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Trade Facilitation Synergies between WTO and ASEAN Initiatives

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EXECUTIVE SUMMARY

- Simplifying and streamlining trade processes reduces trade costs and increases the potential for trade especially in developing countries.
- The WTO's Trade Facilitation Agreement and ASEAN's trade facilitation measures both seek to improve trade processes among member states. While the TFA focuses on customs processes, ASEAN's measures are broader in coverage.
- The ASEAN Trade Repository, ASEAN Single Window and ASEAN Customs Transit System will benefit from a commitment by ASEAN member states to implement similar measures in the WTO Trade Facilitation Agreement.
- ASEAN member states can utilize the assistance and support of the WTO Trade Facilitation Agreement in the implementation of their ASEAN commitments.

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INTRODUCTION

Trade facilitation seeks to simplify and streamline procedures to allow for an easier flow of trade across borders.¹ Within this broad understanding, it can in turn be defined according to different sets of policies affecting trade processes and the cost of trade.² It can be narrowly defined as the improving of cross-border administrative measures or more broadly to include behind-the-border measures such as infrastructure, institutional transparency, good governance, and domestic regulations. All these measures affect trade costs and with it the trade performance of a country.

The World Trade Organization (WTO)'s Trade Facilitation Agreement (TFA) was concluded at the 2013 Bali Ministerial Conference and entered into force on 22 February 2017. It is a landmark for being the first multilateral trade agreement to be reached since the Uruguay Round.³ Besides, it has the potential to improve trade facilitation measures in all the 164 signatories. Meanwhile, the Association of South-East Asian Nations (ASEAN) Trade Facilitation Framework (ATFF) focuses on existing ASEAN commitments and instruments relating to trade facilitation.

This paper compares the trade facilitation measures of the WTO and of ASEAN, whose member states are all also WTO members.

WTO'S TRADE FACILITATION AGREEMENT (TFA)

WTO's TFA has three special features. First, it contains a mix of binding and non-binding commitments.⁴ The latter can be seen in the use of words such as "endeavour to apply" or "to provide to the extent possible" in the provisions of the agreement. Second, the commitments of developing and least-developed countries are linked to their capacity to implement the TFA. Finally, the Agreement includes the WTO Trade Facilitation Agreement Facility which seeks to develop the capacity in various countries to meet their commitments.

The agreement itself has three sections: section 1 contains the core provisions while the second section covers special and differential treatment (S&D) for developing-country and

¹ OECD (undated), "Trade facilitation". (<http://www.oecd.org/trade/facilitation/>; accessed on 1 April 2017).

² Shepherd, B. and Wilson, J.S. (2008), "Trade Facilitation in ASEAN Member Countries: Measuring Progress and Assessing Priorities", *World Bank Policy Research Working Paper WPS4615*, Washington, D.C.: The World Bank.

³ The Uruguay Round (UR) was the eighth round of multilateral trade negotiations conducted under the General Agreement on Tariffs and Trade (GATT), from 1986 to 1994. The Round yielded the first set of multilateral trade agreements, housed under the World Trade Organization (WTO).

⁴ In the WTO agreements, members can take each other to the dispute settlement court for not fulfilling their binding commitments, but this does not hold for the non-binding commitments.

least-developed country (LDC) members.⁵ Institutional arrangements for administering the agreement are found in in the last section.

The Main Provisions

There are 12 articles in the core provisions as shown in Table 1. They seek to expedite the movement, release and clearance of goods by improving transparency, governance, streamlining and modernising border procedures and control techniques and enhancing the movement of goods in transit.⁶ The main provisions indicate WTO focuses only on customs and its related matters such as goods in transit.

Table 1. Provisions in Section 1 of the TFA.

Articles	Articles
1. Publication and Availability of Information	7. Release and Clearance of Goods
2. Opportunity to Comment, Information Before Entry into Force, and Consultations	8. Border Agency Cooperation
3. Advance Rulings	9. Movement of Goods Intended for Import under Customs Control
4. Procedures for Appeal or Review	10. Formalities Connected with Importation, Exportation, and Transit
5. Other Measures to Enhance Impartiality, Nondiscrimination, and Transparency	11. Freedom of Transit
6. Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation and Penalties	12. Customs Cooperation

Source: WTO (undated), "https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm"; accessed 1 May 2017).

