

# EAC GENEVA FORUM

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to the WTO

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## Trade Facilitation Agreement

An Overview of the State of play in EAC

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## Introduction

The Trade Facilitation Agreement (TFA) was among the outcomes of the 9<sup>th</sup> World Trade Organization (WTO) Ministerial Conference of 2014. It was decided that the agreement would be implemented in three phases, commencing with a legal review, to be followed by drafting of the Protocol of amendment to insert the new agreement into Annex 1A of the WTO Agreement, after which it would enter into force once two thirds of WTO members completed their domestic ratification process.

Legal review of the TFA was successfully completed, and member countries commenced notifying their category A commitments; however the draft Protocol of amendment that was to be adopted by the deadline of July 31<sup>st</sup> 2014, failed to garner consensus from the WTO membership therefore delaying implementation of the TFA.

The TFA provides developing countries and least developed countries (LDCs) a flexible period within which its provisions are to be implemented after its entry into force. This will be according to the three categories of A (provisions designated for implementation upon entry into force), B (provisions designated for implementation on a date after a transition period of time following entry into force of the agreement), and C (provisions designated for implementation after transition, and requiring acquisition of implementation capacity).

Despite the flexibility, developing countries and LDCs are obligated to notify their implementation

schedule in the respective categories. The current impasse in adopting the Protocol of amendment to operationalize the TFA provides more time within which these countries can evaluate the status of their trade facilitation structures vis a vis the obligations in the TFA and hence categories their implementation schedule more accurately. This note through literature review provides an overview of the state of play in the EAC.

## Implementation Status of trade facilitation measures in the EAC

### ● Implemented measures

An assessment of the implemented measures in the EAC reveals that most of the TFA Article 1 measures are already in place. Publication and availability of information such as customs laws, regulations, judicial decisions and administrative rulings is in place, although in some cases such publication is not promptly done as required by the TFA.

All the relevant laws and regulations are officially published in the EAC Gazette as required by the TFA, although in the past some stakeholders have experienced difficulties in accessing the gazettes.<sup>1</sup>

Further, as required by the TFA, the relevant EAC customs laws have incorporated WTO/World Customs Organization (WCO) trade facilitation principles, standards and recommended practices regarding import and export procedures and formalities have been

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<sup>1</sup> 2008, [http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs\\_and\\_trade\\_facilitation\\_in\\_the\\_east\\_african\\_community.pdf](http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs_and_trade_facilitation_in_the_east_african_community.pdf)

incorporated in the EAC customs law. What remains is to ensure that they are consistently implemented.<sup>2</sup>

In addition, simplified procedures for authorized traders are to a large extent already in use within the EAC. The use of ASYCUDA++, which classifies imports depending on their level of risk under 'Green', 'Yellow' or 'Red', allows automatic release of goods for compliant traders.<sup>3</sup> Which conforms to the TFA obligations in Article 7.

From the foregoing, EAC could notify the above measure under category B in order to allow for itself a transition period within which some of the shortcomings, such as "prompt notification", access to the gazette and other discussed above, can be fully addressed.

● **Least implemented measures at EAC Regional Level**

According to the UCTAD 2014 report on trade facilitation, the top 10 least implemented measures for LDCs as per the table below<sup>4</sup>, these apply to the EAC given that 4 of its 5 members are LDCs:

**Table: Top 10 least implemented measures by LDCs**

TF Measures	Reference to TFA's articles
Advance ruling	Article 3
Border agency cooperation	Article 8
Disciplines on fees and charges	Article 6
Single window	Article 10
Information / Internet	Article 1
Enquiry points	Article 1
Import / rapid alerts	Article 5
Publication	Article 1
Reduction/ limitation of formalities and documentation requirements	Article 10
Detention	Article 5

**Specific issues at EAC regional Level**

According to the WCO, there is still considerable need for cooperation at the EAC regional level to harmonize procedures concerning authorized traders within the EAC<sup>5</sup> as per the requirements of Article 8 and 12 of the TFA.

Disparities in the cost of leasing electronic cargo tracking gadgets is another area causing jitters among transit cargo transporters who are

2 2008, [http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs\\_and\\_trade\\_facilitation\\_in\\_the\\_east\\_african\\_community.pdf](http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs_and_trade_facilitation_in_the_east_african_community.pdf)

3 2008, [http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs\\_and\\_trade\\_facilitation\\_in\\_the\\_east\\_african\\_community.pdf](http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs_and_trade_facilitation_in_the_east_african_community.pdf)

4 UNCTAD Report,2014 [http://unctad.org/en/PublicationsLibrary/dtlb2013d2\\_en.pdf](http://unctad.org/en/PublicationsLibrary/dtlb2013d2_en.pdf)

