

**National Interest Analysis [2014] ATNIA 6  
with attachment on consultation**

**World Trade Organization (WTO) *Agreement on Trade Facilitation***

**Text as adopted at Bali on 7 December 2013**

**[2014] ATNIF 7**

## NATIONAL INTEREST ANALYSIS: CATEGORY 1 TREATY

### World Trade Organization (WTO) *Agreement on Trade Facilitation* Text as adopted at Bali on 7 December 2013 [2014] ATNIF 7

#### Nature and timing of proposed treaty action

1. It is proposed that Australia consent to be bound by the World Trade Organization (WTO) *Agreement on Trade Facilitation* (ATF). The ATF will be incorporated into Annex 1A of the *Marrakesh Agreement Establishing the World Trade Organization*<sup>1</sup> (Marrakesh Agreement) by means of a Protocol of Amendment (the Protocol). By accepting the Protocol, Australia would consent to be bound by the provisions of the ATF.

2. The text of the ATF was adopted at the WTO Ministerial Conference in Bali on 7 December 2013<sup>2</sup>. Under the terms of the Bali Ministerial decision, the WTO General Council will meet no later than 31 July 2014 to adopt the Protocol of Amendment (currently in preparation) and open it for acceptance by WTO Members. The Protocol will remain open for acceptance until 31 July 2015. In accordance with Article X(3) of the Marrakesh Agreement, the Protocol will enter into force upon acceptance by two-thirds of WTO Members. The ATF will then form an integral part of the WTO “single undertaking”, as embodied in the Marrakesh Agreement and its Annexes.

3. It is proposed that Australia would deposit its instrument of acceptance with the WTO as soon as practicable after 31 July 2014.

#### Overview and national interest summary

4. The objective of the ATF is to clarify and improve existing WTO obligations on trade procedures relating to transparency of trade regulations, fees and formalities, and the transit of goods (Articles V, VIII and X of the *General Agreement on Tariffs and Trade (GATT) 1947*). At its heart, the ATF seeks to cut the costs of trading by removing red tape and unnecessary formalities in border clearance procedures which will benefit Australian exporters.

#### Reasons for Australia to take the proposed treaty action

5. Implementation of the ATF will lead to some of Australia’s largest trading partners, particularly in larger developing countries, simplifying and streamlining customs procedures, in order to move goods in cross-border trade more efficiently, including reducing compliance costs. This will help Australian businesses better connect to the global economy by removing regulatory burdens and increasing transparency and certainty over import requirements, fees and release times. In addition to the assistance that the ATF provides to Australian traders, implementation

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<sup>1</sup> [1995] ATS 8

<sup>2</sup> Ministerial Decision of 7 December 2013 on the *WTO Agreement on Trade Facilitation*, available at [http://www.wto.org/english/tratop\\_e/tradfa\\_e/tradfa\\_e.htm](http://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm).

is expected to improve law enforcement cooperation between Members' customs authorities. If fully implemented, it is estimated that, by cutting trade costs, the ATF could add USD 1 trillion to the world economy and create 21 million jobs<sup>3</sup>. This could reduce trade costs for developed countries, such as Australia, by up to 10%<sup>4</sup>.

6. Adopting the ATF at an early date would be in line with our leadership role in our year as G20 chair, and as a long-time supporter of the WTO system. The ATF emulates the policies of cutting red tape to drive efficiency that the Government is seeking to promote domestically. It enjoys the support of farm and business groups.

## **Obligations**

7. The ATF comprises three sections: Section I, dealing with trade facilitation measures and obligations; Section II, focusing on flexibility arrangements for developing and least developed countries (otherwise known as 'special and differential treatment'); and Section III, discussing institutional arrangements. Australia's primary obligations are contained in Sections I and III. However, Section II also contains some obligations relevant to Australia.

8. Notwithstanding the interpretative note to Annex 1A to the Marrakesh Agreement allowing for an Annex Agreement to prevail over the Marrakesh Agreement in the event of a conflict between provisions, nothing in the ATF shall diminish the obligations of Members under the GATT. Furthermore, the ATF does not diminish the rights and obligations of Members under the *Agreement on Technical Barriers to Trade* and the *Agreement on the Application of Sanitary and Phytosanitary Measures*<sup>5</sup>.