⁵ WTO Agreements typically contain provisions for developing countries, which generally contain the special rights of these countries.

⁶ WTO (2015), "Implementing the Trade Facilitation Agreement", Chapter 4 in *Aid for Trade at a Glance 2015: Reducing Trade Costs for Inclusive, Sustainable Growth*, OECD and WTO. (https://www.wto.org/english/res_e/booksp_e/aid4trade15_chap4_e.pdf; accessed 1 May 2017).

Special and Differential Treatment (SDT)

Since implementing the TFA can be costly,⁷ it is unique among WTO agreements in that it allows members to determine their own implementation schedule, with technical and financial support being linked to the implementation of the core provisions.

Section 2 in the TFA contains the SDT provisions, of which there are nine articles. Essentially, there are three categories. Category A denotes implementation of provisions when TFA enters into force (one year after for LDCs). Category B is for provisions that are implemented after a transition period following entry into force. Category C refers to implementation after a transition period that requires assistance and support. The other articles in the SDT cover notification and implementation; extension of implementation dates for provisions in Categories B and C; implementation of Category B and C; shifting between Categories B and C; grace period for the application of the understanding on rules and procedures governing the settlement of disputes; provision of assistance and support for capacity building; and information on assistance and support for capacity-building to be submitted to the committee.

Institutional Arrangements

The WTO committee, which is responsible for the implementation of the TFA met for the first time in May 2017.⁸ Since it is still working out the procedures for sharing information and best practices, its effectiveness has yet to be tested. The committee will review the operation and implementation of the TFA after four years,⁹ which may be too long a duration for effective monitoring.

Summary of Notice of Implementation

Table 2 below provides a summary of notice of implementation¹⁰ from the ten AMS. It corresponds to the stages of development of the countries, with Singapore having 100 per cent of measures that will be fully implemented, while Cambodia and Myanmar have not fully or partially notified of a single measure. Indonesia has not yet ratified the agreement at the time of writing, although it has provided notice of the measures that it will be implementing.

⁷ Hoekman, Bernard, (2014), “The WTO Trade Facilitation Agreement: Milestone, Mirage, or Mistake”? (<https://www.sais-jhu.edu/sites/default/files/Hoekman.pdf>; accessed 1 May 2017).

⁸ See <http://customstrade.asia/2017/05/17/wto-committee-on-trade-facilitation-meets-for-first-time/> Accessed 31 May 2017.

⁹ Ibid.

¹⁰ All member countries have to give notice to the WTO of the measures that they will be implementing. There are altogether 77 technical measures, which are distributed unevenly over the 12 core articles.

Table 2. Summary of Notice for Implementation, as at May 2017.

Country	Percentage of Measures that will be fully implemented
Brunei	86
Cambodia	0 (ratified but has not notified measures for implementation yet)
Indonesia*	9
Laos	36
Malaysia	94
Myanmar**	0 (ratified but has not notified measures for implementation yet)
Philippines	78
Singapore	100
Thailand	83
Vietnam	33

Note: *Indonesia has not yet ratified the TFA, as at 1 May 2017

Source: PwC 2017[a]¹¹; ** Country data extracted from WTO undated [a] at <https://www.tfadatabase.org/members>

