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REPUBLIC OF KENYA

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Paper laid by the Vice-Chairperson Committee on Finance, Planning and Trade. Hon. Nelson on 3/12/2015

KENYA NATIONAL ASSEMBLY

ELEVENTH PARLIAMENT - THIRD SESSION -

THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE

REPORT ON THE CONSIDERATION OF THE RATIFICATION OF THE WORLD TRADE ORGANIZATION (WTO) AGREEMENT ON TRADE FACILITATION

DIRECTORATE OF COMMITTEE SERVICES
CLERK'S CHAMBERS
PARLIAMENT BUILDINGS
NAIROBI

DECEMBER, 2015

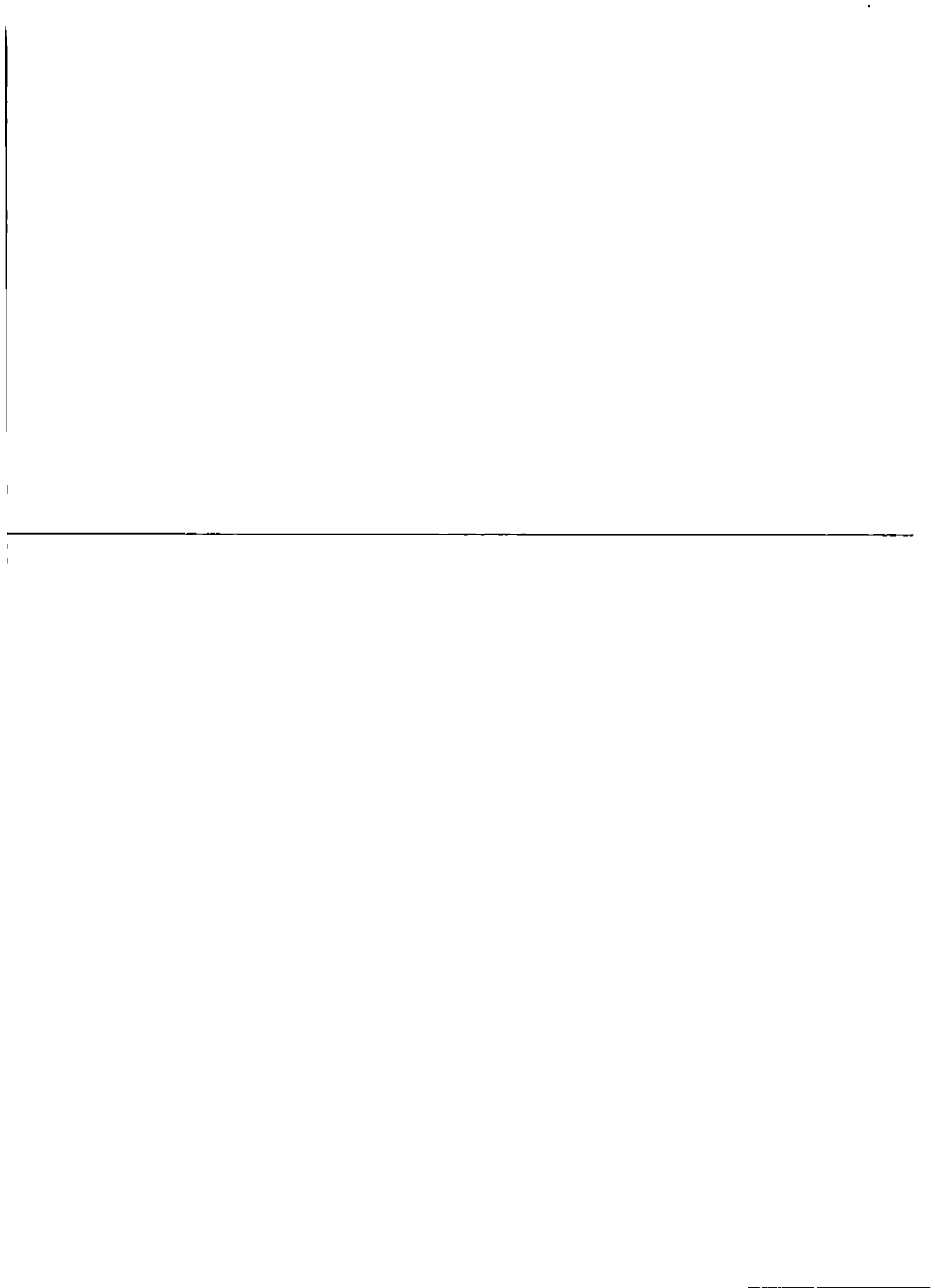
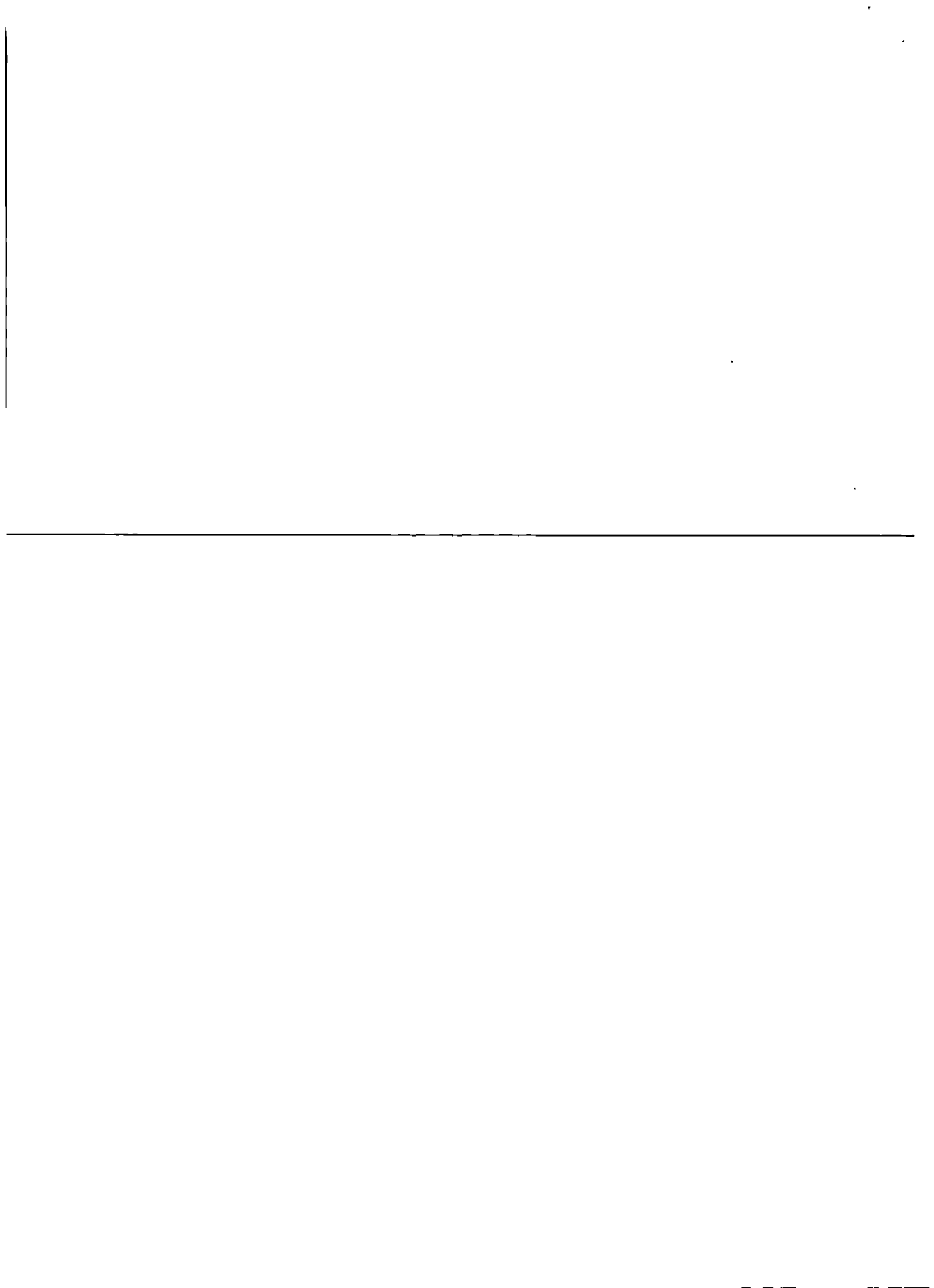


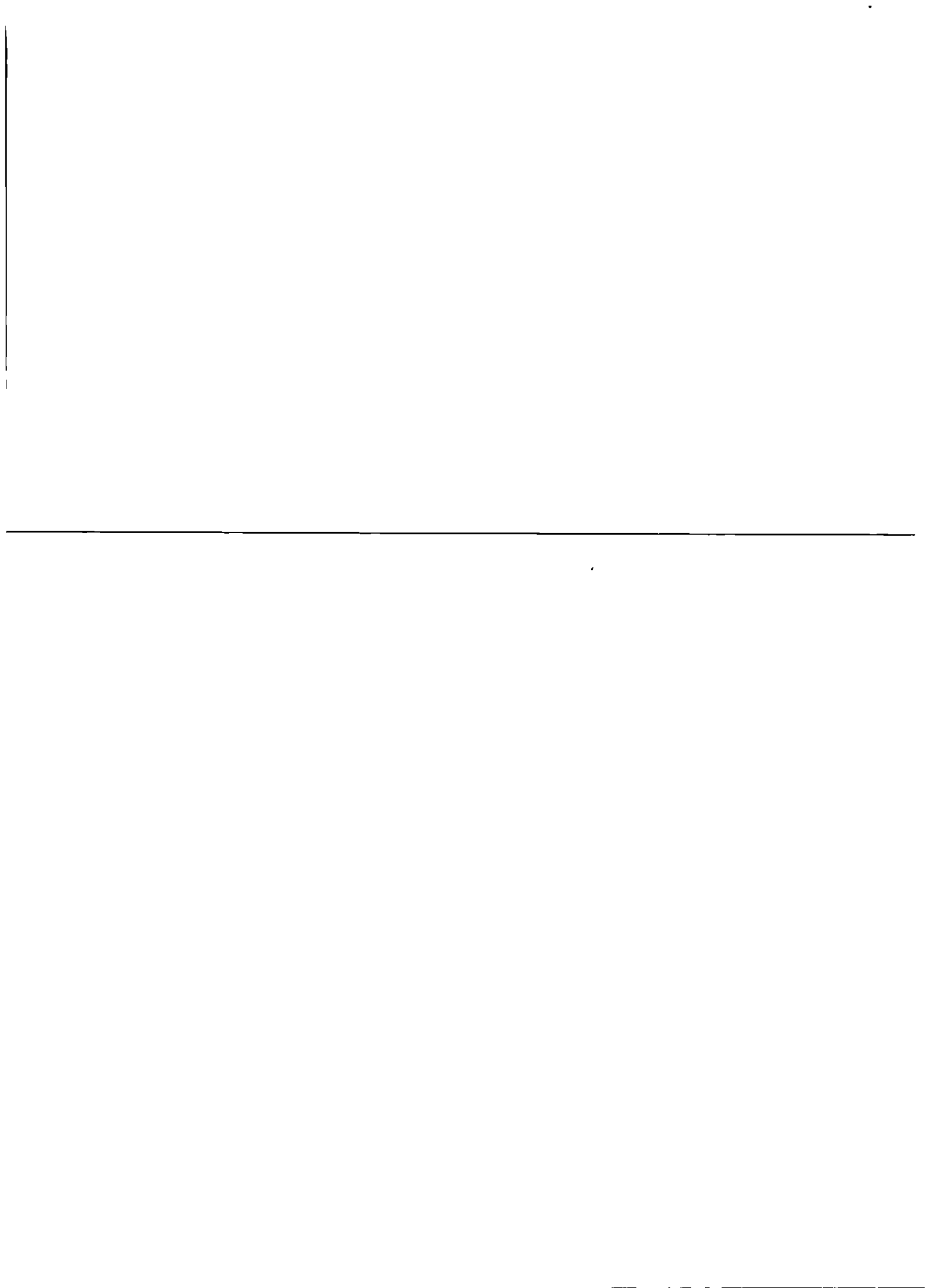
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ABBREVIATIONS

FDI	-	Foreign Direct Investments
GATS	-	General Agreements on Tariffs
MC10	-	Ministerial Conference 10
TFA	-	Trade Facilitation Agreement
UNCTAD	-	United Nations Conference on Trade and Development
WTO	-	World Trade Organization



1.0 PREFACE

Hon Speaker,

On behalf of the Departmental Committee on Finance, Planning and Trade and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the ratification of the World Trade Organization (WTO) Agreement on Trade Facilitation. The agreement was committed to the Committee on 19th November 2015 and it is on the basis of this that the Committee makes this report pursuant to Section 8 of the Treaty Making and Ratification Act.

1.1 MANDATE OF THE COMMITTEE

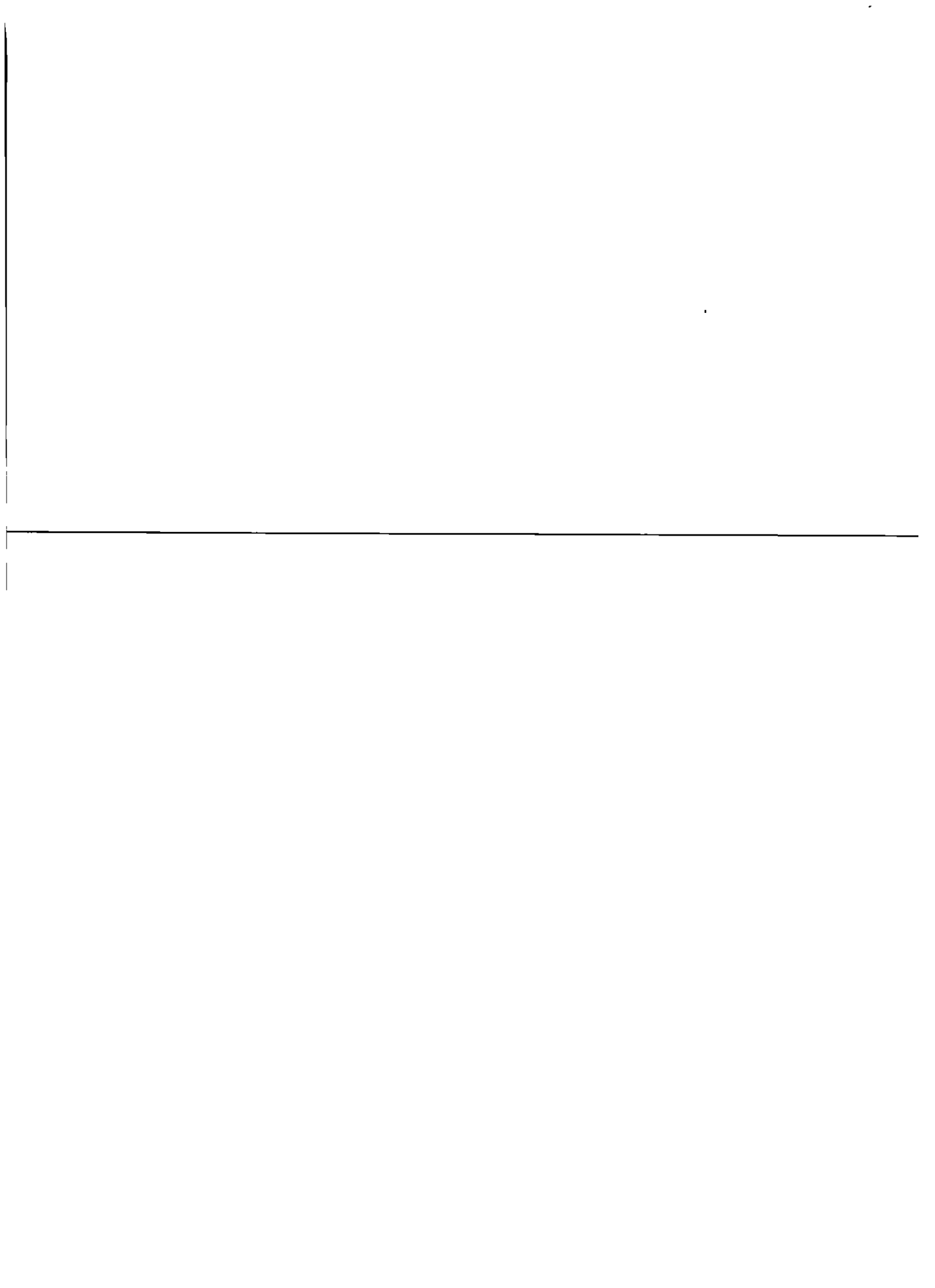
The Committee on Finance, Planning and Trade is one of the Departmental Committees of the National Assembly established under Standing Order 216 and mandated to:-

- (i) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- ~~(ii) To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation.~~
- (iii) To study and review all legislation referred to it;
- (iv) To study, asses and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
- (v) To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary and as may be referred to them by the House;
- (vi) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (*Committee on Appointments*); and
- (vii) Make reports and recommendations to the House as often as possible, including recommendation of proposed legislation.

1.2 COMMITTEE MEMBERSHIP

The Departmental Committee on Finance, Planning and Trade comprises of the following members:-

1. Hon. Benjamin Langat, MP (**Chairman**)
2. Hon. Nelson Gaichuhie, MP (**vice Chairman**)
3. Hon. Jones M Mlolwa, MP



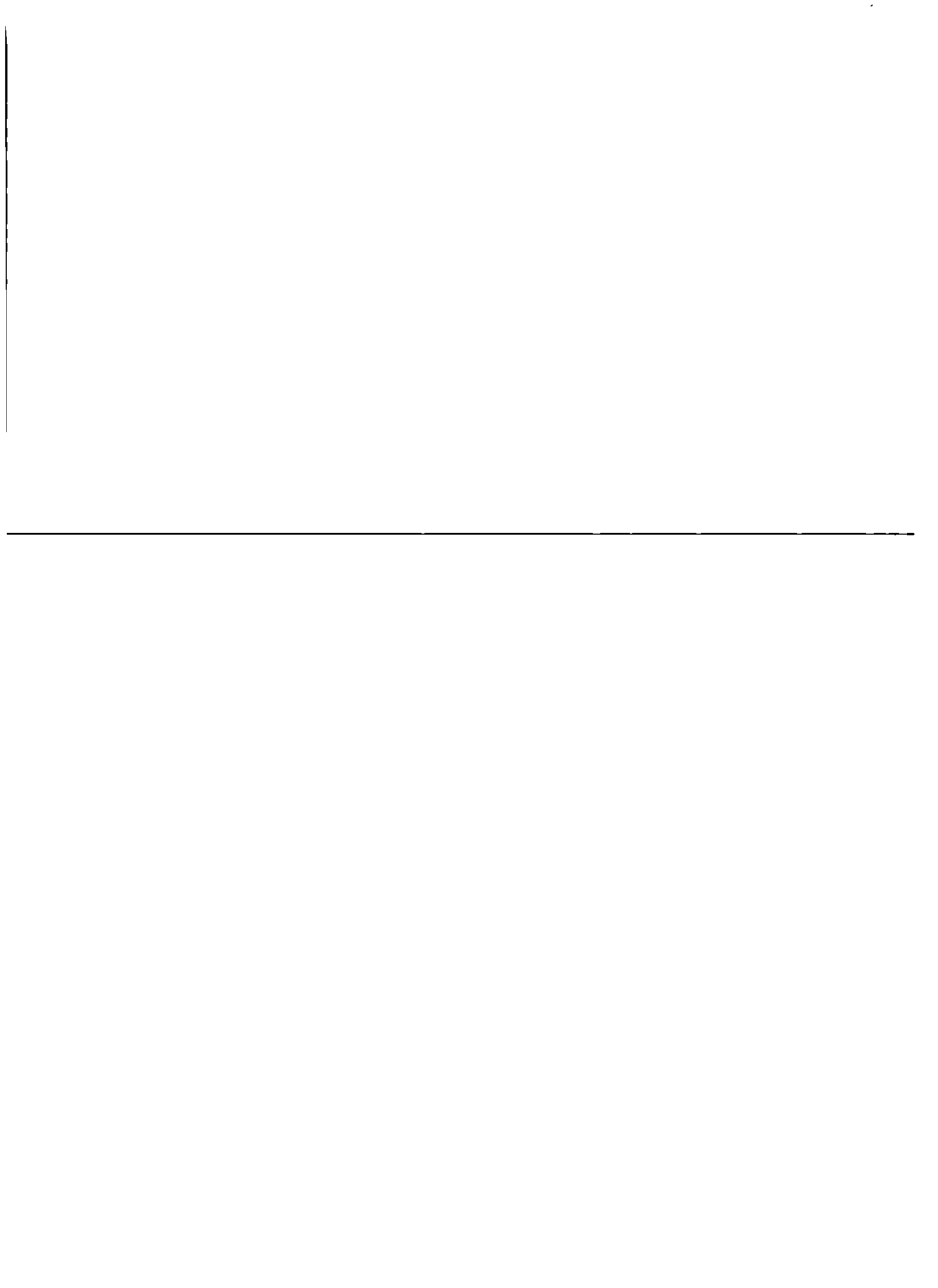
4. Hon. Anyanga, Andrew Toboso, MP
5. Hon. Timothy M .E. Bosire, MP
6. Hon. Shakeel Shabbir Ahmed, MP
7. Hon. Joash Olum, MP
8. Hon. Dr. Oburu Oginga, MP
9. Hon. Patrick Makau King'ola, MP
10. Hon. Abdullswamad Sheriff, MP
11. Hon. Sumra Irshadali, MP
12. Hon. Ogendo Rose Nyamunga, MP
13. Hon. Iringo Cyprian Kubai, MP
14. Hon. Dennis Waweru, MP
15. Hon. Tiras N. Ngahu, MP
16. Hon. Sakaja Johnson, MP
17. Hon. Jimmy Nuru Angwenyi, MP
18. Hon. Ronald Tonui, MP

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19. Hon. Mary Emase, MP
 20. Hon. Joseph Limo, MP
 21. Hon. Lati Lelelit, MP
 22. Hon. Kirwa Stephen Bitok, MP
 23. Hon. Sammy Mwaita, MP
 24. Hon. Daniel E. Nanok, MP
 25. Hon. Eng. Shadrack Manga, MP
 26. Hon. Abdul Rahim Dawood, MP
 27. Hon. Sakwa John Bunyasi, MP
 28. Hon. Alfred W. Sambu, MP
 29. Hon. Sammy Koech, MP

1.3 CONSIDERATION OF THE WTO TRADE FACILITATION AGREEMENT

Upon referral of the WTO Agreement on Trade Facilitation to the Committee on 19th November 2015, the Committee met with the Cabinet Secretary for Foreign Affairs and International Trade on 2nd December 2015 for a briefing session. During the said meeting, the Committee was apprised of the contents of the agreement and was indeed convinced that the ratification of the agreement will have a lot of benefits to the country by:-

- (i) reducing the duration of importation



- (ii) reducing cost of importation
- (iii) increasing government revenue due to high volumes of imports among others

1.4 ACKNOWLEDGMENT

Mr. Speaker, Sir,

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sitting. The Committee wishes to thank all the stakeholders for their participation in scrutinizing the Bill. Finally, I wish to express my appreciation to the Honorable Members of the Committee who sacrificed their time to participate in the activities of the Committee and preparation of this report.

