

# WTO TRADE FACILITATION AGREEMENT

## A BUSINESS GUIDE FOR DEVELOPING COUNTRIES





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The guide explaining the significance of the WTO Agreement on Trade Facilitation and the reasons why it was proposed – aims at helping business communities in developing countries understand the obligations that these countries have taken on or will do so in the future; gives an overview of the main provisions of the agreement; explains how it is intended to ease border controls for business, and how business can still influence the way that governments implement the obligations and specific commitments they have undertaken in reaching the Agreement; includes bibliographical references (pp. 29-30).

Descriptors: **Trade Facilitation, WTO, SMEs, Developing Countries**

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English

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## Foreword

One of the main outcomes of the World Trade Organization's 9th Ministerial Conference in Bali, Indonesia, in December 2013 has been an Agreement on Trade Facilitation. Trade facilitation is important because it can have a major impact on bringing down trade transaction costs. It essentially concerns the cost of clearing goods for import and export. Despite the huge attention given to the cost of border controls over the last 10-15 years, goods continue to be delayed at the border for days (or even weeks), slowing trade flows and adding costs to business that are often passed on to consumers. Trade transaction costs are highest in developing countries, which are the least able to carry this additional burden.

Several elements of poor connectivity affect least developed countries (LDCs): many are remotely located, land-locked, or are small island states; transport infrastructure is often poor. As a result, the average cost of trading is higher in LDCs (for instance, 43% more to move a container across the border) than in other developing countries.

These costs affect small and medium-sized enterprises (SMEs) disproportionately. They often lack the means and capacity to comply with complex rules, and the high costs of compliance with customs and border procedures and other non-tariff measures (NTMs) represent significant charges in relation to their smaller volumes of trade. This makes them uncompetitive as suppliers and hampers their integration into regional and global value chains.

The trade facilitation agreement, which will be binding on all 159 WTO Member States at the level of all border agencies, and not just customs authorities, has been described as a classic 'win-win' outcome. But because there are implementation concerns among some developing countries, and especially LDCs, the agreement includes some flexibilities, including provision for technical assistance for its implementation.

To ensure that business, particularly businesses in developing countries, can benefit, it is important that business understands what the agreement provides for and how the implementation process can be influenced. This simple guide aims at explaining why the agreement has been proposed, what the main provisions of the agreement are, how it is intended to ease border controls for business, and how business can ensure its voice is heard in the way that governments implement the obligations and specific commitments they have undertaken in reaching the agreement.

This guide is not a guide on trade facilitation itself, on which other studies and guidance have been issued by many other organizations, notably the World Bank, the Organisation for Economic Co-operation and Development (OECD) and the United Nation's own Centre for Trade Facilitation and Electronic Commerce (UN/CEFACT), both independently and under the joint auspices of the Global Facilitation Partnership for Transportation and Trade (GFP).

The International Trade Centre (ITC) is ready to work with SMEs in developing countries to increase their knowledge of the new rules and the benefits available to them. It will also assist developing country governments with the preparation of print and online communication materials to inform SMEs of the new rules, under the transparency provision of the agreement. ITC will also facilitate dialogue between the public and private sectors, providing SMEs with a platform to share with government representatives the kind of information they need to enhance their export competitiveness, and to provide a feedback mechanism on the implementation of the new rules on the ground.



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## Acknowledgements

Malcolm McKinnon, former Head of Trade in Services at the United Kingdom's Department for Trade and Industry, and former Chief Executive of SITPRO Ltd, the United Kingdom's trade facilitation body, is the author of this guide. He has based it on his six years as Chief Executive of SITPRO, as well as 11 years as the United Kingdom's leading trade official on trade in services (1994-2005).

Malcolm has travelled extensively, especially in sub-Saharan Africa, where he has seen at first hand the problems at border crossings of achieving efficient border management. Together with his predecessor and the Commonwealth Business Council, he also facilitated the Boksburg Group, an informal group of developing country trade and customs officials and private sector representatives, who met in their personal capacities and helped to influence the early thinking about the potential scope of a WTO trade facilitation agreement.

This book has involved consultation with other experts in the field of trade facilitation. The author is particularly indebted to Nora Neufeld at the WTO Secretariat, who has given valuable advice over the years during the development of the trade facilitation text, as well as former colleagues at SITPRO, particularly Shondeep Banerji and Graham Bartlett, who kindly read through the script and offered comments for improvement.

Rajesh Aggarwal, Chief, Business and Trade Policy Section, supervised the writing of the paper, with Jean Sébastien Roure, Senior Officer, and Charlotta Falenius, Associate Expert, Business and Trade Policy Section, ITC.





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## Abbreviations

The following abbreviations are used:

DDA	Doha Development Agenda
EAC	East African Community
EU	European Union
FDI	Foreign direct investment
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GFP	Global Facilitation Partnership for Transportation and Trade
IBRD	International Bank for Reconstruction and Development
ICC	International Chamber of Commerce
IFC	International Finance Corporation
ITC	International Trade Centre
JBC	Joint Border Committee
LPI	Logistics Performance Index
MFN	Most-favoured nation
OECD	Organisation for Economic Co-operation and Development
OSBP	One-stop border post
SADC	Southern African Development Community
SMEs	Small and medium-sized enterprises
TEU	Twenty-foot container equivalent unit
UNECE	United Nations Economic Commission for Europe
UN/CEFACT	United National Centre for Trade Facilitation and Electronic Commerce
UNCTAD	United Nations Conference on Trade and Development
WCO	World Customs Organization
WTO	World Trade Organization



## Executive summary

The Agreement on Trade Facilitation was adopted at the World Trade Organization's 9th Ministerial Conference in Bali, Indonesia, in December 2013. This Agreement is the first major agreement to have been reached by WTO Member States since the conclusion of the Uruguay Round 20 years ago.

Barely was the ink dry on the Uruguay Round of multilateral trade negotiations concluded in 1993 than some WTO Member States were already thinking about the next round. Amongst the issues that featured in this thinking was trade facilitation. The uncertainty over how long it will take to clear a border crossing creates unpredictability, and adds cost to business that are eventually passed on to consumers in countries where consumers are least able to afford them. Uncertainty in supply chains also acts as a disincentive to potential business investors, who rely on efficient supply chains to minimise inventory costs. Companies have to tie up capital in extra holding costs above the levels that should be necessary. This is especially true for businesses in developing countries, which face these delays and uncertainties on a daily basis.

Inefficient border procedures also add costs to the very authorities whose job it is to control the borders. Over-zealous inspection can actually delay revenue collection. When authorities are intent on maximizing collection from import duties and other border taxes by checking every consignment that passes across the border, they cause queues to form at border points; with faster traffic-flows, revenues could be collected more efficiently post-clearance from compliant traders.

Trade facilitation aims at simplifying not only the documentation required to clear goods, but also the procedures employed by border agencies. Focusing on the biggest risks allows border agencies to speed up the flow of goods across the border, and increases the collection of duties. Trade facilitation has been described as a classic 'win-win' subject for developing and developed countries, since there should be no losers. Yet some developing countries have been concerned about the potential costs of implementing trade facilitation commitments, and have sought commitments from developed countries and other donors to assist in the implementation process.

WTO members finally agreed to add trade facilitation to the Doha Development Agenda in 2004. The Agreement reached at Bali in late 2013 provides a framework of rights and obligations that should see reform of border procedures around the world, if legitimate requests from developing countries for technical assistance are met.

The agreement has the potential to be of particular benefit to traders in developing countries, who continually face lengthy and costly border delays. It will be important for business in developing countries to monitor its implementation in the countries with which they trade. This simple guide aims at helping business understand the obligations that developing countries have accepted - or will in due course accept, so that they can work in partnership with governments to arrive at outcomes that will benefit governments and traders alike.



## Chapter 1      **Negotiating history**

### **WTO members have wanted an agreement for 20 years**

Barely was the ink dry on the Uruguay Round of multilateral trade negotiations concluded in 1993 than some WTO Member States were already thinking about the next round. Amongst the issues that featured in this thinking was trade facilitation.

There is no commonly-used definition of trade facilitation. Former United States Trade Representative Robert Zoellick was once quoted as describing trade facilitation measures as 'basically an extension of market access procedures that lower transaction costs and increase timeliness of transit.' The WTO's definition, which has formed the basis for the new WTO agreement, is:

'The simplification and harmonization of international trade procedures,' with trade procedures being 'the activities, practices and formalities involved in collecting, presenting, communications and processing data required for the movement of goods in international trade'.

The uncertainty over how long it will take to clear a border crossing creates unpredictability and adds cost to business, costs which are eventually passed onto consumers in countries where consumers are least able to afford them. Uncertainty in supply chains also acts as a disincentive to potential business investors, who rely on efficient supply chains to minimise inventory costs. Companies are faced with having to tie up capital in extra holding costs to compensate.

