

Presentation to National Single Window Stakeholder Conference

‘Collaboration Towards a Facilitated Trade Environment’

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WTO OMC

The WTO's Trade Facilitation Agreement

by

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Introductory Remarks

- It is a great pleasure to be here in Ghana and to participate in this National Stakeholder Conference on establishing Ghana's National Single Window.
- The importance that attaches to this event is amply demonstrated by the presence earlier this morning of the His Excellency, the President, and by Ministerial level participation from both the Ministries of Finance and Trade and Industry. The President of Ghana and the Ghanaian Government must be commended for this singular leadership.
- I will also note that the importance of the launch of the National Single Window initiative is also signaled by the presence of so many stakeholders from across the spectrum – both public and private.
- This demonstration of commitment by those with an interest in or with a role to play in the importation and exportation of goods, and thus in facilitating trade, is particularly welcome and reassuring.
- Facilitating trade is a 'joined-up' undertaking. It cannot be done successfully without leadership, and without the knowledge, awareness, and full commitment and cooperation of those who must, on the ground, make the service that is being provided faster, fairer and more efficient.

Single Window – General Comment

- I will begin with a few comments of a general nature on single windows. If there is one commonality it is paradoxically that there is none - for no two single windows are the same. This should not be surprising for, after all, no two countries are the same. It is vitally important that the development and operation of the single window take full account of the local environment and local capacities, even while adhering to good practice and to international standards.
- For this reason, and especially at a meeting of stakeholders;
 - It is particularly appropriate to emphasize the importance of embarking on the journey toward a single window with a change in mind-set as the first step.
 - It is necessary, first and foremost, to eliminate our natural fixation on how things used to be done and to accept that doing them differently now and in the future will yield better results – and this not as an article of faith, but because there is ample experience from a wealth of good practice to confirm that this is so.
- In this sense, therefore, the first window that we all need to work on is the window to our minds, where all meaningful change begins.

Trade Facilitation : The 'What'

- I will now turn to the subject that I have been asked to speak on - the WTO's Trade Facilitation Agreement. In doing so I will address :
 - a) Some of the background to the Agreement,
 - b) key provisions, and
 - c) what has happened since adoption of the Trade Facilitation Agreement at the Bali Ministerial Meeting in December 2013.
- A good place to start is with the 'What' and the 'Why'. The question of what is trade facilitation is much more complex than might appear on the face of things. This had a clear bearing on establishing the scope of the trade facilitation negotiations in the WTO and the question of scope was one of the major road-blocks confronting negotiators in Geneva for several years.
- It is not a far stretch to recognize that much of what takes place in the World Trade Organization in the areas of improved market access and rule making is in one sense about trade facilitation.
- The 2015 World Trade Report draws attention to the range of definitions. It distinguishes between narrow definitions that focus on procedures at the border and broad definitions that involve making changes behind the border, such as in the area of technical barriers to trade. A further distinction is between those approaches that limit relevant infrastructure to information technology and approaches that include in trade facilitation infrastructure such as ports, roads and railways.

Trade Facilitation : The 'What'

- Most organizations, and some examples are UNCTAD, the Economic Commission for Europe, APEC and the ICC – take the narrow path, focusing on simplification, rationalization, and transparency of cross-border and transit procedures and documentation.
- The WTO has not itself defined trade facilitation for at least two good reasons. One is the difficulty of agreeing on a formal definition amongst more than a one hundred and sixty members; the other is, as some might say, so as not to take hostages for the future – in short negotiators in forthcoming years may welcome a relatively free hand in determining what issues to address.
- The definition of trade facilitation for the current purposes of the WTO can be deduced from:
 - ❑ The scope of work set out in the negotiating mandate on the subject. This was set out in Annex 'D' of the 2004 July Framework Package. It mandated negotiations to clarify and improve Articles V, V111, and X of GATT 1994, which were adopted in 1947, and this “with a view to expediting the movement, release and clearance of goods, including goods in transit.”
 - ❑ Another important aspect of the scope reflected in the WTO process was the mandate to strengthen customs cooperation.
 - ❑ A third key element of the negotiating objectives was - and this is important in a forum such as this – enhancing technical assistance and capacity building for trade facilitation.

Trade Facilitation : The 'Why'

- So much for what is trade facilitation in the context of the WTO. Let us look briefly at why trade facilitation in the WTO.
- Many will wonder why there was ever any hesitancy on the part of some negotiators in Geneva to embark on negotiations on trade facilitation.