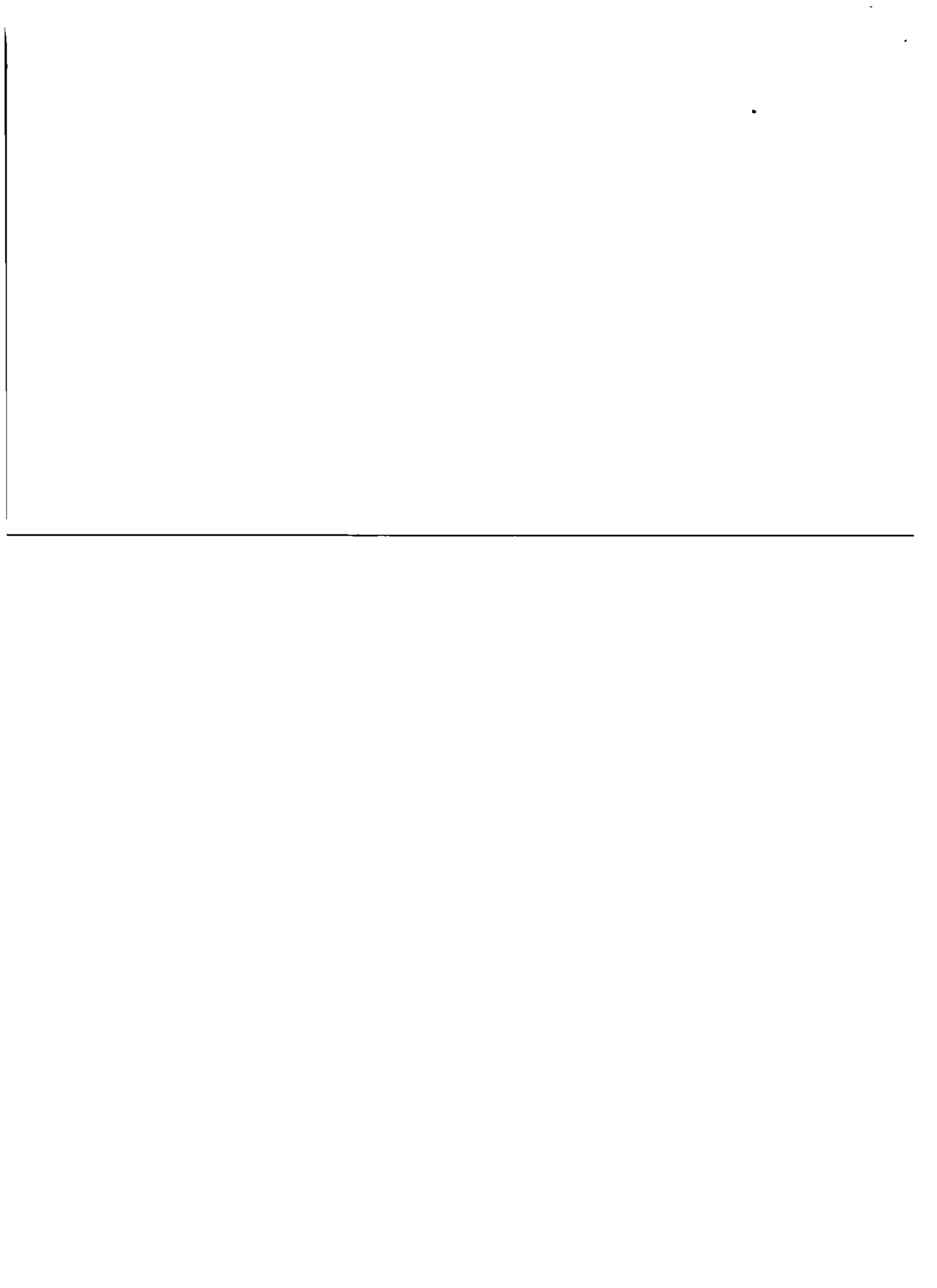
It is my pleasant duty and privilege, on behalf of the Departmental Committee on Finance, Planning and Trade to table its Report on the consideration of the ratification of World Trade Organization (WTO) Agreement on Trade Facilitation pursuant to Treaty Making and Ratification Act of 2012 and ask the House to adopt it.

SIGNED  DATE 02-12-2015

HON. HON. BENJAMIN LANGAT, MP

CHAIRPERSON

DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING AND TRADE



2.0 CONSIDERATION OF THE WTO TRADE FACILITATION AGREEMENT

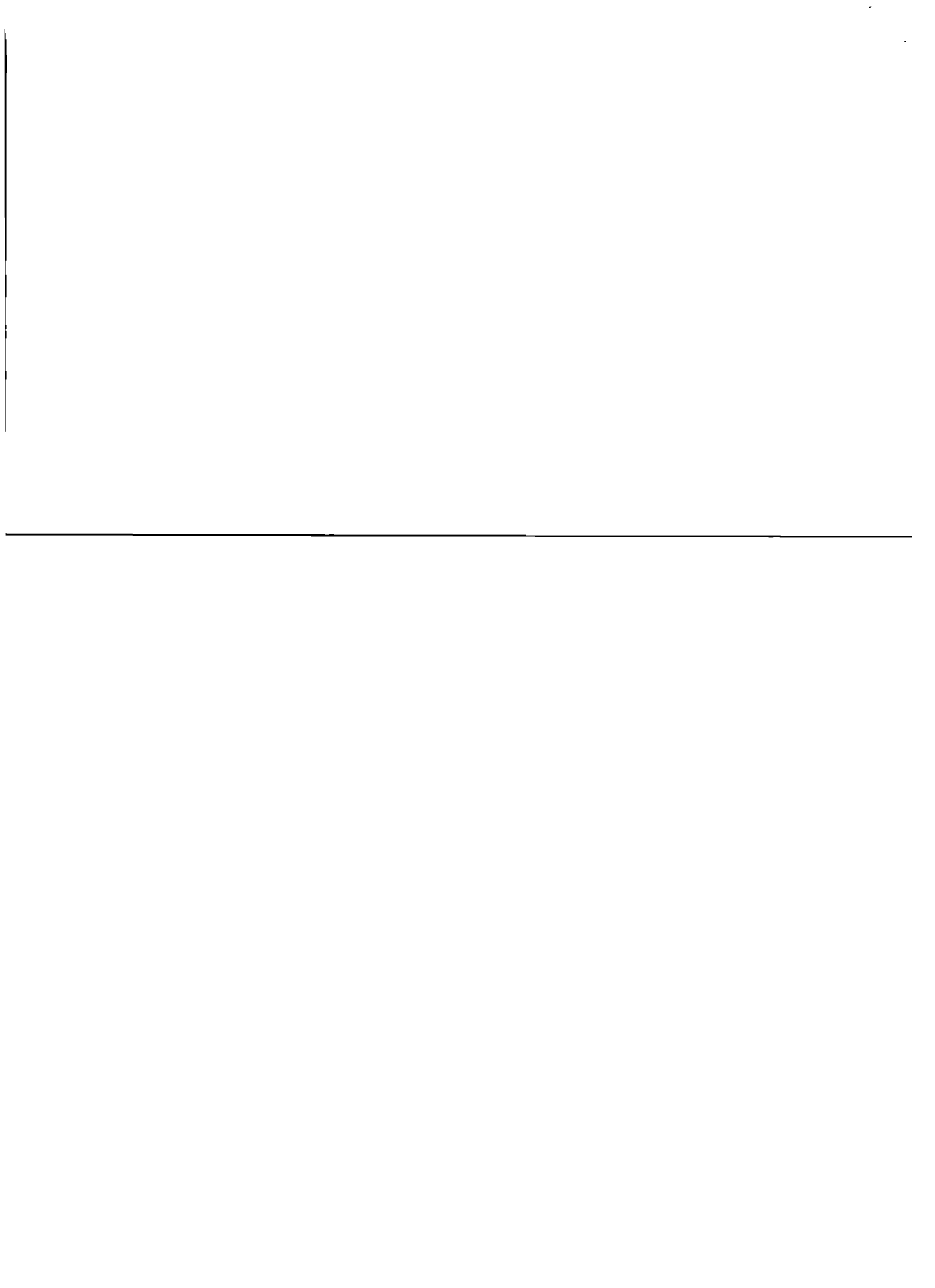
2.1 Background

The World Trade Organization Agreement on Trade Facilitation (TFA) is the most recent of the WTO agreements to be concluded under the Doha Round of Trade negotiations. It was adopted at the 9th WTO Ministerial Conference held in Bali, Indonesia in December, 2013. The TFA contains provisions for expediting the movement, release and clearance of goods, including goods in transit. It also sets measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues. It further contains provisions for technical assistance and capacity building in this area.

2.2 Guidelines used in consideration of the Agreement

In considering the WTO Trade Facilitation Agreement, the Committee was guided by the Treaty Making and Ratification Act. Specifically, the Committee considered the following:-

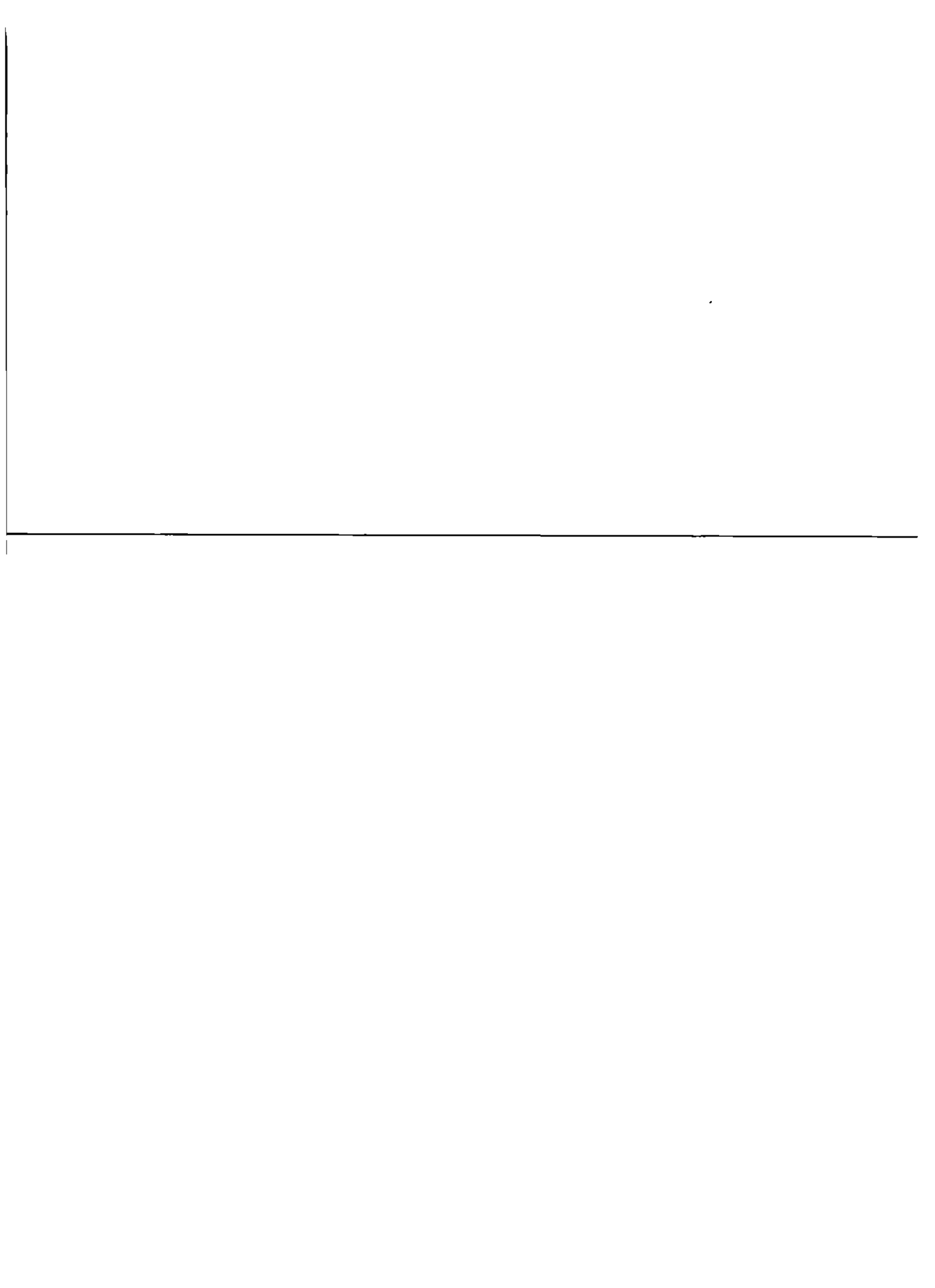
- a) the objects and subject matter of the treaty;
- b) any constitutional implications including—
 - i. any proposed amendment to the Constitution; and
 - ii. that the treaty is consistent with the Constitution and promotes constitutional values and objectives;
- c) the national interests which may be affected by the ratification of the treaty;
- d) obligations imposed on Kenya by the treaty;
- e) requirements for implementation of the treaty;
- f) policy and legislative considerations;
- g) financial implications;
- h) ministerial responsibility;
- i) implications on matters relating to counties;
- j) the summary of the process leading to the adoption of the treaty;
- k) the date of signature;
- l) the number of states that are party to the treaty;
- m) the views of the public on the ratification of the treaty;
- n) whether the treaty sought to be ratified permits reservations and any recommendations on reservations and declarations;



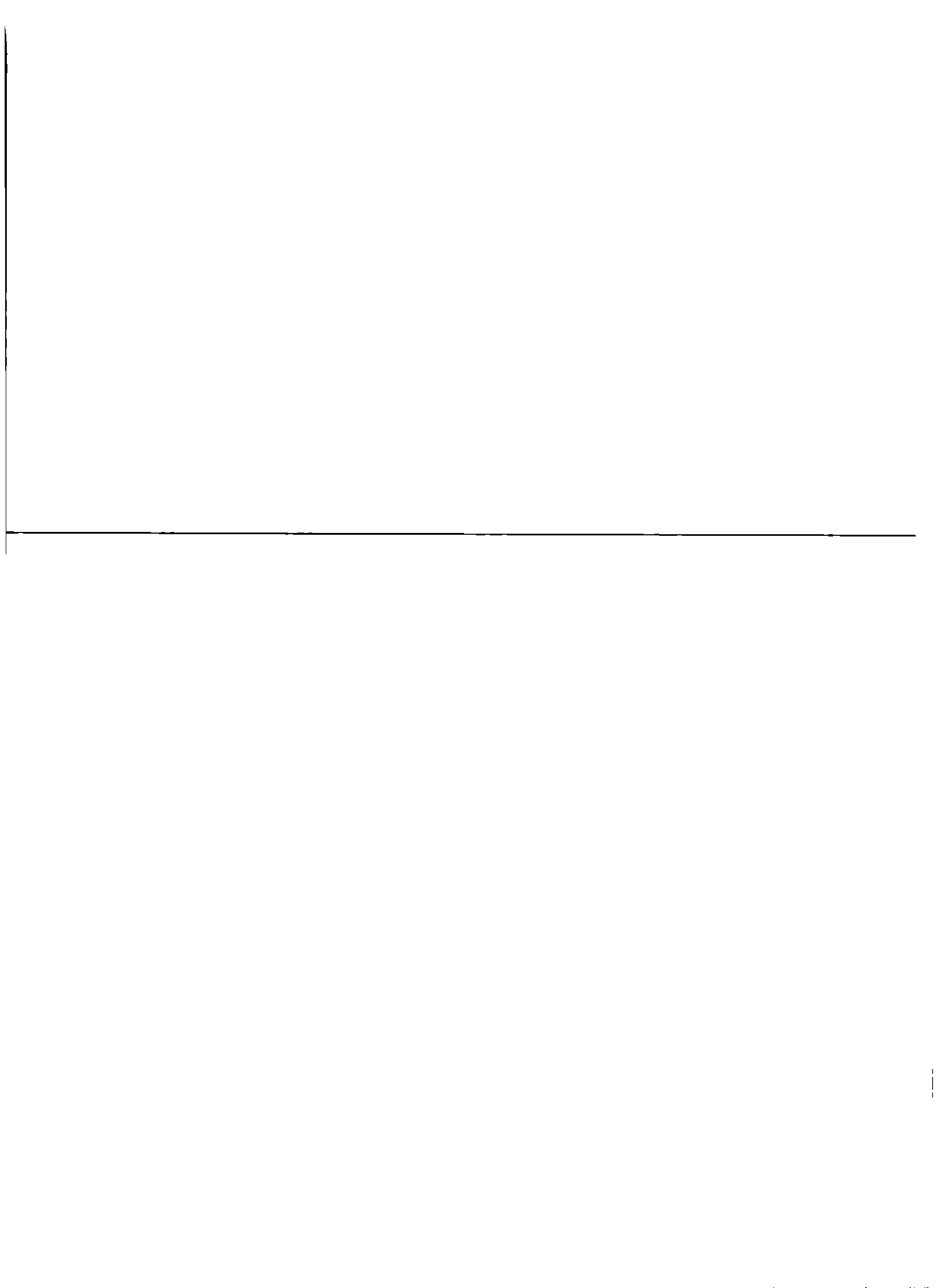
- o) the proposed text of any reservations that should be entered when ratifying the treaty in order to protect or advance national interests or ensure conformity with the Constitution; and
- p) Whether expenditure of public funds will be incurred in implementing the treaty and an estimate, where possible, of the expenditure.

