

## WTO AGREEMENT ON TRADE FACILITATION IN THE SYSTEM OF INTERNATIONAL LEGAL DOCUMENTS

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**Annotation:** This article highlights the international legal aspects of the WTO trade facilitation agreement, characteristic, legal status, dispute resolution mechanism. The author also touched on the legislation and the reforms implemented by Uzbekistan regarding the implementation of this agreement.

**Keywords:** WTO trade facilitation agreement, Revised Kyoto Convention, SAFE Framework standards, World Customs Organization.

As a full-fledged subject of international law, the Republic of Uzbekistan today develops cooperation with other subjects of the international community through bilateral and multilateral agreements. Although the term “agreement,” like an international treaty, generally refers to all types of international arrangements, the term is also used to denote a specific act. In the context of specific acts, the term “agreement” is used to refer to internationally agreed legal acts concerning current issues, economic, financial, technical, and cultural relations between states. Indeed, in most cases, agreements are, by their nature, considered to fall under the broader category of treaties. Today, in the law of international treaties, the scope of agreements has grown significantly larger than the number of international treaties. The necessity to address specific issues and provide clear regulation has elevated the importance of agreements in international law.

According to sources, WTO members approved negotiations on the Trade Facilitation Agreement (TFA) at the Bali Ministerial Conference in 2013. It also included provisions for accelerating the movement of goods across borders, measures for effective cooperation between customs and other border authorities on trade facilitation and compliance with customs requirements. The TFA contains twelve articles on trade facilitation and customs cooperation in Section I, ten articles on special and differential treatment for developing and least-developed countries in Section II, and finally, two articles on institutional mechanisms and final provisions in Section III.

Amendments to the TFA, as with other WTO agreements, can be made through a process involving proposals, negotiations, and adoption by WTO members.

Developing countries that are parties to the TFA demonstrate progressive commitments regarding Categories A, B, and C. Category A standards are simply “ready” for implementation

rules without additional time or resources. This category is generally preferred by developed countries. For Category B, no single country is specified for notification of final dates, whereas for Category C, three countries are missing. While nearly a third of developing countries have fulfilled their obligations under the agreement without even requesting Technical Assistance or Capacity Building (TACB), more than half have not followed suit. This indicates that for some countries, TACB is not only a crucial element for progress in trade facilitation but also that countries that requested assistance were able, in 86.9% of cases, to identify the type of TACB required by assessing the challenges and potential improvements TACB could provide for implementing the TFA.

The set of competencies, tools, and measures for implementing agreements within the WTO and WCO frameworks varies significantly. For example, the WTO lacks enforcement tools (its work is based on voluntary compliance with agreements and recommendations) and dispute resolution, while within the WTO, the dispute settlement mechanism is the primary instrument for ensuring compliance with agreements. Full implementation of the WTO Trade Facilitation Agreement (TFA) depends on simultaneously strengthening (i) regulatory capacity—the quality, consistency, and enforceability of domestic legal norms—and (ii) institutional capacity—the organizational structure, procedural rules, and human resources that ensure these norms are enforced.

WCO capacity-building programs can serve as examples of projects aimed at strengthening customs capacity, including:

- Anti-Corruption and Integrity Promotion Program (A-CIP)
- WCO-EU Program supporting Africa under the Coordinated System
- Trade Facilitation Acceleration – HMRC-WCO-UNCTAD Program
- SECO Global WCO Trade Facilitation Program (GTFP)
- Trade Facilitation Program for Middle-Income Countries (TFP-MICs)
- West Africa Security Project (WASP) – Gender Equality and Diversity Component (GED)
- World Customs Organization and Swedish International Development Cooperation Agency
- WCO-ECA Project
- WCO-GIZ Program for Gambia
- Joint WTO/Japanese International Cooperation Agency (JICA) Project, among others.

The TFA provides additional flexibilities for implementation, such as the Early Warning Mechanism (allowing a request for an extension in case of difficulties implementing Category B/C provisions; the extension is automatic if the requested additional time does not exceed 18 months), Expert Groups (groups that study problems and provide recommendations when extensions are not granted and there is no implementation capacity), transitions between Categories A/B/C, and grace periods (developing countries are exempt from the Dispute

Settlement Agreement for 2 years under Category A provisions). While it could be argued that these mechanisms might further delay implementation, they can also be part of the solution for TFA implementation.

Amendments to the TFA, like other WTO agreements, will follow the established procedures for amending WTO agreements. Amendments to WTO agreements are generally made based on consensus among members, although specific procedures are outlined in the WTO agreements. At the same time, the TFA provides developing countries with certain flexibilities in implementing the agreement, particularly regarding special and differential treatment.

International economic organizations, especially the World Trade Organization (WTO), play a crucial role in mitigating tensions between free trade and protectionism. They help regulate global trade relations, work to remove barriers, and promote trade liberalization to support sustainable economic growth. The competencies, tools, and mechanisms used to implement agreements within the WTO and WCO frameworks vary significantly. For example, the WCO operates primarily on voluntary compliance and recommendations without official enforcement or dispute resolution mechanisms. In contrast, the WTO relies heavily on its dispute settlement system as the main means to ensure compliance with agreements. Notably, in 2021 alone, the WTO registered eight trade disputes for various reasons.

