

WTO TRADE FACILITATION AGREEMENT: WHY GHANA MUST RATIFY

I. Background

The mandate for trade facilitation negotiation was limited to clarifying and improving GATT 1994 Article V on freedom of transit; Article VIII on fees and formalities in connection with importation and exportation of goods; and Article X on publication and administration of trade regulations. The trade facilitation agreement has a very simple objective of reducing trade cost. It could be understood as simplification, harmonization, and automation of the procedures applied to international trade, particularly the requirements and formalities related to importation and exportation of goods, including goods in transit.

Deliberation on trade facilitation (TF) in the WTO history dates back to 1996. The TF, together with issues related to Competition, Investment and Government Procurement were identified and christened as “Singapore Issues”. The Negotiation Committee was established in 2004 and agreement was eventually reached in Bali, Indonesia at the ninth WTO Ministerial Meeting (MC9) on December 2013.

Trade facilitation reforms and measures are being implemented in Africa, although at different speed across countries. The transit issues identified by propounds include: poor infrastructure (roads, customs facilities, information technology, etc) and administrative barriers (lack of cross-border coordination, fees/ charges, internal roadblocks, excessive document requirements and controls, and high transit guarantee amounts/ delayed reimbursement, etc.).

Having regard to the negotiations launched under the Doha Ministerial Declaration (DDA); recalling and reaffirming the mandate and principles contained in paragraph 27th of the Doha Ministerial Declaration (WT/MIN(01)/DEC/1) and in Annex D of the Decision of the Doha Work Programme adopted by the General Council on 1st August 2004 (WT/L/579); as well as in paragraph 33 of and Annex E to the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC); Ministers of Trade and Industry, at the Ninth (9th) WTO Ministerial Conference (MC9) in Bali, Indonesia on December 2013, adopted the Trade Facilitation Agreement (TFA) 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. The Agreement also seek to improve cooperation between customs, border agents and other relevant authorities, while augmenting technical assistance and capacity building for developing countries, especially least developed countries (LDCs).

The Agreement is applicable to all border agencies and further guarantees transparency and binding commitments from trading partners (161 WTO member countries). It is estimated that the TFA will lead to 1% decrease in global costs and an increased global income of USD 40 billion at a minimum. According to an OECD report, up to two-thirds of the total gains are to be obtained by developing countries. OECD has also estimated that there will be a drastic reduction of total trade costs of 14.5% for low-income

countries; 15% for lower-middle income countries, and 13.2% for upper-middle income countries.

Ghana is a signatory to the world trade organization (WTO) and therefore obliged to take the necessary steps to ratify the multilateral trade facilitation agreement. On 27th November 2014, the WTO General Council, after persuading India to stand down their demands on food security and public stockholding, adopted the Protocol of Amendment to insert the TFA into Annex 1A of the WTO Agreement, which is now opened for acceptance by member countries. The Agreement shall enter into force when two-third (108 out of 161 Members) have duly ratified the Protocol of Amendment in their respective legislative bodies (Parliament) and the Instrument of Acceptance deposited at the WTO Secretariat.

II. Key Elements of the WTO Trade Facilitation Agreement

The TFA is divided into three (3) Sections. Section I contains twelve (12) articles of technical measures for an effective and efficient agreement. Section II focuses on special and differential treatment (SDT) provisions for developing countries, via technical assistance and capacity building. Session III deals with institutional arrangements and final provisions. It is remarkable to note that Session III, for instance, mandates member states to establish and/ or maintain a national committee on trade facilitation or designates existing mechanism to facilitate both domestic coordination and implementation of the provisions of this Agreement.

The provisions contained in Articles 1 to 12 of this Agreement shall be implemented by developing and least-developed country Members in accordance with Section I. Under Session II of the Agreement, assistance and support for capacity building shall be provided to help developing and least-developed country Members to implementing the provisions of this Agreement, in accordance with their nature and scope. Put differently, the extent and timing of implementation of the provisions of this Agreement shall be related to the implementation capacities of developing and least-developed country-Members. Pursuant to this Agreement, where a developing or least-developed country-Member continues to lack the necessary capacity, implementation of the provision(s) concerned shall not be required until implementation capacity has been acquired. For LDC Members, the Agreement categorically states that these countries 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.

The TFA has three (3) categories of measures namely Category 'A', 'B', and 'C'. Each developing country and least-developed country-member shall self-designate, on an individual basis, measure of Session I, it is including under each of the Categories. 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 Article 15. 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 Article 16. 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 Article 16.

