cooperation</td>
</tr>
<tr>
<td>Art. 10</td>
<td>• Formalities, including acceptance of copies and single window</td>
</tr>
<tr>
<td>Art. 10:5</td>
<td>• Pre-shipment inspection: no mandatory requirement, no new requirements</td>
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<tr>
<td>Footnote 12</td>
<td></td>
</tr>
<tr>
<td>Art. 10:7(2)</td>
<td>• Common border procedures</td>
</tr>
<tr>
<td>Art. 10:8</td>
<td>• Rejected goods</td>
</tr>
<tr>
<td>Art. 23:2</td>
<td>• National Committee on Trade Facilitation</td>
</tr>
<tr>
<td>Art. 24:6</td>
<td>• Final provisions (relationship with the SPS agreement)</td>
</tr>
</tbody>
</table>
SPS / TFA complementarity (ex.)

SPS only provisions
- Equivalence
- Level of protection

TFA only provisions
- Advance Rulings
- Second Testing

SPS + TFA provisions
- Publication
- Appeal and Review
SPS / TFA OVERLAP

Example: **Perishable goods** (TFA Art. 7.9):

- **Members must release perishable goods within the SHORTEST POSSIBLE TIME**
- “**provided that all regulatory requirements have been met**”
- “**under normal circumstances**”
- **Justify significant delays to the extent practicable at the request of importer**
SPS / TFA complementarity

Art. 24.6 TFA: Notwithstanding the general interpretative note to Annex 1A to the Marrakesh Agreement Establishing the World Trade Organization, nothing in this Agreement shall be construed as diminishing the obligations of Members under the GATT 1994. In addition, nothing in this Agreement shall be construed as DIMINISHING THE RIGHTS AND OBLIGATIONS of Members under the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures.
Nature and scope of obligations in the TFA

**Binding**
- Art. 1.1 (Publication): “Each Member **shall** promptly publish ...”

**Best endeavour**
- Art. 1.3 (Enquiry Points): Members **are encouraged** not to require...

**Combination**
- Art. 1.2 (Information through internet): “Each Member **shall** make available the following...” “Members **are encouraged** to make available”
HOW WILL THE AGREEMENT BE IMPLEMENTED?

THE SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS
Flexible implementation according to an INDIVIDUAL assessment of NATIONAL CAPACITY (for Developing countries and LDCs)

**CATEGORY A**
- Implementation upon Entry Into Force of the Agreement
- +1 year for LDCs
- Annex to TFA

**CATEGORY B**
- Implementation after a transitional period from the entry into force
- Additional time needed

**CATEGORY C**
- Implementation only after acquisition of capacities through TA&CB
- Need time + support

Based on country’s own assessment!
Additional flexibilities

**Early Warning Mechanism (Art. 5)**
- Extend implementation period
- Notify new date and reason for delay
- Automatic extension for 1st request
- “Sympathetic consideration” for further requests

**Expert Group (Art. 6)**
- Assess country’s capacity to implement
- Third-party review
- Category C measures
- No extension granted

**Category Shifting (Art. 7)**
- Between B and C
- Provide info on TA and CB needed

**DSU grace period (Art. 8)**
- 2 years after entry into force for developing country Members – Category A
- 6 years after entry into force for LDC Members – Category A
- 8 years after implementation of Categories B and C measures by LDC
WHAT ARE THE LATEST DEVELOPMENTS?

STATE OF PLAY REGARDING RATIFICATION, NOTIFICATION AND IMPLEMENTATION
Ratifications (137)
2/3 of WTO Members ratified the TFA: 22 February 2017

http://www.tfafacility.org/
Implementation - overview

https://www.tfadatabase.org/
For more information about the TFA:

THE TFA FACILITY / THE TFA DATABASE

www.tfafacility.org

The TFAF site serves as a focal point for WTO members, donors and others seeking information on the Trade Facilitation Agreement

tfaf@wto.org

www.tfadatabase.org

The TFA Database is a tool to track and analyse WTO Members' commitments under the Trade Facilitation Agreement

tfad@wto.org
THANK YOU!

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