The Importance of WTO Trade Facilitation for Vietnam: A Modern Customs Bond System – a New Tool for Transparency, Trade Regulations Reform and Economic Growth

Nestor Scherbey, Senior Advisor
Global Alliance for Trade Facilitation
Who is the GATF and what are they doing in Vietnam?

➢ It is a public-private partnership that consists of the World Economic Forum, the International Chamber of Commerce and the Center for International Private Enterprise, joined by leading global firms including DHL, UPS, Maersk, Walmart and many others.

➢ The Global Alliance for Trade Facilitation (GATF) is partially supported by the governments of Australia, Canada, Germany, the U.K. and the United States.

➢ GATF has selected Vietnam as the first developing country in Asia to assist with WTO TFA implementation by introducing a modern customs bond system for commercial imports and exports.
The Importance of WTO Trade Facilitation Implementation v. FTA’s for Vietnam

➢ “...Even the smallest estimate of trade cost reduction implies that full implementation of the TFA will have an even bigger impact on trade costs than reducing all most-favored nation tariffs (currently estimated to average around 9 per cent) to zero...”

➢ “…the estimated ad valorem equivalent of trade costs in developing countries is 219 per cent, and is 134 per cent in high-income countries. Even if one takes the smallest estimate of a 9.6 per cent reduction in trade costs, this is equivalent to reducing the ad valorem equivalent of trade costs in developing countries by 21 percentage points...”

➢ *This means that implementing the WTO TFA is worth more than twice as much as CPTPP, EVFTA and all free trade agreements combined.*
The Importance of WTO Trade Facilitation

What Are Trade Transaction Costs?

- Trade costs are very large, and a significant portion of them result from economic policies as implemented in the laws, regulations and, especially, the administrative procedures of a country through its border management.

- A World Bank study of 126 countries found that: “...Trade facilitation is not only about the physical infrastructure for trade. Indeed, only about a quarter of the delays in the sample is due to poor road or port infrastructure. Seventy-five percent is due to administrative hurdles - numerous customs procedures, tax procedures, certifications, clearances and cargo inspections - often before the containers reach the port.”

- This means that outdated trade regulations combine with burdensome and non-transparent administrative procedures to inflict a burden on economic growth through trade that is the equivalent of a 164.25% “Invisible Tariff or Tax.”
The Effects of Non-Tariff and TBT Barriers: This is not Free and Fair Trade

- The “invisible tax” of 164.25% (or higher) imposed by outdated trade regulations and related administrative procedures combine to be the most significant non-tariff and TBT barriers to exports of products and commodities to Vietnam.

- Not coincidentally, this is also the greatest barrier to entry and, participation by, Vietnam’s SME’s in global supply and value-added chains. By official measures, 97% of Vietnamese enterprises are SME’s, the vast majority of which do not have the resources or capacity to overcome these barriers in the present situation.

- Research by the World Economic Forum suggests that WTO Trade Facilitation Agreement implementation could trigger an increase of from 60% to 80% SME export sales in some economies. This is particularly important for Vietnam’s national competitiveness and integration into the global economy.
The Importance of WTO Trade Facilitation Implementation for Vietnam

- The percentages found in numerous high-level studies in dense articles by economists need to be placed in context – they will have a huge impact for the private sector.

- Applying a World Bank study of 126 countries to Vietnam’s 2017 trade data reveals that, a one day reduction in export trade processing and clearance time would result in a minimum 1% gain in annual export trade – that is USD 2.13 billion. In certain significant categories of goods involving agriculture and time-sensitive goods, the gain could be as high as 6%. A five day reduction would yield annual export gains of approximately USD 10.65 billion.

- Another study suggests that the gains from a 10% increase in transparency as required by the WTO TFA would yield a gain in annual imports of USD 8.7 billion, based upon Vietnam’s 2016 trade data.
The Importance of WTO Trade Facilitation
Why the Persistence of Burdensome Administrative Formalities?

- In Vietnam, there has been reluctance by various ministries and state agencies to make substantial changes to their administrative compliance procedures. Like their counterparts in all other countries, Vietnamese officers must enforce the laws and regulations that they have.

- In the absence of significant legislative and regulatory changes, together with adoption of new tools, new technologies and new methodologies that will guarantee compliance with measures that are necessary in all countries to protect national security, public health, the national economy, agriculture, the environment and other national interests and priorities, they cannot simply “relax” their mandated inspection and compliance processes for trade purposes.
Recurring complaints by business and trade stakeholders in Vietnam about burdensome and costly administrative procedures, as well as, repetitive general exhortations to officials at all levels to “improve and simplify” these, are simply not sufficient to deal with the challenges presented by the sheer scale of legal, regulatory and administrative procedures reform and modernization required for trade facilitation implementation.

