

WTO Agreement on Trade Facilitation
UNCTAD Trade Facilitation Technical Note No. 6

ARTICLE 1.3: ENQUIRY POINTS

A. BACKGROUND

A trade facilitation enquiry point can be defined as an official or office in a member government designated to deal with queries from other WTO Members and the public on trade facilitation issues (WTO, Glossary). Indeed, it is responsible for obtaining answers from the relevant national bodies and replying to the country or person submitting the query (WTO, 2002).

Establishing a mechanism for providing answers to reasonable trade-related queries and documents in a reasonable time period

B. THE MEASURE

WTO Agreement on Trade Facilitation (TFA)

Article 1: Publication and availability of information

3 Enquiry Points

3.1 Each Member shall, within its available resources, establish or maintain one or more enquiry points to answer reasonable enquiries of governments, traders, and other interested parties on matters covered by paragraph 1.1 and to provide the required forms and documents referred to in subparagraph 1.1(a).

3.2 Members of a customs union or involved in regional integration may establish or maintain common enquiry points at the regional level to satisfy the requirement of paragraph 3.1 for common procedures.

3.3 Members are encouraged not to require the payment of a fee for answering enquiries and providing required forms and documents. If any, Members shall limit the amount of their fees and charges to the approximate cost of services rendered.

3.4 The enquiry points shall answer enquiries and provide the forms and documents within a reasonable time period set by each Member, which may vary depending on the nature or complexity of the request.

C. UNDERSTANDING THE MEASURE

1. What is covered?

Core obligation

Each WTO Member is compelled to establish or maintain at least one enquiry point at national level. Unlike the SPS and TBT Agreements in which each member **shall ensure** the establishment of an enquiry point; the WTO TFA tempered the enforcement of this obligation by adding the phrase "**within its available resources**". In other words, the extent of the implementation would depend on the available financial, human, technical or technological resources of the concerned WTO Member.

The measure aims at enhancing transparency and predictability through the fluent flows of information among WTO Members and relevant stakeholders. The objective is to provide easily accessible, precise and complete information in a timely and cost effective way. This measure also enhances compliance by preventing misunderstanding and solving doubts prior to the transactions (UNCTAD, 2011).

Beneficiaries

As to the beneficiaries, the agents entitle to request information to the enquiry points are either governments, traders or other interested parties. The requesting party, whether from the public or private sector, does not need to justify its interest in order to submit a request.

The Agreement does not differentiate between WTO Members and non-WTO Members. Consequently, public or private representatives from non-WTO Members may submit requests to enquiry points. However, a non-WTO Member cannot challenge the non-compliance of this provision in the WTO Dispute Settlement Mechanism when an enquiry point from a WTO Member refuses to answer.

Information and documents

Article 1.1 (Publication) confines the scope of the answers provided by the enquiry points. Thus, the enquiry point shall provide, at least and upon request, answers on the following issues, even if the information existed before the TFA entered into force:

- Importation, exportation and transit procedures;
- Applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
- Fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;
- Rules for the classification or valuation of products for customs purposes;
- Laws, regulations and administrative rulings of general application relating to rules of origin;
- Import, export or transit restrictions or prohibitions;
- Penalty provisions against breaches of import, export or transit formalities;
- Appeal procedures;
- Agreements or parts thereof with any country or countries relating to importation, exportation or transit;
- Procedures relating to the administration of tariff quotas.

In addition, the enquiry points shall provide forms and documents required for importation, exportation, and transit procedures if requested by an interested party. The Agreement does not mention whether this documentation should be provided in hard or soft copy. Thus, the enquiry points may employ both means when replying enquiries.

Fees

The Agreement encourages WTO Members to supply enquiry points services free of fees and charges. Nevertheless, this provision is not mandatory, thus WTO Members may apply fees for the enquiry point services.

In any case, the amount shall not exceed the approximate cost of services rendered, plus the costs of delivering the documents. The costs should be the same charged to enquiries from nationals or other WTO Members (non-discrimination principle).

Timing

Answers and forms must be provided within a reasonable time period, depending on the nature and complexity of the request. The requested WTO Member sets this time period on a case-by-case basis according to the nature or complexity of the request.

Regional enquiry points

WTO Members being part of regional arrangements (PTA, FTA, Customs Unions, Common Markets, etc.) may set up or maintain one or more common enquiry points for common procedures operated at regional level. Due to its non-mandatory character, members of regional blocks have discretion on choosing to implement this measure.

Contact information

WTO Members are compelled to make available and update to the extent possible and as appropriate, the contact information of enquiry points through the Internet. In addition, each WTO Member has to notify the contact details of the enquiry points to the WTO Committee on Trade Facilitation. The Committee shall also be notified of any change related to the enquiry point.

2. What is not covered?

As this measure is basically focused on results and not on processes, it left aside some important considerations, as follows:

Types of enquiry points

The Agreement does not set forth a specific structure for the enquiry point. There are different ways of how enquiry points may be structured, for instance: a) a centralized body with a group of representatives from related national agencies who would directly provide answers to the enquirer; b) a coordination mechanism within a selected government agency to transmit requests, compile replies and send them back to the requesting parties; c) decentralized enquiry points housed within each government authority responsible for the subject area that would answer to the questions directly; or d) a function or module within a Single Window that will provide those services intended for the enquiry point.

