

National committees on trade facilitation

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Abstract

The World Trade Organization's (WTO) Trade Facilitation Agreement (TFA) includes a specific requirement that national committees on trade facilitation (NCTFs) be established 'to facilitate both domestic coordination and implementation of the provisions of this Agreement' (WTO, 2014, Art 23.2).

This paper, which is based on the findings of a comprehensive review of Australia's National Committee on Trade Facilitation (Widdowson et al., 2017), provides an overview of relevant international policies, recommendations, trends and developments, as well as identified industry priorities and ambitions from an Australian perspective in relation to the facilitation of international trade within the scope of the TFA.

The research identifies ways to enhance the ability of such committees to influence a meaningful trade facilitation agenda that reflects the needs and aspirations of a country's international trading community.

Background

In November 2014, World Trade Organization (WTO) members adopted a Protocol of Amendment to insert the Trade Facilitation Agreement (TFA) into Annex 1A of the WTO Agreement, and in February 2017, the TFA entered into force upon two-thirds of the WTO's members, having completed their domestic ratification process.

The TFA contains provisions for expediting the movement, release and clearance of goods, including goods in transit, and includes a specific requirement that national committees on trade facilitation (NCTFs) be established. In this regard Section III, Article 23.2 of the TFA states:

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 the provisions of this Agreement.

In addition, Section III, Article 23.1.4 provides that the WTO's Committee on Trade Facilitation (CTF) 'shall develop procedures for the sharing by Members of relevant information and best practices as appropriate'.

Australia established its NCTF (the ANCTF), prior to the entry into force of the TFA, with its stated purpose (as reflected in its initial terms of reference) being to 'fulfil the obligations required by the World Trade Organization's Agreement on Trade Facilitation by providing the forum to facilitate both domestic coordination and implementation of the provisions of the World Trade Organization Agreement on Trade Facilitation'. The ANCTF is made up of representatives from a mix of Australian government agencies and private sector interests, the latter consisting primarily of not-for-profit organisations.

This paper explores findings from a recently completed research project focused on an evaluation of the ANCTF against the background of international best practice, the relevant provisions of the TFA, and the views of Australia's trade stakeholders. The review's mission was to enhance the ANCTF's ability to align with international best practice and the TFA's prescriptions, and to highlight key factors in creating a meaningful trade facilitation agenda that reflects the needs and aspirations of Australia's international trading community. The review was funded by the Australian International Trade & Transport Industry Development Fund (AITTIDF), with the support of the Australian Federation of International Forwarders (AFIF), the Customs Brokers and Forwarders Council of Australia Inc. (CBFCA), the Export Council of Australia (ECA), the Conference of Asia Pacific Express Carriers (CAPEC) and Shipping Australia Ltd. (SAL), with the input of a range of other private sector associations and companies involved in exporting and importing. The full report of the review was presented by the AITTIDF to the Australian Government as a consensus industry position on the membership, mandate and governance arrangements of the ANCTF in early 2018.

For several decades, a number of major international organisations have been active in the promotion of trade (and transport) facilitation concepts which include the design, implementation and operation of national trade facilitation bodies, especially in the context of developing countries. Many of these concepts are reflected in the TFA's prescriptions, and our review validated the importance of looking to these very clear common themes, which span the work of the respective international organisations and can, in relation to some aspects of national trade facilitation bodies, be deemed consensus best practice, instructive in considering the development and operation of any NCTF. Moreover, our review validated that private sector trade stakeholders place a high priority on NCTF critical success factors which are closely aligned to the themes in focus as consensus best practice.

International guidance

The United Nations Economic Commission for Europe (UNECE) first published its Recommendation No. 4 (National Trade Facilitation Bodies) in 1974. The Recommendation was revised in 2015 (UNECE, 2015) in light of the adoption of the TFA by the WTO, and integrates guidelines that provide a detailed description of the steps for establishing a national trade facilitation body (NTFB) as well as model terms of reference (TOR) for an NTFB, which countries may use or customise based on their national context.

It should be noted that UNECE Recommendation No. 4 deals with the broader concept of a national trade facilitation *body*—not just a national *committee* on trade facilitation established by a WTO member pursuant to Article 23.2 of the TFA. Its broad scope and many of its principles were developed in the context of an era when the virtues of trade facilitation were advocated on their own merits, without the imprimatur of the WTO's TFA or the binding obligation on contracting states to the TFA to establish NCTFs. Accordingly, the role anticipated by the Recommendation for NTFBs is, arguably, wider than the role of NCTFs under the TFA.

In 2007, the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP) published its *Study on national coordination mechanisms for trade and transport facilitation in the UNESCAP region* (UNESCAP, 2007), reporting on progress on such mechanisms. In 2011, UNESCAP published its *Guidelines on establishing and strengthening national coordination mechanisms for trade and transport facilitation in the ESCAP region* (UNESCAP, 2011). The main purpose of the guidelines is to help countries of the ESCAP region establish national coordination institutions for trade and transport facilitation in the countries where such institutions do not exist, and to reinforce them where they do exist. The guidelines aim to propose common baseline/requirements for an effective and efficient coordination institution, which can be adapted and used depending on the national requirements.

In 2006, the United Nations Conference on Trade and Development (UNCTAD) published its *Trade facilitation handbook: Part I – National facilitation bodies: Lessons from experience* (UNCTAD, 2006). Part I of this handbook guides users in creating the institutional structure for processing trade facilitation measures. It focuses on the trade facilitation body—in the form of an interdisciplinary committee where private sector managers, public sector administrators and policy makers can work together towards the effective implementation of trade facilitation measures.

