

# **PRESENTATION TO THE SELECT COMMITTEE ON TRADE AND INTERNATIONAL RELATIONS**

**Protocol Amending the Marrakesh Agreement  
establishing the World Trade Organisation (WTO)  
by including Annex 1A on the Agreement on Trade  
Facilitation**

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# Introduction

- Raised for the first time at the Singapore Ministerial Council (MC) in 1996
- The July 2004 mandate: to clarify and improve General Agreement on Tariffs and Trade (GATT): Article V (Freedom of Transit), Article VIII (Fees and Formalities connected with Importation and Exportation), and Article X (Publication and Administration of Trade Regulations)
- Also aimed at enhancing technical assistance and capacity building in this area and to improve effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues.

# Provisions in TFA

## GATT Art. X: Transparency and Appeals

- Art. 1: Publication & availability of info
- Art.2: Opportunity to comment before entry into force
- Art.3: Advance Rulings
- Art.4: Appeal/Review procedures
- Art.5: Other measures to enhance impartiality, non-discrimination & transparency

## GATT Art. V: Transit

- Art.11: Freedom of goods in transit
- Art.12: Customs cooperation
- Art.13: Institutional arrangements-**a.** Committee on TF & **b.** National Committee on TF

## GATT Art. VIII: Import/Export/Transit Fees & Formalities

- Art. 6: Disciplines on fees & charges
- Art.7: Release & clearance of goods
- Art.8: Border agency cooperation
- Art.9: Movements of goods under customs control intended for import
- Art.10: formalities connected with importation, exportation, & transit

# Section II: S&DT

- 3 categories:
  - **Cat. A:** commitments that a Developing Country member or Least Develop Country (LDC) member designates for implementation upon entry into force of the TFA, or in the case of a LDC within a 1 year after entry into force
  - **Cat. B:** commitments that a Developing Country member or LDC member designates for implementation on a date after transitional period of time after the entry into force of the TFA

# S&DT continued

- **Cat.C:** commitments that a Developing Country member or LDC member designates for implementation on a date after a transitional period of time following the entry into force of the TFA and requiring the acquisition of implementation capacity through the provision of assistance and support for capacity building



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# Early warning mechanism

- If a Developing Country or LDC considers itself to experience difficulties to implement its commitments by the definitive dates it has notified, it should notify the TF committee
- Developing Countries: no later than 120 days before expiration date
- LDCs: not later than 90 days before such date



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# Early warning mechanism cont.

- Indicate reasons for delay
- Notify new date (at most 18months: Developing Countries & 3yrs: LDCs)
- Automatic extension granted for 1<sup>st</sup> request
- If request for longer period or if subsequent extension is made, TF committee to give “sympathetic consideration”, taking into account “the specific circumstances of the requesting member.”

# Category shifting

- Developing Countries and LDC Members can shift commitments between Cat. B & C.
- Obligation to provide information on assistance required to build capacity.



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# Dispute Settlement (DSU)

## Grace Period

- Members cannot resort to DSU to settle dispute against Developing Countries & LDCs:
  - Developing Countries: Cat. A: 2 years
  - LDCs: Cat. A: 6 years
  - LDCs: Cat. B & C: 8 years

# Timeframes leading to implementation of TFA

- TFA concluded in Bali in Dec. 2013 and approved by Ministers
- Legal review of agreement from Jan. 2014
- Conclusion of legal review process: end of Apr. 2014
- Drafting of Protocol of Amendment of the Marrakesh Agreement to include the TFA
- Receipt of Category A notifications by developing countries and LDCs
- WTO General Council adopted protocol in November 2014 & opened it for acceptance
- Internal ratification processes of countries commenced
- TFA entry into force when 2/3 of all WTO members have ratified

# State of play in South Africa (SA)

- SA emphasised that consideration must be given to the impact of the TFA on the regional integration processes in Africa and working on this in the African Union
- We worked closely with other Southern African Customs Union member states in terms of co-ordinating our respective commitments,
- Inter departmental working group established that:
  - Developed list of SA category A commitments
  - Terms of Reference for establishment of National Trade Facilitation Committee
- Legal opinions obtained from Department of Justice and Constitutional Development and Department of International Relations and Cooperation

# State of play in SA

- Cabinet approved the establishment of National Committee on Trade Facilitation to be co-chaired by the dti and SARS
- First meeting of National Committee on TF to consider and finalise South Africa's category A commitments for submission to the WTO
- Cabinet further approved that the Protocol be submitted to Parliament for ratification
- Protocol approved by National Assembly in March 2016