ASEAN TRADE FACILITATION MEASURES

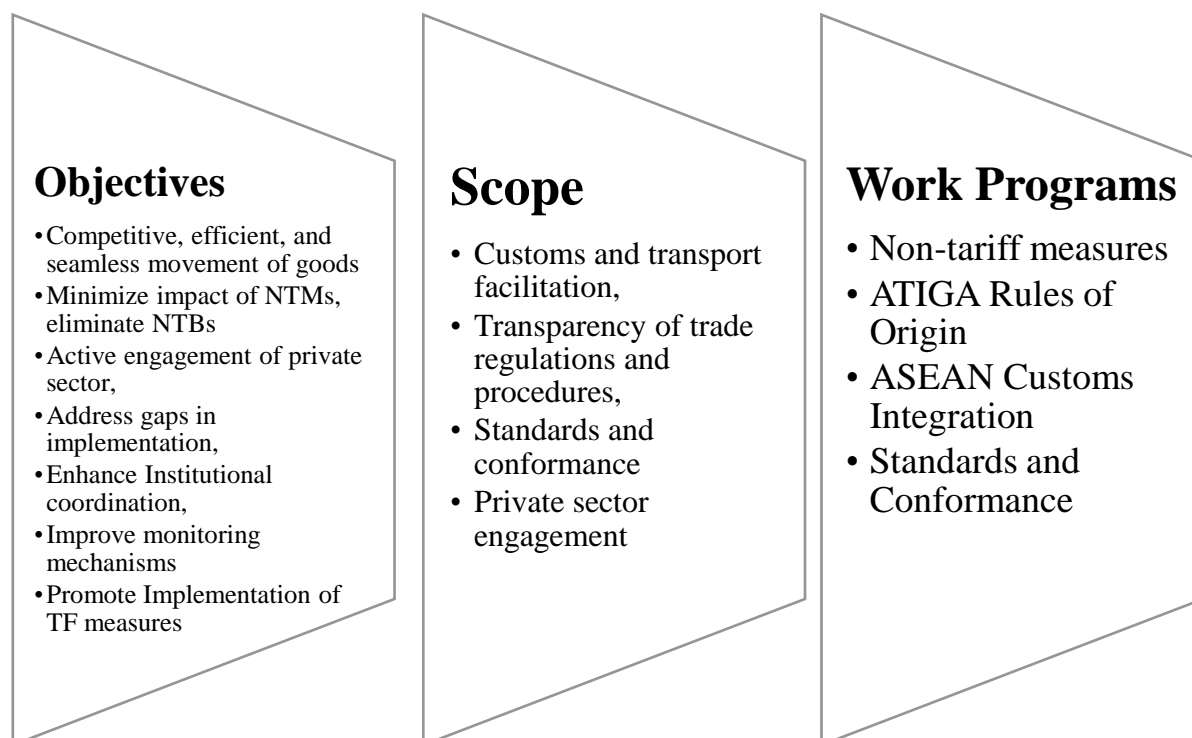
The overarching economic integration objective for ASEAN member states is the ASEAN Economic Community, which is part of the larger ASEAN Community. The new 2025 Blueprint incorporates and carries forward the work of the AEC Blueprint 2015. The Consolidated Strategic Action Plan (CSAP) complements the AEC 2025 Blueprint by listing the key action lines that will be implemented in pursuit of ASEAN economic integration from 2016 to 2025.

The ASEAN Trade Facilitation Framework (ATFF) was adopted in 2016, with the aim at consolidating ASEAN's trade facilitation obligations and commitments in various ASEAN documents such as the *ASEAN Vision 2025: Forging Ahead Together*; *ASEAN Economic Blueprint 2025*; *ASEAN Trade in Goods Agreement 2010*.

Figure 1 shows that ASEAN's Trade Facilitation measures have a much broader coverage than the WTO TFA as it goes beyond customs procedures and processes, for example to include standards and conformance. Since the planned Strategic Action Plan for Trade Facilitation (2017-2025) is not publicly available at the time of writing this article, the WTO FTA and its implementation will be compared to key action lines listed in the CSAP for the implementation of trade facilitation.

¹¹ PwC, (2017 [a]), "Summary of Asia Pacific countries' implementation of the WTO Trade Facilitation Agreement." (<http://www.pwccustoms.com/en/recent-developments/assets/sg-wto-trade-facilitation-agreement.pdf>; accessed 1 May 2017).

Figure 1: Summary of Objectives, Scope and Work Programmes in ASEAN Trade Facilitation Framework (ATFF), adopted in 2016.



