

## **The Proposed World Trade Organization (WTO) Trade Facilitation Agreement (TFA)**

**Scope of Negotiations:** The WTO Negotiating Group on Trade Facilitation is preparing a new multilateral agreement to enhance existing WTO commitments by requiring transparency and consistency in basic customs procedures at the border of every WTO Member. Specifically, WTO Members are developing the TFA to clarify and improve three GATT commitments:

- GATT Article V – Freedom of Transit
- GATT Article VIII – Fees and Formalities Connected with Importation and Exportation
- GATT Article X – Publication and Administration of Trade Regulations

**Objectives of TFA:** The Trade Facilitation Agreement will create binding commitments across 157(+) WTO Members to expedite movement, release and clearance of goods and improve cooperation among WTO Members on customs matters. The TFA will also provide for Special and Differential treatment, such as staging of implementation after entry into force, for developing country Members to ensure that all WTO Members ultimately implement the same commitments.

*Below are highlights of some of the possible outcomes for the TFA; some sub-articles are not addressed in the interest of space:*

- Comprehensive Publication of Import, Export, and Transit Information (Article 1.1):

Timely, accurate and easily accessible information on trade laws, applicable fees and tariffs, procedures to appeal customs decisions, and penalties is essential for the transparency, predictability and efficiency of international commercial transactions. The TFA would require all WTO Members to publish all of these requirements in an easily accessible manner.

- Internet Publication of Key Information (Article 1.2):

The TFA would require all WTO Members to publish online the basic information for import, export, and transit, and also their customs forms and documents. Internet publication provides timely and relevant information and avoids the delays or cost of printing paper-based publications.

- Advance Notice of Changes to Customs Requirements (Article 2):

Advance notice of changes to import, export and transit regulations and the corresponding allowance for public comment gives the trade community the opportunity to address potential challenges and become familiar with new practices before they take effect. The TFA includes proposals that require advance notice of new procedures.

- Advance Rulings (Article 3):

Advance rulings enhance certainty and predictability of trade, and speed up the clearance process. They provide importers assurance of the tariff and tax burden, enabling them to forecast

their business costs, which is crucial when a company is contemplating a new transaction. The TFA text includes proposals for rulings in a wide range of areas, including classification, origin, and valuation.

- Appeal of Customs Decisions (Article 4):

Clear appeal rules ensure a fairer and more transparent application of laws and regulations administered or enforced at the border. The TFA text includes proposals for two layers of review – administrative and judicial. It also includes a proposal to ensure that the results of an appeal will apply throughout the WTO Member’s territory, so that a trader can rely on the result in a later similar transaction, even if it is at a different point of entry.

- Transparency for Detained Goods (Article 5.2):

A trader’s inability to attain information on the status of a detained import transaction can create uncertainty for the trade community as well as for downstream customers in the supply chain. This uncertainty increases costs for all parties in the transaction. The TFA text includes a proposal that would require Members to promptly inform importers in the event their goods are detained for inspection, promoting transparency and predictability that will benefit traders.

- Disciplines on Fees and Charges (Article 6.1):

Fees and charges are an obstacle to trade. They present greater challenges to industry when the fees and charges are uncertain, difficult to understand, or when the amount of the fee or charge is excessive. The TFA would not only reinforce that fees and charges should not exceed the approximate cost of the service rendered by customs, but would provide additional transparency. Review of fees and charges would enable WTO Members to update and reduce fees and charges based on changes in trade conditions or new efficiencies in customs procedures.

- Disciplines on Customs Penalties (Article 6.2):

The TFA would set basic rules for penalties for all Members, to ensure transparency and predictability, and reduce incentives and opportunities for corruption. Having a baseline on penalty disciplines in the WTO is a win for all traders, carriers, and other parties in international trade. Specific proposals in the TFA text would ensure that only those legally responsible for a breach can be penalized, that penalties are appropriate for the facts and circumstances, and that every WTO Member has procedures to avoid conflicts of interest.

- Processing of Customs Information before Goods Arrive (Article 7.1):

Pre-arrival processing reduces delay and bottlenecks at border crossings, enables just-in-time delivery, reduces storage, insurance and transaction costs and enables more efficient use of human resources. The TFA proposes a pre-arrival processing framework where the trade community can provide customs data prior to goods’ arrival, so customs and traders can better organize their work and release the product in advance of arrival.

- Release of Goods before Final Determination of Duties, Taxes, Fees (Article 7.2):

Goods should not be delayed solely as a result of making decisions on how much customs duties are owed. The TFA would require all WTO Members to either promptly determine what is owed or allow release of goods on a security or other guarantee. By separating the release of goods from the timing of determination of money owed, the TFA would support a seamless supply chain used by the trade community, particularly in e-commerce and just-in-time delivery. Traders' costs would be reduced, particularly those related to warehouse fees, insurance, and inventory costs.

- Promoting Risk Management and Post Clearance Audit (Article 7.3 & 7.4):

Risk-based processing enables speedier clearance of compliant cargo while enabling customs to devote fewer resources to low-risk imports and more resources to high-risk imports—those that the risk management system has determined are more likely to be noncompliant. Customs can use risk management to identify appropriate controls, such as post-clearance audit, that ensure compliance without stopping goods at the border.

