



USAID
FROM THE AMERICAN PEOPLE



A COMPREHENSIVE APPROACH TO TRADE FACILITATION AND CAPACITY BUILDING

CONNECTING DEVELOPING COUNTRIES TO SUPPLY CHAINS

A COMPREHENSIVE APPROACH TO TRADE FACILITATION AND CAPACITY BUILDING

CONNECTING DEVELOPING COUNTRIES TO SUPPLY CHAINS

MARCH 2014

BUSINESS ENVIRONMENTS FOR AGILE MARKETS

AUTHORS: ROBERT HOLLER, ERIN ENDEAN, PAUL J. FEKETE, AND VIRGINIA BROWN

This report was prepared for review by the United States Agency for International Development under Contract No. AID-OAA-TO-00044 GBTI II IQC # EEM-I-00-07-00006-00. It was submitted by Erin Endean, Chief of Party, Business Environments for Agile Markets (BEAM), eendean@carana.com, 703-778-3211.

DISCLAIMER:

The authors' views expressed in this publication do not necessarily reflect the views of USAID or the United States Government.

CONTENTS

Foreword	7
Executive Summary	9
A Sequenced Approach to Trade Facilitation	9
Lessons Learned in Trade Facilitation Technical Assistance	11
Public/Private Sector Engagement	12
Economic Gains	12
Donor Assistance	13
Introduction	15
What Is at Stake?	16
Focus of this Paper	17
Key Elements	19
WTO Principles	19
WCO Principles	20
TFA Implementation Timeline	23
Grouping and Sequencing Implementation of the WTO Commitments	27
Sequence Group 1: Political Will and Adoption of Fundamental Principles	29
Sequence Group 2: Procedural Simplification	31
Sequence Group 3: Compliance Management	33
Sequence Group 4: Interagency Cooperation and Coordination	39
Lessons Learned in Technical Assistance	45
Political Commitment	46
Mutual Accountability between Donors and Host Countries	47
Public/Private Sector Cooperation and Transparency	48
All Agency Inclusion	49
Quality Control and Assurance	49
Integration and Assimilation of Modernization Components	51
Technology Solutions	52
Management Capacity Building	52
Economic Gains	55
Donor Assistance	59
References	63
Appendix: Virtual Technical Assistance Library	65
Appendix: World Trade Organization Agreement on Trade Facilitation	69

FOREWORD

The Trade Facilitation Agreement (TFA) was the signature accomplishment of the “Bali Package” adopted in December 2013 at the Ninth Ministerial Conference of the World Trade Organization. The Package is an interim harvest of the Doha Round, launched in 2001, with the objective of improving the trading prospects of developing countries. The new TFA delivers on this long-promised goal.

When the negotiations on a TFA commenced in 2004, reaching an agreement to streamline trade was thought to be an “easy lift”—at least in relation to other issues being negotiated in Geneva. Most countries agreed that the more efficient and timely movement of goods across borders would be a win/win situation for developed and developing countries alike. One of the lessons that many developing countries took to heart in the aftermath of the Uruguay Round was that they needed to pay attention not only to what they were signing, but also to what resources would be necessary to implement any new WTO obligations. As a result the Bali negotiations included an explicit link between substantive commitments to be undertaken and donor assistance for implementation of those new obligations.

This background helps to understand why the TFA includes special and differential treatment provisions for developing country members and least developed country members. These provisions constitute an agreement by donor countries to provide technical assistance and capacity building related to implementation of the TFA’s provisions. Simply put, if the significant economic benefits of the TFA are to be achieved, donors and recipient countries will need to work closely together.

Over the course of the WTO negotiations, USAID’s Office of Trade and Regulatory Reform (TRR) supported the talks by sponsoring and facilitating WTO self-assessments in more than 20 countries and by launching vehicles such as the Partnership for Trade Facilitation (PTF), intended to help countries implement provisions of the TFA.

A Comprehensive Approach to Trade Facilitation and Capacity Building: Connecting Developing Countries to Supply Chains is USAID's contribution toward answering the question posed by many developing countries about how best to manage the TFA's implementation; that it will require an integrated, multi-agency approach. The paper offers a systematic methodology that can be adopted by developing countries regardless of their level of development. Undoubtedly there will be other approaches, but our objective will have been met if this document serves to catalyze discussions between developing countries and their development partners and helps move forward the TFA's implementation.

Other elements will also be necessary, such as donor coordination and the fostering of partnerships with the private sector to identify creative responses for implementing the TFA.

Thank you.

Eric Postel
USAID Assistant Administrator
Bureau of Economic Growth, Education, and Environment (E3)

EXECUTIVE SUMMARY

The World Trade Organization (WTO) Bali Ministerial Conference concluded on December 7, 2013 with agreement on a package of issues designed to streamline trade, boost developing countries' trade, and spur economic growth, particularly in least developed countries (LDCs). The WTO Trade Facilitation Agreement (TFA) is part of the “Bali Package” and will be legally binding; it will also address assistance to developing countries and LDCs to assist with their implementation of the agreement. The text adopted in Bali is not final, although the substance will not change. It will be checked and revised to ensure the language is legally correct, aiming for the WTO General Council to adopt it by July 31, 2014.¹

The primary focus of trade facilitation technical assistance and capacity building has traditionally been on Customs, but this has evolved in recent years to encompass more coordinated multi-agency processes—possibly even integration. There is growing international recognition of the need for formalized, effective collaboration among all of the government agencies whose legislative and regulatory charters include responsibility for some aspect of operations at their nation's borders. This evolution is reflected in the TFA as well as in technical assistance supported by multilateral and bilateral development institutions. The TFA provides an opportunity for developing countries and donor organizations, including USAID, to define a trade facilitation strategy that incorporates a comprehensive, multifaceted, and multi-agency approach.

A Sequenced Approach to Trade Facilitation

In this paper, USAID lays out its approach to grouping and sequencing the specific TFA commitments. The TFA contains 13 articles with a combined total of 37 specific requirements for members.² The TFA provides an implementation timeline for developing and least developed countries. It establishes three categories:

¹ Ninth WTO Ministerial Conference, Days 3, 4 and 5: Round-the-clock consultations produce “Bali Package,” WTO 2013 News Items, http://www.wto.org/english/news_e/news13_e/mc9sum_07dec13_e.htm

² WTO/MIN(13)/36/WT/L/911, 11 December 2013

- **Category A.** Immediate implementation; one-year delayed implementation for LDCs
- **Category B.** Implementation after a transition period
- **Category C.** Implementation after a transition period and following needed capacity building

USAID defines four groupings or clusters that we believe will serve to clarify the interrelationships among the various requirements of the TFA. The clusters will also provide the basis for a sequential planning strategy in which technical assistance to address a specific requirement is timed to occur only after the foundation has been laid by meeting the prerequisite requirement(s). The four groups consist of: 1) Political Will and Adoption of Fundamental Principles, 2) Procedural Simplification, 3) Compliance Management, and 4) Interagency Cooperation and Coordination.

Political Will and Implementation of Fundamental Principles

Sequence Group 1 addresses the fundamental principle that trade regulations, requirements, and procedures should be transparent and readily available to all interested parties. Moreover, those parties should be given advance notice of and reasonable opportunity to comment on any proposed changes. Members also will need to establish their National Trade Facilitation Committee to lay the groundwork for effective implementation of the substantive commitments. (Articles 1, 2, and 13)

Procedural Simplification

Sequence Group 2 encompasses reforms that generally address specific border clearance procedures and formalities. While many Customs authorities will have already implemented some, if not all, of these reforms, other border agencies may find in this Sequence Group new responsibilities and commitments relating to their roles in import, export, and transit processes. (Articles 5, 6, 7, 9, 10, and 11)

Compliance Management

Sequence Group 3 includes a set of more complex operational components that, taken together, establish a foundation for a proactive compliance management environment.³ Over the past two decades, Customs authorities in most developing countries have moved from an operating environment characterized by traditional Customs controls to one characterized by risk-based selective controls. This grouping of activities includes some compliance management activities that are exclusively the purview of Customs, as well as activities that will need to involve other government agencies. Specific articles and commitments in the text address somewhat more complex internal

³ Compliance Management refers to the administration of processes to identify and assess the state of compliance with relevant laws, regulations, and policies.

processes including advance rulings, appeal or review procedures, penalty disciplines, risk management, post-clearance audit, and Authorized Economic Operators (AEOs). (Articles 3, 4, 6, and 7)

Interagency Cooperation and Coordination

Although Sequence Groups 1 through 3 encompass, to differing degrees, elements of interagency cooperation, in Sequence Group 4 cooperation is the primary focus. Our final sequence seeks to ensure that the agency cooperation and collaboration issues and efforts addressed in the first three Sequence Groups bring about real change at the most telling point of impact: the field level.

For trade facilitation efforts to achieve the greatest possible impact, corresponding agency responsibilities and concerns must be addressed in an equivalent manner. While border agencies often tend to come to informal working arrangements, particularly at the port level, this cannot be left to chance and must be addressed and resolved by mandate from the highest possible governmental level. Sequence Group 4 includes average release times, border agency cooperation, Single Windows, and Customs cooperation. (Articles 7, 8, 10, and 12)

Lessons Learned in Trade Facilitation Technical Assistance

USAID has been a leading provider of technical assistance to facilitate trade over the past decade. Assistance has been delivered in a wide variety of single-country projects, in regional trade programs (Southeast Asia, Central America, Andean region; West, East, and Southern Africa), and in global project facilities that allowed USAID/Washington to provide short-term technical assistance “on demand” in scores of countries—much of it relating to trade facilitation.

These projects have had a significant impact on a wide spectrum of trade-related issues in developing countries around the globe. Through project implementation, USAID gained insight into better approaches, “lessons learned,” and recommendations for improvement. These lessons may inform what the other technical assistance donors and technical agencies choose to provide in support of the new WTO trade facilitation agreement. USAID has learned that:

- High-level government and business commitment to trade facilitation reform goals is essential.
- Shared accountability by host countries and donors must be present; goals and burdens must be a mutual responsibility. Moreover, donor assistance must be coordinated—no donor acts in a vacuum.
- The private sector must be heard; ongoing dialogue between government and private trade organizations must be prioritized; and trading community views and recommendations should be

given strong consideration in the drafting of new trade laws and regulations.

- There must be a whole-of-government approach: the integration of agencies other than Customs into trade facilitation efforts is critical.
- It is essential that a quality assurance mechanism be put in place at the project outset and that a reporting system is established at the very highest level that brings problems to the early attention of senior management and informs any change to strategic direction.
- Donor efforts should be fully assimilated into the host organization's operational environment.
- Strategic planning for software and information technology systems is crucial.
- Technical assistance may need to target improving agency management skills as well as enhancing capacity in such areas as project management, change management, and human resource management.

Public/Private Sector Engagement

Ongoing dialogue between government and private trade organizations must be prioritized, and trading community views and recommendations should be given strong consideration in the drafting of new trade laws and regulations. Effective dialogue is a two-way street. Government managers and stakeholders must listen to each other with an open mind and a willingness to enter into partnerships in order to improve border processes and efficiencies.

Implementation of the TFA can also benefit from such partnerships. USAID is moving forward toward a more comprehensive engagement with the private sector in recognition of the fact that engaging with private sector entities and the identification of overlapping interests can lead to better development outcomes. Partnerships can expand the impact of our development efforts, accelerate the achievement of development outcomes, and implement sustainable solutions to development challenges.

Economic Gains

Important studies have been conducted and much has been written about the proven economic benefits of eliminating unnecessary impediments to the movement of goods across international borders. For example, a recent World Economic Forum study calculates that if all countries elevate their performance in the areas of border administration and transport/communications infrastructure, raising their performance halfway to global best practice, global Gross Domestic Product (GDP) would increase by \$2.6 trillion (4.7%) and

exports by \$1.6 trillion (14.5%).⁴ This and other analyses carried out by the World Bank and the OECD summarize economic benefits and emphasize the following conclusions:

- Government managers, whether at the ministry, agency, regional, or field level, need to internalize that they share a responsibility to improve trade-related processes.
- Donors are becoming increasingly frustrated with the failure of technical assistance and capacity-building efforts to achieve the intended results. Allowing this trend to continue will eventually become a disincentive to potential donors. An awareness of the potential long-term economic impact of trade facilitation efforts should engage the interest of those government managers whose support is so crucial.

Donor Assistance

There is no question that targeted technical assistance will be required to implement some components of the TFA. There is also no question that there are components that can and should be implemented without significant outside assistance. The TFA recognizes this in its creation of a tiered approach to identifying the capacity of each developing country WTO member to implement each provision of the TFA. The broad range of technical requirements contained in the TFA, and the need to address issues and work with other border agencies that may not have previously had either an interest or experience in facilitation-oriented reforms, will present new challenges to both the donors committed to providing technical assistance and the developing countries receiving the assistance.

It would be unreasonable for developing countries to expect technical assistance to accomplish every reform. It may be necessary for donors to limit the scope of technical assistance to the level necessary to achieve the basic provisions and then shift responsibility of fine-tuning reforms to the developing countries. Donors will work with developing nations to meet these challenges, but the responsibility must be shared by all parties. Country ownership and mutual accountability are essential elements of sustainable development as highlighted in the Paris Declaration on Aid Effectiveness and subsequently restated in Busan with the Fourth High Level Forum on Aid Effectiveness. As it relates to implementation of the TFA, developing countries should recognize that **the presence of empowered national trade facilitation committees and evidence of political will may be regarded as determining factors when donors prioritize technical assistance efforts.**

⁴ WTO/MIN(13)/36 WT/L/911, 11 December 2013



INTRODUCTION

The World Trade Organization (WTO) Bali Ministerial Conference concluded on December 7, 2013 with an agreement on a package of issues designed to streamline trade and, in so doing, to improve food security, boost least developed countries' trade, and foster economic growth and development more generally. The Bali Package has been described as the first major agreement among WTO members since the WTO's 1995 inception following the conclusion of the Uruguay Round of negotiations (1986-94). The most commercially significant part of the Bali Package is the Trade Facilitation Agreement (TFA), which is about cutting red tape and speeding up port clearances. The TFA is legally binding and provides for assistance to developing and least developed countries in implementation. The benefits to the world economy are calculated to be between \$400 billion and \$1 trillion by reducing the costs to trade by between 10% and 15%, increasing trade flows and revenue collection, creating a stable business environment, and attracting foreign investment. The text adopted in Bali is not final, although the substance will not change. It will be checked and revised to ensure the language is legally correct, aiming for General Council adoption by July 31, 2014.¹

Trade facilitation has traditionally focused primarily on Customs, but in recent years the focus has evolved to encompass more coordinated multi-agency processes—possibly leading to integration. This broadening of the trade facilitation agenda is fully incorporated in the TFA, which demonstrates a transition away from the implicit tendency to equate “trade facilitation” with “Customs modernization.” The TFA provides a new mandate that extends beyond Customs and explicitly aims at bringing about more effective cooperation between Customs, other government authorities, and the trading community.

Donor assistance has followed a similar evolution. Over the past few years, USAID-sponsored expert studies have addressed issues such as port efficiency and transport logistics. Recent technical assistance initiatives have involved time-release studies, integrated border management, and Single Windows—initiatives that incorporate other government agencies involved in the regulation and control

¹ WTO/MIN(13)/36 WT/L/911, 11 December 2013

of international trade processes beyond simply Customs. The World Bank trade facilitation work has followed suit: its *Border Management Modernization Handbook* (2011) substantially expanded the scope and focus of its earlier *Customs Modernization Handbook* (2005).

Technical assistance from the European Union (EU) has similarly evolved. A recent European Commission (EC) thematic review on trade facilitation offers that while Customs is regarded as the key player because it sits at the heart of the clearance process and is involved from the arrival of goods to their delivery out of the border gate, other government agencies are necessarily involved, including veterinary and sanitary/phytosanitary control agencies, technical standards, immigration, trade and transport, port management, and police and security.² From this perspective, the EC review suggests that cooperation and coordination among the various actors at the borders is “the process that links [them] into an active, operational ‘community,’ either at the administrative level through, say, shared risk management information within an integrated Customs environment, or a public/private port community in which information about consignments is shared to facilitate official clearance, or a Single Window environment that widens the community beyond the port, airport or land border post perimeters.”³

In short, trade facilitation and Customs modernization are certainly related, but they are not synonymous: trade facilitation is more inclusive. There is a growing international recognition of the need for formalized, effective cooperation among all of the various government agencies whose legislative and regulatory charters include responsibility for some aspect of operations at their nation’s borders.

What Is at Stake?

The World Economic Forum calculates that if all countries elevate their performance in the areas of border administration and transport/communications infrastructure, raising their performance halfway to global best practice, global Gross Domestic Product (GDP) would increase by \$2.6 trillion (4.7%) and exports by \$1.6 trillion (14.5%).⁴ The greatest gains are to be had from improvements made by developing countries, where border administration and transport/communications infrastructure significantly elevate trade costs and impede their producers’ integration into global supply chains.

2 Des Grimble, Thematic Review: Trade Facilitation, European Commission, 2013

3 Ibid.

4 World Economic Forum, Enabling Trade: Valuing Growth Opportunities, 2013

Focus of this Paper

In the course of developing and implementing technical assistance programs in support of trade facilitation, the responsible U.S. Government agencies, along with their international counterparts such as the World Customs Organization (WCO), have recognized that such capacity-building activities have not always achieved the intended results, and, more constructively, that there are lessons to be learned from those experiences.⁵

Against this background of experience and concepts in transition, USAID hopes to catalyze a discussion about varied approaches to implementation of the TFA. In particular, the purpose of this paper is:

- to guide government officials in developing countries, as well as the USAID missions and other donors that support and assist them, in understanding and applying the rationale for a comprehensive, multifaceted, and multi-agency import/export trade facilitation agenda;
- to illustrate the types of technical assistance projects on trade facilitation that donor and technical organizations (e.g., United Nations Conference on Trade and Development (UNCTAD), the World Bank, the WCO, WTO, and bilateral donors including USAID) have tended to support and the resources, tools, and handbooks that they have created; and
- to foster discussion among donors about an evolving division of labor/comparative advantage with respect to technical assistance in trade facilitation.

⁵ Customs Capacity Building Strategy prepared by the WCO on behalf of the international Customs community and presented to the WTO Ministerial Conference in Cancun in September 2003



CMA CGM

MSC PAILI

PILOTE

LOMÉ

LOMÉ



KEY ELEMENTS

The Trade Facilitation Agreement provides an opportunity for developing countries and donor organizations, including USAID, to define a trade facilitation strategy that incorporates a comprehensive, multifaceted, and multi-agency approach. Key elements underpinning the strategy are:

- a commitment to core WTO and WCO principles of the multilateral trading system;
- the requisite public and private sector institutions and processes to enable a developing country to implement a trade facilitation strategy, once defined;
- agreement (within the developing country and with donors) on a prioritized and sequenced approach to trade facilitation and associated technical assistance, where needed; and
- understanding and application of lessons learned from previous trade capacity-building assistance related to trade facilitation.

Both the WTO and the WCO have laid out what they consider to be the essential principles of the multilateral trading system. We outline core WTO and WCO principles in this chapter.

WTO Principles

The following WTO principles are grounded in binding multilateral rules that govern the trade practices of 160 countries.

- **Non-discrimination.** A country should not discriminate between its trading partners; neither should it discriminate between its own and foreign products, services, or nationals.
- **More open.** Lowering both tariff and non-tariff barriers is one of the most obvious ways of encouraging trade. Tariff barriers typically take the form of high rates of duties and taxes. Non-tariff barriers include measures such as import bans or quotas that selectively prohibit or quantitatively restrict the importation of certain commodities or, perhaps less obviously, complicated, costly,

and/or time-consuming Customs or other agency border clearance procedures.

- **Greater predictability and transparency.** Foreign companies, investors, and governments should be able to understand the rationale of whatever trade barriers cannot be eliminated and have confidence that new barriers will not be raised arbitrarily. With stability and predictability, investment is encouraged, jobs are created, and consumers can enjoy the benefits of competitive markets—more choices and lower prices.
- **More competitive.** ‘Unfair’ practices, such as export subsidies and dumping products at below cost to gain market share, should be discouraged. The issues are complex, and the WTO rules try to establish what is fair or unfair and how governments can respond, in particular by charging additional import duties calculated to compensate for damage caused by unfair trade.
- **More beneficial for less developed countries.** Over three-quarters of WTO members are developing countries and countries in transition to market economies. The WTO agreements give them transition periods to implement commitments, providing time for the development of institutional capacity sufficient to implement commitments as well as for private sector adjustments to commitments like the protection of intellectual property and the increased import competition resulting from lower tariffs.
- **Environmentally conservative.** The WTO’s agreements permit members to take measures to protect not only the environment but also public health, animal health, and plant health. However, these measures must be applied in the same way to both national and foreign businesses. In other words, members must not use environmental protection measures as a means of disguising protectionist policies.

WCO Principles

The World Customs Organization, with about 180 members representing all stages of economic development, is a voluntary membership organization. The WCO operates through member commitments to uphold certain conventions such as the 2005 Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework), which has 160 signatures. The WCO’s Revised Kyoto Convention on the Simplification and Harmonization of Customs Procedures (RKC) has over 80 signatures, although many developing countries are still working toward compliance with its requirements.

Core WCO principles include:

- **Integrity.** Customs administrations should be free of corruption and strive to uphold the highest levels of integrity.