Those countries that for a while resisted entering into negotiations on the subject in the WTO did so for three main reasons:

- I. One was the question of what the scope of the negotiations should be;
 - II. Another was concerns relating to whether binding rules with the possibility of sanctions through the WTO dispute settlement process was the optimal approach;
 - III. and a third, and probably the most prevalent, were concerns relating to progress and balance across the wider Doha negotiating agenda.
- The bottom line was that for developing countries, in particular, with trade in goods constituting a significant and growing portion of GDP, and an established engine of growth and development, taking measures to facilitate trade was an imperative –not a choice.
 - The estimates of trade gains from improved trade facilitation are significant. I am sure you have all seen them.

Trade Facilitation : The 'Why'

WEF 2012 Study

- A 2012 study by the World Economic Forum suggested that reducing supply chain barriers – a wider concept than WTO trade facilitation - could increase GDP up to six times more than removing remaining tariff Barriers.

WTO 2015 Trade Report

- The WTO's 2015 Trade Report estimates that over the 2015 – 2030 period , which, incidentally, would coincide with implementation of the Sustainable Development Goals, implementation of the Trade Facilitation Agreement could add up to 2.7% a year to world export growth, and more than half a per cent a year to global GDP. Developing countries would be unexpected to enjoy the larger share of this increase in exports and GDP. The importance of trade facilitation being therefore not in doubt a question might be the forum.

The WTO is a unique multilateral forum dedicated to trade negotiations. It provides both a framework for negotiating binding rules as well as a mechanism for settling disputes with the outcomes of adjudication binding on the parties.

But ,there is also another consideration which is very important at the multilateral and regional levels : the synergies from most trade facilitation measures – such as, for example, the Single Window – are greatest if all members of the trading community implement them. The gains are multiplied if the widest possible number, and ideally all, members of the trading community implement a facility such as the Single Window.

The Trade Facilitation Agreement

■ What presentation will do

Let me now turn to the content of the Trade Facilitation Agreement. I will try to focus on three things :

- Firstly, on the main provisions, and especially on those elements that go beyond Articles V, XI and X of GATT 1947 that had stood for sixty odd years.
- Secondly, I will speak to the innovations in the Trade Facilitation Agreement on special and differential treatment for developing and Least Developed Countries.
- Finally, I will look at the state of play regarding the implementing of the Agreement, including notification of Category 'A' provisions and acceptance of the Protocol to bring the Agreement into force.

The Trade Facilitation Agreement

■ Structure of the Agreement

The new WTO Trade Facilitation Agreement comprises three sections.

Section 1

- **Section 1** responds to the mandate to clarify and improve the three aforementioned Articles that existed in the old GATT – Articles V, XI and X. But it arguably does much more than clarify and improve – it expands substantively drawing upon contemporary best practices and on existing recommendations and commitments such as are to be found in the World Customs Organization and the Revised Kyoto Convention.

Section 2

- **Section 11** responds to the modalities for negotiations adopted in July 2004, to the effect that the negotiations should aim at enhancing technical assistance and capacity building in support of trade facilitation. This is widely commented on S & D section of the Trade Facilitation Agreement. The Trade Facilitation Agreement approaches special and differential treatment in novel and creative ways that are unprecedented in the World trade Organization and are likely to be a defining template for how the WTO treats with special and differential treatment in the future.

Section 3

- **Section 111** is on institutional arrangements and covers matters such as the establishment of a Committee on Trade Facilitation within the WTO, establishment of national trade facilitation committees, and the processes for adopting and accepting the Protocol of Amendment that will bring the Trade Facilitation Agreement into force

The Trade Facilitation Agreement: Section 1

■ Articles 1 – 5 : Transparency and Predictability

Section 1 of the Trade Facilitation Agreement covers twelve (12) Articles.

The first five – Articles 1 – 5 – are related to strengthening transparency and predictability regarding obligations. Amongst the main requirements are the ‘prompt’ publishing of information and documentation relating to the importation and exportation of goods. There is also the requirement to establish Enquiry Points. There are new obligations in the area of transparency.

Article 2

- Article 2, for example, deals with Prior Publication and Consultation, and calls for consulting traders before introducing new or amended laws or regulations.

