



TECHNICAL NOTES ON TRADE FACILITATION MEASURES



Transport
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Technical Notes on Trade Facilitation Measures

The Technical Notes on Trade Facilitation Measures were first published in 2006 to provide background information on the concepts discussed in the trade facilitation negotiations at the World Trade Organization (WTO). The WTO negotiations on trade facilitation have evolved over the past three years, with a number of new issues being brought up, and other concepts dropped.

These notes have been revised to reflect the latest developments in these negotiations; they now feature 17 individual technical notes on trade facilitation. Each of the notes introduces technical and practical details of major trade facilitation concepts and best practices as they relate to the consolidated draft text of the WTO negotiations on trade facilitation issued by the Chair of the Negotiating Group on Trade Facilitation in December 2009 (TN/TF/W/165 and its revisions).



Note

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This document is a revision of the document entitled “Handbook on Trade Facilitation Part II: Technical Notes on Trade Facilitation”, published by UNCTAD under the document symbol UNCTAD/SDTE/TLB/2005/2. The revised document has been assigned a new document symbol, as the name of the document and the name of the division publishing the document have changed.

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Contents

Introduction.....	1
Section One — Access to information and transparency.....	2
Publication of trade regulations	3
Internet publication	6
Single national enquiry points.....	9
Section Two — Administration of trade regulations	11
Right of appeal against Customs and other agency rulings and decisions	12
Disciplines on the levy of fees and charges	14
Border agency coordination	17
Multi-Agency Working Group on Trade Facilitation	20
Simplification of trade documentation using international standards	26
Section Three — Customs clearance.....	30
Advance rulings	31
Post-clearance audit	33
Separating release from clearance procedures	36
Risk management for Customs control	39
Pre-arrival Customs processing.....	43
Use of Customs automation systems.....	45
ASYCUDA	48
Section Four — Transit Trade	54
Freedom of Transit and Regional Transit Arrangements	55
Bonded Customs Transit	57
References.....	60

Introduction

Trade facilitation is a diverse and challenging subject with potential benefits for both business and government at national, regional and international levels. It involves political, economic, business, administrative, technical and technological as well as financial issues. With trade facilitation reforms, governments seek to establish a transparent and predictable environment for cross-border trade transactions based on simple, standardized Customs procedures and practices, documentation requirements, cargo and transit operations, and trade and transport arrangements.

The profile of trade facilitation was raised in 2001 when the WTO Ministerial Conference placed it on the Agenda of the Doha Round of Trade Negotiations with the aim of clarifying and improving multilateral trade rules governing transparency, Customs operations and transit trade. In July 2004, WTO members agreed to start negotiations on trade facilitation on the basis of principles and modalities set out in the so-called Annex D of the July 2004 Package (WTO/L/579). The negotiations aim to clarify and improve relevant aspects of Articles V, VIII, and X of the General Agreement on Tariffs and Trade (GATT) 1994, draft provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and Customs compliance and enhance technical assistance and capacity building support.

Against the background of the negotiation process information on these best practices, concepts and recommendations used globally for trade facilitation were needed. UNCTAD therefore published a Handbook on Trade Facilitation in 2006, including a Part I on national trade facilitation bodies, and a Part II of so-called technical notes on trade facilitation. Each of the technical notes was written by an acknowledged expert in the field and provides technical and practical information on a trade facilitation concept, recommendation or best practices. A particular emphasis was placed on the presentation of implementation related issues, including, when possible general information on costs and benefits. The Part II constituted a useful document for use by capital and Geneva based negotiators engaged in the WTO negotiations on trade facilitation.

Since 2006, the negotiations have progressed and a first draft consolidated text for a future agreement on trade facilitation was issued by the Chair of the Negotiating Group on Trade Facilitation in December 2009 (TN/TF/W/165). The current draft text is substantially different from the proposals presented in 2005, the first year of the negotiations. WTO members have since been working on draft legal language for each of the proposed legal discipline. Also, some concepts and proposed disciplines have been dropped from the negotiating agenda, whilst others have been expanded or newly introduced. A revision of the Handbook Part II seems therefore both relevant and timely.

This revised version of the technical notes relates more closely to the text currently negotiated. New notes have been incorporated on the following subjects: national trade facilitation working groups; the right of appeal; Automated System for Customs Data (ASYCUDA); bonded Customs regimes and Customs procedures; and, border Agency coordination. The following two previously existing notes have been deleted: maintenance of integrity amongst officials and documentation requirements in maritime transport. They no longer relate to any proposal included the current draft consolidated text. The remaining 12 notes were partly or fully rewritten so as to provide more detail and clarity.

Section One — Access to information and transparency

Transparency is a central element of the Article X of GATT 1994. Art X.1 requires that all WTO members “publish promptly” all their trade regulations of general application “in such a manner as to enable governments and traders to become acquainted with them”. Art. X.1 further defines the coverage of this requirement which extends to all laws, regulations, rulings and judicial decisions of general application with Art X.2 specifying that modified or new measures cannot be enforced prior to their official publication.