5 2008, [http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs\\_and\\_trade\\_facilitation\\_in\\_the\\_east\\_african\\_community.pdf](http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs_and_trade_facilitation_in_the_east_african_community.pdf)

demanding for the charges to be harmonized. EAC rolled out the electronic cargo tracking system (ECTS) to curb theft and dumping of cargo in transit in order to minimize revenue losses that accrue from the diversion of transit goods. It is therefore a requirement for track owners to hire the tracking gadgets. However, transporters are concerned that the high cost of tracking cargo will have a ripple effect on the price of goods - a cost that the consumer will ultimately pay for.<sup>6</sup>(Article 6 + Article 11)

Another issue of concern is that almost all EAC laws are available only in English well as some traders cannot adequately understand the legal, administrative texts written in English. Small and medium-sized enterprises (SMEs) are particularly affected<sup>7</sup> contrary to the requirements of Article 1 of the TFA. The region has to therefore take these issues into account and either categorize the affected obligation under B (requiring more time) or C where technical assistance will be required to facilitate full implementation of the obligations arising.

## ● Country scenarios

### **Kenya**

Amongst the main issues with regard to trade facilitation in Kenya is the need to develop an inter-agency cooperation. Import/export inspection and certification procedures involve many government bodies. These bodies do not

collaborate adequately, which causes duplication of functions and wastage of resources thereby hindering efficiency in trade<sup>8</sup> and contrary to Article 8 and Article 12 of the TFA.

Another measure in Kenya that is inconsistent with the TFA, is the demand for very high customs insurance bond (about US\$200 per 20-foot container) on transit goods destined to Uganda, Rwanda and Burundi which affects traders from these countries and would be in violation of Article 10.<sup>9</sup>

Despite the above shortcomings, Kenya has made tremendous progress with regard to trade facilitation. For instance in 2005, the Customs Reform Modernization program (also known as Simba 2005) commenced. The program introduced electronic filing of customs documents as well as centralized systems, which has immensely improved transparency in customs processes.<sup>10</sup>

Further, the establishment of the Malaba joint one-stop border post (on the Kenya/Uganda border) is another initiative that has advanced trade facilitation in the region resulting in improved coordination and cooperation amongst authorities in the EAC and in conformity with Article 8 of the TFA.<sup>11</sup>

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<sup>6</sup> 2014, <http://www.trademarka.com/importers-push-for-harmonised-cargo-tracking-fees-in-region/> :

<sup>7</sup> 2008, [http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs and trade facilitation in the east african community.pdf](http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs%20and%20trade%20facilitation%20in%20the%20east%20african%20community.pdf)

<sup>8</sup> 2008, [http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs and trade facilitation in the east african community.pdf](http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs%20and%20trade%20facilitation%20in%20the%20east%20african%20community.pdf)

<sup>9</sup> 2008, [http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs and trade facilitation in the east african community.pdf](http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs%20and%20trade%20facilitation%20in%20the%20east%20african%20community.pdf)

<sup>10</sup> 2008, [http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs and trade facilitation in the east african community.pdf](http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs%20and%20trade%20facilitation%20in%20the%20east%20african%20community.pdf)

<sup>11</sup> 2008, [http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs and trade facilitation in the east african community.pdf](http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs%20and%20trade%20facilitation%20in%20the%20east%20african%20community.pdf)

An “Authorized Economic Operator” (AEO) program has also been implemented<sup>12</sup> under the Kenya National Electronic Single Window System, through which the Kenya Revenue Authority (KRA) has cleared a number of firms to operate under the AEO status that gives special cargo clearing privileges, which will be extended to others as it develops<sup>13</sup> and brings the country into conformity with its obligations under Article 10 of the TFA.

### **Tanzania**

Tanzania has also made a number of advancement with regard to trade facilitation. These include automation of customs processes through ASYCUDA++ that has now incorporated the Direct Trade Input (DTI) facility, which allows importers and exporters to clear their consignments by electronic data transfer on the Revenue system.

The above facilities, as well as implementation of e-payment system and roll out plan to all customs stations has improved cargo clearance time from 15days in 2009 to **12 days** as of 2011<sup>14</sup> all of which are within the provisions of Article 7, 9 and 12 of the TFA.

In addition an AEO was introduced under the ‘Compliant Trader Scheme’ (focused on revenue only).<sup>15</sup>

### **Uganda**

Similarly in Uganda, ASYCUDA++<sup>16</sup> is used in customs processes, in addition to the one-stop border post of the Malaba (on the Kenya/Uganda border) that have improved trade facilitation in line with Article 8 of the TFA.<sup>17</sup>

Through the Ministry of Trade, Industry and Cooperatives (MTIC), a High Level Task Force (HLTF) has been constituted composed of Ministers, Leaders of key institutions and private sector players involved in the facilitation of [trade](#), to agree on national governance and institutional arrangements for adoption and implementation of the electronic [single window](#) system (E-SW) and consider the proposed roadmap for its implementation.

The private sector fully supports the implementation of the E-SW and signed a memorandum of understanding (MOU) with the Government<sup>18</sup> which is in line with TFA provisions of Article 7 and 10.

