

CAREC Readiness for Complying with the WTO TFA

A. Background

1. The WTO Trade Facilitation Agreement (TFA) – which seeks to expedite the movement, release and clearance of goods including those in transit¹ - entered into force on 22 February 2017 following its ratification by two-thirds (110 of 164) of the WTO membership. This is significant because the TFA is the first multilateral trade agreement concluded under WTO in 21 years, binds commitments from trading partners, is enforced through dispute settlement, and applies to all border agencies. It improves cooperation between customs and other authorities, and enhances technical assistance and capacity building.

2. The TFA also sets forth rules on special and differential treatment, linking implementation by developing and least developed countries to their acquisition of technical assistance and capacity building. Thus under Section II, such countries shall self-determine the time and means of implementing the measures in Articles 1 to 12 according to: Category A – measures that the WTO member will implement upon entry into force; Category B – measures for which the member will need additional time; Category C – measures for which the member will need additional time which it defines and technical and/or financial assistance or capacity building to implement.

3. The TFA takes effect only for WTO members that have ratified it. WTO members that ratified it will implement it on a most-favored-nation (MFN) basis and continue to implement GATT Articles V (Freedom of Transit), VIII (Fees and Formalities), and X (Transparency). WTO members that have not yet ratified the TFA will only implement such GATT articles.

4. All 8 CAREC countries that are WTO members have ratified the TFA - Afghanistan, People's Republic of China, Georgia, Kazakhstan, Kyrgyz Republic, Mongolia, Pakistan, and Tajikistan. Except for Afghanistan, these countries also notified the WTO on their Category A designations of the TFA provisions; in addition, Georgia, has also provided Category B and C designations.

B. Revised Kyoto Convention

5. The International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention) of the World Customs Organization (WCO), entered into force in 1974. It was amended to become the Revised Kyoto Convention (RKC), which entered into force in 2006, as the blueprint for modern and efficient Customs procedures. It is the main trade facilitation instrument that provides implementation tools for the high principles set by WTO, thus compliance with it puts a country ahead in implementing the TFA.

6. Five CAREC countries have acceded to the RKC – Azerbaijan, People's Republic of China, Kazakhstan, Mongolia, and Pakistan - of which the latter four have also ratified the TFA.

7. A detailed comparative analysis (Wolfgang and Kafeero 2014) of the RKC and the TFA confirms that the TFA is mainly a reflection of the RKC provisions. In addition, aspects of the TFA that are not in the RKC are already taken into account by other WCO instruments and tools, such as for instance the Authorized Economic Operator program of the Standards to Secure and Facilitate Global Trade (SAFE Framework).

¹ These pertain mainly to customs procedures, as WTO negotiations on trade facilitation were launched primarily to establish agreement to simplify cross-border trade procedures.

8. The TFA provisions with their RKC chapter counterparts are in Attachment 1. The RKC comprises a Body (which defines the scope, structure, and management of the Convention), General Annex (GA), and Specific Annexes (SA). The Annexes are subdivided into chapters that contain definitions and standards, which have to be followed strictly and included in a country's customs law.

C. CAREC Compliance-Enabling Initiatives

9. The main CAREC activity that brings the countries closer to complying with the TFA are workshops on the RKC to inform countries of the benefits of accession, improve their understanding of the RKC provisions and built their capacity to use the available self-assessment tools. For instance, Tajikistan found that their national legislation is already largely compliant with the RKC provisions. Kyrgyz Republic did another gap analysis of their customs law in view of their recent membership with the Eurasian Economic Union.

10. Several other CAREC initiatives directly address a number of TFA provisions such as:

- (i) establishment of National Joint Transport and Trade Facilitation Committees (NTFC)
- (ii) use of information and communication technology (ICT)
- (iii) information common exchange (ICE)
- (iv) Corridor Performance Measurement and Monitoring (CPMM) and Time Release Study (TRS)
- (v) CAREC Advanced Transit System (CATS)
- (vi) authorized economic operator (AEO)
- (vii) Single Window, joint customs control
- (viii) Regional Improvement of Border Services (RIBS)

D. CAREC Countries' Commitments

11. The following are required upon entry into force by developing countries. This would include Azerbaijan, People's Republic of China, Georgia, Kazakhstan, Kyrgyz Republic, Mongolia, Pakistan, Turkmenistan, and Uzbekistan.