Virtual enquiry points may also be established. For instance, UNCTAD launched an information platform called Business Facilitation (<http://businessfacilitation.org/>), which compiles and provides data on national regulations and procedures. Another example is the National Trade Point (<http://www.tradepoint.org>).

An enquiry point does not need to be a governmental office. An independent private body contracted by the government may perform as enquiry point. In this case, the government shall monitor and assess the good performance and the accuracy of the information provided by this body.

Language

The measure does not specify the language in which the enquiry points must reply or if these must provide a translation in one of the three WTO official languages (English, French or Spanish).

Disclosure of confidential information

The agreement does not foresee the protection of confidential information. Thus, it would be useful to include, in the domestic regulation, an exception allowing enquiry points to deny the supply of information when its disclosure may affect national interests or security.

Responsibility of numerous enquiry points

Pursuant to Article 3.1, members may establish more than one enquiry point. However, the measure does not rule on the delimitation of responsibilities among these entities or how to settle conflicts among them.

Therefore, members should provide enquiry points with complete and unambiguous scope of responsibilities. Moreover, members should ensure that any enquiry addressed to a wrong enquiry point shall promptly be conveyed to the right enquiry point.

D. IMPLEMENTATION ISSUES

UNCTAD Study

In a recent study entitled "*The new frontier of competitiveness in developing countries: Implementing Trade Facilitation*", UNCTAD analysed the implementation status of TF measures in 26 developing countries, including least-developed countries (LDCs), middle-income developing countries, landlocked countries, transit developing countries, and small island economies in Africa, Asia, the Caribbean and Latin America (UNCTAD, 2014).

As to the enquiry points measure, the study found that 69% of countries partially implemented this measure and 19 % did not comply with it, while only 12 % reported a full compliance. The main reasons for non-implementation, according to the TF stakeholders in the participating countries, were the lack of awareness and knowledge of the benefits of the enquiry point (mentioned by 46 % of the countries), the lack of the organizational and institutional framework (58%), as well as the lack of cooperation between the agencies concerned (50%). Stakeholders also quoted the difficulty to collect the required information as a reason for partial implementation of the measure.

Implementation guidelines

The sustainable and good performance of enquiry points may depend on the following elements:

- The harmonious coordination between the agency/official designated as the enquiry point and other relevant agencies;
- The availability of financial resources: countries do not need significant resources to establish an enquiry point as they may even work with existing infrastructure and human resources. The key point would be to ensure that enquiry points count with the necessary tools to perform their tasks (i.e. computers, fax machines, photocopy machines, Internet access, etc.);
- Monitoring mechanism to ensure that all enquiries are readily answered in reasonable time period;
- Continuous update of information; and
- Use of the fastest means, with its available resources, even if the mode of delivery is at the discretion of the Member concerned.

Implementation Check List

The following list may be used as guidance when estimating the level of compliance with the measure:

<input type="checkbox"/>	There is a national implementation framework (i.e. legislation, administrative provision, procedural) in place for establishing or maintaining an enquiry point.
<input type="checkbox"/>	The enquiry point answers enquiries and provides the forms and documents within a reasonable time period.
<input type="checkbox"/>	The enquiry point covers all issues specified in Article 1.1 (Publication) and provides forms on issues related to export, import and transit.
<input type="checkbox"/>	Fees and charges, if any, are limited to the approximate cost of services delivered by the enquiry point.
<input type="checkbox"/>	The contact information of the enquiry point is available and updated through the Internet.
<input type="checkbox"/>	The contact information of enquiry points is notified to the WTO TF Committee as per requirement of Article 1.4.c (Notification).

Preparing a national implementation plan

The following table may be used as a basis for the national implementation plan for this measure.

	Actions required
Implementation sequence	1. Preparatory stage:
	1.1 Decide on the number and nature of EPs to be created/maintained; one or more
	1.2 Designate a focal point responsible for delivering answers and coordination with relevant agencies/officials, specifically for: Ensuring coverage of all aspects specified in Article 1.1 (Publication); Ensuring that responses are provided in a reasonable time; Ensuring appropriate record keeping;
	1.3. Set some guidelines to determine the reasonable time period according to the nature and complexity of the possible requests.
	1.4. Allot part of the budget for enabling the daily operation of the enquiry point(s)
	1.3 Calculate the basis for fees and charges, if any, and ensure that those correspond to the cost of services rendered.
	2. Set up:
	2.1 Draft the policy and legal framework to establish or maintain one or more EP, get it approved and make EP(s) operational.
	2.2 Put in place a protocol of coordination with all relevant agencies so that latest and updated information is provided.
	2.3 Assign the sufficient staff and train them.
	2.4 Publish the URLs of EP(s) website(s) including notification to the WTO Committee on Trade Facilitation.
	3. Management and follow up:
	3.1 Establish a mechanism for periodical monitoring and evaluation of the system, in particular the response time and accuracy of the information provided by EP(s).
	Time for implementation
Leading implementation agency	Ministry in charge of Trade is most commonly chosen as the leading implementation agency

References

- UNCTAD, Technical Notes on Trade Facilitation Measures, Geneva: United Nations, 2011 p.61.
- UNCTAD, The new frontier of competitiveness in developing countries: Implementing trade facilitation, 2014.
- WTO Glossary, available at http://www.wto.org/english/thewto_e/glossary_e/enquiry_point_e.htm (visited on 19 August 2014).
- WTO Secretariat, Handbook: How to apply the transparency provisions of the SPS Agreement, September 2002.

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