UNCTAD has prepared the following list of the different types of trade facilitation bodies that exist around the world:

- National trade facilitation bodies (often called PRO or ‘procedural’ committees): Based on UNECE Recommendation No. 4, pro-committees deal with the facilitation of trade procedures and identify bottlenecks to trade and promote solutions.
- National trade and transport facilitation committees: These consultative inter-institutional bodies promote trade facilitation, study international trade and transport regulations, prepare recommendations and create transparency on major trade and transport issues.
- National trade facilitation committees: Established as a coordination mechanism, they are advocated to streamline trade procedures and implement trade facilitation measures at national level.
- WTO Negotiations on Trade Facilitation Support Group: Created to support negotiators based in Geneva or delegates from capitals during the negotiations of the WTO Agreement of Trade Facilitation.
- WTO TFA national trade facilitation committees: Created on the basis of Article 23.2 of the WTO Trade Facilitation Agreement. (UNCTAD, 2006)

In 2014, UNCTAD published its *National Trade Facilitation Bodies in the World* report. This publication, based on an in-depth analysis of 50 trade facilitation bodies, provides a quantitative analysis of existing NTFBs and a set of recommendations extracted from the experiences of participating stakeholders.

In 2015, the International Trade Centre (ITC), in collaboration with UNCTAD and UNECE, published its report, *National Trade Facilitation Committees – Moving Towards Implementation* (ITC, 2015). It is designed to provide developing countries with a step-by-step approach to evaluate policy, organisational and funding options to create a detailed roadmap to set up NCTFs. The guide notes that the stated aim in the Article 23.2 of the TFA is to facilitate ‘domestic coordination’ and ‘implementation of provisions of this Agreement’.

We should also note that UNCTAD very recently published the results of a study, *National Trade Facilitation Committees: Beyond Compliance with the WTO Trade Facilitation Agreement?*, covering 59 countries focused on quantitative and qualitative analyses of existing NTFs following the entry into force of the TFA, intended to provide insights into their implementation and operation and how countries are interpreting and applying Article 23.2 of the TFA (UNCTAD, 2017).

In March 2016, the World Customs Organization (WCO) published *National committees on trade facilitation: A WCO guidance*, which is part of the WCO package of recommendations and guidance to its members in their efforts to implement the TFA (WCO, n.d.c). The WCO NCTF guidance document highlights ‘the need for Customs to be involved and take a prominent role in NCTFs’ (WCO, 2016, p. 8), and proceeds to cite a number of justifications for Customs to take a leading role in such national committees, including in an expanded Annex III dedicated to that subject.

The WCO document is intended to provide practical advice to WCO members on implementation of their NCTFs, and also includes annexes which outline a draft NCTF TOR document (Annex VI), a draft NCTF agenda (Annex VII), and a template for a ‘national roadmap to TFA implementation’.

The document does not extensively reference the provisions of the TFA itself nor the work of the United Nations (UN), and instead appears to have the purpose of providing the WCO's member organisations with some concrete recommendations on how to utilise an NCTF as a way of furthering selected goals of the WCO, both in terms of keeping Customs in a prominent role as well as in certain IT-related initiatives.

In terms of the WTO itself, guidance on NCTFs, or even in regard to the substantive provisions of TFA Section I in general, very little has been on offer since the conclusion of the TFA in Bali in 2013. This is not particularly surprising, since the TFA only went into effect in early 2017, it is in the early stage of implementation in most countries, and there has been no opportunity as yet to bring issues of interpretation of TFA provisions to the attention of panels or utilise the WTO dispute resolution process to make determinations. The WTO Trade Facilitation Committee was constituted in mid-May 2017, and has so far been focused on procedural aspects of the committee itself (see WTO, n.d.b). Until such point as the new committee has agreed on its rules of procedure, and can live up to its 'purpose of affording Members the opportunity to consult on any matters related to the operation of this Agreement or the furtherance of its objectives' (WTO, 2014), little substantive guidance on how to interpret provisions of the TFA, including in reference to NCTFs, is to be expected.

Nevertheless, the WTO Secretariat recognised that establishment of NCTFs under Article 23.2 presents a set of challenges for countries looking to implement the TFA (particularly developing countries that may not have a robust tradition of constructive public-private sector collaboration on trade facilitation), and it conducted a workshop in June 2016 on this subject, and also conducted a survey of members' practices on NCTFs. In June 2017, it launched a new *Trade facilitation: Experience sharing series* of publications with a document entitled *National committees on trade facilitation: Current practices and challenges* (WTO, 2017), which focuses on the outcomes of the workshop and the survey, and constitutes a source for 'best practices' for NCTFs which are, at least tacitly, endorsed by the WTO. This document provides some very useful insights into expectations for NCTFs in the TFA context, and is divided into topic areas which closely parallel those focused on by international organisations. A summary of these topics follows below.

Membership—public sector

A consistent theme is the need for involvement of the key trade—and border-focused government agencies and for there to be an appropriate balance of public sector and private sector members.

UNECE Recommendation No.4 notes that one of the three main actors in an NCTF is the public sector—'all relevant government trade-related agencies'—specifically:

- commerce or trade and their agencies (for example export development agency);
- transport/roads/railways/waterways/ infrastructure and their agencies, including sea and land port agencies and others;
- finance/planning/economic development/industry ministries and their agencies, including central banks and others;
- customs agencies;
- government foreign trade institutes and think tanks; and
- standards and accreditation organisations. (UNECE, 2015)

UNESCAP'S 2007 *Study on national coordination mechanisms for trade and transport facilitation in the UNESCAP region* recommends that the membership of the coordination mechanism comprise representatives of all organisations involved in international trade and transport. These organisations, from the public sector, could include (but not necessarily be restricted to):

- trade regulatory authority (most often, ministry of commerce or trade);
- transport regulatory authority (most often, ministries of transport); and
- other government regulatory or planning authorities (e.g. ministry of finance, ministry of planning, ministry of interior, ministry of defence, ministry of agriculture, ministry of health, ministry of industry, ministry for ICT, customs authority, immigration authority, border guards, traffic police, transport management authority, authorities for quarantine/product quality control, central bank). (UNESCAP, 2007)

The WTO notes that it is important to secure the right membership for an NCTF and, in terms of public sector members, those seen as most important were reflected in the WTO survey results, which indicated that agencies in NCTFs almost always include customs, agriculture, foreign trade and finance, with most countries also including transport/infrastructure, health (animal/plant/human), and the government agency responsible for commerce/industry.

Membership—private sector

Another consistent theme is that it is essential to involve the private sector—for example, Recommendation 10 of the 2014 UNCTAD *National trade facilitation bodies in the world* report is 'Always involve the private sector'.

