



TRADE BEAT

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The WTO's Trade Facilitation Agreement



On December 7th, 2013, the Members of the World Trade Organization (WTO) reached consensus on a Trade Facilitation Agreement (TF), after over nine years of hard negotiations. The Trade Facilitation Agreement was concluded in Bali, Indonesia during the 9th Ministerial Conference (MC9) of the WTO, from December 3 to 7, 2013. The TF Agreement formed part of the wider "Bali Package" which facilitated decisions and declarations at the ministerial level. The declaration comprises the decisions adopted by the Ministers as follows, and were conducted in two parts:

Part 1 - comprises the general work undertaken by the General Council (which is the highest level decision making body of the WTO, and comprises a representative from each member government), resulting in the Ministerial Decisions taken on the following topics: Trade Related Aspects of Intellectual Property Rights (TRIPS) Non-violation and Situation Complaints; Work Programme on Electronic Commerce; Work Programme on Small Economies; Aid for Trade; and Trade and Transfer of Technology.

Part 2 - relates to the Doha Development Agenda which includes the Ministerial Decisions taken on the following agenda items:

Trade Facilitation – **The Agreement on Trade Facilitation** ; Agriculture – General Services; Public Stockholding for Food Security Purposes; Understanding on Tariff Rate Quota Administration Provisions of Agricultural Products, as Defined in Article 2 of the Agreement on Agriculture; Export Competition; Cotton; Development - LDC issues; Preferential Rules of Origin for Least-Developed Countries; Operationalization of the Waiver Concerning Preferential Treatment to Services and Service Suppliers of Least-Developed Countries; Duty-Free and Quota-Free Market Access for Least-Developed Countries; and Monitoring Mechanism on Special and Differential Treatment.

This publication focuses on the WTO's Trade Facilitation Agreement and how it affects Jamaica.

What is Trade Facilitation

Trade facilitation in simple terms, speaks to any implemented measure that reduces the costs and delays in the movement of goods across borders, that affects traders, and that contributes to the positive stimulation of the international trading process. These measures provide simplicity, predictability and uniformity in customs and other border procedures that in turn, provide a more level playing field for both large and small enterprises worldwide. These measures, it is felt, will ensure an efficient international trading system and contribute to the overall increase in global trade.

The Trade Facilitation Mandates

The trade facilitation negotiations were meant to “clarify and improve upon the mandates set out in the **General Agreement on Tariffs and Trade (GATT) 1994 Articles**, with a view to further expedite the movement, release and clearance of goods including goods in transit”. The mandates are contained in **Article V-Freedom of transit**, **Article VIII-Fees and Formalities Connected with Importation and Exportation** and **Article X- Publication and Administration of Trade regulations**.



Further, mandates for negotiating a trade facilitation agreement are outlined in **Annex E of the Hong Kong Ministerial Declaration and Annex D of the “July package”**. Annex E was a report done on Trade Facilitation, by the Negotiating Group on Trade Facilitation to the Trade Negotiations Committee (TNC) of the WTO. The text of the WTO General Council’s decision on the Doha Agenda work programme, that was agreed on August 1, 2004, signaled the birth of the negotiations on trade facilitation, and is commonly referred to as the “July Package”. Annex D of the “July Package” speaks to the modalities (specific measures) for negotiations on trade facilitation and specifically indicates that the results of the negotiations shall take fully into account, the principle of Special and Differential Treatment for developing and least-developed countries (LDC). Annex D also stipulates that support and assistance should be provided, to help developing and LDC Members implement the commitments resulting from the negotiations. Annex D also provides that if support for infrastructure development is not provided for, and where a developing or LDC continues to lack the necessary capacity, then implementation of those commitments will not be required.

The Agreement on Trade Facilitation (TF Agreement)

The Bali Ministerial Decision — on Trade Facilitation concluded the nine (9) year long negotiations, and resulted in the WTO Agreement on Trade Facilitation. The Ministerial decision is attached to the Agreement itself and is “subject to legal review for rectifications of a purely formal character that do not affect the substance of the Agreement.” The Decision also establishes a Preparatory Committee under the auspices of the General Council, and is mandated to secure the efficient operation, and the expeditious entry into force of the TF Agreement. The Committee is also responsible for conducting the legal review, receiving notifications of Category A Commitments (provisions that Members have implemented or commit to implement upon entry into force of the Agreement) and drafting the Protocol to amend the Agreement into Annex 1A of the Agreement Establishing the WTO. Annex 1A speaks to the Multilateral Agreement on Trade in Goods (which contains the GATT 1994 mandates) negotiated during

the Uruguay Round of Agreements that established the WTO. The TF Agreement marks the second amendment to the WTO Agreements ever done since the establishment of the Organization in 1995; the first was the 2005 Protocol Amending the TRIPS Agreement. The General Council has committed to meet no later than July 2014 to annex to the TF Agreement, notifications of Category A Commitments, to adopt the Protocol drawn up by the Preparatory Committee, and to open the Protocol for Acceptance until July 31, 2015. The Protocol is scheduled to enter into force, in accordance with Article X:3 of the WTO Agreement, which speaks to the treatment of amendments to the Agreement Establishing the WTO.