- **Transparency.** Customs laws, regulations, administrative guidelines, and procedures should be made public and provided to clients in an easily accessible manner.
- **Accountability.** Customs administrations should be accountable for their actions through a transparent and easily accessible process of administrative and/or judicial review.
- **Predictability.** Customs laws, regulations, administrative guidelines, and procedures should be applied in a stable and uniform manner.
- **Facilitation and control.** While ensuring proper enforcement of Customs laws and regulations, Customs administrations should strive to facilitate the processing and clearance of legitimate trade by risk management.
- **Client service.** Customs administrations should continually strive to improve the level of service they provide to clients.
- **Standardization.** Customs laws, regulations, administrative guidelines, and procedures should, where appropriate, be harmonized with internationally agreed standards.
- **Simplification.** Customs laws, regulations, administrative guidelines, and procedures should be simplified to the extent possible so that Customs clearance can proceed without undue burden.
- **Minimum controls necessary to ensure compliance.** Customs administrations should apply sound risk management intervention systems and audit-based controls to identify high-risk activities, people, cargo, and conveyances and limit the level of Customs intervention.
- **Information and technology.** Customs administrations should make maximum use of information and communication technology to facilitate the adoption of the principles outlined in the Revised Kyoto Convention.
- **Cooperation and partnership.** Customs should strive to develop cooperative relationships with all stakeholders, including government agencies, the private sector, and other Customs administrations.
- **Continuous improvement.** Customs should establish standards of performance and implement systems and procedures that strive to continually improve the efficiency and effectiveness of all business processes.
- **Compliance improvement.** Customs should work with clients to assist them to improve their level of voluntary compliance.



TFA IMPLEMENTATION TIMELINE

The December 2013 WTO Trade Facilitation Agreement provides that technical, financial, or any other mutually agreed form of assistance be provided to help both developing and least developed country members implement the provisions of the agreement consistent with the members' capabilities. Implementation of the specific TFA provision(s) will not be required until the necessary implementation capacity has been acquired.

The TFA establishes three categories of provisions:

- **Category A.** Provisions that developing countries designate for implementation upon entry into force of the agreement and least developed countries designate for implementation within one year of that date.
- **Category B.** Provisions that both developing and least developed countries designate for implementation on a date after a transitional period of time following the entry into force of the agreement, and
- **Category C.** Provisions that both developing and least developed countries designate for implementation on a date after a transitional period which requires the acquisition of implementation capacity through the provision of assistance and support for capacity building.

As mentioned earlier in this paper, priorities—and categorization—must be based on individual country-specific self-assessments. Between 2007 and 2013, the WTO, WCO, USAID, and other donor partners supported and facilitated numerous self-assessments in order to provide participating government agencies and private sector stakeholders with the understanding and tools necessary to prioritize proposals that can be implemented upon entry into force of the TFA, as opposed to those that will need more time and/or technical assistance for full implementation.

The TFA provides detailed notification requirements and procedures for developing and least developed countries with respect to each of the three categories. These include information on technical assistance and support for capacity building when it has been determined as necessary. It also provides detailed notification requirements for donor



nations describing, annually, the following information on assistance and support for capacity building provided in the preceding twelve months and, where available, committed to be provided the next twelve months:

- A description of the assistance and support for capacity building
- The status and amount committed/disbursed
- Procedures for disbursement of the assistance and support
- The beneficiary country, or, where necessary, region
- Implementing agency of the member providing assistance and support

The TFA provides that notifications submitted may also include such further information as the notifying member deems appropriate and encourages members to provide information on the domestic agency/entity responsible for implementation.

It is relevant to refer back to Section 1, Article 13, paragraph 2, which requires that each member establish and/or maintain a national committee on trade facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of provisions of the TFA. From USAID's perspective such a committee will provide the dynamic leadership necessary to bring all of the relevant agencies and stakeholders together in a concerted, collaborative effort to implement the improvements required by the TFA. **Thus, the formation of an empowered national committee on trade facilitation should be a prerequisite for technical assistance or capacity-building activities in support of the TFA.**

Supporting the importance of the national committees as coordinating/oversight bodies, the TFA requires donor members assisting developing country and least developed country members to make known contact points of their agencies responsible for providing assistance and support for capacity building. This includes, when practical, information on such contact points within the country or region where the assistance and support is to be provided; and information on the process and mechanisms for requesting assistance and support. The TFA also encourages developing country members declaring themselves in a position to provide assistance and support to provide similar information.

Specific notification requirements are summarized in the following timeline.

WTO TFA Implementation Timeline



Present

Present Implementation of the TFA involves the establishment of an interim trade facilitation committee (preparatory committee), a legal scrub of the text, and the drafting of a protocol that opens the agreement up for acceptance by the Membership.

July 31, 2014 The 2013 Ministerial Decision on Trade Facilitation calls for the General Council to meet no later than July 31, 2014 to annex the **Category A** notifications from **developing countries** to the Agreement, and to adopt the Protocol drawn up by the Preparatory Committee.

Entry into Force

DEVELOPING COUNTRIES

Year 1, Month 1 **Developing country member** notifies **Category B** and corresponding indicative dates for implementation. (4.1a)

Developing country member notifies **Category C** and corresponding indicative dates for implementation. (4.1c)

Year 1, Month 12 No later than one year after entry into force of this Agreement, each **developing country member** shall notify to the Committee its definitive dates for implementation of the provisions it has designated in **Category B**. If a developing country Member, before this deadline, believes it requires additional time to notify its definitive dates, the Member may request that the Committee extend the period sufficient to notify its dates. (4.1b)

Developing country Members and relevant donor Members, shall provide information to the Committee on the arrangements maintained or entered into that are necessary to provide assistance and support for capacity building to enable implementation of **Category C**. (4.1d)

Year 3, Month 6 Within 18 months from the date of the provision of the information stipulated in subparagraph 4.1d., donor members and respective **developing country members** shall inform the Committee on progress in the provision of assistance and support. Each **developing country member** shall, at the same time, notify its list of definitive dates for implementation. (4.1e)

Category A: Provisions that a developing country member or a LDC designates for implementation upon entry into force of this Agreement, or in the case of an LDC, within one year after entry into force.

Category B: Provisions that a developing country member or LDC designates for implementation on a date after a transitional period of time following the entry into force of the agreement.

Category C: Provisions that a developing country member or LDC designates for implementation on a date after a transitional period of time following the entry into force of the agreement and requiring the acquisition of implementation capacity. (2.1)

Year 1

July 31, 2015 The Protocol will be open for acceptance by a target date of July 31, 2015. Two-thirds of the Membership must ratify and deposit instruments of acceptance before the Agreement enters into force. If two-thirds of the membership does not ratify the Agreement by this date, the General Council will need to review and take appropriate action.

Year 2

LEAST DEVELOPED COUNTRIES

Year 1, Month 12 **LDC** notification of **Category A** Commitments. (3.2)

No later than one year after entry into force of this Agreement, an **LDC member** shall notify the Committee its **Category B** provisions and may notify corresponding indicative dates for implementation of these provisions. (4.2a)

Year 2, Month 1 One year after entry into force of this Agreement each **LDC member** shall notify the Committee of the provisions it has designated in **Category C**. (4.2c)

Year 3, Month 1 One year after the date stipulated in sub-paragraph 4.2c., **LDC members** shall notify information on assistance and support for capacity building that the Member requires in order to implement **Category C**. (4.2d)

Year 3

Year 3, Month 12 No later than two years after the notification date stipulated under sub-paragraph 4.2 a., each **LDC member** shall notify the Committee to confirm designations of provisions and notify its dates for implementation. (4.2b)

Year 4

Year 5

Year 5, Month 1 Within two years after the notification under sub-paragraph 4.2d., **LDC members** and relevant donor members, taking into account information submitted pursuant to sub-paragraph d. above, shall provide information to the Committee on the arrangements maintained or entered into that are necessary to provide assistance and support for capacity building to enable implementation of **Category C**. The participating **LDC member** shall promptly inform the Committee of such arrangements, and shall, at the same time, notify indicative dates for implementation of corresponding **Category C** commitments covered by the assistance arrangements. (4.2e)

Year 6

Year 6, Month 7 Within 18 months from the date of the provision of the information stipulated in subparagraph 4.2e., relevant donor members and respective **LDC members** shall inform the Committee on progress in the provision of assistance and support. Each **LDC member** shall, at the same time, notify its list of definitive dates for implementation. (4.2f)



GROUPING AND SEQUENCING IMPLEMENTATION OF THE WTO COMMITMENTS

Section I of the TFA consists of 13 articles that set forth a total of 37 specific requirements to be accomplished by members.¹ When viewed from a technical assistance perspective, these requirements logically fall into four broad sequential categories, as presented below. It is hoped that these groupings will serve both to clarify the interrelationships among the various requirements as well as to provide the basis for a sequential technical assistance planning strategy (i.e., technical assistance to address a specific requirement is timed to occur only after the foundation has been laid by meeting the prerequisite requirement(s)). It is important to note that while the Sequence Groups are intended to provide a basic roadmap that suggests the general order in which specific reforms should be undertaken, there will be overlaps. It is not necessary, for example, that every reform included in Sequence Group 2 be completed before work can begin on the more complex reforms included in Sequence Group 3 and so on.

In each case, priorities must be determined on the basis of a country-specific assessment. For many developing countries, this process has already been underway in the form of a WTO-supported trade facilitation needs self-assessment; over 80 such assessments were conducted between 2007 and 2011. A second round of assessments is currently underway to update the earlier work or, in some cases, undertake a first assessment. The new round of self-assessments provides countries with the understanding and tools necessary to prioritize proposals that can be implemented upon entry into force of the TFA, as opposed to those that will need more time and/or technical assistance for full implementation.

In addition to the WTO self-assessments, both the WCO and USAID have published assessment instruments: the WCO Customs Diagnostic Framework and the downloadable USAID TCBaseline Customs Assessment Tool.² Either tool can be used to facilitate an assessment that will yield a gap analysis and corrective action matrix, which can then be used to identify requirements that can be satisfied with domestic resources and can also provide the rationale and justification needed to support requests for donor assistance. Regardless of which

¹ TN/TF/W/165/Rev.15 dated 27 March 2013

² <http://egateg.usaid.gov/sites/default/files/TCBaseline%20Customs%20Assessment%20Tool.pdf>

STREAMLINING TRADE PROCEDURES TO REDUCE CLEARANCE TIMES IN JAMAICA



USAID's PRIDE Jamaica project has mapped Customs and other trade clearance procedures in Jamaica, allowing it to prioritize and coordinate efforts to streamline, simplify, and make more transparent all import and export-related processes. PRIDE Jamaica in 2010 completed a full mapping of Jamaica's import/export processes for all the agencies involved in trade operations at the ports of entry. PRIDE performed this work in conjunction with the Trade Community System Partnership (TCSP), a public-private partnership. As a result of the mapping and streamlining exercise, Jamaica has reduced border clearance times by two days for certain categories of cargo, improved Jamaican producers' access to the imported inputs needed for their operations, and boosted the cost competitiveness of Jamaican products on local and export markets. Jamaica raised its ranking on the World Bank's Logistics Performance Index from 124th (in 2012) to 70th out of 160 nations in 2014. The mapping work also served as an input to Jamaica's Single Window for imports and exports. The mapping exercise identified gaps and inefficiencies that defined a roadmap for the process reengineering needed to make a Single Window function optimally. The Single Window is a priority for the Government of Jamaica's efforts to improve producers' trade competitiveness.

assessment instrument is employed and whether the assessment is done with or without outside consultants, the assessment team should include the active participation of representatives of Customs and the other border agencies.

Sequence Group 1: Political Will and Adoption of Fundamental Principles

SEQUENCE GROUP 1

Article 1

Publication and Availability of Information

Article 2

Opportunity to Comment, Information Before Entry into Force and Consultation

Article 13, Paragraph 2

Committee on Trade Facilitation

These articles, taken together, propose mechanisms to oversee and guide the implementation of the TFA and call for measures to ensure the application of the fundamental principles of impartiality and transparency.

More specifically, Articles 1 and 2 address the fundamental principle that trade regulations, requirements, and procedures should be transparent and readily available to all interested parties and, moreover, that those parties should be given advance notice of and reasonable opportunity to comment on any proposed changes.

- Article 1 calls for each member to publish detailed information relating to the following areas of trade-related operations: importation, exportation, and transit procedures and restrictions; duties, taxes, and fees; and classification, valuation, and quotas.
- Article 1 specifies information that should be available over the Internet and directs each member to establish or maintain one or more enquiry points to answer reasonable enquiries from governments, traders, and other interested parties.
- Article 1 further requires that members maintain one or more enquiry points to answer reasonable enquiries of governments, traders, and other interested parties about these issues and to serve as a source for required forms and documents.
- Article 2 calls for each member to ensure that there is an interval between the publication and the implementation of new or amended laws and regulations of general application (not merely Customs) related to the movement, release, and clearance of goods, including goods in transit, and that the interval includes adequate time and opportunity for interested parties to comment.
- Consistent with these requirements as well as the Article 13 Committee on Trade Facilitation requirement, Article 2 requires members to provide for regular consultations between border agencies and traders or other stakeholders within its territory.

It should be noted here that although Article 1 does speak to specific Customs issues, it also encompasses other agency requirements. Requirements regarding publicizing import, export, transit, and appeal procedure, as well as restrictions and prohibitions, are not limited to Customs. This, and the specific mention of “other government

agencies” with respect to fees and charges, demonstrates a clear intent to include the other border agencies in the trade facilitation process.

Article 13 requires members to establish national committees on trade facilitation to facilitate both domestic coordination and implementation of provisions of the TFA. The article does not elaborate on the rationale for these national trade facilitation committees or on their composition and function. UNCTAD, however, fills this gap with the following comments in a document on “Multi-Agency Working Groups on Trade Facilitation.”

Trade facilitation involves a wide and diverse range of public agencies performing functions related to cross-border trade. Public authority has largely been divested to specialized, quasi-autonomous executive agencies operating in often different locations. Such delegation of authority makes coordination and collaborative work a challenging task; agencies work in an atomized manner sealed off from input of other stakeholders. Executive agencies responsible for the implementation of policies are rarely involved in the preparation of policies and designing of solutions. In such an environment, the success of a coordinating mechanism is strongly dependent on the appropriate institutional framework, leadership/or a national champion to drive the process, a clear vision and goals, and committed participants.³

UNCTAD goes on to provide an indicative list of agencies and organizations that are typically involved in cross-border trade issues and suggests that agency representatives to the national committee on trade facilitation should come from different functional levels, including executive and non-executive directors and technical staff. Moreover, the committee would be characterized by an open environment of transparent collaboration based on the contributions of representatives of the following public and private sector entities:

- Implementing agencies—Customs, Quarantine, Standards Board, Port Authority, and Airport Authority, etc.
- Attorney General or Legal Department of Cabinet (with regard to relevant legal matters, e.g., appeals)
- Line Ministries for Transport, Commerce, Foreign Affairs, Economy, and Finance
- Ministries for Agriculture and Animals, Food and Drugs, and Environment
- A representative cross-section of concerned interests in the private sector, including large and small importers and exporters, carriers, freight forwarders, Customs brokers, cargo owners, chambers of commerce, and shippers associations

From a USAID standpoint, such a committee—if properly constituted, motivated, and empowered—would provide the dynamic leadership

³ Multi-Agency Working Group on Trade Facilitation; Technical Notes on Trade Facilitation Measures; Trade and Transport Facilitation Series No. 1; United Nations Conference on Trade and Development, 2011

SEQUENCE GROUP 2**Article 5**

Other Measures to Enhance Impartiality, Non Discrimination, and Transparency [including detentions]

Article 6

Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation [including penalty disciplines]

Article 7, Paragraph 1

Pre-Arrival Processing

Article 7, Paragraph 2

Electronic Payment

Article 7, Paragraph 3

Separation of Release from Final Determination of Customs Duties, Taxes, Fees, and Charges

Article 7, Paragraph 8

Expedited Shipments

Article 7, Paragraph 9

Perishable Goods

Article 9

Movement of Goods under Customs Control Intended for Import

Article 10, Paragraph 1

Formalities and Documentation Requirements

Article 10, Paragraph 2

Acceptance of Copies

Article 10, Paragraph 3

Use of International Standards

Article 10, Paragraph 5

Pre-shipment Inspections

Article 10, Paragraph 6

Use of Customs Brokers

Article 10, Paragraph 8

Rejected Goods

Article 10, Paragraph 9

Temporary Admission of Goods/ Inward and Outward Processing

Article 11

Freedom of Transit

necessary to bring all of the relevant agencies and stakeholders together in a concerted, collaborative effort to implement the procedural and other improvements required by the TFA. That said, the political will to create, support, and sustain this committee must emanate from the highest possible authority within the Government in order to ensure the unqualified attention and commitment of the various ministries, departments, and agencies. This support and mandate will enable the committee to provide strong leadership and ensure that technical assistance and capacity-building efforts in support of trade facilitation will address all of the various agencies' needs. For these reasons, the formation of a national committee on trade facilitation, as described above, with a clear, demonstrable mandate from the highest possible level of the Government should be a prerequisite for technical assistance or capacity-building activities in support of the TFA.

Once the national trade facilitation committee has been formed, the next step is to address Sequence Group 2, which includes the various procedural improvements specified in the TFA as presented below.

Sequence Group 2: Procedural Simplification

Sequence Group 2 includes:

- **Alerts, Detentions, and Testing.** Article 5 requires that each member introduce or maintain a system of notifications or guidance for enhanced controls or inspections. Such notifications or guidance concern such specific agency issues as animal and plant health and the quality and safety of food products, clearly demonstrating the need for other border agency involvement. Article 5 also contains provisions on detention notification and testing.
- **Fees, Charges, and Penalties.** Article 6 addresses disciplines on all fees and charges other than import and export duties and other than taxes within the purview of Article III of GATT 1994. Article 6 addresses Customs administrative penalty disciplines.
- **Release and Clearance of Goods.** Elements of Article 7 that address the release and clearance of goods including processes and requirements relating to pre-arrival processing, electronic payment, separation of release from payments, expedited shipments, and perishable goods are included in Sequence Group 2.
- **Goods in Transit.** Article 9 requires goods intended for import to be moved within a member country's territory under Customs supervision, from a Customs office of entry to another Customs office in its territory where the goods are released or cleared. Additionally, Article 11
 - requires that transit regulations or formalities not be maintained if the circumstances or objectives giving rise to their adoption no

longer exist or if changed circumstances can be addressed in a less restrictive manner,

- requires that transit regulations or formalities not be applied so as to constitute a disguised restriction,
 - limits the extent of fees or charges imposed in respect of transit,
 - prohibits voluntary restraints or similar measures on traffic in transit,
 - requires that products that will be in transit through the territory of any other member be treated no less favorably than if they were being transported from their place of origin to their destination without going through the territory of such other member,
 - encourages physically separate infrastructure for traffic in transit,
 - requires that formalities, documentation requirements, and Customs controls, in connection with traffic in transit, not be overly burdensome,
 - requires that advance filing and processing of transit documentation and data prior to the arrival of goods be permitted, and
 - establishes requirements regarding guarantees.
- **Formalities.** Elements of Article 10 included in Sequence Group 2 address formalities and documentation requirements related to importation, exportation, and transit, including the acceptance of copies, the use of international standards, pre-shipment inspections, the use of Customs brokers, common border procedures and uniform documentation requirements, rejected goods procedures, and procedures relating to the temporary admission of goods for inward and outward processing.

Article 10, paragraph 1 calls for an ongoing review process so that members neither enact new formalities and requirements if the objectives can be achieved in a less trade-restrictive way, nor maintain requirements that no longer fit current circumstances and/or represent unnecessary obstacles to international trade, including import, export, and transit shipments. Correspondingly, members are called upon to reduce and simplify documentation requirements. This review process is intended to address requirements in order to minimize the incidence and complexity of formalities and required documentation taking into account policy objectives, changed circumstances, relevant new information and business practices, availability of techniques and technology, international best practices, and inputs from interested parties.

Some procedures and requirements in this grouping relate only to Customs, while some involve all border agencies. For example, Article 5 provides guidelines relating to a system of issuing notifications for enhanced controls or inspections, including detention notices,

for enhancing the level of sanitary and phytosanitary controls or inspections at the border in respect to foods, beverages, or feedstuffs covered under the notification for protecting human or animal life or health. Other examples that specifically call for or require multiple agency direct involvement include pre-arrival processing, electronic payment, separation or release from final determination of Customs duties, taxes, and other fees and charges, and perishable goods. It is important to note that in the course of ongoing modernization efforts, many Customs authorities have already addressed, or are in the process of addressing, the Sequence Group 2 reforms. In these cases, assisting the other border agencies in their efforts may be the appropriate focus.

SEQUENCE GROUP 3

Article 3

Advance Rulings

Article 4

Appeal or Review Procedures

Article 6, Paragraph 3

Penalty Disciplines

Article 7, Paragraph 4

Risk Management

Article 7, Paragraph 5

Post Clearance Audit

Article 7, Paragraph 7

Trade Facilitation Measures for Authorized Operators

Sequence Group 3: Compliance Management

Sequence Group 3 includes a set of more complex operational components that, taken together, establish a foundation for a proactive compliance management environment.

Over the past 25 years, Customs authorities in most developing countries have moved from an operating environment characterized by traditional Customs controls to one characterized by risk-based selective controls. In some cases, other border agencies have not followed suit, although the current emphasis on creating a Single Window for import transactions is beginning to provide the impetus needed for a more collaborative approach to risk-based targeting. In the United States, the three cornerstones for this collaborative approach to trade facilitation were established by the Modernization Act of 1993: Informed Compliance, Reasonable Care, and Shared Responsibility. Similarly, the TFA moves beyond a limited risk management approach to a broader compliance-management environment characterized by partnerships, shared responsibility, informed compliance, and proactive compliance measurement.

