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## *Position Paper*

### **TFA Proposal Related to a Trade Facilitation Agreement at the WTO**

*The Trade Facilitation Alliance (TFA) is an alliance of companies, large and small, from developed and developing countries, based in Geneva, covering a wide range of key trading sectors all of whom are committed to improving the efficiency of the international trade.*

WTO Members are entering into a critical stage in the Doha Development Agenda (Doha Round) if they want to bring it to a successful conclusion in 2006. The Members of the Trade Facilitation Alliance (TFA) realize that the Doha Round is in serious difficulty, particularly given the failure to meet expectations at the end of July. For this reason, the TFA calls on WTO Members to intensify their efforts and show real commitment in the ongoing negotiations in the remaining months leading up to the Hong Kong Ministerial Meeting in December 2005.

TFA Members have been particularly heartened by the pace of the trade facilitation negotiations since the beginning of the year. However, TFA Members are aware that the success of the Doha Round in this area is inevitably linked to a positive outcome on the other pillars of the Round. TFA Members encourage therefore WTO Members to strike the key deals on agriculture and non-agricultural market access – the so-called “modalities” – and to make substantive progress in the other negotiating areas, such as services, rules and trade and development issues in order to secure a balanced and ambitious final agreement.

#### **I - GENERAL ASSESSMENT OF THE TRADE FACILITATION NEGOTIATIONS**

TFA Members have examined the proposals tabled by WTO Members since the beginning of the year and considered that the step-by-step confidence building approach evident in delegations’ proposed clarifications and improvements of relevant aspects of GATT Articles V, VIII and X was most likely to lead to concrete results.

The TFA encourages WTO Members to move a step forward in order to keep the momentum in these negotiations.

- WTO Members have submitted more than 50 proposals so far, covering a wide range of subject matter as reflected in the WTO Secretariat's compilation.<sup>1</sup> The TFA considers that it is time now to start "clearing the table" by merging those proposals that are similar and by highlighting the eventual discrepancies between them. This exercise will not only prompt WTO Members to start "actual negotiations" on the details of the proposed improved or new disciplines, but it will also facilitate a serious assessment of Members' needs and priorities. We definitely expect that Members should start the text-based negotiations after the Hong Kong Ministerial Meeting.
- Further discussions regarding the relationships and synergies between the elements (i.e. rules, needs and priorities of Members, technical assistance and capacity building and special and differential treatment) as reflected in the negotiating mandate, are also encouraged to maintain the current momentum in these negotiations.
- Finally, the TFA strongly supports the Secretariat's capacity building and technical assistance program, and the collaborative effort of the other inter-governmental organizations. However, the TFA encourages them to integrate business representatives from the developing or least-developed countries in national or regional activities. By enhancing their understanding of the negotiations, private sector representatives will be able to make constructive contributions in the definition of their countries' national negotiating position and in the self-assessment of their countries' needs and priorities.

## **II - SPECIFIC EXPECTATIONS REGARDING THE TRADE FACILITATION NEGOTIATIONS**

This paper aims to share the TFA Members' expectations with all parties with an interest in the WTO trade facilitation negotiations.

### **A – Expectations Regarding the Outcome of the Negotiations**

#### Rule-based agreement

The TFA strongly believes that a WTO Agreement on Trade Facilitation will give coherence to the border management process; increase political will for countries to improve their domestic economic performance; encourage the simplification, standardization and modernization of the border process; and, ensure that the essential core standards that underpin the border management process are adhered to and implemented in the same way.

**Recommendation:** The TFA encourages WTO Members to ensure that a WTO Agreement on trade facilitation is a "rule-based" agreement and contains "meaningful" (and manageable for all) disciplines and commitments.

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<sup>1</sup> TN/TF/W/43/Rev.1, dated July 20, 2005.

### Coherent holistic and pragmatic approach

Recognizing that the negotiating mandate narrows the scope of negotiations to GATT Articles V, VIII and X, trade facilitation underpins international trade in goods and is an absolutely vital component of the WTO rule-based system. As such, it must be treated as a comprehensive and coherent issue within the WTO.

***Recommendation:*** the TFA encourages WTO Members to agree on a “comprehensive” and “autonomous” text that covers the matters addressed in the compilation of Members’ proposals. Distinct classification of the issues in GATT Articles V, VIII and X is not seen to be a pre-requisite because of the high degree of crosscutting issues that fall within the scope of the mandate. Furthermore, the TFA insists that all aspects the Trade Facilitation Agreement should be “user-friendly and pragmatic” in order to facilitate implementation and compliance.

### Development aspect

In expressing their support for these proposals, TFA Members are aware of the fact that the timing of introduction of many of these reforms by certain developing and Least-Developed countries (LDCs) WTO Members will necessarily be dependent upon successful capacity-building initiatives. A WTO Agreement must also ensure that these countries will have access to appropriate technical support and capacity building funds. Once initiated the improvement in the border management process should be self financing and sustainable.

### ***Recommendations:***

1. The TFA believes that individual WTO members must accurately assess their own needs and priorities relative to the prospective agreement using a standardized assessment process. This exercise will have two functions:

- Firstly, to categorize each Member in terms of capability to implement an agreement; and
- Secondly, to define the technical and financial resources required to implement the agreement.

