

## WTO Agreement on Trade Facilitation UNCTAD Trade Facilitation Technical Note No. 1

### ARTICLE 1.1: PUBLICATION

#### A. BACKGROUND

Publication is the act of making information available to a third person or the general public by display, distribution, or circulation (UNCTAD, 2011).

*Publication of trade-related information  
in a prompt, non-discriminatory and  
easily accessible manner*

Under the WTO Agreement on Trade Facilitation (TFA), publication also constitutes an obligation at the international level, which is widely based on the principle of transparency. Transparency is one of the core pillars of the multilateral trading system, aimed at making the business environment stable and predictable.

The TFA includes the publication obligation in Article 1.1, but this obligation is also included in other WTO Agreements, namely: i) the GATT 1994 (Article X); ii) the TBT Agreement; iii) the SPS Agreement; and iv) the Agreement on Customs Valuation (Article 12).

#### B. THE MEASURE

##### WTO Agreement on Trade Facilitation

##### Article 1: Publication and availability of Information

##### 1. Publication

1.1 Each Member shall promptly publish the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders, and other interested parties to become acquainted with them:

- (a) procedures for importation, exportation, and transit (including port, airport, and other entry-point procedures), and required forms and documents;
- (b) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
- (c) fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;
- (d) rules for the classification or valuation of products for customs purposes;
- (e) laws, regulations, and administrative rulings of general application relating to rules of origin;
- (f) import, export or transit restrictions or prohibitions;
- (g) penalty provisions for breaches of import, export, or transit formalities;
- (h) procedures for appeal or review;
- (i) agreements or parts thereof with any country or countries relating to importation, exportation, or transit; and
- (j) procedures relating to the administration of tariff quotas.

1.2 Nothing in these provisions shall be construed as requiring the publication or provision of information other than in the language of the Member except as stated in paragraph 2.2.

## C. UNDERSTANDING THE MEASURE

### 1. What is covered?

#### *Core obligation*

The measure introduces the obligation for all WTO Members to promptly publish trade-related information in a non-discriminatory and easily accessible manner in order to ensure that relevant stakeholders become acquainted with this information.

The aim is that other WTO Members and traders affected, or others likely to be affected, by governmental measures imposing restraints, procedures, requirements and other burdens, should be given a reasonable opportunity to acquire reliable information about such measures and accordingly to protect and adjust their activities (Appellate Body Report, *US-Underwear* case).

Timely, accurate and easily accessible information on trade legislation, applicable fees and tariffs, and related adjudicatory mechanisms is a critical element in establishing a transparent and predictable environment for improving international trade efficiency, Customs compliance, government revenues and foreign investments.

#### *Beneficiaries*

The measure instructs each WTO Member to make available trade-related information to the following stakeholders:

Governments: the measure does not specify if these should be WTO Members or no. As long as the measure is publicly available, non-WTO Members shall also benefit from it.

Traders: national and foreign traders need information beforehand on the measures that have the potential to affect their importation, exportation and transit transactions in order to adjust their activities accordingly.

Other interested parties: this category may cover other actors such as chambers of commerce, associations, unions, and international organizations among others.

#### *Scope of information*

As Article 1.1 of the TFA was developed from GATT Article X, it covers most of the items included in GATT Article X. Nonetheless, Article 1.1 extends the obligation of publication to different items, as follows: i) procedures for import, export and transit; ii) regulation on rules of origins, iii) penalties; iv) procedures for appeal and review; and v) tariff quotas-related procedures.

In addition, both provisions have different approaches. GATT Article X refers specifically to the publication of the legal basis of certain items, while the TFA Article 1.1 refers straightforward to the availability of information on these (and additional) items. Notwithstanding the TFA approach, GATT Article X remains fully applicable to WTO Members (UNCTAD, 2014b).

#### *Requirements*

Promptly published: "Prompt" means quickly and without delay. However, it is not an absolute concept since whether a measure has been published "promptly" necessarily requires a case-by-case assessment (Panel Report, *EC-IT Products* case).

Non-discriminatory: it means that the information should be equally available to national and international stakeholders as well as to stakeholders from other WTO Members.

*Easily accessible*: the information is to be published in such a manner as to enable governments, traders and other interested parties become acquainted with it. It must be generally available through an appropriate medium. Thus, the "medium" should make information generally available to the public in such a manner as to "enable governments, traders and interested parties to become acquainted with it" to be considered as "appropriate" (Panel Report, *EC-IT Products* case).