2.3 Contents of the WTO Trade Facilitation Agreement

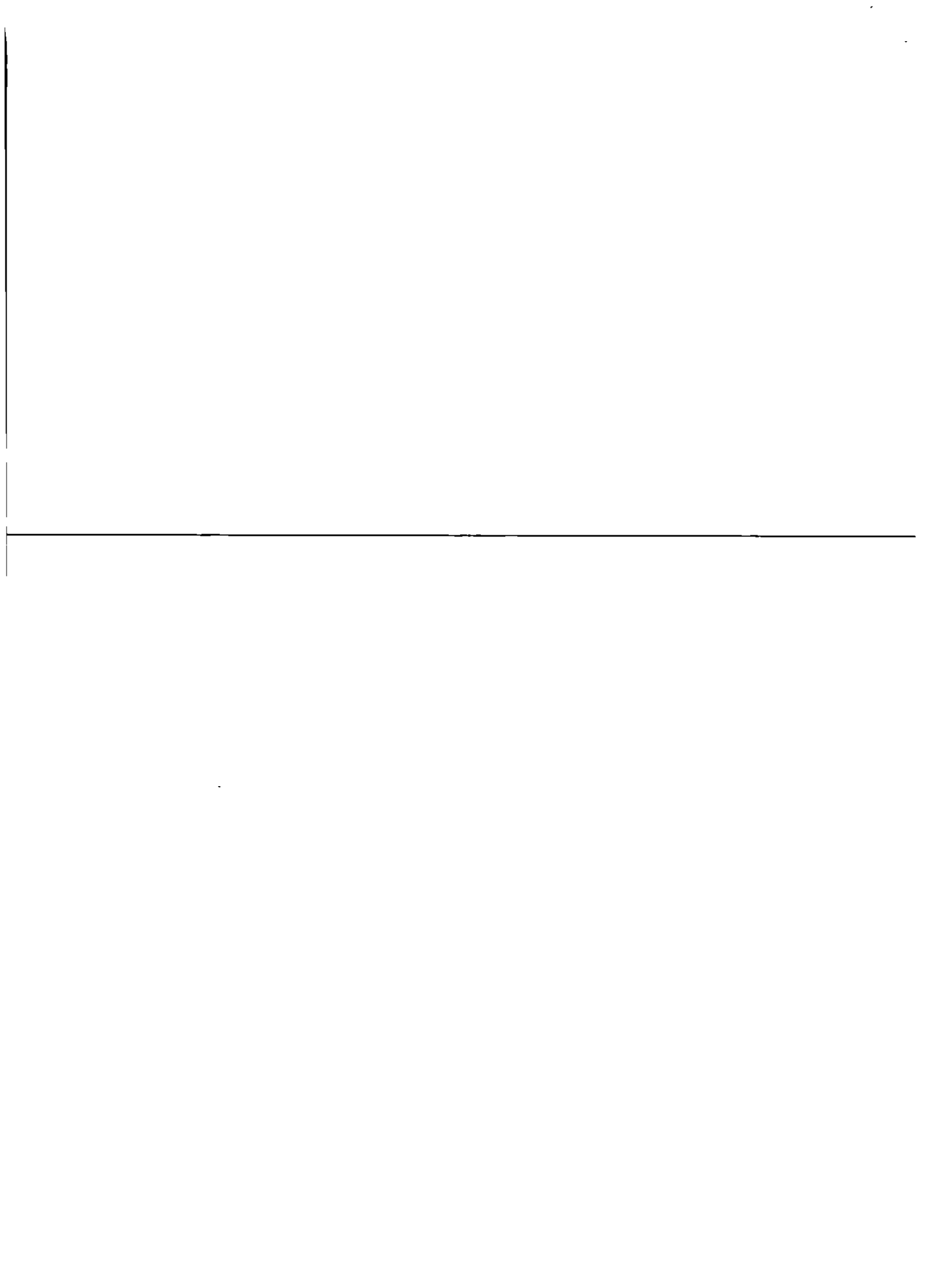
Article	Highlights	Comments
Preamble		
SECTION I		
1	<p>Publication and availability of information</p> <p>Members shall publish on the internet:</p> <ul style="list-style-type: none"> • descriptions of their import, export, and transit procedures • the required documents or forms, • relevant trade laws (where possible), and • The enquiry point contact information. 	The Committee agreed to the Article
2	<p>Opportunity to comment</p> <ul style="list-style-type: none"> ▪ Traders and other interested parties must be given an opportunity and reasonable time to comment on proposals for new trade-related and customs laws and administrative regulations, as well as any amendments thereto. ▪ New or amended laws and regulations must be made publicly available, as early as possible before their entry into force. 	The Committee agreed to the Article
3	<p>Advancement Rulings</p> <ul style="list-style-type: none"> ▪ Customs shall provide a written Ruling on tariff classification or origin 	The Committee agreed to the Article



	<ul style="list-style-type: none"> ▪ The ruling shall be binding on Customs 	
4	<p>Appeal and review Procedure</p> <p>Members are allowed judicial appeal if aggrieved by decisions of the Customs</p>	The Committee agreed to the Article
7	<p>Release and Clearance of Goods</p> <p>Under Members shall adopt procedures for import of perishable goods that:</p> <ul style="list-style-type: none"> ▪ allow release within shortest possible time; ▪ provide for release, where appropriate, outside Customs normal business hours; ▪ give priority when scheduling examinations; ▪ allow storage in appropriate conditions for their conservation 	This Article is beneficial to Kenyan perishable exports
8	<p>Border Agency Cooperation</p> <ul style="list-style-type: none"> ▪ National border authorities/agencies shall cooperate and coordinate border controls and procedures to facilitate trade ▪ Countries with common land borders shall cooperate and coordinate procedures to facilitate cross-border trade 	The Committee agreed to the Article.
10	<p>Single Window</p> <p>Article 10.4 provides that Members shall endeavour to establish a "single window" to which a trader can submit all documents and/or data required by customs and all other border or licensing authorities for the import, export or transit of goods, and from which the trader will receive all notifications – See KENTRADE</p>	The Committee Agreed to the Article



11	Provides that there will be freedom of transit of goods	The Committee agreed to the Article
12	Customs Cooperation Members are obligated to share customs information and verification of the information provided	The Committee agreed to the Article as worded.
13	Institutional Arrangements <ul style="list-style-type: none"> • This Article establishes the Committee on Trade facilitation that will meet at least ones a year to review the implementations of this agreement ▪ Each Member shall have a national trade facilitation body to oversee implementation of the WTO trade facilitation agreement 	The Committee agreed to the Article as worded.
SECTION II		
13	Special and Differential Treatment (SDT) <ul style="list-style-type: none"> • This section part applies to developing countries. • Gives flexibility in implementation of obligations • Each developing country decides when it can implement <u>each</u> provision <p style="text-align: center;">Special & Differential Treatment for developing and LDC countries</p> <ul style="list-style-type: none"> • Implementation of agreement linked with capacity • Each developing county can say when it 	The Committee agreed to it as worded.

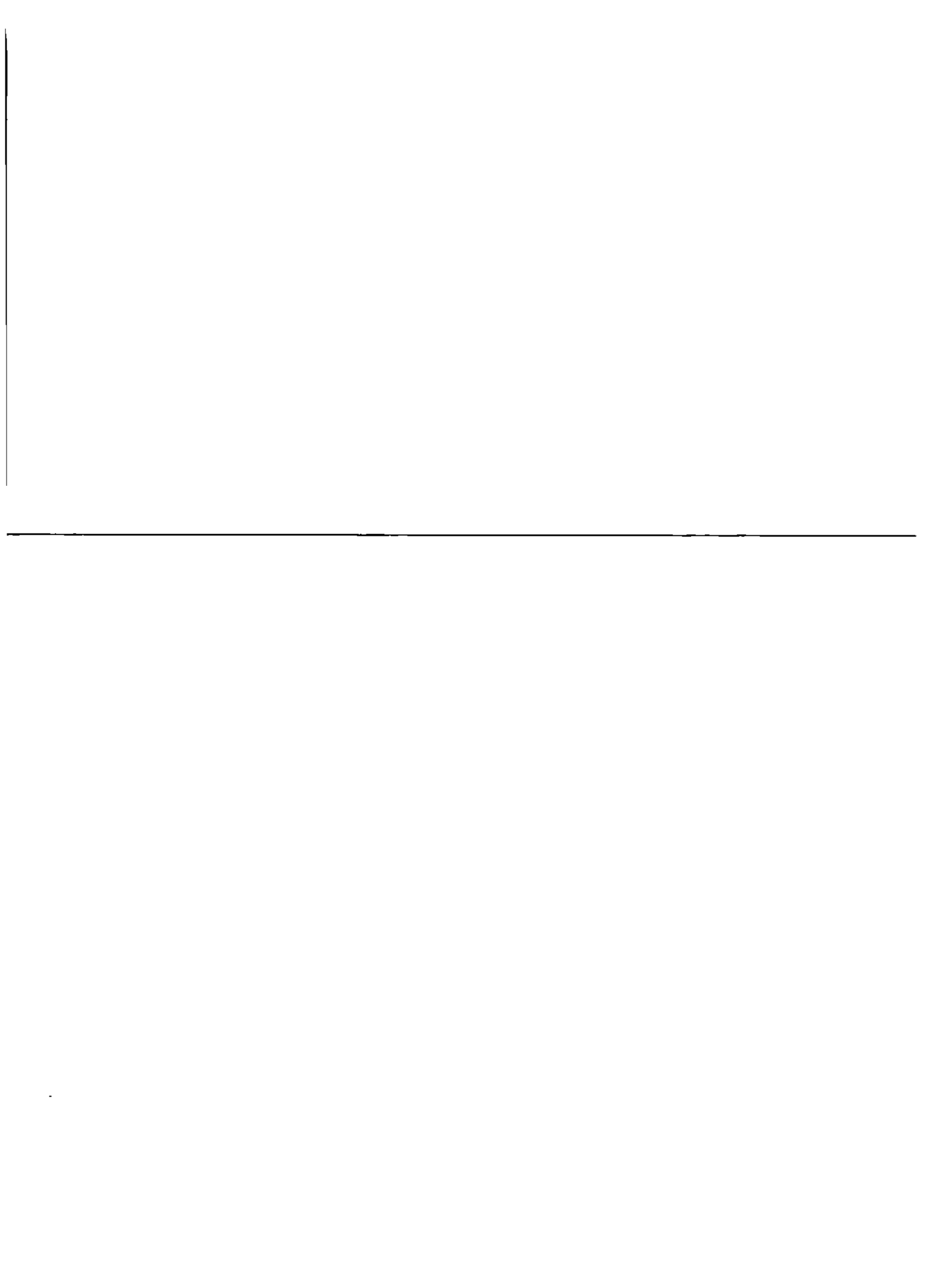


	<p>will implement <u>each</u> measure</p> <ul style="list-style-type: none"> • Donors have promised sufficient technical assistance <p>Categorization of each measure</p> <p>Each developing and LDC country Member will categorize each measure into one of three</p> <ul style="list-style-type: none"> • Category A: at time Agreement enters into force (one year later for LDCs) • Category B: Entry into force + (X) time (only “local action” needed) • Category C: After TACB 	
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3.0 COMMITTEE OBSERVATIONS

3.1 Benefits of the Agreement

- i. Shortening of waiting time for goods in transit, customs release and clearance
- ii. Reduction of transaction costs for traders, especially SMEs
- iii. Improved revenue collection and effectiveness of border control
- iv. A more transparent and efficient regulatory climate for investors
- v. Improvement of efficiency and integrity of customs agencies
- vi. Improved relations between border control authorities and the business/trading community
- vii. Better functioning of public agencies.
- viii. As SMEs suffer more from administrative burdens than larger enterprises, they are expected to benefit considerably from implementation of the TFA.
- ix. Agreement will help developing countries attract more FDI, increase customs revenues and reduce the incidence of corruption.
- x. Implementing the TFA will also increase the opportunity for developing countries to integrate more into global value chains (GVCs).



3.2 Cost of implementing the WTO Trade Facilitation Agreement

Substantial initial investment varies according to the level of reforms needed and existing infrastructure. But, considerable improvement can be made within the existing framework without incurring heavy capital investments through, inter-alia:

- Synchronized business timings at borders
- Customs procedures simplification and standardization
- Harmonization of trade documents
- Joint customs operations

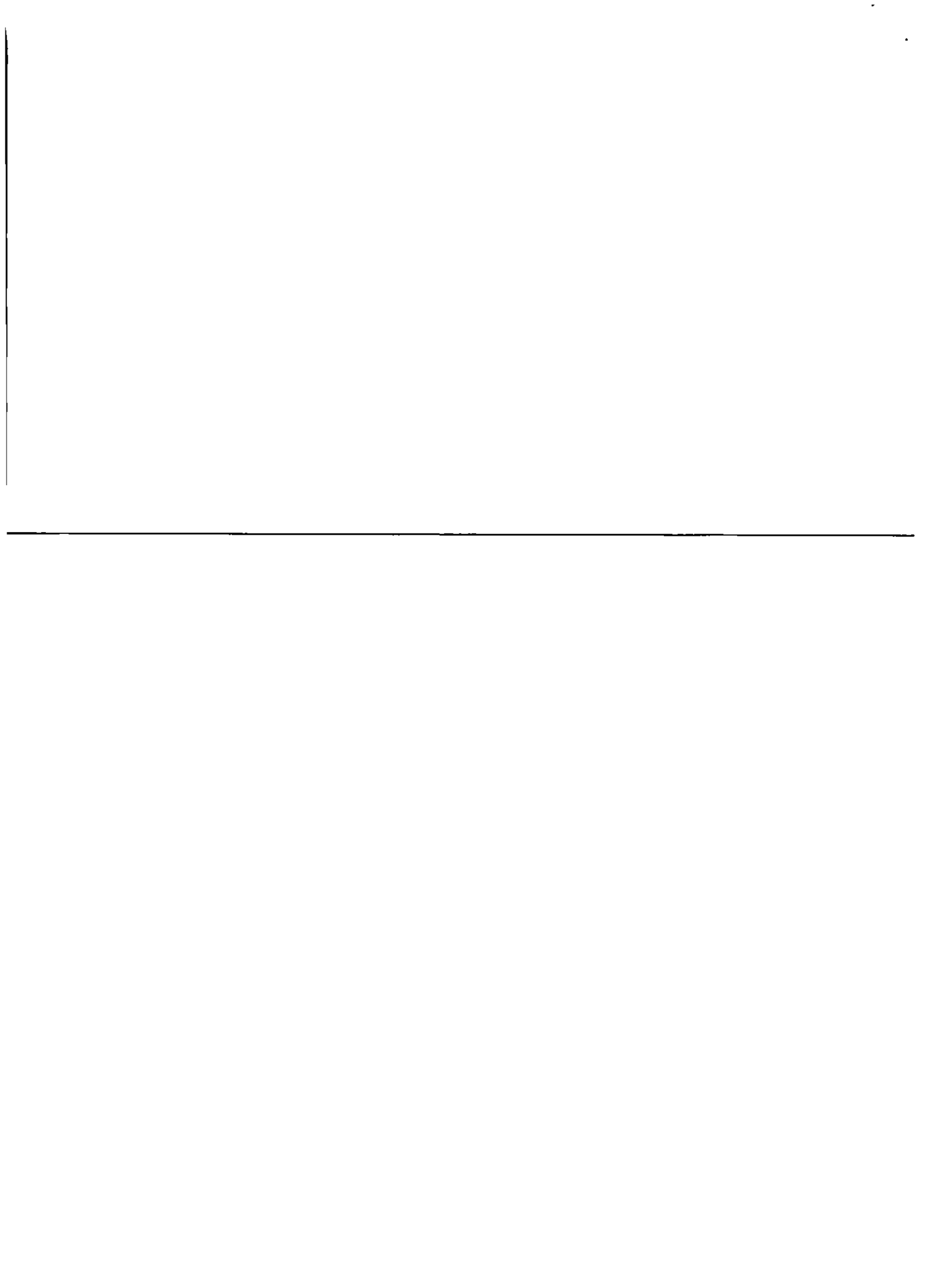
3.3 Implementation of the Trade Facilitation Agreement

WTO members face the task of ratifying the Agreement so as to bring it into force. Two-thirds of the WTO membership must complete their domestic ratification process for the TFA to come into force. Considering that Kenya will be hosting the MC10 in mid December, 2015, it will be important for Kenya to ratify the TFA.

3.4 Compliance of the Trade Facilitation Agreement with the Treaty Making and Ratification Act

Upon analysis of the TFA and the Memorandum that was approved by the Cabinet, the Committee observed that the process and the Agreement complied with the Treaty Making and ratification Act by outlining the following:-

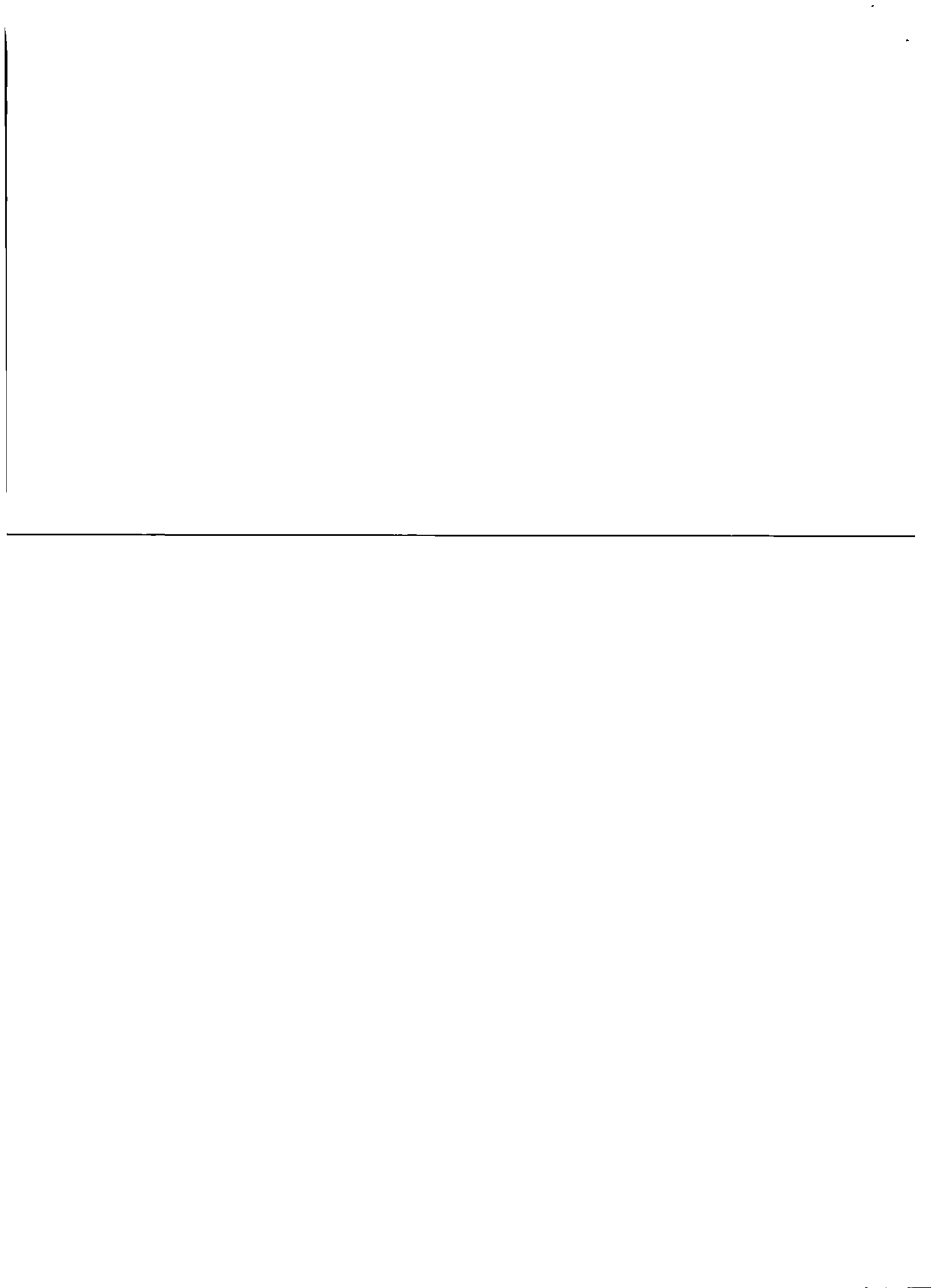
- Objectives of the memorandum
- Approval from the Cabinet
- Constitutional implications
- Expected benefits of the Agreement
- Financial implications of the Trade Facilitation Agreements



4.0 COMMITTEE RECOMMENDATIONS

Pursuant to Section 8 of the Treaty Making and Ratification Act No. 45 of 2012, the Committee recommends that the House Approves the ratification of: **the World Trade Organization (WTO) Agreement on Trade Facilitation**