UNECE Recommendation No.4 notes that the main actors in an NTFB include:

- private sector traders who can benefit from such solutions in their international trade transactions, specifically: importers and their associations; exporters and their associations
- private sector trade services providers who can offer market-oriented trade and transport solutions within the framework of national and international trade and transport practices, obligations and laws, specifically: carriers or transporters; freight forwarders; chambers of commerce and their federations; private laboratories or certification agencies; technical software providers; banks, insurance companies; customs agents; in all the cases above, their associations; academic institutions, non-public Think Tanks. (UNECE, 2015b)

UNESCAP's 2007 *Study on national coordination mechanisms for trade and transport facilitation in the UNESCAP region* recommends that the membership of the coordination mechanism include the business sector, specifically chambers of commerce, transport associations, trading banks, and associations of insurance companies, customs agents and freight forwarders.

The WTO survey notes that 98 per cent of members responding indicated that their NCTFs involved the private sector, including both traders (importers, exporters) and service providers (e.g. forwarders, transport providers, brokers). The WTO also noted that an inclusive approach to allowing stakeholders to take part appears to be a success factor in NCTFs, but cautions on going too far in terms of inclusiveness, as this can have a negative impact on the NCTF's level of efficiency, and impede the committee in its ability to reach consensus on decisions.

Mandate

The ITC *National trade facilitation committees – Moving towards implementation* publication provides developing countries with a step-by-step approach to evaluate policy, organisational and funding options to create a detailed roadmap to set up NCTFs pursuant to Article 23.2 of the TFA (ITC, 2015). After noting that the stated aim of Article 23.2 is to facilitate ‘domestic coordination’ and ‘implementation of provisions of this Agreement’, the guide provides the following explanations of those aims:

The purpose of ‘domestic coordination’ is to bring border agencies together so border management policy and practice are genuinely linked. Such coordination would ensure that in matters of border management, the relevant agencies discuss proposals with each other so duplicate or unnecessary procedures are avoided, and the border process is streamlined, e.g. through data and inspection sharing. Although this can be done without the participation of traders, they should be involved. Traders are affected by border controls and can see – in ways that border agencies may not be able to see – how processes could be enhanced to reduce compliance costs while improving levels of compliance.

The second function is ‘to facilitate the implementation of provisions of this Agreement’. This is important, because full implementation of the TFA would bring significant benefits to implementing governments, traders, consumers and the multilateral trading system. NTFBs play a key role in aiding the implementation of the TFA, as in many measures require inter-agency and public-private coordination for effective implementation in a way that promotes trade and development. The TFA will be a legally binding WTO agreement. The NTFB’s role in facilitating implementation is therefore particularly important to prevent possible future disputes or other negative consequences associated with non-implementation.

One of the primary aims of an NTFB is to bring government and business closer together to discuss and apply trade facilitation measures. This means the most effective NTFBs involve the private sector. Indeed, in some countries, the private sector leads these bodies. (ITC, 2015)

That description helps define the minimum mandate for an NCTF. However, the ITC makes the salient point that such a minimum mandate should not necessarily suffice. The first of its recommended steps in forming an NCTF is to define the mandate:

It is important to understand from the outset why the NTFB is being established. It may be purely to fulfil the obligation in the TFA, but this could be a somewhat passive approach, if its purpose is to primarily tick the box of compliance with Article 23.2. While the TFA mandates the creation of an NTFB, the body can – and should – perform many other useful functions related to trade facilitation. This is important because the implementation of the TFA has a determinable timeframe and because trade facilitation reform is a continuous activity. In addition, pursuing a wider agenda of trade facilitation will enhance the NTFB’s reputation and enable it to deliver tangible benefits to government and the business community.

An NTFB must have a clear mandate and ambition to deliver worthwhile outputs. The key purpose of NTFB ... is to act as an open forum to promote trade facilitation, facilitate inter-agency coordination and provide directives on major trade facilitation issues. This should include both the goal of engagement with government and business, and institutional mechanisms for engagement. It must also be able to deliver well-considered recommendations and proposals. (ITC, 2015)

NTFBs, with their ‘Article 23.2 Plus’ roles as discussed by international organisations such as UNECE, UNCTAD and UNESCAP, pre-date the TFA. Accordingly, the mandate of many of those bodies does not necessarily reflect the terms of Article 23.3, unless expressly updated in recent years to do so. This fact establishes, however, that, even before Article 23.2 required the creation of NCTFs by WTO members,

there were sound reasons for international organisations to promote, and for numerous countries to create, NTFBs. The mandates of those NTFBs therefore warrant consideration in the context of potential mandates for NCTFs.

UNECE's Recommendation No. 4 describes the overarching role of an NTFB in the following terms:

4. An NTFB encompasses all trade facilitation issues including regulatory, operational, customs, multimodal transport, transit, logistics, banking and finance, agriculture, sanitary and phytosanitary, health, and electronic business issues, among other related topics. Key success factors for establishing an NTFB include (but are not limited to) favourable government policies for economic development and trade; a robust and dynamic private sector; the availability of human and financial resources; and a strong political will to improve the performance of international trade transactions and supply chains.

5. Trade facilitation bodies, in addition to providing an inclusive and constructive consultation process, will give stakeholders the opportunity and means to voice their viewpoints, clarify issues, and engage in meaningful dialogue. Within a Government's overall national trade policy framework, the NTFB can coordinate the relevant stakeholders in order to devise a strategy that offers a holistic approach to national trade facilitation activities including coordination at a policy level, the development of trade simplification measures and proposals for action plans. The NTFB can present this strategy to the relevant government institutions for endorsement, for support and in order to obtain a mandate for implementation of the strategy.

7. An NTFB can establish collaboration between the public and private sectors for the design of measures to eliminate or drastically reduce the barriers to efficient and effective trading processes. This approach to solving problems in the international supply chain is greatly improved if the NTFB works with similar organizations at the regional, sub-regional and international levels, and participates in the work of international bodies dedicated to trade facilitation and to the development of international trading standards. (UNECE, 2015b)

The Recommendation describes the purpose of an NTFB in the following paragraphs:

21. An NTFB acts as an open forum to promote trade facilitation, encourage inter-agency coordination, and provide directives on major trade facilitation issues. The success and sustainability of an NTFB relies on its reflecting the interests, objectives and activities of the national stakeholders over the long run.