Advance Rulings

Advance rulings are a proven means of facilitating trade, promoting transparency and consistency in Customs operations, and fostering the participation of small and medium-sized enterprises in global commerce. Well-implemented advance ruling systems provide certainty to traders and their agents about how their goods will be treated at the time of import, promote consistent application of Customs rulings and law, foster trust between Customs and traders, and provide a transparent framework that encourages compliance.⁴

Article 3 of the TFA defines an advance ruling as a “a written decision provided by a member to an applicant prior to the importation of a good covered by the application that sets forth the treatment that the

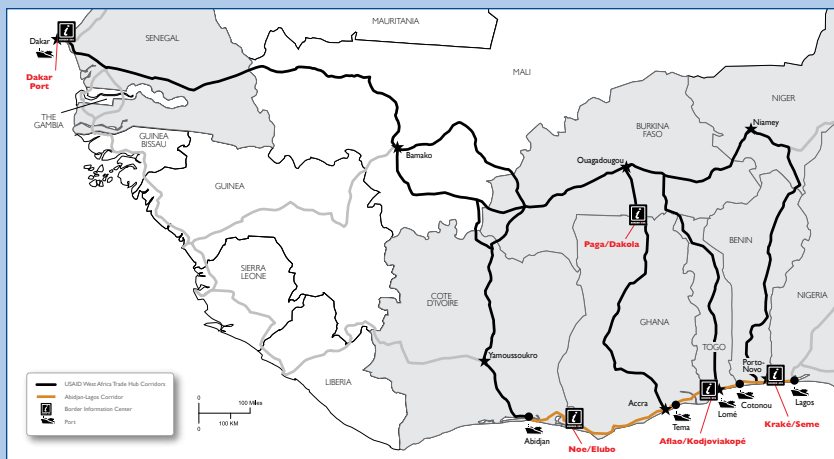
⁴ Edmund Saums, Robert Holler, Wilbur Smith, and Ann Katsiak; USAID Advance Rulings Resource Guide; USAID Worldwide Support for Trade Capacity Building project (TCBoost), 2011

GOING “BORDERLESS” IN WEST AFRICA - INCLUDING THE PRIVATE SECTOR IN TRADE FACILITATION

USAID, under its West Africa Trade Hub (WATH), identified key measures to improve regional integration in West Africa following a comprehensive Gap Analysis on the Economic Community of West African States (ECOWAS) Free Trade Area. The Gap Analysis identified the need for improved public-private dialogue and coordinated private sector advocacy regarding implementation of the ECOWAS Tariff Liberalization Scheme (ETLS).

As a result, WATH assisted leading firms with trading and transport operations in the region to form a private sector association, known as the Borderless Alliance (BA). Established in 2011, the Alliance is a business association that leverages its members' influence to identify and advocate for evidence-based transport and trade policy reforms. The Borderless Alliance's membership base has since grown dramatically. The Borderless Alliance established an independent secretariat and founded National Committees in Côte d'Ivoire, Nigeria, Benin, and Senegal. It is thus well positioned for long-term sustainability and self-governance.

One of BA's most successful endeavors has been the creation of Border Information Centers (BICs) at border posts along the highly trafficked trade corridors in the region. As mentioned previously, the earlier analysis had highlighted the need to increase awareness of ETLS rules and procedures among the private companies trading and transporting goods within the region, as well as the public agencies responsible for regulating trade. Regional traders find that ports and land borders are major bottlenecks due to the multiplicity of rules and procedures required to move vehicles and goods through border processes—and the lack of consistency in implementation. Each BIC operates with two offices—one on either side of a land border (in Senegal, the Port of Dakar has its own BIC). Each office is staffed with a knowledgeable trade advisor from the host country who advises shippers, truck drivers, producers, and traders on specifics of the regional agreements (and border clearance requirements of the entering or exiting country). With USAID support, from November 2011 to early 2014, the BIC network expanded to nine such information centers (see map).



Nine Border Information Centers (BICs) have been established in West Africa with USAID support.

Most BICs are established in partnership with the national shippers' council of the host country, which usually provides the physical location of the center and which may provide in-kind support. Other financial support to the BICs comes from Customs agencies, national shippers' councils, and other border stakeholders. USAID has supported the salaries of Trade Advisors (generally former Customs Officers of their respective countries) stationed at each border; and has funded trainings, coordination meetings, publications, and outreach activities. USAID has published a Border Information Center toolkit, intended to guide and inform future implementers on best practices in setting up and monitoring impact.

The BICs are already demonstrating significant improvements at the borders where they have been launched. In the second quarter of 2013, for example, average clearance times at borders with BICs decreased by 27% as compared to the previous quarter.

member shall provide to the good at the time of importation with regard to: i. the good's tariff classification, and ii. the origin of the good.” While not mandated in the TFA or included in the definition, the TFA goes on to encourage members “to provide advance rulings on the appropriate method or criteria, and the application thereof, to be used for determining the Customs value under a particular set of facts; the applicability of the member's requirements for relief or exemption from Customs duties; the application of the member's requirements for quotas, including tariff quotas; and any additional matters for which a member considers it appropriate to issue an advance ruling.” Since the advance rulings process builds predominantly on Customs knowledge and expertise, an effective advance rulings process can readily be implemented in house. As part of its Customs Modernization Handbook series, USAID, in collaboration with the U.S. Trade Representative, U.S. Customs and Border Protection, the Canada Border Services Agency, and the Australia Customs and Border Protection Service, has published an Advance Rulings Resource Guide that provides best practice examples and a comparative analysis of how three different Customs authorities have organized their respective advance rulings processes.⁵

Appeal or Review Procedures

Article 4 (footnote 4) defines an administrative decision as “a decision with a legal effect that affects rights and obligations of a specific person in an individual case” and provides that administrative decisions “include an administrative action within the meaning of Article X of GATT 1994 or failure to take an administrative action or decision as provided for in a member's domestic law and legal system.” Article 4 further provides that to address such failure, “members may maintain an alternative administrative mechanism or judicial recourse to direct the Customs authority to promptly issue an administrative decision in place of the right to appeal or review.” Article 4 requires that each member shall provide that any person to whom Customs issues an administrative decision has the right, within its territory, to (a) administrative appeal or review by an administrative authority higher than or independent of the official or office that issued the decision, and/or (b) judicial appeal or review of the decision. The Article also encourages members to make its provisions applicable to administrative decisions issued by other border agencies.

Developing country Customs appeals processes are often viewed as problematic. Recent USAID assessments, which include interviews with trade associations and representative economic operators, have found that appeals processes are often a matter of contention and are considered pointless by many in the business sector because Customs decisions are always sustained. A well-functioning, efficient appeals

⁵ Ibid.

system promotes consistency and uniformity and transparency among Customs offices throughout a country.

Penalty Disciplines

Article 6, Paragraph 3 of the TFA requires that administrative penalties imposed by Customs take into consideration and depend on the facts and circumstances of the case and be commensurate with the degree and severity of the breach. This section also addresses voluntary disclosure practices, time limits, the avoidance of conflicts of interest, and provisions for written explanation of the reasons for the penalty and the applicable legal authority.

Reasonable and appropriate penalty disciplines are critical to the successful transition to a compliance management environment. General Annex chapter 3 and Specific Annex H of the RKC have long provided specific standards and best practices with respect to penalty disciplines. USAID field experience has shown, however, that Customs administrations in only a few developing countries have penalty disciplines that conform either to the longstanding RKC standards or to the Article 6 standard under discussion here. In these cases, the design and implementation of effective penalty disciplines, complete with sustainable management guidelines and oversight regimens, may be a complex undertaking.

Risk Management

The term “risk management,” as used in the title of Article 7, Paragraph 4 of the TFA, tends to be equated and loosely applied in the Customs context to automated risk-based targeting systems. Most Customs authorities today have implemented basic risk-based selectivity processes to target high-risk transactions, often as a byproduct of automation. In the Customs vernacular, this is generally understood as risk management; however, while it is a commendable effort, simple targeting through automated selectivity falls short. Comprehensive risk management moves beyond targeting high-risk transactions by applying more sophisticated, risk-based analytical processes in order to identify key industries, ascertain compliance levels, establish measurable compliance goals, and develop public-private collaborative action plans to meet those goals. This more advanced approach encompasses other potential threats to the national interest, such as

- agricultural pests and diseases that could have a devastating economic impact;
- toxic substances that could have a similarly detrimental effect on the environment; and
- various other public safety issues.

This expanded concept of risk management is also important for purposes of promoting trade facilitation and the inclusion of other government agencies.

Article 7, Paragraph 4 requires that each member shall, to the extent possible, adopt or maintain a risk management system for Customs control and apply risk management in a manner so as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions to international trade. It requires that each member shall concentrate Customs control and, to the extent possible other relevant border controls, on high risk consignments and expedite the release of low risk consignments.

ASYCUDA World (Automated System for Customs Data), the most commonly used automated selectivity platform, now provides for and allows other agency access, connectivity, and functionality. Jordan, for example, has already undertaken interagency efforts to create collaborative, risk-based selectivity programs. Other countries that have not progressed in this direction often find that the absolute inspection requirements of other agencies can undermine Customs efforts to expedite legitimate trade flow. Similarly, organizations such as the Association of Southeast Asian Nations and the Southern African Customs Union are exploring regional approaches to risk management; additionally, the AEO mutual recognition component of the WCO SAFE Framework of Standards to Secure and Facilitate Trade clearly has international risk management implications. As the recent World Bank Border Management Modernization Handbook points out, “Little is achieved when a Customs agency adds automation, or when it adopts risk management principles allowing the selective examination of imports, so long as other agencies are not automated and continue to routinely inspect goods regardless of the level of risk involved.”⁶

On the whole, risk management efforts have plateaued at the basic, single-agency (Customs) targeting stage and have yet to achieve their full potential. Raising risk management to a more comprehensive undertaking that integrates trusted trader programs, post-clearance controls, all border agency input, and mutual recognition concerns is crucial and long overdue.

That said, it must be acknowledged that recent technical assistance projects to promote post-clearance audit and trusted trader programs (e.g., AEO) have tended to treat them as stand-alone trade facilitation initiatives, without adequately stressing that both are integral extensions of the risk management process. While post-clearance auditing can help sort out those high-risk traders whose future transactions may require intensive scrutiny, it can also serve to identify low-risk traders eligible for the “fast-track” permissions and simplified procedures available in AEO and other compliance recognition-based programs that benefit

⁶ Monica Alina Mustra; Chapter 3: Border management modernization and the trade supply chain; Border Management Modernization, The World Bank, 2011

both the government and business sectors in terms of time and cost savings.⁷

Post-clearance Audit

Article 7, Paragraph 5 of the TFA requires that in order to expedite the release of goods, each member shall adopt or maintain post-clearance audit to ensure compliance with Customs and other related laws and regulations. Post-clearance auditing is one of the most effective trade facilitation strategies available to border agencies because it enables the immediate release of imported cargo through the subsequent use of audit-based regulatory controls. When implemented as part of an overall regulatory compliance framework, post-clearance audit can deliver improved rates of compliance and facilitate cross-border transactions without any loss of border control. The WCO, the World Bank, and USAID have all published detailed guidelines on the implementation and management of post-clearance audit programs.

Trade Facilitation Measures for Authorized Operators

Article 7, Paragraph 7 of the TFA requires members to provide additional trade facilitation measures related to import, export, and transit formalities and procedures to qualifying trade operators (AEOs). The majority of WTO members already have committed to implement such programs, and many initiatives are currently underway at both the national and regional levels. The concept is predicated on a voluntary partnership approach to sharing compliance responsibility and on ensuring supply chain security. Supply chain security is a relatively recent Customs priority worldwide. Entering into voluntary partnerships with private sector actors may be previously unexplored territory for many Customs authorities. Consequently, Customs authorities may find developing the necessary simplified procedures and effectively engaging the private sector challenging, as demonstrated by recent experience in USAID-supported technical assistance activities.

The WCO originally promoted AEO programs as a Customs initiative, but revised the SAFE Framework in June 2012 to add a new chapter addressing coordinated border management, with reference to both government inter-agency and cross-border relationships. Prior to this revision, insufficient attention had been given to incorporating other agency concerns into so-called “trusted trader” programs. The inclusion of all agencies that engage in international cargo examinations is necessary to prevent their requirements from serving to limit the potential benefits that can be used to market and propagate AEOs and similar programs. The need to strike a balance between ensuring compliance and facilitating trade—interests that are not incompatible although they are often viewed as competing—is reflected in the TFA.

⁷ David Widdowson and Adj. Professor Rob Preece; Post Clearance Audit: Reference and Implementation Guide; University of Canberra, on behalf of the International Trade Department of the World Bank, 2013

As a continuation of its Customs Modernization Handbook series, USAID, in cooperation with the WCO, published the Authorized Economic Operator Program Handbook in March 2010. The AEO Handbook provides a generic action plan for AEO implementation and describes the “best practices” available at that time on the subject. As might be expected, the WCO has provided and regularly updates an impressive array of compendia and other guidance on this important trade facilitation topic. These reference materials are summarized in the Appendix to this paper.

SEQUENCE GROUP 4

Article 7, Paragraph 6
Establishment and Publication
of Average Release Times

Article 8
Border Agency Cooperation

Article 10, Paragraph 4
Single Window

Article 10, Paragraph 7
Common Border Procedures
and Uniform Documentation
Requirements

Article 12
Customs Cooperation

Sequence Group 4: Interagency Cooperation and Coordination

For trade facilitation efforts to achieve the greatest possible impact, all agency responsibilities and concerns must be addressed in a realistic manner. In some cases, Customs may be able to drive cooperation and collaboration; in other cases another agency may need to champion streamlining border operations. For many members such a cohesive effort may be new and require long-term commitment. While border agencies often tend to come to informal working arrangements, particularly at the port level, this cannot be left to chance and must be addressed and resolved by mandate from the highest possible level in all agencies.

This fourth and last Sequence Group of commitments builds on the three preceding groups, as follows:

- Sequence Group 1 calls for the establishment of national trade facilitation committees that include executive and non-executive directors and technical staff from agencies and organizations typically involved in cross-border trade issues. Such committees must have the support of the upper echelons of government in order to ensure that the various representatives are sufficiently motivated to collaborate in a positive and productive manner to replace inefficiencies and redundancies with coordinated, integrated procedures.
- Sequence Group 2 calls for each member to conduct a multi-agency assessment of its formalities and documentation requirements relative to international best practices, and to ensure that these requirements are not unduly trade restrictive or applied in a manner that constitutes an unnecessary obstacle to trade. Customs and all of the other agencies that have a measurable impact on border clearance procedures must actively participate in this assessment.
- Sequence Group 3 calls for all agency inclusion in risk-based selectivity systems, in developing fair and impartial appeals systems, and in deploying a system of rapid alerts.

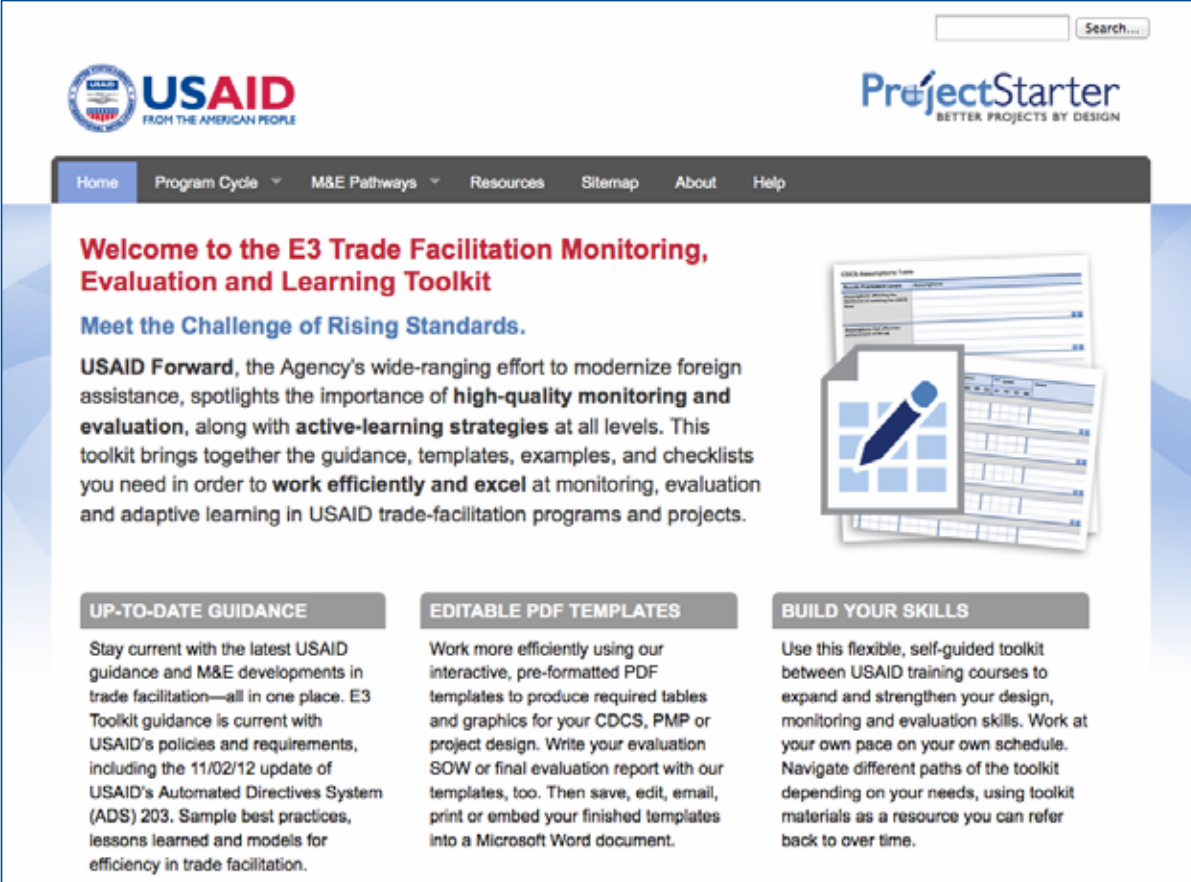
Sequence Group 4 must thus ensure that the agency cooperation and collaboration issues and efforts addressed in the first three sequence

MONITORING AND EVALUATION OF TRADE FACILITATION SUPPORT

Integrating monitoring and evaluation (M&E) planning directly into program and project design with respect to capacity building and technical assistance efforts will be an important shared responsibility between donors and developing countries and will assure successful implementation of the TFA. In the seamless world envisioned by USAID's program cycle, USAID and country partners will systematically transform the traditional aid assistance process into a collaborative venture in evidence-based development that accelerates progress and enhances development effectiveness across sectors and regions. Early attention to performance monitoring and evaluation needs and requirements will also help ensure that when evaluations are undertaken, the resources needed to support them are in place.

USAID has developed a tool to ensure that high quality evidence about what works and what does not work is more readily available to development partners and countries alike. The USG has made significant strides in evaluating the effects of its TCB assistance and has designed a monitoring and evaluation toolkit specifically for trade-related projects. The ProjectStarter toolkit (<http://usaidprojectstarter.org/>) is a web-based monitoring, evaluation, and learning resource for USAID staff and its implementing partners in developing countries introduced by USAID in 2013. ProjectStarter reflects substantial advances in USAID's overall monitoring, evaluation, and learning framework as well as in USAID guidance and tools.

One component of the toolkit is a Trade Facilitation Indicators Handbook designed to help organize projects and their activities around clusters of highly researched development hypotheses, to understand the hierarchy and critical assumptions surrounding each framework, and to develop indicators that are useful for monitoring trade capacity building components of programs. The ProjectStarter toolkit also compiles and systematically organizes a substantial set of resources specific to trade capacity building that will serve development practitioners worldwide in support of the TFA's implementation.



USAID FROM THE AMERICAN PEOPLE

ProjectStarter BETTER PROJECTS BY DESIGN

Home Program Cycle M&E Pathways Resources Sitemap About Help

Welcome to the E3 Trade Facilitation Monitoring, Evaluation and Learning Toolkit

Meet the Challenge of Rising Standards.

USAID Forward, the Agency's wide-ranging effort to modernize foreign assistance, spotlights the importance of **high-quality monitoring and evaluation**, along with **active-learning strategies** at all levels. This toolkit brings together the guidance, templates, examples, and checklists you need in order to **work efficiently and excel** at monitoring, evaluation and adaptive learning in USAID trade-facilitation programs and projects.

UP-TO-DATE GUIDANCE

Stay current with the latest USAID guidance and M&E developments in trade facilitation—all in one place. E3 Toolkit guidance is current with USAID's policies and requirements, including the 11/02/12 update of USAID's Automated Directives System (ADS) 203. Sample best practices, lessons learned and models for efficiency in trade facilitation.

EDITABLE PDF TEMPLATES

Work more efficiently using our interactive, pre-formatted PDF templates to produce required tables and graphics for your CDCS, PMP or project design. Write your evaluation SOW or final evaluation report with our templates, too. Then save, edit, email, print or embed your finished templates into a Microsoft Word document.

BUILD YOUR SKILLS

Use this flexible, self-guided toolkit between USAID training courses to expand and strengthen your design, monitoring and evaluation skills. Work at your own pace on your own schedule. Navigate different paths of the toolkit depending on your needs, using toolkit materials as a resource you can refer back to over time.

groups bring about real change at the most telling point of impact: the field level.

Average Release Times

Article 7, Paragraph 6 calls for members to calculate and publish average release times. Three recent USAID TCBaseline assessments revealed that the host government had previously given little consideration to the impact of agencies other than Customs, as well as private industry practices on meeting this requirement. Correspondingly, to varying degrees, these assessments concluded that Customs authorities felt that completing Customs processing within the 48-hour limit would satisfy provisions of bi- and multi-lateral agreement release time commitments.

Formal time-release studies, usually based on WCO guidelines and initiated by Customs, generally address the specific impact each agency has on the overall processing times. Article 7, Paragraph 6 clearly includes bottlenecks identified and any resulting effects on efficiency. It stands to reason, then, that all of the agencies concerned must be charged with the responsibility of collaborating to eliminate inefficiencies or redundancies revealed in the analysis. Moreover, technical assistance and capacity building may be required in the initial development and implementation of time-release studies. Unfortunately, even when well-conceived and conducted, time-release studies have tended to be regarded as one-time events without collaborative follow-up. USAID will pursue more long-term use of time-release studies. This is due to the fact that Article 7 requires (1) that they become an ongoing management function and (2) that average release times be publicized.