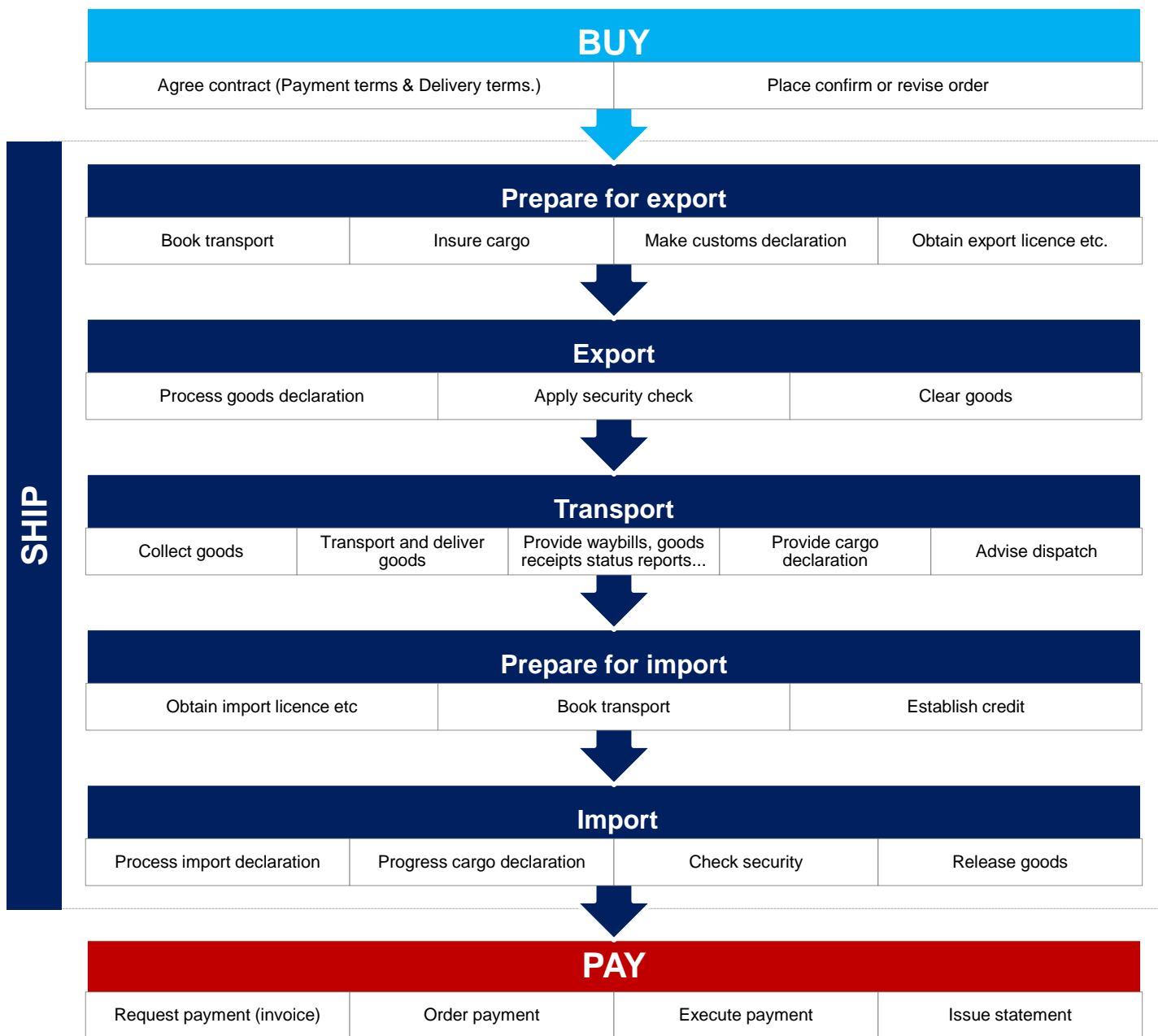
In 2003, the International Chamber of Commerce (ICC), which represents 8,000 businesses around the world, stated that 'a trade facilitation agreement is fundamental to the establishment of an improved and more efficient management process for international trade in goods on a global basis. Binding commitments are essential because only WTO can ensure the political support required for durable improvements in global trade.' It also noted that the main beneficiaries of an agreement would be developing countries, since it would 'augment the capacity of developing countries to handle and grow their share of international trade, not least with other developing countries.'

Speaking in early 2013 to the Chittagong Chamber of Commerce in Bangladesh (WTO, 2013a), former WTO Director General Pascal Lamy said: 'Multilateral trade negotiations can sometimes be difficult to relate to the day-to-day work of doing business. Not so for trade facilitation. Effective trade facilitation increases customs productivity, improves tax collection at the border and helps to attract foreign direct investment. A multilateral agreement on trade facilitation would expedite the movement of goods across borders and would improve the transparency and predictability of trade and doing business. With the growing prevalence of regional and global supply chains, effective and predictable trade facilitation is an essential ingredient in making supply chains work for developing countries.'

### **The costs and benefits of trade facilitation**

Many studies have been undertaken to measure and monitor the costs of border controls. The World Bank, OECD, UNCTAD and the World Customs Organization (WCO) have been particularly prominent, while the United Nations Centre for Trade Facilitation and Electronic Commerce (UN/CEFACT) has focused on best practice and the development of international standards, such as its 'Buy-Ship-Pay' model – see figure 1.

**Figure 1: UN/CEFACT Buy-Ship-Pay model**



Source: Trade Facilitation Implementation Guide, UNECE, 2013.

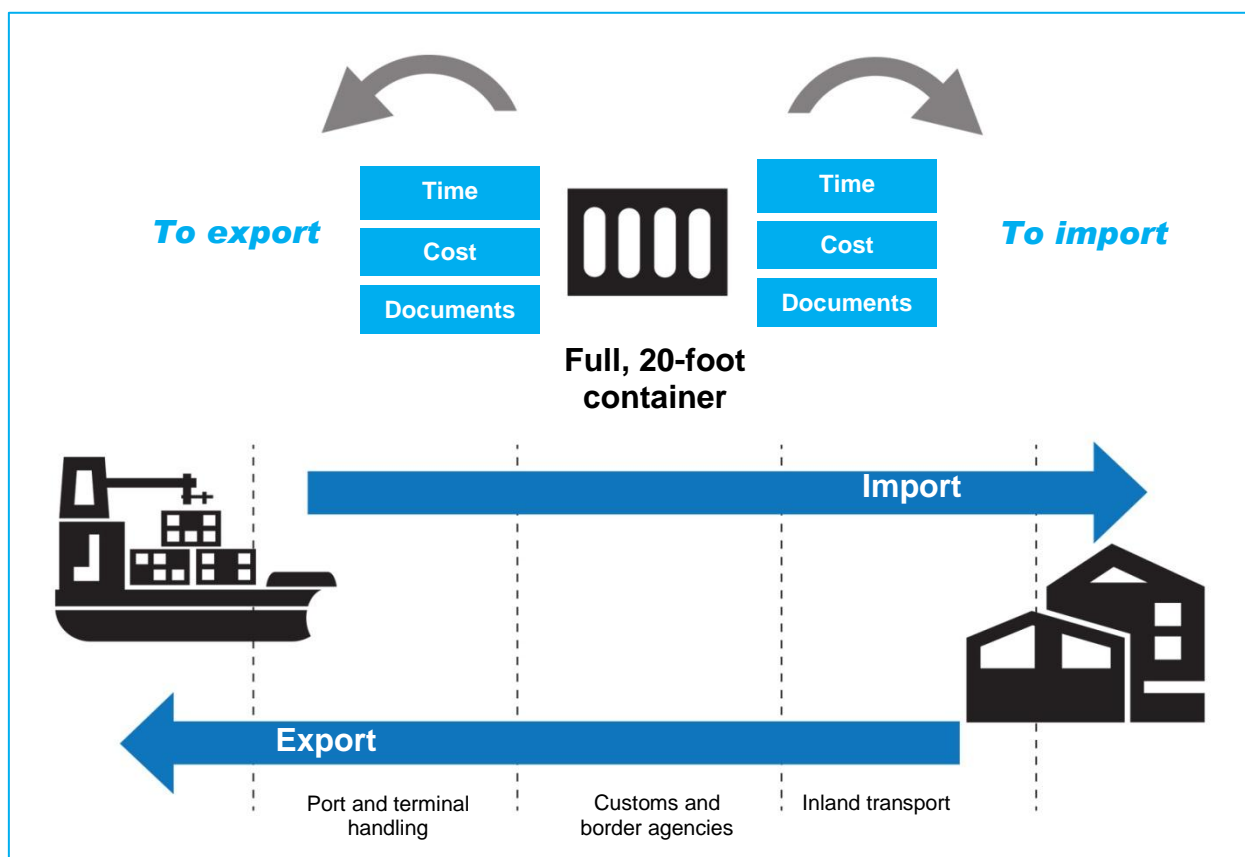
(The Buy-Ship-Pay model developed by UN/CEFACT describes the main processes and parties in the international supply chain. The supply chain ensures that goods are ordered, shipped and paid for while complying with regulatory requirements and supporting trade security. The Buy-Ship-Pay model identifies the key commercial, logistical, regulatory and payment procedures involved in the international supply chain, and provides an overview of the information exchanged between the parties throughout its successive steps. The model presents a 'top-down' view of the supply chain, linking the detailed 'bottom-up' actions derived from the business requirements that are specified in the UN/CEFACT standards development process.)

The World Bank’s annual Doing Business Reports include a chapter on trading across borders that measures the time, cost, documentation and procedures required to clear a typical 20 foot container (TEU) for import and export, and compares these factors across 189 countries (World Bank/IFC, 2013) – see



figure 2. This has become an important indicator and stimulus for reforming border procedures and improving a country's ranking.

**Figure 2: Measuring the ease of trading across borders**



**Source:** World Bank, Doing Business Report.

The World Bank also publishes a Logistics Performance Index, an interactive benchmarking tool created to help countries identify the challenges and opportunities they face in terms of trade logistics, and what they can do to improve their performance. The LPI 2012 allows for comparisons across 155 countries (IBRD/World Bank, 2012). OECD has similarly published studies on the impact of trade facilitation on trade costs (OECD, 2011).

