



A Cheat Sheet to the WTO Trade Facilitation Agreement

December 2013

What is the Trade Facilitation Agreement?

The Trade Facilitation Agreement is part of a deal reached by members of the World Trade Organization (WTO) in Bali on December 7, 2013 that will simplify and make more transparent customs procedures and regulations to improve the speed and reliability of exporting and importing. The agreement is seen as a deliverable on the Doha Development Round agenda of the WTO that was outlined in 2001.

Trade Facilitation is one of four “Singapore Issues” that were tabled back at the WTO’s 1996 Singapore Ministerial along with trade and investment, trade and competition policy, transparency in government procurement. WTO Members reached agreement in August 2004 to negotiate on trade facilitation as part of the Doha Development agenda, and dropped the three other Singapore issues from consideration under the Round.)

Potential impact

The most widely-cited figures are from a report commissioned by the International Chamber of Commerce: “[T]he WTO trade facilitation agreement could boost global GDP by US\$960 billion annually and increase exports of developing countries by US\$570 billion and of developed countries by US\$475 billion. It would also create 18 million jobs in developing countries and 3 million in developed countries.”¹

The OECD modeled 16 trade facilitation indicators that map to the draft WTO Trade Facilitation negotiations. They conclude that:

the policy areas that seem to have the greatest impact on trade volumes and trade costs...are the availability of trade-related information, the simplification and harmonization of documents, the streamlining of procedures and the use of automated processes. The combined effect of improvements in these areas is greater than the simple sum of the impact of individual measures, reaching almost 14.5% reduction of total trade costs for low income countries, 15.5% for lower middle income countries and 13.2% for upper middle income countries.²

¹ <http://www.iccwbo.org/News/Articles/2013/WTO-deal-still-possible-but-business-must-push-governments-to-bridge-remaining-gaps/>; <http://www.iie.com/publications/papers/hufbauer-schott20130614ppt.pdf>

² http://www.oecd-ilibrary.org/trade/trade-facilitation-indicators_5k4bw6kg6ws2-en



Business community support

The business community has expressed strong support for an agreement. Groups including the National Foreign Trade Council, Business Roundtable, U.S. Chamber of Commerce and International Chamber of Commerce released statements of support after a deal was announced. NFTC expressed support on the merits – the Trade Facilitation Agreement has the potential to improve the ability of small businesses to access the global marketplace and promote more inclusive growth – and for the important signal the Bali Package sent that a deal could be negotiated among the WTO’s broad membership. While the agreement does not include everything the business community wanted – e.g. there is no commitment for a meaningful *de minimis* threshold under which goods could enter duty-free, while the exclusion of VAT from the *de minimis* commitment that does exist is disappointing – it is significant for business. The agreement also offers a base on which to build commitments in other forums such as the Transpacific Partnership.

Entry into force

A WTO Preparatory Committee will perform a legal review, receive notifications of “Category A” commitments (provisions that a developing country Member designates for implementation upon entry into force of the Agreement or in the case of a least developed country Member within one year after entry) and draw up a Protocol. The legal instruments will be considered no later than 31 July 2014, after which time the Protocol will be open for acceptance by Member Economies until 31 July 2015. It will enter into force once two-thirds of the membership has submitted their acceptance of the Protocol.

Key provisions

SECTION II

Prior to reading the substantive commitments members have undertaken, it may be useful to understand how the commitments will be implemented, which is laid out in Section II of the agreement:

- Section II outlines the special treatment for developing and least developed members in implementing the Agreement.
- Developing and least developed countries self-identify three categories of commitments:
 - Category A, which will be implemented upon entry of the agreement into force or for least-developed countries, within one year after entry into force;
 - Category B, which will be implemented after a transitional period; and
 - Category C, which will be implemented after assistance and support for capacity building from developed countries.
- The agreement specifies a timeline by which developing and least developed countries will notify the WTO of its commitments, and that “donor members agree to facilitate the provision of assistance and support for capacity building to developing country and least developed country Members” bilaterally or through international organizations like the World Bank.



SECTION I

1: Publication and availability of information

- Members will promptly publish information on trade and transit procedures and documents; applied duties, taxes, fees and charges; rules governing classification, valuation and origin; penalty and appeal procedures.
- Much of this information must or should be available via the internet and, wherever practicable, in one of the official languages of the WTO.
- Members shall establish one or more enquiry points to respond to requests for information in a reasonable time period and are encouraged not to charge a fee for answering these requests.