End



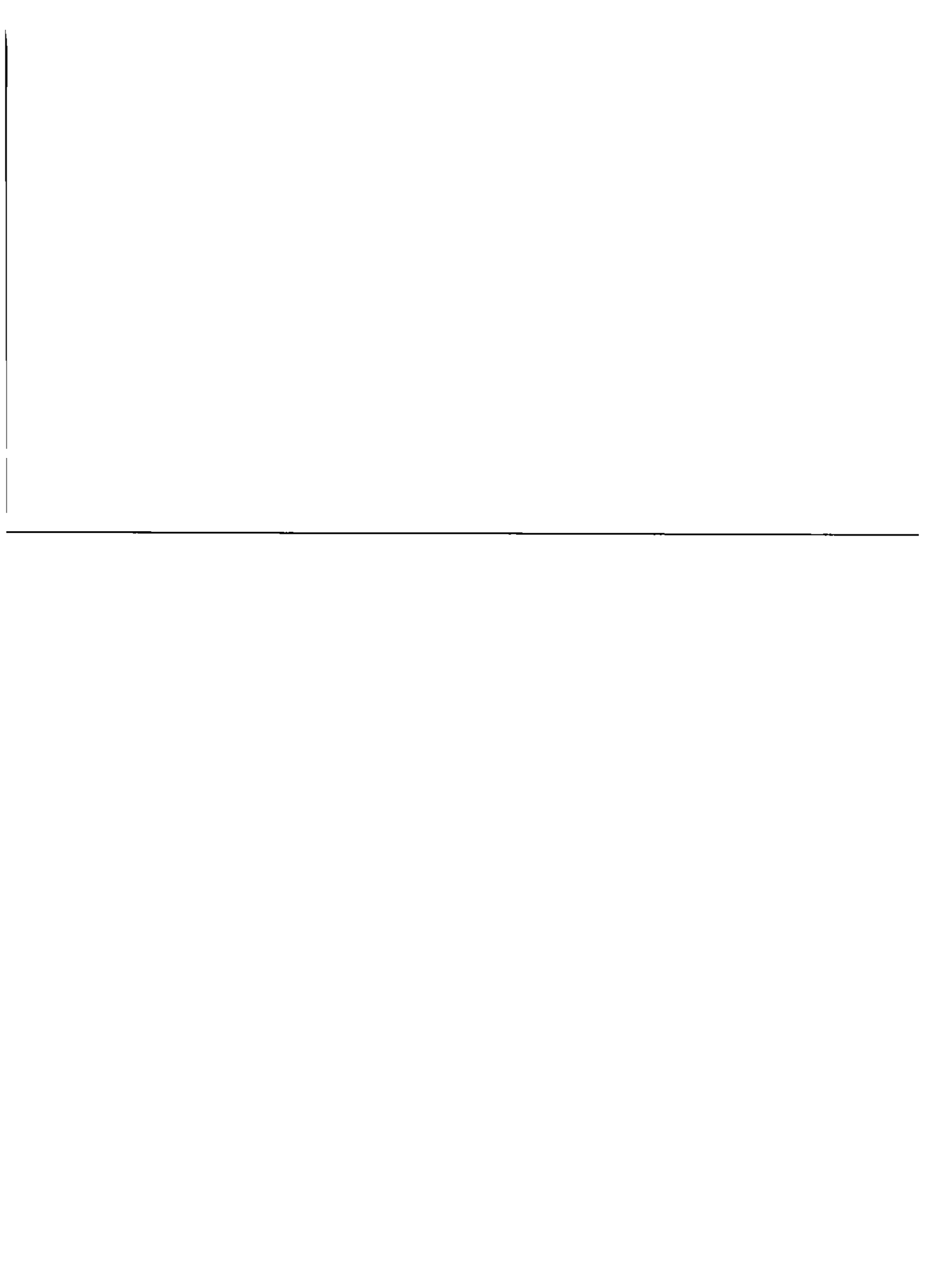
MINUTES OF THE 65TH SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE, PLANNING & TRADE MEETING WITH AMB. AMINA MOHAMED CABINET SECRETARY MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE HELD ON WEDNESDAY 2ND, DECEMBER 2015, MAIN PARLIAMENT, COMMITTEE ROOM 7, PARLIAMENT BUILDINGS AT 10:30 AM

PRESENT

- | | |
|-----------------------------------|-------------------------|
| 1. Hon. Benjamin Langat, MP | Chairperson |
| 2. Hon. Nelson Gaichuhie, MP | Vice-Chairperson |
| 3. Hon. Jimmy Nuru Angwenyi, MP | |
| 4. Hon. Dr. Oburu Oginga, MP | |
| 5. Hon. Sammy Mwaita, MP | |
| 6. Hon. Anyanga Andrew Toboso, MP | |
| 7. Hon. Joash Olum, MP | |
| 8. Hon. Timothy Bosire, MP | |
| 9. Hon. Shakeel Shabbir, MP | |
| 10. Hon. Abdul Rahim Dawood, MP | |
| 11. Hon. Ogendo Rose Nyamunga, MP | |
| 12. Hon. Joseph Limo, MP | |
| 13. Hon. Kirwa Stephen Bitok, MP | |
| 14. Hon. Sakwa John Bunyasi, MP | |

ABSENT WITH APOLOGIES

1. Hon. Alfred Sambu, MP
2. Hon. Sumra Irshadali, MP
3. Hon. Tiras Ngahu, MP
4. Hon. Sakaja Johnson, MP
5. Hon. Eng. Shadrack Manga, MP
6. Hon. Abdullswamad Shariff, MP
7. Hon. Daniel Epuyo Nanok, MP
8. Hon. Jones Mlolwa, MP
9. Hon. Sammy Koech, MP
10. Hon. Mary Emase, MP
11. Hon. Ronald Tonui, MP
12. Hon. Patrick Makau King'ola, MP
13. Hon. Lati Lelelit, MP
14. Hon. Kubai Iringo, MP
15. Hon. Dennis Waweru, MP



IN ATTENDANCE

- | | | |
|-------------------------|---|-----------------------|
| 1. Mr.Evans Oanda | - | First Clerk Assistant |
| 2. Mr. Joash Kochiba | - | Budget Office |
| 3. Ms. Anneceta Gacheri | - | Research Officer |

MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE

1. Amb. Amina Mohamed
2. Dr. Karanja Kibicho
3. Amb. Nelson Ndirangu
4. Mr.Amb. Eliphias Barine
5. Mr.Edward Limo
6. Mr.Hussein S. Muhamad
7. Mr.J.B. Makori
8. Ms.Stella Munyi

MIN.NO. DCF/280/2015: PRELIMINARIES

The Chairperson called the meeting to order at 10:30 am followed by a word of prayer.

MIN.NO. DCF/281/2015: PRESENTATION BY AMB. AMINA MOHAMED CABINET SECRETARY MINISTRY OF FOREIGN AFFAIRS AND INTERNATIONAL TRADE, ON WORLD TRADE ORGANIZATION (WTO) AGREEMENT ON TRADE FACILITATION

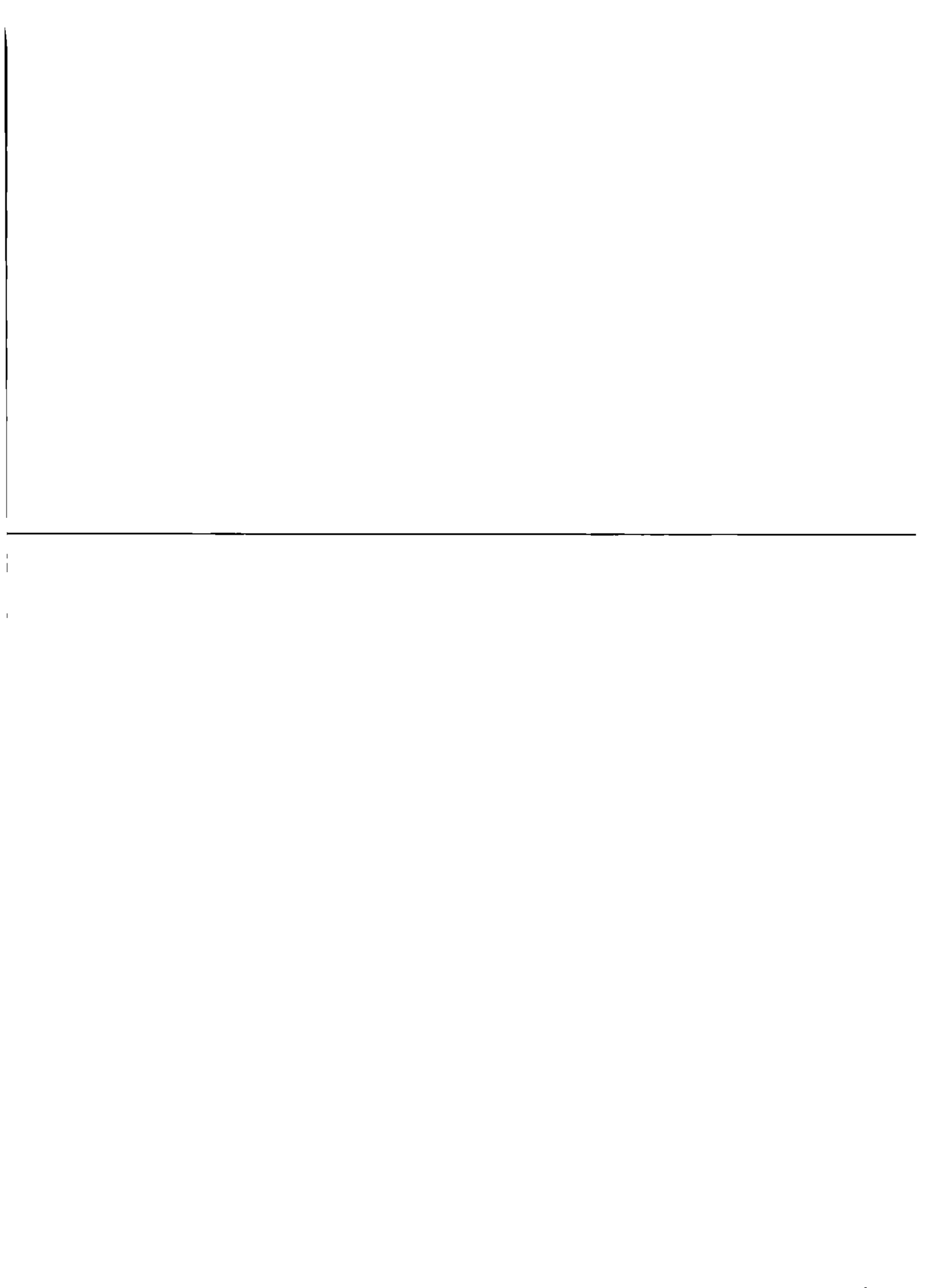
Amb. Amina Mohamed appeared before the Committee and presented the following:

1. World Trade Organization

- i. WTO is the only global international organization dealing with rules of trade among nations, to assist producers of goods and services, exporters and importers to conduct their business.
- ii. Kenya is a signatory to all WTO multilateral Agreements such as the GATT, the Agreement on Agriculture (AOA), the General Agreement on Trade in Services (GATS) and the Agreement on Trade Related Intellectual Property Rights (TRIPS).

2. World Trade Organization Agreement on Trade Facilitation (TFA)

- i. World Trade Organization Agreement on Trade Facilitation (TFA) was adopted at the 19th WTO Conference held in Bali, Indonesia in December 2013. Kenya was an active member of the WTO Agreements concluded under the Doha Round of Trade negotiations.



- ii. TFA encompasses provisions for expediting the movement, release and clearance of goods including goods in transit into and across WTO member countries.
- iii. The Agreement also sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues.
- iv. Further the Agreement contains provisions for technical assistance and capacity building.

3. Benefits of World Trade Organization Agreement on Trade Facilitation (TFA)

- i. The establishment of customs inquiry points in all WTO member countries will enhance transparency and the flow of goods. This will curb vices such as under invoicing and over invoicing.
- ii. Movement of goods in transit will be better managed through customs cooperation among WTO member countries, therefore minimizing chances of goods being smuggled into the domestic market of country of transit.

-
- iii. Further, the Agreement will reduce the costs of doing business significantly in that it provides border measures with better coordinated border agencies and efficiency in their operations in addition to handling of import and export documents.

4. The Coming into force of the World Trade Organization Agreement on Trade Facilitation (TFA)

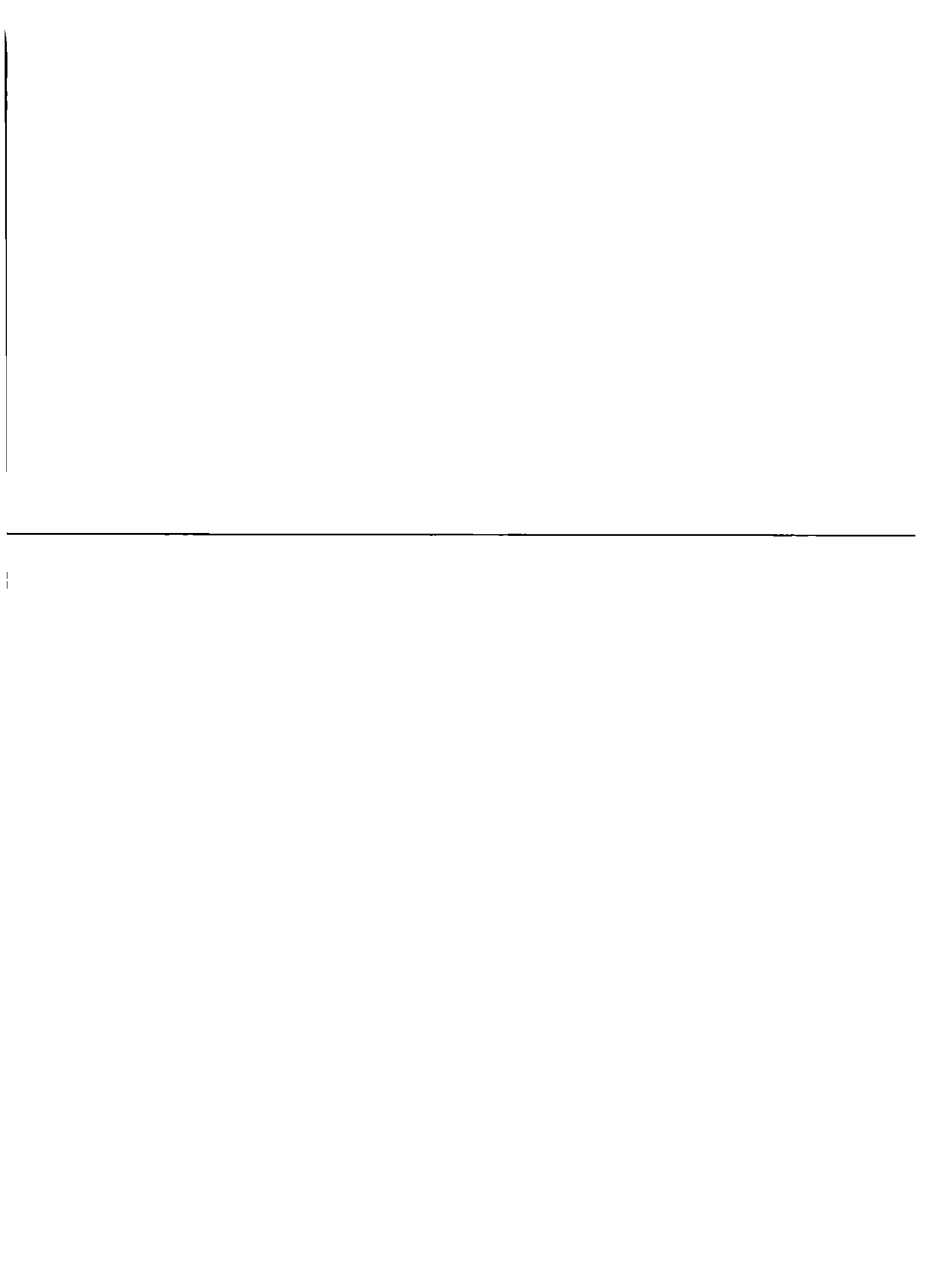
Two-thirds of the WTO Membership has to formally accept the Agreement for the TFA to enter into force. Sixteen members have formally accepted the TFA, of which 3 are African countries such as Mauritius, Botswana and Niger.

5. Kenya's Position on the Ratification of the Agreement on Trade Facilitation

The Cabinet has approved the ratification of Agreement on Trade Facilitation. However, for the Government of Kenya to ratify the Agreement, Parliament should approve the ratification of the WTO Trade Facilitation Agreement.

MIN.NO. DCF/282/2015: 10TH WTO MINISTERIAL CONFERENCE

Kenya is privileged to be the first African country to host the 10th WTO ministerial conference from 5th to 18th December 2015 in Nairobi with Amb. Mohammed, Cabinet Secretary for foreign affairs and international trade being the current chair of the Conference.



Consequently the Cabinet Secretary is mandated to encourage other WTO members to ratify the TFA for its timeliness of coming into force. Therefore Kenya should be at the forefront in ratifying the Agreement.

Other observations made by the Committee were as follows:

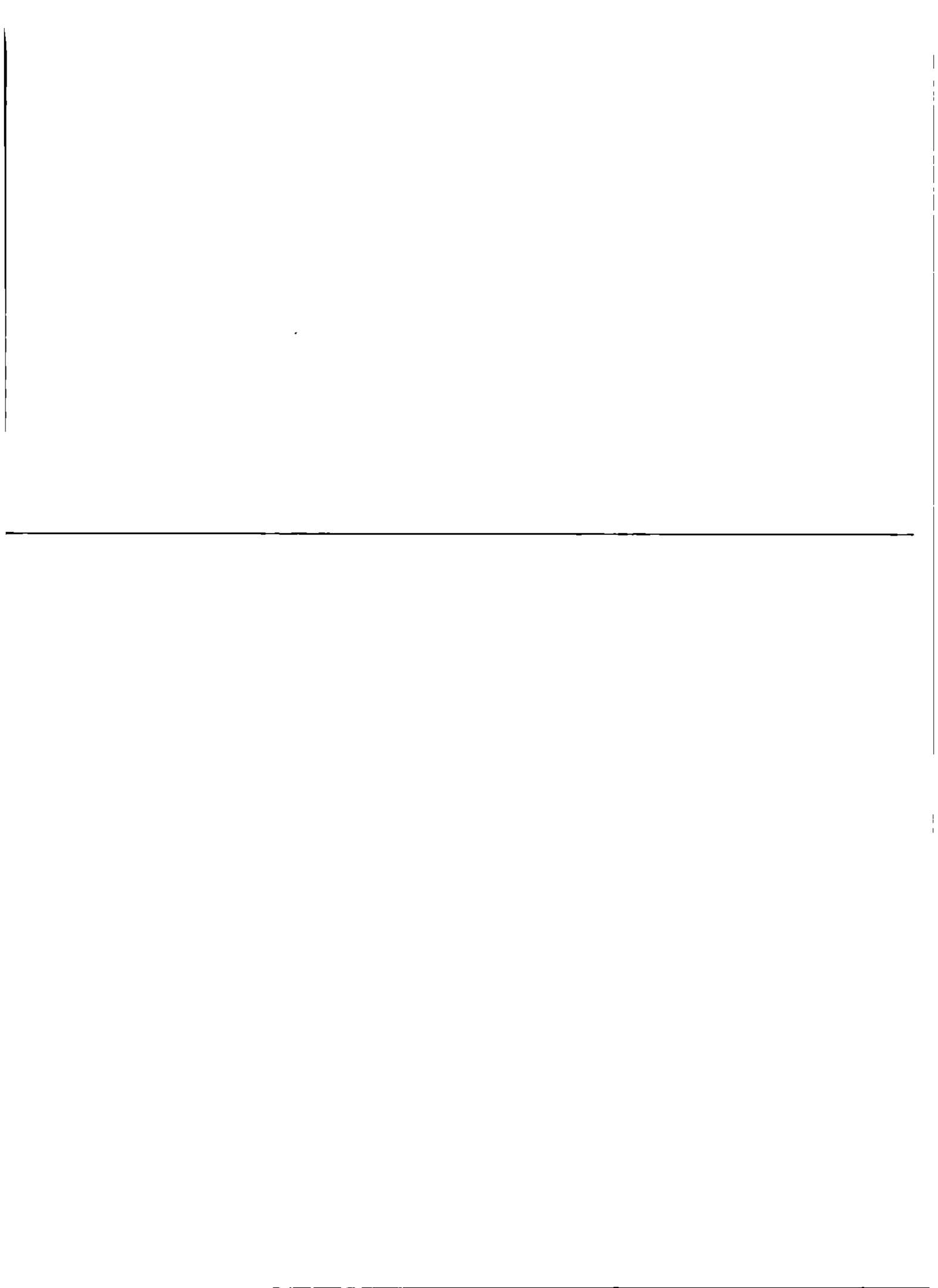
- i. Why the Cabinet Secretary was not prompt in ensuring that the treaty was ratified earlier causing its present urgency?
- ii. On whether the challenges facing the export of the Agricultural products such as tea and horticultural would be addressed through the WTO Trade Facilitation Agreement.
- iii. Besides the cost of reduction in doing business, what would be the impact of the Agreement on revenue collection in the country?
- iv. Whether the Agreement had any exit clause, in case it was not favorable to the county.
- v. The cost of accommodation in the upcoming 10th WTO Ministerial Conference.
- vi. Whether the Agreement was in line with Treaty Making and Ratification Act, 2012.

