



GUIDING PRINCIPLES

for technical assistance, capacity building and special and differential treatment in the implementation of a WTO trade facilitation agreement

Commitments

1. All WTO Members should commit to the same set of measures with implementation tailored to individual countries' circumstances.
2. WTO Members, at the time of entry into force of the agreement, should be prepared at least to bind existing levels of trade facilitation.

Special and Differential Treatment

3. WTO Members should stipulate a time period within which they would be bound to implement specific commitments / measures.

Technical Assistance and Capacity Building

4. Commitments should from the outset be linked to technical assistance (TA) and funds for capacity building (CB) where this is necessary to enable effective implementation. Commitments should not be enforceable if adequate TACB is not provided.
5. Commitments should be contained in individual Member implementation plans, drawn up on the basis of a Member's needs assessment and working with donors as appropriate.
6. A simple overview of donor assistance should be maintained to enable WTO Members to identify any gaps in Members' scheduled needs for TACB are covered and whether there is any duplication.
7. Capacity acquisition should be determined by the Member requesting TACB in partnership with its donor(s).

Monitoring

8. An early warning system should be established within the WTO to allow advance notice of any implementation delay.
9. A WTO Committee on Trade Facilitation should be established to provide a forum for guidance on implementation and monitoring implementation.

Dispute Settlement

10. Dispute settlement should be a last resort.

Introduction

This paper sets out some guiding principles developed by the Boksburg Group on the issues of technical assistance, capacity building and special and differential treatment. These issues have always been central to the Boksburg Group's thinking related to a Trade Facilitation Agreement.

Trade facilitation is recognized as being good for all countries, especially developing countries. A more efficient border process not only benefits developing countries but extends the global marketplace to the benefit of all. Commitments and measures accepted as part of a WTO trade facilitation agreement need to be implemented in a transparent, predictable and uniform manner. This will create challenges for developing countries (DC's) and least developed countries (LDC's).

A WTO agreement will necessarily build on existing obligations in GATT Articles V, VIII and X, to which all Members are already committed.

The Boksburg Group believes that the guiding principles below on how to address these issues in a trade facilitation agreement would allow developing economies to implement progressively a comprehensive package of trade facilitation measures, within a flexible framework of rules, at a pace that they can accommodate.

- **Negotiating capacity**

It is essential that DC and LDC Members are enabled to negotiate effectively during the WTO Trade Facilitation negotiations as this is an issue of vital importance for improvement in their economic performance. The negotiation process is stretching the capability of some of the DC's and LDC's involved. Support and technical assistance is required without delay for some countries during the negotiation process to enable them to understand the implications and benefits of their potential commitments. This support should also be available to sponsor capital negotiators' participation in the WTO Geneva negotiating process (see principle 8 below).

Funds already identified by developed countries / donors to support trade facilitation technical assistance should be made available without delay to DC's and LDC's with specific pre-implementation needs.

Ten guiding principles

Commitments

1. All WTO Members should commit to the same set of measures with implementation tailored to individual countries' circumstances.

- The aim should be to create an agreement that establishes higher border management standards for all. These higher standards will give benefit to all through lower costs and improved predictability for both imports and exports.
- To ensure all Members benefit from a trade facilitation agreement, there is a strong case for all countries to implement a common set of trade facilitation measures. Setting a benchmark based on a minimum set of measures could discriminate against those DC's and LDC's with the most to undertake to achieve trade facilitation.
- WTO Members are at different stages of trade facilitation. Implementation of measures should be tailored to individual countries' circumstances (see also principles 2-4 below), based as necessary on needs assessments.
- Whilst the costs associated with implementation and the time it takes to implement a measure should be addressed on an individual country basis, the standard of trade facilitation / border management achieved for the agreed commitments / measures should be the same for all WTO Members.
- Commitments should be specified before an agreement is concluded. An agreement should only contain measures that will be of substantive benefit to countries conducting international trade and should not contain unnecessary or unworkable measures.

2. WTO Members, at the time of entry into force of the agreement, should be prepared at least to bind existing levels of trade facilitation.

- The benefits that a trade facilitation agreement will confer on WTO Members will depend on all members improving their existing and sustainable level of trade facilitation.
- Any such 'standstill' commitment should not endorse or condone existing border measures where these are not good practice.

Special and Differential Treatment

3. WTO Members should stipulate a time period within which they would be bound to implement specific commitments / measures.