- Rules for Authorized Operator Programs (Article 7.6):

Authorized Operator programs can facilitate trade for participating low risk traders through measures such as fewer inspections and reduced paperwork. The TFA would establish rules for the criteria that operators need to achieve to be accredited under a Member's authorized operator program. These criteria should focus on lowering supply chain risks associated with trade and ensure that the programs do not enable unjustifiable or arbitrary discrimination.

- Procedures for Expedited Shipments (Article 7.7):

The TFA text on expedited shipments establishes procedures for Members to provide a channel facilitating the expedited release of goods through customs. Access to expedited shipping channels is especially important for SMEs and e-commerce traders that are trying to access global supply chains, and are operating in a "just-in-time" production or delivery environment. The TFA would require every WTO Member to have procedures for such shipments, and the TFA would set minimum requirements for such procedures. Key elements include release within a shortened timeframe, establishing a *de minimis* value under which customs duties will not be assessed, pre-arrival processing of import information, and ability to present a single manifest to cover all goods in a shipment.

- Elimination of Consular Requirements (Article 8):

Removing consular requirements will have the real world effect of lowering transaction costs and eliminating the loss of time involved in seeking a consular stamp. Consular requirements do not ensure quality control or assure import requirements are met. They cost time and money, and are disproportionately burdensome to small traders.

- Cooperation Between Customs Agencies (Article 9 and Article 12):

Cooperation between government agencies that have a roll in the customs clearance process is important to facilitate trade in a just-in-time delivery or production supply chain. Article 9 of the TFA contains agreed text that a Member's border agencies cooperate with one another and coordinate their activities in order to facilitate trade. The text also promotes coordination between customs agencies that share a common border. Cooperation reduces compliance and enforcement costs and promotes efficiency gains. Further, Article 12 of the TFA seeks to promote effective cooperation between customs and other border agencies on trade facilitation and customs compliance issues.

- Entry of Goods During Transit Operation (Article 9 bis):

In some cases, business may want to import a good that was initially put under a transit procedure. The TFA would allow traders to make entry at any port or place in a Member's customs territory rather than just at the first point of arrival of the goods in the Member's territory. This would allow flexibility and meaningful choices based on costs, and risks for the trader.

- Simplifying formalities and documentation requirements (Articles 10.1, 10.2 and 10.9):

Provisions to review and reduce formalities and documentation associated with import and export can diminish administrative obstacles to trade, and are proposed in the TFA. Tangible benefits may include: fewer documents; forms that are easier to complete; reduced time, money and human resources; improved administrative controls; and smoother electronic document submission. Article 10.9 of the TFA further seeks to promote uniformity across customs documentation requirements throughout the territory of a Member.

- Encouraging the use of International Standards (Article 10.4):

The TFA encourages Members to use relevant international standards as a basis for their importation, exportation or transit procedures in an effort to promote uniform documentation and data requirements.

- Encouraging "one stop" submission of customs information (Article 10.5):

The TFA encourages the establishment of a "single window" that allows traders to submit documentation or data requirements for importation, exportation or transit of goods to a single entry point, resulting in reduced procedural requirements and harmonized data requirements. The main value of having a single window is to eliminate redundancy for traders, improve efficiency for traders and for their interaction with government, and facilitate government's coordination with multiple government agencies.

- Fewer Pre-Shipment Inspection Requirements (Article 10.6):

The TFA is seeking to prohibit the use of PSI for classification and valuation purposes. PSI companies are very expensive and PSI requirements can have the effect of keeping customs officers from building expertise to make determinations in core customs matters such as classification and valuation. A simple commitment prohibiting the use of PSI for classification and valuation purposes would have a concrete and beneficial effect.

- Disciplines on Requirements to Use Customs Brokers (Article 10.7):

Customs brokers can provide a valuable service, but mandatory requirements for use of brokers can make transactions more difficult. A discipline on such requirements, such as ensuring that owners of goods may file their own customs declarations without a broker, would have a positive effect on trade.

- Providing for Temporary Entry of Goods (Article 10.11):

Due to the reality of global supply chains, goods increasingly do not cross the border into a country for permanent importation, but only temporarily for processing or repair before being exported. Further, there is benefit in permitting the temporary entry of goods for commercial fairs or as commercial samples, allowing enterprises to examine, test and even temporarily use foreign goods that will be returned. The TFA contains proposals for “inward and outward processing” and “temporary admission” under which goods entering a Member’s territory under these procedures receive a partial or total exemption from the payment of import duties and taxes.

- Disciplines on Transit Requirements (Article 11):

The text on transit seeks to improve security and safety while simultaneously facilitating the efficient movement of goods in transit. Formalities, documentation requirements and customs controls on traffic in transit are to be limited in scope, and applied only at the beginning and conclusion of the transit operation. Other facilitations such as advance filings and discharging guarantees are provided. Procedures governing traffic in transit are of significant importance to traders in, or engaged with, trade with landlocked countries and transit countries.