Border Agency Cooperation

Article 8 echoes one of the primary themes of this paper, that authorities and agencies responsible for border controls and procedures dealing with the importation, exportation, and transit of goods must cooperate with one another and coordinate their activities in order to facilitate trade. One lagging agency can defeat the best efforts of all other agencies. By way of specific instances of the prescribed cooperation and coordination, Article 8 includes the following examples, in particular for cooperation between WTO members:

- Aligning work days and hours, procedures and formalities
- Developing and sharing common facilities
- Establishing joint and/or one-stop border post controls

Establishing Joint Controls

In a complementary way, the World Bank's recently published "Border Management Modernization Handbook" speaks in terms of the need for "collaborative border management practices" among government agencies, within the context of a "holistic approach" to reform, steered by a strategy of modern regulatory compliance.⁸

Single Windows

Article 10, Paragraph 4 of the TFA provides that "Members shall endeavour to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation or transit of goods through a single entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner."

United Nations Centre for Trade Facilitation and Electronic Business Recommendation 33 defines a Single Window as "a facility that allows parties involved in trade and transport to lodge standardized information and documents with a single entry point to fulfill all import, export, and transit-related regulatory requirements. If information is electronic, then individual data elements should only be submitted once." The latest set of UNCTAD Notes on Trade Facilitation Measures, in the Border Agency Coordination section, correctly suggests that integrating border agency operations should start with an analysis/mapping of each agency's existing procedures, mandate, and operations, and that the findings of this analysis should be used as the basis for designing a new set of joint operational functions. UNCTAD goes on to suggest that

- these joint procedures would lead to the development of common documents and integrated procedures;
- a monitoring system of the traffic flow and time delays should be designed to measure the impact of the changes and to continuously identify possible bottlenecks at the border post; and
- the decision to share data between the different agencies and departments operating at the border will require a new Information Technology (IT) environment, and possibly the introduction of a Single Window platform.

In earlier days, the Single Window concept provided a contrasting alternative to the traditional "long-room" model, whereby traders or brokers physically walked their declarations from window to window within the Customhouse, and often to other agency offices at other locations, for all of the necessary stamps and approvals. Automation

⁸ Tom Doyle; Chapter 2: The Future of Border Management, Border Management Modernization, The World Bank, 2011

was not a primary consideration. Rather, the focus was on co-locating the various agencies involved and on devising a procedural chain into which the broker or importer deposited his declaration and out of which he ultimately obtained the associated cargo release, all within a single office. Movement of the declaration through the necessary steps was internal and not the importer's or broker's responsibility. In brief, the earliest versions of Single Windows were structured to achieve process simplification and improved efficiency through interagency collaboration, cooperation, and co-location.

The WCO Factsheet entitled, "The Single Window Concept: The World Customs Organization's Perspective," advises that the Single Window concept places the onus on the border control authorities to manage the Single Window and to ensure that all of the participating authorities or agencies are either given access to the information or are actually given the information by the managing authority, thereby eliminating the need for multiple submissions of the same data by the trader or transporter. The factsheet continues that the implementation of a Single Window does not necessarily imply the implementation and use of high-tech information and communication technology and that a Single Window can be implemented in a manual environment with the cooperation of all border authorities. After addressing the fuller benefits that can be achieved through an automated Single Window, the factsheet concludes that, if examination of the goods is necessary, the coordination of physical inspection among the relevant agencies adds significantly to the value of the Single Window.

Today's emphasis on the added benefits of the application of Information and Communications Technology to Single Window is obviously valid. However, this focus on automating the process may have inappropriately relegated the coordinated application of all of the various border agency controls from a matter of primary consideration to merely a value-adding factor. There is no one way to develop a Single Window. For example, the Philippines—a country engaged in a large-scale, automated, Single Window initiative with regional implications—made the decision to automate first and to evaluate and simplify the various agency requirements and procedures later. It should be noted for contrast that, as long as two decades ago, UNCTAD managers responsible for one of the most successful long-term Customs modernization and automation initiatives declared that simplification had to precede automation and that to do otherwise expended significant resources automating bad procedures, a poor return on investment.

Each country will have its own political dynamic that will drive decisions on the sequencing of automation and simplification. With respect to technical assistance, providers should take care not to view Single Window initiatives as vehicles to achieving interagency collaboration at the highest organizational levels. Nor should they expect that this collaboration will work its way gradually down through

the ranks to field-level managers and officers and, ultimately, to the trading community. There is also the potential pitfall of implementing a Single Window without first establishing the requisite degree of interagency cooperation. In Ghana, a country that is said to represent the model of a Single Window environment in Africa, all of the border efficiencies made possible by the Single Window are offset, as of this writing, by the continuing use of a destination inspection firm, which requires a clean report of findings in Accra, not at the border. Thus, from the private sector point of view, the value of the Single Window for trade facilitation is diminished. It is envisioned that, by applying the sequential approach presented in this paper to future Single Window initiatives, developing countries and their technical assistance providers can avoid these pitfalls.

Common Border Procedures (and Uniform Documentation Requirements)

Article 10, Paragraph 7 requires that each member apply common Customs procedures and potentially other border procedures and uniform documentation requirements for release and clearance of goods throughout its territory. Uniform requirements enhance transparency and reduce “port shopping.” In keeping with our sequenced approach, the various border management agencies will need to collaborate on the implementation of action items resulting from the Article 10, section 1, joint assessment included in Sequence Group 2. Implementation of the reforms and simplifications identified in the joint assessment will rely on the agencies involved to work together, particularly with respect to timing and ensuring that improvements requiring actions by more than one agency are accomplished in a partnership mode. The implementation of this commitment likely will require active oversight and review by the National Trade Facilitation Committee.

Customs Cooperation

Article 12 of the TFA addresses the exchange of information between Customs services and provides detailed guidance in that regard. Customs cooperation is important for sharing of information, including sensitive information, if appropriate confidentiality controls are in place. In addition, broader cooperation efforts and data sharing are important to sophisticated risk management. Implementing these requirements will be a matter for government-to-government negotiation. Article 12 also encourages members to share information on best practices in managing customs compliance.

LESSONS LEARNED IN TECHNICAL ASSISTANCE

Successful Customs modernization efforts are dependent on a combination of factors, the absence of which can make any reform program incomplete, or in extreme cases, a failure. All Customs modernization efforts are dependent upon a commitment to reform and clear direction from top management. This is an essential foundation for success. Customs modernization and reform may involve many policy, program, and procedural areas, and these areas tend to support each other as they begin to be implemented. Trade facilitation is a dynamic process—not a one-time effort after which the job is complete.

The United States is one of the largest single-country providers of Aid for Trade, with \$10 billion going to that program since its launch in 2005, out of the \$14 billion total that the United States obligated for trade-related assistance to developing countries between 1999 and 2010.¹ Developing countries typically need a range of assistance to build a well-functioning trade facilitation system. The success of individual projects, however, often depends on the specific institutions responsible for implementing the affected public and private sector functions and on the sequencing of capacity-building activities. When the complex technical and institutional relationships are not carefully considered, the results of Customs and trade facilitation projects are often disappointing.²

Over the past decade, USAID trade facilitation capacity-building efforts have dealt with a wide variety of issues. Examples include Customs valuation, automation, and Electronic Data Interchange, including automated Single Window; risk management; legislative reform; post-clearance audit; improving ports efficiency, logistics, and transport services; reducing processing times, from both a cargo release and a transit corridor perspective; and enhancing supply chain security.

USAID has been a leader in the provision of technical assistance to facilitate trade over the past decade. Assistance has been provided in a variety of single-country projects, in regional trade programs (Southeast Asia, Central America, Andean region), and in global facilities that allow USAID/Washington to provide short-term technical assistance “on demand” in scores of countries—much of it relating to trade facilitation.

Beginning in 2003, USAID’s Bureau for Economic Growth, Agriculture, and Trade and its successor, the Bureau for Economic Growth, Education, and Environment, have established and managed a continuing series of global trade facilitation capacity-building projects designed to support a broad range of activities and work with USAID field missions, other U.S. agencies, the U.S. private

¹ <http://www.usaid.gov/>; April 5, 2013

² Fekete, The Trade Facilitation and Capacity Building Project (“FASTRADE”) Final Report October 2003–October 2008

sector, other donors, and a wide array of government agencies and private sector stakeholders in developing countries. These projects have had a significant impact on a wide spectrum of trade-related issues in developing countries around the globe. In the process, they have provided USAID with insights into better approaches, “lessons learned,” and recommendations for improvement. What follows is an overview of some of those insights, lessons, and recommendations garnered not just by USAID, but also by other major providers of technical assistance. These lessons may be relevant to the design of technical assistance from a variety of donors—not just USAID—in support of the implementation of the WTO TFA. We hope that developing country counterparts responsible for implementing the agreement will consider the lessons learned as they move forward with implementation planning efforts.

Political Commitment

USAID has learned that there must be a firm commitment to trade facilitation reform goals at the highest levels of government and business. The WCO has also found that without such a commitment, even a well-designed reform strategy is unlikely to succeed.³ Without that long-term commitment, capacity-building efforts are likely to be unsuccessful, regardless of the quality of their design and implementation.⁴ Leaders’ commitment must be sufficient to overcome resistance to change as well as opposing objectives. For example, while revenue collection, especially of import duties and taxes, remains an important objective of developing countries, it can subordinate trade facilitation to a lower order of priority, unless the need for a proper balance between the two objectives is expressly stated. This is particularly true where governments have introduced revenue authorities and have concentrated on revenue enhancement to the detriment of all else. Facilitating trade does not result in revenue loss if properly implemented.

Countries working to facilitate trade in a regional environment may find it easier to provide the requisite balance, since there will be political and economic goals to achieve.⁵ A regional approach, of course, is also dependent upon political commitment and support.

From the donors’ perspective, two other key lessons must be recognized. The first is that country ownership at the highest political level and effective intra-governmental coordination are frequently reported as critical factors for success. The second is that active local participation and involvement of stakeholders, including the private sector and civil society, in the preparation and implementation of

³ Ibid.

⁴ Customs Capacity Building Strategy Prepared by the WCO on behalf of the international Customs community and presented to the WTO Ministerial Conference in Cancun in September 2003

⁵ Grimble, *op. cit.*

projects is also crucial.⁶ The message to agency managers must be clear: they must work in unison with their stakeholders, both public and private sector. Finally, innovative leadership must exist at the top of public and private trade organizations, as well as at middle and line management levels. Leadership at all levels should actively support trade facilitation reform.⁷

Mutual Accountability between Donors and Host Countries

Mutual accountability is designed to build genuine partnerships and focus on delivering results. Three elements are central in establishing mutual accountability:

- A shared agenda with clear objectives and reciprocal commitments
- Monitoring and evaluating these commitments and actions
- Dialogue and review

Accountability between partners and donors is enhanced by transparency about the effectiveness of the aid interventions and about learning what works and what does not work.⁸

One of the perennial problems facing capacity-building recipients and providers alike is the poor level of coordination and communication between national, regional, and international donors, and the resultant duplication of effort and/or errors of omission. To achieve real improvement, developing country governments must avoid the temptation of accepting donor assistance simply because it is available. Officials should play a more active and positive role both in identifying their genuine needs and in shaping the strategy and tactics to meet them.⁹

USAID and other donors have contributed significant assistance to helping developing countries draft new Customs codes or significantly modify their existing codes to bring them into compliance with international standards. Similarly, USAID and others have contributed significant analytical assistance to identify weaknesses and to offer viable, practical solutions. When a donor has made that level of commitment, the recipient agency must reciprocate with meaningful follow-up actions. Customs and other border control agencies should neither rely on nor expect the donor to carry the full weight of modernization efforts. A government that requests donor-supported expert assessments that produce reasonable recommendations to correct inefficiencies should embrace moving forward on those recommendations to the very best of its ability. Again, recipient government ownership is a must. All too often, return visits reveal that

⁶ Aid for Trade – Showing Results; OECD and WTO; October 31, 2011

⁷ Fekete, op. cit.

⁸ Aid for Trade – Showing Results; OECD and WTO; October 31, 2011

⁹ Customs Capacity Building Strategy Prepared by the WCO on behalf of the international Customs community and presented to the WTO Ministerial Conference in Cancun in September 2003

little to no follow-up action has been taken. This is a clear indication of a lack of commitment and should be pivotal in determining the extent to which further donor aid is offered.¹⁰

Finally, Customs and other government agencies need not wait for outside assistance but should take the initiative themselves in those instances where there is minimal need for donor-provided technical assistance. USAID has published a series of Customs modernization handbooks that provide generic action plans and best practice examples relating to such important issues as risk management, post-clearance audit, Customs integrity, AEOs, and advance rulings. Similarly, the WCO and the World Bank have published highly articulate works that can guide a Customs organization through the implementation process. In today's information-based world, best practices are generally only a few keystrokes away. A wealth of technical information—including international standards, best practices, and practical examples—is readily available on the Internet.

Public/Private Sector Cooperation and Transparency

Ongoing dialogue between government and private trade organizations must be prioritized, and trading community views and recommendations should be given strong consideration in the drafting of new trade laws and regulations. Trade rules and regulations must be made clear to the trading community through published regulations that are readily available to the public.¹¹ This is often one of the more difficult barriers to overcome. In countries where border control agencies and their private sector stakeholders have historically regarded each other with mutual distrust and disrespect, overcoming those perceptions on both sides can be a daunting task. Nevertheless, it is a task that must be undertaken proactively and energetically. Effective dialogue is not achieved when government managers merely meet with their stakeholders to advise them of new changes. **Effective dialogue is a two-way street.** Government managers must listen to what their stakeholders have to say with an open mind and a willingness to enter into partnership approaches to improving processes and efficiencies. While a National Trade Facilitation Committee is a firm step in the right direction, it is not the only step. Similar multi-agency, public/private sector working committees should be established at every level from the headquarters, to the regional offices, to the offices in the field.

Implementation of the TFA will be advanced through such dialogue and collaboration with private sector entities. USAID is moving forward toward a more comprehensive engagement with the private sector, recognizing that engaging with private sector entities and the identification of overlapping interests can lead to partnerships with external stakeholders that can expand the impact of our development

¹⁰Robert Keller, Senior Customs and Technical Advisor, U.S. Customs and Border Protection, USAID Facilitando Comercio and BEAM Projects, 43 years of experience
¹¹Fekete, op. cit.

efforts, accelerate the achievement of development outcomes, and implement sustainable solutions to development challenges.

All Agency Inclusion

Most trade facilitation projects simply have not adequately addressed the importance and impact of border control agencies beyond Customs. Agencies such as Plant Inspection and Quarantine, Environmental Protection, Food and Drug, Quality Standards, Public Health, Veterinary Inspection, Metrology, Drug Enforcement, and others have legislated roles in the broader cargo-release process. While other agencies are now being included in automated Single Window initiatives and in time-release studies, they have rarely been incorporated into either procedural simplification or risk management initiatives.

An effective risk-based cargo selectivity capability, which is vital to trade facilitation, can easily be undermined by agencies that have not been convinced and enticed to accept and implement risk-based selectivity and/or who do not collaborate with Customs to either delegate examination authority or to coordinate inspections. Since Customs and the other border control agencies often do not work together on such basic issues as coordinating examinations, they have not been inclined to share information or effectively link individual databases, measures that would facilitate a joint agency approach to risk management.¹²

From a business perspective, Customs cargo processes are only a subset of the broader universe of government agency inspection processes, any and all of which can result in redundancies, inefficiencies, delays, and unnecessary costs. This limits the extent to which Customs-centric trade facilitation initiatives can expect to make substantive and measurable improvements in the broader cargo-processing environment. Integrating all border control agencies into a trade facilitation project design adds new dimensions and new challenges. The sustained high-level political will and commitment discussed in the WCO strategy paper¹³ can no longer be limited to Customs and its parent ministry, but now requires that political will and commitment be shared by all of the ministries and departments directly involved in border clearance processes.

Quality Control and Assurance

Trade facilitation projects often involve considerable numbers of actors and a complex set of deliverables against international law, regulations, and standards. IT system deliverables are especially complex to specify, develop, and implement. It is essential that a quality assurance

¹² Keller

¹³ Customs Capacity Building Strategy prepared by the WCO on behalf of the international Customs community and presented to the WTO Ministerial Conference in Cancun in September 2003

mechanism be put in place at the project outset and that a reporting system is established to the very highest level to bring problems to the early attention of senior management and to inform any needed change in strategic direction.¹⁴

Increasing attention has been given to the importance of establishing achievable, quantifiable goals and in measuring and reporting the extent to which the project has accomplished them. However, the attention has tended to focus more on ensuring that the donor project demonstrates effectiveness, rather than focusing on measurable improvements in agency productivity. Many developing country border authorities lack comprehensive management reporting systems and internal control systems. This deprives high-level managers of vital, necessary information.

- First, it deprives them of ongoing assurance that individual modernization components have been properly implemented with the necessary buy-in and are not being marginalized by lack of commitment from lower management and line staff.
- Second, it deprives them of timely data-based internal analysis and reporting necessary for them to monitor and gauge the effectiveness and productivity of individual modernization components.

It is one thing to know that your Customs authority now has a new capability, whether risk management, post-clearance audit, or something similar. It is another thing to know whether or not the Customs authority is demonstrably more efficient and productive as a result of that new capability.

Risk management is a prime example. Management reporting often tends to be haphazard, rather than regularized. Reporting is narrowly focused on enforcement actions resulting from targeting, rather than based on a broader analysis of criteria effectiveness or compliance levels. Customs clearance, valuation, and duty collection processes are a second prime example of the necessity of internal controls and management reporting. Donors have provided recurring training on Customs valuation over the past decade. Yet technical assessments still reveal that, while Customs managers may be conversant in the defined valuation standards, local implementation is minimal. Results-based management and proper management controls will provide agency leadership with the ability to ascertain the extent to which local application complies with WTO valuation standards.

¹⁴Grimble

Integration and Assimilation of Modernization Components

Modernization of a developing country border is usually a multilateral undertaking with various donors providing complementary technical assistance in different areas. While over the past decade donor-to-donor communications and interactions have improved, they have not adequately overcome the tendency for each donor to introduce specific modernization components as a discrete undertaking rather than as a well-planned complement to the work of another donor. More attention is needed to ensure that one donor's effort is adequately linked to related initiatives and fully assimilated into the host organization's operational environment.

As an example, recent USAID assessments have repeatedly encountered situations where key modernization components such as risk management, post-clearance audit, and AEO programs have been implemented individually and tend to operate without regard to one another or without an adequate understanding of how they interrelate. Similarly, these assessments have repeatedly identified situations in which cargo examination activities have not been effectively linked to risk-based selectivity systems. Two factors come into play:

- In the first, examining officers tend to consider selectivity routing as advisory and subject to being overridden at their will.
- In the second, hesitancy at different levels within the organization to accept the best practice concept of “green channel” treatment of low-risk transactions has resulted in no distinction between green and yellow selectivity channel treatments. Inexplicably, more than one occasion has been noted where green channel declarations are actually slower to process than yellow or red channel declarations. This is indicative of inadequate or ineffective indoctrination and training of examining officers and of deficient internal controls and management reports.

On a broader scale, weak integration can also be indicative of internal communication and collaboration constraints resulting from the placement of the management responsibility of related functional components within different, and sometimes competing, organizational components (operations versus enforcement, headquarters versus regional or field office, etc.).

Risk management should be an operational philosophy assimilated across the entire organizational structure, rather than merely a technical specialty housed within one organizational component. While USAID and other donors have provided technical assistance for many years to management practitioners in traditional Customs organizations, very few risk management departments have progressed to the point where they actually apply risk-avoidance practices to effectively manage compliance; that is, practices to (1) establish compliance goals, (2) measure current compliance levels against those goals, (3) identify and

recognize highly compliant importers and exporters, and (4) engage the private sector (i.e. traders) in voluntary compliance initiatives. This failure to progress is not necessarily indicative of poor management design or implementation. It is generally a consequence of a short-term technical assistance perspective that limits the scope of a project to accomplishing the basics. What is needed is a long-term strategic perspective that facilitates subsequent projects by building on previous accomplishments to ultimately raise implementation to best practice levels.

Technology Solutions

USAID has often encountered inadequate implementation of automated systems, leading to unnecessary procedural issues and delays at the border. Many countries have implemented various iterations of ASYCUDA¹⁵ but not all of the modules are operational or being used as intended. Rather than take full advantage of their existing system, country officials look instead to donor-supported system upgrades or total replacements. Automated Customs systems are often not interfaced with the systems of other government agencies, port and terminal operators, and traders, even when the existing software platform would support those linkages. This puts unnecessary procedural burdens on traders and transporters.¹⁶ Opportunities to facilitate trade have been missed in some Single Window (SW) projects. Many SW projects have not adequately addressed building necessary interagency cooperation and simplifying licensing and other agency procedures, and instead focused on automation and software development or integration. Care should be taken in automation projects to avoid in-house developments of software by an individual Customs Administration of declaration processing and similar complex systems that will be very expensive—and which may be unable to interface with other border agency systems without full feasibility studies being undertaken.¹⁷

Management Capacity Building

Many developing country government agencies are constrained by budgetary and other considerations, and therefore may not have had the proper formal exposure to project management, change management, and program management techniques. This issue is too often underappreciated. Lack of results-based management is evidenced by the failure to develop, monitor, and enforce clear, achievable, and measurable goals and tie them through management reporting systems

¹⁵ ASYCUDA is a widely used Customs automated processing system and UNCTAD has built an exemplary record in supporting Customs authorities around the world in adapting the system to their legislative and operational environments. It should be noted that UNCTAD and ASYCUDA assistance is dependent on donor agency funding and project design.

