

## Trust Fund for Trade Facilitation Negotiations Technical Note No. 1

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# Publication of trade regulations

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## Background

Publication is the act of making information available to a third person or the general public by display, distribution, or circulation. Information can be published through different means, channels and in different formats: on paper or in electronic format, in a newspaper or by placing it on a website accessible through the Internet.

Timely, accurate and easily accessible information on trade legislation, applicable fees and tariffs, and related adjudicatory mechanisms is essential for the transparency, predictability and efficiency of international commercial transactions. However, publication provisions and practices differ amongst countries.

### *Coverage of GATT Article X*

The current scope of Article X pertains to laws, regulations, judicial decisions and administrative rulings of general application. Laws and regulations are mentioned separately in the text; with laws referring to enforceable rules of general application promulgated by parliamentary or legislative bodies, and regulations referring to so-called secondary legislation adopted by the administration. Judicial decisions and administrative decisions are interpretations of the application of existing regulation by governmental agencies referring to a particular situation or case. Rulings and decisions, as opposed to regulations, relate in general to specific cases and situations and are binding only on those cases. However, some rulings may not be specifically addressed to a particular company or person and therefore be qualified as of general application. Several WTO panel and the appellate body decisions dealt with the scope of application of certain administrative rulings. Further to acts of general application, bilateral or multilateral agreements shall also be published.

### *Publication of acts of general application*

In most countries, the publication of laws is part of the constitutionally mandated legislative procedure and the publication by the signatory is a necessary condition to become a law. Through the publication the existence of the law is rendered public and the published text will be deemed authentic and admissible in national courts. Most countries use a government publication – journal, bulletin, gazette are synonyms in this context, as the official channel of publication of the law by date of vote or entry into force. Such gazettes are printed regularly and distributed through individual or institutional subscription and/or by single issue sales in public kiosks. Many countries have also developed an electronic version of their bulletin and provide additional functions of access to codified laws on dedicated websites.

Publication practice and obligation for secondary legislation and decisions by the judiciary vary across countries. Often administrative rulings and judicial decisions are not published in a large scope but are displayed to the public at specific locations or circulation internally if they are considered to be of general application. Further to the

display, such rulings and decisions may be available to interested parties upon request at the registry.

Laws can furthermore be codified by topical subject area and published in consolidated form – either in special editions of the government gazette, government departments or ministerial printings or through external legal publishing house.

## **Issues to consider**

### *Traders' needs*

Traders need information to carry out the importation and exportation transactions. The required information includes the existing regulatory framework, applied procedures, operational practices, and intelligence information on the quality of services delivered for the importation and exportation.

However, traders need the information to be timely, accurate and readable. Paper-based publications which appear with delay or are not available to a large public are of limited use to traders, in particular SMEs. Legislative texts are important in case of dispute and appeal. Nevertheless, practical information – such as opening hours of border crossings, applicable fees and charges and tariff schedules, and descriptive outlines of the procedures and formalities – have a greater value for the operational practices.

The publication of trade-related information should therefore not be addressed in an isolated and ad hoc manner by each agency. Rather, it should be addressed as a comprehensive strategic objective of trade facilitation. Guiding principles of a trade information management should be readability with regards to the content and accessibility based on a combination of different channels and means of publication, including the Internet. Taking such an overall approach to trade related information management and incorporating requirements of traders improves the government services and ensures a more efficient management of the information.

## **Implementation Issues**

Four elements need to be taken into consideration for trade-related information management: Governance, Delivery, Data/Information, and Storage.

The governance element includes the role and responsibilities of the different agencies, the legal framework, security measures and rules, as well as a monitoring mechanism to control the quality. Delivery regroups aspects of maintenance of information, such as decision of means and channels, as well as a selection of a technology to support the delivery process. Data and information include the collection, analysis and production of information, the development and adoption of templates for the publication, as well as the structure of the data and information provided. Storage is the final element of information management and covers questions related to digitalised or paper archives and centralised or individual storage system.

These elements can be addressed in a step-by-step approach, starting with an initial decision over departmental responsibility to conduct the information management project. In a next step, the information requirement and offer is analysed, taking into account actual information needs of traders. This analysis leads to the definition of the information to be provided. This information may need to be produce or rearranged. The production of the information to be provided and the testing of its user-friendliness and readability is, therefore, the next step. At the same time, the legal framework has to

be revised to ensure legal validity and authenticity of the information provided. A final step is the definition and organization of the information delivery. During this phase, aspects of the means and channels of the publication will be defined and, if necessary, an information technology selected to assist in the maintenance, storage and publication of the information. Further, an organizational framework to oversee the maintenance of the information and institutional responsibilities, as well as policies or rules, including security rules, will have to be adopted.

## References and tools available

### *The Global Facilitation Partnership for Transportation and Trade (GFP)*

The Global Facilitation Partnership for Transportation and Trade (GFP) brings together the world's leading organizations and practitioners in trade and transport facilitation. It creates an open information and exchange platform on major new developments and all aspects of trade and transport facilitation. See [www.gfptt.org](http://www.gfptt.org).

### *Further UNCTAD Technical Notes*

Further Technical Notes are available via <http://www.unctad.org/technicalnotes>.

See in particular:

- Technical Note No. 6 (Single national enquiry points)
- Technical Note No. 11 (Internet publication)

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