Article 3

- The subject of Article 3 - Advance Rulings – is another new obligation at the level of the WTO. Advance rulings are now offered by many administrations but were not previously part of the WTO’s legal architecture : they help to provide certainty and predictability to traders.
- Article X of the old GATT 1994 was the provision most relevant to the issue of right of appeal . It provided for members to maintain or institute “ as soon as practicable” mechanisms or procedures for the “prompt” review and correction of administrative action relating to customs matters. The new Trade Facilitation Agreement addresses the issue of review and appeal in a much more robust manner than was previously the case

The Trade Facilitation Agreement: Section 1

■ Articles 1 – 5 : Transparency and Predictability

Article 4

- In Article 4, Trade facilitation Agreement makes the right of appeal definitive. There is an obligation on each member to provide procedures and mechanisms so that any person to whom customs has issued a decision can judicially appeal or otherwise have that decision independently reviewed.
- The objective is to promote fairness and predictability by protecting individuals and traders from acts or omissions by Customs that may not comply fully or in part with the laws and regulations that Customs itself is responsible for administering.
- The Trade Facilitation Agreement also encourages members to extend this right of appeal to administrative decisions of relevant border agencies other than customs. Together these constitute major provisions geared toward increasing transparency and reducing arbitrariness at the border.

The Trade Facilitation Agreement: Section 1

Articles 6 – 12: Fees and Formalities for Imports, Exports and Transit

Transparency and predictability can be said to be the main themes of the first cluster of articles in the first section – Section 1 - of the Trade Facilitation Agreement. The second cluster of articles in Section 1 cover fees and formalities for importing, exporting and transiting. These are to be found in Articles 6-12 of the Agreement.

Article 6

- In this regard, Article 6 imposes a standard requirement in a WTO context : It stipulates that fees and charges should be commensurate to the actual cost of providing a service. In other words, fees and charges should not be disguised forms of taxation or of raising revenues - and in that sense arbitrary. A new obligation in this context is one that requires members to review their fee structure periodically. It is fair to state that the Trade Facilitation Agreement not only clarifies the more than sixty year old GATT provisions, it modernizes them .

Article 7

- This can clearly be seen in Article 7 of the Agreement which introduces as obligations or best endeavour the implementation of measures, procedures and practices relating to several matters – for example, acceptance of electronic payment, pre-arrival processing, operation of risk management systems, post-clearance audits, determination of average release times, expedited shipments and designation of authorized operators.
- Many of these measures represent current good practice in border management but were not part of the trade facilitation provisions which were adopted in 1947 by members of the old General Agreement on Tariffs and Trade (GATT) and then subsequently incorporated into the WTO Agreements when the WTO came into existence in 1994.

The Trade Facilitation Agreement: Section 1

■ Articles 6 – 12: Fees and Formalities for Imports, Exports and Transit

Article 8

- Another new and important provision in the recently agreed WTO Trade Facilitation Agreement is **Article 8** which responds to the negotiating mandate to strengthen customs cooperation.
- This particular provision focusses on border agency cooperation – which is of course important globally but especially so amongst neighboring countries and amongst members of regional trading arrangements. This new provision urges members to undertake practices such as aligning work days and work periods and establishing one-stop border post controls.
- I will quickly mention other relevant provisions in the Agreement that relate to the general subject of fees and formalities at the border and in transit.

Article 9

- Article 9 is brief – it seeks to address border congestion and increase convenience by requiring members ‘to the extent possible’ to establish inland processing depots.

The Trade Facilitation Agreement: Section 1

■ Articles 6 – 12: Fees and Formalities for Imports, Exports and Transit

Article 10

- **Article 10** is a major step forward in the multilateral community's effort to improve and promote the modernization of trade facilitation processes. This important article either obliges or encourages members to address complex procedures and simplify documentation through measures such as the acceptance of copies and the subject of this conference - the establishment of single windows.
- Member states are required to endeavour to or to establish or maintain a single window for the submission of documentation and/or data relating to the import, export or transit of goods. Once received through a single entry point the same documentation or data would not normally be requested by relevant authorities and agencies. Importantly, to the extent possible and practicable, members are required to use information technology to support the operation of the single window. It should be noted that the Trade Facilitation Agreement, under this article, that is Article 10, also prohibits the mandatory use of customs brokers, and of pre-shipment inspection for tariff classification and customs valuation.
- Another important area in which, under the WTO Agreement, new elements have been introduced into trade facilitation processes, is that of Freedom of Transit. Amongst these elements, especially important to land-locked countries, but relevant to all countries with contiguous borders, is the encouragement to provide separate facilities - such as special lanes or berths – for traffic in-transit, and the obligation to allow for advance filing and processing of transit documents.

The Trade Facilitation Agreement: Section 1

- **Articles 6 – 12: Fees and Formalities for Imports, Exports and Transit**
- The final provision in Section 1 of the Trade Facilitation Agreement is major and new. It is on customs cooperation. Earlier we saw that the Agreement – in Article 8 – addressed customs cooperation between agencies that share a common border.