The Cabinet Secretary appraised the members as follows:

- i. The Agreement will support Kenya in capacity building and the resources to implement the Agreement, will be borne by Partners.
- ii. The cost of complying with the Agreement is much lower than the benefits that will accrue to the country.
- iii. It will be easier to clear perishable exports. Member countries will be obligated to provide storage for perishable goods being exported to their countries.
- iv. Agriculture has continued to be thorny issue, and the same is expected to be discussed more in the upcoming 10th WTO ministerial conference. The conference will push for export subsidies such as market access and domestic support will be done thereafter post 10th WTO Ministerial Conference.
- v. The Agreement has complied with Treaty Making and Ratification Act, 2012.
- vi. The Agreement has an exit strategy.
- vii. The hotels in Kenya are quite competitive in hosting the WTO Ministerial Conference compared to the rates in other countries that have hosted the conference in the past.

MIN.NO. DCF/283/2015: COMMITTEE RESOLUTION ON WTO TRADE FACILITATION AGREEMENT

The Committee unanimously approved and recommended ratification of the WTO Trade Facilitation Agreement.

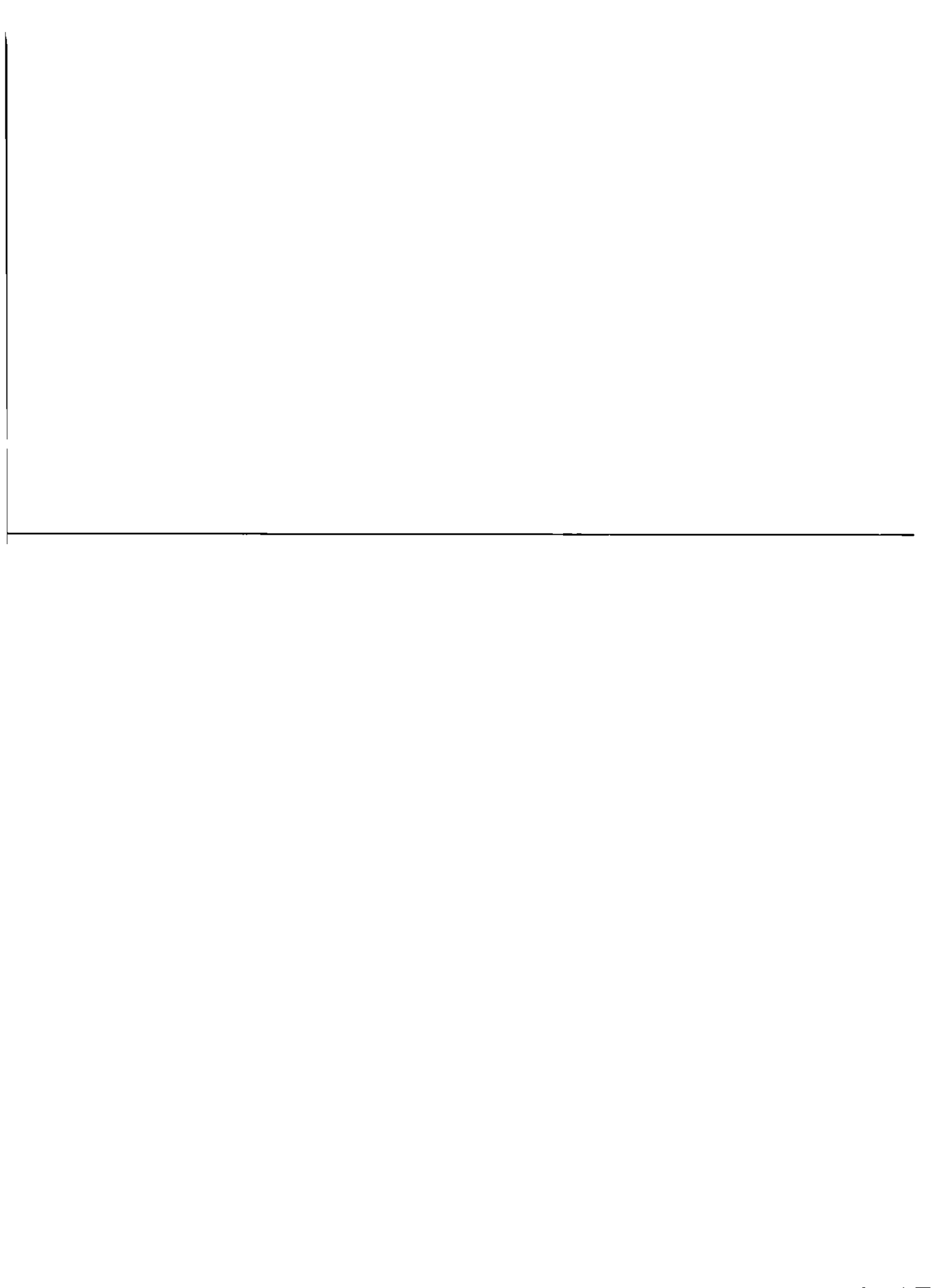


MIN.NO. DCF/284/2015: ADJOURNMENT

The Chairperson adjourned the meeting at 12.07 pm

Signed.....date.....

Chairperson

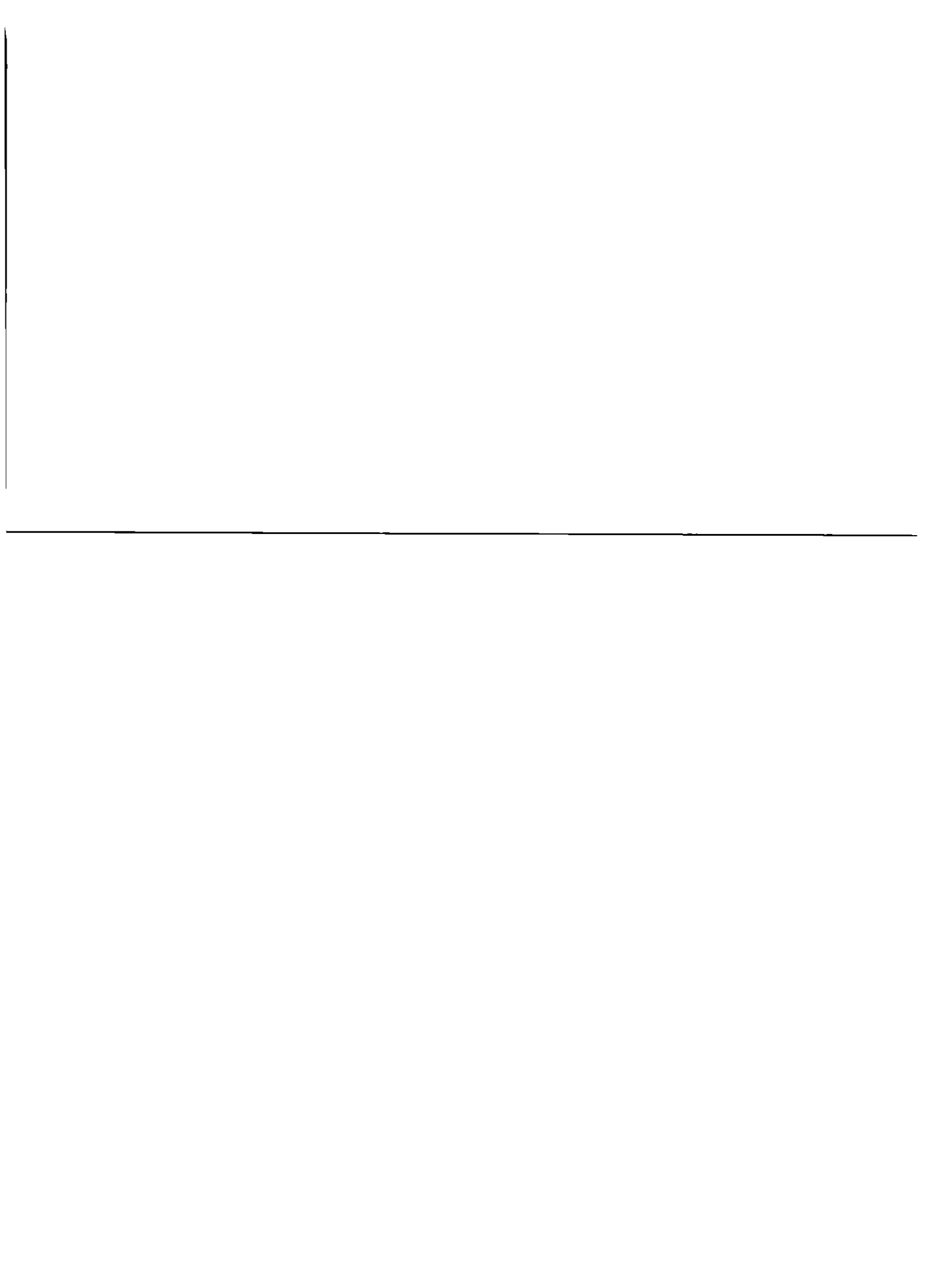


SELECT COMMITTEE ON REGIONAL INTEGRATION

MEMBERS ATTENDANCE REGISTER

DATE	02/12/2015	TIME	10:00 AM
AGENDA	Meeting CS, Foreign Affairs on Ratification of WTO Trade Facilitation Agreement		

	NAME	TITLE	SIGNATURE
1	Hon. Benjamin K. Longat	Chairman	
2	Hon. Nelson Chechukie	Chair	
3	Hon. Jimmy Angwenyi	Member	
4	Hon. Dr. Eburul Egginga	" "	
5	Hon. Sammy Mwaite	" "	
6	Hon. Anyanga Andrew Toboso	"	
7	Hon. Teash Oloro	"	
8	Hon. T.M.E. Bwalya	"	
9	Hon. Shakeel Shabbir	"	
10	Hon. A. RAZIM DAWOOD	"	
11	Hon. Rose Nyamunga	"	
12	Hon. Joseph Linto	"	
13	Hon. Kimani Stephen Bitok	"	
14	Hon. SARUWA BUNYKA	"	
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**MEMORANDUM TO THE SPEAKER OF THE NATIONAL
ASSEMBLY ON THE RATIFICATION OF THE WORLD TRADE
ORGANIZATION (WTO) AGREEMENT ON TRADE
FACILITATION**

(Submitted by the Cabinet Secretary for Foreign Affairs and
International Trade)

1.0 INTRODUCTION

Kenya is an active member of the multilateral trading system since signing the General Agreement on Tariffs and Trade (GATT) on 2nd February 1964. The GATT had been in existence since 1947. Kenya was among the founding members of the World Trade Organization (WTO) when the Marrakesh Agreement, which established the Organization, was signed in Morocco on 15 April 1994 and came to force on 1st January 1995. With a membership of 163 countries, WTO is the only global international organization dealing with rules of trade among nations, to assist producers of goods and services, exporters, and importers to conduct their business.

Committed to safeguarding the norms and values for a fair multilateral trading system, Kenya is signatory to all WTO multilateral agreements. These include the GATT, the Agreement on Agriculture (AOA); the General Agreement on Trade in Services (GATS) and the Agreement on Trade-Related Intellectual Property Rights (TRIPS).

2.0 OBJECTIVE OF THE MEMORANDUM

The purpose of this Memorandum is to:

- ~~a. Inform the National Assembly of the adoption of the Agreement on Trade Facilitation (TFA) by members of the World Trade Organization (WTO);~~
- b. Inform the National Assembly that the Cabinet in its Seventh Cabinet Meeting held on 6th November, 2015 approved the ratification of Agreement on Trade Facilitation;
- c. Seek the approval of the National Assembly for Kenya to ratify the Agreement on Trade Facilitation.

3.0 BACKGROUND

The WTO Agreement on Trade Facilitation (TFA) is the most recent of the WTO Agreements to be concluded under the Doha Round of Trade negotiations. It was adopted at the 9th WTO Ministerial Conference held in Bali, Indonesia in December, 2013.

The TFA contains provisions for expediting the movement, release and clearance of goods, including goods in transit. It also sets out measures for

effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues. It further contains provisions for technical assistance and capacity building in this area.

The TFA will enter into force once two-thirds of the WTO membership has formally accepted the Agreement. So far, sixteen (16) WTO members have formally accepted the TFA, including three African countries – Mauritius, Botswana and Niger.

4.0 PROBLEM ANALYSIS AND JUSTIFICATION

Traders from both developing and developed countries have long pointed to the “red tape” and inefficiencies that they encounter when moving goods across borders. Furthermore documentation requirements often lack transparency and harmony, a problem often compounded by the lack of cooperation between traders and government agencies. Despite advances in information technology, automatic data submission is still not a common practice at most borders.

The United Nations Conference on Trade and Development (UNCTAD) estimates that the average customs transaction involves 20–30 different parties, 40 documents, 200 data elements (30 of which are repeated at least 30 times) and the re-keying of 60–70 per cent of all data at least once. With the lowering of tariffs across the globe, the cost of complying with customs formalities is reported to exceed in many instances, the cost of duties to be paid. In the modern business environment of just-in-time production and delivery, traders need fast and predictable release and movement of goods.

For developing-country economies such as Kenya, inefficiencies in areas such as customs and transportation can be barriers to their integration into the global economy and may severely impair export competitiveness or inflow of Foreign Direct Investment (FDI). This is one of the reasons why developing-country exporters, Kenya included are increasingly advocating for the removal of administrative and non-tariff barriers.

The WTO has been addressing issues related to the facilitation of trade, ~~although it lacked specific provisions in some areas, particularly on customs~~ procedures, documentation, and transparency. This Agreement was therefore concluded to fill these gaps.

5.0 CONSTITUTIONAL IMPLICATIONS

The ratification of the WTO Trade Facilitation Agreement does not envisage amendments to the Constitution of Kenya. However, County Governments may be expected to enact relevant laws and adopt trade regulations and measures that are in conformity with the Agreement.

6.0 EXPECTED BENEFITS OF THE AGREEMENT

The Agreement provides for simplified border measures, better coordinated border agencies and efficiency in their operations, as well as handling of import and export documents leading to faster movement of goods into and across WTO member countries, hence reducing the costs of doing business.

The establishment of customs inquiry points in all WTO member countries will enhance transparency and the flow of goods, as well as exchange of information in borders. This will curb vices such as under-invoicing and over-invoicing that are responsible for illicit financial flows experienced by most developing countries.

Finally, movement of goods in transit will be better managed through customs cooperation among WTO member countries, thus minimizing chances of the aforesaid goods being smuggled into the domestic market of the country of transit.

Developing Countries such as Kenya will enjoy some flexibility in the implementation of the Agreement, in accordance with the Special and Differential Treatment principle. This entails longer transition period, capacity building, and technical assistance including financial assistance.

7.0 WAY FORWARD

Kenya is a founder and active member of the World Trade Organization, having played significant roles in advancing developing countries' agenda at this trade negotiation forum. As such, Kenya will be the first African country to host the WTO Ministerial Conference (Tenth Ministerial Conference), which is the Organization's top most decision making body, in Nairobi on December 15 – 18, 2015.

The Cabinet Secretary for Foreign Affairs and International Trade is currently the Chair of the tenth Ministerial Conference (MC10) and part of her mandate is to encourage other WTO members to ratify the TFA for it to come into force as contemplated.

In view of the above, it is recommended that the Government considers ratifying the Agreement on Trade Facilitation.

8.0 FINANCIAL IMPLICATIONS

Section III of the Agreement contains provisions that establish a Permanent Committee on Trade Facilitation at the WTO. It also requires each member to establish a National Committee to facilitate domestic coordination and implementation of the provisions of the Agreement.

Funds will be required to train personnel in charge of border agencies and expand infrastructure as prescribed by the agreement.

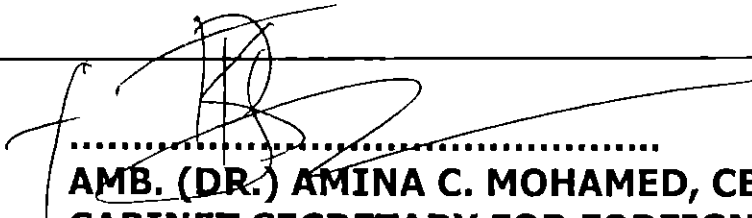
Kenya has already established an Interim National Committee on Trade Facilitation to coordinate the implementation of the Agreement at the national level. This Committee has to be legally constituted and funded to fulfill its domestic and international obligations. These funds are proposed to be provided through the annual Government budget.

9.0 RECOMMENDATIONS TO THE NATIONAL ASSEMBLY

The National Assembly is requested to:

- a) Take note of the contents of this Memorandum;
- b) Approve the ratification of the WTO Trade Facilitation Agreement.

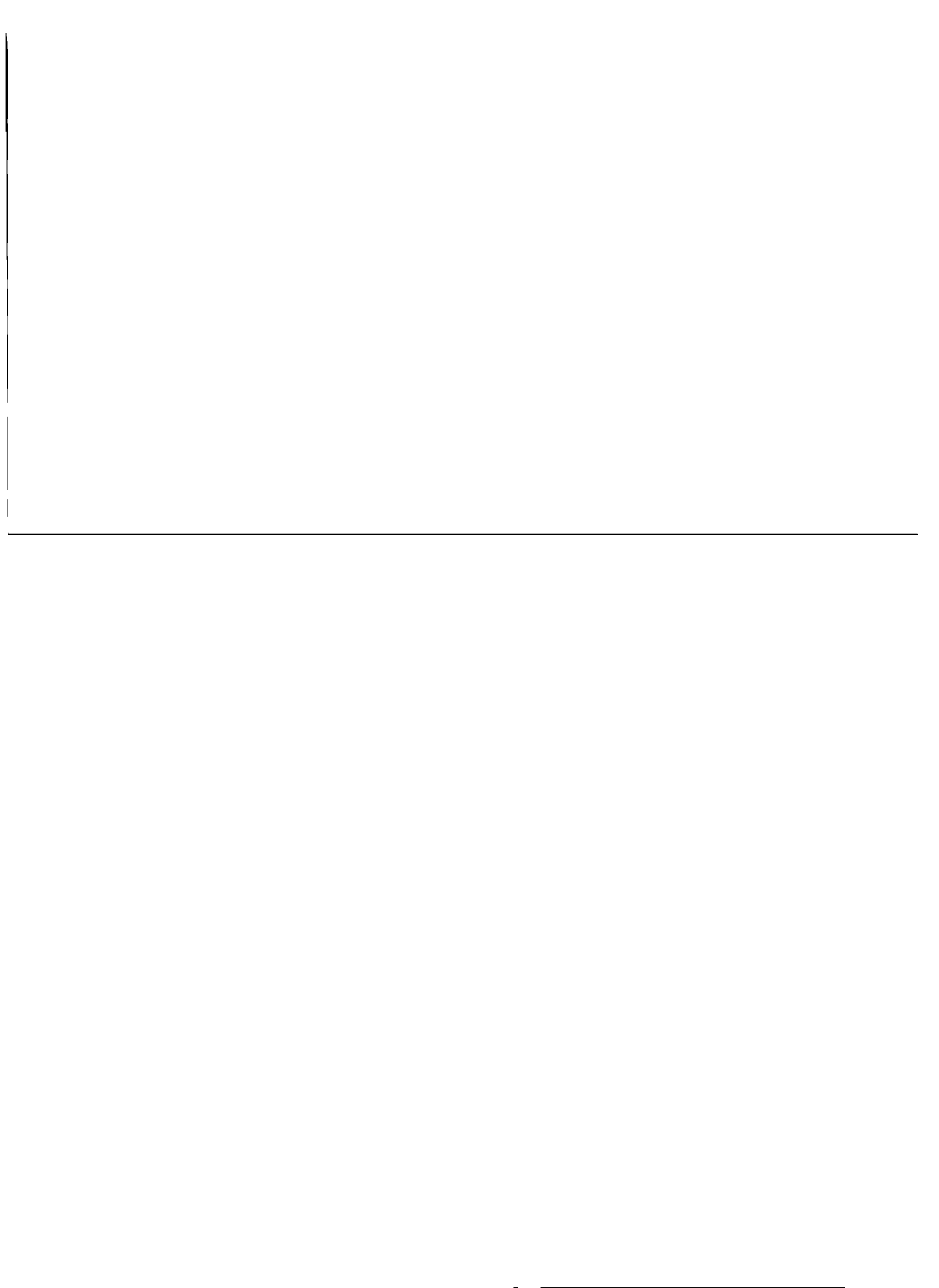
SIGNED



.....
AMB. (DR.) AMINA C. MOHAMED, CBS, CAV
CABINET SECRETARY FOR FOREIGN AFFAIRS
AND INTERNATIONAL TRADE

DATE

19/11/15
.....