9. The first group of articles, Articles 1-5, essentially address transparency issues, and expand on GATT Article X.

10. Under Article 1 (Publication and Availability of Information), Members will be required to publish information on their customs procedures, including the forms, fees and charges applicable to importation, on the internet. Members must also establish 'Enquiry Points' to answer questions and provide documentation.

11. Under Article 2 (Opportunity to Comment, Information before Entry Into Force, and Consultations), a Member will be required, to the extent practicable and in a manner consistent with its domestic law and legal system, to provide an opportunity for traders to comment on new or amended customs laws and regulations, and to allow a reasonable period of time between their publication and entry into force.

12. Under Article 3 (Advance Rulings), Members' customs authorities will be required to provide rulings to traders prior to importation upon written request, outlining how the trader's goods will be treated upon arrival to that country, e.g. how the goods will be classified (and what tariffs and non-tariff barriers will apply). Members will be required to provide advice on tariff classification and origin.

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<sup>3</sup> Peterson Institute of Economics, 2013

<sup>4</sup> OECD, 2013

<sup>5</sup> The *Agreement on Technical Barriers to Trade* and the *Agreement on the Application of Sanitary and Phytosanitary Measures* are both included at Annex 1A to the Marrakesh Agreement.

Additionally, Members shall publish, at a minimum: the requirements (information and format) for the application for an advance ruling; the time period by which it will issue an advance ruling; and the length of time for which the advance ruling is valid.

13. Under Article 4 (Procedures for Appeal or Review), Members will be required to provide appeal mechanisms to challenge the decisions by customs on goods, including rights to further appeal or review for traders if the decision on appeal takes too long.

14. Article 5 (Other Measures) sets disciplines for how Members operate systems for border controls to ensure that controls are not maintained unnecessarily; details how Members shall notify exporters if their goods are detained; and provides for transparent testing of detained goods.

15. The next group of articles, Articles 6-12, are concerned mainly with fees, charges and formalities for import, export and transit, expanding on GATT Articles V and VIII.

16. Under Article 6 (Disciplines on Fees and Charges), Members undertake obligations related to the rationale and amount of fees and charges imposed in connection with importation and exportation. For example, fees are to be published and limited to the approximate cost of services rendered. Article 6 also obliges Members with respect to the magnitude of penalties imposed for a breach of customs, and the procedure for imposing them.

17. Under Article 7 (Release and Clearance of Goods), Members will be required to establish procedures and objectives for customs authorities to draw upon to clear goods. The article contains nine disciplines, covering: pre-arrival processing of import documents; electronic payment; allowing goods to be released where the amount of duty payable still has not been determined; the use of risk management procedures and post clearance audits to minimise inspections; tracking of average release times; the establishment of authorised operator schemes and expedited shipment schemes (or ensuring equivalent treatment for all shipments); and procedures to be used for perishable goods.

18. Under Article 8 (Border Agency Cooperation), Members' border agencies will be encouraged to cooperate domestically as well as with their counterparts in neighbouring countries.

19. Under Article 9 (Customs Controls), Members will be required to allow goods intended for import to be moved within its territory from one customs office to another, to the point where the goods would be released or cleared.

20. Under Article 10 (Formalities), Members will be required to streamline and simplify formalities (ie forms and customs checks) connected with trade and remove some unnecessary requirements or constraints in the import/export process. Members are encouraged to establish/maintain a 'single window', enabling traders to submit documentation through a single entry point for all participating agencies/authorities.

21. Under Article 11 (Freedom of Transit), Members will be required to minimise restrictions on goods transiting through their territories (for example, limitations on the amount of guarantee requested).

22. Article 12 (Customs Cooperation) relates to the sharing of information between governments to verify information on specific imports or exports. For example, Members shall hold all information or documents provided by the requested Member strictly in confidence, respect any case-specific conditions set out by the requested Member regarding retention and disposal of confidential information or documents and personal data; and upon request, inform the requested Member of any decisions and actions taken on the matter as a result of the information or documents provided.

