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**Committee on Trade Facilitation**

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## **DEVELOPING THE ARTICLE 1.4 NOTIFICATION**

### COMMUNICATION FROM THE UNITED STATES

The following communication, dated 12 June 2019, is being circulated at the request of the delegation of the United States for Members' information.

#### **INTRODUCTION**

The United States submitted its WTO Trade Facilitation Agreement (TFA) "transparency notification" on 13 June 2017. The "transparency notification" consists of notification obligations in TFA Articles 1.4, 10.4, 10.6, and 12.2 and are key to reaping the benefits of the TFA. Specifically, Article 1.4 is a critical tool for traders seeking trade-related information that is easily accessible and comprehensible.

Below we share the US experience in publishing relevant trade-related laws and regulations, general rulings and procedures, and practical guides for traders. In addition, we examine the US experience in drafting the Article 1.4 notification and using its National Trade Facilitation Committee (NTFC) to request information from over 20 federal agencies. First, the United States reaffirms the benefits of transparency and good regulatory practices in reducing trade costs. Second, the United States shares the legal framework that creates the expectation of transparency and ensures availability of trade-related information. Finally, the United States shares a case study of our experience using the NTFC to identify relevant trade-related information (Article 1.1) and coordinate government-wide clearance of the Article 1.4 notification for submission.

#### **1 BENEFITS OF TRANSPARENCY**

##### **Implementing Transparency and Good Regulatory Practices Reduces Trade Costs**

1.1. TFA Article 1.1 sets out the types of trade-related information that WTO Members must provide in an easily accessible manner. The information required by Article 1.1(a)-(j) is essential for governments, traders, and other interested parties to become familiar with before beginning to trade with new trading partners. Examples include publication of procedures for importation, exportation, and transit; the applied rates of duties and taxes; fees and charges; and procedures for appeal or review.

1.2. Difficult to find, complex, and overly burdensome trade regulations impair trade and increase compliance cost for governments and traders. To increase trade-related information availability and predictability, the TFA incorporated good regulatory practices into Article 1 (Publication) and Article 2 (Notice and Comment). According to the OECD Trade Facilitation Indicators, ensuring availability of trade-related information (TFA Articles 1 and 2) has the potential to reduce trade costs between 2.4 – 2.8 percentage points depending on each country's level of development.<sup>1</sup>

1.3. In addition to reduced trade costs, regulatory transparency benefits traders, citizens, and governments. For traders, transparency provides predictability and uniformity, reduces compliance

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<sup>1</sup> <https://www.oecd.org/tad/policynotes/oecd-tfi-implementation-impact-trade-costs.pdf>

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costs, and reduces delays at the border. For citizens, transparency contributes to rising standards of living and provides new opportunities for small and medium-sized enterprises (SMEs).

1.4. For governments, being transparent about laws, regulations, and requirements facilitates compliance and improves efficiency. When there is one set of consistent rules for all ports, customs officers, and traders, the long-term government enforcement costs decrease and revenue collection improves. Several Least Developed Country Members of the WTO (LDCs) have expressed concerns that informal trade remains an obstacle to enforcement and revenue collection. Consequently, it is vital for customs administrations to clearly communicate trade rules with the "informal sector" in a way that can be easily understood and, as a result, invites and facilitates compliance. By emphasizing transparency, accountability and predictability are improved for both traders and governments.

## 2 THE US APPROACH TO INSTITUTIONALIZING TRANSPARENCY

### Creating the Expectation and Legal Framework for Publication

2.1. The United States implements key aspects of TFA Article 1 (Publication) and Article 2 (Notice and Comment) through a coordinated legal framework that ensures federal agencies publish government and rulemaking information. The Federal Register Act (1935), the Administrative Procedures Act (1946), and the E-Government Act (2002) established the expectation of information publication for federal agencies. The US Article 1.4 notification cites several publication methods used to deliver the trade-related information to the public. The United States relies upon [www.govinfo.gov](http://www.govinfo.gov); the Federal Register; the Code of Federal Regulations; Regulations.gov; and each federal agency to make available the trade-related information required by Article 1.1. The detailed descriptions below provide more information about each method of publication, as well as information on the main US laws that support these methods.