It is consistently estimated that a trade facilitation agreement could reduce business costs by between \$350 billion and \$1 trillion, according to WTO (WTO, 2013), and could increase world trade by between \$33 billion and \$100 billion in global exports per year and \$67 billion in global GDP (World Bank, OECD, 2011). Hufbauer and Schott note that the estimated \$950 billion increase in two-way trade, as a consequence of significant trade facilitation, delivers GDP increases of approximately \$440 billion. For developing countries, the estimated \$1 trillion increase in two-way trade delivers GDP increases of \$520 billion. Overall, the potential trade expansion from a far-reaching trade facilitation agreement could translate to world GDP increases of \$960 billion annually (Hufbauer and Schott, 2013).

### Trade facilitation became a 'Singapore issue'

At the 1st WTO Ministerial Conference held in Singapore in 1996, Member States agreed to establish working groups to conduct studies or further work on the four issues; in the case of trade facilitation, Member States agreed:

'to undertake exploratory and analytical work, drawing on the work of other relevant international organizations, on the simplification of trade procedures in order to assess the scope for WTO rules in this area.'

Together, these four issues became commonly referred to as the 'Singapore issues'.

When the WTO Doha Development Agenda was adopted in 2001, the Doha Ministerial Declaration provided that the Council for Trade in Goods:

'shall review and as appropriate clarify and improve relevant aspects of Articles V (Freedom of Transit), VIII (Fees and Formalities Connected with Importation and Exportation) and X (Publication and Administration of Trade Regulations) of the GATT 1994 and identify the trade facilitation needs and priorities of members, in particular developing and least-developed countries.'

This still did not constitute a negotiating mandate, but it clarified the likely scope of any future negotiations. Subsequently, WTO Member States reviewed these three GATT articles from the point of view of their impact on border measures.

## Member States included trade facilitation in 'the July 2004 package'

In July 2004, in the light of the exploratory and review work that had been conducted since 1996, Member States finally agreed to add trade facilitation to the negotiating agenda of the Doha Development Agenda. The agreement in the so-called 'July package' read (paragraph 27):

'Recognizing the case for further expediting the movement, release and clearance of goods, including goods in transit, and the need for enhanced technical assistance and capacity building in this area, we agree that negotiations will take place after the Fifth Session of the Ministerial Conference on the basis of a decision to be taken, by explicit consensus, at that session on modalities of negotiations. In the period until the Fifth Session, the Council for Trade in Goods shall review and as appropriate, clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 and identify the trade facilitation needs and priorities of members, in particular developing and least developed countries. We commit ourselves to ensuring adequate technical assistance and support for capacity building in this area.'

The mandate for these negotiations is set out in Annex D ('Modalities for Negotiations on Trade Facilitation') of the 'July Package' of 2004, which is reproduced at appendix I. Under this mandate, Member States agreed the following:

- **GATT rules:** The negotiations 'shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit';
- **Technical assistance and capacity building:** The negotiations also aim at 'enhancing technical assistance and support for capacity building in this area,' and at developing 'provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues'. The results 'shall take fully into account the principle of special and differential treatment for developing and least developed countries';
- **Infrastructure:** Developing and least developed countries would not be obliged 'to undertake investments in infrastructure projects beyond their means'.

In October 2004, a WTO Negotiating Group on Trade Facilitation (NGTF) was established. Member States have met in this group since then to reach the agreement that was finally adopted at the Bali Ministerial.

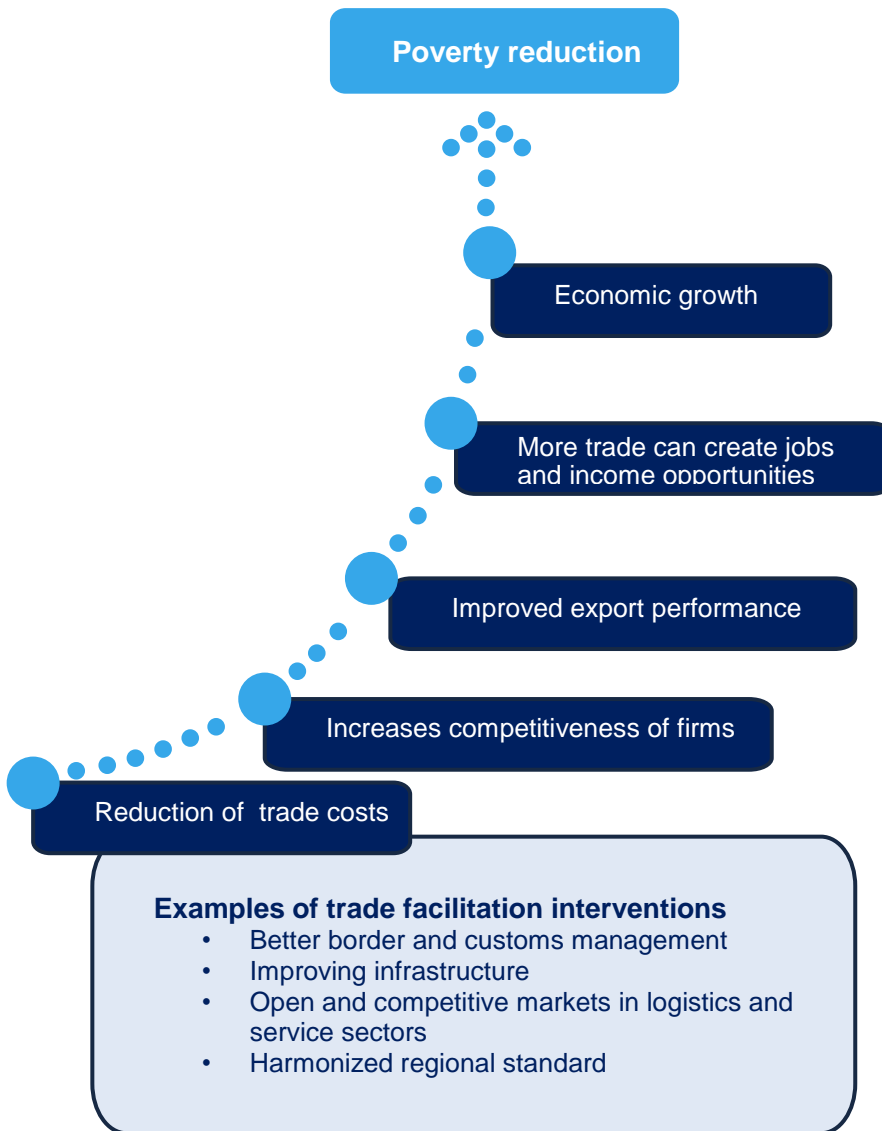
## Developing countries worried about implementation costs

With such consistently strong indicators pointing to the benefits of trade facilitation, and the near-universal claim that trade facilitation is a classic 'win-win' subject for both developed and developing countries, it may seem surprising that some developing countries have been less than enthusiastic about embracing a

WTO trade facilitation agreement. Some of this reluctance has been linked to concerns that other outstanding issues from the Uruguay Round have not been sufficiently progressed to justify new rules in other areas. Other concerns, however, have related to fears about the costs of implementing trade facilitation commitments.

There was strong support from industry groups for rapid conclusion of the agreement in its current form, citing OECD estimates of a reduction in trade transaction costs of 13%-15.5% in developing countries (Business Standard, 2013). The World Bank has estimated the costs of implementing the measures likely to be covered by a trade facilitation agreement at as little as \$7 million-\$11 million in the countries covered by the study (World Bank, 2013). And a study by Rippel has argued that the costs of not implementing the agreement may be far higher than the immediate implementation costs, in terms of how trade facilitation can contribute to reaching development goals, as figure 3 illustrates:

**Figure 3: How trade facilitation can contribute to reaching development goals**



Source: Rippel, 2011.

## Chapter 2 Why the existing GATT was not enough

### Articles V, VIII and X

It was agreed that the basis for the trade facilitation agreement would be Articles V, VIII and X of the General Agreement on Tariffs and Trade (GATT) 1994. These articles provide rules that have existed since 1947 covering:

- Article V - Freedom of transit
- Article VIII - Fees and formalities connected with importation and exportation
- Article X - Publication and administration of trade regulations

These articles were deemed to capture the essence of what trade facilitation is about. It was also easier to base work on trade facilitation in the WTO on a clarification of existing provisions rather than attempt to design a new agreement from scratch. As a consequence, the process carried out in the NGTF has been to consider whether these articles are adequate to promote trade facilitation through efficient national procedures and effective border management. The mandated clarification and improvement of these articles has been based on proposals by WTO Member States.

This chapter looks at the current provisions of each of these articles.

### Freedom of transit (Article V)

The aim of Article V is to ensure that WTO Member States allow freedom of transit through their territory for transportation to or from the territory of other WTO Member States. It does this by setting out two main obligations:

- Not to hinder traffic in transit by imposing unnecessary delays or restrictions or by imposing unreasonable charges;
- To grant Most-Favoured-Nation (MFN) treatment to all transit goods of WTO Member States.

WTO has interpreted this to mean that Member States may only impose charges on traffic in transit in only two ways: charges for transportation and charges for administrative expenses arising from transit or related services. Such charges must be reasonable (undefined) and non-discriminatory. In this regard, each Member State is obliged to treat products which have been in transit through the territory of any other Member State no less favourably than would have been the case if such products had been transported from their place of origin to their destination without going through the territory of the Member State concerned.

Article V has never been cited in WTO dispute settlement cases. While violations have been claimed, they have never been taken as far as a panel ruling.

Nevertheless, in reviewing this article in the NGTF, WTO Member States have proposed the following amendments and improvements:

- Strengthened non-discrimination (MFN and national treatment) provisions;
- Predictable, reduced and simplified fees and charges;
- More transparent transit formalities and documentation for traders;
- Use of international standards;
- Promotion of regional transit arrangements;
- Limitation of inspections and controls (bonded transport);
- Quota-free transit.