Article 12

- **Article 12** is broader and more generic. It speaks to cooperation generally between customs bodies and sets out procedures in areas such as request for information, the provision of information, reciprocity, unauthorised use or disclosure of information and limitation on these processes.
- In a globalized world with trade a growing portion of GDP , and with increasing licit and illicit activities across borders, strengthened cooperation between customs organisations is obviously both a desirable and a necessary objective.

The Trade Facilitation Agreement: Section 11

■ Articles 13 – 22: Special and Differential treatment

I have gone through the first twelve articles of the Trade Facilitation Agreement - comprising Section 1 - in some detail. In doing so, the objective is to provide a clear indication of the Agreement's scope, and also to show that, and how, the Agreement breaks new substantive ground in terms of WTO provisions in the area of trade facilitation. At the same time it bears noting that some of these elements echo or reflect provisions to be found elsewhere, such as in the 1974 International Convention on the Simplification and Harmonization of Customs Procedures – the Kyoto Convention - and its 1999 revision, which entered into force in 2006.

I will take a more synoptic approach to the final two sections of the Trade Facilitation Agreement – **Section 11 on Special and Differential Agreement, and Section 111 on Institutional Arrangements..**

In so far as special and differential treatment is concerned, the newly agreed Trade Facilitation Agreement is path-breaking. It is the first Agreement in the WTO to link the implementation of obligations with provision of the capacity to do so. It also provides for unprecedented flexibility in that developing and Least Developed Country members can decide when to implement each of the individual provisions, subject to their capacity to do so and to relevant notification to members.

Article 13 sets out the general principles relating to S & D under the TFA Agreement, and the subsequent articles in section 11 – **Articles 14 to 22** - set out the modalities for operationalizing those general principles.

The agreed framework allows developing and LDC members to place each provision of the TF Agreement into one of three categories - **Categories A, B or C**. and to implement, or notify members of the indicative or definitive dates for implementing the provisions placed in the various categories.

In a nutshell, **Category 'A'** provisions are those that a developing member designates for implementation by the time the Trade Facilitation Agreement enters into force and **Category 'B'** provisions are those the country designates for implementation after a transitional period of time after the entry into force of the Agreement.

The Trade Facilitation Agreement: Section 11

■ Articles 13 – 22: Special and Differential treatment

Category 'C' provisions are provisions the developing country member designates for implementation after a transitional period of time following the entry into force of the Agreement and the provision of assistance and support for capacity building. There are several other areas of flexibility as well, designed to support developing countries in their implementation of the TFA. These include an **early warning mechanism** whereby a member can request an extension from the WTO's Trade Facilitation Committee should that member encounter any difficulty in implementing a provision in Category 'B' or 'C' by the date it had notified. And there is an appeal process, so to speak, in which an **Expert Group** which will be established to review and make recommendations where a request has not been granted. It should be noted that the Agreement provides for requests for extensions for periods less than a year and a half to be granted automatically.

Importantly as well, from the point of view of flexibility, **Category Shifting** is permitted : developing and Least Developed Country members are permitted to shift provisions between Categories 'B' and 'C', depending on their requirements as the implementation process unfolds. While, as earlier stated, for developing countries, Category 'A' provisions will have to be implemented at the time the Trade Facilitation Agreement enters into force for LDCs, **notification** of provisions it has placed in Category 'A' must occur within one year of the TFA's entry into force. In the case of Category 'B' provisions , developing countries, such as Ghana, must notify the WTO of their proposed implementation date for this set of provisions at the time of entry into force of the Trade Facilitation Agreement, as well as indicate **definitive** dates for implementation of these Category 'B' provisions.

The Trade Facilitation Agreement: Section 11

■ Articles 13 – 22: Special and Differential treatment

As far as Category 'C' obligations are concerned, developing countries must notify what these are at the time of entry into force of the TFA, provide **indicative** dates for their implementation, and provide as well information on the assistance and support for capacity building that is needed in order to implement. Within a year further information must be provided to the WTO by the developing member concerned regarding arrangements that exist or that are to be entered into to provide this necessary assistance and capacity building support.

