

## WTO Trade Facilitation Agreement enters into force

Following ratification by two-thirds of the WTO membership, the WTO Trade Facilitation Agreement (“TFA”) entered into force on 22 February 2017.

The objective of the TFA is to simplify, modernize and streamline import and export procedures, customs formalities and transit requirements. In addition, the TFA is intended to improve transparency and predictability and enhance customs cooperation. In this way, the TFA will make it easier for small and medium-sized companies to participate in global value chains, and encourage developing countries to diversify their economies.

Estimates show that full implementation of the TFA could reduce trade costs by an average of 14.3% and boost global trade by up to \$1 trillion per year. This would have a bigger impact on international trade than the elimination of all the world’s remaining tariffs. The biggest gains are to be expected in the least developed countries, for which the implementation of the TFA could reduce trade costs by almost 17%.

### 1. WHAT IS NEW IN THE TFA?

Section I of the TFA, comprising 12 articles, sets forth the trade facilitation disciplines and obligations intended to expedite trade procedures. In general terms, Section I clarifies and complements Articles V, VIII and X of the General Agreement on Tariffs and Trade 1994 (“GATT 1994”).

#### 1.1 Enhanced transparency and predictability

The TFA contains multiple provisions aimed at enhancing the transparency and predictability of trade and customs procedures. Amongst other provisions:

- Article 1.1 obliges Members to promptly **publish** certain specified requirements related to customs clearance or transit of goods in a non-discriminatory and easily accessible manner. Such publication must allow all traders – located both inside and outside the country – to become acquainted with trade procedures.
- Article 1.2 requires Members to publish three categories of trade information on the **internet**, and encourages Members generally to make all trade-related information available through the internet. As a result, businesses should be able to obtain copies of the forms or documents requested by the customs authorities faster and at no or little cost.
- Article 1.3 sets forth the obligation for Members to maintain **enquiry points**, in order to answer reasonable enquiries on import or export requirements

submitted by traders or other interested parties and to provide copies of the required forms and documents.

- Article 1.4 requires Members to **notify** the Committee on Trade Facilitation of the publication of new rules governing customs clearance, the place of publication of such rules and the contact information of enquiry points.
- Article 2.1.2 states that Members must, in principle, ensure that new laws and regulations relating to customs clearance or changes hereto are **published as early as possible** before the new requirements enter into force, in order to make traders acquainted with the requirements.
- Article 3 grants businesses the opportunity to submit a request for an **advance ruling**, i.e. a binding decision from the authorities concerning the customs treatment of goods. If the request contains all necessary information, Members must, in principle, issue such an advance ruling. For businesses, the benefit of an advance ruling is the possibility to determine, with legal certainty, the amount of duties and taxes that will have to be paid before the goods are shipped.

For businesses, enhanced transparency and predictability imply a more precise determination of the import and export costs and requirements related to foreign markets. The fact that businesses have more time to become acquainted with new trade rules and requirements grants them the possibility to plan accordingly and, if necessary, to adjust their business operations in a timely fashion.

### 1.2 Faster, easier and cheaper customs clearance

Several provisions of the TFA are aimed at improving the efficiency of cross-border trade by simplifying requirements, harmonizing procedures and accelerating the release and clearance of goods. Amongst other provisions:

- Article 7.1 states that each Member must implement a **pre-arrival processing** procedure, allowing carriers and importers to submit import documents and other required information prior to the arrival of goods with a view to expediting the release of goods upon arrival. Members are encouraged to allow the pre-arrival processing of the documents in electronic format.
- Article 7.2 obliges Members to implement procedures allowing the **option of electronic payment** for duties, taxes, fees and charges collected by customs upon importation and exportation, to the extent practicable.
- Article 7.7 states that Members must provide **additional trade facilitation benefits to authorized operators**, i.e. businesses that meet a number of specified criteria. Members are encouraged to develop their authorized operator schemes on the basis of international standards. The import and export

transactions of an authorized operator will be subject to fewer customs checks, reducing the time and cost of customs clearance.

- Article 10.2 provides that Members are encouraged, albeit not bound, to **accept paper or electronic copies** of supporting documents required for import, export or transit formalities.
- Article 10.4 provides that Members are encouraged, albeit not bound, to establish a **single window** where traders can submit documentation in relation to the importation, exportation or transit of goods through a single entry point. After examination of the documentation by the authorities, the results shall be notified to the applicants through the single window in a timely manner. As a result, companies no longer have to make multiple submissions to multiple authorities.

