

## The role of ICT in implementation of the WTO Trade Facilitation Agreement: some preliminary reflections

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### Introduction and key messages

This policy brief aims to highlight just some of the ways that Information and Communications Technologies (ICT) will almost inevitably play a role in helping WTO Members implement their commitments under the WTO Trade Facilitation Agreement (TFA). Indeed, the important role that the internet will play is explicitly recognized in the text of the TFA, as well as in some of what are the assumptions clearly underlying many of the Agreement's provisions. But there are other ways that ICT can be leveraged to enhance and facilitate WTO Members in realizing the objectives inherent to the TFA, which this brief also aims to discuss.

#### Key policy relevant messages of the brief are:

1. If ratified and implemented faithfully, the WTO TFA stands to make a tangible, significant and noticeable contribution to improving the cross-border efficiency of trade by improving transparency, predictability and reducing trade costs.
2. ICT is predestined to play a big role in how governments go about implementing their commitments under the WTO TFA, in obvious ways but also in ways that are subtler.

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3. Policymakers need to place ratification and implementation of the WTO TFA at or near the very top of their trade policy agendas, particularly now as we face an uncertain future over ongoing trade and investment liberalization initiatives.

The private sector has a huge interest in seeing the gains promised by the WTO TFA come to fruition. Policymakers should not be shy in seeking constructive engagement from the private sector and working with it to see that the TFA is meaningfully implemented sooner rather than later.

### **Role of ICT in enabling cross-border transactions**

The fundamentally transformative role played by ICT across many industries, sectors and processes has by now been well documented<sup>1</sup> and to a very great extent enjoys universal acceptance among business leaders and policymakers. ICT has also played a role in facilitating international trade, in various ways. As one leading industry advocate was recently overheard saying “nothing gets traded in the world today without a computer in the exporting country talking to another computer in the importing country”.<sup>2</sup> Also in the realm of customs clearance and import administration, ICT has come to play an increasingly important role as countries and customs territories such as Singapore and Hong Kong, China have lead the way in the automation and digitization of import procedures and the collection of customs duties, essentially moving far beyond paper-based customs procedures to electronic clearing and payment procedures. But many other countries have followed and are themselves starting to show world-beating efficiency gains on key metrics such as dwell times and import-clearance speeds. Huawei<sup>3</sup> has been working with a number of Customs authorities both in China, as well as in countries like Saudi Arabia to help governments to leverage the benefits of ICT in order to achieve greater efficiency, lower costs for logistics operators and thereby make their ports and their economies more competitive both regionally and internationally.

The World Customs Organization (WCO) declared 2016 the year of Digital Customs and has launched a number of initiatives to help Customs agencies at the national level conceptualize

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<sup>1</sup> See by way of example OECD (2004), *The Economic Impact of ICT: Measurement, Evidence and Implications*, OECD Publishing, Paris, <http://dx.doi.org/10.1787/9789264026780-en>; or more recent work published by the World Economic Forum such as Robert Pepper, John Garrity, and Connie LaSalle, *Cross-Border Data Flows, Digital Innovation, and Economic Growth*, in: Silja Baller, Soumitra Dutta, and Bruno Lanvin (eds), "The Global Information Technology Report 2016", World Economic Forum, Geneva 2016.

<sup>2</sup> This statement is from Pascal Kerneis of the European Services Forum.

<sup>3</sup> Huawei is a leading global ICT solutions provider with the vision to enrich life through communication. Driven by customer-centric innovation and open partnerships, Huawei has established an end-to-end ICT solutions portfolio that gives our customers competitive advantages in telecom and enterprise networks, devices and cloud computing. Founded in 1987, Huawei is a private company fully owned by its employees. More information available from [www.huawei.com](http://www.huawei.com).

and implement digital transformation programs. As the WCO Secretary General Kunio Mikuriya recently articulated with respect to the widespread adoption and increasing all-pervasive nature of ICT, “[f]rom the use of ICT in office automation, to the use of the Internet to publish and disseminate information, to the use of automated clearance systems to make declarations, perform risk management, undertake validation and processing, and eventually to issue approvals, ICT has transformed the way that Customs and governments operate”.<sup>4</sup>

But it is not just the automation of processes that has benefitted from ICT, the possibilities offered by data analytics are also manifold and include helping Customs authorities recognize potentially fraudulent or other non-compliant shipments just on the basis of comparing the data submitted against historical patterns of similar shipments. This can be done with sufficiently sizeable data samples and the use of specially tailored algorithms. Intelligent and targeted collection and analysis of data can also help Customs authorities to think and act strategically in adapting existing procedures to increase efficiency as well as in planning for the future.