The Agreement on Trade Facilitation — comprises the Preamble, Section I, Section II and the Final Provisions, as well as the Format for Notification Under Article 10.1 (Annex1) which relates to the commitments of the technical and financial assistance and capacity building resources by Donor Members .

The Preamble — speaks to the purpose of the Agreement and states the authority that guides the provisions of the Agreement, as elaborated in the TF mandates. It also recognizes the particular needs of developing and especially least developed country Members and wishes to enhance assistance and support for capacity building in the area of trade facilitation. The need for effective cooperation among Members in the area of trade facilitation and customs compliance is also recognized.

Section I — contains 13 Articles, wherein Articles 1-12 form the substantive disciplines. These are the core provisions of the Agreement and defines the obligation of each Member as it relates to each provision. Article 13 contains the Institutional Arrangements of the Agreement, that establishes a Committee on Trade Facilitation that will cooperate with other international organizations within the field of trade facilitation. A National Committee on trade facilitation should also be established by each Member, or an existing mechanism should be designated to facilitate both domestic coordination and implementation of the provisions of the TF Agreement.

Section II — refers to Special and Differential Treatment Provisions for Developing Country Members and LDC Members, and speaks to the Categories of Provisions for implementation and their respective treatment. The WTO Agreements contain special provisions which give developing countries “special rights”. These special rights are called “special and differential treatment” provisions, and allow developed countries the possibility to treat developing countries more favourably than other WTO Members. These special provisions include, for example, longer time periods for implementing Agreements, and commitments or measures to increase trading opportunities for developing countries. The special provisions also provide for support to help developing countries build the capacity to carry out the work of the WTO, handle disputes, and implement technical standards.

Section 1 of the Agreement on Trade Facilitation:

- Article 1: Publication and Availability of Information
- Article 2: Opportunity to Comment, Information before Entry into Force and Consultation
- Article 3: Advance Rulings
- Article 4: Appeal or Review Procedure
- Article 5: Other Measures to Enhance Impartiality, Non-Discrimination and Transparency
- Article 6: Discipline on Fees and Charges Imposed or in Connection with Importation and Exportation
- Article 7: Release and Clearance of Goods
- Article 8: Border Agency Cooperation
- 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
- Article 13: Institutional Arrangements



The language in Section 1 of the TF Agreement has implications for WTO Members, in terms of the nature of the obligations set out in the provisions. The language used is a combination of:

Binding — characterized as “shall” without any qualification;

Qualified Binding — for e.g. “shall, consistent with domestic laws and regulations”;

Binding Best Endeavour — for e.g. “shall to the extent practicable/possible/as appropriate”; and

Permissive — characterized as a “ may”.

This language is applied across all the provisions in Section 1, and has to be assessed in terms of the nature of the language in order to determine if external assistance would be needed for the specific provision, and how the implementation would be done in accordance with Section II of the Agreement.

For e.g. In the provision for WTO Members to establish an **Enquiry Point** as set out in **Section I, Article 1.3** — a combination of binding, binding best endeavour, permissive and non-binding obligation language, is used throughout the provision. Examination of the language is critical to assess exactly what the country can and cannot commit to.

Section 2 of the Agreement on Trade Facilitation: *Special and Differential Treatment Provisions for Developing Country Members and Least Developed Country Members*

1. General Principles
2. Categories of Provisions
3. Notification and Implementation of Category A
4. Notification of definitive Dates for Implementation of Category B and Category C
5. Early Warning Mechanism: Extension of Implementation dates for Provisions in categories B & C
6. Implementation of Category B & C
7. Shifting Between Categories B & C
8. Grace Period for the Application of the Understanding on Rules and Procedures Governing Settlement of Disputes
9. Provision of Assistance for Capacity Building
10. Information on Assistance to be Submitted to the Committee



Categories of Special and Differential Provisions for Implementation of the TF Agreement

- **Category A commitments** are defined as those provisions not requiring a transition period and will be implemented upon entry into force of the Agreement.—Developing and LDC Members will employ **self-designation** to determine what category of provisions will be placed in the Category A commitments.
- **Category B commitments** are defined as those provisions designated for implementation after a transition period.—The principle of **self-select** will be used for the implementation dates for each of the Section I provisions binding on them.
- **Category C commitments** are defined as those provisions that will be implemented upon acquisition of capacity through assistance and a transition period. — **Implementation is not required if capacity is lacking.** This category provides for a **pre-notification process**, to guarantee the binding commitment from donors, that was lacking in earlier draft texts of the TF Agreement. This process would build in additional time for developing and LDC Members, while ensuring that the commitment for assistance would be obtained before notifying their definitive implementation dates; this process was at first resisted by developed country Members.

