

## Trust Fund for Trade Facilitation Negotiations Technical Note No. 1

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### Publication of trade related information

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#### The measure in the WTO context

Transparency is a central element of the WTO agreements the GATT 1994. Article X:1 contains WTO members' obligations to publish "laws, regulations, judicial decisions and administrative rulings of general application made effective by any contracting party" pertaining to the cross-border trade procedures and "agreements affecting international trade policy" "promptly in such a manner as to enable governments and traders to become acquainted with them"

In the context of the negotiations on trade facilitation Members propose strengthening and clarifying the publication requirements of the GATT 1994 by defining exactly what information should be published and by enhancing accessibility through placing the content on websites and through the establishment of national enquiry points. Proposals are also made to extend the publication obligation beyond the scope of Art. X to elements of operational use to traders, such as procedural outlines or descriptions and forms and documents. For an overview of proposals see the WTO reference document TN/TF/W/43 (latest revision).

#### Background

Publication is the act of making information available to a third person or the general public by distribution and circulation. Information can be published using different means and formats: on paper by printing in a journal, in electronic format 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. .

#### *Scope of Article X of GATT*

The current scope of Article X pertains to laws, regulations, and decisions passed by the legislative, executive bodies and the judiciary and with general application. Laws, and regulations are mentioned separately in the text; the first referring to enforceable rules of general application promulgated by parliamentary or legislative bodies, and the latter to regulations to so-called secondary legislation adopted by the administration. The terms "of general application" restricting publication requirements for administrative rulings have been defined further by a WTO panel and the appellate body. Rulings, as opposed to regulations, are a reaction to a specific case which already happened and therefore could be perceived as being limited in application to this particular case. However, some rulings may not be specifically addressed to a particular company or person and therefore be qualified as of general application. Subsequent WTO agreements, furthermore, clarified that the publication requirements applies to acts entered into force and not to draft regulations.

Further to acts of general application Art. X of GATT 1994 bi-lateral or multilateral agreements shall also be published. This is of particular importance to the application of the MFN treatment. A privilege granted to nationals of one member has to be accorded unconditionally to nationals of all other members alike.

### *Publication of acts of general application*

In most countries publication of laws are 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 specific websites (see Technical Note No. 11 on Internet Publication).

Publication requirements for secondary legislation and decisions by the judiciary vary across countries. Often administrative rulings and judicial decisions are not published regularly but are available to the public through the registry upon request.

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' requirements*

Information requirements by im- and exporters go beyond the current scope and application of Article X. Not only is the scope of published information limited. In many countries accessibility to this information is limited as publication relies on paper prints and the government gazette is printed with delay and in an insufficient number so that wide distribution can not be ensured - not least to say distribution across the borders.

Therefore when revising current publication means and channels it is necessary to bear in mind traders' requirements in order to achieve trade facilitation.

Legislative texts are important for litigation and appeal and dispute settlement, but for the actual operation of trade transactions practical descriptive information or excerpts have greater value. Operational implications and aspects of legislation, such as outlines of border crossing formalities, opening hours of border crossing and other agencies offices, updated release and clearance times at selective border crossings etc. are essential for traders. Applicable fees and charges and tariff schedule are also valid information for traders.

Different forms of publication can be used in particular in view of combining related information in one format. As such legal text can be consolidated, arranged by topical subject matter and provided with summary descriptions of major trade regulations. Another more operational option would be the development of a trade facilitation

handbook which combines information on the legislative framework, outlines of procedures, and forms.

Essential information such as applicable fees and charges can be published separately from its regulation and be circulated as leaflets, as much as descriptions of border procedures and traffic flow at a particular border post.

Innovative means of publication with the use of ITC and the internet in particular should be envisaged. (See Technical Note on Internet Publication)

It is of great use if the information is provided in a main international working language. However, as it may be too costly to translate all relevant legal documents, the translation could be limited to the summary descriptions of relevant legislation or the procedural outlines and descriptions.

## **Steps for implementation**

### *Stocktaking*

The first step is to take stock of the scope of published acts as well as their means and channel of publication. Then, availability and accessibility of the published information can be assessed through the number of subscriptions to the government journal, geographical distribution, and type of subscribers. Particular emphasis should be placed on how traders inside the country and abroad have access. The Chamber of Commerce or other professional associations play a crucial role in disseminating this information to their constituency and often have an institutional subscription to the journal and print sectoral information notes.

The stocktaking should then be extended to other regular or irregular publications by governmental bodies; such as newsletter, handbooks, and information notes etc.. Here again the assessment should not be limited to the content but should also cover aspects of distribution.

Finally internal processes of information and publication services in the governmental agencies should be analysed to identify resources assigned to the task.

### *Definition of information requirements*

Following the stocktaking, information requirements of the trading community should be assessed, including type of information and ways of access. Requirements of importers located outside the country also have to be kept in mind. Requirements may include;

- Standard processing times, document formats;
- Outline of border crossing formalities;
- Description of major Customs procedures available;
- Timely information on changes in applied tariff rates and classifications;
- Fees and charges levied as well as penalty provisions etc..

### *Identification of solutions*

Once the current situation and the needs are identified appropriate solutions to address the information deficit and be in compliance with the GATT commitment have to be identified and implemented. For this purpose it is useful to differentiate between the constitutionally requirements of publication of acts and the solution designed from a

trade facilitation perspective in particular. The publication of "laws" remains regulated by the constitutional mandated procedures and requires official publication. Operational information however can be provided fairly easily, under the condition that trust in the accurateness of the information exists. Possible solutions are;

- Agency-level information notes outlining major trade related procedures under their responsibility;
- A Trade Facilitation handbook providing descriptive practical operational information to traders is a useful tool for transparency.

The use of electronic means of publication should be planned incrementally as part of the solutions. Published information is only of value if it is constantly updated and accurate. Therefore, administrations have to adopt information policies, including setting up information desks and training of staff in editing and writing for publication and assign necessary resources.

## Benefits and costs

The expected benefits lie in ameliorating the conditions under which traders and operators, especially small- and medium- sized enterprises (SMEs), can effectively engage in foreign trade. Transaction costs for traders will be cut through more predictability and clarity on the costs and formalities involved in transaction. Transparency will also reduce opportunities for the collection of unpublished and illegal fees and the maintenance of outdated practices.

Most of the benefits are expected to accrue to SMEs, as they generally lack the wherewithal to search out trade laws and Customs procedures from a variety of sources when looking for markets for their products and services. In this respect small countries with no or only limited commercial representations outside their home market might benefit the most from strengthened multilateral rules on publication requirement.

## References and tools available

### *The Global Facilitation Partnership for Transportation and Trade (GFP)*

The Global Facilitation Partnership for Transportation and Trade (GFP) brings together the world's leading organizations and practitioners in trade and transport facilitation. It creates an open information and exchange platform on major new developments and all aspects of trade and transport facilitation. See [www.gfptt.org](http://www.gfptt.org).

### *Further UNCTAD Technical Notes*

Further Technical Notes are available via <http://r0.unctad.org/ttl/technical-notes.htm>. See in particular:

- Technical Note No. 6 (National Enquiry Points)
- Technical Note No. 11 (Internet Publication)

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