## **Fees and formalities (Article VIII)**

The aim of Article VIII is to limit the costs and complexity of the import and export process. It imposes specific legal obligations on Member States with respect to the fees and charges that may be charged in connection with importation and exportation, and the penalties that may be imposed for minor breaches of customs procedures. It also explicitly recognizes the need to reduce the number and complexity of import- and export-related fees and formalities, although it provides no legal requirement to do so.

The provisions of Article VIII have been the subject of a number of dispute settlement cases. Consequently, WTO Member States agreed that the article needs further clarification and proposed amendments and improvements including:

- Greater predictability and reliability of procedures;
- A cost-based limit to fees and charges;
- Simplified formalities and documentation;
- Use of international standards;
- Adoption of single windows for traders;
- Elimination of pre-shipment inspection, mandatory customs brokers and consular transactions;
- Expedited release and clearance of goods;
- Greater use of risk assessment techniques and authorised trader schemes;
- Post-clearance audits.

## **Transparency (Article X)**

The main obligations arising from Article X are for Member States to publish their trade laws in a prompt and accessible manner, to refrain from enforcing measures prior to publication, and to administer such measures in a uniform, impartial and reasonable manner. Member States are also required to institute or maintain tribunals or other procedures for prompt review and correction of administrative action relating to customs matters.

Panel cases have given interpretative guidance on some of the provisions in the article.

In reviewing Article X, Member States proposed the following amendments and improvements:

- Better and easier access to information for traders;
- Use of modern technology for publication (i.e. Internet publication);
- The establishment and publication of enquiry points for customs matters;
- Prior publication and consultation;
- Advance rulings on customs matters;
- Rights of appeal for traders.

## **Identifying business needs**

Attempts have been made to identify business interests in the WTO trade facilitation negotiations. In 2003-2004, SITPRO and the Commonwealth Business Council developed an initiative known as the Boksburg Group, which brought together trade and customs officials, as well as business representatives from developing countries, to consider the objectives of a possible trade facilitation agreement. Later, when negotiations had been launched as part of the 'July package', the Boksburg Group continued to discuss issues that could be included in an agreement, and helped developing countries in generating proposals for the negotiations.

Then in 2007, a list of common issues emerged from a study of business needs in East, West and Southern Africa. This initiative was carried out by the Business Action for Improving Customs Administration in Africa (BAFICAA), in response to the Commission for Africa Report in 2005. The issues identified are set out in box 1.

**Box 1. Six key trade facilitation issues for the African private sector**

1. The need for fast-track customs services for compliant and low risk taxpayers and traders.
2. The need for customs to work closely with, and consult regularly with the private sector to ensure support for the changes and reforms in customs administration.
3. The need to speed up the automation of all customs processes and procedures.
4. A service charter between the customs services department and the private sector setting out the expectations of each party from the other, as well as setting out the parameters for the expected level and quality of services.
5. Removal of duplication and bureaucracy in post clearance audits and valuation processes.
6. The need for professional training, accreditation and certification of clearing, forwarding and customs agencies.

**Source:** BAFICAA, 2007.

Not all of these are relevant for a WTO agreement, but those that are have been captured in some way in the agreement adopted at Bali.

## Chapter 3 The new WTO Agreement on Trade Facilitation

### The overall shape of the agreement

The new WTO Agreement on Trade Facilitation (WTO, 2013b) comprises two sections: Section I, dealing with trade facilitation measures and obligations; and Section II, focusing on flexibility arrangements for developing and least developed countries (otherwise known as 'special and differential treatment').

This guide will focus mainly on Section I. It will, however, consider in Chapter 4 the implications for business arising from Section II.

### The specific issues that have been agreed

The trade facilitating issues in Section I are set out in 12 articles, arranged as follows:

- Article 1: Publication and availability of information
- Article 2: Prior publication and consultation
- Article 3: Advance rulings
- Article 4: Appeal or review procedures
- Article 5: Other measures to enhance impartiality, non-discrimination and transparency
- Article 6: Disciplines on fees and charges imposed on or in connection with importation and exportation
- Article 7: Release and clearance of goods
- Article 8: Border agency coordination
- Article 9: Movement of goods under customs control intended for import
- Article 10: Formalities connected with importation and exportation and transit
- Article 11: Freedom of transit
- Article 12: Customs cooperation

OECD has developed a set of 12 trade facilitation indicators (TFIs) that correspond to these categories of measures (Moisé, Orliac and Minor, 2011). Research findings suggest that the greatest contributions to reducing trade costs are likely to come from measures to streamline procedures and from advance rulings. Other areas with some potential are automation, and measures to streamline fees and charges. OECD has concluded that the cumulative cost reduction potential of all the TFIs is almost 10% of trade costs, an estimate which they note is consistent with other studies of the impact of trade facilitation on trade costs. It is these areas, then, that should also matter most to business.

This paper now considers the provisions of each of the articles in Section I and the implications for business.

#### Transparency

The first group of articles, Articles 1-5, essentially address transparency issues, and expand on GATT Article X.

## **Article 1: Publication and availability of information**

The issues covered by this article are:

1. Publication
2. Information available through the Internet
3. Enquiry points
4. Notification

The main obligations here are that Member States are required to publish 'promptly' a wide range of specific information related to the requirements and procedures for clearing goods for import or export. This includes procedures, forms and documents; rates of duty and taxes; rules for the classification and valuation of goods for customs purposes; rules of origin; transit restrictions and procedures; penalties; appeal procedures; trade agreements; and tariff quota administration arrangements.

In addition, Member States are required to publish this information on the Internet - notably procedures, forms and documentation, together with information on national enquiry points, which must be designated and notified to WTO.

Previously, GATT Article X had referred specifically to only some of these requirements (such as customs valuation and classification, rates of duty, taxes and other charges). These additional, specific transparency requirements should assist business in obtaining up-to-date information about all import and export procedures and requirements.

## **Article 2: Prior publication and consultation**

The agreement imposes new obligations on Member States to consult traders and other interested parties prior to introducing new or amended laws or regulations related to the movement, release and clearance of goods. It also provides for regular consultations between border agencies, traders and other stakeholders within its territory.

Business has often complained that it is not able to get sufficient access to border agencies for consultations on customs and other border matters (although the position varies considerably between countries). Contributory factors may include suspicions about stakeholders' compliance levels that some border agencies hold, and traders' concerns regarding the integrity of border officials responsible for enforcing compliance. Ensuring regular consultations will help reduce those anxieties, and afford traders and border officials an opportunity to discuss the most efficient and least burdensome approaches to achieving regulatory objectives.

## **Article 3: Advance rulings**

This is a new area for WTO rules, but reflects existing practice in many - if not most - Member States. OECD has noted that this is one of the most effective measures in the agreement for facilitating trade.

Importers and exporters are often confronted with inconsistent decisions on classification and origin, depending on, for example, the customs office of import or export, or the rotating allocation of appraisal officers. This leads to uncertainty in the entire trade transaction, as these different decisions have an impact on the duties to be paid and ultimately on the end price of the product. The effect can be to induce supply chains to move to countries and locations with higher certainty, predictability and reliability, with an obvious impact on trade development.

Inconsistency of decisions is also a major source of dispute between customs officials and traders. Wrong decisions on valuation, classification of goods, or rules of origin may constitute a non-tariff barrier to trade if they are a de facto way to circumvent the official tariff schedule. This may also give rise to corruption if traders resort to bribery in a bid to obtain better treatment for their goods.



Advance rulings are binding decisions by customs, at the request of the person concerned, on specific aspects of goods, in particular the classification and origin of the goods in preparation for importation or exportation. Advance rulings facilitate the declaration, and consequently ease the release and clearance process, as the classification of the goods has already been determined in the advance ruling, and is binding on all customs offices for the specified period of its validity – which may be three months or a year.

The WCO's guidelines on advance rulings in accordance with the provisions of standard 9.9 of the Revised Kyoto Convention define the term as follows: 'The expression "binding ruling" (or "advance ruling") generally designates the option for customs to issue a decision, at the request of the economic operator planning a foreign trade operation, relating to the regulations in force. The main benefit for the holder is the legal guarantee that the decision will be applied' (see <http://www.wcoomd.org>).

Advance rulings enhance certainty and predictability of cross-border trade transactions. They reduce disputes with the customs authority on tariff headings, valuation and origin (influencing eligibility for preferential treatment) at the moment of release or clearance, and they consequently avoid delays. Customs integrity will not be challenged during the clearance of consignments, and possibilities for corruption are reduced.

The new agreement is therefore a major advance for trade facilitation. The obligations imposed on Member States are:

- To issue an advance ruling in a reasonable, time-bound manner to an applicant that has submitted a request in writing containing the necessary information; or to explain in writing the relevant facts as to why an advance ruling has been declined (some examples are contained in the article);
- To guarantee the advance ruling for a reasonable period of time and to be bound by it;
- To publish requirements for how an applicant may apply for an advance ruling and for how long it shall be valid; and how an applicant may request a review of an advance ruling;
- To publish such advance rulings as may be of interest to other traders.

#### **Article 4: Appeal or review procedures**

The new agreement expands provisions on appeal or review procedures - administrative or judicial – beyond those already contained in GATT Article X. While this is primarily aimed at decisions by customs authorities, Member States are encouraged to extend these provisions to decisions by other relevant border agencies.

This provision echoes Chapter 10 of the General Annex to the revised Kyoto Convention. Where a trader considers that they have been directly affected by a decision or omission of Customs, it is important that Customs provide upon request an explanation of the reasons for their decision or omission, and to offer the trader the right to appeal to a competent authority. The purpose of this right of appeal is to protect individuals or traders against decisions or omissions of Customs which may not comply fully with the laws and regulations that Customs are responsible for administering and enforcing. In addition, the review conducted by the competent authority and the verdicts of that review can be a suitable means of ensuring uniform application of the laws and regulations (WCO).