Yet another initiative has been launched under the auspices of United Nations Economic and Social Commission for Asia and the Pacific (ESCAP): the Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific.<sup>5</sup> Opened for signature on 1 October 2016, the Framework Agreement sets out an ambitious roadmap for signatories to streamline their cross-border trade procedures and move towards a trading environment characterised by digital clearance of regulatory control procedure through paperless trade system including national single windows. Although the Framework Agreement is an important first step, like many of the international treaties enacted under the United Nations, it is characterized by the frequent use of hortatory language (most provisions start with “Parties *shall endeavour*” – emphasis added) and lacks any mechanism for ensuring Parties to it implement their commitments. As such, the Framework Agreement represents more a best-endeavour-based collective effort rather than a binding treaty text enforceable under international law. Nevertheless, having its signatories coalesce around and take collective action to reduce impediments to cross-border trade by adopting the approaches, policies and institutions foreseen under the Framework Agreement represents progress.

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<sup>4</sup> Kunio Mikuriya, *Digital Customs, the opportunities of the Information Age*, in: “WCO news”, No. 79 February 2016.

<sup>5</sup> See <http://www.unescap.org/resources/framework-agreement-facilitation-cross-border-paperless-trade-asia-and-pacific> for information on the initiative and the agreed treaty text.

## ICT and implementation of the WTO Trade Facilitation Agreement

The WTO Trade Facilitation Agreement (TFA), adopted by Members at the Bali Ministerial Conference in December 2013, and which at the time of writing looks very likely to be ratified in early 2017, also presents numerous opportunities for national Customs authorities to leverage ICT to help them achieve the TFA's objectives, which can best be described as threefold: 1) to expedite the movement, release and clearance of goods (including goods in transit); 2) to enhance technical assistance and support for capacity building in this area; and 3) to support effective cooperation between Customs or any other appropriate authorities on trade facilitation and customs compliance issues. Below, the rest of this brief discusses, on the basis of the text of the TFA and the rights and obligations that its provisions bestow and impose upon WTO Members, some of the ways in which ICT is likely to continue to play a role in reforming, modernizing, streamlining and improving the efficiency of customs procedures as Members begin the process of implementing the TFA.

Article 1 of the TFA sets out a number of obligations that require Members to publish and make available essentially any and all information that may be of relevance to anyone seeking to import, export or transit goods through a WTO Member and sets out a detailed catalogue of just what kind of information falls under this obligation. The role that ICT can play here is obvious and many Customs authorities in dozens of countries have long availed themselves of an official internet portal in order to acquit themselves of the transparency obligations they were already subject to in this regard, as well as to lighten the administrative burden on themselves to publish such information. Perhaps to underscore this point, paragraph 2 of Article 1, appropriately entitled "Information Available Through (*sic*) Internet" sets out minimum standards for what Customs authorities must make available via the public internet.

The establishment of enquiry points, as mandated by paragraph 3 of Article 1 of the TFA, and which many Members are already familiar with given similar obligations in the General Agreement on Trade in Services - GATS (Art. III.4), the Agreement on Technical Barriers to Trade – TBT Agreement (Art. 10), and the Agreement on Sanitary and Phytosanitary Measures – SPS Agreement (paragraph 3 of Annex B), is something that clearly begs the assistance of ICT. Indeed, many Members have availed themselves of special information portals on the websites of trade ministries, their standards bodies, or their quarantine authorities in order to establish the access points for these three enquiry points respectively. What is more, much of the trade-related technical assistance that donor countries have provided to developing countries, either under the auspices of Aid for Trade or otherwise, has gone towards the establishment of such enquiry points and their respective internet websites, since their benefit to both the recipient institutions and the broader trading community are immediately obvious.

Article 2 of the TFA stipulates a set of carefully qualified obligations (since Members must only implement them to the extent practicable and in a manner consistent with their domestic laws and legal systems) that Members both publish and provide opportunities for affected parties to comment on new laws and regulations of general application or amendments to such laws and regulations related to the movement, release and clearance of goods. This is already an article of faith and generally recognized as good regulatory practice in many countries and territories, and is something that those governments who do practice this approach generally tend to execute using ICT. Those governments that do solicit comments in anticipation of planned legislation or regulatory action invariably invite such comments to be submitted via a dedicated internet portal or sent to a specified email address. The European Union, the United States of America, Australia, New Zealand, but also developing countries like Kenya and South Africa to mention just a few, are all countries that practice this approach and generally tend to publish either all individual submissions or collated and curated summaries of relevant submissions for interested parties to review.