The Electronic Cargo Tracking System (ECTS) monitors imports, exports, re-exports and goods in transit to other countries in the region was adopted and it is expected to greatly improve the process of managing goods in transit by providing real time feedback to the business community and the authorities, as well as

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<sup>12</sup> 2008, [http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs and trade facilitation in the east african community.pdf](http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs%20and%20trade%20facilitation%20in%20the%20east%20african%20community.pdf)

<sup>13</sup> 2014, <http://www.trademarka.com/news/new-electronic-port-clearance-goes-live/>

<sup>14</sup> Trade Facilitation Implementation in Tanzania, James John Mbunda, Manager Modernisation and Quality Assurance, 5<sup>th</sup> September 2011

<sup>15</sup> 2008, [http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs and trade facilitation in the east african community.pdf](http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs%20and%20trade%20facilitation%20in%20the%20east%20african%20community.pdf)

<sup>16</sup> 2008, [http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs and trade facilitation in the east african community.pdf](http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs%20and%20trade%20facilitation%20in%20the%20east%20african%20community.pdf)

<sup>17</sup> 2008, [http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs and trade facilitation in the east african community.pdf](http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs%20and%20trade%20facilitation%20in%20the%20east%20african%20community.pdf)

<sup>18</sup> 2014, <http://www.trademarka.com/press-releases/uganda-on-course-to-open-wide-an-electronic-single-window-for-trade/>

reducing transit time and the cost of doing business<sup>19</sup> as envisaged by the TFA in Article 7 and 10.

However the main challenge faced is the limited capacity of the National Working Group on Trade facilitation (NWGTF) to analyze technical assistance and capacity building needs that will need to be notified under category C of the TFA.

### **Rwanda**

Rwanda is also on track with regard to improvement of trade facilitation, more especially in the ICT sector, where the Rwandan Revenue Authority is performing well. ICT systems have contributed a lot, for instance, by reducing the time for clearance and release.<sup>20</sup>

Further there are steps to enhance cross-border trade facilitation through ongoing [EAC](#) one-stop border posts that are being implemented in the region. Another initiative was the 2012 launch of the electronic [single window](#) system<sup>21</sup> that brings the country into conformity with Article 10 of the TAF. The process has been streamlined and computerized and has cut the amount of time it takes to clear cargo by 40% or one full day – a huge advance and a direct saving for business of estimated at around US\$8-17 million a year.

The Rwanda Bureau of Standards (RBS) simplified and increased transparency of import/ export procedures. The RBS has the responsibility to coordinate development and implementation of policies in line with Rwanda National Policy 2010 and the EAC SQMT Act 2006. The bureau is also charged with the responsibility to build capacity

in testing laboratories to support industries and ensure Rwanda goods comply with national and regional standards<sup>22</sup>, which is also in line with Article 7 of the TFA

[Rwanda](#) launched sub-Saharan Africa's first one-stop electronic [trade](#) clearance system, a computerized scheme that saves time, and money.<sup>23</sup> These initiatives have given the country a strong grounding towards conforming to its obligations under the TFA.

### **Burundi**

Of the EAC member countries, Burundi is faced with the most challenges with regard to trade facilitation, the main reasons attributed this is the long civil-war that destroyed infrastructure in the country setting it backwards. Some of the main challenges are highlighted as follows<sup>24</sup>:

Access to publications is difficult due to lack of dissemination channels, difficult Internet access and lack of archiving facilities, moreover the national language French is not well understood by most economic stakeholders.

Human resource capacity is limited in the country, exacerbated by the fact that there is no inter-instructional coordination amongst the organizations charged with trade facilitation processes. All in all Burundi's situation with regard to trade facilitation requires significant technical assistance such as the hard infrastructure, as well as capacity building for the required human resource.

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19 2014, <http://www.trademarka.com/press-releases/ura-launches-electronic-monitoring-of-goods-in-transit/>

20 2008, [http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs\\_and\\_trade\\_facilitation\\_in\\_the\\_east\\_african\\_community.pdf](http://www.worldcustomsjournal.org/media/wcj/-2008/1/customs_and_trade_facilitation_in_the_east_african_community.pdf) :

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24 2014, Annex of 14th Burundi Update Note, CUTS International

## ● What still needs to be done by the EAC?<sup>25</sup>

From the foregoing and in addition to the country scenarios, below are some of the measures that are still required for the EAC to conform to the TFA obligations:

- Consolidation and development regional trade facilitation instruments based on the WTO's TF measures.
- Harmonization of customs and non-customs procedures through an integrated Border Management framework.
- Finalize the interconnectivity of Customs Systems from RADDEX to a more vibrant and integrated systems
- Development of legal framework to address NTBs across the supply chain that will impose sanctions and penalties.
- Full employment of Risk Based Management System in Customs Process
- Implementation of SAFE framework of Standards under WCO-EAC Project
  - Accelerating trade and transport facilitation Infrastructure. Investment in infrastructure is the key to unlock the potential of the EAC.

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