11 December 2013

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**Ministerial Conference
Ninth Session
Bali, 3-6 December 2013**

AGREEMENT ON TRADE FACILITATION

MINISTERIAL DECISION OF 7 DECEMBER 2013

The Ministerial Conference,

Having regard to paragraph 1 of Article IX of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement");

Decides as follows:

1. We hereby conclude the negotiation of an Agreement on Trade Facilitation (the "Agreement"), which is annexed hereto, subject to legal review for rectifications of a purely formal character that do not affect the substance of the Agreement.
 2. ~~We hereby establish a Preparatory Committee on Trade Facilitation~~ (the "Preparatory Committee") under the General Council, open to all Members, to perform such functions as may be necessary to ensure the expeditious entry into force of the Agreement and to prepare for the efficient operation of the Agreement upon its entry into force. In particular, the Preparatory Committee shall conduct the legal review of the Agreement referred to in paragraph 1 above, receive notifications of Category A commitments, and draw up a Protocol of Amendment (the "Protocol") to insert the Agreement into Annex 1A of the WTO Agreement.
 3. The General Council shall meet no later than 31 July 2014 to annex to the Agreement notifications of Category A commitments, to adopt the Protocol drawn up by the Preparatory Committee, and to open the Protocol for acceptance until 31 July 2015. The Protocol shall enter into force in accordance with Article X:3 of the WTO Agreement.
-

ANNEX

AGREEMENT ON TRADE FACILITATION

Preamble

Members,

Having regard to the Doha Round of Multilateral Trade Negotiations;

Recalling and reaffirming the mandate and principles contained in paragraph 27 of the Doha Ministerial Declaration and Annex D of the Decision of the Doha Work Programme adopted by the General Council on 1 August 2004, as well as paragraph 33 and Annex E of the Hong Kong Ministerial Declaration;

Desiring to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit;

Recognizing the particular needs of developing and especially least-developed country Members and desiring to enhance assistance and support for capacity building in this area;

Recognizing the need for effective cooperation among Members on trade facilitation and customs compliance issues:

Hereby agree as follows:

SECTION I

ARTICLE 1: PUBLICATION AND AVAILABILITY OF INFORMATION

1 Publication

1.1. Each Member shall promptly publish the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders and other interested parties to become acquainted with them:

- a. Importation, exportation and transit procedures (including port, airport, and other entry-point procedures) and required forms and documents;
- b. Applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;
- c. Fees and charges imposed by or for governmental agencies on or in connection with importation, exportation or transit;
- d. Rules for the classification or valuation of products for customs purposes;
- e. Laws, regulations and administrative rulings of general application relating to rules of origin;
- f. Import, export or transit restrictions or prohibitions;
- g. Penalty provisions against breaches of import, export or transit formalities;
- h. Appeal procedures;
- i. Agreements or parts thereof with any country or countries relating to importation, exportation or transit;
- j. Procedures relating to the administration of tariff quotas.

1.2. Nothing in these provisions shall be construed as requiring the publication or provision of information other than in the language of the Member except as stated in paragraph 2.2.

2 Information Available Through Internet

2.1. Each Member shall make available, and update to the extent possible and as appropriate, the following through the internet:

- a. A description¹ of its importation, exportation and transit procedures, including appeal procedures, that informs governments, traders and other interested parties of the practical steps needed to import and export, and for transit;
- b. The forms and documents required for importation into, exportation from, or transit through the territory of that Member;
- c. Contact information on enquiry points.

2.2. Whenever practicable, the description referred to in subparagraph 2.1 a. shall also be made available in one of the official languages of the WTO.

2.3. Members are encouraged to make available further trade related information through the internet, including relevant trade-related legislation and other items referred to in paragraph 1.1.

3 Enquiry Points

3.1. Each Member shall, within its available resources, establish or maintain one or more enquiry points to answer reasonable enquiries of governments, traders and other interested parties on matters covered by paragraph 1.1 as well as to provide the required forms and documents referred to in subparagraph 1.1 a.

3.2. Members of a customs union or involved in regional integration may establish or maintain common enquiry points at the regional level to satisfy the requirement of paragraph 3.1 for common procedures.

3.3. Members are encouraged not to require the payment of a fee for answering enquiries and providing required forms and documents. If any, Members shall limit the amount of its fees and charges to the approximate cost of services rendered.

3.4. The enquiry points shall answer enquiries and provide the forms and documents within a reasonable time period set by each Member, which may vary depending on the nature or complexity of the request.

4 Notification

4.1. Each Member shall notify the Committee of:

- a. The official place(s) where the items in subparagraphs 1.1 a. to j. have been published; and
- b. The URLs of website(s) referred to in paragraph 2.1, as well as the contact information of the enquiry points referred to in paragraph 3.1.

ARTICLE 2: OPPORTUNITY TO COMMENT, INFORMATION BEFORE ENTRY INTO FORCE AND CONSULTATION

1 Opportunity to Comment and Information before Entry into Force

1.1. Each Member shall, to the extent practicable and in a manner consistent with its domestic law and legal system, provide opportunities and an appropriate time period to traders and other interested parties to comment on the proposed introduction or amendment of laws and regulations of general application related to the movement, release and clearance of goods, including goods in transit.

¹ Each Member has the discretion to state on its website the legal limitations of this description.

1.2. Each Member shall, to the extent practicable, and in a manner consistent with its domestic law and legal system, ensure that new or amended laws and regulations of general application related to the movement, release and clearance of goods, including goods in transit are published, or information on them made otherwise publicly available, as early as possible before their entry into force, in order to enable traders and other interested parties to become acquainted with them.

1.3. Changes to duty rates or tariff rates, as well as measures that have a relieving effect or whose effectiveness would be undermined by prior publication, measures applied in urgent circumstances, or minor changes to domestic law and legal system are excluded from paragraphs 1.1 and 1.2 above.

2 Consultations

Each Member shall, as appropriate, provide for regular consultations between border agencies and traders or other stakeholders within its territory.

ARTICLE 3: ADVANCE RULINGS

1. Each Member shall issue an advance ruling in a reasonable, time bound manner to an applicant that has submitted a written request containing all necessary information. If a Member declines to issue an advance ruling it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

2. A Member may decline to issue an advance ruling to an applicant where the question raised in the application:

- a. is already pending in the applicant's case before any governmental agency, appellate tribunal or court; or
- b. has already been decided by any appellate tribunal or court.

3. The advance ruling shall be valid for a reasonable period of time after its issuance unless the law, facts or circumstances supporting the original advance ruling have changed.

4. Where the Member revokes, modifies or invalidates the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where a Member revokes, modifies or invalidates advance rulings with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false or misleading information.

5. An advance ruling issued by a Member shall be binding on that Member in respect of the applicant that sought it. The Member may provide that the advance ruling be binding on the applicant.

6. Each Member shall publish, at a minimum:

- a. the requirements for the application for an advance ruling, including the information to be provided and the format;
- b. the time period by which it will issue an advance ruling; and
- c. the length of time for which the advance ruling is valid.

7. Each Member shall provide, upon written request of an applicant, a review of the advance ruling or the decision to revoke, modify or invalidate the advance ruling.²

8. Each Member shall endeavour to make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.

² Under this paragraph: a) a review may, before or after the ruling has been acted upon, be provided by the official, office or authority that issued the ruling, a higher or independent administrative authority, or a judicial authority; and b) a Member is not required to provide the applicant with recourse to Article 4.1.1 of this Agreement.

9. Definitions and scope:

- a. An advance ruling is a written decision provided by a Member to an applicant prior to the importation of a good covered by the application that sets forth the treatment that the Member shall provide to the good at the time of importation with regard to:
 - i. the good's tariff classification, and
 - ii. the origin of the good;³
- b. In addition to the advance rulings defined in subparagraph 3.9 a., Members are encouraged to provide advance rulings on:
 - i. the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts;
 - ii. the applicability of the Member's requirements for relief or exemption from customs duties;
 - iii. the application of the Member's requirements for quotas, including tariff quotas; and
 - iv. any additional matters for which a Member considers it appropriate to issue an advance ruling.
- c. An applicant is an exporter, importer or any person with a justifiable cause or a representative thereof.
- d. A Member may require that an applicant have legal representation or registration in its territory. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium sized enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.

ARTICLE 4: APPEAL OR REVIEW PROCEDURES

1 Right to Appeal or Review

1.1. Each Member shall provide that any person to whom customs issues an administrative decision⁴ has the right, within its territory to:

- a. administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision;
and/or
- b. judicial appeal or review of the decision.

1.2. The legislation of each Member may require administrative appeal or review to be initiated prior to judicial appeal or review.

1.3. Members shall ensure that their appeal or review procedures are carried out in a non-discriminatory manner.

³ It is understood that an advance ruling on the origin of a good may be an assessment of origin for the purposes of the Agreement on Rules of Origin where the ruling meets the requirements of this Agreement and the Agreement on the Rules of Origin. Likewise, an assessment of origin under the Agreement on Rules of Origin may be an advance ruling on the origin of a good for the purposes of this Agreement where the ruling meets the requirements of both agreements. Members are not required to establish separate arrangements under this provision in addition to those established pursuant to the Rules of Origin Agreement in relation to the assessment of origin provided that the requirements of this Article are fulfilled.

⁴ An administrative decision in this Article means a decision with a legal effect that affects rights and obligations of a specific person in an individual case. It shall be understood that an administrative decision in this Article covers an administrative action within the meaning of Article X of the GATT 1994 or failure to take an administrative action or decision as provided for in a Member's domestic law and legal system. For addressing such failure, Members may maintain an alternative administrative mechanism or judicial recourse to direct the customs authority to promptly issue an administrative decision in place of the right to appeal or review under subparagraph 1.1 a.

1.4. Each Member shall ensure that, in a case where the decision on appeal or review under subparagraph 1.1 a. is not given either i. within set periods as specified in its laws or regulations or ii. without undue delay, the petitioner has the right to either further appeal to or further review by the administrative authority or the judicial authority or any other recourse to the judicial authority.⁵

1.5. Each Member shall ensure that the person referred to in paragraph 1.1 is provided with the reasons for the administrative decision so as to enable such a person to have recourse to appeal or review procedures where necessary.

1.6. Each Member is encouraged to make the provisions of this Article applicable to an administrative decision issued by a relevant border agency other than customs.

ARTICLE 5: OTHER MEASURES TO ENHANCE IMPARTIALITY, NON-DISCRIMINATION AND TRANSPARENCY

1 Notifications for enhanced controls or inspections

Where a Member adopts or maintains a system of issuing notifications or guidance to its concerned authorities for enhancing the level of controls or inspections at the border in respect of foods, beverages or feedstuffs covered under the notification or guidance for protecting human, animal, or plant life or health within its territory, the following disciplines shall apply to the manner of their issuance, termination or suspension:

- a. each Member may, as appropriate, issue the notification or guidance based on risk.
- b. each Member may issue the notification or guidance so that it applies uniformly only to those points of entry where the sanitary and phytosanitary conditions on which the notification or guidance are based apply.
- c. each Member shall promptly terminate or suspend the notification or guidance when circumstances giving rise to it no longer exist, or if changed circumstances can be addressed in a less trade restrictive manner.
- d. when a Member decides to terminate or suspend the notification or guidance, it shall, as appropriate, promptly publish the announcement of its termination or suspension in a non-discriminatory and easily accessible manner, or inform the exporting Member or the importer.

2 Detention

A Member shall inform the carrier or importer promptly in case of detention of goods declared for importation, for inspection by Customs or any other competent authority.

3 Test Procedures

3.1. A Member may, upon request, grant an opportunity for a second test in case the first test result of a sample taken upon arrival of goods declared for importation shows an adverse finding.

3.2. A Member shall either publish, in a non-discriminatory and easily accessible manner, the name and address of any laboratory where the test can be carried out or provide this information to the importer when it is granted the opportunity under paragraph 3.1.

3.3. A Member shall consider the result of the second test in the release and clearance of goods, and, if appropriate, may accept the results of such test.

⁵ Nothing in this paragraph shall prevent Members from recognizing administrative silence on appeal or review as a decision in favour of the petitioner in accordance with its laws and regulations.

ARTICLE 6: DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION**1 General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation**

1.1. The provisions of paragraph 6.1 shall apply to all fees and charges other than import and export duties and other than taxes within the purview of Article III of GATT 1994 imposed by Members on or in connection with importation or exportation of goods.

1.2. Information on fees and charges shall be published in accordance with Article 1 of this Agreement. This information shall include the fees and charges that will be applied, the reason for such fees and charges, the responsible authority and when and how payment is to be made.

1.3. An adequate time period shall be accorded between the publication of new or amended fees and charges and their entry into force except in urgent circumstances. Such fees and charges shall not be applied until information on them has been published.

1.4. Each Member shall periodically review its fees and charges with a view to reducing their number and diversity, where practicable.

2 Specific disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation

2.1. Fees and charges for customs processing:

- i. shall be limited in amount to the approximate cost of the services rendered on or in connection with the specific import or export operation in question; and
- ii. are not required to be linked to a specific import or export operation provided they are levied for services that are closely connected to the customs processing of goods.

3 Penalty Disciplines

3.1. For the purpose of Article 6.3, the term "penalties" shall mean those imposed by a Member's customs administration for a breach of the Member's customs law, regulation, or procedural requirement.

3.2. Each Member shall ensure that penalties for a breach of a customs law, regulation, or procedural requirement are imposed only on the person(s) responsible for the breach under its laws.

3.3. The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.

3.4. Each Member shall ensure that it maintains measures to avoid:

- i. conflicts of interest in the assessment and collection of penalties and duties; and
- ii. creating an incentive for the assessment or collection of a penalty that is inconsistent with paragraph 3.3.

3.5. Each Member shall ensure that when a penalty is imposed for a breach of customs laws, regulations, or procedural requirements, an explanation in writing is provided to the person(s) upon whom the penalty is imposed specifying the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed.

3.6. When a person voluntarily discloses to a Member's customs administration the circumstances of a breach of a customs law, regulation, or procedural requirement prior to the discovery of the breach by the customs administration, the Member is encouraged to, where appropriate, consider this fact as a potential mitigating factor when establishing a penalty for that person.

3.7. The provisions of this paragraph shall apply to the penalties on traffic in transit referred to in paragraph 3.1.

ARTICLE 7: RELEASE AND CLEARANCE OF GOODS

1 Pre-arrival Processing

1.1. Each Member shall adopt or maintain procedures allowing for the submission of import documentation and other required information, including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.

1.2. Members shall, as appropriate, provide for advance lodging of documents in electronic format for pre-arrival processing of such documents.

2 Electronic Payment

Each Member shall, to the extent practicable, adopt or maintain procedures allowing the option of electronic payment for duties, taxes, fees and charges collected by customs incurred upon importation and exportation.

3 Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges

3.1. Each Member shall adopt or maintain procedures allowing the release of goods prior to the final determination of customs duties, taxes, fees and charges, if such a determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met.

3.2. As a condition for such release, a Member may require:

- a. payment of customs duties, taxes, fees and charges determined prior to or upon arrival of goods and a guarantee for any amount not yet determined in the form of a surety, a deposit or another appropriate instrument provided for in its laws and regulations; or
- b. a guarantee in the form of a surety, a deposit or other appropriate instrument provided for in its laws and regulations.

3.3. Such guarantee shall not be greater than the amount the Member requires to ensure payment of customs duties, taxes, fees and charges ultimately due for the goods covered by the guarantee.

3.4. In cases where an offence requiring imposition of monetary penalties or fines has been detected, a guarantee may be required for the penalties and fines that may be imposed.

3.5. The guarantee as set out in paragraphs 3.2 and 3.4 shall be discharged when it is no longer required.

3.6. Nothing in these provisions shall affect the right of a Member to examine, detain, seize or confiscate or deal with the goods in any manner not otherwise inconsistent with the Member's WTO rights and obligations.

4 Risk Management

4.1. Each Member shall, to the extent possible, adopt or maintain a risk management system for customs control.

4.2. Each Member shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or disguised restrictions to international trade.

4.3. Each Member shall concentrate customs control and, to the extent possible other relevant border controls, on high risk consignments and expedite the release of low risk consignments.

Each Member may also select, on a random basis, consignments for such controls as part of its risk management.

4.4. Each Member shall base risk management on assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, *inter alia*, HS code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport.

5 Post-clearance Audit

5.1. With a view to expediting the release of goods, each Member shall adopt or maintain post-clearance audit to ensure compliance with customs and other related laws and regulations.

5.2. Each Member shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Member shall conduct post-clearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved the Member shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations and the reasons for the results.

5.3. Members acknowledge that the information obtained in post-clearance audit may be used in further administrative or judicial proceedings.

5.4. Members shall, wherever practicable, use the result of post-clearance audit in applying risk management.

6 Establishment and Publication of Average Release Times

6.1. Members are encouraged to measure and publish their average release time of goods periodically and in a consistent manner, using tools such as, *inter alia*, the WCO Time Release Study.⁶

6.2. Members are encouraged to share with the Committee their experiences in measuring average release times, including methodologies used, bottlenecks identified, and any resulting effects on efficiency.

7 Trade Facilitation Measures for Authorized Operators

7.1. Each Member shall provide additional trade facilitation measures related to import, export or transit formalities and procedures, pursuant to paragraph 7.3, to operators who meet specified criteria, hereinafter called authorized operators. Alternatively, a Member may offer such facilitation measures through customs procedures generally available to all operators and not be required to establish a separate scheme.

7.2. The specified criteria shall be related to compliance, or the risk of non-compliance, with requirements specified in a Member's laws, regulations or procedures. The specified criteria, which shall be published, may include:

- a. an appropriate record of compliance with customs and other related laws and regulations;
- b. a system of managing records to allow for necessary internal controls;
- c. financial solvency, including, where appropriate, provision of a sufficient security/guarantee; and
- d. supply chain security.

⁶ Each Member may determine the scope and methodology of such average release time measurement in accordance with its needs and capacity.

The specified criteria to qualify as an operator shall not:

- a. be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail; and
- b. to the extent possible, restrict the participation of small and medium-sized enterprises.

7.3. The trade facilitation measures provided pursuant to paragraph 7.1 shall include at least 3 of the following measures:⁷

- a. low documentary and data requirements as appropriate;
- b. low rate of physical inspections and examinations as appropriate;
- c. rapid release time as appropriate;
- d. deferred payment of duties, taxes, fees and charges;
- e. use of comprehensive guarantees or reduced guarantees;
- f. a single customs declaration for all imports or exports in a given period; and
- g. clearance of goods at the premises of the authorized operator or another place authorized by customs.

7.4. Members are encouraged to develop authorized operator schemes on the basis of international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfillment of the legitimate objectives pursued.

7.5. In order to enhance the facilitation measures provided to operators, Members shall afford to other Members the possibility to negotiate mutual recognition of authorized operator schemes.

7.6. Members shall exchange relevant information within the Committee about authorized operator schemes in force.

8 Expedited Shipments

8.1. Each Member shall adopt or maintain procedures allowing for expedited release of at least those goods entered through air cargo facilities to persons that apply for such treatment, while maintaining customs control.⁸ If a Member employs criteria⁹ limiting who may apply, the Member may, in published criteria, require that the applicant shall, as conditions for qualifying for the application of the treatment described in paragraphs 8.2 a. - d. to its expedited shipments:

- a. provide adequate infrastructure and payment of customs expenses related to processing of expedited shipments, in cases where the applicant fulfills the Member's requirements for such processing to be performed at a dedicated facility;
- b. submit in advance of the arrival of an expedited shipment the information necessary for release;
- c. be assessed fees limited in amount to the approximate cost of services rendered in providing the treatment described in paragraph 8.2 a. - d.;
- d. maintain a high degree of control over expedited shipments through the use of internal security, logistics, and tracking technology from pick-up to delivery;
- e. provide expedited shipment from pick-up to delivery;
- f. assume liability for payment of all customs duties, taxes, and fees and charges to the customs authority for the goods;
- g. have a good record of compliance with customs and other related laws and regulations;

⁷ A measure listed in sub-paragraphs a.-g. will be deemed to be provided to authorized operators if it is generally available to all operators.

⁸ In cases where a Member has an existing procedure that provides the treatment in paragraph 8.2, this provision would not require that Member to introduce separate expedited release procedures.

⁹ Such application criteria, if any, shall be in addition to the Member's requirements for operating with respect to all goods or shipments entered through air cargo facilities.

- h. comply with other conditions directly related to the effective enforcement of the Member's laws, regulations and procedural requirements, that specifically relate to providing the treatment described in paragraph 8.2.