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

This article contains new WTO obligations on Member States relating to border controls and inspections of foods, beverages or feedstuffs. Where a Member State issues notifications or guidance for enhancing the level of control or inspection of such goods, the article obliges the Member State concerned to base such controls or inspections on risk, to apply such measures uniformly at relevant points of entry, to withdraw the procedures promptly when the circumstances no longer justify them, and to publish promptly an announcement of the termination of the measures. It also requires the importer or his authorised agent to

be informed of any cases where the goods have been detained, and, if a first test proves negative, it obliges the Member State to carry out a second sample test if requested to do so.

Traders that import such goods know that the goods are subject to health controls that aim to protect consumers from products that may be unfit for consumption being placed on the market. Where any food which is unsafe is part of a batch, lot or consignment, control authorities often assume that the whole batch, lot or consignment is unsafe. This also applies to animal feed, which are subject to controls preventing the placement of unsafe feed on the market or being fed to any food-producing animals. Health risk analysis should be based on the available scientific evidence and is carried out in an independent, objective and transparent manner. Given the costs to traders of losing consignments deemed to be unsafe, they may wish to seek a second opinion. This article provides for such an opportunity to be provided by Member States.

### **Fees and formalities for import, export and transit**

The next group of articles, Articles 6-12, are concerned mainly with fees, charges and formalities for import, export and transit, expanding on GATT Articles V and VIII.

## **Article 6: Disciplines on fees and charges imposed on or in connection with importation and exportation**

The aim of this article is to limit the size of fees and charges to the approximate cost of the services rendered, in keeping with existing GATT obligations. A publication requirement has been included, together with a clause requiring Member States to review their fees and charges periodically and not to demand payment of revised charges before the information on them has been published. A series of disciplines has been included on the imposition of penalties. These ensure that penalties are imposed only on persons responsible for a breach of laws or regulations, and guard against conflicts of interest in the assessment and collection of penalties and duties. They also specify that penalties imposed should be proportionate to the breach, take account of mitigating circumstances, be communicated in writing, and be imposed within a fixed, finite period from the alleged offence.

Business should benefit from the prevention of arbitrary imposition of fees and penalties, and from new opportunities to mount challenges, through rights exercised by their governments, to measures that are potentially disproportionate.

## **Article 7: Release and clearance of goods**

This detailed article sets out the procedures which Member States are obliged to establish or maintain for the release and clearance of goods for import, export or transit. In effect, it provides for best practice in customs and other border procedures, and reflects recommendations of the World Customs Organization, notably in the Revised Kyoto Convention – see box 2 and appendix II.<sup>1</sup>

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<sup>1</sup> International Convention on the Simplification and Harmonization of Customs Procedures (as revised), [www.wcoomd.org/Kyoto\\_New/Content/content.html](http://www.wcoomd.org/Kyoto_New/Content/content.html)

## Box 2. The Revised Kyoto Convention

The International Convention on the Simplification and Harmonization of Customs procedures (Kyoto Convention) entered into force in 1974 and was revised and updated to ensure that it meets the current demands of governments and international trade.

The WCO Council adopted the revised Kyoto Convention in June 1999 as the blueprint for modern and efficient customs procedures in the 21st century. Once implemented widely, it will provide international commerce with the predictability and efficiency that modern trade requires. The revised Kyoto Convention elaborates several key governing principles - chief among which are the principles of:

- Transparency and predictability of customs actions;
- Standardization and simplification of the goods declaration and supporting documents;
- Simplified procedures for authorized persons;
- Maximum use of information technology;
- Minimum necessary customs control to ensure compliance with regulations;
- Use of risk management and audit based controls;
- Coordinated interventions with other border agencies;
- Partnership with the trade.

The revised Kyoto Convention promotes trade facilitation and effective controls through its legal provisions that detail the application of simple yet efficient procedures. The revised Convention also contains new and obligatory rules for its application which all Contracting Parties must accept without reservation.

The revised Kyoto Convention entered into force on February 3, 2006.

Article 7 includes:

- *Pre-arrival processing*

The new agreement requires Member States to operate procedures that would allow documentation, including in electronic format, and other formalities to be dealt with prior to the arrival of imported goods, in order to speed up their release once they have arrived.

- *Electronic payment*

The agreement obliges Member States, to the extent practicable, to allow traders the option of making payments electronically for duties, fees and other customs charges.

- *Separation of release from final determination of customs duties, etc*

Member States are required to operate procedures that will allow goods to be released for import or export before a final determination has been made of the customs fees and charges, provided that all other regulatory requirements have been met. A guarantee in the form of a surety or other payment instrument may be required, but any such guarantee should be no greater than the amount ultimately to be required and should be discharged as soon as it is no longer required.

- *Risk management*

Each Member State is required, to the extent possible, to operate an appropriate risk management system, under which customs controls would be focused on the highest-risk consignments, thus allowing low-risk consignments to enjoy faster release. Random customs controls may still be applied to any consignment, however, in keeping with best customs practice for risk management.

- *Post-clearance audit*

Member States are also required to operate a post-clearance audit system, under which traders would be obliged to subject their records to customs authorities to demonstrate compliance with customs controls and to allow verification of compliance with other regulatory requirements.

- *Average release times*

Member States are encouraged to publish average release times, in order to demonstrate to traders that goods are not being held up unduly.

A particular tool recommended by the agreement is the WTO Time Release Study.<sup>2</sup> Writing in the World Customs Journal, Matsuda explains that as part of the efforts by customs administrations to streamline interagency procedures at borders and ensure that trade facilitation measures are being applied effectively, a Time Release Study (TRS) has been used to improve the performance of the functions being measured. He describes this as a unique tool for measuring the performance of border activities, and customs procedures in particular, as they relate directly to trade facilitation at the border (Matsuda, 2011).

- *Authorised operators*

Member States are obliged to provide additional trade facilitation measures to operators who meet specified criteria, otherwise referred to as 'authorised operators'.

In recent years, there has been a growing trend among customs authorities to develop programmes that allow certain traders to benefit from additional trade facilitation measures, such as rapid release, reduced documentation and data requirements, and fewer physical inspections. Such traders may be regarded as 'trusted', in having a track record of full compliance that supports the assumption that they will continue to comply with border requirements, and that they therefore constitute a low risk. Trusted trader programmes have been offered in both developed and developing countries. In the EU these traders are referred to as 'authorised economic operators', and are granted recognition when they have been approved against specified criteria, such as history of compliance, records management, financial solvency and supply chain security – criteria that are referred to specifically in the WTO Agreement.

Responding to these global developments, the WCO adopted in June 2005 the SAFE Framework of Standards to Secure and Facilitate Global Trade ('the SAFE Framework of Standards'). Its purpose was to support changes to the world trade regime and the growth in the end-to-end management of goods moving across borders, while recognizing the significance of a closer partnership between customs and the business community in relation to supply chain security. Guidelines on AEO conditions and requirements have been a key element in these international standards. These have undergone a number of revisions and updates, the latest version being published in June 2012 (WCO, 2012).

- *Expedited shipments*

Member States are obliged to adopt or maintain procedures for allowing for expedited release of 'at least' those goods entered through air cargo facilities.

This is a particular concern of express delivery operators, many of which operate air cargo services and whose services rely on the ability to offer just-in-time delivery. In modern global supply and value chains, just-in-time delivery helps to keep down business costs such as holding costs for inventory and increases competitiveness.

- *Perishable goods*

The agreement obliges Member States to provide, under normal circumstances, for the release of perishable goods within the shortest possible time, giving them appropriate priority when scheduling

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<sup>2</sup> The WCO Time Release Study Guide Version 2 is available at: [www.wcoomd.org/files/1.%20Public%20files/PDFandDocuments/Procedures%20and%20Facilitation\\_2/instruments/Final%20TRS%20Guide%20Version%2011%20EN.pdf](http://www.wcoomd.org/files/1.%20Public%20files/PDFandDocuments/Procedures%20and%20Facilitation_2/instruments/Final%20TRS%20Guide%20Version%2011%20EN.pdf)

examinations, and allowing for proper storage prior to release, including release at storage facilities where practicable, and at the request of the importer.

## **Article 8: Border agency coordination**

This article places an obligation on Member States to ensure that its authorities and agencies responsible for border controls and procedures for import, export and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade. The article suggests that such cooperation and coordination may include:

a. *Alignment of working days and hours*

Problems arise when border authorities on either side of a border open at different times. The result is that the border is closed for longer than necessary, a problem that can easily be avoided by alignment. Until recently, the Songwe River border crossing between Malawi and Tanzania both operated from 06:00 until 18:00, without taking into account the one hour time difference between the two countries. Alignment has been achieved by altering the crossing times in Tanzania by one hour from 07:00 until 19:00.

b. *Alignment of procedures and formalities*

When different border agencies operate independently of each other, delays can occur as traders have to comply separately with uncoordinated requirements. Coordination helps to ensure that clearance of goods can be achieved more quickly and efficiently. Data harmonization and document alignment can also be particularly important examples of how procedures and formalities can be coordinated.

c. *Development and sharing of common facilities*

Efficiencies can be achieved if border agencies share common facilities, such as buildings. For example, Co-location in verification sheds (as at Malaba – see box 4 below) helps to ensure that physical inspections can be carried out together. An example of best practice is in Poland, where the establishment of one-stop processing and the construction of joint processing facilities at land border crossing points has yielded a 30% reduction in processing time (CSD, 2011).

d. *Joint controls*

If border agencies need to verify the contents of a consignment, it causes delay if those agencies independently require a physical inspection. Sharing of data and other coordination of controls also aids the control process.

e. *Establishment of one stop border post control*

A number of countries have gone down the route of creating 'one-stop border posts' (OSBP), involving closer cooperation between the border agencies operating at a particular border – notable examples include the Chirundu crossing (Zambia / Zimbabwe) and the Malaba crossing (Kenya / Uganda), where the OSBP has been established in the station buildings at the rail head on the Kenyan side – see box 4.