III. The Interface between Trade Facilitation and Regional Integration

According to a research conducted by the United Nations Economic Commission for Africa, (UNECA, 2013; Trade Facilitation from African Perspective), transport costs are relatively high in Africa. In terms of geography, Africa has sixteen (16) landlocked countries with low traffic volumes. The studies further revealed that only 38% of cross-border paved roads are in good and fair conditions. On regulation of transport services, it was held that transport prices are lower in competitive environments such as Eastern and Southern Africa; as compared to higher transport prices in regulated environments of West and Central Africa. In respect of Africa’s performance relative to world average in 2012, the report also revealed that Africa’s import-export activities were 20% longer and 20% more costly than the world average. Document preparation for instance, was time-consuming and customs procedures were more costly for exporters.

Nonetheless, the studies concluded that the costs of implementation vary widely across measures and countries, but overall, they appear to be moderate compared to potential gains from the trade facilitation. The report also revealed that technical and financial assistance for TF would be crucial, although domestic resource mobilization should play a complementary role. The report further suggested that the implementation of the TF Agreement should be approached in a strategic and coordinated fashion by sequencing and prioritizing the measures, taking into account flexibilities of the Agreement.

Similarly, a research conducted by the Africa Union Commission trade policy directorate indicated that trade facilitation would play a pivotal role in Africa’s regional integration continental free trade area (CFTA) agenda. However, their findings stressed that successful implementation of trade facilitation measures requires strong political will, clear strategic and implementation plans, closer cooperation among relevant stakeholders and adequate resources to keep momentum of the reforms thriving at both regional and national levels.

IV. Linking TFA with the GATT Provisions

GATT	TFA	
Art. X Transparency	Art. 1	Publication and availability of information
	Art. 2	Opportunity to comment, information before entry into force and consultations

	Art. 3	Advance rulings□
	Art. 4	Procedures for appeal or review
	Art. 5	Other measures to enhance impartiality, non discrimination and transparency

GATT	TFA	
Art. VIII Fees and Formalities	Art. 6	Disciplines on fees and charges imposed on or in connection with import and export and penalties
	Art. 7	Release and clearance of goods□?
	Art. 8	Border agency cooperation□?
	Art. 9	Movement of goods intended for import under customs control
	Art. 10	Formalities connected with importation, exportation and transit

GATT	TFA	
Art. V Freedom of Transit	Art. 11	Freedom of transit
	Art. 12	Customs cooperation

V. Compliance of TF Measures by AU Member States

The United Nations Economic Commission for Africa (UNECA), in June 2015, commissioned a global survey on trade facilitation and paperless implementation. The core objective was to collect relevant data and information that will enable countries to better understand and monitor progress in trade facilitation, thereby supporting evidence-based policy-making.

The survey established the following outcomes:

- a. For implementation of TF measures related to transparency, twenty (20) countries were 72% fully compliant on independent appeal mechanism; while six (6) African countries representing 22% were also compliant on advance ruling;

- b. On TF measures related to formalities, nineteen (19) countries are fully implementing post-clearance audit; eighteen (18) countries on separation of release from final determination of duties; seventeen countries (17) on acceptance of paper or electronic copies of supporting documents; thirteen (13) on pre-arrival processing; and ten (10) on risk management were all fully compliant;
- c. On measures related to transit, the report revealed that nine (9) countries currently support pre-arrival processing for transit goods; while six (6) countries in Africa were also compliant and fully cooperating with agencies involved in transit goods;
- d. On TF measures related to cross-border paperless trade, only six (6) countries were found to be fully compliant on laws and regulations for electronic transactions, while nine (9) countries were found not implementing the laws at all; and
- e. That import-export activities in Africa were practically 20% longer and 20% more costly than the world average. In the same report, documentation preparation were seen as time consuming while customs procedures were relatively costly for exporters, which inextricably creates a competitive wedge penalizing African firms.

Hence, the lesson for the government of Ghana is to approach it in a strategic and coordinated fashion consistent with Ghana's Shared Growth and Development Agenda (GSGDA). Again, it is of paramount importance for Ghana to sequence and prioritize its TF measures, thereby harnessing the flexibilities of the agreement in such a way that benefits first and foremost firms, especially SMEs and other budding entrepreneurs in Ghana.

VI. Breakdown of Ghana's Category 'A', 'B' & 'C' Commitments/ Measures

The Ministry of Trade and Industry in collaboration with Members of the National Trade Facilitation Committee classified, reviewed and validated various categories of Ghana measures under Session I of the TFA.

Under Category 'A' (TFA Art. 15), it was realized that Ghana was fully compliant (immediate implementation upon entry into force of the Agreement) in six (6) measures representing 17 %. With respect to Category 'B' (TFA Art. 16), six (6) measures were identified as partially compliant, which meant that Ghana could only implement these measures after a transitional period from date of entry into force. For Category 'C' (TFA Art.16), the national TF committee found that twenty-four (24) measures, representing 66% of total category of Ghana measures, required technical assistance and capacity building (adequate time and support) to effectively and efficiently implement them.