The transparency provisions of GATT aim at ensuring predictability and access to information on trade policies, regulations, and legislation. The expected benefits lie in ameliorating the conditions under which traders and operators, especially small- and medium-sized enterprises (SMEs) engage in international trade transactions. Transaction costs for traders will be cut through more predictability and clarity on the costs and formalities involved in transaction. Improving the transparency also helps reducing opportunities for corruption, in particular the collection of unpublished and illegal fees and the maintenance of outdated practices.

In the context of the negotiations on trade facilitation WTO members propose clarifying and strengthening the publication requirements of GATT 1994. This would entail a clearer and closed definition of documents to be published, and the clarification of means and channels of publication. The latter could include placing the content on websites, and establishing national enquiry points. Proposals also aim at extending the publication obligation beyond the current scope of Art. X to also include information of more practical nature, such as procedural outlines or descriptions and forms and documents.

Publication of trade regulations

Background

Publication is the act of making information available to a third person or the general public by display, distribution, or circulation. Information can be published through different means, channels and in different formats: on paper or in electronic format, in a newspaper or by placing it on a website accessible through the Internet.

Timely, accurate and easily accessible information on trade legislation, applicable fees and tariffs, and related adjudicatory mechanisms is essential for the transparency, predictability and efficiency of international commercial transactions. However, publication provisions and practices differ amongst countries.

Coverage of GATT Article X

The current scope of Article X pertains to laws, regulations, judicial decisions and administrative rulings of general application. Laws and regulations are mentioned separately in the text; with laws referring to enforceable rules of general application promulgated by parliamentary or legislative bodies, and regulations referring to so-called secondary legislation adopted by the administration. Judicial decisions and administrative decisions are interpretations of the application of existing regulation by governmental agencies referring to a particular situation or case. Rulings and decisions, as opposed to regulations, relate in general to specific cases and situations and are binding only on those cases. However, some rulings may not be specifically addressed to a particular company or person and therefore be qualified as of general application. Several WTO panel and the appellate body decisions dealt with the scope of application of certain administrative rulings. Further to acts of general application, bilateral or multilateral agreements shall also be published.

Publication of acts of general application

In most countries, the publication of laws is part of the constitutionally mandated legislative procedure and the publication by the signatory is a necessary condition to become a law. Through the publication the existence of the law is rendered public and the published text will be deemed authentic and admissible in national courts. Most countries use a government publication – journal, bulletin, gazette are synonyms in this context, as the official channel of publication of the law by date of vote or entry into force. Such gazettes are printed regularly and distributed through individual or institutional subscription and/or by single issue sales in public kiosks. Many countries have also developed an electronic version of their bulletin and provide additional functions of access to codified laws on dedicated websites.

Publication practice and obligation for secondary legislation and decisions by the judiciary vary across countries. Often administrative rulings and judicial decisions are not published in a large scope but are displayed to the public at specific locations or circulation internally if they are considered to be of general application. Further to the display, such rulings and decisions may be available to interested parties upon request at the registry.

Laws can furthermore be codified by topical subject area and published in consolidated form – either in special editions of the government gazette, government departments or ministerial printings or through external legal publishing house.

Issues to consider

Traders' needs

Traders need information to carry out the importation and exportation transactions. The required information includes the existing regulatory framework, applied procedures, operational practices, and intelligence information on the quality of services delivered for the importation and exportation.

However, traders need the information to be timely, accurate and readable. Paper-based publications which appear with delay or are not available to a large public are of limited use to traders, in particular SMEs. Legislative texts are important in case of dispute and appeal. Nevertheless, practical information – such as opening hours of border crossings, applicable fees and charges and tariff schedules, and descriptive outlines of the procedures and formalities – have a greater value for the operational practices.

The publication of trade-related information should therefore not be addressed in an isolated and ad hoc manner by each agency. Rather, it should be addressed as a comprehensive strategic objective of trade facilitation. Guiding principles of a trade information management should be readability with regards to the content and accessibility based on a combination of different channels and means of publication, including the Internet. Taking such an overall approach to trade related information management and incorporating requirements of traders improves the government services and ensures a more efficient management of the information.

Implementation Issues

Four elements need to be taken into consideration for trade-related information management: Governance, Delivery, Data/Information, and Storage.

The governance element includes the role and responsibilities of the different agencies, the legal framework, security measures and rules, as well as a monitoring mechanism to control the quality. Delivery regroups aspects of maintenance of information, such as decision of means and channels, as well as a selection of a technology to support the delivery process. Data and information include the collection, analysis and production of information, the development and adoption of templates for the publication, as well as the structure of the data and information provided. Storage is the final element of information management and covers questions related to digitalised or paper archives and centralised

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