2: Opportunity to comment, information before entry into force and consultation

- Provide opportunities to comment on new or amended laws and regs.
- Ensure that rules are published as early as possible prior to their entry into force.
- Provide for regular consultations between border agencies and stakeholders.

3: Advance rulings

- Members shall issue advance rulings (a written decision prior to the importation of a good that sets forth the good's tariff classification, and origin) in a reasonable time period and notify denials in writing that should be valid for a reasonable period of time, which shall be binding on the member.
- Members shall provide written notice to applicants when it revokes or changes the ruling.
- Members shall publish requirements and procedures for applying for an advance ruling, and shall endeavor to make public information on advance rulings "of significant interest" to others.

4: Appeal or review procedures

- Each Member shall provide the right of a nondiscriminatory administrative and/or judicial appeal, and further appeal or review where a decision is not given within set periods or without undue delay.
- Each Member shall ensure that reasons for the administrative decision are provided and is encouraged to extend the provisions in this Article to agencies other than customs.

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

- Each member shall apply disciplines to the issuance, termination, or suspension of notifications for enhanced controls or inspections. Each member shall promptly terminate notifications or guidance when circumstances that gave rise to it no longer exist and shall promptly publish the announcement.
- Members shall inform carriers/importers promptly in case of detention of goods.
- A Member may grant an opportunity for a second test in the case of an adverse finding, shall publish the name and address of labs used for testing, and shall consumer the result of a second test in the release and clearance of goods.

6: Disciplines on fees and charges

- Information on fees and charges shall be published in a transparent manner; changes shall be published with adequate time prior to taking effect; and Members shall seek to reduce the number and diversity of fees over time.



- Fees/charges for customs processing shall be limited to the approximate cost of services rendered and are not required to be linked to a specific import or export operation if they are levied for services that are closely connected to the customs processing of goods.
- Members shall ensure that penalties are imposed only on the person(s) responsible for the breach, that the penalty shall depend on the facts and be commensurate with the severity of the breach, that they shall take steps to avoid conflicts of interest, and that an explanation in writing is provided. Members are encouraged to consider voluntary disclosures as a potential mitigating factor when establishing a penalty.

7: Release and clearance of goods

- Members shall adopt procedures for “pre-arrival processing” of documentation to expedite goods and, as appropriate, provide for advance lodging of documents in electronic format.
- Members shall to the extent practicable permit electronic payment for duties, taxes, etc.
- Members shall adopt procedures allowing the release of goods prior to the final determination of customs duties, taxes, etc., provided other requirements have been met.
- Members shall to the extent possible adopt risk management systems for customs based on appropriate criteria and concentrated on high-risk consignments while expediting the release of low-risk consignments in a way that avoids unjustifiable discrimination or blocks trade.
- Members shall adopt post-clearance audit to ensure customs compliance in a risk based and transparent manner, and shall, wherever practicable, use the result in applying risk management.
- Members are encouraged to measure and publish average release time of goods and share their experiences in measurement.
- **Authorized operator program:** Members shall establish/incorporate Authorized Operator programs, giving operators who meet specific criteria related to compliance (e.g. a record of compliance with customs, a system of managing records using internal controls; financial solvency and supply chain security) additional trade-facilitative measures. Members shall provide at least 3 of the following measures to Authorized Operators: low document and data requirements, low rate of physical inspections, rapid release of goods, deferred payment of duties and taxes, use of comprehensive guarantees, a single customs declaration for imports/exports in a given period, and/or clearance of goods at the premises of the authorized operator.
- **Expedited shipments:** Members shall adopt/maintain procedures that allow for the expedited release of at least those goods entered through air cargo facilities and provide certain conditions for qualifying for the application of expedited. Members shall minimize documentation, provide for expedited shipments to be released under normal circumstances *as rapidly as possible* after arrival, endeavor to apply the treatment to any weight or value “recognizing that a Member is permitted to require additional entry procedures, including declarations and payment of duties, and to limit such treatment, based on the type of good, provided the treatment is not limited to low value goods,” and provide, to the extent possible, for a *de minimis* shipment value for which customs duties will not be collected, aside from certain prescribed goods. Internal taxes, such as value added taxes and excise taxes, applied to imports are not subject to this provision.
- Members shall provide for the release of perishable goods under normal circumstances within the shortest amount of time and, in exceptional circumstances outside the business hours of customs and other relevant authorities; and should arrange for the proper storage pending their release.