Category ‘A’ Measures

The six (6) measures identified under Category ‘A’ and ready to be implemented when the TF Agreement is ratified are:

- i. Art. 6.3 Penalty Disciplines
- ii. Art. 9 Movement of Good Under Customs Intended for Imports
- iii. Art. 10.7 Common Border Procedures and Requirements and Uniforms and Documentation relating to clearance
- iv. Art. 10.8 Rejected Goods
- v. Art. 10.9 Temporary Admission of Goods/Inward and Outward Processing
- vi. Art. 13.2 National Committee on Trade Facilitation

Category ‘B’ Measures

Under Category ‘B’, the six (6) measures were identified as follows:

- i. Art. 5.2 Detention
- i. Art. 7.1 Pre-arrival processing
- ii. Art. 7.3 Separation of Release from final Determination of Customs Duties, Taxes, Fees and Charges
- iii. Art. 10.2 Acceptance of Copies
- iv. Art. 10.3 Use of International Standards
- v. Art. 10.5 Pre-Shipment Inspection

Category ‘C’ Measures

In respect of Category ‘C’, the twenty-four (24) measures identified by the Committee comprises the following:

- i. Art. 1.1 Publication
- ii. Art. 1.2 Information Available Through Internet
- iii. Art. 1.3 Enquire Points
- iv. Art. 1.4 Notification
- v. Art. 2.1 Opportunity to Comment and Information before Entry into Force

- vi. Art. 2.2 Consultation
- vii. Art. 3.1 Advance Rulings
- viii. Art. 4.1 Right to Appeal or Review
- ix. Art. 5.1 Notification for Enhanced Controls or Inspections
- x. Art. 5.3 Test Procedures
- xi. Art. 6.1 General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation
- xii. Art. 7.2 Electronic Payment
- xiii. Art. 7.4 Risk Management
 - xiv. Art. 7.5 Post Clearance Audit
 - xv. Art. 7.6 Establishment and Publication of Average Release Times
 - xvi. Art. 7.7 Trade Facilitation Measures for Authorized Operators
 - xvii. Art. 7.8 Expedited Shipments
 - xviii. Art. 7.9 Perishable Goods
- xix. Art. 8 Border Agency Cooperation
- xx. Art. 10.1 Formalities and Documentation Requirements
- xxi. Art. 10.4 Single Window
- xxii. Art. 10.6 Use of Custom Brokers
- xxiii. Art. 11 Freedom of Transit
- xxiv. Art. 12 Customs Cooperation.

VII. What can the Agreement Deliver for Ghana?

A growing number of researches have argued that the TF measures, if well implemented would inevitably:

- i. Benefit consumers who have to contend with higher prices induced by obscure import administration;
- ii. Enable firms to increase their continental share of trade in goods and services as a consequence of lower transaction costs;
- iii. Ease pressure of government and help to establish more efficient control regimes, efficient resource allocation, as well as seal revenue loopholes for higher revenue generation;

- iv. Enhance Ghana's competitiveness due to reduction in trade costs in respect of service charges, business opportunity costs, and costs associated with uncertainty and corruption;
- v. Improve the investment climate, which lead to increase in FDI flows and inclusive sustainable growth;
- vi. Help ameliorate security and customs risk management control systems in respect of human and animal health and safety at the ports.

VIII. Conclusion

Generally, WTO member states are required to undertake commitments to the extent consistent with their individual development, financial and trade needs or administrative and institutional capabilities. Africa's proximity to rest of world could have greater impact on Ghana's comprehensive trade cost, poor infrastructure and inefficient customs clearance and procedures. Africa's position that capacity building should be a binding commitment in the WTO trade facilitation agreement is quite clear and Ghana should stand ready on how it could fully operationalize the process.

In fact, trade facilitation is one of the clusters in African Union's Action Plan and an imperative for boosting intra-African trade. Hence, the renewed attention to trade facilitation is expected to consolidate ongoing efforts by Regional Economic Communities and their member states. The WTO TF Agreement is consistent with the African Union trade facilitation objectives at national, sub-regional and continental levels, and also not incompatible with the Revised Kyoto Convention, which more than a third of African countries are signatories/ have ratified. Hence, a timely implementation of these measures could help fast-track realization of the Continental Free Trade Area (CFTA).

It is unequivocal that successful implementation of trade facilitation measures require strong political will; clear strategic and implementation plans; closer cooperation among stakeholders and adequate resources to keeping the momentum of implementation, is crucial although domestic resource mobilization could substantially play an important complementary role in this regard.

Against this background, Ghana needs to progressively implement these measures, at its own pace, and in consonant with its national development priorities, within the meaning of its treaty obligations under the WTO Agreements.

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