Source: Author's Summary from ATFF (<http://asean.org/storage/2016/08/ASEAN-Trade-Facilitation-Framework.pdf>)

COMPARING TRADE FACILITATION MEASURES IN CUSTOMS IN WTO AND ASEAN

The issue of trade facilitation received considerable attention in the CSAP and its coverage spans a total of four pages with 31 key action lines.¹² ASEAN's trade facilitation measures broadly cover eight trade-related areas,¹³ while the WTO TFA covers mainly customs. The comparison will therefore be restricted to areas covered by both WTO and ASEAN. These are the provision of information, single window, and goods in transit.

¹² PwC, (2017 [b]), "We have a plan! Will the Consolidated Strategic Action Plan Deliver on ASEAN's 2025 Promise?", *Trade Intelligence Asia Pacific*, February/March 2017, (<https://www.pwc.com/us/en/tax-services/publications/insights/trade-intelligence-asia-pacific-february-and-march.html>; accessed 1 May 2017).

¹³ The eight areas are (i) tariff liberalisation; (ii) elimination of Non-Tariff Measures and Non-Tariff Barriers (NTMs and NTBs); (iii) customs integration, (iv) ASEAN Single Window, (v) Self-Certification System, (vi) enhancement of Common Effective Preferential Tariff (CEPT) Rules of Origin Requirements (Operational Certification Procedure's), (vii) harmonisation of standards and conformance procedures, and (x) engagement with private sector.

WTO's requirement of publication and availability of information and ASEAN's Trade Facilitation Platforms

Although the CSAP calls for accelerating and deepening trade facilitation measures, the language used indicates that the points agreed to, are of both a binding and a best-endeavour nature. For example, the first action line in CSAP calling for enhancing the ASEAN Trade in Goods (ATIGA) Facilitation Measures uses words like “support”, “explore” and “strengthen”, which do not carry the same weight as the next action line, which calls for operationalising ASEAN’s trade facilitation platforms.¹⁴ These include the ASEAN Trade Repository (ATR); ASEAN Single Window (ASW); Tariff Finder; and ASEAN Solution for Investment, Services and Trade (ASSIST). I exclude the Tariff Finder and ASSIST in the following analysis as tariff rates are also available from WTO’s Tariff Analysis Online and Tariff Download Facility¹⁵ while ASSIST is non-binding.¹⁶

The ASEAN Trade Repository (ATR), contains trade-related information on each member country. It links via the web the National Trade Repositories in each country, which are domestic portals. The ASEAN Secretariat is responsible for the ATR. The ATR can contribute to lower business costs and extend regulatory transparency and greater certainty in business dealings free of charge to the public at large.

Since the ATR aims to provide trade-related information in each AMS, it should enable AMS to fulfill article 1.1 and 1.2 in the WTO TFA, which deals with the publication and availability of information on customs measures related to import and export, including the online provision of this information. Yet these two WTO articles have only received notice for category A implementation for five ASEAN members (Table 3). The WTO TFA commitments cast some doubt on whether all of the ASEAN countries can truly commit to all the promises made in the CSAP.

¹⁴ ASEAN Secretariat, (2017), “ASEAN Economic Community 2025 Consolidated Strategic Action Plan”, (<http://asean.org/storage/2017/02/Consolidated-Strategic-Action-Plan.pdf> ; accessed 1 May 2017).

¹⁵ World Trade Organization (WTO), (undated [b]), “Get Tariff Data”, (https://www.wto.org/english/tratop_e/tariffs_e/tariff_data_e.htm; accessed 1 May 2017).

¹⁶ ASEAN Solutions for Investments, Services and Trade (ASSIST), (undated). (<http://assist.asean.org/>; accessed 1 May 2017).

Table 3. Notice for implementation of specific articles for AMS, as at 1 May 2017.