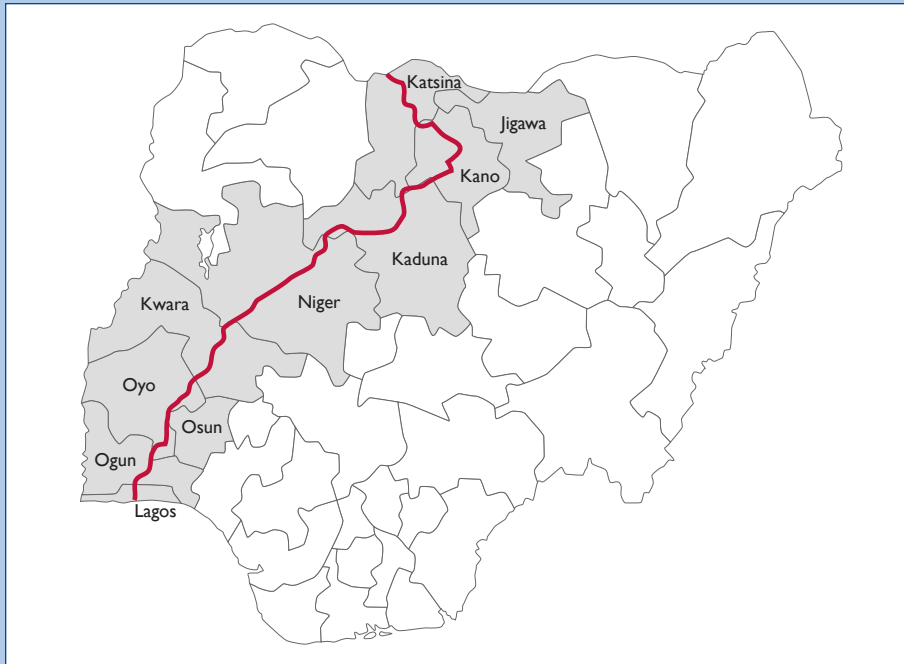
¹⁶ Patricia McCauley, Customs Legal Expert, U.S. Customs, WCO, USAID BIZTAR and BRITE projects (37 years of Customs experience)

¹⁷ Grimble, op. cit.

to managers and offices that are assigned responsibility for driving or participating in accomplishing those goals. In that respect, a Customs authority, a phytosanitary agency, or any other government agency is no different from a private business; efficiency and productivity depend on competent management and are not likely to be achieved without it. In most cases, competent managers require more than technical training in their specialty field: they require management training. The World Customs Organization has developed robust results-based management tools that can be helpful in designing programs for all border agencies.

DEVELOPING NIGERIA'S LAKAJI CORRIDOR - INTEGRATING PUBLIC AND PRIVATE COLLABORATION TO PROMOTE FOOD SECURITY AND INVESTMENT

USAID/Nigeria is seeking to catalyze trade and investment as drivers of inclusive economic growth along the Lagos-Kano-Jibiya (LAKAJI) Corridor; which runs northeast from Nigeria's main port of Lagos to inland agriculture-producing states and Nigeria's northern neighbor, landlocked Niger. The Nigeria Expanded Trade and Transport (NEXTT) Project has three key components, all of which rest fundamentally on multi-stakeholder coordination and collaboration. Some of NEXTT's work fosters collaboration between government entities (at the state and central levels); other initiatives facilitate alliance-building between and among private sector producers, associations, and transporters; and still other initiatives aim to build mechanisms for dialogue and consensus-building between public and private sector groups on reforms that will unlock the corridor's investment potential.



Transport Corridor Improvements

NEXTT brings together public and private sector stakeholders, including in all eight of the Nigerian states touched by the LAKAJI Corridor, into a new LAKAJI Corridor Management Group (LCMG). LCMG seeks to achieve consensus on public investment priorities, ensure regulatory consistency between states, and promote investment and cluster development along the corridor.

Policy Reform and Trade Facilitation

NEXTT aligns the formulation, coordination, and implementation of trade policies, regulations, and facilitation services in ways that will maximize competitiveness and support expanded trade, investment, and job creation. Stakeholder forums address and prioritize the most critical constraints to be addressed in Customs and port/border clearance times, sanitary and phytosanitary standards, and the infrastructure needed to support agricultural trade (such as warehouses, intermodal hubs, and cold storage facilities.)

Expanded Export Support

NEXTT improves the capacity of institutions and service providers that support exporting enterprises to meet international market requirements, building an export-support ecosystem. Its focus is on key value chains, exporter associations, and Government of Nigeria agencies.

ECONOMIC GAINS

Important studies have been conducted and much has been written about the proven economic benefits of eliminating unnecessary impediments to the movement of goods across international borders. As might be expected, the expertise to undertake such an analysis requires extensive backgrounds in economic theory and statistical analysis. The studies are sometimes too academic in presentation to be widely read by the people who need to understand them the most: the officials who make day-to-day decisions that either facilitate or block trade. Further compounding the problem, these analyses are not always widely distributed.

This paper does not include a comprehensive literature review. However, it is important, for the two reasons stated below, to summarize the broader conclusions echoed in the analytical studies of the economic benefits of trade facilitation.

- First, government managers, whether at the ministry, agency, regional, or field level, need to internalize that they share a responsibility to improve trade-related processes. Customs in developing countries is typically a key factor in realizing much-needed government revenue. This reality, coupled with a potentially disturbing tendency to subordinate trade facilitation to revenue collection by combining Customs and internal revenue agencies into a consolidated revenue authority, does not promote the necessary level of commitment to trade facilitation obligations. When revenue target concerns override trade facilitation goals, any actual or potential revenue increases must be weighed against the possibly negative impact on the country's overall economy, as its producers are left out of global value chains by virtue of high transactions costs on imported components as well as exported value-added manufactures.
- Second, as mentioned in the introduction to this paper, donors are becoming increasingly frustrated with the failure of technical assistance efforts to achieve the intended results, quicker and cheaper movement of goods across borders. Allowing this trend to continue will eventually become a disincentive to potential donors. Developing countries share the responsibility for ensuring the success of a donor-funded initiative. This calls for concerted political will, along

with agency and management accountability. An awareness of the potential long-term economic impact of trade facilitation efforts should engage the interest of those government managers whose support is so crucial.

A 2004 World Bank analysis of 75 countries concluded that increased efficiency at ports and airports could increase global trade in manufacturing by up to \$377 billion a year and triple the benefits for consumers from tariff reductions. These gains would come from streamlining Customs, reducing bribery and corruption, improving infrastructure and the efficiency of cross-border services, and speeding up business through use of the Internet. This projected increase in trade in manufacturing represented 9.7% of the total trade among these countries.¹

In 2005, the Organization for Economic Cooperation and Development (OECD) cited studies that indicate that even modest reductions in trade transaction costs, such as cutting lengthy border procedures, translate into significantly increased trade, and that developing countries stand to gain two-thirds of total world welfare benefits from trade facilitation. Other studies reviewed by OECD at that time yielded similar conclusions, as summarized below.

- There is a positive link between trade facilitation and trade growth that translates into significantly increased trade for even modest reductions in trade transaction costs.
- Trade in both rich and poor countries stands to gain from trade facilitation; in relative terms, trade gains would be higher in developing countries than in developed countries, due to their comparatively less efficient Customs administrations and ports.
- Inefficient movement of goods across borders is a serious impediment to trade and growth.²

More recent OECD studies have provided similar evidence of the positive impact of trade facilitation on the global economy and, even to a greater degree, on the economies of developing countries. Revenue losses from inefficient border procedures in some African countries are estimated to exceed 5% of GDP.³

- An average 5% reduction in the time spent at the border could help exporters in Sub-Saharan Africa achieve a 10% increase in formal intra-regional export volume.⁴
- The saving from streamlining procedures could be between 2% and 15% of the value of the goods traded.⁵ Lengthy or unpredictable

1 John S. Wilson, Catherine L. Mann, and Tsunehiro Otsuki; Assessing the Potential Benefit of Trade Facilitation: A Global Perspective; World Bank Policy Research Working Paper 3224, February 2004

2 Michale Engman; The Economic Impact of Trade Facilitation; OECD Trade Policy Working Paper No. 21; TD/TC/WP(2005)12/FINAL; 12 October 2005

3 Informal Cross-Border Trade and Trade Facilitation Reform in Sub-Saharan Africa," OECD Trade Policy Working Paper No. 86

4 Overcoming Border Bottlenecks: The Costs and Benefits of Trade Facilitation, OECD, 2009

5 WTO Information Centre: Trade Facilitation; http://www.wto.org/english/news_e/brief_

export and import times not only reduce trade volumes, but also reduce the probability that firms will enter export markets for time-sensitive products at all.⁶

A 2011 OECD study concluded that when seeking to identify the policy areas then under negotiation in the WTO that could help achieve the most significant reductions in trade costs, measures to streamline procedures and advance rulings were the greatest contributors; the former have the potential of reducing trade costs by 5.4% and the latter by 3.7%. Other measures that have an important cost reduction potential are automation (2.7% in total) and measures to streamline fees and charges (1.7%). These are quite significant savings, bearing in mind that similar studies have estimated that improvements regarding technical barriers to trade taken as a whole would account for 4.5% of trade cost reductions. In adding together all of these various types of trade facilitation initiatives, their cost reduction potential would reach almost 10% of trade costs. This estimate is consistent with several existing studies on the overall impact of trade facilitation on trade costs.⁷

Finally, a 2013 OECD study assessing the impact of specific trade facilitation measures on developing countries' trade analyzed 16 trade facilitation indicators corresponding to the main policy areas then under negotiation at the WTO. The analysis found that the availability of trade-related information, the simplification and harmonization of documents, the streamlining of procedures, and the use of automated processes appear to have the greatest impact on trade volumes and trade costs, not only for imports but also for export performance. The combined effect of improvements in these four areas results in a 14.5% reduction of total trade costs for low income countries, a 15.5% reduction for lower middle income countries, and a 13.2% reduction for upper middle income countries.⁸

trdefa_e.htm)

6 Logistics and Time as a Trade Barrier," OECD Trade Policy Working Paper No. 35

7 Moïsé, E., T. Orliac, and P. Minor (2011), "Trade Facilitation Indicators: The Impact on Trade Costs," OECD Trade Policy Papers, No. 118, OECD Publishing

8 Moïsé, E. and S. Sorescu (2013), "Trade Facilitation Indicators: The Potential Impact of Trade Facilitation on Developing Countries' Trade," OECD Trade Policy Papers, No. 144, OECD Publishing



DONOR ASSISTANCE

There is no question on the part of developing countries or donor organizations that technical assistance will be required to implement some components of the TFA in some WTO member countries. There is also no question that there are components that can and should be implemented without significant outside assistance. The broad range of technical requirements contained in the trade facilitation package and the need to address issues and work with border agencies that may not have previously had either an interest or experience in facilitation-oriented reforms may well present new challenges to donor nations committed to supporting technical assistance. Donor members will work with developing country members to meet these challenges, but the responsibility must be shared by all parties.

USAID has five basic themes as we move forward to support developing countries to implement the TFA. **First, developing country members need not wait for technical assistance to begin the reform process.** Significant improvements can be made without outside assistance starting with the implementation of a National Trade Facilitation Committee that includes the various border agencies as well as private sector trade organizations. The Committee must be empowered sufficiently to drive an inclusive modernization process. A legislative debate about the pros and cons of consolidating border agencies or establishing primacy among the agencies is not required. The formation of a National Trade Facilitation Committee and designation of a lead border agency can normally be accomplished by presidential mandate. Again, developing country members should recognize that the presence of empowered national committees and evidence of political will could well be a determining factor when donors begin prioritizing technical assistance.

Second, it would be unreasonable for developing country members to expect technical assistance to accomplish every reform. Over the past decade, USAID has published a series of short, concise Customs Modernization Handbooks, Best Practice Guides, and other resources with best practice examples and generic action plans to assist Customs authorities in developing countries undertake currently prominent trade facilitation initiatives. The World Bank has

similarly provided broader Customs Modernization Handbooks, case studies, and more recently the Border Management Modernization publication. The WCO also offers a substantial quantity and variety of best practice guides and compendiums, as do other international organizations such as the United Nations Economic Commission for Europe and UNCTAD. The value of these publications in terms of potentially reducing or eliminating the need for outside technical assistance and funding should not be underestimated. The guidelines, recommendations, and best practice examples contained in these publications provide virtually everything a conscientious project manager needs to know to undertake at least the basic development and implementation steps of many of the issues at hand. The Appendix to this report provides a brief description of the various publications that are currently available at little to no cost, most of which are available for downloading from the Internet.

Third, expectations must be reasonable. Resources are not unlimited. Due to the expected demand for technical assistance, it may be necessary for donors to limit the scope of technical assistance to the level necessary to achieve the basic provisions particularly if political commitment to reform is not present. Responsibility for fine-tuning reforms to advanced levels may be shifted to the developing country. As an example, it might be considered unrealistic for a developing country member to expect the substantial financial and technical support necessary to implement an automated Single Window if it has not demonstrated action on the first steps: creating collaborative working relationships among the various border agencies, assessing inefficiencies and redundancies, and at least beginning the process of simplifying and better coordinating trade processes.

Fourth, developing country members need to look to their own technical resources whenever possible. A Customs administration, for example, that has an effective risk-based cargo selectivity system in place likely can and should serve as a technical resource to other government border agencies that have not adopted similar systems and require assistance. Similarly, while technical training has historically focused more on technical issues and less on assisting developing country agencies to develop and improve basic managerial skills, competencies, and systems, training managers with program management, change management, and human resource management skills is a necessity, not a luxury. Developing country members should look to their own resources, whether academic or professional organizations, to strengthen management teams, particularly at the first line and mid-level manager levels. Since management theories and practices cut across organizational lines, management training can and should be provided in a mixed agency participant setting. This would help to form new networking capabilities among the participants and provide an opportunity to undertake practical exercises specifically focused on cooperatively and collaboratively improving border management and trade facilitation practices.

Finally, donors that have a specific interest in a particular issue or set of issues should consider taking the lead in developing a basic framework to support technical assistance regarding that issue or those issues. USAID understands it may not be practical to go so far as to prescribe among donors a “division of labor,” a scheme or framework in which certain donors assume primary responsibility for technical assistance in specific technical areas, but is open to discussions on how to ensure no duplication of effort.

As an example, starting in 2011, USAID implemented a Partnership for Trade Facilitation (PTF) to assist developing countries in support of the trade facilitation negotiations underway at the time, specifically in regard to seven U.S. negotiating proposals relating to advance rulings, Internet publication, expedited shipments, penalties, appeals, pre-arrival processing, and transit guarantee systems. Similarly, USAID has commissioned training presentations on penalties, appeals, and Internet publication that could serve as the seeds for more comprehensive packages. This approach could be expanded within USAID and adopted by other donors to supplement existing “how to” best practice guides with corresponding training curricula that could be shared among the donor nations.

USAID is formulating its post-Bali trade facilitation support, beginning with this publication. With completion of the negotiations, there is much to be done for WTO members to achieve the vision and promise of the TFA. USAID looks forward to being a part of this process by helping developing country members achieve the dramatic gains in trade, competitiveness, and growth that implementation of the TFA offers.

REFERENCES

Tom Doyle; Chapter 2: The Future of Border Management, Border Management Modernization, The World Bank, 2011

Michale Engman; The Economic Impact of Trade Facilitation; OECD Trade Policy Working Paper No. 21; TD/TC/WP(2005)12/FINAL; 12 October 2005

Paul Fekete, The Trade Facilitation and Capacity Building Project “FASTRADE” Final Report October 2003–October 2008

Des Grimble, Thematic Review: Trade Facilitation, European Commission, 2013

Molly Hageboeck, From Aid To Trade: Delivering Results, A Cross-Country Evaluation of USAID Trade Capacity Building Summary, Management Systems International, November 10, 2010

Matthias Helble, Catherine Mann, and John S. Wilson; Policy Research Working Paper 5064; Aid for Trade Facilitation; The World Bank Development Research Group Trade and Integration Team; September 2009

Robert Keller, Senior Customs and Technical Advisor, U.S. Customs and Border Protection, USAID Facilitando Comercio and BEAM Projects, 43 years of experience

Patricia McCauley, Customs Legal Expert, U.S. Customs, WCO, USAID BIZTAR and BRITE projects (37 years of Customs experience)

E. Moisé, T. Orliac, and P. Minor (2011), “Trade Facilitation Indicators: The Impact on Trade Costs,” OECD Trade Policy Papers, No. 118, OECD Publishing

E. Moisé and S. Sorescu (2013), “Trade Facilitation Indicators: The Potential Impact of Trade Facilitation on Developing Countries’ Trade,” OECD Trade Policy Papers, No. 144, OECD Publishing

Monica Alina Mustra; Chapter 3: Border management modernization and the trade supply chain; Border Management Modernization, The World Bank, 2011

Robert Olson, Senior Customs and Technical Advisor, U.S. Customs, U.S. State Department, SECI/TTFSE Regional Manager

Ambassador Michael Punke; Statement by Deputy United States Trade Representative to the Eleventh WTO Trade Policy Review of the United States of America, World Trade Organization, Geneva, Switzerland, December 18, 2012

Ambassador Michael Punke; Statement by Deputy United States Trade Representative to the Informal Session of the Trade Negotiations Committee, Geneva, Switzerland, October 21, 2011

Edmund Saums, Robert Holler, Wilbur Smith, and Ann Katsiak; USAID Advance Rulings Resource Guide; USAID Worldwide Support for Trade Capacity Building project (TCBoost), 2011

Wilbur Smith, Customs Advisor, U.S. Customs, Commercial Operations, Training and Management Inspections, World Bank SECI/TTFSE Project, USCBP Advisory Team, Trinidad and Tobago (interim contractor), USAID Comercio Facilitando and BEAM Projects (various, short-term assignments), 37 years of Customs experience

David Widdowson and Adj. Professor Rob Preece; Post Clearance Audit: Reference and Implementation Guide; University of Canberra, on behalf of the International Trade Department of the World Bank, 2013

John S. Wilson, Catherine L. Mann, and Tsunehiro Otsuki; Assessing the Potential Benefit of Trade Facilitation: A Global Perspective; World Bank Policy Research Working Paper 3224, February 2004

OECD; Overcoming Border Bottlenecks: The Costs and Benefits of Trade Facilitation, 2009

OECD Trade Policy Working Paper No. 35: "Logistics and Time as a Trade Barrier"

OECD Trade Policy Working Paper No. 86; "Informal Cross-Border Trade and Trade Facilitation Reform in Sub-Saharan Africa"

UNCTAD; Trade and Transport Facilitation Series No. 1; United Nations Conference on Trade and Development, 2011

USAID Website; April 5, 2013

USCBP; U.S. Customs and Border Protection Factsheet: The Role of Customs Brokers, July 2012

USTR Webpage, April 7, 2013

WCO; Revised Kyoto Convention, General Annex 10, Conclusion

WCO; Customs Capacity Building Strategy Prepared by the WCO on behalf of the international Customs community and presented to the WTO Ministerial Conference in Cancun in September 2003.

WTO Information Centre: Trade Facilitation; http://www.wto.org/english/news_e/brief_tradefa_e.htm

Aid for Trade – Showing Results; OECD and World Trade Organization; October 31, 2011

WTO Information Centre: Trade Facilitation; http://www.wto.org/english/news_e/brief_tradefa_e.htm

WTO; World Trade Organization website; "What We Stand For"

WTO/MIN(13)/36 WT/L/911, 11 dated December 2013

WTO 2013 News Items: Ninth WTO Ministerial Conference, Days 3, 4 and 5: Round-the-clock consultations produce 'Bali Package', http://www.wto.org/english/news_e/news13_e/mc9sum_07dec13_e.htm

APPENDIX: VIRTUAL TECHNICAL ASSISTANCE LIBRARY

Donors and international organizations have devoted significant resources to developing and publishing informative guides on issues relevant to the trade facilitation negotiations. Unfortunately, these publications are sometimes not easy to find. While it is not possible to list every potentially useful handbook, guide or online tool, the following are all available for download at no cost.

U.S. Agency for International Development

USAID has taken the approach that there are Customs authorities in developing countries capable of developing their own in-house modernization initiatives without being dependent on external technical advisors and has published a series of “DIY” or “How to” guides, subject-specific guides that offer a generic actions plans based on best practice examples and in some cases supporting online tools.

Advance Rulings Resource Guide (October 2011)

http://tcboostproject.com/_resources/resource/Advance%20Rulings%20guide%20correctedcgkbbk8.pdf

Information and Communications Technology Procurement Guide Best Practice Guide for Customs Administrations (May 2011)

http://tcboostproject.com/_resources/resource/USAID%20ICT%20Procurement%20Guide%20for%20Customs.pdf

Customs ICT Solutions Database

<http://ictsolutions.wcoomdpublishings.org/>

Post Clearance Audit Programs (October 2011)

http://tcboostproject.com/_resources/resource/Postclearance_Audit%20Handbook%20reduced.pdf

Authorized Economic Operator Programs (March 2010)

<http://egateg.usaid.gov/sites/default/files/AEO%20Programs%20Handbook.pdf>

TC Baseline Customs Assessment Tool (December 2009)

http://egateg.usaid.gov/sites/default/files/TCBaseline%20Customs%20Assessment%20Tool_0.pdf

Trade Facilitation Impact (TFI) Calculator

http://www.tcboostproject.com/resources/tools/impactcalculator.php?country_id=160

Establishing and Implementing a Customs Integrity Program (September 2005)

[http://aysps.gsu.edu/isp/files/Customs_Integrity_Handbook_\(USAID\).pdf](http://aysps.gsu.edu/isp/files/Customs_Integrity_Handbook_(USAID).pdf)

Establishing and Implementing a Customs Program Management Process (July 2005)

http://www.tcboostproject.com/_resources/resource/Establishing%20and%20Implementing%20a%20Customs%20Program%20Management%20Process.PDF

International Trade: Improving the Duty Collection/Payment Process (December 2004)

http://pdf.usaid.gov/pdf_docs/PNADI203.pdf

Private Sector Trade Facilitation Service Opportunities (November 2004)

http://www.tcboostproject.com/_resources/resource/Private%20Sector%20Trade%20Facilitation%20Service%20Opportunities.PDF

Establishing Risk Management/Cargo Selectivity Capability (July 2004)

http://pdf.usaid.gov/pdf_docs/PNADI201.pdf

World Bank

The World Bank publishes a wide variety of trade facilitation handbooks, toolkits, and analytical studies.