- Individual commitments should be able to be implemented progressively.
- The time to implement particular commitments will vary depending on a country's circumstances. To facilitate monitoring by Members some standardization and simplification of implementation times for individual commitments may be helpful, eg immediate, within 2 years, 5 years, 10 years, 15 years of entry into force or beyond. However, LDCs' commitments would be in accordance with paragraph 3 of Annex D.
- It should be recognized that the sooner it takes to implement measures, the sooner it will be when a Member starts to reap the benefits. These suggested time milestones are not intended to create a disincentive to early implementation.
- S&DT is to allow DC's and LDC's to gain benefits as quickly as their capability allows by improving their trade facilitation measures.

Technical Assistance and Capacity Building

4. Commitments should from the outset be linked to technical assistance (TA) and funds for capacity building (CB) where this is necessary to enable effective implementation. Commitments should not be enforceable if adequate TACB is not provided.

- All DC's and LDC's should be given the option of being able to implement progressively a comprehensive package of trade facilitation measures, within a flexible framework of rules, at a pace that they can accommodate given an appropriate level of technical assistance and capacity building.
- Each Member seeking technical assistance and capacity building must undertake a needs assessment.
- If adequate TACB is not made available to DC's or LDC's from donor countries or organizations in relation to any individual Member or commitment, any such commitment shall not be enforceable until such TACB is provided and implementation capacity acquired (see principle 10 below).
- This would provide an essential safety net for DC's or LDC's not in a position to implement commitments through no fault of their own.

5. Commitments should be contained in individual Member implementation plans, drawn up on the basis of a Member's needs assessment and working with donors as appropriate.

- Needs assessments should preferably be completed before an agreement is concluded and in any event before its entry into force.
- Implementation plans should cover all the measures required to be implemented and should be submitted to the WTO before entry into force of the agreement. They should form part of the agreement and should set out those commitments to be implemented immediately, those where time is needed, and those where TACB is needed.
- There should in principle be a period of 1 to 2 years between conclusion of an agreement and its entry into force, though this may be affected by timings of individual countries' implementation plans and completion of needs assessments.
- The plans should recognize the benefits of achieving similar trade facilitation standards within a region and, where appropriate, TACB should be considered on a regional basis.

6. A simple overview of donor assistance should be maintained to enable WTO Members to identify any gaps in Members' scheduled needs for TACB are covered and whether there is any duplication.

- There should be a process for helping DCs and LDCs to know the availability of TACB and how to access it.
- A system of notification of TACB arrangements to the WTO should be introduced for transparency purposes (see also principle 7). Any such notification system should be as simple as possible and avoid overly bureaucratic procedures.
- Donor countries and organizations should make funds available to DC's and LDC's who make requests for TACB in order to be able to (i) negotiate effectively (including funding for participation of capital-based officials), (ii) undertake needs assessments and (iii) implement measures.
- TACB should not be conditional upon objectives outside the scope of a WTO trade facilitation agreement.

7. Capacity acquisition should be determined by the Member requesting TACB in partnership with its donor(s).

- TACB arrangements should include performance indicators and provide for how capacity will be assessed by the parties.
- Once a bilateral agreement has been reached it should be notified to the WTO by the recipient Member.
- Acquisition of capacity should be determined by the Member requesting TACB in partnership with its donor(s) as part of any bilateral capacity building arrangements. It should not be a matter for the WTO unless there is disagreement between the parties.

Monitoring

8. An early warning system should be established within the WTO to allow advance notice of any implementation delay.

- A process should be established to encourage Members to give other WTO Members adequate notice of any delay in any aspect of their implementation plan.

9. A WTO Committee on Trade Facilitation should be established to provide a forum for guidance and monitoring implementation.

- A Committee on Trade Facilitation should include:
 - ensuring transparency;
 - acting as a source of guidance in the implementation of an agreement;
 - receiving and monitoring Members' implementation plans and TACB requirements;
 - monitoring donor activities and the provision of TACB through notifications;
 - providing a peer review forum for the progress of implementation plans and monitoring implementation capability;
 - receiving notifications of capacity acquisition;
 - receiving requests for assistance in obtaining TACB where this has not been provided through bilateral arrangements, and use its good offices to intermeditate where necessary;
 - acting as an early warning forum for implementation delays.

Dispute Settlement

10. Dispute settlement should be a last resort.

- Dispute settlement must be a process of last resort related to this particular agreement. All possible steps must have been taken before any formal dispute settlement process is initiated.
- No dispute settlement process should be initiated if a Member has not received adequate TACB or acquired the capacity to implement its commitments in a particular area(s). Without adequate funds or technical assistance being provided such commitments under the agreement should be temporarily suspended (see principle 4 above).