N. Gafurova and D. Sattarov note that it is necessary to consider specific mechanisms for resolving international economic disputes used by international economic organizations. The most widely discussed method in international law science is the dispute settlement mechanism employed within the WTO framework. Meanwhile, M. Mahamatov emphasizes that the purpose of the WTO dispute settlement mechanism is to ensure the practical resolution of disputes.

Disputes arising within the framework of the WTO TFA (Trade Facilitation Agreement) are resolved using the WTO's dispute settlement mechanism and documents. The General Council functions as the Dispute Settlement Body (DSB) in resolving conflicts between WTO member states. These disputes can concern any agreement included in the Final Act of the Uruguay Round that falls under the "Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)." The DSB is authorized to establish dispute settlement panels, refer cases to arbitration, adopt reports from panels, the Appellate Body, and arbitrators, monitor compliance with their rulings and recommendations, and, if necessary, authorize the suspension of trade concessions when participants fail to meet their obligations.

Moreover, the Appellate Body was established in 1995 pursuant to Article 17 of the DSU. This permanent body, consisting of seven members, considers appeals submitted by WTO members against the findings of dispute settlement panels. The Appellate Body has the authority to uphold, modify, or reverse the legal findings and interpretations of panels. Its reports are officially adopted by the Dispute Settlement Body unless all members unanimously decide to reject them. The Appellate Body is located in Geneva.

There are three stages in dispute resolution, which consist of:

1. Holding consultations.

2. If consultations fail, an arbitration panel will examine whether a complaint has been filed by any party.
3. If the dispute is not resolved through stages 1 and 2, it is considered by the Appellate Body.

The WTO Trade Facilitation Agreement is linked to various international treaties, such as the Revised Kyoto Convention (RKC) and the SAFE Framework Standards. The similarities of standards between these legal documents have been studied by scholars such as Wolfgang and Kafeero, A. Grainger, M. Shermamatova, and others. For example, Wolfgang and Kafeero compiled a table comparing the first 12 articles of the WTO TFA with the provisions of the RKC. Grainger, in his article (particularly in Figure 2), shows that GATT Articles V, VII, VIII, X, the RKC, the SAFE Framework Standards, Harmonized Commodity Description and Coding Systems, and the WTO coding system are important instruments for facilitating trade.

M. Shermamatova also prepared a comparative table of corresponding provisions of these three legal documents: the WTO TFA, the RKC, and the SAFE Framework Standards. For instance, WTO TFA Standard 1.1, “Publication and Availability of Information,” corresponds to RKC Article 9.1: “The customs administration shall ensure unrestricted access by any interested party to all general information relating to customs legislation.” Further correspondences can be observed among other provisions of these documents. TFA Standard 2.1, “Opportunity to provide information, comments, and consultations before the entry into force,” aligns with RKC Standard 9.2: “Where it is necessary to amend available information due to changes in customs legislation, administrative measures, or requirements, the customs administration shall provide interested parties with unrestricted access to the relevant updated information before the entry into force of such updates (except where prior disclosure is not feasible).”

While TFA Standard 3 regulates matters related to “Advance Rulings,” the RKC also addresses this in Standard 9.9: “At the request of an interested party, the customs administration issues binding rulings provided it has all information it deems necessary.” This RKC Standard 9.9 can be linked to TFA Standard 4, “Procedures for Review and Appeal of Decisions.” “Other measures to enhance impartiality, non-discrimination, and transparency” are established in TFA Standard 5, and as a risk management norm, the RKC standards also support non-discrimination: 6.3 – “In conducting customs controls, the customs administration uses a risk management system,” 6.4 – “Risk management analysis is used to determine persons and goods subject to customs inspection, including vehicles, and the scope of such inspection,” 6.5 – “Customs applies compliance assessment strategies to support the risk management system.”

TFA Standard 6.2 regulates “Customs duties and charges levied on goods under import and export regimes,” which is similarly covered in RKC Standards 3.2, 9.7, 19, 9, 10. “Penalty procedures” are addressed in TFA Standard 6.3, while RKC Standards 3.39 and 3.43 regulate offences. TFA Standard 7, “Customs Clearance of Goods,” reflects RKC provisions 3.18, 3.21, 3.25. Standard 7.2, “Electronic Payments,” corresponds to RKC Chapter 7. TFA 7.3, “Classification and Identification of Customs Duties and Taxes,” aligns with RKC Standards 3.13, 3.14, 3.17, 3.40, 5.1, 5.6, 5.7. Furthermore, TFA Standard 7.4 on risk management reflects RKC Standards 6.3, 6.4, 6.5.