8: Border agency cooperation

- Members shall ensure that authorities cooperate/coordinate and, to the extent possible, on mutually agreed terms with other Members with whom they share a common border.

9: Movement of goods under customs control intended for import

- Members shall to the extent practicable allow goods for import to be moved under customs control from one office to another.

10: Formalities connected with importation and exportation and transit

- Members shall review formalities and documentation requirements with a view to a rapid release and clearance of goods, that aims at reducing time and cost of compliance, are least trade restrictive and are not maintained if no longer required.
- Members shall endeavor to accept paper or electronic copies of supporting documents.
- Members are encouraged to follow international standards, participate in international standards setting bodies and share best practices.
- Members shall endeavor to establish/maintain a single window, enabling traders to submit documentation/ data through a single entry point
- Members shall not require the use of pre-shipment inspections
- From the entry into force of this agreement Members shall not introduce the mandatory use of customs brokers, though those who currently use them (e.g. Panama) will be grandfathered in.
- Members shall apply common customs procedures and uniform documentation requirements for release and clearance of goods throughout its territory
- Members shall allow importers to re-consign or to return rejected goods to the exporter or another person
- Members shall allow the temporary admission of goods duty-free if they are intended for re-export and have not been changed. Members shall also allow inward and outward processing of goods.

11: Freedom of transit

- Traffic in transit regulations shall not be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a less trade restrictive manner or if they constitute a disguised restriction.
- Traffic in transit shall not be conditioned upon collection of any fees or charges except as commensurate with administrative expenses for transit or services rendered.
- Members shall not maintain new voluntary restraints on traffic in transit.
- Each Members shall accord products in transit no less favorable treatment than that which would be accorded to such products if they were being transported from their place of origin to their destination without going through the territory of such other Member.
- Members are encouraged to make available physically separate infrastructure (such as lanes, berths and similar) for traffic in transit.
- Formalities, documentation requirements and customs controls, in connection with traffic in transit, shall not be more burdensome than necessary.



- After goods have been authorized to proceed from the point of origination in a Member's territory, they will not be subject to any customs charges nor unnecessary delays or restrictions until they conclude their transit at the point of destination.
- Members shall not apply technical regulations and conformity assessment procedures, shall provide for advance filing and processing of transit documentation and data prior to the arrival of goods and, once traffic in transit has reached the customs office where it exits the territory of the Member, that office shall promptly terminate the transit operation if transit requirements have been met.
- Members shall endeavor to cooperate/coordinate to enhance freedom of transit, and shall endeavor to appoint a national transit coordinator to which all enquiries and proposals by other Members relating to the good functioning of transit operations can be addressed.

12: Customs cooperation

- Members agree to take measures to promote customs compliance/cooperation, including by encouraging voluntary compliance, and are encouraged to share best practices.
- Members shall exchange information to verify an import or export declaration where there are reasonable grounds to doubt its truth.
- Members shall request information in writing only after conducting appropriate due diligence of declarations. The requesting Member shall hold all information in confidence with at least the same level of such protection and confidentiality as provided under the domestic law, provide the information only to customs authorities for the purpose stated, not disclose the information or documents without the specific written permission and not use any unverified information or documents as the deciding factor, among other provisions.
- The requested Member shall promptly provide specific information in writing when requested.
- This Article also sets out provisions governing postponement or refusal of requests, prioritization of requests based on resource constraints, limitations on what members may be required to modify with respect to requests received, and procedures for notifying members of unauthorized use or disclosure of information.
- Nothing in this Article shall prevent a Member from entering into or maintaining a bilateral, plurilateral, or regional agreement for sharing or exchange of customs information and data, including on a secure and rapid basis such as on an automatic basis or in advance of the arrival of the consignment or shall be construed to alter or affect Members' rights or obligations under such agreements.

13: Institutional arrangements

- A committee on trade facilitation is established under the WTO
- Members shall establish/maintain a national committee on trade facilitation to facilitate domestic coordination and implementation of the TF Agreement.

Links

<https://mc9.wto.org/> contains text of the Ministerial Decision and the Trade Facilitation Agreement