



# Note

## The WTO Trade Facilitation Agreement

### Negotiations, Developments and LDCs & Developing Countries' Concerns

By Leslie Debornes & Yvonne Quaison

#### Summary

The World Trade Organization (WTO) with its member states came up with an agreement whose main purpose was to reduce total trade costs for all members in trading at their various borders. Its primary concern was to speed up processes and allow the free flow of trade across the various borders. Therefore, the inception of Trade Facilitation Agreement (TFA). This report will focus on issues of Trade Facilitation in the context of the World Trade Organization with references on the five participating that is Pakistan, Nepal, Laos, Vietnam and Sri Lanka. It will try and define trade facilitation, its history and current status with respect to the five countries mentioned above. It will touch upon how the countries can take advantage of the Trade Facilitation Agreement and give some recommendation to the negotiators of the five South & South-East Asian countries concerned.

## What is Trade Facilitation?

Trade Facilitation according to the WTO is “the provisions for expediting the movement, release and clearance of goods, including goods in transit. It also sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues. It further contains provisions for technical assistance and capacity building in this area”.<sup>1</sup>

According to the European Commission, trade facilitation can be defined as the simplification and harmonisation of international trade procedures including import and export procedures. Procedures in this context largely refer to: “the activities (practices and formalities) involved in collecting, presenting, communicating and processing the data required for movement of goods in international trade”.<sup>2</sup>

Finally, for OECD countries, facilitating trade is about streamlining and simplifying international trade procedures. OECD analyses the benefits and costs of trade facilitation efforts and also provides support to World Trade Organization (WTO) discussions in this area.<sup>3</sup>

Generally, trade facilitation is a move which is used by countries to help facilitate the movement of goods and services. Its main focus is to help regulate and facilitate various issues bothering on the legalities of countries and their appropriate authorities for the free flow of goods and services with minimal impediments as much as possible. In

other words, easing the flow of goods across the various borders.

## History of trade facilitation in the WTO<sup>4</sup>

Work on trade facilitation at the WTO started with the mandate given in the Singapore Ministerial Declaration in 1996 which directed “(...) the Council for Trade in Goods to undertake exploratory and analytical work (...) on the simplification of trade procedures in order to assess the scope for WTO rules in this area”.

From 1996 to 2001, the discussion covered issues related to import and export procedures, including Customs procedures, physical movement of consignments (transport and transit), payment, insurance and other financial requirements, electronic facilities and the need for assistance and cooperation. The CTG discussions were important for two main reasons:

- 1) *After reviewing the existing regulatory framework on trade facilitation outside and inside the WTO, members established that a new regulatory framework was necessary.*
- 2) *Members defined the scope of trade facilitation at the WTO to focus on the simplification of import and export procedures, document and data requirements, transparency, and*

---

<sup>1</sup> [www.wto.org](http://www.wto.org)

<sup>2</sup> [http://ec.europa.eu/taxation\\_customs/customs/policy\\_issues/trade\\_facilitation/index\\_en.htm](http://ec.europa.eu/taxation_customs/customs/policy_issues/trade_facilitation/index_en.htm)

<sup>3</sup> <http://www.oecd.org/trade/facilitation/>

<sup>4</sup> <http://tfig.unece.org/contents/Scope-of-TF-at-WTO.html>

cooperation among customs and other government agencies.

The work undertaken by the Council of Trade in Goods led to a proposal to start negotiations on a new legal framework for trade facilitation at the WTO. This proposal was included in the Doha Ministerial Declaration. But negotiations on the Doha Round, including the new topic of trade facilitation, were delayed as WTO struggled to find consensus on the detailed work programme and modalities for the negotiations.

The negotiating process was conducted as a bottom-up process with members putting forward their proposals for new rules and provisions. Starting in November 2004, the Negotiating Group on Trade Facilitation (NGTF) met regularly to discuss these proposals.