22. Depending on the national context, the specific purposes of the NTFB could entail, among others, to:

- Facilitate inter-agency coordination;
- Provide directives on major trade facilitation issues;
- Champion the national strategic trade priorities;
- Develop new national policies mapped against existing international, standardized and harmonized methods;
- Promote existing facilitation solutions and help implement them;
- Participate actively in the creation and maintenance of trade facilitation measures internationally;
- Contribute to the work of established international organizations such as UN working parties, WCO committees, the WTO under the framework of the Trade Facilitation Agreement and other recognized international bodies. (UNECE, 2015b)

UNCTAD's 2014 publication, *National trade facilitation bodies in the world*, notes its first recommendation as:

Be SMART when setting up the objectives and scope of a national trade facilitation body. The objectives and scope of a trade facilitation body will determine the goals pursued when establishing the group as well as the main functions allocated to it. The objectives contemplated by the trade facilitation body should be SMART, that is, sustainable, measurable, attainable, realistic and time-bound, and not expressed in terms of to-do lists or activities, as is currently often done (Doran, 1981). The ability of a trade facilitation body to prioritize and thereafter monitor trade facilitation reforms – above and beyond implementing the World Trade Organization Agreement on Trade Facilitation – is essential to its sustainability and relevance. (UNCTAD, 2014)

UNESCAP's 2007 *Study on national coordination mechanisms for trade and transport facilitation in the UNESCAP region* incorporates several recommendations including the following:

Purpose

It is recommended that the national facilitation coordination mechanisms cooperate, coordinate, propose and implement arrangements for improvement of the effectiveness and efficiency of international trade and transport.

Role

Ideally, national coordination mechanisms should be established with a role to review, assess, propose and take action for the facilitation of international trade and transport.

Functions

The main functions of national trade/transport facilitation coordination mechanisms should include, but not necessarily be limited to, the following:

- (a) To continuously monitor and assess the quantity flows of trade and transport across national borders;
- (b) To identify bottlenecks in the entire process of international trade and transport (using the UNESCAP Trade Facilitation Framework and Time/Cost-Distance Model, as appropriate)
- (c) To review and assess the adequacy of international trade and transport-related infrastructure (including seaports, airports, roads, railways, river ports and inland cargo storage facilities), and propose investment projects, as necessary;
- (d) To study and propose measures for improving the operational performance of international trade and transport;
- (e) To coordinate to establish harmonized documentation and procedures for international trade and transport;
- (f) To identify, propose and follow through changes to border control procedures and documentation needed to improve trade/transport efficiency and reduce costs;
- (g) To coordinate and cooperate for implementation of Single Window clearances and Single Stop inspections at border crossings;
- (h) To promote the application of information and communication technology to documentation and procedures in the management of international trade and transport operations;
- (i) To coordinate the national positions in negotiation of agreements on international trade and transport with multi-sectoral nature;

- (j) To identify, propose and follow through changes in trade and/or transport policies and in the bilateral or multilateral agreements through which these policies are enforced, when such changes are required to improve trade/transport performance;
- (k) To coordinate the implementation of agreements on international trade and transport with multi-sectoral nature;
- (l) To review the international conventions relating to trade and transport facilitation and provide advice to national government on accession to the conventions;
- (m) To monitor and coordinate the implementation of the acceded international conventions relating to trade and transport facilitation;
- (n) To monitor the dissemination of information to the trading and transport communities on changes or revisions to border control procedures and documentation;
- (o) To organize workshops and seminars on facilitation of international trade and transport; and
- (p) To serve as national focal points for international facilitation programmes and assistance. (UNESCAP, 2007)

The WTO provides the following guidance on the issue of NCTF mandate and scope of activity:

Having a clear mandate from the outset, which establishes the NCTF as the coordinating body for the implementation of the TFA and clearly identifies its objectives, saves the NCTF time and effort by creating understanding among the members of the committee as to its purpose. This, in turn, can assist committee members when articulating the objectives of the NCTF to their own constituencies. Once a clear mandate is in place and all actors coalesce their efforts around it, devising a clear structure and roadmap becomes easier, which in turn contributes to a well-functioning NCTF. (WTO, 2017, p. 9)

Whether an NCTF's mandate should be limited to the member's TFA activities, or extends to a broader agenda, is a question which the WTO has looked at, and appears to be neutral on, while noting that members that have already implemented most of the TFA's Section I obligations will have an easier time dealing with a broader agenda than will those members who have not yet done so (WTO, 2017, p. 9). The WTO's survey results do, however, indicate that a majority of members have implemented a mandate for their NCTF, which goes beyond the TFA.

The Australian study found that private sector stakeholders generally support a wider trade facilitation agenda than just TFA implementation (Widdowson et al., 2017) and do not wish to see an NCTF being straightjacketed by its member agencies and the scope of the TFA. In this regard, they note that some significant issues that impact trade and its facilitation are seen to fall outside those parameters and are likely to be overlooked without the active participation of responsible agencies. One such issue is trade and transport infrastructure, particularly around ports and airports.

A key issue noted from an Australian industry perspective is the need to focus on streamlining and simplifying end-to-end import and export processes, including in cooperation with countries at the other end of particular international trade lanes. Simplified import entry and genuine self-assessed clearance arrangements were also identified as matters of interest, which may involve a simplified entry or the elimination of entries, possibly incorporated into a broader consideration of Authorised Economic Operator (AEO) programs. Such initiatives were seen by industry as being too readily placed by government in the 'too hard' or the 'let's wait and see what the rest of the world does' basket. Industry-initiated thoughts on ways in which government agencies could better cooperate and coordinate their activities are also considered to be of value to the NCTF agenda, rather than simply receiving briefings on what agencies themselves are doing to achieve this.

