



The 2013 World Trade Organization Agreement on Trade Facilitation: Israel's obligations towards Palestinian Trade



UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT

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on Trade Facilitation: Israel's obligations towards
Palestinian Trade^{*}**



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**The UNCTAD secretariat prepared this study drawing on a report prepared by UNCTAD/Palestinian Shippers Council (PSC) legal expert Dr. Nizar Ayoub, undertaken in the context of the project “Capacity development to facilitate Palestinian trade”. The project was implemented by UNCTAD's Programme of Assistance to the Palestinian people, in partnership with the PSC and in cooperation with the Palestinian Authority's Ministry of National Economy.*

Executive Summary

The Agreement on Trade Facilitation (ATF) was adopted at the Ninth Ministerial Conference of the World Trade Organization (WTO) convened in Bali, Indonesia, in December 2013, following about ten years of negotiations in Geneva. The ATF, which is binding to all member-states of the WTO, will take effect in the middle of 2015 and is expected to result in major trade gains and savings in time and costs of export and import operations, customs clearance, transit passage and related trade measures. The Agreement would also benefit shipments to and from land-locked countries through adjacent countries, as well as countries or non-sovereign territories and those under foreign military occupation.

It is acknowledged that membership in the WTO does not require that candidates be sovereign states, but that they enjoy full autonomy in conducting their external trade relations and policies and in decisions within the competencies of the WTO. Based on these criteria, Hong Kong, Taiwan and Macau are Members of the WTO (WTO, 1994: Article 12, Paragraph 1). The State of Palestine/Occupied Palestinian Territory (OPT) has not been able to meet these membership conditions owing to the constraints imposed by the Paris Protocol (Khalidi, 2015). The Protocol allows the Palestinian Authority (PNA) to manage external trade only within a very limited scope and maintains the domination of the Israeli occupation over the Palestinian economy and its external trade. However, some analysts contend that Palestine has the right to become a full member of the WTO notwithstanding its lack of control over a significant part of its external trade (Cottier, 1997). Meanwhile, others affirm that the signing in 1997 of an Association Agreement between the European Union and the PNA (free trade agreement) covers goods outside the three lists specified in the Paris Protocol, which exempt certain Palestinian imports from the provisions of the Israeli trade regime. This is thought to pave the way for considering the OPT a “separate customs territory” since it has the ability to enter into international trade agreements and hence is entitled to accede to the WTO (Kanafani, 2000).

This study does not address the potential membership of Palestine in the WTO or the degree of its readiness to accede to the Organization. However, it focuses on the potential applicability of the ATF in the OPT, regardless of whether or not Palestine, which has been accorded Observer State Membership in the United Nations, is a party to the WTO Agreement. The study assesses the applicability of the ATF to Palestinian trade in light of international law, positions of international organizations and legal scholars. The question here relates to whether Israel, as the occupying power and a party to the Agreement, is obliged to apply the ATF to Palestinian trade and how the provisions should be applied.

Some estimates suggest that the potential cost savings via trade facilitation will be considerable and concrete. The Organization for Economic Cooperation and Development (OECD) estimates that every percentage point in cost-savings in international trade boosts global income by \$40 billion. The new ATF could reduce trade transaction costs by around 14.5 percent for low-income countries and 10 percent for higher-income countries. Other studies estimate that considerable facilitation of trade as promoted by this Agreement could increase global Gross Domestic Product (GDP) over time by \$1 trillion (ITC, 2013; USTR, 2013).

Undoubtedly, the application of the ATF to Palestinian trade by Israel, in its capacity as a party to the Agreement, as with all international agreements that the international community demands to be applied to the OPT, will result in removing many "security-related" restrictions placed by Israel on Palestinian trade. This in turn would expedite the flow of Palestinian exports and imports, reduce the costs of Palestinian trade operations, contribute to development in the OPT and have a positive impact on the economy as a whole. If the ATF is to be applied to Palestinian trade, it would contribute to reducing the administrative obstacles faced in different markets and establish technical standards for the operation of customs and monitoring agencies in dealing with imports and expedite customs clearance. It would also allow for deployment of electronic clearance and payment systems to collect customs duties as well as all other costs or fees imposed on imports such as those related to the inspection of shipments, handling etc., which in turn reduces customs clearance times.