The first version of the TF Agreement was annexed to the Bali Ministerial Decision on Trade Facilitation. In Bali, Members agreed that a Protocol of Amendment of the Marrakech Agreement should be ready by 31 July 2014. This deadline was missed as India linked approval to the Protocol with progress made in other areas of the Bali Ministerial Decision, namely on public food stockholdings. The blockage was overcome and the WTO General Council adopted the November 2014 decision that included text of the Trade Facilitation Agreement and a Protocol for adding it to the WTO agreements. Since 28 November 2014 the Protocol for Amendment is open for ratification by Members. According to Article X:3 of the Marrakech Agreement, two thirds of the WTO Members need to ratify the Protocol for it to enter into force. When entering into force the Agreement will only enter

into force for those Members having ratified it.

## **Overview of WTO trade facilitation agreement, focusing on special and differential treatment within the agreement**

The WTO Trade Facilitation Agreement has various dimensions which covers from goods, services and intellectual property. They spell out the principles of liberalization and the permitted exceptions for the various countries. They include individual countries commitments to lower customs tariffs and other trade barriers, and to open and keep open services markets. Member state must bear in mind that these are all negotiable per the WTO legal law. Thereby giving room for member countries to be heard. Especially developing and Least Developed Countries (LDCs) whose main focus is to help their economy grow through trade.

The Agreement contains unique special and differential treatment (SDT) measures that link the requirement to implement with the capacity of developing and least developed countries (LDC) to do so. The Agreement provides even greater flexibility in implementation for LDCs than for developing countries. It also recognizes the need for donor Members to enhance assistance and support for capacity building.

The overview of the WTO trade facilitation agreement has three main sections which have been boldly spelt out<sup>5</sup>:

---

<sup>5</sup>[https://www.wto.org/english/tratop\\_e/tradfa\\_e/tradfa\\_e.htm](https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm)

- *Section I contains provisions for expediting the movement, release and clearance of goods, including goods in transit. It clarifies and improves the relevant articles (V, VIII and X) of the General Agreement on Tariffs and Trade (GATT) 1994. It also sets out provisions for customs cooperation.*
- *Section II contains SDT provisions that allow developing and LDCs to determine when they will implement individual provisions of the Agreement and to identify provisions that they will only be able to implement upon the receipt of technical assistance and support for capacity building.*
- *Section III contains provisions that establish a permanent committee on trade facilitation at the WTO, require members to have a national committee to facilitate domestic coordination and implementation of the provisions of the Agreement. It also sets out a few final provisions.*

To benefit from SDT, a member must categorize each provision of the Agreement, as defined below, and notify other WTO members of these categorizations in accordance with specific timelines outlined in the Agreement below.

- *Category A: provisions that the member will implement by the time the Agreement enters into force (or in the case of a least-developed country member within one year after entry into force)*
- *Category B: provisions that the member will implement after a transitional period following the entry into force of the Agreement*
- *Category C: provisions that the member will implement on a date after a transitional period following the entry into force of the Agreement and requiring the acquisition of assistance and support for capacity building.*

For provisions designated as categories B and C, the

member must provide dates for implementation of the provisions.

The Agreement also provides additional protections for Developing and LDC Members such as Early Warning Mechanism whereby a Member can request an extension from the WTO Trade Facilitation Committee if it experiences difficulties in implementing a provision in Category B or C by the date it had notified; an Expert Group, where a requested extension has not been granted and a Member lacks capacity to implement, the TF committee will establish an Expert Group to examine the issue and to make a recommendation; Shifting between Categories: Members may shift provisions between Categories B and C; as well as a Grace Period: following entry into force of the Agreement, LDCs will not be subject to the Dispute Settlement Understanding for a period of 6 years for Category A provisions and for 8 years for Categories B and C.

## **Current status of work of the WTO trade facilitation agreement/ implementation stage**

Following the dissolution of the Negotiating Group on Trade Facilitation after the conclusion of the negotiations in December 2013, work on trade facilitation primarily takes place in the Preparatory Committee on Trade Facilitation. The Committee, which is open to all WTO members, is mandated under the Bali Ministerial Decision to “perform such functions as may be necessary to ensure the expeditious entry into force of the Agreement and to prepare for the efficient operation of the Agreement upon its entry into force.” The decision tasks the

Committee to<sup>6</sup>:

- *Conduct a legal review of the Trade Facilitation Agreement*
- *Receive notifications from members on the commitments they can undertake immediately (Category A commitments)*
- *Draw up a Protocol of Amendment to insert the Agreement into Annex 1A of the WTO Agreement.*

Ministers decided that the Protocol would enter into force after two-thirds of the WTO's membership have completed their domestic ratification process.