### 1.3 Appeal or review procedures

Article 4 stipulates that all Members must provide for appeal procedures (administrative and/or judicial) against administrative decisions issued by the customs authorities. The appeal and review procedures must be carried out in a non-discriminatory manner. To businesses, such procedures grant the possibility of formally challenging unfavourable customs rulings, of obtaining the reasons for such adverse decisions and of having a remedy when the customs authorities fail to act.

## 2. WHAT ROLE CAN BUSINESSES PLAY?

It should be noted that the provisions of the TFA are drafted in broad and general terms, granting Members a certain degree of flexibility with regard to national implementation. Indeed, the degree to which the intended benefits of the TFA materialize largely depends on such implementation. While implementation is the responsibility of Members, businesses have an important role to play in advising national authorities on how the TFA is best applied in practice. In order to do so, the TFA explicitly grants businesses the opportunity to have a greater say in the decision-making process of trade laws and regulations.

By correctly understanding the benefits of and adequately using the following mechanisms, businesses can ensure that their needs and preferences are taken into account:

### 2.1 Opportunity to comment

Article 2.1.1 provides that Members must – to the extent practicable – provide businesses with the opportunity to comment on proposed trade laws and regulations before their entry into force.

## **2.2 Consultations**

Article 2.2 obliges Members to hold regular consultations between its border agencies and traders or other stakeholders located within their territory. This regular consultation mechanism provides businesses with the opportunity to bring their trade concerns to the attention of the competent authorities, to discuss how the quality and efficiency of trade procedures could be improved and to stay informed about future plans of the national authorities which may affect their business.

## **2.3 National Committee on Trade Facilitation**

Article 23.2 of the TFA requires Members to establish a National Committee on Trade Facilitation in order to facilitate the domestic coordination and implementation of the Agreement. For businesses, participation in the national committees is crucial to ensure that their interests are taken into account when implementing the TFA into national law and administrative practice.

## **2.4 Use of optional trade facilitation procedures**

The TFA provides for a number of “optional” trade facilitation procedures, which may be obtained by businesses on a voluntary basis and on their own request (e.g. advance rulings, pre-arrival processing, additional facilitation for authorized operators, appeal or review procedure).

## **3. WHEN WILL THE PROVISIONS OF THE TFA BE IMPLEMENTED?**

The TFA provides for differentiated requirements concerning the implementation of the new rules for developed countries, on one hand, and for developing and least developed countries (“LDCs”) on the other hand.

### **3.1 Implementation of the TFA by developed countries**

Developed countries are, as of its entry into force, required to immediately implement the new rules laid down in the TFA. Developed countries cannot avail of flexibility mechanisms, nor can they postpone the implementation of the new rules as it is presumed that they have the capacity to do so.

### **3.2 Implementation of the TFA by developing countries and LDCs**

Section II of the TFA provides for a certain degree of flexibility with regard to developing countries and LDCs, directly linking the implementation of the TFA to the individual capacity of the Members to do so. In particular, the TFA establishes provisions on the special and differential treatment (“S&DT”) for developing countries and LDCs, allowing them to unilaterally determine the starting date for the implementation of the substantive provisions of the TFA.

To benefit from such S&DT, developing countries and LDCs must categorize the provisions of the TFA into the following three categories, and must notify the other WTO Members of such categorization:

- **Category A:** provisions that the Member will implement by the time the TFA enters into force (or, in the case of LDCs, within one year after entry into force);
- **Category B:** provisions that the Member will implement after a transitional period following the entry into force of the TFA; and
- **Category C:** provisions that the Member will implement after a transitional period following the entry into force of the TFA and requiring the acquisition of assistance and support for capacity building.

Each developing country and LDC thus has the right to decide when it will implement the provisions of the TFA and what technical and/or financial assistance or other capacity building support, if any, it will need from external donors (e.g. the World Bank) in order to do so. If such assistance is not provided or if the Member, despite receiving assistance, continues to lack the necessary capacity, it will not be forced to implement the provisions.

#### 4. CONCLUSION

The entry into force of the TFA represents an important step forward in international coordination concerning import and export procedures, customs formalities and transit requirements. As explained above, the private sector can play an important role in contributing to the correct implementation of the new provisions and in monitoring the compliance with the TFA's disciplines by the domestic governments and competent authorities.