Post Clearance Audit: Reference and Implementation Guide (February 2013)

http://siteresources.worldbank.org/INTRANETTRADE/Resources/239054-1305664393028/PostClearanceAudit_web.pdf

Developing a Trade Information Portal (July 2012)

<http://siteresources.worldbank.org/INTRANETTRADE/Resources/Pubs/TIP-Complete-Version.pdf>

Risk-Based Compliance Management (March 2012)

http://siteresources.worldbank.org/INTRANETTRADE/Resources/239054-1305664393028/Risk-Based_Compliance_Management.pdf

Border Management Modernization (January 2011)

http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2011/01/07/000356161_20110107013015/Rendered/PDF/588450PUB0Bord101public10BOX353816B.pdf

Customs Modernization Handbook (January 2005)

http://www-wds.worldbank.org/external/default/WDSContentServer/WDSP/IB/2005/02/03/000090341_20050203145443/Rendered/PDF/31477.pdf

World Customs Organization

In order to bring together this important body of material in one convenient place, the WCO has compiled a package of documents relevant to implementation of its Framework of Standards to Secure and Facilitate Global Trade (the SAFE Framework), which incorporates all these instruments and guidelines. As the SAFE Framework continues to be more fully implemented by WCO Members it is clear that a substantial amount of additional support material will be developed in the future and it is envisaged that the SAFE Package will be able to be readily updated and expanded. The SAFE Package and its contents provide a valuable aid both in understanding the dynamics of this major WCO instrument and in its global application and implementation.

SAFE Framework of Standards to Secure and Facilitate Global Trade – 2012 edition

http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/~/_media/55F00628A9F94827B58ECA90C0F84F7F.ashx

Customs Guidelines on Integrated Supply Chain Management

http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/~/_media/D81B2807C64A4B669942F88D51D5FCF6.ashx

AEO Implementation Guidance

<http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/~media/4448CE5B00DB422FA89A29AA447A4F22.ashx>

AEO Compendium – 2012 edition

<http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/~media/B8FC2D23BE5E44759579D9E780B176AC.ashx>

Model AEO Appeal Procedures

<http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/~media/702E5CAD86DB4F92B020C1A3FEC59127.ashx>

AEO Benefits: Contribution from the WCO Private Sector Consultative Group

<http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/~media/16A58BA1B8464CCA620E84E69BAC6E2.ashx>

Guidelines for the Purchase and Deployment of Scanning/Imaging Equipment – 2011 edition

<http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/~media/40E1B23E988B489492206C1D1BE93793.ashx>

SAFE Data Element Maintenance Mechanism

<http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/~media/3793228324CC44CC815804A41F125593.ashx>

Trade Recovery Guidelines

<http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/~media/558C64ADD8634558A123D75357E188EE.ashx>

The Authorized Economic Operator and the Small and Medium Enterprise (FAQ)

<http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/~media/93162547322F462A97F8767D0987A901.ashx>

Mutual Recognition Arrangement/Agreement Guidelines

<http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/~media/29AC477114AC4D1C91356F6F40758625.ashx>

AEO Template

<http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/tools/~media/C5BFD21DF7FF4E18992EA359DD3E4EDB.ashx>

[United Nations Conference on Trade and Development](#)

UNCTAD has recently updated its The Technical Notes on Trade Facilitation Measures, which were first published in 2006. The revised notes are an invaluable resource reflecting the latest developments in these negotiations and providing technical and practical details of major trade facilitation concepts and best practices.

Technical Notes on Trade Facilitation Matters

http://unctad.org/en/Docs/dtlftb20101_en.pdf

United Nations Centre for Trade Facilitation and Electronic Business

Recommendation and Guidelines on establishing a Single Window to enhance the efficient exchange of information between trade and government; Recommendation No. 33 (2005)

http://www.unece.org/fileadmin/DAM/cefact/recommendations/rec33/rec33_trd352e.pdf

Establishing a Legal Framework for International Trade Single Window; Recommendation No.35 (December 2010)

http://www.unece.org/fileadmin/DAM/cefact/recommendations/rec35/Rec35_ECE_TRADE_401_EstablishingLegalFrameworkforSingleWindow_E.pdf

United Nations Economic Commission for Europe

The Trade Facilitation Implementation Guide (TFIG).

<http://tfig.unece.org/>

APPENDIX: WORLD TRADE ORGANIZATION AGREEMENT ON TRADE FACILITATION

Preamble

Members,

Having regard to the Doha Round of Multilateral Trade Negotiations;

Recalling and reaffirming the mandate and principles contained in paragraph 27 of the Doha Ministerial Declaration and Annex D of the Decision of the Doha Work Programme adopted by the General Council on 1 August 2004, as well as paragraph 33 and Annex E of the Hong Kong Ministerial Declaration;

Desiring 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;

Recognizing the particular needs of developing and especially least-developed country

Members and desiring to enhance assistance and support for capacity building in this area;

Recognizing the need for effective cooperation among Members on trade facilitation and customs compliance issues:

Hereby agree as follows:

SECTION I

ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION

1 Publication

1.1. Each Member shall promptly publish the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders and other interested parties to become acquainted with them:

- a. Importation, exportation and transit procedures (including port, airport, and other entry-point procedures) and required forms and documents;
- b. Applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
- c. Fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;
- d. Rules for the classification or valuation of products for customs purposes;

- e. Laws, regulations and administrative rulings of general application relating to rules of origin;
- f. Import, export or transit restrictions or prohibitions;
- g. Penalty provisions against breaches of import, export or transit formalities;
- h. Appeal procedures;
- i. Agreements or parts thereof with any country or countries relating to importation, exportation or transit;
- j. Procedures relating to the administration of tariff quotas.

1.2. Nothing in these provisions shall be construed as requiring the publication or provision of information other than in the language of the Member except as stated in paragraph 2.2.

2 Information Available Through Internet

- 2.1. Each Member shall make available, and update to the extent possible and as appropriate, the following through the internet:
- a. A description¹ of its importation, exportation and transit procedures, including appeal procedures, that informs governments, traders and other interested parties of the practical steps needed to import and export, and for transit;
 - b. The forms and documents required for importation into, exportation from, or transit through the territory of that Member;
 - c. Contact information on enquiry points.
- 2.2. Whenever practicable, the description referred to in subparagraph 2.1 a. shall also be made available in one of the official languages of the WTO.
- 2.3. Members are encouraged to make available further trade related information through the internet, including relevant trade-related legislation and other items referred to in paragraph 1.1.

3 Enquiry Points

- 3.1. Each Member shall, within its available resources, establish or maintain one or more enquiry points to answer reasonable enquiries of governments, traders and other interested parties on matters covered by paragraph 1.1 as well as to provide the required forms and documents referred to in subparagraph 1.1 a.
- 3.2. Members of a customs union or involved in regional integration may establish or maintain common enquiry points at the regional level to satisfy the requirement of paragraph 3.1 for common procedures.
- 3.3. Members are encouraged not to require the payment of a fee for answering enquiries and providing required forms and documents. If any, Members shall limit the amount of its fees and charges to the approximate cost of services rendered.
- 3.4. The enquiry points shall answer enquiries and provide the forms and documents within a reasonable time period set by each Member, which may vary depending on the nature or complexity of the request.

¹ Each Member has the discretion to state on its website the legal limitations of this description.

4 Notification

4.1. Each Member shall notify the Committee of:

a. The official place(s) where the items in subparagraphs 1.1 a. to j. have been published;

and

b. The URLs of website(s) referred to in paragraph 2.1, as well as the contact information of the enquiry points referred to in paragraph 3.1.

ARTICLE 2: OPPORTUNITY TO COMMENT, INFORMATION BEFORE ENTRY INTO FORCE AND CONSULTATION

1 Opportunity to Comment and Information before Entry into Force

1.1. Each Member shall, to the extent practicable and in a manner consistent with its domestic law and legal system, provide opportunities and an appropriate time period to traders and other interested parties to comment on the proposed introduction or amendment of laws and regulations of general application related to the movement, release and clearance of goods, including goods in transit.

1.2. Each Member shall, to the extent practicable, and in a manner consistent with its domestic law and legal system, ensure that new or amended laws and regulations of general application related to the movement, release and clearance of goods, including goods in transit are published, or information on them made otherwise publicly available, as early as possible before their entry into force, in order to enable traders and other interested parties to become acquainted with them.

1.3. Changes to duty rates or tariff rates, as well as measures that have a relieving effect or whose effectiveness would be undermined by prior publication, measures applied in urgent circumstances, or minor changes to domestic law and legal system are excluded from paragraphs 1.1 and 1.2 above.

2 Consultations

Each Member shall, as appropriate, provide for regular consultations between border agencies and traders or other stakeholders within its territory.

ARTICLE 3: ADVANCE RULINGS

1. Each Member shall issue an advance ruling in a reasonable, time bound manner to an applicant that has submitted a written request containing all necessary information. If a Member declines to issue an advance ruling it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

2. A Member may decline to issue an advance ruling to an applicant where the question raised in the application:

a. is already pending in the applicant's case before any governmental agency, appellate tribunal or court;
or

b. has already been decided by any appellate tribunal or court.

3. The advance ruling shall be valid for a reasonable period of time after its issuance unless the law, facts or circumstances supporting the original advance ruling have changed.

4. Where the Member revokes, modifies or invalidates the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where a Member revokes, modifies or invalidates advance rulings with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false or misleading information.
5. An advance ruling issued by a Member shall be binding on that Member in respect of the applicant that sought it. The Member may provide that the advance ruling be binding on the applicant.
6. Each Member shall publish, at a minimum:
 - a. the requirements for the application for an advance ruling, including the information to be provided and the format;
 - b. the time period by which it will issue an advance ruling; and c. the length of time for which the advance ruling is valid.
7. Each Member shall provide, upon written request of an applicant, a review of the advance ruling or the decision to revoke, modify or invalidate the advance ruling.²
8. Each Member shall endeavour to make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.
9. Definitions and scope:
 - a. An advance ruling is a written decision provided by a Member to an applicant prior to the importation of a good covered by the application that sets forth the treatment that the Member shall provide to the good at the time of importation with regard to:
 - i. the good's tariff classification, and
 - ii. the origin of the good;³
 - b. In addition to the advance rulings defined in subparagraph 3.9 a., Members are encouraged to provide advance rulings on:
 - i. the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts;
 - ii. the applicability of the Member's requirements for relief or exemption from customs duties;
 - iii. the application of the Member's requirements for quotas, including tariff quotas; and iv. any additional matters for which a Member considers it appropriate to issue an advance ruling.
 - c. An applicant is an exporter, importer or any person with a justifiable cause or a representative thereof.
 - d. A Member may require that an applicant have legal representation or registration in its territory. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply

2 Under this paragraph: a) a review may, before or after the ruling has been acted upon, be provided by the official, office or authority that issued the ruling, a higher or independent administrative authority, or a judicial authority; and b) a Member is not required to provide the applicant with recourse to Article 4.1.1 of this Agreement.

3 It is understood that an advance ruling on the origin of a good may be an assessment of origin for the purposes of the Agreement on Rules of Origin where the ruling meets the requirements of this Agreement and the Agreement on the Rules of Origin. Likewise, an assessment of origin under the Agreement on Rules of Origin may be an advance ruling on the origin of a good for the purposes of this Agreement where the ruling meets the requirements of both agreements. Members are not required to establish separate arrangements under this provision in addition to those established pursuant to the Rules of Origin Agreement in relation to the assessment of origin provided that the requirements of this Article are fulfilled.

for advance rulings, with particular consideration for the specific needs of small and medium sized enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.

ARTICLE 4: APPEAL OR REVIEW PROCEDURES

1 Right to Appeal or Review

- 1.1. Each Member shall provide that any person to whom customs issues an administrative decision⁴ has the right, within its territory to:
 - a. administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision;

and/or

 - b. judicial appeal or review of the decision.
- 1.2. The legislation of each Member may require administrative appeal or review to be initiated prior to judicial appeal or review.
- 1.3. Members shall ensure that their appeal or review procedures are carried out in a non- discriminatory manner.
- 1.4. Each Member shall ensure that, in a case where the decision on appeal or review under subparagraph 1.1 a. is not given either i. within set periods as specified in its laws or regulations or ii. without undue delay, the petitioner has the right to either further appeal to or further review by the administrative authority or the judicial authority or any other recourse to the judicial authority.⁵
- 1.5. Each Member shall ensure that the person referred to in paragraph 1.1 is provided with the reasons for the administrative decision so as to enable such a person to have recourse to appeal or review procedures where necessary.
- 1.6. Each Member is encouraged to make the provisions of this Article applicable to an administrative decision issued by a relevant border agency other than customs.

ARTICLE 5: OTHER MEASURES TO ENHANCE IMPARTIALITY, NON-DISCRIMINATION AND TRANSPARENCY

1 Notifications for enhanced controls or inspections

Where a Member adopts or maintains a system of issuing notifications or guidance to its concerned authorities for enhancing the level of controls or inspections at the border in respect of foods, beverages or feedstuffs covered under the notification or guidance for protecting human, animal, or plant life or health within its territory, the following disciplines shall apply to the manner of their issuance, termination or suspension:

- a. each Member may, as appropriate, issue the notification or guidance based on risk.

⁴ An administrative decision in this Article means a decision with a legal effect that affects rights and obligations of a specific person in an individual case. It shall be understood that an administrative decision in this Article covers an administrative action within the meaning of Article X of the GATT 1994 or failure to take an administrative action or decision as provided for in a Member's domestic law and legal system. For addressing such failure, Members may maintain an alternative administrative mechanism or judicial recourse to direct the customs authority to promptly issue an administrative decision in place of the right to appeal or review under subparagraph 1.1 a.

⁵ Nothing in this paragraph shall prevent Members from recognizing administrative silence on appeal or review as a decision in favour of the petitioner in accordance with its laws and regulations.

- b. each Member may issue the notification or guidance so that it applies uniformly only to those points of entry where the sanitary and phytosanitary conditions on which the notification or guidance are based apply.
- c. each Member shall promptly terminate or suspend the notification or guidance when circumstances giving rise to it no longer exist, or if changed circumstances can be addressed in a less trade restrictive manner.
- d. when a Member decides to terminate or suspend the notification or guidance, it shall, as appropriate, promptly publish the announcement of its termination or suspension in a non-discriminatory and easily accessible manner, or inform the exporting Member or the importer.

2 Detention

A Member shall inform the carrier or importer promptly in case of detention of goods declared for importation, for inspection by Customs or any other competent authority.

3 Test Procedures

- 3.1. A Member may, upon request, grant an opportunity for a second test in case the first test result of a sample taken upon arrival of goods declared for importation shows an adverse finding.
- 3.2. A Member shall either publish, in a non-discriminatory and easily accessible manner, the name and address of any laboratory where the test can be carried out or provide this information to the importer when it is granted the opportunity under paragraph 3.1.
- 3.3. A Member shall consider the result of the second test in the release and clearance of goods, and, if appropriate, may accept the results of such test.

ARTICLE 6: DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION

1 General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation

- 1.1. The provisions of paragraph 6.1 shall apply to all fees and charges other than import and export duties and other than taxes within the purview of Article III of GATT 1994 imposed by Members on or in connection with importation or exportation of goods.
- 1.2. Information on fees and charges shall be published in accordance with Article 1 of this Agreement. This information shall include the fees and charges that will be applied, the reason for such fees and charges, the responsible authority and when and how payment is to be made.
- 1.3. An adequate time period shall be accorded between the publication of new or amended fees and charges and their entry into force except in urgent circumstances. Such fees and charges shall not be applied until information on them has been published.
- 1.4. Each Member shall periodically review its fees and charges with a view to reducing their number and diversity, where practicable.

2 Specific disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation

- 2.1. Fees and charges for customs processing:

- i. shall be limited in amount to the approximate cost of the services rendered on or in connection with the specific import or export operation in question; and
- ii. are not required to be linked to a specific import or export operation provided they are levied for services that are closely connected to the customs processing of goods.

3 Penalty Disciplines

- 3.1. For the purpose of Article 6.3, the term “penalties” shall mean those imposed by a Member’s customs administration for a breach of the Member’s customs law, regulation, or procedural requirement.
- 3.2. Each Member shall ensure that penalties for a breach of a customs law, regulation, or procedural requirement are imposed only on the person(s) responsible for the breach under its laws.
- 3.3. The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.
- 3.4. Each Member shall ensure that it maintains measures to avoid:
 - i. conflicts of interest in the assessment and collection of penalties and duties; and
 - ii. creating an incentive for the assessment or collection of a penalty that is inconsistent with paragraph 3.3.
- 3.5. Each Member shall ensure that when a penalty is imposed for a breach of customs laws, regulations, or procedural requirements, an explanation in writing is provided to the person(s) upon whom the penalty is imposed specifying the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed.
- 3.6. When a person voluntarily discloses to a Member’s customs administration the circumstances of a breach of a customs law, regulation, or procedural requirement prior to the discovery of the breach by the customs administration, the Member is encouraged to, where appropriate, consider this fact as a potential mitigating factor when establishing a penalty for that person.
- 3.7. The provisions of this paragraph shall apply to the penalties on traffic in transit referred to in paragraph 3.1.

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

1 Pre-arrival Processing

- 1.1. Each Member shall adopt or maintain procedures allowing for the submission of import documentation and other required information, including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.
- 1.2. Members shall, as appropriate, provide for advance lodging of documents in electronic format for pre-arrival processing of such documents.

2 Electronic Payment

Each Member shall, to the extent practicable, adopt or maintain procedures allowing the option of electronic payment for duties, taxes, fees and charges collected by customs incurred upon importation and exportation.

3 Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges

- 3.1. Each Member shall adopt or maintain procedures allowing the release of goods prior to the final determination of customs duties, taxes, fees and charges, if such a determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met.
- 3.2. As a condition for such release, a Member may require:
 - a. payment of customs duties, taxes, fees and charges determined prior to or upon arrival of goods and a guarantee for any amount not yet determined in the form of a surety, a deposit or another appropriate instrument provided for in its laws and regulations; or
 - b. a guarantee in the form of a surety, a deposit or other appropriate instrument provided for in its laws and regulations.
- 3.3. Such guarantee shall not be greater than the amount the Member requires to ensure payment of customs duties, taxes, fees and charges ultimately due for the goods covered by the guarantee.
- 3.4. In cases where an offence requiring imposition of monetary penalties or fines has been detected, a guarantee may be required for the penalties and fines that may be imposed.
- 3.5. The guarantee as set out in paragraphs 3.2 and 3.4 shall be discharged when it is no longer required.
- 3.6. Nothing in these provisions shall affect the right of a Member to examine, detain, seize or confiscate or deal with the goods in any manner not otherwise inconsistent with the Member's WTO rights and obligations.

4 Risk Management

- 4.1. Each Member shall, to the extent possible, adopt or maintain a risk management system for customs control.
- 4.2. Each Member shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions to international trade.
- 4.3. Each Member shall concentrate customs control and, to the extent possible other relevant border controls, on high risk consignments and expedite the release of low risk consignments.

Each Member may also select, on a random basis, consignments for such controls as part of its risk management.

- 4.4. Each Member shall base risk management on assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, inter alia, HS code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport.

5 Post-clearance Audit

- 5.1. With a view to expediting the release of goods, each Member shall adopt or maintain post-clearance audit to ensure compliance with customs and other related laws and regulations.
- 5.2. Each Member shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Member shall conduct post-clearance audits in a

transparent manner. Where the person is involved in the audit process and conclusive results have been achieved the Member shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations and the reasons for the results.

5.3. Members acknowledge that the information obtained in post-clearance audit may be used in further administrative or judicial proceedings.

5.4. Members shall, wherever practicable, use the result of post-clearance audit in applying risk management.

6 Establishment and Publication of Average Release Times

6.1. Members are encouraged to measure and publish their average release time of goods periodically and in a consistent manner, using tools such as, inter alia, the WCO Time Release Study.⁶

6.2. Members are encouraged to share with the Committee their experiences in measuring average release times, including methodologies used, bottlenecks identified, and any resulting effects on efficiency.

7 Trade Facilitation Measures for Authorized Operators

7.1. Each Member shall provide additional trade facilitation measures related to import, export or transit formalities and procedures, pursuant to paragraph 7.3, to operators who meet specified criteria, hereinafter called authorized operators. Alternatively, a Member may offer such facilitation measures through customs procedures generally available to all operators and not be required to establish a separate scheme.

7.2. The specified criteria shall be related to compliance, or the risk of non-compliance, with requirements specified in a Member's laws, regulations or procedures. The specified criteria, which shall be published, may include:

- a. an appropriate record of compliance with customs and other related laws and regulations;
- b. a system of managing records to allow for necessary internal controls;
- c. financial solvency, including, where appropriate, provision of a sufficient security/guarantee; and
- d. supply chain security.

The specified criteria to qualify as an operator shall not:

- a. be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail; and
- b. to the extent possible, restrict the participation of small and medium-sized enterprises.