**Box 3. One-stop border post: Chirundu between Zambia and Zimbabwe**

The Chirundu one-stop border post between Zambia and Zimbabwe was officially inaugurated in December 2009. It was hailed as the first African one-stop border post. The goal was to address the challenges of one of the busiest border crossings in the region where transporters experienced significant delays, due to clearance of consolidated loads, and procedures by the revenue authorities at the border (Curtis 2009).

The establishment of the one-stop border post has provided some significant improvements: for example, passengers and commercial traffic stop only once to complete border formalities for both countries, and waiting times for commercial traffic have been reduced from about four to five days to a maximum of two days and often to a few hours.

However, the process of transforming the border-crossing and complete integration of all procedures is a long-term project that has shown that trade facilitation is not only about bricks-and-mortar investment but requires commitment, negotiations, and harmonisation of procedures and policies. The initial results also indicate the importance of starting discussion on reforms of rules and procedures early in the process.

**Source:** TradeMark Southern Africa 2011, from Rippel (2011).

**Box 4. One-stop border post: Malaba between Kenya and Uganda**

The border post at Malaba between Kenya and Uganda is one of East Africa's busiest borders. Over 1,000 trucks cross via Malaba each day handling roughly 40% of transit cargo en route to and from Mombasa and Rwanda, Burundi, the Democratic Republic of Congo, South Sudan and Uganda. However, the crossing suffers from congestion and delays. In an effort to ease the congestion, the Kenya and Uganda Revenue Authorities agreed to establish a one-stop border post. The OSBP was opened in the rail terminal on the Kenyan side, with co-location of officials from both authorities in the railway station. However, this did little to ease the congestion for trucks, which carry the bulk of goods across the border.

Various initiatives have been taken to make the border post more efficient. Since 2009, USAID has promoted coordinated border management through the establishment and support of Joint Border Committees (JBCs) at 16 border posts in East Africa, of which the first was established at Malaba. JBCs are working groups made up of government agencies and private-sector stakeholders involved in cross-border trade, and promote coordination between government agencies and businesses to enhance efficiency at borders. Since the establishment of the JBC at Malaba, joint verification of cargo and 24/7 operations have been established. As a result, trucks can cross the Malaba border in as little as three hours, compared to several days a few years ago.

Another new project involves the construction, started in October 2013, of multibillion one stop border post facilities at the Malaba and nearby Busia border points. The project is funded through a loan from the World Bank and a grant from Trademark East Africa and the Government of Uganda. The scope of the work will include the construction of a customs facility that will include goods inspections shed for joint inspection of Uganda bound cargo and co-location of other relevant agencies. The works will also include the construction of a modern immigration facility, plant and animal health facility, and a security facility for cross border operations.

The East African Community (EAC) regional authorized economic operator programme is also being piloted at Malaba, one of 14 such border crossings in the EAC region.

**Sources:** Author, USAID East Africa Trade Hub, New Vision, TradeMark East Africa, 2013.

It is also understood that Malawi will soon embark on an OSBP project with Tanzania (BNL news report, 2013). Border officials from two countries at the Songwe and Mwanza border posts will synchronize their operations, and goods cleared on one side, will not need to be handled again on the other side. With this development, Malawi will become the third country within the Southern African Development Community (SADC) to introduce OBSP.

Coordination is important to the efficiency of border crossings, where fragmented inspections can cause considerable delay and queuing of vehicles. Even at the small border crossing at Kazungula, Zambia, there are 11 border agencies.

The WCO has led an initiative to promote coordinated border management.

## **Article 9: Movement of goods under customs control intended for import**

This short article requires Member States, to the extent possible, to allow goods intended for import to be moved under customs control from the point of entry to another customs office.

The aim of this article is to speed the flow of goods at borders and to allow goods to be cleared at inland depots. Normally this should not be a problem and indeed would help improve border clearance times.

## **Article 10: Formalities connected with importation and exportation and transit**

This substantial article aims at minimizing the incidence and complexity of import, export and transit formalities and at decreasing and simplifying documentation requirements. It covers the following:

### *1. Formalities and documentation requirements*

Once the agreement has come into force, Member States will be required to review their formalities and documentary requirements for import, export and transit, and ensure that they are geared towards rapid release and clearance of goods and reducing compliance costs and time for traders. They must also be the least trade restrictive measures available, and be eliminated if no longer needed.

### *2. Acceptance of copies*

The agreement encourages Member States where appropriate to accept paper or electronic copies of supporting documents, and to oblige government agencies to accept copies, including where applicable from the government agency that holds the original, rather than from the trader.

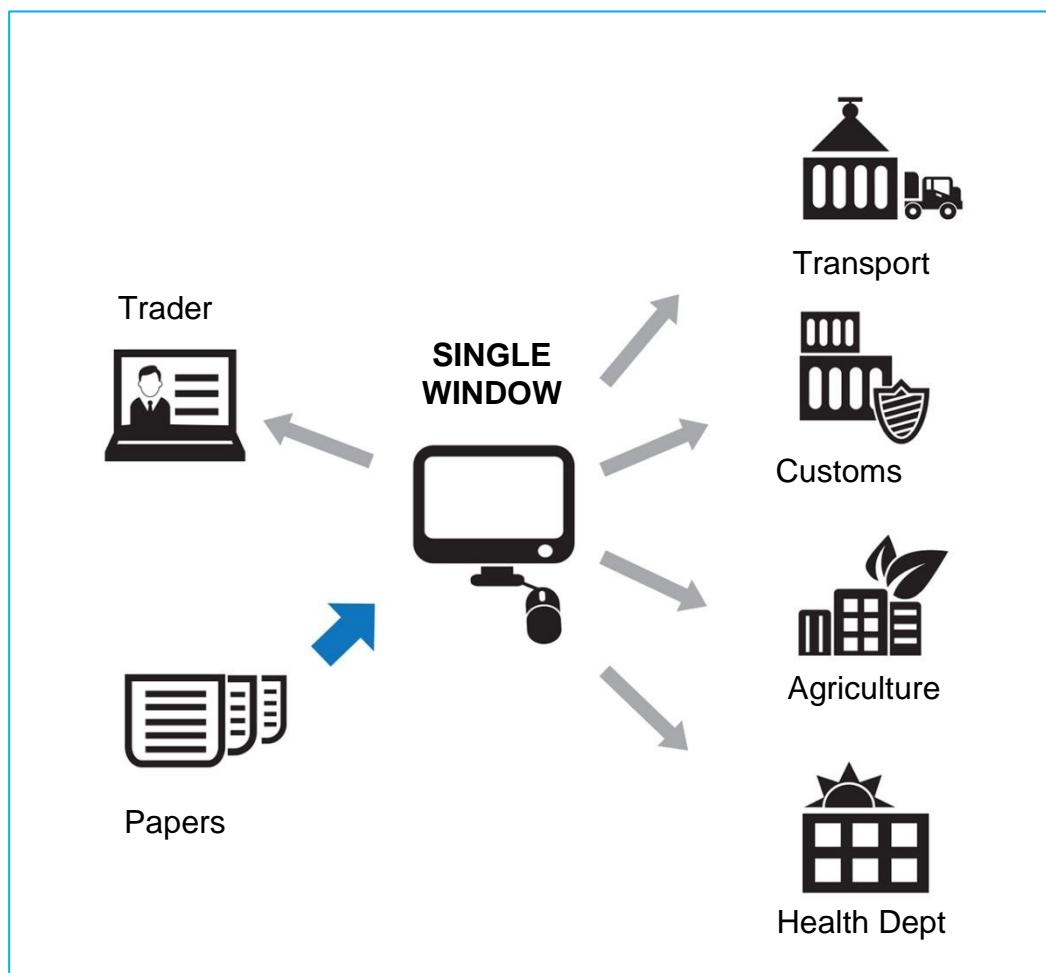
### *3. Use of international standards*

The agreement encourages Member States to follow best practice in the form of international standards (such as, for example, the recommendations of UN/CEFACT, although this source is not specifically referred to in the agreement), and to participate in the review and development of international standards. A list of UN/CEFACT Recommendations relevant to trade facilitation is set out in appendix II.

### *4. Single window*

Member States will be required to use their best endeavours to establish or maintain a single window for the submission of documentation and/or data requirements for import, export or transit, and to simplify procedures so that information that has already been supplied via the single window should not be asked for again by another border agency participating in the single window. Member States are also required, to the extent possible and where practical, to make their single windows electronic.

The use of single windows, in which a trader would only once input all the data required for import or export, provides an ideal trade facilitation tool. Yet such systems, if they are to work properly, require a commitment by all the relevant border agencies to participate.

**Figure 4: Single window concept**

Source: UNECE, UN/CEFACT

### Box 5. Mozambique's single window

Mozambique's Single Window was launched in 2011, providing a centralized platform to streamline and simplify the operation of customs and other government agencies involved in border control. Implementation was not easy. Mozambique had to overcome infrastructure weaknesses at land borders in remote areas and resistance from certain stakeholders. Today, the system is able to handle up to 400,000 customs declarations per year, or about 1,500 per day, bringing many benefits to both clients and participating agencies. The system is the subject of continuous improvement. Future plans include the incorporation of additional services and new features in relation to international data exchange. The Mozambique Single Window was designed to conform to international recommendations and standards. The design was based on the Singapore model, also deployed in Ghana and Madagascar. The system has two main components: Customs Management System (CMS), and TradeNet electronic data interchange.