Article	Brunei	Cambodia	Laos	Indonesia	Malaysia	Myanmar*	Philippines	Singapore	Thailand	Vietnam
1.1 (Publication)	A	None	A	None	A	None	A	A	A	None
1.2 (Information available through the Internet)	B	None	A	None	A	None	A	A	A	None
10.4 (Single Window)	None	None	None	None	A	None	None	A	A	None
11 (Transit)	A	None	None	None	B	None	A	A	B	B

Notes: A to be implemented upon entry into force; B – to be implemented after 60 days’ transitional period

Source: PwC 2017[a]; * Country data extracted from WTO undated [a] at <https://www.tfadatabase.org/members>

Single Window

Article 10.4 of WTO TFA, which is on the creating of a single window, is non-binding. Technical measures considered by developing and least-developed countries to have the highest priority for technical assistance and capacity building are: single window, border agency coordination, authorised operator, risk management and advance rulings.¹⁷ Why is this so? Requests for technical assistance are not necessarily based on how challenging a matter is. Rather, a measure may be considered to have high priority “because it is already part of a country’s modernization programme and/or is in high demand”.¹⁸

In the ASEAN CSAP, the action plan for Customs calls for full implementation of the ASEAN Single Window (ASW).¹⁹ The ASW is a regional initiative that connects and integrates the National Single Window (NWS) of ASEAN Member States. Its objective is to expedite cargo clearance and promote ASEAN economic integration by enabling the electronic exchange of border documents.

Indonesia, Malaysia, Singapore, Thailand and Vietnam are now using the ASW to exchange electronic certificates of origin.²⁰ Once the Protocol for the Legal Framework to implement the ASEAN Single Window is fully ratified, the electronic certificates will be used for assigning preferential tariff rates under ATIGA and further expedite the customs clearance of goods between the participating AMS in the ASW. Other AMS are at different stages of preparation and will join when ready.

Freedom of Transit

Article 11 in the WTO TFA introduces transit measures that have minimum documentation requirements and formalities, and the requirements for transit guarantees.

The ASEAN Framework Agreement on the Facilitation of Goods in Transit (AFAFGIT) signed on 16 December 1998, and its Technical Appendix establish the legal and technical provisions for the operation of ASEAN Customs Transit System (ACTS). ACTS is a harmonized and fully computerized customs transit management system for controlling the movement of goods through the AMS. It is based on 5 key elements:²¹

- Fully computerized;
- System open to all authorized traders;
- Risk Profiling System to exempt reliable traders from a range of standard requirements
- One guarantee valid in all countries to cover the goods throughout the entire journey
- Single regional customs document for transit

¹⁷ Op. cit.

¹⁸ Ibid., page 115.

¹⁹ The Agreement to establish and implement the ASW was signed in 2005.

²⁰ See asw.asean.org

²¹ See ACTS at <https://acts.asean.org/acts>; accessed 1 May 2017.

An ACTS Pilot project was tested in Malaysia, Singapore and Thailand in late 2016 and early 2017. ASEAN Regional Integration Support from the EU 2013-2016 (ARISE) has produced ACTS procedural manuals for Customs, Transport and the private sector, and have provided procedural training for Government and private sector stakeholders in these sectors. The system will be operationalised in the pilot countries at a later phase once the legal environment is in place. It will be later extended to other AMS, depending on their readiness and demand.

However, in the WTO TFA, only three AMS have notified article 11 for category A implementation and three others for category B implementation while four other AMS have not made any notification on the implementation of this article.

CONCLUSION

Over the years, ASEAN has made repeated calls to reduce trade costs through trade facilitation measures. It has an ambitious trade facilitation plan that covers a broader scope than the WTO TFA. But even when we narrow matters down to just three measures—namely implementation of ATR, single window, and ACTS - we see that there could be considerable savings on compliance costs on the part of traders. However, the implementation of the ASEAN initiatives to date is uneven due to its “flexibilities in implementation” approach, which is adopted because it has to consider the different state of readiness and capabilities in each AMS.

The three cases highlighted in this paper indicate that trade facilitation measures in ASEAN can assist AMS to comply with their WTO trade facilitation commitments. Likewise, the implementation of WTO commitments, even when non-binding, can help AMS fulfill their commitments in ASEAN. There are obvious synergies between WTO TFA and ASEAN trade facilitation plans and AMS need to commit to and implement both for the synergies to work well. Technical and financial support through capacity building is essential for full implementation of ASEAN’s initiatives to be possible, especially for the less developed AMS.

The three cases explored indicate that the AMS can utilize the WTO TFA to assist in the implementation of their ASEAN commitments, thereby fulfilling WTO and ASEAN’s common objective of lowering trade costs.

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