7.3. The trade facilitation measures provided pursuant to paragraph 7.1 shall include at least 3 of the following measures:⁷

- a. low documentary and data requirements as appropriate;
- b. low rate of physical inspections and examinations as appropriate;
- c. rapid release time as appropriate;
- d. deferred payment of duties, taxes, fees and charges;

⁶ Each Member may determine the scope and methodology of such average release time measurement in accordance with its needs and capacity.

⁷ A measure listed in sub-paragraphs a.-g. will be deemed to be provided to authorized operators if it is generally available to all operators.

- e. use of comprehensive guarantees or reduced guarantees;
- f. a single customs declaration for all imports or exports in a given period; and
- g. clearance of goods at the premises of the authorized operator or another place authorized by customs.

7.4. Members are encouraged to develop authorized operator schemes on the basis of international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfillment of the legitimate objectives pursued.

7.5. In order to enhance the facilitation measures provided to operators, Members shall afford to other Members the possibility to negotiate mutual recognition of authorized operator schemes.

7.6. Members shall exchange relevant information within the Committee about authorized operator schemes in force.

8 Expedited Shipments

8.1. Each Member shall adopt or maintain procedures allowing for expedited release of at least those goods entered through air cargo facilities to persons that apply for such treatment, while maintaining customs control.⁸ If a Member employs criteria⁹ limiting who may apply, the Member may, in published criteria, require that the applicant shall, as conditions for qualifying for the application of the treatment described in paragraphs 8.2 a. – d. to its expedited shipments:

- a. provide adequate infrastructure and payment of customs expenses related to processing of expedited shipments, in cases where the applicant fulfills the Member's requirements for such processing to be performed at a dedicated facility;
- b. submit in advance of the arrival of an expedited shipment the information necessary for release;
- c. be assessed fees limited in amount to the approximate cost of services rendered in providing the treatment described in paragraph 8.2 a. – d.;
- d. maintain a high degree of control over expedited shipments through the use of internal security, logistics, and tracking technology from pick-up to delivery;
- e. provide expedited shipment from pick-up to delivery;
- f. assume liability for payment of all customs duties, taxes, and fees and charges to the customs authority for the goods;
- g. have a good record of compliance with customs and other related laws and regulations;
- h. comply with other conditions directly related to the effective enforcement of the Member's laws, regulations and procedural requirements, that specifically relate to providing the treatment described in paragraph 8.2.

8.2. Subject to paragraphs 8.1 and 8.3, Members shall:

⁸ In cases where a Member has an existing procedure that provides the treatment in paragraph 8.2, this provision would not require that Member to introduce separate expedited release procedures.

⁹ Such application criteria, if any, shall be in addition to the Member's requirements for operating with respect to all goods or shipments entered through air cargo facilities.

- a. minimize the documentation required for the release of expedited shipments in accordance with Article 10.1, and to the extent possible, provide for release based on a single submission of information on certain shipments;
 - b. provide for expedited shipments to be released under normal circumstances as rapidly as possible after arrival, provided the information required for release has been submitted;
 - c. endeavour to apply the treatment in sub-paragraphs 8.2 a. and b. to shipments of any weight or value recognizing that a Member is permitted to require additional entry procedures, including declarations and supporting documentation and payment of duties and taxes, and to limit such treatment based on the type of good, provided the treatment is not limited to low value goods, such as documents; and
 - d. provide, to the extent possible, for a de minimis shipment value or dutiable amount for which customs duties and taxes will not be collected, aside from certain prescribed goods. Internal taxes, such as value added taxes and excise taxes, applied to imports consistently with Article III of the GATT 1994 are not subject to this provision.
- 8.3. Nothing in paragraphs 8.1 and 8.2 shall affect the right of a Member to examine, detain, seize, confiscate or refuse entry to goods, or to carry out post-clearance audits, including in connection with the use of risk management systems. Further, nothing in paragraphs 8.1 and 8.2 shall prevent a Member from requiring, as a condition for release, the submission of additional information and the fulfillment of non-automatic licensing requirements.

9 Perishable Goods

- 9.1. With a view to preventing avoidable loss or deterioration of perishable goods,¹⁰ and provided all regulatory requirements have been met, each Member shall:
- a. provide for the release of perishable goods under normal circumstances within the shortest possible time; and
 - b. provide for the release of perishable goods, in exceptional circumstances where it would be appropriate to do so, outside the business hours of customs and other relevant authorities.
- 9.2. Each Member shall give appropriate priority to perishable goods when scheduling any examinations that may be required.
- 9.3. Each Member shall either arrange, or allow an importer to arrange, for the proper storage of perishable goods pending their release. The Member may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorizations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. The Member shall, where practicable and consistent with domestic legislation, upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.
- 9.4. In cases of significant delay in the release of perishable goods, and upon written request, the importing Member shall, to the extent practicable, provide a communication on the reasons for the delay.

¹⁰For the purposes of this provision, perishable goods are goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.

ARTICLE 8: BORDER AGENCY COOPERATION

1. A Member shall ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade.
2. Members shall, to the extent possible and practicable, cooperate on mutually agreed terms with other Members with whom they share a common border with a view to coordinating procedures at border crossings to facilitate cross-border trade. Such cooperation and coordination may include:
 - i. alignment of working days and hours;
 - ii. alignment of procedures and formalities;
 - iii. development and sharing of common facilities;
 - iv. joint controls;
 - v. establishment of one stop border post control.

ARTICLE 9: MOVEMENT OF GOODS UNDER CUSTOMS CONTROL INTENDED FOR IMPORT

Each Member shall, to the extent practicable, and provided all regulatory requirements are met, allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where the goods would be released or cleared.

ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION AND TRANSIT

1 Formalities and Documentation Requirements

- 1.1. With a view to minimizing the incidence and complexity of import, export, and transit formalities and of decreasing and simplifying import, export and transit documentation requirements and taking into account the legitimate policy objectives and other factors such as changed circumstances, relevant new information and business practices, availability of techniques and technology, international best practices and inputs from interested parties, each Member shall review such formalities and documentation requirements, and, based on the results of the review, ensure, as appropriate, that such formalities and documentation requirements:
 - a. are adopted and/or applied with a view to a rapid release and clearance of goods, particularly perishable goods;
 - b. are adopted and/or applied in a manner that aims at reducing the time and cost of compliance for traders and operators;
 - c. are the least trade restrictive measure chosen, where two or more alternative measures are reasonably available for fulfilling the policy objective or objectives in question; and
 - d. are not maintained, including parts thereof, if no longer required.
- 1.2. The Committee shall develop procedures for sharing relevant information and best practices as appropriate.

2 Acceptance of Copies

- 2.1. Each Member shall, where appropriate, endeavour to accept paper or electronic copies of supporting documents required for import, export or transit formalities.
- 2.2. Where a government agency of a Member already holds the original of such a document, any other agency of that Member shall accept a paper or electronic copy, where applicable, from the agency holding the original in lieu of the original document.
- 2.3. A Member shall not require an original or copy of export declarations submitted to the customs authorities of the exporting Member as a requirement for importation.¹¹

3 Use of International Standards

- 3.1. Members are encouraged to use relevant international standards or parts thereof as a basis for their importation, exportation or transit formalities and procedures except as otherwise provided for in this Agreement.
- 3.2. Members are encouraged to take part, within the limits of their resources, in the preparation and periodic review of relevant international standards by appropriate international organizations.
- 3.3. The Committee shall develop procedures for the sharing by Members of relevant information, and best practices, on the implementation of international standards, as appropriate. The Committee may also invite relevant international organizations to discuss their work on international standards. As appropriate, the Committee may identify specific standards that are of particular value to Members.

4 Single Window

- 4.1. Members shall endeavour to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation or transit of goods through a single entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.
- 4.2. In cases where documentation and/or data requirements have already been received through the single window, the same documentation and/or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances and other limited exceptions which are made public.
- 4.3. Members shall notify to the Committee the details of operation of the single window.
- 4.4. Members shall, to the extent possible and practical, use information technology to support the single window.

5 Pre-shipment Inspection

- 5.1. Members shall not require the use of pre-shipment inspections in relation to tariff classification and customs valuation.

¹¹ Nothing in this paragraph precludes a Member from requiring documents such as certificates, permits or licenses as a requirement for the importation of controlled or regulated goods.

5.2. Without prejudice to the rights of Members to use other types of pre-shipment inspection not covered by paragraph 5.1, Members are encouraged not to introduce or apply new requirements regarding their use.¹²

6 Use of Customs Brokers

6.1. Without prejudice to the important policy concerns of some Members that currently maintain a special role for customs brokers, from the entry into force of this agreement Members shall not introduce the mandatory use of customs brokers.

6.2. Each Member shall notify and publish its measures on the use of customs brokers. Any subsequent modifications thereof shall be notified to the Committee and published promptly.

6.3. With regard to the licensing of customs brokers, Members shall apply rules that are transparent and objective.

7 Common Border Procedures and Uniform Documentation Requirements

7.1. Each Member shall, subject to paragraph 7.2, apply common customs procedures and uniform documentation requirements for release and clearance of goods throughout its territory.

7.2. Nothing in this Article shall prevent a Member from:

- a. differentiating its procedures and documentation requirements based on the nature and type of goods, or their means of transport;
- b. differentiating its procedures and documentation requirements for goods based on risk management;
- c. differentiating its procedures and documentation requirements to provide total or partial exemption from import duties or taxes;
- d. applying electronic filing or processing; or
- e. differentiating its procedures and documentation requirements in a manner consistent with the Agreement on Sanitary and Phytosanitary Measures.

8 Rejected Goods

8.1. Where goods presented for import are rejected by the competent authority of a Member on account of their failure to meet prescribed sanitary or phytosanitary regulations or technical regulations, the Member shall, subject to and consistent with its laws and regulations, allow the importer to re-consign or to return the rejected goods to the exporter or another person designated by the exporter.

When such an option is given and the importer fails to exercise it within a reasonable period of time, the competent authority may take a different course of action to deal with such non-compliant goods.

9 Temporary Admission of Goods/Inward and Outward Processing

a. Temporary Admission of Goods

Each Member shall allow, as provided for in its laws and regulations, goods to be brought into a customs territory conditionally relieved, totally or partially, from payment of import duties and taxes if such goods are brought into a customs territory for a specific purpose, are intended for re-exportation within a specific

¹²This sub-paragraph refers to pre-shipment inspections covered by the Pre-shipment Inspection Agreement, and does not preclude pre-shipment inspections for SPS purposes.

period, and have not undergone any change except normal depreciation and wastage due to the use made of them.

b. Inward and Outward Processing

- i. Each Member shall allow, as provided for in its laws and regulations, inward and outward processing of goods. Goods allowed for outward processing may be re-imported with total or partial exemption from import duties and taxes in accordance with the Member's laws and regulations in force.
- ii. For the purposes of this Article, the term "inward processing" means the Customs procedure under which certain goods can be brought into a Customs territory conditionally relieved totally or partially from payment of import duties and taxes, or eligible for duty drawback, on the basis that such goods are intended for manufacturing, processing or repair and subsequent exportation.
- iii. For the purposes of this Article, the term "outward processing" means the Customs procedure under which goods which are in free circulation in a Customs territory may be temporarily exported for manufacturing, processing or repair abroad and then reimported.

ARTICLE 11: FREEDOM OF TRANSIT

1. Any regulations or formalities in connection with traffic in transit imposed by a Member shall not:
 - a. be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a reasonably available less trade restrictive manner,
 - b. be applied in a manner that would constitute a disguised restriction on traffic in transit.
2. Traffic in transit shall not be conditioned upon collection of any fees or charges imposed in respect of transit, except the charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.
3. Members shall not seek, take or maintain any voluntary restraints or any other similar measures on traffic in transit. This is without prejudice to existing and future national regulations, bilateral or multilateral arrangements related to regulating transport consistent with WTO rules.
4. Each Member shall accord to products which will be in transit through the territory of any other Member treatment no less favourable than that which would be accorded to such products if they were being transported from their place of origin to their destination without going through the territory of such other Member.
5. Members are encouraged to make available, where practicable, physically separate infrastructure (such as lanes, berths and similar) for traffic in transit.
6. Formalities, documentation requirements and customs controls, in connection with traffic in transit, shall not be more burdensome than necessary to:
 - a. identify the goods; and
 - b. ensure fulfillment of transit requirements.
7. Once goods have been put under a transit procedure and have been authorized to proceed from the point of origination in a Member's territory, they will not be subject to any customs charges nor unnecessary delays or restrictions until they conclude their transit at the point of destination within the Member's territory.

8. Members shall not apply technical regulations and conformity assessment procedures within the meaning of the Agreement on Technical Barriers to Trade on goods in transit.
9. Members shall allow and provide for advance filing and processing of transit documentation and data prior to the arrival of goods.
10. Once traffic in transit has reached the customs office where it exits the territory of the Member, that office shall promptly terminate the transit operation if transit requirements have been met.
- 11.1. Where a Member requires a guarantee in the form of a surety, deposit or other appropriate monetary or non-monetary¹³ instrument for traffic in transit, such guarantee shall be limited to ensuring that requirements arising from such traffic in transit are fulfilled.
- 11.2 Once the Member has determined that its transit requirements have been satisfied, the guarantee shall be discharged without delay.
- 11.3 Each Member shall, in a manner consistent with its laws and regulations, allow comprehensive guarantees which include multiple transactions for same operators or renewal of guarantees without discharge for subsequent consignments.
- 11.4 Each Member shall make available to the public the relevant information it uses to set the guarantee, including single transaction and, where applicable, multiple transaction guarantee.
- 11.5 Each Member may require the use of customs convoys or customs escorts for traffic in transit only in circumstances presenting high risks or when compliance with customs laws and regulations cannot be ensured through the use of guarantees. General rules applicable to customs convoys or customs escorts shall be published in accordance with Article 1.
12. Members shall endeavour to cooperate and coordinate with one another with a view to enhance freedom of transit. Such cooperation and coordination may include, but is not limited to an understanding on:
- i. charges;
 - ii. formalities and legal requirements; and
 - iii. the practical operation of transit regimes.
13. Each Member shall endeavour to appoint a national transit coordinator to which all enquiries and proposals by other Members relating to the good functioning of transit operations can be addressed.

ARTICLE 12: CUSTOMS COOPERATION

1 Measures Promoting Compliance and Cooperation

- 1.1. Members agree on the importance of ensuring that traders are aware of their compliance obligations, encouraging voluntary compliance to allow importers to self-correct without penalty in appropriate circumstances, and applying compliance measures to initiate stronger measures for non-compliant traders.¹⁴
- 1.2. Members are encouraged to share information on best practices in managing customs compliance, including through the Committee on Trade Facilitation. Members are encouraged to cooperate in

¹³ Nothing in this provision shall preclude a Member from maintaining existing procedures whereby the mean of transport can be used as a guarantee for traffic in transit.

¹⁴ Such activity has the overall objective of lowering the frequency of non-compliance, and consequently reducing the need for exchange of information in pursuit of enforcement.

technical guidance or assistance in building capacity for the purposes of administering compliance measures, and enhancing their effectiveness.

2 Exchange of Information

- 2.1. Upon request, and subject to the provisions of this Article, Members shall exchange the information set out in paragraph 6 b. and/or c. for the purpose of verifying an import or export declaration in identified cases where there are reasonable grounds to doubt the truth or accuracy of the declaration.
- 2.2. Each Member shall notify to the Committee the details of its contact point for the exchange of this information.

3 Verification

A Member shall make a request for information only after it has conducted appropriate verification procedures of an import or export declaration and after it has inspected the available relevant documentation.

4 Request

- 4.1. The requesting Member shall provide the requested Member with a written request, through paper or electronic means in a mutually agreed WTO or other language, including:
 - a. the matter at issue including, where appropriate and available, the serial number of the export declaration corresponding to the import declaration in question;
 - b. the purpose for which the requesting Member is seeking the information or documents, along with the names and contact details of the persons about which the request relates, if known;
 - c. where required by the requested Member, provide confirmation¹⁵ of the verification where appropriate.
 - d. the specific information or documents requested;
 - e. the identity of the originating office making the request;
 - f. reference to provisions of the requesting Member's domestic law and legal system that govern the collection, protection, use, disclosure, retention and disposal of confidential information and personal data;
- 4.2. If the requesting Member is not in a position to comply with any of the sub-paragraphs of 4.1, it shall specify this in the request.

5 Protection and confidentiality

- 5.1. The requesting Member shall, subject to paragraph 5.2:
 - a. hold all information or documents provided by the requested Member strictly in confidence and grant at least the same level of such protection and confidentiality as that provided under the domestic law and legal system of the requested Member as described by it under paragraphs 6.1 b. and 6.1 c.;
 - b. provide the information or documents only to the customs authorities dealing with the matter at issue and use the information or documents solely for the purpose stated in the request unless the requested Member agrees otherwise in writing;

¹⁵This may include pertinent information on the verification conducted under paragraph 12.3. Such information shall be subject to the level of protection and confidentiality specified by the Member conducting the verification.

- c. not disclose the information or documents without the specific written permission of the requested Member;
- d. not use any unverified information or documents from the requested Member as the deciding factor towards alleviating the doubt in any given circumstance;
- e. respect any case-specific conditions set out by the requested Member regarding retention and disposal of confidential information or documents and personal data; and
- f. upon request, inform the requested Member of any decisions and actions taken on the matter as a result of the information or documents provided.

5.2. A requesting Member may be unable under its domestic law and legal system to comply with any of the sub-paragraphs of 5.1. If so, the requesting Member shall specify this in the request.

5.3. The Requested Member shall treat any request, and verification information, received under paragraph 4 with at least the same level of protection and confidentiality accorded by the requested member to its own similar information.

6 Provision of information

6.1. Subject to the provisions of this article, the requested Member shall promptly:

- a. respond in writing, through paper or electronic means;
- b. provide the specific information as set out in the import or export declaration, or the declaration, to the extent it is available, along with a description of the level of protection and confidentiality required of the requesting Member;
- c. if requested, provide the specific information as set out in the following documents, or the documents, submitted in support of the import or export declaration, to the extent it is available: commercial invoice, packing list, certificate of origin and bill of lading, in the form in which these were filed, whether paper or electronic, along with a description of the level of protection and confidentiality required of the requesting Member;
- d. confirm that the documents provided are true copies;
- e. provide the information or otherwise respond to the request, to the extent possible, within 90 days from the date of the request.

6.2. The requested Member may require, under its domestic law and legal system, an assurance prior to the provision of information that the specific information will not be used as evidence in criminal investigations, judicial proceedings, or in non-customs proceedings without the specific written permission of the requested Member. If the requesting Member is not in a position to comply with this requirement it should specify this to the requested Member.

7 Postponement or refusal of a request

7.1. A requested Member may postpone or refuse part or all of a request to provide information, and shall so inform the requesting Member of the reasons for doing so, where:

- a. it would be contrary to the public interest as reflected in the domestic law and legal system of the requested Member.

- b. its domestic law and legal system prevents the release of the information. In such case it shall provide the requesting Member with a copy of the relevant, specific reference.
- c. the provision of the information would impede law enforcement or otherwise interfere with an on-going administrative or judicial investigation, prosecution or proceeding.
- d. the consent of the importer or exporter is required by domestic law and legal system that govern the collection, protection, use, disclosure, retention and disposal of confidential information or personal data and that consent is not given.
- e. the request for information is received after the expiration of the legal requirement of the requested Member for the retention of documents.

7.2. In the circumstances of paragraph 4.2, 5.2 or 6.2 execution of such a request shall be at the discretion of the requested Member.

8 Reciprocity

If the requesting Member is of the opinion that it would be unable to comply with a similar request in case such a request was made by the requested Member, or if it has not yet implemented this Article, it shall state that fact in its request. Execution of such a request shall be at the discretion of the requested Member.

9 Administrative burden

- 9.1. The requesting Member shall take into account the associated resource and cost implications for the requested Member's administration in responding to requests for information. The requesting Member shall consider the proportionality between its fiscal interest in pursuing its request and the efforts to be made by the requested Member in providing the information.
- 9.2. If a requested Member receives an unmanageable number of requests for information, or a request for information of unmanageable scope from one or more requesting Member(s), and is unable to meet such requests within a reasonable time it may request one or more of the requesting Member(s) to prioritize with a view to agreeing on a practical limit within its resource constraints. In the absence of a mutually-agreed approach, the execution of such requests shall be at the discretion of the requested Member based on the results of its own prioritization.

10 Limitations

Requested Members shall not be required to:

- a. modify the format of their import or export declarations or procedures;
- b. call for documents other than those submitted with the import or export declaration as specified in paragraph 6 c.;
- c. initiate enquiries to obtain the information;
- d. modify the period of retention of such information;
- e. introduce paper documentation where electronic format has already been introduced;
- f. translate the information;
- g. verify the accuracy of the information;

- h. provide information that would prejudice the legitimate commercial interests of particular enterprises, public or private.

11 Unauthorized use or disclosure

11.1. In the event of any breach of the conditions of use or disclosure of information exchanged under this Article, the requesting Member that received the information shall promptly communicate the details of such unauthorized use or disclosure to the requested Member that provided the information, and:

- a. take necessary measures to remedy the breach;
- b. take necessary measures to prevent any future breach; and
- c. notify the requested Member of the measures taken under sub-paragraphs a. and b. above.

11.2. The requested Member may suspend its obligations to the requesting Member under this Article until the measures set out in paragraph 11.1 have been taken.

12 Bilateral and regional agreements

12.1. Nothing in this Article shall prevent a Member from entering into or maintaining a bilateral, plurilateral, or regional agreement for sharing or exchange of customs information and data, including on a secure and rapid basis such as on an automatic basis or in advance of the arrival of the consignment.

12.2. Nothing in this Article shall be construed to alter or affect Members' rights or obligations under such bilateral, plurilateral or regional agreements or to govern the exchange of customs information and data under such other agreements.