Source: Trade Facilitation Implementation Guide, UNECE, 2012.



**Box 6. The ASEAN Single Window**

The ASEAN Single Window (ASW) is a regional initiative that connects and integrates the National Single Windows (NSWs) of the Member States of the Association of South East Asian Nations (ASEAN). The objective is to expedite cargo clearance within the context of increased economic integration in ASEAN. ASW implementation will ensure compatibility of Member States NSWs with international open communication standards while also ensuring that each of those Member States can then exchange data securely and reliably with any trading partners that use international open standards.

The ASW currently supports the exchange of the intra-ASEAN certificate of origin (ATIGA Form D) and ASEAN Customs Declaration Document (ACDD) on a pilot basis among seven Member States and will be expanded to exchange other types of data. Eventually the ASW, because it uses international operability standards, will be able to support the exchange of certificates of origin and advance cargo information with non-ASEAN trading partners. Other benefits will include legal inter-operability, support for ASEAN's policy harmonization efforts (e.g. phytosanitary measures), and better data exchange among Member States.

The development of the ASW is managed by a Steering Committee and supported by technical and legal working groups. Consultations with the private sector have been initiated on data to be exchanged as well as other complementary initiatives.

**Source:** ASEAN Single Window.

**5. Pre-shipment inspection**

The new agreement bans the use of pre-shipment inspections where this procedure is used to determine tariff classification and customs valuation. Other types of pre-shipment inspection will, however, remain permitted although Member States are encouraged not to extend the practice.

Many countries operate pre-shipment inspection (PSI) requirements, and inspection companies argue that PSI helps to reduce compliance costs. However, some countries have taken the view that that mandatory inspections are an unnecessary and costly non-technical barrier to trade and that the practice should be discontinued. UNCTAD argues that PSIs affect, on average, almost 20% of trade and products. Although they are often necessary to provide some assurance on the quality/quantity of the shipment and thus may promote international trade, they add to the cost of trading. These additional costs may reduce the competitiveness of countries, thus distorting trade (UNCTAD, 2013).

**6. Use of customs brokers**

The agreement prohibits Member States from introducing measures to make the use of customs brokers mandatory. Member States are also required to publish national measures on the use of customs brokers and ensure that licensing requirements for such brokers are transparent and objective.

Mandatory use has been seen as another unnecessary cost to traders.

**Box 7. Malawi customs brokers**

It is mandatory in Malawi for all importers to employ a customs broker/clearing agent, although six firms are licensed to prepare declarations on their own and are exempt from hiring a customs broker/clearing agent as they have in-house capability for DTI and access to the Malawi Revenue Authority (MRA) system. Customs brokers (of which there are approximately 125 operating in Malawi) are licensed by the MRA under the Customs and Excise Act, and are required to furnish MK 500,000 to the MRA as bond. Broker fees vary and are set by the brokers themselves but are regulated by the broker associations. The importer must provide all the required documentation to the customs broker/clearing agent, which includes: the invoice, bill of lading (or airway bill), and if required SPS certificate, country of origin certificate, and any other permit or licence. On the basis of these documents, the customs broker/clearing agent prepares the Malawi Customs Declaration Form 12, which is a single administrative document.

**Source:** Malawi Trade Policy Review, WTO, 2010.

#### 7. *Common border procedures and uniform documentary requirements*

Under a broad new obligation, each Member State is to apply common customs procedures and uniform documentation requirements for the release and clearance of goods throughout its territory. This is to ensure common standards that will improve predictability for traders over how procedures are applied, and at the same time to improve compliance for border authorities.

#### 8. *Rejected goods*

Member States are required under the agreement to allow an importer to re-consign or return goods that have been rejected for import due to their failure to comply with sanitary, phytosanitary or technical regulations.

#### 9. *Temporary admission for goods including inward/outward processing*

A provision requires Member States to allow goods to be imported under temporary admission procedures or to be imported or exported under inward or outward processing procedures that provide full or partial exemption from payment of duties and taxes.

### **Article 11: Freedom of transit**

The expanded provisions on freedom of transit, which are the subject of GATT Article V, are covered in a single article in the new Agreement, Article 11.

The article repeats the provision in GATT Article V that each Member State is to treat products in transit no less favourably than if they were being transported to their destination without going through the territory of that Member State. Member States are also required to remove any regulations or formalities on traffic in transit that are either no longer needed or whose obligations can be addressed in a less trade-restrictive way. No new charges that are additional to those administrative expenses already provided for in GATT Article V should be imposed on traffic transiting through a Member State's territory, and even such expenses should be limited to the cost of providing the transit service.

New provisions that have been agreed include:

- Encouraging Member States to provide physical separation between traffic in transit and other imports (e.g. by the use of special lanes, berths or similar infrastructure);
- Ensuring that formalities, documentation requirements and customs controls on traffic in transit are no more burdensome than necessary to identify the goods and ensure fulfilment of transit requirements;
- Ensuring that once goods have been put under a transit procedure they will not be subject to further customs controls until they conclude their transit within a Member State's territory, nor will they be subject to technical regulations and conformity assessment while in transit;
- Requiring Member States to allow advance filing and processing of transit documents;
- Requiring Member States to terminate the transit operation promptly once the traffic in transit has reached the destination where it exits the territory of the Member State;
- Requiring Member States to discharge any guarantees without delay.

There is also a new general obligation on Member States to cooperate with each other to enhance freedom of transit.

Business should find that the rules on transit will be greatly simplified by these obligations. It should, however, also monitor performance on the transport corridors, and report to national authorities any on-the-ground breaches of these obligations. If such breaches are found, they can be discussed in the newly constituted WTO Committee on Trade Facilitation (see Article 13 below).

## Other provisions

A number of other issues, not found in the existing GATT, are included in Articles 12-13. These include customs cooperation, institutional arrangements and national trade facilitation committees.

## Article 12: Customs cooperation

A detailed article sets out the terms and requirements for improving customs cooperation. The broad aim is to establish a framework for cooperation that obliges Member States to share information in order to ensure orderly coordination of customs control, while respecting the confidentiality of information held.

The article sets out the procedures that Member States must follow when a customs authority needs information from the authority in another Member State to verify an import or export declaration, because of suspicions over the truth or accuracy of the declaration. Such information must be requested in writing, and the authority to which the request is made must promptly supply the information requested, to the extent that it is available. Information must be held in strict confidence and not disclosed without specific written permission. There are provisions for postponement or refusal of a request, including for reasons of lack of reciprocity in meeting a similar request in the opposite direction. The article also makes clear that Member States may enter into or maintain bilateral, plurilateral or regional agreements for sharing or exchanging customs information and data.

An important provision for business in this article is that Member States are encouraged to develop voluntary compliance systems that would allow importers to self-correct without penalty, while initiating stronger measures for non-compliant traders. Traders have long argued that a strong commitment to compliance, backed up by a track-record, should be recognized by customs authorities, and benefit from fewer penalties for minor, technical infringements, while the risk management process focuses resources on other traders. Voluntary compliance of this sort would inevitably result in a closer relationship between such traders and customs authorities.

## Article 13: Institutional arrangements

The Negotiating Group on Trade Facilitation will, in effect, be replaced by a permanent forum – the Committee on Trade Facilitation – to oversee the operation of the agreement and further its objectives. Member States have agreed that there should be an initial review of the operation of the agreement four years after it has entered into force, and this will in all probability take place within this new committee.

Business should be interested in how the agreement is taken forward. Business communities will have to find ways of engaging with their respective governments through national consultation mechanisms. This is recognized in a simple provision in this article, which obliges each WTO Member State to form or maintain a national committee on trade facilitation, or designate an existing mechanism. Amongst the functions that such bodies may fulfil, the agreement stipulates that they are to facilitate domestic coordination and implementation of the agreement. This echoes a recommendation of UN/CEFACT that countries should form national trade facilitation committees (Recommendation 4).

Importantly for business, many such mechanisms involve dialogue between business representatives and government agencies concerned with border management. Interested business will need to be aware of the issues on a technical level if they are to engage successfully with their governments in establishing how such coordination mechanisms will work and how business can help monitor implementation of the agreement.

Business will need to be ready to bring issues and problems that traders face to the attention of national governments if this engagement is to be effective, so that it can play an active part in bringing up concerns in the WTO Committee on Trade Facilitation regarding matters covered by the new agreement.

## Chapter 4 Implementation issues

### Special and differential treatment for developing countries

It is widely recognised that there is a common interest in reducing trade transaction costs for all WTO members. Despite the 'win-win' outcome that most commentators consider will flow from the agreement, Member States that are developing or least developed countries have sought enhanced flexibility in implementing it – what is known as 'special and differential treatment'.

To help developing countries and LDCs to implement trade facilitation reforms, therefore, the agreement provides for staged implementation, over long periods where necessary. This will be based on national needs assessments to determine assistance needs and costs, and a scheduling of commitments at individual Member State level. Developing countries and LDCs will be able to link their commitments to the receipt of technical assistance and support for capacity building, monitored by WTO.

### How the agreement will be implemented

Although the agreement will be binding in its entirety on all developed countries from its entry into force, it recognizes that some Member States will require technical assistance before they can implement some or all of the obligations to which it binds them. Consequently, it has been agreed that commitments by developing and least developed country members will be implemented according to different categories of commitments.

It will fall to each developing and least developed Member State to determine the timing and entry into force of its commitments, according to the following categories:

- Category A commitments are those that a Member State has designated for implementation upon entry into force of the agreement;
- Category B commitments are those that a Member State has designated for implementation on a date after a transitional period;
- Category C commitments are those that a Member State has designated for implementation on a date after a transitional period and the acquisition of implementation capacity through the provision of technical assistance and support for capacity building.