8.2. Subject to paragraphs 8.1 and 8.3, Members shall:

- a. minimize the documentation required for the release of expedited shipments in accordance with Article 10.1, and to the extent possible, provide for release based on a single submission of information on certain shipments;
- b. provide for expedited shipments to be released under normal circumstances as rapidly as possible after arrival, provided the information required for release has been submitted;
- c. endeavour to apply the treatment in sub-paragraphs 8.2 a. and b. to shipments of any weight or value recognizing that a Member is permitted to require additional entry procedures, including declarations and supporting documentation and payment of duties and taxes, and to limit such treatment based on the type of good, provided the treatment is not limited to low value goods, such as documents; and
- d. provide, to the extent possible, for a *de minimis* shipment value or dutiable amount for which customs duties and taxes will not be collected, aside from certain prescribed goods. Internal taxes, such as value added taxes and excise taxes, applied to imports consistently with Article III of the GATT 1994 are not subject to this provision.

8.3. Nothing in paragraphs 8.1 and 8.2 shall affect the right of a Member to examine, detain, seize, confiscate or refuse entry to goods, or to carry out post-clearance audits, including in connection with the use of risk management systems. Further, nothing in paragraphs 8.1 and 8.2 shall prevent a Member from requiring, as a condition for release, the submission of additional information and the fulfillment of non-automatic licensing requirements.

9 Perishable Goods¹⁰

9.1. With a view to preventing avoidable loss or deterioration of perishable goods, and provided all regulatory requirements have been met, each Member shall:

- a. provide for the release of perishable goods under normal circumstances within the shortest possible time; and
- b. provide for the release of perishable goods, in exceptional circumstances where it would be appropriate to do so, outside the business hours of customs and other relevant authorities.

9.2. Each Member shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

9.3. Each Member shall either arrange, or allow an importer to arrange, for the proper storage of perishable goods pending their release. The Member may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorizations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. The Member shall, where practicable and consistent with domestic legislation, upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

9.4. In cases of significant delay in the release of perishable goods, and upon written request, the importing Member shall, to the extent practicable, provide a communication on the reasons for the delay.

¹⁰ For the purposes of this provision, perishable goods are goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.

ARTICLE 8: BORDER AGENCY COOPERATION

1. A Member shall ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade.

2. Members shall, to the extent possible and practicable, cooperate on mutually agreed terms with other Members with whom they share a common border with a view to coordinating procedures at border crossings to facilitate cross-border trade. Such cooperation and coordination may include:

- i. alignment of working days and hours;
- ii. alignment of procedures and formalities;
- iii. development and sharing of common facilities;
- iv. joint controls;
- v. establishment of one stop border post control.

ARTICLE 9: MOVEMENT OF GOODS UNDER CUSTOMS CONTROL INTENDED FOR IMPORT

Each Member shall, to the extent practicable, and provided all regulatory requirements are met, allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where the goods would be released or cleared.

ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION AND EXPORTATION AND TRANSIT**1 Formalities and Documentation Requirements**

1.1. With a view to minimizing the incidence and complexity of import, export, and transit formalities and of decreasing and simplifying import, export and transit documentation requirements and taking into account the legitimate policy objectives and other factors such as changed circumstances, relevant new information and business practices, availability of techniques and technology, international best practices and inputs from interested parties, each Member shall review such formalities and documentation requirements, and, based on the results of the review, ensure, as appropriate, that such formalities and documentation requirements:

- a. are adopted and/or applied with a view to a rapid release and clearance of goods, particularly perishable goods;
- b. are adopted and/or applied in a manner that aims at reducing the time and cost of compliance for traders and operators;
- c. are the least trade restrictive measure chosen, where two or more alternative measures are reasonably available for fulfilling the policy objective or objectives in question; and
- d. are not maintained, including parts thereof, if no longer required.

1.2. The Committee shall develop procedures for sharing relevant information and best practices as appropriate.

2 Acceptance of Copies

2.1. Each Member shall, where appropriate, endeavour to accept paper or electronic copies of supporting documents required for import, export or transit formalities.

2.2. Where a government agency of a Member already holds the original of such a document, any other agency of that Member shall accept a paper or electronic copy, where applicable, from the agency holding the original in lieu of the original document.

2.3. A Member shall not require an original or copy of export declarations submitted to the customs authorities of the exporting Member as a requirement for importation.¹¹

3 Use of International Standards

3.1. Members are encouraged to use relevant international standards or parts thereof as a basis for their importation, exportation or transit formalities and procedures except as otherwise provided for in this Agreement.

3.2. Members are encouraged to take part, within the limits of their resources, in the preparation and periodic review of relevant international standards by appropriate international organizations.

3.3. The Committee shall develop procedures for the sharing by Members of relevant information, and best practices, on the implementation of international standards, as appropriate. The Committee may also invite relevant international organizations to discuss their work on international standards. As appropriate, the Committee may identify specific standards that are of particular value to Members.

4 Single Window

4.1. Members shall endeavour to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation or transit of goods through a single entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.

4.2. In cases where documentation and/or data requirements have already been received through the single window, the same documentation and/or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances and other limited exceptions which are made public.

4.3. Members shall notify to the Committee the details of operation of the single window.

4.4. Members shall, to the extent possible and practical, use information technology to support the single window.

5 Pre-shipment Inspection

5.1. Members shall not require the use of pre-shipment inspections in relation to tariff classification and customs valuation.

5.2. Without prejudice to the rights of Members to use other types of pre-shipment inspection not covered by paragraph 5.1, Members are encouraged not to introduce or apply new requirements regarding their use.¹²

6 Use of Customs Brokers

6.1. Without prejudice to the important policy concerns of some Members that currently maintain a special role for customs brokers, from the entry into force of this agreement Members shall not introduce the mandatory use of customs brokers.

6.2. Each Member shall notify and publish its measures on the use of customs brokers. Any subsequent modifications thereof shall be notified to the Committee and published promptly.

6.3. With regard to the licensing of customs brokers, Members shall apply rules that are transparent and objective.

¹¹ Nothing in this paragraph precludes a Member from requiring documents such as certificates, permits or licenses as a requirement for the importation of controlled or regulated goods.

¹² This sub-paragraph refers to pre-shipment inspections covered by the Pre-shipment Inspection Agreement, and does not preclude pre-shipment inspections for SPS purposes.

7 Common Border Procedures and Uniform Documentation Requirements

7.1. Each Member shall, subject to paragraph 7.2, apply common customs procedures and uniform documentation requirements for release and clearance of goods throughout its territory.

7.2. Nothing in this Article shall prevent a Member from:

- a. differentiating its procedures and documentation requirements based on the nature and type of goods, or their means of transport;
- b. differentiating its procedures and documentation requirements for goods based on risk management;
- c. differentiating its procedures and documentation requirements to provide total or partial exemption from import duties or taxes;
- d. applying electronic filing or processing; or
- e. differentiating its procedures and documentation requirements in a manner consistent with the Agreement on Sanitary and Phytosanitary Measures.

8 Rejected Goods

8.1. Where goods presented for import are rejected by the competent authority of a Member on account of their failure to meet prescribed sanitary or phytosanitary regulations or technical regulations, the Member shall, subject to and consistent with its laws and regulations, allow the importer to re-consign or to return the rejected goods to the exporter or another person designated by the exporter.

When such an option is given and the importer fails to exercise it within a reasonable period of time, the competent authority may take a different course of action to deal with such non-compliant goods.

9 Temporary Admission of Goods/Inward and Outward Processing

a. Temporary Admission of Goods

Each Member shall allow, as provided for in its laws and regulations, goods to be brought into a customs territory conditionally relieved, totally or partially, from payment of import duties and taxes if such goods are brought into a customs territory for a specific purpose, are intended for re-exportation within a specific period, and have not undergone any change except normal depreciation and wastage due to the use made of them.

b. Inward and Outward Processing

- i. Each Member shall allow, as provided for in its laws and regulations, inward and outward processing of goods. Goods allowed for outward processing may be re-imported with total or partial exemption from import duties and taxes in accordance with the Member's laws and regulations in force.
- ii. For the purposes of this Article, the term "inward processing" means the Customs procedure under which certain goods can be brought into a Customs territory conditionally relieved totally or partially from payment of import duties and taxes, or eligible for duty drawback, on the basis that such goods are intended for manufacturing, processing or repair and subsequent exportation.
- iii. For the purposes of this Article, the term "outward processing" means the Customs procedure under which goods which are in free circulation in a Customs territory may be temporarily exported for manufacturing, processing or repair abroad and then reimported.

ARTICLE 11: FREEDOM OF TRANSIT

1. Any regulations or formalities in connection with traffic in transit imposed by a Member shall not:
 - a. be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a reasonably available less trade restrictive manner,
 - b. be applied in a manner that would constitute a disguised restriction on traffic in transit.
2. Traffic in transit shall not be conditioned upon collection of any fees or charges imposed in respect of transit, except the charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.
3. Members shall not seek, take or maintain any voluntary restraints or any other similar measures on traffic in transit. This is without prejudice to existing and future national regulations, bilateral or multilateral arrangements related to regulating transport consistent with WTO rules.
4. Each Member shall accord to products which will be in transit through the territory of any other Member treatment no less favourable than that which would be accorded to such products if they were being transported from their place of origin to their destination without going through the territory of such other Member.
5. Members are encouraged to make available, where practicable, physically separate infrastructure (such as lanes, berths and similar) for traffic in transit.
6. Formalities, documentation requirements and customs controls, in connection with traffic in transit, shall not be more burdensome than necessary to:
 - a. identify the goods; and
 - b. ensure fulfillment of transit requirements.
7. Once goods have been put under a transit procedure and have been authorized to proceed from the point of origination in a Member's territory, they will not be subject to any customs charges nor unnecessary delays or restrictions until they conclude their transit at the point of destination within the Member's territory.
8. Members shall not apply technical regulations and conformity assessment procedures within the meaning of the Agreement on Technical Barriers to Trade on goods in transit.
9. Members shall allow and provide for advance filing and processing of transit documentation and data prior to the arrival of goods.
10. Once traffic in transit has reached the customs office where it exits the territory of the Member, that office shall promptly terminate the transit operation if transit requirements have been met.
- 11.1. Where a Member requires a guarantee in the form of a surety, deposit or other appropriate monetary or non-monetary¹³ instrument for traffic in transit, such guarantee shall be limited to ensuring that requirements arising from such traffic in transit are fulfilled.
- 11.2. Once the Member has determined that its transit requirements have been satisfied, the guarantee shall be discharged without delay.
- 11.3. Each Member shall, in a manner consistent with its laws and regulations, allow comprehensive guarantees which include multiple transactions for same operators or renewal of guarantees without discharge for subsequent consignments.

¹³ Nothing in this provision shall preclude a Member from maintaining existing procedures whereby the mean of transport can be used as a guarantee for traffic in transit.

11.4 Each Member shall make available to the public the relevant information it uses to set the guarantee, including single transaction and, where applicable, multiple transaction guarantee.

11.5 Each Member may require the use of customs convoys or customs escorts for traffic in transit only in circumstances presenting high risks or when compliance with customs laws and regulations cannot be ensured through the use of guarantees. General rules applicable to customs convoys or customs escorts shall be published in accordance with Article 1.

12. Members shall endeavour to cooperate and coordinate with one another with a view to enhance freedom of transit. Such cooperation and coordination may include, but is not limited to an understanding on:

- i. charges;
- ii. formalities and legal requirements; and
- iii. the practical operation of transit regimes.

13. Each Member shall endeavour to appoint a national transit coordinator to which all enquiries and proposals by other Members relating to the good functioning of transit operations can be addressed.

ARTICLE 12: CUSTOMS COOPERATION

1 Measures Promoting Compliance and Cooperation

1.1. Members agree on the importance of ensuring that traders are aware of their compliance obligations, encouraging voluntary compliance to allow importers to self-correct without penalty in appropriate circumstances, and applying compliance measures to initiate stronger measures for non-compliant traders.¹⁴

1.2. Members are encouraged to share information on best practices in managing customs compliance, including through the Committee on Trade Facilitation. Members are encouraged to cooperate in technical guidance or assistance in building capacity for the purposes of administering compliance measures, and enhancing their effectiveness.

2 Exchange of Information

2.1. Upon request, and subject to the provisions of this Article, Members shall exchange the information set out in paragraph 6 b. and/or c. for the purpose of verifying an import or export declaration in identified cases where there are reasonable grounds to doubt the truth or accuracy of the declaration.

2.2. Each Member shall notify to the Committee the details of its contact point for the exchange of this information.

3 Verification

A Member shall make a request for information only after it has conducted appropriate verification procedures of an import or export declaration and after it has inspected the available relevant documentation.

4 Request

4.1. The requesting Member shall provide the requested Member with a written request, through paper or electronic means in a mutually agreed WTO or other language, including:

- a. the matter at issue including, where appropriate and available, the serial number of the export declaration corresponding to the import declaration in question;

¹⁴ Such activity has the overall objective of lowering the frequency of non-compliance, and consequently reducing the need for exchange of information in pursuit of enforcement.

- b. the purpose for which the requesting Member is seeking the information or documents, along with the names and contact details of the persons about which the request relates, if known;
- c. where required by the requested Member, provide confirmation¹⁵ of the verification where appropriate.
- d. the specific information or documents requested;
- e. the identity of the originating office making the request;
- f. reference to provisions of the requesting Member's domestic law and legal system that govern the collection, protection, use, disclosure, retention and disposal of confidential information and personal data;

4.2. If the requesting Member is not in a position to comply with any of the sub-paragraphs of 4.1, it shall specify this in the request.

5 Protection and confidentiality

5.1. The requesting Member shall, subject to paragraph 5.2:

- a. hold all information or documents provided by the requested Member strictly in confidence and grant at least the same level of such protection and confidentiality as that provided under the domestic law and legal system of the requested Member as described by it under paragraphs 6.1 b. and 6.1 c.;
- b. provide the information or documents only to the customs authorities dealing with the matter at issue and use the information or documents solely for the purpose stated in the request unless the requested Member agrees otherwise in writing;
- c. not disclose the information or documents without the specific written permission of the requested Member;
- d. not use any unverified information or documents from the requested Member as the deciding factor towards alleviating the doubt in any given circumstance;
- e. respect any case-specific conditions set out by the requested Member regarding retention and disposal of confidential information or documents and personal data; and
- f. upon request, inform the requested Member of any decisions and actions taken on the matter as a result of the information or documents provided.

5.2. A requesting Member may be unable under its domestic law and legal system to comply with any of the sub-paragraphs of 5.1. If so, the requesting Member shall specify this in the request.

5.3. The Requested Member shall treat any request, and verification information, received under paragraph 4 with at least the same level of protection and confidentiality accorded by the requested member to its own similar information.

6 Provision of information

6.1. Subject to the provisions of this article, the requested Member shall promptly:

- a. respond in writing, through paper or electronic means;
- b. provide the specific information as set out in the import or export declaration, or the declaration, to the extent it is available, along with a description of the level of protection and confidentiality required of the requesting Member;
- c. if requested, provide the specific information as set out in the following documents, or the documents, submitted in support of the import or export declaration, to the extent it is available: commercial invoice, packing list, certificate of origin and bill of lading, in the

¹⁵ This may include pertinent information on the verification conducted under paragraph 12.3. Such information shall be subject to the level of protection and confidentiality specified by the Member conducting the verification.

form in which these were filed, whether paper or electronic, along with a description of the level of protection and confidentiality required of the requesting Member;

- d. confirm that the documents provided are true copies;
- e. provide the information or otherwise respond to the request, to the extent possible, within 90 days from the date of the request.

6.2. The requested Member may require, under its domestic law and legal system, an assurance prior to the provision of information that the specific information will not be used as evidence in criminal investigations, judicial proceedings, or in non-customs proceedings without the specific written permission of the requested Member. If the requesting Member is not in a position to comply with this requirement it should specify this to the requested Member.

7 Postponement or refusal of a request

7.1. A requested Member may postpone or refuse part or all of a request to provide information, and shall so inform the requesting Member of the reasons for doing so, where:

- a. it would be contrary to the public interest as reflected in the domestic law and legal system of the requested Member.
- b. its domestic law and legal system prevents the release of the information. In such case it shall provide the requesting Member with a copy of the relevant, specific reference.
- c. the provision of the information would impede law enforcement or otherwise interfere with an on-going administrative or judicial investigation, prosecution or proceeding.
- d. the consent of the importer or exporter is required by domestic law and legal system that govern the collection, protection, use, disclosure, retention and disposal of confidential information or personal data and that consent is not given.
- e. the request for information is received after the expiration of the legal requirement of the requested Member for the retention of documents.

7.2. In the circumstances of paragraph 4.2, 5.2 or 6.2 execution of such a request shall be at the discretion of the requested Member.

8 Reciprocity

If the requesting Member is of the opinion that it would be unable to comply with a similar request in case such a request was made by the requested Member, or if it has not yet implemented this Article, it shall state that fact in its request. Execution of such a request shall be at the discretion of the requested Member.

9 Administrative burden

9.1. The requesting Member shall take into account the associated resource and cost implications for the requested Member's administration in responding to requests for information. The requesting Member shall consider the proportionality between its fiscal interest in pursuing its request and the efforts to be made by the requested Member in providing the information.

9.2. If a requested Member receives an unmanageable number of requests for information, or a request for information of unmanageable scope from one or more requesting Member(s), and is unable to meet such requests within a reasonable time it may request one or more of the requesting Member(s) to prioritize with a view to agreeing on a practical limit within its resource constraints. In the absence of a mutually-agreed approach, the execution of such requests shall be at the discretion of the requested Member based on the results of its own prioritization.

10 Limitations

Requested Members shall not be required to:

- a. modify the format of their import or export declarations or procedures;

- b. call for documents other than those submitted with the import or export declaration as specified in paragraph 6 c.;
- c. initiate enquiries to obtain the information;
- d. modify the period of retention of such information;
- e. introduce paper documentation where electronic format has already been introduced;
- f. translate the information;
- g. verify the accuracy of the information;
- h. provide information that would prejudice the legitimate commercial interests of particular enterprises, public or private.

11 Unauthorized use or disclosure

11.1. In the event of any breach of the conditions of use or disclosure of information exchanged under this Article, the requesting Member that received the information shall promptly communicate the details of such unauthorized use or disclosure to the requested Member that provided the information, and:

- a. take necessary measures to remedy the breach;
- b. take necessary measures to prevent any future breach; and
- c. notify the requested Member of the measures taken under sub-paragraphs a. and b. above.

11.2. The requested Member may suspend its obligations to the requesting Member under this Article until the measures set out in paragraph 11.1 have been taken.

12 Bilateral and regional agreements

12.1. Nothing in this Article shall prevent a Member from entering into or maintaining a bilateral, plurilateral, or regional agreement for sharing or exchange of customs information and data, including on a secure and rapid basis such as on an automatic basis or in advance of the arrival of the consignment.

12.2. Nothing in this Article shall be construed to alter or affect Members' rights or obligations under such bilateral, plurilateral or regional agreements or to govern the exchange of customs information and data under such other agreements.

ARTICLE 13: INSTITUTIONAL ARRANGEMENTS

1 COMMITTEE ON TRADE FACILITATION

1.1. A Committee on Trade Facilitation is hereby established.

1.2. The Committee shall be open for participation by all Members and shall elect its own Chairperson. The Committee shall meet as needed and envisaged by the relevant provisions of this Agreement, but no less than once a year, for the purpose of affording Members the opportunity to consult on any matters related to the operation of this Agreement or the furtherance of its objectives. The Committee shall carry out such responsibilities as assigned to it under this Agreement or by the Members. The Committee shall establish its own rules of procedure.

1.3. The Committee may establish such subsidiary bodies as may be required. All such bodies shall report to the Committee.

1.4. The Committee shall develop procedures for sharing by Members of relevant information and best practices as appropriate.

1.5. The Committee shall maintain close contact with other international organizations in the field of trade facilitation, such as the World Customs Organization, with the objective of securing the

best available advice for the implementation and administration of this Agreement and in order to ensure that unnecessary duplication of effort is avoided. To this end, the Committee may invite representatives of such organizations or their subsidiary bodies to:

- a. attend meetings of the Committee; and
- b. discuss specific matters related to the implementation of this Agreement.

1.6. The Committee shall review the operation and implementation of this Agreement 4 years from its entry into force, and periodically thereafter.

1.7. Members are encouraged to raise before the Committee questions relating to issues on the implementation and application of this Agreement.

1.8. The Committee shall encourage and facilitate ad hoc discussions among Members on specific issues under this Agreement, with a view to reaching a mutually satisfactory solution promptly.

2 NATIONAL COMMITTEE ON TRADE FACILITATION

Each Member shall establish and/or maintain a national committee on trade facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of provisions of this Agreement.

