



**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 2<sup>nd</sup> 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 1<sup>st</sup> 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.

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*Paper Laid  
By Hon. K.O. Mutho  
(Majority Party Whip) on  
Nov. 19. 2015 (PM)  
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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 6<sup>th</sup> 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 9<sup>th</sup> 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**

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

**DATE**

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