2. An agreement should feature special and differential treatment to allow developing and LDCs WTO Members to implement progressively a comprehensive package of trade facilitation measures, within a flexible framework, at a pace that they can accommodate. In an ideal agreement developing and LDCs WTO Members would define their own program of improved border management within a framework of WTO rules, stimulated and supported by the WTO.

3. To ensure equality of treatment and to avoid recourse to dispute settlement, consideration should be given to establishing a management committee or another mechanism to organize and co-ordinate technical assistance and capacity building in the area of trade facilitation, pooling the efforts of donors, recipients and international organizations. This mechanism would ensure that technical assistance is appropriate to the needs of recipients, to guarantee transparency, coherence and effective assistance to developing and least developed countries in the implementation of their commitments.

## **B – Expectations Regarding Specific Trade Facilitation Measures**

The TFA considers that the Agreement on Trade Facilitation should include at least the following core commitments that will enhance efficiency, transparency and predictability of cross border trade. The ultimate goal is to expedite the movement, release and clearance of goods, including goods in transit. The security of the supply chain must also be a prime consideration.

- ***Publication of laws and regulations*** – 1. All relevant information on trade regulations, fees and formalities should be published on the Internet and made readily and promptly available to traders. 2. Unless exceptional circumstances prevail, there should be an appropriate time period between publication of new rules and their entry into force.
- ***Prior consultation and commenting on new and amended regulations*** – All Interested parties, especially the private sector, should be given an opportunity to comment in advance on proposed new regulations or changes to regulations. Each WTO Member should be able to accommodate this commitment to its own domestic legal framework.
- ***Enquiry points*** - WTO Members should establish an enquiry point where traders are able to obtain information relating to trade regulations, fees and formalities.
- ***Advance Rulings*** – WTO Members should make available on request advance rulings on tariff classification and applicable rates of duty. Provided that the facts and circumstances on which the rulings are based remain unchanged, the rulings should stay in effect for a predetermined period and be binding on the authorities. To the extent possible, and subject to confidentiality requirements, advance rulings should be made publicly available.
- ***Simplification of border procedures and formalities.*** All border procedures should be simplified before the implementation of automation or modernization (e.g. electronic documentation and single window).
- ***Standard formalities and documentation requirements*** - Use of appropriate international standards for import and export formalities and documentation requirements. A single administrative document and universal data set to be used by all border agencies should be introduced to simplify and improve the management of trade data and speed clearance at the border. Export data should be the import data.
- ***Single window*** - Traders should be able to submit all necessary documentation to government at a single point (window). The data will then be shared with the appropriate government agencies. This is a long-term goal and it should be included in the Trade Facilitation Agreement as a “best endeavor” commitment.
- ***Risk-based management*** – Examination of all shipments is costly, inefficient, and fails to recognize efforts made by compliant traders. All WTO Members

should recognize that international trade has a spectrum of risks associated to it. To achieve maximum efficiency together with a high level security and enforcement “a recognized” risk-management process based on relevant international standards and practices should be implemented. Nevertheless, it is recognized that occasional random inspection is justified.

- **Measurement of trade facilitation** – It is in every WTO Member country’s interest to be able to monitor its own performance related to the facilitation of international trade. A measurement of trade facilitation should be achieved using release times for imported/exported goods. The initial process could be based on a national time-release measurement, which each Member country would establish for itself by measuring the time that it takes from the receipt of an entry into the port to the issuance of a release order. The measurement should be both transparent and reproducible. Countries should commit to a quantified improvement program. This process aims to achieve improvement on a national basis; it would not be used to compare performance between countries.
- **Release of goods** - 1. The process of releasing goods should be separated from the accounting process, utilizing as necessary guarantees such as bonds or deposits. The amount of any security required should be kept to a minimum and not be more than the liability involved. Any security should be discharged as soon as the border agency is satisfied that the obligation has been fulfilled.  
  
2. It should be recognized that there is a range of logistic services involved with the international trade of goods. It is appropriate that expedited clearance is implemented for express shipments as this is a vital aspect of competitiveness for many companies. The TFA supports commitment to provide separate expedited procedures to express shipments, including individual elements such as providing for import data being submitted in advance of arrival of goods, an absence of weight or value restrictions on these transactions, arrangements should be made to secure rapid release under normal circumstances, and implementation of *de minimis* procedures for low value shipments.
- **Fees and charges.** Fees and charges in connection with importation or exportation should be transparent and should not exceed the cost of services rendered. Fees and charges should be published on the Internet and Members should be able to justify them as directly related to the services’ cost. It should be recognized that fees and charges could be a significant competitive disadvantage to domestic trade.
- **Right of appeal.** For exports, imports and goods in transit, there should be an obligation to provide a non-discriminatory, legal right of appeal against customs and other agency rulings and decisions, initially within the same agency or other body, and subsequently to a separate judicial or administrative body. There should be a maximum time defined for appeals at administrative level. Companies should have the right to be represented at all stages of appeal procedures by an agent or legal representatives.

- ***Cooperation between customs or any other appropriate authorities*** - There should be provisions to promote cooperation and data exchange between customs administrations of different WTO Members in the area of trade facilitation and customs compliance.
- ***Goods in transit***. International standards should be used as the basis for transit formalities and documentation requirements, with any applicable fees and charges associated with transit publicized in advance and applied on a non-discriminatory basis.