Improved trade facilitation would also help Palestine, and its developing economy, to gradually build its capacity to meet its trade commitments towards Israel and other Members of the WTO, and eventually fully comply with the ATF once it becomes a member of the WTO. Were the PNA to benefit from the application of the ATF, this would strengthen Palestinian Customs capacity, improve revenue collection and assist small and medium enterprises in accessing new export and import opportunities via measures featuring transparent customs procedures, limited documentation requirements and processing customs transactions in advance of the shipping of goods.

To ensure Israel's application of the ATF to Palestinian external trade, a series of actions are required under each Article of the ATF. One of them is, in cooperation with, and supported by the PNA, the Palestinian Shippers Council (PSC) should act as the national focal point for the Palestinian private sector for advocacy and other initiatives to end the exclusive and unilateral Israeli domination over Palestinian trade at the bilateral and multilateral levels. This requires the PSC to explore all avenues and tools in the context of a clear strategy for making the application of ATF in the OPT mandatory, and to launch a domestic and international campaign to this end, beginning with the establishment of the National Trade Facilitation Committee as ATF stipulates.

Abbreviations

ATF	Agreement on Trade Facilitation
EC	Europe Commission
ECOSOC	Economic and Social Council
EDISCO	Electronic Digital Information Systems Co
GATT	General Agreement on Tariffs and Trade
GDP	gross domestic product
ICJ	International Court of Justice
IDF	Israel Defense Forces
IHL	International Humanitarian Law
ITC	International Trade Centre
MAS	Palestine Economic Policy Research Institute
OECD	The Organization for Economic Cooperation and Development
OPT	occupied Palestinian territory
PalTrade	Palestine Trade Center
PCBS	Palestinian Central Bureau of Statistics
PLO	Palestine Liberation Organization
PNTFC	Palestinian National Trade Facilitation Committee
PSC	Palestinian Shippers Council
UN	United Nations
UN/CEFACT	United Nations Centre for Trade Facilitation and E-Business
UNCTAD	United Nations Conference on Trade and Development
UNGA	United Nations General Assembly
USTR	United States Trade Representative
WCO	World Customs Organization
WTO	World Trade Organization

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Chapter I Introduction

A. Background

This study has been prepared in the context of the project “Capacity Development to Facilitate Palestinian Trade” implemented by the United Nations Conference on Trade and Development (UNCTAD), in partnership with the PSC, and in cooperation with the Palestinian Ministry of National Economy. The study focuses on the applicability of the WTO Agreement on Trade Facilitation (Bali Package, 2013) in the OPT and its impact on the overall Palestinian trade process through the expediting of the flow of goods across borders and reducing the costs of those trade transactions identified in the Agreement.

The field of international trade facilitation contains some of the most important challenges faced by trade operators and governments alike, as it encompasses political, economic, commercial and technical aspects, as well as financial dimensions. The latter are within the purview of customs authorities and need to be taken into consideration when any country devises its trade facilitation strategy. UNCTAD has affirmed that governments and commercial businesses concerned with improving trade transactions across borders need to cooperate on a permanent basis to identify and implement reform measures that improve these transactions through reducing the time and costs of handling goods, thus facilitating the trade logistics as a whole (UNCTAD, 2006).

It is widely acknowledged that trade logistics in the OPT have been subjected since 1967 to the absolute control of Israeli authorities. Through military orders issued by military commanders, Israel imposed import and export fees and other duties, and regulated standards and specifications in line with those applied in Israel. On the other hand, Israel has been working towards de facto annexation of occupied East Jerusalem to Israel since 1967 as the Israeli law was imposed on the city and its Palestinian inhabitants. The Israeli policies enabled the occupation authorities to exercise full domination over Palestinian trade and render the Palestinian market dependent.

The Israeli authorities created these facts on the ground through applying a legal system that combined civil legislations with military orders, thus dominating the Palestinian

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