Work plan

UNECE's Recommendation No. 4 promotes the need for a focused work program covering all aspects of international trade transactions and supply chains:

The development of the work programme should be undertaken in consultation with all stakeholders and other interested parties. These actors should be encouraged to formulate their views using tried-and-tested techniques such as workshops, seminars, or 'brainstorming' sessions. The results would then be presented to the NTFB. The work programme needs to be flexible enough to take into account issues that might arise which could not have been anticipated. (UNECE, 2015b)

UNESCAP's 2017 *Study on National Coordination Mechanisms for Trade and Transport Facilitation in the UNESCAP Region* included the following recommendation in relation to work programs:

It is recommended that each facilitation body have a detailed annual work programme setting out the objectives, expected outputs and schedule of its major activities. (UNESCAP, 2007)

Chapter 3 of the 2015 ITC report *National Trade Facilitation Committees – Moving Towards Implementation* provides a detailed step-by-step approach to creating an NTFB in a developing country. Step 7 involves establishing a clear business or work plan of activities:

A work plan is ... a key need for any NTFB, because it must be clear why the NTFB is working on particular priorities and how these are relevant to business needs and global border-management developments.

What an NTFB does and how it performs goes to the very heart of its external reputation. The business plan is therefore linked closely to reputation. This means a good work programme should include realistic timeframes and schedules to achieve goals, as well as concrete actions and initiatives to meet the goals, with clear responsibilities for all members. (ITC, 2015)

The WTO notes that maintaining NCTF momentum over time is linked to having a roadmap, which can be defined as '...an action plan containing clear goals and describing the tasks, timeframes, allocation of responsibilities, necessary resources and associated risks involved in achieving those goals within a given period of time' (WTO, 2017, p. 21). The WTO also notes '... that it is vital to set achievable, realistic targets that will result in success', and also notes the importance of strategy in tackling issues (WTO, 2017, p. 21).

The Australian private sector indicated support for the development of a clear agenda that supports a long-term strategic perspective for the ANCTF. More fundamentally, based on the premise that the *raison d'être* of an NCTF is to 'facilitate both domestic coordination and implementation of the provisions', industry representatives took the position that it is essential that an NCTF must clearly identify whether and to what extent the country complies with each of the articles of the TFA, including those provisions that are mandatory, 'best endeavours' and 'alternative approaches' (Widdowson et al., 2017).

Outcomes

UNCTAD's 2014 publication *National trade facilitation bodies in the world* includes the following recommendation:

Establish monitoring and evaluating mechanisms to measure results. For a well-functioning trade facilitation body, presenting concrete results and/or monitoring results is considered essential. However, only a few trade facilitation bodies use these kinds of tools in a systematic way. There is a need, therefore, to develop evaluation and monitoring techniques adapted to the needs of trade facilitation bodies. (UNCTAD, 2014)

The WTO notes the importance of showing accountability for the success of an NCTF, suggesting that ‘concretely demonstrating that the national committee is having a positive impact on trade facilitation reform and delivering benefits for stakeholders’ is critical to the success of the committee; this includes instituting a ‘results-based ethos into committee members from the outset and to include an effective system of measurement and monitoring as an important part of the committee’s operational procedures’ (WTO, 2017, p. 24).

Constitution/legal base

The 2006 UNCTAD publication, *Trade facilitation handbook: Part 1 – National facilitation bodies: Lessons from experience*, notes that:

A Government must be politically committed to establishing and supporting a trade facilitation committee as a national forum for promoting trade facilitation measures. The committee should be established by decree or within a legal framework, as appropriate. (UNCTAD, 2006)

The 2014 UNCTAD publication, *National trade facilitation bodies in the world*, includes the following recommendation:

Make it official – give the national trade facilitation body a strong legal backing. As trade facilitation is a policy area that includes different public stakeholders, institutionalization at the governmental level may be beneficial, in order to prevent conflicts of interest and in order to increase participation and ensure high-level political commitment. The implementation in national law of the World Trade Organization Agreement on Trade Facilitation may be a good starting point. (UNCTAD, 2014)

The 2011 UNESCAP *Guidelines on establishing and strengthening national coordination mechanisms for trade and transport facilitation in the ESCAP region* notes that it is desirable to have an appropriate mandate in the form of a legal basis for these institutions to be effective and sustainable over time. Experience has shown that without an appropriate legal basis, these institutions may have difficulty in sustaining themselves for a long period of time:

Trade and transport facilitation initiatives may result in redistribution or even loss of authority of some agencies over certain processes, causing conflict of interests and leading to efforts to block the implementation of such initiatives. Having an appropriate legal backing can prevent blockage of the implementation of reform measures by the vested interests. Moreover, presence of strong political will as manifested by instituting legal basis for the coordination institution gives a clear signal to the stakeholders within and outside the country about the commitment given to the trade and transport facilitation efforts and in this regard ensures continuity of efforts. A legal basis for the national coordination institution can increase its effectiveness and sustainability. (UNESCAP, 2011)

The 2015 ITC report, *National trade facilitation committees – moving towards implementation*, comments on defining the governance and legal structure:

To cement the continued existence of an NTFB, it should ideally be enshrined in a legal framework. An NTFB may be established by ministerial or cabinet decree, but this would expose it to the risk of being wound up on the basis of a political decision. Since the maintenance of an NTFB is now an internationally binding obligation under WTO law, the national processes for implementing the TFA should provide an ideal opportunity to include a legal mechanism that sets out legally binding terms of reference, accountability lines including its independent status, decision-making rules and the role of individual stakeholder groups, including the private sector. (ITC, 2015)

The WTO highlighted the need for a strong institutional framework for the NCTF, but stated that the legal basis for the ANCTF is in large part a function of the country's overall cultural and legal framework; of the WTO survey respondents, a minority had anchored their NCTF formally in law, while in a substantial proportion the NCTF had been instituted by decree or other ministerial actions (WTO, 2017, p. 12).