Final Provisions of the Agreement on Trade Facilitation

The final provisions defines the term “Member” as the competent authority of that Member, and states that all provisions of the Agreement are binding on all Members. The TF Agreement should be implemented by Members after its entry into force, and developing and LDC Members should implement the Agreement in accordance with the provisions in Section II, should they choose to use it. After its entry into force, Members should implement their Category B and C Commitments, counting the relevant periods from the date the Agreement enters into force. Regional approaches to assist in the implementation of obligations, may be adopted by Members belonging to customs unions or regional economic arrangements, through such regional bodies. Reservations to the provisions of the agreement may not be entered by Members, without the consent of the other Members. The categories of commitments by developing and LDC Members should constitute an integral part of the TF Agreement, which should work in tandem with the general principles and commitments of the Agreement Establishing the WTO.

Significant Contribution by the ACP Group



The African, Caribbean and Pacific (ACP) Group of States, was instrumental in building consensus regarding Category C negotiations, through their proposal tabled in mid-2013. The process upon which consensus was built across developing countries, and refined in the Group of 90 (G90), was designed by the ACP Group, and was effective in breaking the almost decade long deadlock in negotiations on Section

II of the TF Agreement. The ACP Group, the African Group and the LDC Group all form a part of the G90 alliance, which is a negotiating body that represents the common interests of the countries involved. The group managed to also secure definitions for the three categories of implementation afforded to developing and LDC Members in the Agreement, as well as the concept of financial assistance as part of what may be provided. This is a milestone achievement for developing nations, as the inclusion of definitions, as it relates to the categories of commitments within the Agreement, was strongly opposed by developed countries, who have committed not to use Section II of the Agreement.

Jamaica and the Trade Facilitation Agreement

Jamaica was represented at the WTO MC9, with a delegation headed by the Hon. Arnaldo Brown, M.P., Minister of State in the Ministry of Foreign Affairs & Foreign Trade, who also served as Ministerial Coordinator of the ACP States. Jamaica has always been aligned with the TF negotiations and has progressively been modernizing its customs operations and building convergence with all agencies involved in the trade process. The TF negotiations has also guided the policy direction for Jamaica as it sought to be compliant with international best practices in TF, addressing critical elements in border management to effect its position of being the Logistics Hub for the Caribbean, and potentially the fourth node in the global logistics chain, complementing Dubai, Singapore and Rotterdam.



While Jamaica will attempt to commit to as many of its obligations under the TF agreement, early implementation of Section 1 measures will be limited by resource constraints. In order to appreciate Jamaica's capacity to commit to Section 1 provisions, a re-examination of the Needs Assessment Framework conducted in 2008, would have to be done. The Needs Assessment, was a national self assessment of the trade facilitation needs and priorities of Jamaica, conducted by the WTO's Trade Finance and Trade Facilitation Division. The assessment was done to determine where technical assistance was required, and it is believed that with adequate time and the provision of the necessary technical, financial and capacity building assistance (TFACB), it will be possible to comply with the relevant obligations in Section 1 of the TF Agreement.

Jamaica's position in respect to this provision, is that emphasis should be placed on developing a single, national enquiry point. It is also recognized that progress within CARICOM in relation to a Harmonized Customs Legislation, would also provide for a regional enquiry point. The language in the provisions provides for the implementation of either option, so Jamaica and CARICOM would need to examine the provisions of the Article together, along with the respective Needs Assessments of Member States, in order to determine the most appropriate option for Members. Deeper analysis of each article will be required given that the Needs Assessments were based on earlier drafts of the TF Agreement, and would need to be updated and aligned with the current TF Agreement. The National TF Committee was established to address trade facilitation issues in Jamaica, in accordance with the provisions in the Agreement, and comprises all the stakeholder agencies concerned with facilitating trade and expediting border procedures. With the conclusion of the TF Agreement, the National TF Committee will undoubtedly assume greater importance in ensuring that commitments can be met, as well as to contribute to the scheduling of the implementation process of the Agreement.

The TF Agreement contains provisions for faster and greater efficiency among customs and other relevant authorities as it relates to customs procedures and customs compliance issues. The agreement also provides for technical assistance and capacity building to ensure that implementation of relevant trade facilitation measures, is carried out by all Members. For the more than 159 Members of the WTO, the recently concluded TF Agreement guarantees binding commitments to expedite the movement, release and clearance of goods, which will improve border procedures and stimulate world trade. The Agreement also provides for improved cooperation among WTO Members on customs matters, and commits to helping developing countries fully implement the obligations as required under the Agreement. Being a Member of the WTO, Jamaica has the opportunity to take advantage of these trade measures, and position itself to explore more export markets in order to achieve growth and economic stability, while facilitating trade.

The Agreement on Trade Facilitation is available on the WTO website through the following link:
http://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm



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