For Category C commitments, each country concerned will seek from donor agencies the technical assistance and/or capacity building that it requires, with a view to securing an agreement to provide it. Once such agreements have been reached, each country concerned is to notify WTO of its expected implementation date. A complex early-warning procedure has been established to cover situations where a country experiences difficulty in obtaining the support required, or where it experiences difficulty in implementation without technical assistance, and needs to transfer certain commitments from Category B to Category C. In such cases, notification to the Committee on Trade Facilitation is envisaged.

Commitments will form part of the agreement. Individual schedules of commitments will therefore be published. There are a number of areas that will be of interest to business to know about:

- Understanding when a country intends to implement a commitment gives business an indication of when to expect trade facilitation improvements, and avoids creating unrealistic expectations;
- The publication of schedules exposes a country's plans to stakeholder scrutiny – for example, business may know of existing reforms in the country that are not reflected in the scheduled implementation timetables;

- It may be possible to implement the consultation and dialogue obligations earlier than other commitments that are more technical or that require changes in national laws or regulations. This would enable business to discuss implementation within national committees, and raise the possibility for business to contribute technical assistance or capacity-building support.

## **Appendix I    Modalities for Negotiations on Trade Facilitation (Annex D of the ‘July 2004 package’)**

1. Negotiations shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit. Negotiations shall also aim at enhancing technical assistance and support for capacity building in this area. The negotiations shall further aim at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues.
2. The results of the negotiations shall take fully into account the principle of special and differential treatment for developing and least-developed countries. Members recognize that this principle should extend beyond the granting of traditional transition periods for implementing commitments. In particular, the extent and the timing of entering into commitments shall be related to the implementation capacities of developing and least-developed members. It is further agreed that those members would not be obliged to undertake investments in infrastructure projects beyond their means.
3. Least-developed country members will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.
4. As an integral part of the negotiations, members shall seek to identify their trade facilitation needs and priorities, particularly those of developing and least-developed countries, and shall also address the concerns of developing and least-developed countries related to cost implications of proposed measures.
5. It is recognized that the provision of technical assistance and support for capacity building is vital for developing and least-developed countries to enable them to fully participate in and benefit from the negotiations. Members, in particular developed countries, therefore commit themselves to adequately ensure such support and assistance during the negotiations.
6. Support and assistance should also be provided to help developing and least-developed countries implement the commitments resulting from the negotiations, in accordance with their nature and scope. In this context, it is recognized that negotiations could lead to certain commitments whose implementation would require support for infrastructure development on the part of some members. In these limited cases, developed-country members will make every effort to ensure support and assistance directly related to the nature and scope of the commitments in order to allow implementation. It is understood, however, that in cases where required support and assistance for such infrastructure is not forthcoming, and where a developing or least-developed member continues to lack the necessary capacity, implementation will not be required. While every effort will be made to ensure the necessary support and assistance, it is understood that the commitments by developed countries to provide such support are not open-ended.
7. Members agree to review the effectiveness of the support and assistance provided and its ability to support the implementation of the results of the negotiations.
8. In order to make technical assistance and capacity building more effective and operational and to ensure better coherence, members shall invite relevant international organizations, including IMF, OECD, UNCTAD, WCO and the World Bank to undertake a collaborative effort in this regard.
9. Due account shall be taken of the relevant work of the WCO and other relevant international organizations in this area.
10. Paragraphs 45-51 of the Doha Ministerial Declaration shall apply to these negotiations. At its first meeting after the July session of the General Council, the Trade Negotiations Committee shall establish a Negotiating Group on Trade Facilitation and appoint its chair. The first meeting of the Negotiating Group shall agree on a work plan and schedule of meetings.

Source: WTO, 2004.

## Appendix II Revised Kyoto Convention

Outline of provisions in General Annex

<b>Chapter 1</b>	General principles
<b>Chapter 2</b>	Definitions
<b>Chapter 3</b>	Clearance and other customs formalities
<b>Chapter 4</b>	Duties and taxes <ul style="list-style-type: none"> <li>A. Assessment, collection and payment of duties and taxes</li> <li>B. Deferred payment of duties and taxes</li> <li>C. Repayment of duties and taxes</li> </ul>
<b>Chapter 5</b>	Security
<b>Chapter 6</b>	Customs control
<b>Chapter 7</b>	Application of information technology
<b>Chapter 8</b>	Relationship between the customs and third parties
<b>Chapter 9</b>	Information, rulings and decisions by the customs <ul style="list-style-type: none"> <li>A. Information of general application</li> <li>B. Information of a specific nature</li> <li>C. Decisions and rulings</li> </ul>
<b>Chapter 10</b>	Appeals in customs matters <ul style="list-style-type: none"> <li>A. Right of appeal</li> <li>B. Form and grounds of appeal</li> <li>C. Consideration of appeal</li> </ul>
<b>Specific annexes</b>	Arrival of goods in a customs territory
	Importation
	Exportation
	Customs warehouses and free zones
	Transit
	Processing
	Temporary admission
	Offences
	Special procedures
	Origin

Source: WCO.

## Appendix III UN/CEFACT recommendations

No.	ISO	Name	Description
1	6422	United Nations Layout Key for Trade Documents	Provides standardization of international trade document layout including the visual representation of such documents.
3	3166	ISO Country Code: Code for Representation of Names of Countries	AKA the 'ISO ALPHA-2 Country Code', containing country codes, names, dependencies, and other areas of special geopolitical interest for purposes of international trade.
4		National Trade Facilitation Organs: Arrangements at the National Level to Coordinate Work on Facilitation of Trade Procedures	Recommends that governments establish and support national trade facilitation bodies.
5		Abbreviations of INCOTERMS; Alphabetic Code for INCOTERMS 2000	International Chamber of Commerce's trade terms, known as INCOTERMS. Used in cross-border trade to help define transport contracts.
6		Aligned Invoice Layout Key For International Trade	Applies to the design of commercial invoices for international trade in goods.
7	8601 2000	Numerical Representation of Dates, Time and Periods of Time	Establishes a standardised and unambiguous all-numerical date, time of day and period of time.
9	4217	Alphabetic Code for the Representation of Currencies	Codes for the representation of currencies and funds, for application in international trade and their use in commercial transactions when currencies are expressed in coded or abbreviated form.
12		Measures to Facilitate Maritime Transport Documents Procedures	Aims at the simplification, rationalization and harmonization of procedures and documents used to evidence the contract of carriage in maritime transport.
15		Simpler Shipping Marks	Recommends the use of a standardised and simplified shipping mark for marking on packages and for reproduction in documents.
16		UN/LOCODE; Code for Trade and Transport Locations	Recommends a five letter alphabetic code for abbreviating the names of locations of interest to international trade, such as ports, airports, inland freight terminals, and other locations where Customs clearance of goods can take place.
17		Abbreviation for Terms of Payment	Provides abbreviations to certain terms of payment, referred to as 'PAYTERMS', for use in international trade transactions as appropriate. The 'PAYTERMS' apply to commercial transactions relating to the provision of goods and/or services.
18		Facilitation Measures related to International Trade Procedures	Outlines a series of measures related to the movement of goods in an international trade transaction, which governments should consider implementing.
19		Codes for Modes of Transport	Establishes codes for representing transport modes in international trades.
20		Codes for Units of Measure used in International Trade	Provides codes for units of measurement for length, area, volume/capacity, mass (weight), time, and other quantities used in international trade.
22		Layout Key for Standard Consignment Instructions	Can be used as a basis for the design of standard consignment instructions intended to convey instructions from either a seller or a buyer to a freight forwarder, carrier or other provider of service, enabling the movement of goods and associated activities.
23		Freight Cost Code-FCC; Harmonization of the Description of Freight Costs and other Charges	Provides a naming system to be used for the establishment of harmonised descriptions of freight costs and other charges related to the international movement of goods.



No.	ISO	Name	Description
24		Trade and Transport Status Codes	Provides transport status codes to satisfy requirements for exchanging coded information about the status of consignments, goods or means of transport at a certain time or place in the transport chain.
25		Use of the United Nations Electronic Data Interchange for Administration, Commerce and Transport (UN/EDIFACT)	UN/EDIFACT as the single international standard for electronic data interchange between public administrations and private companies of all economic sectors worldwide.
26		Commercial Use of Interchange Agreements for Electronic Data Interchange (EDI)	Promotes the use of interchange agreements between commercial parties using electronic data interchange in connection with international commercial transactions.
28		Codes for Types of Means of Transport	Establishes a common code list for the identification of the type of means of transport in international trade.
31		Electronic Commerce Agreement	Proposes a model for a contractual approach to electronic commerce operations. This approach takes into consideration the need for a framework of basic provisions to be agreed by business entities combined with the flexibility required to conduct day-to-day commercial transactions.
32		E-Commerce Self-Regulatory Instruments (Codes of Conduct)	Emphasises the need for the development, support and promulgation of voluntary codes of conduct for electronic business so as to support the development of international trade, and calls on governments to promote and facilitate the development of relevant self-regulation instruments, national and international accreditation schemes, codes of conduct and trust mark schemes.
33		Recommendation and Guidelines Establishing a Single Window	A single window allows parties involved in international trade and transport to lodge standardised documents to a single entry point to fulfil all import, export, and transit-related regulatory requirements.
34		Data Simplification and Standardization for International Trade	Recommends that governments should develop a national dataset in a simplified, standardised form that can be used to provide information requirements in distinct syntax formats using a range of technologies.
35		Establishing a legal framework for international trade Single Window	Recommends that governments should undertake a study and use UN/CEFACT checklists and guidelines to ensure a sound legal framework to support the operations of an international trade single window.



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