Looking more closely at the five South & South East Asian countries specifically concerned by this paper, only three of them have ratified the WTO Trade Facilitation Agreement.

Lao People Democratic Republic has ratified the Trade Facilitation Agreement in September 2015, and has notified its Category A provisions/obligations only. To oversee national implementation of the Agreement each member must establish a national trade facilitation committee that, to be effective, requires the participation of all relevant border agencies. The Trade Facilitation Secretariat (TFS) was established in 2010, two years after the establishment of the National Steering Committee for Economic Integration. The TFS, responsible by the Department of Import and Export (MOIC) serves as a focal point for coordinating policies and following up with implementation progress of trade facilitation in Laos.<sup>7</sup>

Vietnam has ratified the Trade Facilitation

Agreement in December 2015, and has notified its Category A provisions/obligations only. To oversee national implementation of the Agreement each member must establish a national trade facilitation committee that, to be effective, requires the participation of all relevant border agencies. In December 2014, Vietnam Trade Facilitation Alliance was established as a collaboration between U.S. Agency for International Development, the American Chamber of Commerce in Vietnam and the Vietnam Chamber of Commerce and Industry. The private sector-led alliance supports TFA implementation, as well as next generation of free trade agreements such as the Trans-Pacific Partnership.<sup>8</sup>

Sri Lanka has not ratified the Trade Facilitation Agreement to date, but has notified its Category A provisions/obligations. To oversee national implementation of the Agreement each member must establish a national trade facilitation committee that, to be effective, requires the participation of all relevant border agencies. The National Committee on Trade Facilitation (NCTF) in Sri Lanka was established in June 2014, as required by Article 23.2 of the WTO Trade Facilitation Agreement (TFA).<sup>9</sup>

Pakistan has ratified the Trade Facilitation Agreement in October 2015, and has notified its Category A provisions/obligations only. To oversee national implementation of the Agreement each member must establish a national trade facilitation committee that, to be effective, requires the participation of all relevant border agencies. Pakistan established its National Trade and

---

<sup>6</sup>[https://www.wto.org/english/tratop\\_e/tradfa\\_e/tradfa\\_e.htm](https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm)

<sup>7</sup><http://www.unescap.org/sites/default/files/03-NCTF%20Implementation%20case%202%20Lao%20PDR-Phoutsawanh%20Khounchantha.pdf>

<sup>8</sup>[https://www.wto.org/english/res\\_e/booksp\\_e/aid4trade15\\_chap4\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/aid4trade15_chap4_e.pdf)

<sup>9</sup>[http://www.wcoomd.org/en/topics/wco-implementing-the-wto-atf/~/\\_media/8E946EAF42464545B4ED67E97F930A9F.ashx](http://www.wcoomd.org/en/topics/wco-implementing-the-wto-atf/~/_media/8E946EAF42464545B4ED67E97F930A9F.ashx)

Transport Facilitation Committee in August 2001. The committee coordinates government ministries and public and private stakeholders in order to adopt trade and transport facilitation measures. Its mandate 'to review the regulation, procedures and systems pertaining to the conduct of trade and transport that impact the cost and efficiency of the country's international trade' is set out in law.<sup>10</sup>

Nepal has not ratified the Trade Facilitation Agreement to date, but has notified its Category A provisions/obligations. To oversee national implementation of the Agreement each member must establish a national trade facilitation committee that, to be effective, requires the participation of all relevant border agencies. Nepal's National Trade and Transport Facilitation Committee was originally established in the 1990s, but slipped into disuse. It was re-established in 2012 under the chairmanship of the Ministry of Commerce and Supplies. Its membership comprises high-level representatives from public and private trade institutions. Its main activities cover advice on regulatory reform, monitoring and coordination, capacity enhancement, research and development, and coordinating and enhancing public-private dialogue aimed at trade facilitation.<sup>11</sup>