- (i) Have an NTFC in place
- (ii) Countries that have not done so will notify WTO of Category A designations
- (iii) Implement Category A designations
- (iv) Notify WTO of Category B & C designations and indicative dates for implementation; Category C will include information on technical assistance and capacity building (TACB) required to implement
- (v) Countries declaring themselves in a position to assist other countries will submit information on the disbursed and committed TACB support

12. The following are required for least developed countries. This would include Afghanistan and Tajikistan.

- (i) Have an NTFC in place
- (ii) Start countdown for notification of Categories A, B, C designations

13. The establishment of NCTF or similar mechanism (Article 23.2) is among the mandatory provisions of the TFA. As of 2014, an UNCTAD (2014) inventory noted that Azerbaijan, Kyrgyz Republic, Mongolia, and Pakistan have NCTFs, while PRC has a WTO Negotiations on Trade Facilitation Support Group.

Attachment 1: The TFA Provisions with their RKC Chapter Counterparts

TFA Provision	RKC Chapter
SECTION I (Expediting the movement, release, clearance of goods; customs cooperation)	
1 Publication and Availability of Information	
1.1 Publication	GA Chap 9; Standards 9.1, 9.2, 9.5, 9.9 GA Chap 4 (Standard 4.4)
1.2 Information available through internet	GA Chap 9; Standard 9.3
1.3 Enquiry points	GA Chap 7 (and ITC guidelines), 9; Standards 9.1, 9.4, 9.8
1.4 Notification	GA Chap 3, 7, 9; Standards 9.1, 9.4, 9.8
2 Opportunity to Comment, Information Before Entry into Force and Consultations	
2.1 Opportunity to comment and information before entry into force	GA Chap 1, 9; Standard 1.3, 9.2
2.2 Consultations	GA Chap 1, 7, 9; Standard 1.3
3 Advance rulings	GA Chap 9; Standard 9.9 and its RKC Guidelines
4 Procedures for appeal or review	GA Chap 10 and all its Standards
5 Other Measures to Enhance Impartiality, Non-Discrimination and Transparency	
5.1 Notification for enhanced controls or inspections	GA Chap 6
5.2 Detention	GA Chap 6; SA-H Chap 1
5.3 Test procedures	GA Chap 3; Standard 3.38
6 Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation	
6.1 General disciplines on fees and charges imposed in connection with importation and exportation	GA Chap 3, 9 SA-A Chap 1
6.2 Specific disciplines on fees and charges for customs processing imposed in connection with importation and exportation	GA Chap 3 SA-A Chap 1
6.3 Penalty disciplines	GA Chap 3 SA-H Chap 1
7 Release and Clearance of Goods	
7.1 Pre-arrival processing	GA Chap 3 (Standards 3.21, 3.25), Chap 7
7.2 Electronic payment	GA Chap 7
7.3 Separation of release from final determination of customs duties, taxes, fees and charges	GA Chap 3 (Standards 3.41, 3.42, 3.43) and 5
7.4 Risk management	GA Chap 6 (Standard 6.3)
7.5 Post-clearance audit	GA Chap 6 (Standard 6.6)
7.6 Establishment and publication of average release times	None
7.7 Trade facilitation measures for authorized operators	GA Chap 3 (Standard 3.32)
7.8 Expedited shipments	GA Chap 3 (Standard 3.32); immediate release guidelines
7.9 Perishable goods	GA Chap 3 (Standard 3.34)
8 Border Agency Cooperation	GA Chap 3; Standard 3.35