Least developed countries are afforded even more generous time-lines regarding notification and implementation of Categories 'B' and 'C' commitments, with implementation of Category 'C' commitments being related to the provision of assistance, and requiring periodic reporting over a period of six years to the WTO by Least Developed Members and by donors on the provision of the support and capacity building for the implementation of Category 'C' provisions. It should be noted, in this regard, that as part of the facilitation of capacity buildings, donors will be required to provide to the WTO's Committee on Trade Facilitation detailed annual information on their assistance programmes

A very important point to recognize is that the provisions notified on Categories 'A', 'B' and 'C', and their definitive implementation dates, will become an integral part of the Trade Facilitation Agreement, making them analogous to legally binding tariff schedules. In this regard, and given long-standing concerns by some developing countries on this issue, it is also very important to note that there will be, for developing countries, a grace period of two years after entry into force of the TFA, during which the Dispute Settlement Understanding will not be applicable in respect of any provision under Category 'A'. For Least Developed Countries, this grace period for Category 'A' commitments is six years, as well as a grace period of eight years, applicable only to LDCs, following their implementation of provisions under Categories 'B' and 'C'.

The Trade Facilitation Agreement: Section 111

■ Article 23 : Institutional arrangements

The final section of the Trade Facilitation Agreement is Section 111 on Institutional Arrangements. The two major institutional measures set out under Article 23 are:

- (i) The establishment of a Committee on Trade Facilitation to replace the Negotiating Group which concluded its work before Bali, and the current Preparatory Committee on Trade Facilitation that has been at work since Bali, and
- (ii) The requirement that each member establish and/or maintain a national committee on trade facilitation to facilitate domestic coordination and implementation of the provisions of the Agreement.

The Trade Facilitation Agreement: Final section

■ State of Play : TFA Implementation

This final section will comment on the state of play regarding implementation of the Trade Facilitation Agreement. The Agreement is yet to come into force following the successful conclusion of negotiations at the Bali Ministerial Meeting in December 2013, and the subsequent adoption, in November 2014, of the Protocol Amendment to insert the Trade Facilitation Agreement into Annex 1A of the 1994 Marrakesh Agreement Establishing the World Trade Organization.

This will require acceptance at national level of the Protocol of Amendment by two-thirds of WTO members – that is by 108 members. So far fifty two members – counting the twenty eight EU members individually – have ratified the Protocol. Three African members of the WTO have done so – Mauritius, Botswana and Nigeria

At its most recent meeting in mid-October 2015, the Chair of the Preparatory Committee on Trade Facilitation indicated that seventy two (72) developing members had submitted their Category 'A' notifications – that is the provisions that will be implemented when the agreement enters into force.

The list include several African members of the WTO. Amongst those who have done so are: Botswana, Burundi, Republic of Congo, Cote d'Ivoire, Egypt, Gabon, Kenya, Mauritius, Nigeria, Senegal, Seychelles, Tanzania and Tunisia. Some countries such as Mauritius, Botswana, Nigeria, Rwanda and Senegal have undertaken a quite substantial list of initial commitments under Category 'A'.

The Trade Facilitation Agreement: Final section

■ State of Play : TFA Implementation

However, although a number of countries such as Thailand, Malaysia, Qatar, Costa Rica and Brazil have included maintaining or establishing national single windows in their Category 'A' commitments, it appears that so far Senegal is the only African country to do so.

This is probably a reflection of the complexity of establishing the single window and the desire on the part of countries to have this mechanism established and operational for a while before making it a part of their binding commitments in the WTO, subject to implementation when the Trade Facilitation Agreement enters into force and, in the case of developing countries, to dispute settlement procedures two years thereafter. This is probably also a reflection as well of the desire of countries to seek or to continue to seek capacity building assistance for the establishment of the single window, making this provision less amenable to Category 'A' classification

An important issue is the question of the provision of technical assistance and capacity building to developing and Least Developed Countries for trade facilitation. In July 2014, the WTO announced the launch of its **Trade Facilitation Agreement Facility (TFAF)**, which became operational on the adoption of the Protocol of Amendment a few months later. The TFAF will support developing and Least Developed Countries in assessing their specific implementation needs and identifying development partners to help them meet those needs. It is also recognized that many multilateral and regional institutions, and bilateral partners, are prioritizing support for trade reforms. The WTO has noted, for example, that the World Bank has earmarked US\$ 7.1 billion for overall trade reforms, with US\$30 million targeted specifically toward implementation of the TFA

The Trade Facilitation Agreement: Final section

- State of Play : TFA Implementation

In concluding, I would reiterate that the high level political interest and leadership that is being shown in establishing Ghana's National Single Window augur well for institutional cooperation and for Ghana's future capability to meet fully its WTO obligations. Even more importantly, this augurs well for the domestic and regional trading community and ultimately for Ghana's development, and thus for her people. In the final analysis, this is the defining importance of trade facilitation generally, and of an efficient operational Single Window.

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