## **How countries took advantage (may take advantage in the near future) of technical assistance & capacity building that can be provided by WTO on this issue.**

Before the Trade Facilitation Agreement, support to developing countries and LDCs was already available to help countries implement trade facilitation measures. Expenses for purchasing equipment, training officials and putting in place new measures have benefitted from substantial technical and financial assistance for trade facilitation over the last decade. Since 2005, approximately USD 1.9 billion has been disbursed in aid for trade facilitation. Donor commitments directed to simplifying and modernising border rules and procedures reached USD 670 million in 2013, an almost eightfold increase from the 2002-05 base-line average.<sup>12</sup>

---

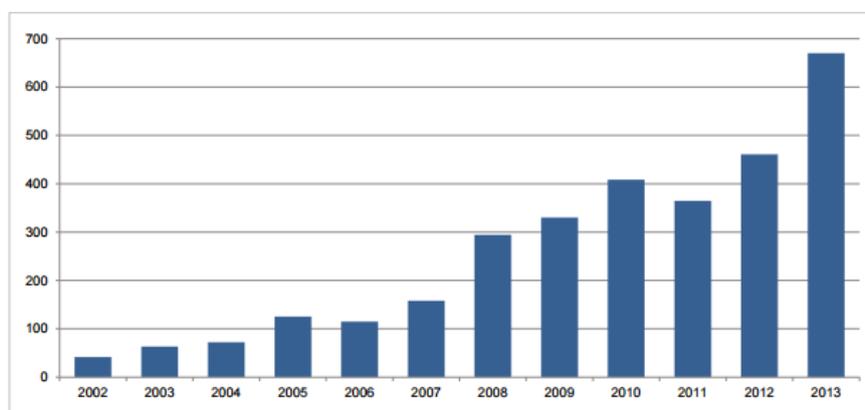
<sup>10</sup>[http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/2014-2015-324%20-%20National%20Trade%20Facilitation%20Committees\\_Low-res.pdf](http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/2014-2015-324%20-%20National%20Trade%20Facilitation%20Committees_Low-res.pdf)

<sup>11</sup>[http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/2014-2015-324%20-%20National%20Trade%20Facilitation%20Committees\\_Low-res.pdf](http://www.intracen.org/uploadedFiles/intracenorg/Content/Publications/2014-2015-324%20-%20National%20Trade%20Facilitation%20Committees_Low-res.pdf)

[http://www.oecd.org/trade/WTO-TF-Implementation-Policy-Brief\\_EN\\_2015\\_06.pdf](http://www.oecd.org/trade/WTO-TF-Implementation-Policy-Brief_EN_2015_06.pdf)

<sup>12</sup> [http://www.oecd.org/trade/WTO-TF-Implementation-Policy-Brief\\_EN\\_2015\\_06.pdf](http://www.oecd.org/trade/WTO-TF-Implementation-Policy-Brief_EN_2015_06.pdf)

Figure: Commitments 2002-13 (USD million, 2013 constant prices)



Source: OECD-DAC Aid activities database (CRS), under the "trade policy and regulations; trade facilitation" purpose code.

More recently, a group of major international organizations came together on 22 July 2015 to recognize the development potential of the Trade Facilitation Agreement and to offer their assistance to WTO members in implementing their commitments under the Agreement. In a joint statement the organizations declared their intention to work together to assist developing and least-developed Members through a range of technical assistance and capacity-building initiatives.<sup>13</sup>

Implementing the trade facilitation agreement is supposed to bring developing countries and LDCs many economic, trade and to some extent social benefits. However to be able to implement the agreement once signed and ratified, those countries (such as Nepal) have emphasized the need to receive technical assistance and capacity-building.