Additionally, customs instruments such as customs audits (TFA 7.5 and RKC 6.6), authorized economic operators (TFA 7.7 and RKC 3.32), expediting shipments (TFA 7.8 and RKC 4.13),

perishable goods (TFA 7.9 and RKC 3.34), border agency cooperation (TFA 8, RKC 3.35, General Annexes 1.3, 1.4, 1.5, and SAFE Framework Standard 1), customs brokers (TFA 10.6 and RKC 3.6, 3.7), general customs procedures and unified documentation requirements (TFA 10.7, RKC Chapter 3 and SAFE Framework Standard 7), defective goods (TFA 10.8, RKC Special Annex A, and SAFE Framework Standard 6), customs regimes such as temporary importation and processing in and out of customs territory (TFA 10.9 and RKC Special Annexes F and G), customs cooperation (TFA 12 and RKC 6.7, 7.4), and others, are aligned across these frameworks.

Uzbekistan submitted its application to join the WTO as a full member in December 1994, and a Working Party on the Accession of Uzbekistan to the WTO was established. The Working Party met three times (in 2002, 2004, and 2005), and several multilateral and bilateral meetings were conducted. During this period, Uzbekistan carried out significant work to align its national legislation with the rules of the international trade system. Notably, the Revised Customs and Tax Codes of Uzbekistan were adopted, along with laws on “Technical Regulation,” “Protective, Anti-dumping, and Countervailing Measures,” “Copyright and Related Rights,” and others. The Government of Uzbekistan adopted an Action Plan (Roadmap) for accession to the WTO, which included more than 30 measures. The new “Uzbekistan – 2030” strategy, adopted in September 2023, includes WTO accession as a priority goal.

The WTO plays a crucial role in promoting both regional and global economic integration. In the regional context, the WTO can serve as a platform for facilitating trade negotiations, resolving disputes, and promoting fair and transparent trade practices among member countries.

In addition, the following documents regarding WTO membership and trade facilitation were adopted (sorted by date):

- Resolution of the Cabinet of Ministers “On the Approval of the Composition of the Interagency Commission for Work with the World Trade Organization” No. 1040 (24.12.2018)
- Resolution of the Cabinet of Ministers “On the Approval of the Regulation on the Interagency Commission for Work with the World Trade Organization” No. 339 (28.05.2020)
- Decree of the President of the Republic of Uzbekistan “On Additional Measures to Accelerate the Process of Uzbekistan’s Accession to the World Trade Organization” No. 181 (02.06.2023)
- Presidential Decree of the Republic of Uzbekistan “On Amendments to Certain Presidential Documents on the Adaptation of the National Legislation of the Republic of Uzbekistan to the Agreements of the World Trade Organization” No. 140 (15.08.2023)
- Resolution of the Cabinet of Ministers “On Amendments to Certain Government Decisions on the Adaptation of the National Legislation of the Republic of Uzbekistan to the Agreements of the World Trade Organization” No. 407 (21.08.2023)
- Law of the Republic of Uzbekistan “On Amendments and Additions to Certain Legislative Acts of the Republic of Uzbekistan Considering the Harmonization of the National Legislation of the Republic of Uzbekistan with the Agreements of the World Trade Organization” No. 908 (15.02.2024).

Let us now examine the level of implementation of the Trade Facilitation Agreement (TFA) using the example of international customs institutions.

In accordance with the requirements of the TFA and international conventions, the following key measures have been implemented:

- From March 1, 2019, a risk management system was introduced;
- From April 29, 2019, the Institute of Authorized Economic Operators was established;
- From January 1, 2020, the automated “single window” system was implemented (covering 12 agencies and 60 types of documents);
- From January 1, 2021, customs duty rates were set at a fixed amount;
- From January 1, 2021, an automatic release system was introduced;
- From May 1, 2021, the customs audit institute was established;
- From January 1, 2022, the practice of issuing advance rulings on customs payments was introduced;
- On April 6, 2022, a new procedure for determining customs value was approved;
- From May 1, 2022, the customs clearance period was reduced from three days to one working day;
- On November 23, 2022, the national trade portal “Uz Trade Info” was launched.

Within the framework of cooperation agreements with customs services of foreign countries, real-time (online) information exchange has been organized with eight countries: Russian Federation (25.07.2017); Kazakhstan (25.09.2017); Belarus (12.01.2019); Azerbaijan (09.01.2020); Tajikistan (09.10.2020); Afghanistan (25.07.2017); Kyrgyzstan (01.01.2021); Turkmenistan (02.03.2023).

In conclusion, the WTO Trade Facilitation Agreement (TFA) is one of the most significant and modern trade agreements of this century, providing substantial support to developing and least-developed countries, allowing them to implement its provisions according to their capacities. Although Uzbekistan postponed its WTO accession for nearly three decades, recent steps toward adopting the TFA are expected to facilitate the country’s accession process. Being a legally binding agreement, the TFA obliges member states to fulfill their commitments. It further clarifies and expands key provisions of the General Agreement on Tariffs and Trade (GATT) 1994—particularly Articles V, VIII, and X—by providing clearer and more modern guidelines for trade facilitation.

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