



Customs Flash Belgium

WTO Trade Facilitation Agreement: what to expect in terms of business benefits and Government implementation

Introduction

On 22 February 2017, the WTO Trade Facilitation Agreement (TFA) entered into force following ratification by 112 national parliaments out of a total 164 WTO members. Promising greater trade efficiency by addressing administrative barriers to trade, the TFA required a 2/3 majority among WTO members to enter into force, a majority achieved after ratifications by Rwanda and Tchad during the week of 20 February 2017.

The new agreement's goal is to simplify and streamline customs formalities for the import and export of goods and to create greater transparency and legal certainty towards businesses involved in cross border trade. The TFA will help companies move goods quicker and more efficiently across borders, supporting big and smaller companies' participation in supply chains. The TFA benefits would increase competitiveness in developing countries, as trade transaction costs are highest in the world's poorest countries. It is estimated that implementing TFA would have a bigger impact on international trade than eliminating all remaining tariffs.

Furthermore, potential gains from the TFA have been well-documented, and include:

- Reduction of trade costs for members by an average of 14.3 %, according to studies conducted by the WTO and the OECD;
- According to the 2015 World Trade Report, developing countries' exports are estimated to increase by between USD 170 billion and USD 730 billion per annum, whereas developed economies' exports are estimated to increase by between USD 310 billion and USD 580 billion per annum.

Governments across the globe are now stimulated to further bring down trade barriers that relate to customs and trade facilitation by using the TFA as a reform catalyst.

Through commitments made in a number of areas, the TFA imposes rules on WTO Members which will result in faster, simpler and cheaper border clearance. Through implementation of commitments by Governments worldwide, the TFA will increase trade efficiency by cutting customs-related red tape, simplifying customs procedures, reducing the clearance time of goods, stimulating cooperation among customs authorities and improving the quality of trade facilitation decision making.

Facts

Building on the existing WTO General Agreement on Tariffs and Trade (GATT), the WTO TFA expands and updates the articles dealing with "access to information", "faster, simpler and cheaper border clearance" and "fairness in customs disputes". Hence, the WTO TFA pushes its Members to further improve policies and procedures in the area of customs and trade, to enhance the movement, release and clearance of goods across borders, and is acting as a driver for customs related reforms domestically. Whereas the TFA obliges Governments to implement some provisions, other commitments remain 'best effort' obligations, allowing some flexibility (accommodating the challenges of implementation by developing country Governments in particular).

With regards to **improving access to information**, Governments must, under the WTO TFA, publish all customs requirements and trade regulations as well as appeal procedures on the internet. The use of **fees and charges** by governments needs to be transparent and published, with the intention to be further reduced. Governments will also need to prepare and publish practical, **step by step guides** to their import and export procedures on the Internet. It also foresees the possibility for businesses to participate in consultations and decision making processes of these requirements, by offering the possibility to comment on any proposed new or amended laws or regulations concerning the movement, release or clearance of goods.

The TFA provides businesses with the right to request **advance rulings to businesses upon request**, which are written decisions by the government concerning the customs treatment of goods that a person plans to import. Questions for rulings by traders on **tariff classifications and country of origin of imported goods** need to be provided by Governments. These advance rulings provide legal certainty on

the payment of import duties before the actual import of goods. Whereas many countries (including the EU, which also maintains a public rulings database) already foresee this facility, the advance rulings obligation and guidelines in the WTO TFA may demand legislative reforms in other countries.

With regards to **faster, simpler and cheaper border clearance**, the TFA invokes a significant number of provisions. Fees and charges imposed by customs authorities in connection with import and export will be controlled and several trade facilitation measures are introduced. First, Governments need to provide for a **pre-arrival processing procedure of goods**, allowing carriers and importers to submit documents (such as cargo manifests, import goods declaration and supporting documents) before import to expedite their release.

Secondly, Member governments will need to put in place **preferential trader programmes for authorised operators**, offering additional trade facilitation benefits, based on eligibility criteria. The use of 'mutual recognition agreements' (MRA's) between countries is stimulated to expand the validity of AEO certificates. Such an agreement can be negotiated between Members, where they reciprocally accept each other's conformity assessment procedures to prevent double controls.

Whereas many Governments already offer these so-called AEO programs, these facilities are still under development in other countries, often making use of WCO best practices and guidelines. Deloitte supported the development of AEO programmes, including in Belgium, offering useful insights and best practices.

In addition, Governments are stimulated to establish so-called **single window schemes**, offering a single entry point for businesses to submit information and documents. The European Union is still working to establish such a single window scheme, one of the areas where WTO TFA may have a positive impact on the EU business environment.

The WTO TFA improves efficiency and transparency of procedures in the area of **transit**, an important topic for businesses transporting goods through land-locked countries. Other simplified customs procedures are ensured under the TFA. Under the WTO TFA, Governments cannot, among other things, request fees and charges on transit traffic and are limited in requiring companies to provide transit guarantees.

With regards to the right to **fairness in customs disputes**, the TFA grants businesses the right in every Member to appeal or review decisions by the customs authorities that influence them. Companies can also ask a **confirmatory test** if customs reject the conformity of goods with required standards, which is especially relevant in the area of agriculture (pesticide residue levels tests, etc.). On the other hand, businesses will also become accountable for breaches of the Member's customs regulations and penalties will be imposed.

Apart from policy commitments, each WTO member agreed on institutional commitments, which includes the obligation to set

up a **national trade facilitation body** where both public and private sector engage in a structured platform to discuss and monitor trade facilitation improvements.

Finally, as the first multilateral trade agreement since the establishment of the WTO, the TFA has been welcomed as an **innovative and modern agreement**. Whereas developed countries will need to ensure implementation upon entry into force, the developed countries benefit from flexibilities under the TFA. For developing countries, the commitments under the TFA can be implemented based on a self-assessment and prioritisation of issues to be addressed directly (Category A), and others to be addressed through a phased approach or requiring technical assistance (Categories B and C).

What does it mean for you?

With the TFA's entry into force, businesses operating and trading in global markets can hope for and may expect some simplifications in dealing with customs authorities, especially in countries where they currently experience more difficulties.

For Governments and customs authorities, the TFA can serve as a catalyst for customs modernisation and optimisation, thereby supporting competitiveness. Members, especially developing countries but also a number of developed countries, still have a lot of work to do to properly implement the TFA. A recurring problem for many Members is the fact that a significant number of TFA provisions already exist in some form or another but are not practically applicable or do not reach their goal. Customs authorities should gain improved insights into the TFA compliance gaps and identify priority issues to be addressed.

What to do?

In dealing with customs authorities, companies should soon be able to make use of advantageous procedures implemented by Members due to the TFA.

Customs authorities should make sure that a TFA gap-analysis is undertaken, so as to identify those areas where compliance requires additional efforts.

Deloitte's Customs and Global Trade (CGT) team offers substantial insights and experiences in supporting public and private entities on customs and trade facilitation. The team stands ready to assist with the implementation of the TFA through:

- Advising companies on their current customs challenges in target markets and how the TFA can be used to their advantage;
- Supporting customs authorities in their customs modernisation efforts, such as through prioritising the implementation of TFA commitments.

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