*Official publication*: Even if Article 1.1 does not mention this requirement, Article 1.4 (a) does as it requires the communication of the "official place" where the items in Article 1.1. have been published. Thus, both articles should be read together.

### *Notification*

Under Article 1.4(a) of the TFA, each WTO Member shall notify the Committee on Trade Facilitation of the official place(s) where the items in subparagraphs 1.1(a) to (j) have been published. Thus, each time that there is an amendment on these items, the concerned WTO Member must notify to the Committee where it was officially published.

## **2. What is not covered?**

This measure as included in the WTO TFA leaves aside some important considerations, as follows:

### *Means of publication*

Article 1.1 does not specify the channel through which the information should be made generally known. Article 1.4 only mentions that the publication should be made in an official place. Following this, the publication may be carried out through the following official means:

*Printing*: Most countries publish a printed copy of their laws in government publications (journal, bulletin, gazette) as a legal requirement for the enforcement of their laws. Such gazettes are printed regularly and distributed in public kiosks. Furthermore, laws can be codified by topical subject area and published in consolidated form. Through the publication, the existence of the law is rendered public and the published text will be deemed authentic and admissible in national courts (UNCTAD, 2011).

*Internet*: Many countries have also developed an electronic version of their legal framework and provide additional information, explanation, and guidelines. In all cases, the website needs to be an official channel of communication of the government. The Agreement encourages WTO Member to make available trade-related information included in Article 1.1 through the Internet (Article 1.2.3 of the TFA).

### *Disclosure of confidential information*

Article 1.1 does not contain any clause preventing the disclosure of confidential or sensitive information. Nonetheless, GATT Article X clearly states that WTO Members are not required to disclose confidential information, which would impede law enforcement, or otherwise be contrary to the public interest or would prejudice the legitimate commercial interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Even if GATT Article X remains fully applicable, it will not be enough to protect confidential information under Article 1.1 of the TFA as this covers more items than GATT Article X (see Scope of Information section). However, WTO Members will always have the option to publish a non-confidential version of the concerned items.

### *Language*

Under Article 1.1 of the TFA, there is no obligation to publish the information in one of the official languages of the WTO. Nonetheless, a WTO Member may make available, whenever practicable, a

description of its procedures for importation, exportation and transit in one of the WTO official languages (Article 1.2.2 of the TFA).

*Dissemination of information*

There is also no obligation to publish the information in a centralized manner, unless it is considered more convenient for the user-friendliness, non-discrimination and accessibility of the information.

**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 2014a).

As to publication, 77% of the participating countries partially claims to implement this measure, while only 23% fully complies with it. What stands out is the high level of compliance as all participating countries partially or fully apply this measure. The main reasons for the partial application of this measure are the lack of resources, lack of interagency cooperation and, inefficient/dysfunctional organization and institutional framework.

*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 legal obligation to officially publish the information listed in Art.1 para.1 <input type="checkbox"/> All 10 items of the required information are published <input type="checkbox"/> Information is published promptly and updated when modified <input type="checkbox"/> Information is published in a non-discriminatory and user-friendly manner
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*Preparing a national implementation plan*

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

	Actions required
<b>Recommended Implementation method</b>	<b>1. Preparatory stage</b>
	1.1. Take legal or administrative measures to introduce the obligation to officially publish and update the required information
	1.2 If needed, designate a focal Ministry/Department in the country responsible for overseeing that all the required information is published.
	1.3 Assess and ensure the user-friendliness and/or accessibility of the information
	<b>2. Set up</b>
	2.1 Ensure/Improve production of the information and testing of its user-friendliness and readability

	2.2 Define and organize the information delivery (means and channels of publication, choice of the IT platform for maintenance ( if published electronically), storage and publication of the information)
	2.3 Address or clarify the issue of legal validity
	2.3 Notify to the WTO Committee on Trade Facilitation about the official place(s) where the items in subparagraphs 1.1(a) to (j) have been published
	<b>3. Management and follow-up</b>
	Periodical monitoring and evaluation of the situation with respect to publication.
<b>Leading agency</b>	Ministry of Trade

### References

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- US-Underwear, Appellate Body Report, *United States – Restrictions on Imports of Cotton and Man-made Fibre Underwear*, WT/DS24/AB/R, adopted 25 February 1997, DSR 1997:I

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