ARTICLE 13: INSTITUTIONAL ARRANGEMENTS

1 Committee on Trade Facilitation

1.1. A Committee on Trade Facilitation is hereby established.

1.2. The Committee shall be open for participation by all Members and shall elect its own Chairperson. The Committee shall meet as needed and envisaged by the relevant provisions of this Agreement, but no less than once a year, for the purpose of affording Members the opportunity to consult on any matters related to the operation of this Agreement or the furtherance of its objectives. The Committee shall carry out such responsibilities as assigned to it under this Agreement or by the Members. The Committee shall establish its own rules of procedure.

1.3. The Committee may establish such subsidiary bodies as may be required. All such bodies shall report to the Committee.

1.4. The Committee shall develop procedures for sharing by Members of relevant information and best practices as appropriate.

1.5. The Committee shall maintain close contact with other international organizations in the field of trade facilitation, such as the World Customs Organization, with the objective of securing the best available advice for the implementation and administration of this Agreement and in order to ensure that unnecessary duplication of effort is avoided. To this end, the Committee may invite representatives of such organizations or their subsidiary bodies to:

- a. attend meetings of the Committee; and

- b. discuss specific matters related to the implementation of this Agreement.
- 1.6. The Committee shall review the operation and implementation of this Agreement 4 years from its entry into force, and periodically thereafter.
- 1.7. Members are encouraged to raise before the Committee questions relating to issues on the implementation and application of this Agreement.
- 1.8. The Committee shall encourage and facilitate ad hoc discussions among Members on specific issues under this Agreement, with a view to reaching a mutually satisfactory solution promptly.

2 National Committee on Trade Facilitation

Each Member shall establish and/or maintain a national committee on trade facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of provisions of this Agreement.

SECTION II

SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS FOR DEVELOPING COUNTRY MEMBERS AND LEAST DEVELOPED COUNTRY MEMBERS

1 General Principles

- 1.1. The provisions contained in Articles 1 to 12 of this Agreement shall be implemented by developing and least developed country Members in accordance with this Section, which is based on the modalities agreed in Annex D of the July 2004 Framework Agreement (WT/L/579) and paragraph 33 and Annex E of the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC).
- 1.2. Assistance and support for capacity building¹⁶ should be provided to help developing and least-developed country Members implement the provisions of this agreement, in accordance with their nature and scope. The extent and the timing of implementing the provisions of this Agreement shall be related to the implementation capacities of developing and least developed country Members. Where a developing or least developed country Member continues to lack the necessary capacity, implementation of the provision(s) concerned will not be required until implementation capacity has been acquired.
- 1.3. 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.
- 1.4. These principles shall be applied through the provisions set out in Section II.

2 Categories of Provisions

- 2.1. There are three categories of provisions:
 - a. Category A contains provisions that a developing country Member or a least developed country Member designates for implementation upon entry into force of this Agreement, or in the case of a least developed country Member within one year after entry into force, as provided in paragraph 3.

¹⁶For the purposes of this Agreement, "assistance and support for capacity building" may take the form of technical, financial, or any other mutually agreed form of assistance provided.

- b. Category B contains provisions that a developing country Member or a least developed country Member designates for implementation on a date after a transitional period of time following the entry into force of this Agreement, as provided in paragraph 4.
 - c. Category C contains provisions that a developing country Member or a least developed country Member designates for implementation on a date after a transitional period of time following the entry into force of this Agreement and requiring the acquisition of implementation capacity through the provision of assistance and support for capacity building, as provided for in paragraph 4.
- 2.2. Each developing country and least developed country Member shall self-designate, on an individual basis, the provisions it is including under each of the Categories A, B and C.

3 Notification and Implementation of Category A

- 3.1. Upon entry into force of this Agreement, each developing country Member shall implement its Category A commitments. Those commitments designated under Category A will thereby be made an integral part of this Agreement.
- 3.2. A least developed country Member may notify the Committee of the provisions it has designated in Category A for up to one year after entry into force of this Agreement. Each least developed country Member's commitments designated under Category A will thereby be made an integral part of this Agreement.

4 Notification of Definitive Dates for Implementation of Category B and Category C

- 4.1. With respect to the provisions that a developing country Member has not designated in Category A, the Member may delay implementation in accordance with the process set out in this paragraph.

Developing Country Member Category B

- a. Upon entry into force of this Agreement, each developing country Member shall notify to the Committee the provisions that it has designated in Category B and corresponding indicative dates for implementation.¹⁷
- b. No later than one year after entry into force of this Agreement, each developing country Member shall notify to the Committee its definitive dates for implementation of the provisions it has designated in Category B. If a developing country Member, before this deadline, believes it requires additional time to notify its definitive dates, the Member may request that the Committee extend the period sufficient to notify its dates.

Developing Country Member Category C

- c. Upon entry into force of this Agreement, each developing country Member shall notify to the Committee the provisions that it has designated in Category C and corresponding indicative dates for implementation. For transparency purposes, notifications submitted shall include information on the assistance and support for capacity building that the Member requires in order to implement.¹⁸
- d. Within one year after entry into force of this Agreement, developing country Members and relevant donor Members, taking into account any existing arrangements already in place, notifications pursuant to paragraph 10.1 and information submitted pursuant to sub-paragraph c. above, shall provide

¹⁷ Notifications submitted may also include such further information as the notifying Member deems appropriate. Members are encouraged to provide information on the domestic agency/entity responsible for implementation.

¹⁸ Members may also include information on national trade facilitation implementation plans or projects; the domestic agency/entity responsible for implementation; and the donors with which the Member may have an arrangement in place to provide assistance.

information to the Committee on the arrangements maintained or entered into that are necessary to provide assistance and support for capacity building to enable implementation of Category C.¹⁹ The participating developing country Member shall promptly inform the Committee of such arrangements. The Committee shall also invite non-Member donors to provide information on existing or concluded arrangements.

- e. Within 18 months from the date of the provision of the information stipulated in sub-paragraph 4.1 d., donor Members and respective developing country Members shall inform the Committee on progress in the provision of assistance and support. Each developing country Member shall, at the same time, notify its list of definitive dates for implementation.

4.2. With respect to those provisions that a least developed country Member has not designated under Category A, least developed country Members may delay implementation in accordance with the process set forth in this paragraph.

Least Developed Country Member Category B

- a. No later than one year after entry into force of this Agreement, a least developed country Member shall notify the Committee its Category B provisions and may notify corresponding indicative dates for implementation of these provisions, taking into account maximum flexibilities for least developed country Members.
- b. No later than two years after the notification date stipulated under sub-paragraph a. above, each least developed country Member shall notify the Committee to confirm designations of provisions and notify its dates for implementation. If a least developed country Member, before this deadline, believes it requires additional time to notify its definitive dates, the Member may request that the Committee extend the period sufficiently to notify its dates.

Least Developed Country Member Category C

- c. For transparency purposes and to facilitate arrangements with donors, one year after entry into force of this Agreement each least developed country Member shall notify the Committee of the provisions it has designated in Category C, taking into account maximum flexibilities for least developed country Members.
- d. One year after the date stipulated in sub-paragraph c. above, least developed country Members shall notify information on assistance and support for capacity building that the Member requires in order to implement.²⁰
- e. Within two years after the notification under sub-paragraph d. above, least developed country Members and relevant donor Members, taking into account information submitted pursuant to sub-paragraph d. above, shall provide information to the Committee on the arrangements maintained or entered into that are necessary to provide assistance and support for capacity building to enable implementation of Category C.²¹ The participating least developed country Member shall promptly inform the Committee of such arrangements. The least developed country Member shall, at the same time, notify indicative dates for implementation of corresponding Category C commitments covered by the assistance arrangements. The Committee shall also invite non-Member donors to provide information on existing and concluded arrangements.

¹⁹ Such arrangements will be on mutually agreed terms, either bilaterally or through appropriate international organizations, consistent with paragraph 9.3.

²⁰ Members may also include information on national trade facilitation implementation plans and projects and information on the domestic agency/entity responsible for implementation, and the donors with which the Member may have an arrangement in place to provide assistance.

²¹ Such arrangements will be on mutually agreed terms, either bilaterally or through appropriate international organizations, consistent with subparagraph 9.3.

- f. Within 18 months from the date of the provision of the information stipulated in sub-paragraph 4.2 e., relevant donor Members and respective least developed country Members shall inform the Committee on progress in the provision of assistance and support. Each least-developed country Member shall, at the same time, notify its list of definitive dates for implementation.
- 4.3. Developing country Members and least developed country Members experiencing difficulties in submitting definitive dates for implementation within the deadlines set out in paragraphs 4.1 and 4.2 because of the lack of donor support or lack of progress in the provision of assistance and support should notify the Committee as early as possible prior to the expiration of those deadlines. Members agree to cooperate to assist in addressing such difficulties, taking into account the particular circumstances and special problems facing the Member concerned. The Committee shall, as appropriate, take action to address the difficulties including, where necessary, by extending the deadlines for the Member concerned to notify its definitive dates.
- 4.4. Three months before the deadline stipulated in paragraph 4.1 b. or 4.1 e., or in the case of a least developed country Member paragraph 4.2 b. or 4.2 f., the Secretariat shall remind a Member if that Member has not notified a definitive date for implementation of provisions that it has designated in Category B or C. If the Member does not invoke paragraph 4.3 or paragraph 4.1 b., or in the case of a least developed country Member paragraph 4.2 b., to extend the deadline and still does not notify a definitive date for implementation, the Member shall implement the provisions within one year after the deadline stipulated in paragraph 4.1 b. or 4.1 e., or in the case of a least developed country Member paragraph 4.2 b. or 4.2 f., or extended by paragraph 4.3.
- 4.5. No later than 60 days after the dates for notification of definitive dates for implementation of Category B and Category C in accordance with paragraphs 4.1, 4.2 or 4.3, the Committee shall take note of the annexes containing each Member's definitive dates for implementation of Category B and Category C provisions, including any dates set under paragraph 4.4, thereby making these annexes an integral part of this Agreement.

5 Early Warning Mechanism: Extension of Implementation Dates for Provisions in Categories B and C

- 5.1.
- a. A developing country Member or least developed country Member that considers itself to be experiencing difficulty in implementing a provision that it has designated in Category B or Category C by the definitive date established under paragraph 4.1 b. or 4.1 e., or in the case of a least-developed country Member paragraph 4.2 b. or 4.2 f., and should notify the Committee. Developing countries shall notify the Committee no later than 120 days before the expiration of the implementation date. Least developed countries shall notify the Committee no later than 90 days before such date.
- b. The notification to the Committee shall indicate the new date by which the developing country Member or least developed country Member expects to be able to implement the provision concerned. The notification shall also indicate the reasons for the expected delay in implementation. Such reasons may include the need for assistance not earlier anticipated or additional assistance to help build capacity.
- 5.2. Where a developing country Member's request for additional time for implementation does not exceed 18 months or a least developed country Member's request for additional time does not exceed 3 years, the requesting Member is entitled to such additional time without any further action by the Committee.
- 5.3. Where a developing country or least developed country Member considers that it requires a first extension longer than that provided for in paragraph 5.2 or a second or any subsequent extension, it shall

submit to the Committee a request for an extension containing the information described in 5.1 b. no later than 120 days in respect of a developing country and 90 days in respect of a least developed country before the expiration of the original definitive implementation date or that date as subsequently extended.

- 5.4. The Committee shall give sympathetic consideration to granting requests for extension taking into account the specific circumstances of the Member submitting the request. These circumstances may include difficulties and delays in obtaining assistance.

6 Implementation of Category B and Category C

- 6.1. In accordance with paragraph 1.2, if a developing country Member or a least developed country Member, having fulfilled the procedures set forth in sub-paragraph 4.1 or 4.2 and in paragraph 5, and where an extension requested has not been granted or where the developing country Member or least developed country Member otherwise experiences unforeseen circumstances that prevents an extension being granted under paragraph 5, self-assesses that its capacity to implement a provision under Category C continues to be lacking, that Member shall notify the Committee of its inability to implement the relevant provision.
- 6.2. The Trade Facilitation Committee shall immediately establish an Expert Group, and in any case no later than 60 days after the Committee receives the notification from the relevant developing country Member or least developed country Member. The Expert Group will examine the issue and make a recommendation to the Committee within 120 days of its composition.
- 6.3. The Expert Group shall be composed of five independent persons, highly qualified in the fields of trade facilitation and assistance and support for capacity building. The composition of the Expert Group shall ensure balance between nationals from developing and developed country Members. Where a least developed country Member is involved, the Expert Group shall include at least one national from a least developed country. If the Committee cannot agree on the composition of the Expert Group within 20 days of its establishment, the Director-General, in consultation with the chair of the Committee, shall determine the composition of the Expert Group in accordance with the terms of this paragraph.
- 6.4. The Expert Group shall consider the Member's self-assessment of lack of capacity and shall make a recommendation to the Trade Facilitation Committee. When considering the Expert Group's recommendation concerning a least developed country Member, the Committee shall, as appropriate, take action that will facilitate the acquisition of sustainable implementation capacity.
- 6.5. The Member shall not be subject to proceedings under the Dispute Settlement Understanding on this issue from the time the developing country Member notifies the Committee of its inability to implement the relevant provision until the first meeting of the Committee after it receives the recommendation of the Expert Group. At that meeting, the Committee shall consider the recommendation of the Expert Group. For the least developed country Member, the proceedings under the Dispute Settlement Understanding shall not apply on the respective provision from the date of notification to the Committee of its inability to implement the provision until the Committee makes a decision on the issue, or within 24 months after the first Committee meeting set out above, whichever is the earlier.
- 6.6. Where a least developed country Member loses its ability to implement a Category C commitment, it may inform the Committee and follow the procedures set out in paragraph 6.

7 Shifting between Categories B and C

- 7.1. Developing Country Members and least developed country Members who have notified provisions under Categories B and C may shift provisions between such categories through the submission of a

notification to the Committee. Where a Member proposes to shift a provision from Category B to C, the Member shall provide information on the assistance and support required to build capacity.

7.2. In the event that additional time is required to implement a provision as a result of it having been shifted from Category B to Category C, the Member may:

a. use the provisions of paragraph 5, including the opportunity for an automatic extension;

or

b. request an examination by the Committee of the Member's request for extra time to implement the provision and, if necessary, for assistance and support for capacity building, including the possibility of a review and recommendation by the Expert Group under paragraph 6; or

c. in the case of a least developed country Member, any new implementation date of more than four years after the original date notified under Category B shall require approval by the Committee. In addition, a least developed country continues to have recourse to paragraph 5. It is understood that assistance and support for capacity building is required for a least developed country Member so shifting.

8 Grace Period for the Application of the Understanding on Rules and Procedures

Governing the Settlement of Disputes

8.1. For a period of 2 years after entry into force of this Agreement, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against a developing country Member concerning any provision that the Member has designated in Category A.

8.2. For a period of 6 years after entry into force of this Agreement, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against a least developed country Member concerning any provision that the Member has designated in Category A.

8.3. For a period of 8 years after implementation of a provision under Category B and C by a least developed country Member, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against that least developed country Member concerning those provisions.

8.4. Notwithstanding the grace period for the application of the Understanding on Rules and Procedures Governing the Settlement of Disputes, before making a request for consultations pursuant to Articles XXII or XXIII, and at all stages of dispute settlement procedures with regard to a measure of a least developed country Member, a Member shall give particular consideration to the special situation of least developed country Members. In this regard, Members shall exercise due restraint in raising matters under the Understanding on Rules and Procedures Governing the Settlement of Disputes involving least developed country Members.

8.5. Each Member shall, upon request, during the grace period allowed under this paragraph, provide adequate opportunity to other Members for discussion with respect to any issue relating to the implementation of this Agreement.

9 Provision of Assistance for Capacity Building

- 9.1. Donor Members agree to facilitate the provision of assistance and support for capacity building to developing country and least developed country Members, on mutually agreed terms and either bilaterally or through the appropriate international organizations. The objective is to assist developing country and least developed country Members to implement the provisions of Section I of this Agreement.
- 9.2. Given the special needs of least developed country Members, targeted assistance and support should be provided to the least developed country Members so as to help them build sustainable capacity to implement their commitments. Through the relevant development cooperation mechanisms and in coherence with the principles of technical assistance and capacity building as referred to in paragraph 9.3, development partners shall endeavour to provide assistance and support in this area in a way that does not compromise existing development priorities.
- 9.3. Members shall endeavour to apply the following principles for providing assistance and support for capacity building with regard to the implementation of this Agreement:
- a. take account of the overall developmental framework of recipient countries and regions and, where relevant and appropriate, ongoing reform and technical assistance programs;
 - b. include, where relevant and appropriate, activities to address regional and sub-regional challenges and promote regional and sub-regional integration;
 - c. ensure that ongoing trade facilitation reform activities of the private sector are factored into assistance activities;
 - d. promote coordination between and among Members and other relevant institutions, including regional economic communities, to ensure maximum effectiveness of and results from this assistance. To this end:
 - i. coordination, primarily in the country or region where the assistance is to be provided, between partner Members and donors, and among bilateral and multilateral donors, should aim to avoid overlap and duplication in assistance programs and inconsistencies in reform activities through close coordination of technical assistance and capacity building interventions;
 - ii. for least developed country Members, the Enhanced Integrated Framework should be a part of this coordination process; and
 - iii. Members should also promote internal coordination between their trade and development officials, both in capitals and Geneva, in the implementation of the Agreement and technical assistance.
 - e. encourage use of existing in-country and regional coordination structures such as roundtables and consultative groups to coordinate and monitor implementation activities; and
 - f. encourage developing countries Members to provide capacity building to other developing and least developed country and consider supporting such activities, where possible.
- 9.4. The Committee shall hold at least one dedicated session per year to:
- a. discuss any problems regarding implementation of provisions or sub-parts of provisions;
 - b. review progress in the provision of technical assistance and capacity building to support the implementation of the Agreement, including any developing or least developed country Members not receiving adequate technical assistance and capacity building;

- c. share experiences and information on ongoing assistance and implementation programs, including challenges and successes;
- d. review donor notifications as set forth in paragraph 10; and e. review the operation of paragraph 9.2.

10 Information on Assistance to be Submitted to the Committee

10.1. To provide transparency to developing and least developed Members on the provision of assistance and support for implementation of Section I, each donor Member assisting developing country and least developed country Members with the implementation of this Agreement shall submit to the Committee, at entry into force of the Agreement and annually thereafter, the following information on its assistance and support for capacity building that was disbursed in the preceding twelve months and, where available, that is committed in the next twelve months:²²

- a. a description of the assistance and support for capacity building;
- b. the status and amount committed/disbursed;
- c. procedures for disbursement of the assistance and support;
- d. the beneficiary country, or, where necessary, the region; and
- e. the implementing agency in the Member providing assistance and support.

The information shall be provided in the format specified in Annex 1. In the case of OECD members, the information submitted can be based on relevant information from the OECD Creditor Reporting System. Developing country Members declaring themselves in a position to provide assistance and support are encouraged to provide the information above.

10.2. Donor Members assisting developing country and least developed country Members shall submit to the Committee:

- a. contact points of their agencies responsible for providing assistance and support for capacity building related to the implementation of the provisions of Section I of this Agreement including, where practicable, information on such contact points within the country or region where the assistance and support is to be provided; and
- b. information on the process and mechanisms for requesting assistance and support. Developing country Members declaring themselves in a position to provide assistance and support are encouraged to provide the information above.

10.3. Developing country and least developed country Members intending to avail themselves of trade facilitation-related assistance and support shall submit to the Committee information on contact point(s) of the office(s) responsible for coordinating and prioritizing such assistance and support.

10.4. Members may provide the information in paragraphs 10.2 and 10.3 through internet references and shall update the submitted information as necessary. The Secretariat shall make all such information publicly available.

10.5. The Committee shall invite relevant international and regional organizations (such as the IMF, OECD, UNCTAD, WCO, UN Regional Commissions, the World Bank, or their subsidiary bodies, and regional development banks) and other agencies of cooperation to provide information referred to in paragraphs 10.1, 10.2 and 10.4.

²²The information provided will reflect the demand driven nature of the provision of technical assistance.

FINAL PROVISIONS

1. For the purpose of this Agreement, the term “Member” is deemed to include the competent authority of that Member.
2. All provisions of this Agreement are binding on all Members.
3. Members shall implement this Agreement from the date of its entry into force. Developing country Members and least developed country Members that choose to use the provisions of Section II shall implement this Agreement in accordance with Section II.
4. A Member which accepts this Agreement after its entry into force shall implement its Category B and C commitments counting the relevant periods from the date this Agreement enters into force.
5. Members of a customs union or a regional economic arrangement may adopt regional approaches to assist in the implementation of their obligations under the Agreement on Trade Facilitation including through the establishment and use of regional bodies.
6. Notwithstanding the General interpretative note to Annex 1A, nothing in this Agreement shall be construed as diminishing the obligations of Members under the GATT 1994. In addition, nothing in this Agreement shall be construed as diminishing the rights and obligations of Members under the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures.
7. All exceptions and exemptions²³ under the General Agreement on Tariffs and Trade 1994 shall apply to the provisions of this Agreement. Waivers applicable to the GATT 1994 or any part thereof, granted according to Article IX:3 and Article IX:4 of the Marrakesh Agreement establishing the WTO and any amendments thereto as of the date of entry into force of this Agreement, shall apply to the provisions of this Agreement.
8. The provisions of Articles XXII and XXIII of the General Agreement on Tariffs and Trade 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided for in this Agreement.
9. Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.
10. The Category A commitments of developing and least developed country Members annexed to this Agreement in accordance with paragraphs 3.1 and 3.2 of Section II shall constitute an integral part of this Agreement.
11. The Category B and C commitments of developing and least developed country Members taken note of by the Committee and annexed to this Agreement pursuant to paragraph 4.5 of Section II shall constitute an integral part of this Agreement.

²³This includes Articles V:7 and X:1 of the GATT 1994 and the Ad note to Article VIII of the GATT 1994.