TFA Provision	RKC Chapter
9 Movement of Goods Intended for Import under Customs Control	GA Chap 6 SA-E Chap 1, 2
10 Formalities Connected with Importation, Exportation and Transit	
10.1 Formalities and documentation requirements	GA Chap 3 (Standards 3.12, 3.13, 3.15, 3.16, 3.17, 3.19)
10.2 Acceptance of copies	GA Chap 3 (Standards 3.16, 3.17)
10.3 Use of international standards	GA Chap 3 (Standards 3.11), 7
10.4 Single Window	GA Chap 3 (Standard 3.35)
10.5 Pre-shipment inspection	None
10.6 Use of customs brokers	GA Chap 3 (Standard 3.6, 3.7), 8
10.7 Common border procedures and uniform documentation	GA Chap 3 (Standards 3.11, 3.20)
10.8 Rejected goods	GA Chap 3 (Standard 3.26), SA-C Chap 1
10.9 Temporary admission of goods and inward and outward processing	GA Chap 3 SA-G Chap 1 SA-F Chap 1, 2
11 Freedom of Transit	SA-E Chap 1, 2 (on transshipment); also guidelines
12 Customs cooperation	(only general applicability) GA Standard 6.7 GA Chap 1 and 3; SA-H Chap 1 – for measures promoting compliance and cooperation; GA Chap 6, & - for exchange of information

Attachment 2: The Category A commitments of 7 CAREC countries

PROVISION	PRC	Georgia	Kazakhstan	Kyrgyz Republic	Mongolia	Pakistan	Tajikistan
SECTION I (Expediting the movement, release, clearance of goods; customs cooperation)							
1 Publication and Availability of Information							
1.1 Publication	A	A				A (except j)	A
1.2 Information available through internet	A	A				A (except 2.1 and 2.3)	A
1.3 Enquiry points	A	A				A (except 3.1 and 3.4)	
1.4 Notification	A	A			A	A	
2 Opportunity to Comment, Information Before Entry into Force and Consultations							
2.1 Opportunity to comment and information before entry into force	A	A	A				
2.2 Consultations	A	A			A		
3 Advance rulings	A	A					
4 Procedures for appeal or review	A	A	A	A	A		A
5 Other Measures to Enhance Impartiality, Non-Discrimination and Transparency							
5.1 Notification for enhanced controls or inspections	A	A	A				
5.2 Detention	A	A	A	A	A	A	A
5.3 Test procedures	A	A	A			A	A
6 Disciplines on Fees and Charges Imposed On or In Connection with Importation and Exportation							
6.1 General disciplines on fees and charges imposed in connection with importation and exportation	A	A	A		A		A
6.2 Specific disciplines on fees and charges for customs processing imposed in connection with importation and exportation	A	B (Jan 2017)	A		A	A	A

PROVISION	PRC	Georgia	Kazakhstan	Kyrgyz Republic	Mongolia	Pakistan	Tajikistan
6.3 Penalty disciplines	A	A	A			A (except 3.6)	A
7 Release and Clearance of Goods							
7.1 Pre-arrival processing	A	A	A			A	A
7.2 Electronic payment	A	A					
7.3 Separation of release from final determination of customs duties, taxes, fees and charges	A	A	A			A (except 3.4 and 3.5)	A
7.4 Risk management	A	A	A				A
7.5 Post-clearance audit	A	A	A				A
7.6 Establishment and publication of average release times		A					A
7.7 Trade facilitation measures for authorized operators	A	C (Dec 2018)					
7.8 Expedited shipments	A	A					A
7.9 Perishable goods	A	A	A				A
8 Border Agency Cooperation	A	A	A				A for first paragraph
9 Movement of Goods Intended for Import under Customs Control	A	A	A	A			A
10 Formalities Connected with Importation, Exportation and Transit							
10.1 Formalities and documentation requirements	A	A	A		A		A
10.2 Acceptance of copies	A	A	A		A	A (except 2.1 and 2.2)	A
10.3 Use of international standards	A	A					A
10.4 Single Window		A					
10.5 Pre-shipment inspection	A	A	A	A		A	A
10.6 Use of customs brokers	A	A	A			A	A
10.7 Common border procedures and uniform documentation	A	A	A		A	A (except 7.1)	A
10.8 Rejected goods	A	A	A		A		A
10.9 Temporary admission of goods and inward and outward processing		A	A				A
11 Freedom of Transit							