2.2. [www.govinfo.gov](http://www.govinfo.gov): Previously known as the US Government Publishing Office Federal Digital System, this website provides free public access to official publications from the executive, legislative, and judicial branches of the US Federal Government. Users can easily access or search for official documents on the website including laws, regulations, congressional records, presidential memoranda, and court opinions.

2.3. **Federal Register:** The Federal Register Act (1935) established the Federal Register, which is the official daily publication for rules, proposed rules, and notices of federal agencies and organizations, as well as executive orders and other presidential documents.<sup>2</sup> The Office of the Federal Register of the National Archives and Records Administration (NARA) publishes the Federal Register in conjunction with the Government Printing Office (GPO). For each regulation, the Federal Register includes a title, unique identifier, brief description, an explanation of why the regulation is being proposed, and a point of contact in case of any questions. Since July 2010, the Federal Register is also available in an online format ([www.federalregister.gov](http://www.federalregister.gov)). The Federal Register keeps other federal agencies, Congress, and the public informed about the regulatory process.

2.4. **Code of Federal Regulations:** The Code of Federal Regulations is an annual supplement to the Federal Register that aggregates all operative agency regulations. It is divided into 50 titles that represent broad areas subject to federal regulation and can be found online at <https://www.govinfo.gov/app/collection/cfr>. The US notification frequently references Title 19 of the Code of Federal Regulations (CFR) – Customs Duties because it is the most relevant title for traders who want to become familiar with US customs regulations.

2.5. **Access to the Regulatory Process:** The United States implements key aspects of TFA Articles 1 and 2 through the Administrative Procedures Act (APA). Enacted in 1946, the APA mandated public access to information of all proposed federal regulations while also ensuring that all comments and agency responses are public. The publication methods described above help implement the APA by informing the public of potential regulatory changes, while Regulations.gov allows an interested stakeholder to submit comments on any proposed changes. Regulations.gov is a centralized, government-wide rulemaking portal for the public, which allows users to search for rules and submit comments electronically on the text of proposed rules. For example, the most recent US notice and solicitation for comments related to US customs and trade facilitation objectives is available at US-

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<sup>2</sup> <https://www.archives.gov/federal-register/the-federal-register/about.html#whatis>

Japan Trade Agreement Requests for Comments on Negotiating Objectives <https://www.regulations.gov/docket?D=USTR-2018-0034>. The United States has found the final regulations that result from this process are clearer and more effective when stakeholders have had an opportunity to take part in the rulemaking dialogue and to provide regulators with data on the potential impacts of a proposed rule. For additional discussion on "notice and comment" procedures, please refer to the US paper, "The Role of 'Notice and Comment' and Related Administrative Procedures in Trade Facilitation Implementation", [G/TFA/W/6](#).

**2.6. Federal Agency Online Publication:** The United States notification includes specific URL locations to direct traders to additional relevant trade-related information published by a federal agency in addition to that published on [www.govinfo.gov](http://www.govinfo.gov). For example, the notification includes the URL location for basic importing and exporting procedures maintained by US Customs and Border Protection (CBP).

**2.7. A Key Step to Online Publication:** For the United States, a key to facilitating the publication of government information online was the E-Government Act of 2002.<sup>3</sup> The Act established a broad framework of legal measures requiring federal agencies to use internet-based information technology to enhance citizen access to government information and services. The Act established the Office of Electronic Government to ensure that federal agencies are successful in developing online information portals (webpages) that contain relevant agency information or services. The result was a concerted effort by all federal agencies to ensure government information was published in an online format and ensured the United States was able to comply with TFA Article 1.2 (Information Available Through Internet). The Act also required agencies to begin accepting public comments on proposed rules electronically, which evolved into Regulations.gov.