Form

The UNECE's Recommendation No. 4 proposes a three-tier organisational structure—strategic, operational and technical:

At the strategic level would be the *Board* of the NTFB. They would be responsible for implementing the trade facilitation plan (policy and priorities) advised by the Lead Agency that established the NTFB, whether this be from the government (as envisaged by the World Trade Organization in its Trade Facilitation Agreement – Article 23.2), the private sector or a partnership between trade and government. The Board would set the work programme of the NTFB and report back to the Lead Agency on its activities with any proposals, recommendations or other outcomes;

At the operational level, the *NTFB* would prepare reports, develop proposals and offer recommendations for achieving the objective of the trade facilitation plan. These activities would be undertaken by permanent NTFB staff (in senior and managerial positions, including a secretariat) plus any seconded staff from the public or private sector. The results of this work would be presented to the Board for strategic consideration;

At the technical level, *ad hoc Working Groups* (either permanent or temporary) could be formed to undertake specific tasks defined by the NTFB. The composition of the Working Groups should include representatives from trade and industry sectors, relevant consultants and individual trade experts. This approach should ensure the quality of input into the process and that outcomes/outputs presented to the NTFB at the operational level would be constructive and valuable. (UNECE, 2015b)

The 2006 UNCTAD publication, *Trade facilitation handbook: Part 1 – National facilitation bodies: Lessons from experience*, recommends a three-tiered structure comprised of the main or whole committee, the steering committee and working group(s).

Members of the main committee should represent all trade and transport operators and public agencies interested in trade facilitation. The steering committee should have a limited membership comprising officials with decision-making power, who can devote the necessary time to guiding the activities of the working groups. The main committee should meet at least once a year for programme and budget approval, while the steering committee should meet every three months to provide guidelines for the working group(s) and to consider and approve recommendations. The formation of working group(s) will be dictated by the work programme in question and may be on an ad hoc basis. Any output of the working group(s) should be presented to the steering committee for endorsement and submission to the appropriate government agency for implementation. The steering committee could assume the role of an advisory council. (UNCTAD, 2006)

UNESCAP's 2007 *Study on national coordination mechanisms for trade and transport facilitation in the UNESCAP region* includes the following recommendation relating to form:

It is recommended that national coordination mechanisms take the form of regulatory and advisory bodies, which are charged with the coordination and implementation of actions to facilitate efficient international trade and transport and propose facilitation measures to government. (UNESCAP, 2007)

The study also recommends that the organisational structure of the national trade/transport facilitation coordination mechanism be adapted from multilevel structures featuring, in some cases, a national trade and transport facilitation body, trade and transport facilitation sub-bodies, and specialist working groups.

The 2015 ITC report, *National trade facilitation committees – moving towards implementation*, comments:

Based on the UNECE Recommendation No. 4, one of the most successful models is a three-tiered structure comprising a board at the strategic level to advise the NTFB, the general members (all members of NTFB) at an operational level to carry out the regular activities, and ad-hoc working groups at a technical level to undertake specific tasks decided by the NTFB. (ITC, 2015)

Aside from the comments on institutional structure captured in the previous section (relating to membership and legal basis) and below, the WTO has not issued any firm recommendations on form of the NCTF.

Terms of reference

The 2014 UNCTAD publication, *National trade facilitation bodies in the world*, recommends:

Set clear game rules – define terms of reference in a comprehensive and inclusive way. Terms of reference should be defined and used as a tool to support the sustainability and efficient work of the trade facilitation body. They should be concrete but flexible and be agreed by all involved stakeholders. (UNCTAD, 2014)

The 2015 ITC report, *National trade facilitation committees – moving towards implementation*, discusses the importance of establishing clear TOR, including the extent of the body's independence:

It is vitally important that an NTFB has clear terms of reference, providing a commonly understood basis of what the NTFB aims to achieve and how it is expected to operate.

A key issue concerns the independence of the NTFB. Ideally, an NTFB should be independent of government, free to express its own views and challenge government where necessary. At the same time, it should not be purely a business lobby, as that would also potentially devalue its impact as an honest broker. It must be able, where necessary, to understand and explain government requirements to businesses that fail (deliberately or otherwise) to see the purpose of particular new compliance requirements.

The challenge with genuine independence goes partly to the issue of funding, which is closely linked to accountability. An NTFB that is funded by government should account for its activities to the ministry that provides the funding. If funding is drawn primarily from the private sector, there could be a perception that it focusses excessively on business interests at the expense of other policy and regulatory objectives.

To be effective, an NTFB must be truly independent, every time. Independence can be reinforced by being located away from a government ministry building. (ITC, 2015)

Aside from the comments on mandate captured above, the WTO has not issued any firm recommendations on NCTF TOR.

Chair

The 2006 UNCTAD publication, *Trade facilitation handbook: Part 1 – National facilitation bodies: Lessons from experience*, recommends:

The chair should be a senior and influential government official with the necessary inter-agency networking capacity, or the president of a business association who has a voice in the industry. If the private sector is to take the lead, the legal framework for formalizing the committee should be in place. The tenure of the chair should be a minimum period of three years. To ensure stability and long-term perspectives, an ‘extended chair system’, consisting of the incumbent, the previous chair and a vice chair who would succeed the chair, is advisable. (UNCTAD, 2006)

The 2011 UNESCAP *Guidelines on establishing and strengthening national coordination mechanisms for trade and transport facilitation in the ESCAP region* indicates that it is advisable that the chairperson be the minister for transport or commerce (UNESCAP, 2011).

The 2014 UNCTAD publication, *National trade facilitation bodies in the world*, recommends:

Provide the national trade facilitation body with a permanent secretariat. Countries should consider whether the Ministry of Trade should assume the role of coordinating agency or whether this role may be shared with other public organizations (e.g. customs authorities) essential for trade facilitation or with the private sector (e.g. chamber of commerce). Resources should be allocated to the establishment of a permanent secretariat. (UNCTAD, 2014)

The 2015 ITC report, *National trade facilitation committees – moving towards implementation*, notes that:

Aside from building a rationale for the establishment of an NTFB, the two most crucial issues are who should lead it and how should it be funded. Without a committed champion, an NTFB may quickly lose its sense of purpose and support. It must be driven by a strong leader who believes in the cause of trade facilitation. Without adequate funding, an NTFB can do nothing, and may not even get off the drawing board ... Identify a champion and ensure strong leadership ... Ensure the right balance between public and private stakeholders – Some process or mechanism for the rotation of chairs or co-chairs may also be helpful, to ensure that all key stakeholders are included. (ITC, 2015)

The WTO dedicates a good deal of discussion to the importance of NCTF leadership. The WTO points out that the NCTF chair should ‘be a robust champion for the committee’ and set a clear direction, as ‘competing priorities and rivalries can have an extremely negative impact on a committee, paralysing its work and diminishing the chances of generating the cross-agency cooperation necessary for the implementation of the TFA’. The chair acts also as a champion to promote the NCTF and its work, and plays a key role in establishing linkages, ‘to ensure visibility and public awareness of the NCTF’s role, both nationally and internationally’ (WTO, 2017, pp. 16–24).