SECTION II

SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS FOR DEVELOPING COUNTRY MEMBERS AND LEAST DEVELOPED COUNTRY MEMBERS

1 General Principles

1.1. The provisions contained in Articles 1 to 12 of this Agreement shall be implemented by developing and least developed country Members in accordance with this Section, which is based on the modalities agreed in Annex D of the July 2004 Framework Agreement (WT/L/579) and paragraph 33 and Annex E of the Hong Kong Ministerial Declaration (WT/MIN(05)/DEC).

1.2. Assistance and support for capacity building¹⁶ should be provided to help developing and least-developed country Members implement the provisions of this agreement, in accordance with their nature and scope. The extent and the timing of implementing the provisions of this Agreement shall be related to the implementation capacities of developing and least developed country Members. Where a developing or least developed country Member continues to lack the necessary capacity, implementation of the provision(s) concerned will not be required until implementation capacity has been acquired.

1.3. Least developed country Members will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.

1.4. These principles shall be applied through the provisions set out in Section II.

2 CATEGORIES OF PROVISIONS

2.1. There are three categories of provisions:

- a. Category A contains provisions that a developing country Member or a least developed country Member designates for implementation upon entry into force of this Agreement, or in the case of a least developed country Member within one year after entry into force, as provided in paragraph 3.
- b. Category B contains provisions that a developing country Member or a least developed country Member designates for implementation on a date after a transitional period of time following the entry into force of this Agreement, as provided in paragraph 4.
- c. Category C contains provisions that a developing country Member or a least developed country Member designates for implementation on a date after a transitional period of time following the entry into force of this Agreement and requiring the acquisition of implementation capacity through the provision of assistance and support for capacity building, as provided for in paragraph 4.

2.2. Each developing country and least developed country Member shall self-designate, on an individual basis, the provisions it is including under each of the Categories A, B and C.

3 Notification and Implementation of Category A

3.1. Upon entry into force of this Agreement, each developing country Member shall implement its Category A commitments. Those commitments designated under Category A will thereby be made an integral part of this Agreement.

3.2. A least developed country Member may notify the Committee of the provisions it has designated in Category A for up to one year after entry into force of this Agreement. Each least developed country Member's commitments designated under Category A will thereby be made an integral part of this Agreement.

¹⁶ For the purposes of this Agreement, "assistance and support for capacity building" may take the form of technical, financial, or any other mutually agreed form of assistance provided.

4 Notification of Definitive Dates for Implementation of Category B and Category C

4.1. With respect to the provisions that a developing country Member has not designated in Category A, the Member may delay implementation in accordance with the process set out in this paragraph.

Developing Country Member Category B

- a. Upon entry into force of this Agreement, each developing country Member shall notify to the Committee the provisions that it has designated in Category B and corresponding indicative dates for implementation.¹⁷
- b. No later than one year after entry into force of this Agreement, each developing country Member shall notify to the Committee its definitive dates for implementation of the provisions it has designated in Category B. If a developing country Member, before this deadline, believes it requires additional time to notify its definitive dates, the Member may request that the Committee extend the period sufficient to notify its dates.

Developing Country Member Category C

- c. Upon entry into force of this Agreement, each developing country Member shall notify to the Committee the provisions that it has designated in Category C and corresponding indicative dates for implementation. For transparency purposes, notifications submitted shall include information on the assistance and support for capacity building that the Member requires in order to implement¹⁸.
- d. Within one year after entry into force of this Agreement, developing country Members and relevant donor Members, taking into account any existing arrangements already in place, notifications pursuant to paragraph 10.1 and information submitted pursuant to sub-paragraph c. above, shall provide information to the Committee on the arrangements maintained or entered into that are necessary to provide assistance and support for capacity building to enable implementation of Category C.¹⁹ The participating developing country Member shall promptly inform the Committee of such arrangements. The Committee shall also invite non-Member donors to provide information on existing or concluded arrangements.
- e. Within 18 months from the date of the provision of the information stipulated in sub-paragraph 4.1 d., donor Members and respective developing country Members shall inform the Committee on progress in the provision of assistance and support. Each developing country Member shall, at the same time, notify its list of definitive dates for implementation.

4.2. With respect to those provisions that a least developed country Member has not designated under Category A, least developed country Members may delay implementation in accordance with the process set forth in this paragraph.

Least Developed Country Member Category B

- a. No later than one year after entry into force of this Agreement, a least developed country Member shall notify the Committee its Category B provisions and may notify corresponding indicative dates for implementation of these provisions, taking into account maximum flexibilities for least developed country Members.
- b. No later than two years after the notification date stipulated under sub-paragraph a. above, each least developed country Member shall notify the Committee to confirm designations of provisions and notify its dates for implementation. If a least developed country Member, before this deadline, believes it requires additional time to notify its

¹⁷ Notifications submitted may also include such further information as the notifying Member deems appropriate. Members are encouraged to provide information on the domestic agency/entity responsible for implementation.

¹⁸ Members may also include information on national trade facilitation implementation plans or projects; the domestic agency/entity responsible for implementation; and the donors with which the Member may have an arrangement in place to provide assistance.

¹⁹ Such arrangements will be on mutually agreed terms, either bilaterally or through appropriate international organizations, consistent with paragraph 9.3.

definitive dates, the Member may request that the Committee extend the period sufficiently to notify its dates.

Least Developed Country Member Category C

- c. For transparency purposes and to facilitate arrangements with donors, one year after entry into force of this Agreement each least developed country Member shall notify the Committee of the provisions it has designated in Category C, taking into account maximum flexibilities for least developed country Members.
- d. One year after the date stipulated in sub-paragraph c. above, least developed country Members shall notify information on assistance and support for capacity building that the Member requires in order to implement.²⁰
- e. Within two years after the notification under sub-paragraph d. above, least developed country Members and relevant donor Members, taking into account information submitted pursuant to sub-paragraph d. above, shall provide information to the Committee on the arrangements maintained or entered into that are necessary to provide assistance and support for capacity building to enable implementation of Category C.²¹ The participating least developed country Member shall promptly inform the Committee of such arrangements. The least developed country Member shall, at the same time, notify indicative dates for implementation of corresponding Category C commitments covered by the assistance arrangements. The Committee shall also invite non-Member donors to provide information on existing and concluded arrangements.
- f. Within 18 months from the date of the provision of the information stipulated in sub-paragraph 4.2 e., relevant donor Members and respective least developed country Members shall inform the Committee on progress in the provision of assistance and support. Each least-developed country Member shall, at the same time, notify its list of definitive dates for implementation.

4.3. Developing country Members and least developed country Members experiencing difficulties in submitting definitive dates for implementation within the deadlines set out in paragraphs 4.1 and 4.2 because of the lack of donor support or lack of progress in the provision of assistance and support should notify the Committee as early as possible prior to the expiration of those deadlines. Members agree to cooperate to assist in addressing such difficulties, taking into account the particular circumstances and special problems facing the Member concerned. The Committee shall, as appropriate, take action to address the difficulties including, where necessary, by extending the deadlines for the Member concerned to notify its definitive dates.

4.4. Three months before the deadline stipulated in paragraph 4.1 b. or 4.1 e., or in the case of a least developed country Member paragraph 4.2 b. or 4.2 f., the Secretariat shall remind a Member if that Member has not notified a definitive date for implementation of provisions that it has designated in Category B or C. If the Member does not invoke paragraph 4.3 or paragraph 4.1 b., or in the case of a least developed country Member paragraph 4.2 b., to extend the deadline and still does not notify a definitive date for implementation, the Member shall implement the provisions within one year after the deadline stipulated in paragraph 4.1 b. or 4.1 e., or in the case of a least developed country Member paragraph 4.2 b. or 4.2 f., or extended by paragraph 4.3.

4.5. No later than 60 days after the dates for notification of definitive dates for implementation of Category B and Category C in accordance with paragraphs 4.1, 4.2 or 4.3, the Committee shall take note of the annexes containing each Member's definitive dates for implementation of Category B and Category C provisions, including any dates set under paragraph 4.4, thereby making these annexes an integral part of this Agreement.

²⁰ Members may also include information on national trade facilitation implementation plans and projects and information on the domestic agency/entity responsible for implementation, and the donors with which the Member may have an arrangement in place to provide assistance.

²¹ Such arrangements will be on mutually agreed terms, either bilaterally or through appropriate international organizations, consistent with subparagraph 9.3.

5 Early Warning Mechanism: Extension of Implementation Dates for Provisions in Categories B and C

5.1.

- a. A developing country Member or least developed country Member that considers itself to be experiencing difficulty in implementing a provision that it has designated in Category B or Category C by the definitive date established under paragraph 4.1 b. or 4.1 e., or in the case of a least-developed country Member paragraph 4.2 b. or 4.2 f., and should notify the Committee. Developing countries shall notify the Committee no later than 120 days before the expiration of the implementation date. Least developed countries shall notify the Committee no later than 90 days before such date.
- b. The notification to the Committee shall indicate the new date by which the developing country Member or least developed country Member expects to be able to implement the provision concerned. The notification shall also indicate the reasons for the expected delay in implementation. Such reasons may include the need for assistance not earlier anticipated or additional assistance to help build capacity.

5.2. Where a developing country Member's request for additional time for implementation does not exceed 18 months or a least developed country Member's request for additional time does not exceed 3 years, the requesting Member is entitled to such additional time without any further action by the Committee.

5.3. Where a developing country or least developed country Member considers that it requires a first extension longer than that provided for in paragraph 5.2 or a second or any subsequent extension, it shall submit to the Committee a request for an extension containing the information described in 5.1 b. no later than 120 days in respect of a developing country and 90 days in respect of a least developed country before the expiration of the original definitive implementation date or that date as subsequently extended.

5.4. The Committee shall give sympathetic consideration to granting requests for extension taking into account the specific circumstances of the Member submitting the request. These circumstances may include difficulties and delays in obtaining assistance.

6 Implementation of Category B and Category C

6.1. In accordance with paragraph 1.2, if a developing country Member or a least developed country Member, having fulfilled the procedures set forth in sub-paragraph 4.1 or 4.2 and in paragraph 5, and where an extension requested has not been granted or where the developing country Member or least developed country Member otherwise experiences unforeseen circumstances that prevents an extension being granted under paragraph 5, self-assesses that its capacity to implement a provision under Category C continues to be lacking, that Member shall notify the Committee of its inability to implement the relevant provision.

6.2. The Trade Facilitation Committee shall immediately establish an Expert Group, and in any case no later than 60 days after the Committee receives the notification from the relevant developing country Member or least developed country Member. The Expert Group will examine the issue and make a recommendation to the Committee within 120 days of its composition.

6.3. The Expert Group shall be composed of five independent persons, highly qualified in the fields of trade facilitation and assistance and support for capacity building. The composition of the Expert Group shall ensure balance between nationals from developing and developed country Members. Where a least developed country Member is involved, the Expert Group shall include at least one national from a least developed country. If the Committee cannot agree on the composition of the Expert Group within 20 days of its establishment, the Director-General, in consultation with the chair of the Committee, shall determine the composition of the Expert Group in accordance with the terms of this paragraph.

6.4. The Expert Group shall consider the Member's self-assessment of lack of capacity and shall make a recommendation to the Trade Facilitation Committee. When considering the Expert Group's recommendation concerning a least developed country Member, the Committee shall, as appropriate, take action that will facilitate the acquisition of sustainable implementation capacity.

6.5. The Member shall not be subject to proceedings under the Dispute Settlement Understanding on this issue from the time the developing country Member notifies the Committee of its inability to implement the relevant provision until the first meeting of the Committee after it receives the recommendation of the Expert Group. At that meeting, the Committee shall consider the recommendation of the Expert Group. For the least developed country Member, the proceedings under the Dispute Settlement Understanding shall not apply on the respective provision from the date of notification to the Committee of its inability to implement the provision until the Committee makes a decision on the issue, or within 24 months after the first Committee meeting set out above, whichever is the earlier.

6.6. Where a least developed country Member loses its ability to implement a Category C commitment, it may inform the Committee and follow the procedures set out in paragraph 6.

7 Shifting between Categories B and C

7.1. Developing Country Members and least developed country Members who have notified provisions under Categories B and C may shift provisions between such categories through the submission of a notification to the Committee. Where a Member proposes to shift a provision from Category B to C, the Member shall provide information on the assistance and support required to build capacity.

7.2. In the event that additional time is required to implement a provision as a result of it having been shifted from Category B to Category C, the Member may:

- a. use the provisions of paragraph 5, including the opportunity for an automatic extension; or
- b. request an examination by the Committee of the Member's request for extra time to implement the provision and, if necessary, for assistance and support for capacity building, including the possibility of a review and recommendation by the Expert Group under paragraph 6; or
- c. in the case of a least developed country Member, any new implementation date of more than four years after the original date notified under Category B shall require approval by the Committee. In addition, a least developed country continues to have recourse to paragraph 5. It is understood that assistance and support for capacity building is required for a least developed country Member so shifting.

8 Grace Period for the Application of the Understanding on Rules and Procedures Governing the Settlement of Disputes

8.1. For a period of 2 years after entry into force of this Agreement, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against a developing country Member concerning any provision that the Member has designated in Category A.

8.2. For a period of 6 years after entry into force of this Agreement, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against a least developed country Member concerning any provision that the Member has designated in Category A.

8.3. For a period of 8 years after implementation of a provision under Category B and C by a least developed country Member, the provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall not apply to the settlement of disputes against that least developed country Member concerning those provisions.

8.4. Notwithstanding the grace period for the application of the Understanding on Rules and Procedures Governing the Settlement of Disputes, before making a request for consultations pursuant to Articles XXII or XXIII, and at all stages of dispute settlement procedures with regard to a measure of a least developed country Member, a Member shall give particular consideration to the special situation of least developed country Members. In this regard, Members shall exercise due restraint in raising matters under the Understanding on Rules and Procedures Governing the Settlement of Disputes involving least developed country Members.

8.5. Each Member shall, upon request, during the grace period allowed under this paragraph, provide adequate opportunity to other Members for discussion with respect to any issue relating to the implementation of this Agreement.

9 Provision of Assistance for Capacity Building

9.1. Donor Members agree to facilitate the provision of assistance and support for capacity building to developing country and least developed country Members, on mutually agreed terms and either bilaterally or through the appropriate international organizations. The objective is to assist developing country and least developed country Members to implement the provisions of Section I of this Agreement.

9.2. Given the special needs of least developed country Members, targeted assistance and support should be provided to the least developed country Members so as to help them build sustainable capacity to implement their commitments. Through the relevant development cooperation mechanisms and in coherence with the principles of technical assistance and capacity building as referred to in paragraph 9.3, development partners shall endeavour to provide assistance and support in this area in a way that does not compromise existing development priorities.

9.3. Members shall endeavour to apply the following principles for providing assistance and support for capacity building with regard to the implementation of this Agreement:

- a. take account of the overall developmental framework of recipient countries and regions and, where relevant and appropriate, ongoing reform and technical assistance programs;
- b. include, where relevant and appropriate, activities to address regional and sub-regional challenges and promote regional and sub-regional integration;
- c. ensure that ongoing trade facilitation reform activities of the private sector are factored into assistance activities;
- d. promote coordination between and among Members and other relevant institutions, including regional economic communities, to ensure maximum effectiveness of and results from this assistance. To this end:
 - i. coordination, primarily in the country or region where the assistance is to be provided, between partner Members and donors, and among bilateral and multilateral donors, should aim to avoid overlap and duplication in assistance programs and inconsistencies in reform activities through close coordination of technical assistance and capacity building interventions;
 - ii. for least developed country Members, the Enhanced Integrated Framework should be a part of this coordination process; and
 - iii. Members should also promote internal coordination between their trade and development officials, both in capitals and Geneva, in the implementation of the Agreement and technical assistance.
- e. encourage use of existing in-country and regional coordination structures such as roundtables and consultative groups to coordinate and monitor implementation activities; and
- f. encourage developing countries Members to provide capacity building to other developing and least developed country and consider supporting such activities, where possible.

- 9.4. The Committee shall hold at least one dedicated session per year to:
- a. discuss any problems regarding implementation of provisions or sub-parts of provisions;
 - b. review progress in the provision of technical assistance and capacity building to support the implementation of the Agreement, including any developing or least developed country Members not receiving adequate technical assistance and capacity building;
 - c. share experiences and information on ongoing assistance and implementation programs, including challenges and successes;
 - d. review donor notifications as set forth in paragraph 10; and
 - e. review the operation of paragraph 9.2.

10 Information on Assistance to be Submitted to the Committee

10.1. To provide transparency to developing and least developed Members on the provision of assistance and support for implementation of Section I, each donor Member assisting developing country and least developed country Members with the implementation of this Agreement shall submit to the Committee, at entry into force of the Agreement and annually thereafter, the following information on its assistance and support for capacity building that was disbursed in the preceding twelve months and, where available, that is committed in the next twelve months²²:

- a. a description of the assistance and support for capacity building;
- b. the status and amount committed/disbursed;
- c. procedures for disbursement of the assistance and support;
- d. the beneficiary country, or, where necessary, the region; and
- e. the implementing agency in the Member providing assistance and support.

The information shall be provided in the format specified in Annex 1. In the case of OECD members, the information submitted can be based on relevant information from the OECD Creditor Reporting System. Developing country Members declaring themselves in a position to provide assistance and support are encouraged to provide the information above.

10.2. Donor Members assisting developing country and least developed country Members shall submit to the Committee:

- a. contact points of their agencies responsible for providing assistance and support for capacity building related to the implementation of the provisions of Section I of this Agreement including, where practicable, information on such contact points within the country or region where the assistance and support is to be provided; and
- b. information on the process and mechanisms for requesting assistance and support.

Developing country Members declaring themselves in a position to provide assistance and support are encouraged to provide the information above.

10.3. Developing country and least developed country Members intending to avail themselves of trade facilitation-related assistance and support shall submit to the Committee information on contact point(s) of the office(s) responsible for coordinating and prioritizing such assistance and support.

10.4. Members may provide the information in paragraphs 10.2 and 10.3 through internet references and shall update the submitted information as necessary. The Secretariat shall make all such information publicly available.

10.5. The Committee shall invite relevant international and regional organizations (such as the IMF, OECD, UNCTAD, WCO, UN Regional Commissions, the World Bank, or their subsidiary bodies, and regional development banks) and other agencies of cooperation to provide information referred to in paragraphs 10.1, 10.2 and 10.4.

²² The information provided will reflect the demand driven nature of the provision of technical assistance.

FINAL PROVISIONS

1. For the purpose of this Agreement, the term "Member" is deemed to include the competent authority of that Member.
2. All provisions of this Agreement are binding on all Members.
3. Members shall implement this Agreement from the date of its entry into force. Developing country Members and least developed country Members that choose to use the provisions of Section II shall implement this Agreement in accordance with Section II.
4. A Member which accepts this Agreement after its entry into force shall implement its Category B and C commitments counting the relevant periods from the date this Agreement enters into force.
5. Members of a customs union or a regional economic arrangement may adopt regional approaches to assist in the implementation of their obligations under the Agreement on Trade Facilitation including through the establishment and use of regional bodies.
6. Notwithstanding the General interpretative note to Annex 1A, nothing in this Agreement shall be construed as diminishing the obligations of Members under the GATT 1994. In addition, nothing in this Agreement shall be construed as diminishing the rights and obligations of Members under the Agreement on Technical Barriers to Trade and the Agreement on the Application of Sanitary and Phytosanitary Measures.
7. All exceptions and exemptions²³ under the General Agreement on Tariffs and Trade 1994 shall apply to the provisions of this Agreement. ~~Waivers applicable to the GATT 1994 or any part thereof, granted according to Article IX:3 and Article IX:4 of the Marrakesh Agreement establishing the WTO and any amendments thereto as of the date of entry into force of this Agreement, shall apply to the provisions of this Agreement.~~
8. The provisions of Articles XXII and XXIII of the General Agreement on Tariffs and Trade 1994 as elaborated and applied by the Understanding on Rules and Procedures Governing the Settlement of Disputes shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided for in this Agreement.
9. Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.
10. The Category A commitments of developing and least developed country Members annexed to this Agreement in accordance with paragraphs 3.1 and 3.2 of Section II shall constitute an integral part of this Agreement.
11. The Category B and C commitments of developing and least developed country Members taken note of by the Committee and annexed to this Agreement pursuant to paragraph 4.5 of Section II shall constitute an integral part of this Agreement.

²³ This includes Articles V:7 and X:1 of the GATT 1994 and the Ad note to Article VIII of the GATT 1994.

ANNEX 1: FORMAT FOR NOTIFICATION UNDER ARTICLE 10.1

Donor Member:

Period covered by the notification:

Description of the technical and financial assistance and capacity building resources	Status and amount committed/disbursed	Beneficiary country/ Region (where necessary)	The implementing agency in the Member providing assistance	Procedures for disbursement of the assistance