### 3 CASE STUDY: HOW THE UNITED STATES DEVELOPED ITS ARTICLE 1.4 NOTIFICATION

3.1. In 2017, the United States used its NTFC to develop the transparency notification (TFA Articles 1.4; 10.4.3; 10.6.2; and 12.2)<sup>4</sup>, which was circulated as [G/TFA/N/USA/1](#). The Office of the United States Trade Representative (USTR), which is responsible for developing and coordinating US trade policy, took the lead in drafting an outline for the notification. The outline was divided into four sections: notified under Article 1.4; notified under Article 10.4; notified under Article 10.6; and notified under Article 12.2. This case study will focus on the development of the Article 1.4 notification.

3.2. In preparation for the Article 1.4 notification, USTR first outlined each provision of Article 1.4 that required information. For example, USTR's draft transparency notification outline listed each subparagraph of Article 1.1(a)-(j) in need of an official publication location. USTR circulated the notification outline to the NTFC and solicited input from each of the NTFC's over 20 federal agency representatives. The NTFC representatives subsequently circulated the draft transparency notification outline within their agency seeking review and comment. The NTFC Secretary compiled the comments received from each federal agency into one comprehensive notification and recirculated the comprehensive notification to NTFC representatives, seeking each agency's final approval. After receiving approval from all 20 federal agencies, the United States submitted its Article 1.4 notification to the WTO Secretariat on 13 June 2017.

3.3. The United States incorporated three strategic good practices into its Article 1.4 notification. These practices are easily replicable and designed to ensure that a notification is easily comprehensible to traders seeking information.

- *Easy to Read Format:* use headings to ensure that traders, even those new to international trade (including importing, exporting, and transit) can find the information necessary to engage in trade
- *As Specific as Possible:* identify specific URLs for relevant information rather than providing a generic location for official publications

<sup>3</sup> <https://www.govinfo.gov/content/pkg/PLAW-107publ347/pdf/PLAW-107publ347.pdf>

<sup>4</sup> For additional information on the US NTFC, please refer to the US experience sharing paper titled, "Structure and Role of the US National Trade Facilitation Committee", [G/TFA/W/5](#).

- *Provide Details*: include descriptions for the information a trader will encounter for each official publication location

3.4. **Easy to Read Format**: The United States structured the transparency notification to include each subparagraph listed in Article 1.4(a) as a heading and listed the relevant websites below the subparagraph. By separating the requested information into headings, the notification became an easy-to-read tool to find specific information for a trader. For example, if a trader is searching for the applied rates of duties and taxes, the trader can easily find the website <http://www.hts.usitc.gov/current>, where up-to-date tariff and tax information is published, in accordance with subheading Article 1.4(b).

3.5. **As Specific as Possible**: The United States identified direct links to relevant information when available rather than simply providing generic location for official publications. For example, in Article 1.4(a) the United States provided the location for general information regarding import, export, and transit procedures located on the CBP website: <http://www.cbp.gov>. The United States went a step further and included specific URLs to CBP information on importing and exporting basics, advanced rulings, and informed compliance publications. The United States provided similar information for the US Department of Agriculture, including a general information website, <http://www.usda.gov>, and additional direct links to USDA Animal and Plant Health Inspection Service product specific factsheets that address import and export information for traders.

3.6. **Provide Details**: The US notification provides additional information that may be helpful to a trader searching for trade information for the first time. The US notification offers simplified explanations for each official publication location for additional context. Under Article 1.4(a), the United States listed as an official publication location the CFR and its website. While this information is accurate, to be even more helpful, the United States provided context about the CFR by explaining that Title 19 – Customs Duties is the relevant chapter.

#### 4 CONCLUSION

Notifications, and the transparency they provide, are essential to the proper functioning of the TFA, the Committee on Trade Facilitation, and the WTO. The United States encourages Members to submit their transparency notifications (Articles 1.4; 10.4.3; 10.6.2; and 12.2) to the WTO Secretariat, and if needed, seek technical assistance to support the development of these notifications. It is important to note that these notifications serve as an invaluable source information for current and future traders. The United States remains committed to reviewing Members' notifications to ensure they meet the terms of the TFA.

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