



## Deloitte Trade Newsletter

### Nigeria ratifies the Trade Facilitation Agreement

Nigeria has ratified the Trade Facilitation Agreement (TFA), earlier negotiated with members of the World Trade Organization (WTO) at the Bali Ministerial Conference in December 2013.

The country recently submitted its instrument of ratification, becoming the 107th country to sign up to the agreement. The TFA will become legally effective when 110 of the 164 WTO members (representing two thirds of the WTO membership) ratify the agreement.

The TFA was born out of the need to curb the excessive bureaucracy that still exists

around the world when goods are moved across borders.

Traders have long complained about the treatment and often laborious hurdles set by Customs and other local authorities in many jurisdictions. They often argue that the costs incurred in overcoming these hurdles increases business costs, dissuades small and medium enterprises from

participating in global trade, and ultimately harms the growth of developing countries.

Based on the provisions of the agreement, the TFA would ensure:

- Expedited movement, release and clearance of goods, including goods in transit;

- Effective cooperation between customs and other relevant authorities on trade facilitation and customs compliance issues;
- Developing and least developing countries are provided with the necessary technical and capacity building support.

Earlier, on 10 November 2014, Nigeria submitted its 'Category A' notifications (i.e. substantive provisions of the TFA it intends to implement upon entry into force of the agreement) to the WTO. It is expected that other provisions of the agreement would be implemented after a transitional period or upon receipt of technical assistance and support for capacity building.

A summary of specific provisions that would be implemented by Nigeria upon entry into force of the TFA are summarized below:

### 1. Disciplines on fees and charges imposed on or in connection with importation and exportation and penalties

Members who apply civil or administrative customs penalties shall:

- Impose penalties only on the person(s) responsible for the violation;
- Ensure that the amount of such penalties are proportionate to the degree and severity of the violation;
- Avoid conflicts of interest;

- Avoid creating an incentive for the assessment of a penalty that is not commensurate with the circumstances of the case;
- Provide the person with a written explanation;
- Consider a "prior disclosure" as a potential factor to mitigate the penalty amount.

### 2. Release and clearance of goods

- Traders shall be permitted to submit the import documentation and other information required for release of imported goods, in electronic format where appropriate, prior to arrival of the goods in order to expedite release.
- Members shall allow importers to obtain release of their goods, under a guarantee, if required, prior to the final determination and payment of customs duties, taxes, fees and charges where the final determination is not done prior to, upon arrival or as rapidly as possible after arrival.
- Any required guarantee shall be limited in amount to the equivalent of duties, taxes, fees and charges to which the goods may be liable, as determined by Customs.
- If the importer commits an offense, Customs may require a guarantee for the potential fine or penalty as a condition for

release of the goods (however, release of goods in cases of violations of law or fraud shall be determined by each Member's law).

- Customs shall discharge the guarantee without delay when no longer required for its intended purposes/when all requirements have been met.

**The TFA was born out of the need to curb the excessive bureaucracy that still exists around the world when goods are moved across borders.**

### 3. Movement of goods intended for import under customs control

- A declarant should be able to move goods from a customs office of entry to another customs office within the same customs territory.

### 4. Formalities connected with importation, exportation and transit

- Customs shall apply uniform documentation requirements and uniform release and clearance procedures.

- Members shall adopt customs procedures for the temporary admission, inward processing and outward processing of goods.

## 5. Freedom of transit

- Members shall not seek, take or maintain any voluntary restraints or any other similar measures on traffic in transit. This is without prejudice to existing and future national regulations, bilateral or multilateral arrangements related to regulating transport, consistent with WTO rules.
- A Member shall not treat goods that will pass in transit through another Member's territory to the final destination less favourably than if the goods were shipped to the destination without passing through that other Member's territory.

- Formalities, documentation requirements, and customs controls in connection with traffic in transit shall not be more burdensome than necessary to identify the goods and ensure fulfillment of transit requirements.
- Members shall not apply technical regulations and conformity assessment procedures within the meaning of the agreement on Technical Barriers to Trade on goods in transit.
- Members shall allow and provide for advance filing and processing of transit documentation and data prior to the arrival of goods.
- Once traffic in transit has reached the customs office where it exits the territory of the Member, that office shall promptly terminate the transit operation if transit requirements have been met.

- Where a Member requires a guarantee in the form of a surety, deposit or other appropriate monetary or non-monetary instrument for traffic in transit, such guarantee shall be limited to ensuring that requirements arising from such traffic in transit are fulfilled.

A careful review of the above provisions vis-à-vis the extant regulations and practical requirements of trading with Nigeria, shows that drastic changes may not be necessary when the TFA enters into force. To this end, entry into force of the TFA may not immediately alleviate the challenges faced by enterprises trading with Nigeria.

However, Nigeria's accent to the TFA and the current work on repealing and re-enacting the Customs and Excise Management Act may be signs that the country is looking to change the trading landscape.

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