As explained previously, assistance for Developing and LDC Countries was already being provided by regional and multilateral agencies, bilateral donors

and other stakeholders through a broad range of different programs. However, to insure that all WTO Members will receive the support they need the WTO has created a new WTO Trade Facilitation Agreement Facility (TFAF). Under the Facility the WTO Secretariat will expand its existing technical assistance programs; provide information on other assistance programs, case studies and training materials; assist with matchmaking of donors and recipients; and will offer two types of grants for the situations where no other source of assistance is available. The grants are for project preparation and project implementation.<sup>14</sup>

The functions of the Facility will include<sup>15</sup>:

- *supporting LDCs and developing countries to assess their specific needs and identify possible development partners to help them meet those needs*
- *ensuring the best possible conditions for the flow of information between donors and recipients through the creation of an information sharing platform for demand and supply of Trade Facilitation-related technical assistance*
- *disseminating best practice in implementation of Trade Facilitation measures*
- *providing support to find sources of implementation assistance, including formally requesting the Director-General to act as a facilitator in securing funds for specific project implementation*

<sup>13</sup>[https://www.wto.org/english/news\\_e/news14\\_e/fac\\_22jul\\_14\\_e.htm](https://www.wto.org/english/news_e/news14_e/fac_22jul_14_e.htm)

<sup>14</sup><http://www.ipu.org/splz-e/wto-forum15/tfa.pdf>

<sup>15</sup>[https://www.wto.org/english/news\\_e/news14\\_e/fac\\_22jul\\_14\\_e.htm](https://www.wto.org/english/news_e/news14_e/fac_22jul_14_e.htm)

- *providing grants for the preparation of projects in circumstances where a Member has identified a potential donor but has been unable to develop a project for that donor's consideration, and is unable to find funding from other sources to support the preparation of a project proposal*
- *providing project implementation grants related to the implementation of Trade Facilitation Agreement provisions in circumstances where attempts to attract funding from other sources have failed. These grants will be limited to "soft infrastructure" projects, such as modernization of customs laws through consulting services, in-country workshops, or training of officials.*

## Recommendations

1. Countries that have ratified should take all necessary steps to notify all Category provisions, as well as to implement/reinforce their national trade facilitation implementation bodies to speed up the move.

2. WTO negotiators should assist their national governments in benefiting from capacity-building and technical assistance provided by the WTO or other international and regional organizations.

3. WTO donor members and international organisations must fulfil their commitments of providing support to assist developing and LDC members to implement the Agreement.

4. Awareness raising of public and private national stakeholders on the TFA and its potential impacts should definitely be strongly considered. Private sector cannot be left behind as their active participation in the TF measures implementation is critical.

5. Ensuring that trade facilitation is aligned with other national priorities and expressed by developing and LDC members through existing national and regional development dialogues with their development partners is a critical step in TFA implementation<sup>16</sup>.

---

<sup>16</sup>[https://www.wto.org/english/res\\_e/booksp\\_e/aid4trade15\\_chap4\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/aid4trade15_chap4_e.pdf)



## CUTS International, Geneva

CUTS International, Geneva is a non-profit NGO that catalyses the pro-trade, pro-equity voices of the Global South in international trade and development debates in Geneva. We and our sister CUTS organizations in India, Kenya, Zambia, Vietnam, and Ghana have made our footprints in the realm of economic governance across the developing world.

© 2016. CUTS International, Geneva.

This note is authored by Leslie Debornes & Yvonne Quaison. CUTS' notes are to inform, educate and provoke debate on specific issues. Readers are encouraged to quote or reproduce material from this paper for their own use, provided due acknowledgement of the source is made.

37-39, Rue de Vermont, 1202 Geneva, Switzerland

geneva@cuts.org • www.cuts-geneva.org

Ph: +41 (0) 22 734 60 80 | Fax:+41 (0) 22 734 39 14 | Skype: cuts.grc

### GENEVA TRADE & BUSINESS CONNEXION FORUM

The Trade & Business Connexion project aims at bridging the gap between South and Southeast Asian WTO delegates and their national private sectors. Web: [http://www.cuts-geneva.org/Geneva\\_Connexion\\_SNSEAsia.html](http://www.cuts-geneva.org/Geneva_Connexion_SNSEAsia.html)



The Geneva Trade & Business Connexion Forum project is undertaken with funding support from the Australian Aid agency (Australian government).