23. Section II provides for special and differential treatment of developing and least developed countries, including staged implementation of commitments and assistance for implementation. Australia's obligations under Section II are only activated upon Australia's interaction with developing and least developed countries. For example, under Article 20, developed countries are obliged to exercise restraint in bringing disputes against such countries. Under Article 21, developed countries are required to apply certain principles should they decide to provide assistance and support for capacity building with respect to the implementation of the ATF.

24. In Section III, Article 23 establishes a WTO Committee on Trade Facilitation, open to all WTO Members, to oversee implementation of the ATF. In addition, each Member is required to establish a national committee on trade facilitation to facilitate domestic coordination and implementation of the provisions of the ATF.

### **Implementation**

25. It will not be necessary to enact or amend legislation in order to implement the ATF in Australia. Australian border procedures already comply with the ATF.

26. In line with Article 23 of the ATF, Australia will need to establish a National Committee on Trade Facilitation involving governmental and private sector stakeholders. This can be undertaken administratively and will not require legislation. Relevant agencies (including the Australian Customs and Border Protection Service, and the Department of Foreign Affairs and Trade) are now considering arrangements for establishing this Committee. These arrangements will be made before Australia accepts the ATF and will be in place at the ATF's entry into force.

### **Costs**

27. The financial impact of the ATF is expected to be revenue neutral – as stated above, border procedures will not need to change. The establishment of a National Committee on Trade Facilitation is not expected to add any cost burden as the Committee's functions are expected to largely consist of meeting and corresponding to consider trade facilitation matters and will be managed by participating agencies as part of their normal running costs. The ATF provides a framework for the provision of assistance to developing countries and Least-Developed Countries, but there are no

obligations upon Members to provide such assistance. As noted above, effective implementation of the ATF by WTO Members is expected to reduce business costs for Australian exporters over time.

### **Regulation Impact Statement**

28. The Office of Best Practice Regulation, Department of Prime Minister and Cabinet, has been consulted and has confirmed that a Regulation Impact Statement is not required.

### **Future treaty action**

29. Article X of the Marrakesh Agreement would apply to any future amendments to the ATF. Amendments would enter into force upon acceptance by two thirds of WTO Members.

### **Withdrawal or denunciation**

30. Article XV of the Marrakesh Agreement provides for the withdrawal of Members from the WTO and thereby the ATF. It states that any Member may withdraw from the Marrakesh Agreement. Such withdrawal shall apply to all of the multilateral trade agreements annexed to the Marrakesh Agreement, including the ATF, and shall take effect upon the expiration of six months from the date on which written notice of withdrawal is received by the Director-General of the WTO. That is, Australia may only withdraw from the WTO as a whole, and may not withdraw from the ATF separately. Withdrawing from the Marrakesh Agreement would result in Australia losing its Most Favoured Nation status and a range of other rights that membership of the WTO provides.

### **Contact details**

Industrials and Market Access Section  
Office of Trade Negotiations  
Department of Foreign Affairs and Trade

## ATTACHMENT ON CONSULTATION

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#### **States and Territories**

31. There is no impact on States or Territories as a result of the ATF.
32. The ATF was included on the Schedule of Treaties provided to the Commonwealth-State/Territory Standing Committee on Treaties (SCOT) for the first time in March 2014. A briefing on the scope, objectives and expected regulatory impacts of the Protocol was provided to SCOT at that time.
33. No concerns have been raised by the States or Territories.

#### **Industry**

34. Australian Government participation in negotiations for the ATF was carried out in close consultation with industry and agriculture interest groups (e.g. the Australian Industry Group, the Australian Chamber of Commerce and Industry, and the National Farmers Federation). These interest groups have confirmed their support for the ATF.
35. The interest groups (mentioned above) were regularly consulted on the potential objectives and scope of the ATF during the negotiations (2004-2013). During these consultations, the interest groups outlined their key objectives and priorities for the future ATF. Consultation with the interest groups primarily took the form of face-to-face meetings, teleconferences and emails.

#### **Consumer groups**

36. The Protocol will not alter consumer rights. For this reason, consumer groups have not been consulted on the ATF.