Hosting

The 2015 ITC report, *National trade facilitation committees – moving towards implementation*, comments on the need to choose appropriate accommodation that reflects the body’s independence:

[L]ocating an independent NTFB within the sponsoring government ministry risks compromising the perception of its real independence, as it will be seen as hardly indistinguishable from its sponsor. The same could be said of housing an NTFB in a chamber of commerce. (ITC, 2015)

Accountability/Reporting

UNESCAP's 2007 *Study on national coordination mechanisms for trade and transport facilitation in the UNESCAP region* recommended:

... that national coordination mechanism be made accountable to officials at the high level of national government, be they Deputy Prime Minister or Minister. The mechanism would ideally be chaired by a Deputy Minister, Permanent Secretary, Secretary or other appropriate senior official of trade/commerce or transport. (UNESCAP, 2007)

Closely tied with the issue of NCTF leadership, the WTO notes the importance of accountability and reporting in the general sense, for example to the public, but does not go into detail about how the NCTF should formally report within a national governmental structure (WTO, 2017, p. 24).

Funding

The UNECE's Recommendation No. 4 notes that one of the prerequisites for an NTFB is the availability of resources (both human and financial) to support the implementation of agreed measures.

The 2006 UNCTAD publication, *Trade facilitation handbook: Part I – National facilitation bodies: Lessons from experience*, notes that:

Financial support from the Government, be it in the form of regular budgetary contributions or grants, is vital to sustaining the committee in its early development and throughout its existence. However, complementary income-earning activities are needed to bolster financial soundness – e.g. paid training courses, workshops, publication of reports, sale of forms and technical material. (UNCTAD, 2006)

UNESCAP's 2007 *Study on national coordination mechanisms for trade and transport facilitation in the UNESCAP region* recommended:

... that the public and private sector resources be mobilized to finance the operations and activities of the national coordination mechanisms. It is further recommended that international assistance be sought to finance initial operation and some subsequent activities of the national coordination mechanisms. (UNESCAP, 2007)

The 2015 ITC report, *National trade facilitation committees – moving towards implementation*, notes that:

Without sufficient funding, the NTFB will not last long. An NTFB must be financed adequately to fulfil its mandated functions, as set out in annual and five-year business plans, and sustainably to ensure its longevity. Business plans must be matched to the available funding. (ITC, 2015)

The WTO notes that funding is important for the continuity of an NCTF, especially in the context of developing countries, and provides those countries guidance on obtaining funding (WTO, 2017, p. 28); nevertheless the WTO survey indicated that almost half (47%) of the NCTFs did not have a permanent source of funding, but of those that did, most came from the national government (WTO, 2017, p. 18).

Meeting frequency

The 2014 UNCTAD publication, *National trade facilitation bodies in the world*, recommends:

Meet regularly. The regularity and frequency of meetings can contribute to the sustainability of a trade facilitation body. Establishing that the body will meet on the first Wednesday of each quarter, for instance, will help members to plan their calendars based on fixed dates and ensure that they are present for each session of the working group. The regularity of meetings is essential for monitoring and following up on the activities of the trade facilitation body, which was noted by respondents as an important success factor. (UNCTAD, 2014)

UNESCAP's 2007 *Study on national coordination mechanisms for trade and transport facilitation in the UNESCAP region* recommended the following in respect of meeting frequency:

It is recommended that the joint facilitation body or inter-agency bodies and advisory body meet quarterly. Additional special meetings should be convened if necessary. The working groups may meet monthly. The task forces meet on an 'as required' basis determined by the specific requests of their working groups. (UNESCAP, 2007)

The WTO included the topic of meeting frequency in the survey of its members; the results indicated the majority scheduled meetings at least quarterly (WTO, 2017, p. 25).

Communication

The UNECE's Recommendation No. 4 notes that one of the prerequisites for an NTFB is to 'Provide a national focal point for the collection and dissemination of information on best practices in international trade facilitation' (UNECE, 2015b).

The 2006 UNCTAD publication, *Trade facilitation handbook: Part 1 – National facilitation bodies: Lessons from experience*, notes that:

Nationwide recognition of the committee is essential. It needs to be publicized as the focal point of all trade-facilitation-related activities in order to give it the political edge and credibility to pursue the implementation of reforms. (UNCTAD, 2006)

The 2014 UNCTAD publication, *National trade facilitation bodies in the world*, recommends:

Take every opportunity to raise awareness about trade facilitation. The establishment of a website may be a useful tool for strengthening the trade facilitation body as a platform for dialogue with the private sector, as well as for coordination, awareness raising and information sharing. Donors that wish to assist least developed countries in this task should take into consideration potential challenges, such as a high level of computer illiteracy among trade facilitation body members or the lack of Internet access in many agencies. Additional training and resources should be allocated to address these possible challenges. Trade facilitation reforms can have profound implications for the general public and certain stakeholders. Trade facilitation bodies should therefore contemplate a strategy to communicate with these audiences if deemed necessary. For instance, additional events may be organized to inform other stakeholders that are not necessarily members of the body but might be concerned by forthcoming trade facilitation reforms. (UNCTAD, 2014)

The WTO notes that public communication of NCTF's activity is essential, and states that 'Having a communication strategy in place from the outset allows committees to immediately and consistently communicate positive results and showcase the benefits of the committee's work' (WTO, 2017, p. 27).