Article 7 on "Release and Clearance of Goods" sets out a number of obligations, the proper implementation of which is simply not conceivable without the effective exploitation of complex ICT solutions, such as pre-arrival processing of the information required to obtain customs clearance, for which 7.1.1 requires that Members provide ("as appropriate") a platform for this to be done "in electronic format". Article 7.2 also imposes an obligation on Members ("to the extent practicable") to allow for the electronic payment of "duties, taxes, fees and charges", which likewise encourages Customs authorities to not only move towards paperless procedures but also cashless payments.

This last requirement moves Customs into the realm of fintech or financial technology, an area into which banks and other financial services providers started to move many years ago, and which finance ministries and revenue or tax authorities have also started to move in many countries under broader e-government initiatives. In the realm of trade facilitation, this requires Customs authorities to set up electronic interfaces or internet portals which serve as a platform linking Customs to other decision-making bodies (such as the quarantine authorities or other license or permit-issuing agencies), as well as to banks or payment clearance institutions, as well as to freight forwarders and import agents. Many will already be familiar with such a platform under the so-called Single Window concept, which is in essence nothing more than a large and complex ICT solution to streamline, facilitate and expedite the importation, clearance and release of goods. However what the WTO Trade Facilitation Agreement does is to essentially make the underlying approach inherent to the Single Window concept a matter of binding WTO rules and thus, once adopted, part of the "covered agreements" subject to WTO dispute settlement, albeit notwithstanding the special grace periods and other qualifying language on

use of the DSU set out in Art. 20 of the TFA. The Single Window approach is indeed precisely what Art. 10.4 of the TFA mandates, although this provision uses "softer" language in that it stipulates that Members "shall endeavour" to establish such a Single Window, thereby arguably rendering this into a so-called "best endeavours" or "best efforts" obligation.<sup>6</sup>

Even the classification, monitoring and implementation of different commitments into three distinct categories for developing country and least developed country Members, and the planned requests for and provision of technical assistance required to support such Members in achieving implementation of the many new obligations set out under the TFA, is something that can be greatly enhanced by the effective use of appropriate, publicly accessible data-bases, information exchange systems and benchmarking platforms. This is indeed something already recognized and being addressed under such initiatives as the WTO's own Trade Facilitation Agreement Facility, an online portal that includes not only information on the TFA but also on donors, organizations, national contact points, needs assessments, capacity building and other useful resources. A similar initiative is one by the Global Alliance for Trade Facilitation, a mix of public and private sector actors, who likewise offer an online resource portal to help developing and least-developed country Members in their efforts to implement the various institutional-reform and process-streamlining commitments envisaged under the Trade Facilitation Agreement.

## **Limitations of ICT**

Finally this brief would not be complete without also mentioning the limits of ICT, since it is also true that, although ICT can go a long way to supporting and will in effect be indispensable to the effective implementation of the WTO Trade Facilitation Agreement, it also clearly has its limitations. Many decades of customs reform efforts by organizations such as the World Bank and the regional development banks have shown without any doubt that the most important ingredient and the most decisive factor in achieving meaningful improvements in the speed and ease of moving goods across borders is political will. The WTO Trade Facilitation Agreement and the ESCAP Framework Agreements represent important and tangible initiatives to benchmark and codify what policymakers and Customs officials need to do, and the capacity building commitment language in Section II of the WTO TFA also goes a long way to removing any excuses for failure. But ultimately it is up to the political leadership in developing and least developed countries to show that they are serious about forcing through often difficult institutional and procedural reforms. Likewise it will be up to leaders in developed countries to live up to the

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<sup>6</sup> This means in order to comply with this obligation, Members merely need to show that they have made the best effort they could to implement the obligation, although they fell short of the desired outcome.

commitments they have made in the context of the WTO TFA in terms of technical assistance and capacity building. Time will of course tell, but for now we all remain cautiously optimistic as we await the entry into force and the effective operation of both the WTO Trade Facilitation Agreement and the ESCAP's Framework Agreement on Facilitation of Cross-border Paperless Trade in Asia and the Pacific.



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