Collaboration with regional NCTFs

The UNECE's Recommendation No. 4 proposes the formation of a regional trade facilitation organisation constituted by representatives of national bodies. It suggests that the TOR could include:

- monitor regional progress in trade and transport facilitation and to coordinate regional awareness raising activities;
- identify common barriers and inhibitors (technical, institutional or commercial);
- identify common solutions and regional action required to solve existing problems; and
- support the region-wide use of trade related standards, recommendations, tariff structures, electronic data interchange and other simplification tools and techniques. (UNECE, 2015b)

The 2006 UNCTAD publication, *Trade facilitation handbook: Part 1 – National facilitation bodies: Lessons from experience*, notes that:

A trade facilitation body cannot be a stand-alone institution but needs to be linked with national, regional and international institutions. It is more likely to be effective in the context of a regional programme ...

... Establishing formal and informal relations with similar or regional bodies will assist the committee in accumulating experience as well as pave the way for bilateral and regional cooperation of mutual benefit. (UNCTAD, 2006)

UNESCAP's 2007 *Study on national coordination mechanisms for trade and transport facilitation in the UNESCAP region* includes the following recommendations:

Coordination with other national trade and transport facilitation coordination mechanisms of the region/sub-region or along specific transport corridors.

In order to ensure the smooth movement of goods and people and the harmonization and standardization of border crossing documentation and procedures between the countries, it is recommended that national bodies establish permanent links and a schedule of meetings with their counterpart bodies in other countries, within the subregion or along specific transport corridors.

Where sub-regional facilitation mechanisms are in place, it is recommended that these mechanisms be used as forums for the exchange of information and experience in relation to trade and transport facilitation, and also as a means of achieving the harmonization of documentation and procedures.

It is recommended that a regional forum on trade and transport facilitation be established to provide an opportunity for the national facilitation bodies to meet and exchange information and experience and exploration of opportunity of international assistance. The forum may meet every two years. These meetings will involve the participation of all national trade/transport facilitation bodies from the region, all international, regional and subregional organizations and international financial institutions as well as selected countries outside the region with expertise in the field of trade and transport facilitation. (UNESCAP, 2007)

While Article 23 of the TFA strongly implies that one of the roles of the NCTF is to coordinate national TFA-related activities to the WTO's own Trade Facilitation Committee, the WTO in its guidance to date does not focus on collaboration between the NCTFs of different members, while noting that they can play a role in regional economic integration (WTO, 2017, p. 18).

Notably, the Australian private sector indicated a strong interest in its NCTF actively liaising with NCTF counterparts in key trading partner countries and with relevant regional committees for trade facilitation. This was seen as a good way to enhance the visibility of issues in goods flows between countries, and such an approach could initially focus on significant trading partners that are jointly identified by government and industry.

Conclusion

As noted above, the researchers' review of the international guidance revealed a significant level of uniformity in the approaches of the main international bodies to the key topics bearing on the membership, mandate and governance of NCTFs – a level of uniformity which could be argued to constitute a consensus best practice. The researchers' analysis confirmed that many of these approaches are reflected in the terms of the TFA's prescriptions. The conclusions which follow derive primarily from that international guidance and the terms of the TFA.

The researchers' investigations of the views of the private sector were, by virtue of the TOR set by the AITTIDF for the research project, limited to the Australian context – i.e. the features of the existing ANCTF set against the background of Australia's international trade regulatory environment. Accordingly, they do not warrant detailed recitation in the context of the wider international focus of this article, but may be of interest as emblematic of the concerns of developed country trade stakeholders in reference to NCTF-related factors (see Widdowson et al., 2017). To the extent such private sector views collected in the Australian context were considered likely to be consistent with the views of the private sector at a more global level, they have helped inform the development of the below conclusions.

The establishment of an NCTF provides an ideal opportunity for a country to reconsider its approach to facilitating international trade, including domestic coordination and implementation of the provisions of the TFA. International organisations such as the WTO, UNECE, UNCTAD, WCO and ITC, among others, have for several years been active in the promotion of trade and transport facilitation including the design, implementation and operation of national trade facilitation bodies. Some clear common threads can be found in the work of these organisations that can be usefully applied in the development and operation of NCTFs.

As a starting point, it is incumbent upon an NCTF to provide clear evidence of how its country complies with each of the articles of the TFA, including those provisions that are mandatory, 'best endeavours' and 'alternative approaches'. Without such evidence, it is not possible for the NCTF to 'facilitate both domestic coordination and implementation of the provisions' of the TFA, which is its essential purpose, nor can it appropriately identify those areas which require further effort.

Having undertaken this fundamental task, an NCTF should reflect on its mandate in order to maximise its contribution to trade facilitation in the medium-to-long-term. A review of the committee's mandate will allow it to determine its priorities and translate those priorities into an effective work plan that defines the scope of work to be undertaken, allocates appropriate resources and sets deadlines for completion of the work. High-quality outcomes will help ensure the sustainability of the NCTF, provided that they are appropriately delivered and communicated to the wider public and private sector audiences involved in international trade.

In terms of the NCTF's constitutional basis, consideration should be given to formalising the basis for its existence, but a legislative basis is not considered necessary.

Arrangements for chairing the committee should not result in, or lead to the perception that it is a 'customs' committee, thereby unnecessarily narrowing its focus or remit. Recognising that many of the articles of the TFA fall squarely within the area of customs management, many others are either the responsibility of other agencies or the joint or interacting responsibilities of Customs and those other

agencies. As a key objective of the TFA is to ensure more efficient communication and coordination between all relevant border agencies, it is argued that it may be inappropriate to vest responsibility for the management of that process in one of the key operational agencies involved.

As such, it may be more fitting for the role of NCTF chair to be the responsibility of an agency that does not have an operational role at the border. The chair should bring a broad perspective to bear in the deliberations of the NCTF, including consideration of issues that fall outside the remit of the various border management agencies, such as infrastructure, which is regarded by the trading community to be an essential element of trade facilitation. Similarly, a 'neutral' agency would arguably be better placed to oversee issues on which operational agencies may have differing viewpoints, and would remove the risk of the NCTF being perceived as a narrowly focused creation of an operational department.

There is also a need for the accountabilities, responsibilities and decision-making capacity of the NCTF and its members to be clearly identified, and for the lines of reporting within and across agencies and industry to be transparent and properly observed.

Finally, the research points to the need for an NCTF to consider the benefits of collaborating with its counterparts in other countries.

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Bryce Blegen



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Notes

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