Officers of ministries and state agencies regulating trade in Vietnam ask such questions as: “How do we do this?” and, “Which national standards and protections of the public should we sacrifice or ignore?” and, “What risks should we accept and allow?”
Does Vietnam have the political will for necessary changes? Yes – July 31, 2017 2nd Annual VPSF
“...Many provisions of the law on private economy have not been strictly enforced. The environment for business investment and start up is still rather unfavorable with high potential risks and lack of transparency. Rights for business freedom and property rights, rights to access to business opportunities and society’s resources are not equitable between the private sector and other economic sectors; intermediary, unofficial costs remain high.

Administrative procedures are cumbersome and complicated; harassment, unaccountability and irresponsibility, abuse of power, and difficulties made for businesses are still common. Delegation, decentralization and coordination among ministries, industries, sectors and localities are unreasonable and insufficient. The effectiveness of inspection and control of private sector activities is low...”
RESOLUTION OF THE 5th PLENUM OF THE PARTY CENTRAL COMMITTEE (RESOLUTION 5) ON THE DEVELOPMENT OF THE PRIVATE SECTOR. From Guiding Views and Objectives:

- “...2 - Create a favorable investment, business environment for the development of the private economy: Promote the participation of private enterprises in regional and global production networks, value chains.

- Adopt mechanisms and policies to create conditions for the private economy to actively participate in the process of international economic integration. Support the private sector to access and exploit opportunities in international integration, market expansion, international investment and trade promotion; eliminate unreasonable barriers to private sector’s participation in international trade and investment. Facilitate the private sector to develop and improve its capacity to gradually and deeply participate in the regional and global value chains...”
A New Approach and New Methodologies for Vietnam: Post-Customs Release Trade Compliance

- In order to persuade ministries and state agencies regulating trade in Vietnam to modernize compliance processes and procedures by adopting risk management and post-customs release compliance procedures, a new approach is needed to provide a foundation for necessary legal, regulatory and administrative procedures reforms.

- The Global Alliance for Trade Facilitation (GATF) has selected Vietnam as the first country in Asia to assist with WTO TFA implementation by introducing a modern customs bond system for commercial imports and exports.
What WTO Members Use Customs Bonds?

- A partial listing includes:

  - Australia  Singapore
  - Canada    South Africa
  - EU        Sweden
  - Finland   Tanzania
  - Ireland   Thailand
  - Kenya     Uganda
  - Malaysia  UK
  - New Zealand USA
  - Norway
  - Philippines
  - Rwanda

- And many others in South and Central America, the Caribbean and in other countries.
The WTO Trade Facilitation Agreement and Introduction of Customs Bonds

- A customs bond is a specialized form of contract provided by sureties (insurance companies) that have been approved by Customs and, it is given to insure the performance of obligations imposed by law or regulations.

- It operates in a manner somewhat similar to an insurance policy that guarantees payments to Customs if a required act is not performed. Unlike an insurance policy, it has three parties and not two. It is a very specialized form of performance bond.

- Customs bonds do much, much more than merely guaranteeing payment of customs duties, taxes, fees and charges. There are many types of customs bonds.

- They operate to guarantee a stricter penalty regime through which performance of all relevant trade compliance requirements for imported goods is secured.
The WTO TFA and Introduction of a Modern Customs Bond System

- In Vietnam, implementation of a modern customs bond system will provide a basis for solving state management of goods “specialized inspection” issues involved with customs release of goods.

- It is a trade facilitation measure that can provide other ministries and state agencies regulating trade with the basis for implementation of risk management-based and modernized administrative compliance procedures.

- It is a measure that will also provide the needed support for new enforcement approaches that provide sufficient financial deterrence to trade and customs fraud, dumping, subsidies, intellectual property infringement and, other international trade offences.
The WTO TFA and Introduction of a Modern Customs Bond System

❖ In the U.S., the primary customs bond used by companies includes:

✓ An agreement to pay duties, taxes and charges on imports;
✓ An agreement to complete customs declarations;
✓ An agreement to produce documents and evidence;
✓ An agreement to redeliver goods to Customs in the event of non-compliance;
✓ An agreement to rectify any Non-Compliance for admission of imported goods;
✓ An agreement for examination of imported goods;
✓ An agreement on Duty-Free declarations or withdrawals;
✓ An agreement to comply with electronic customs entry and advance cargo filing requirements;
✓ Agreement to pay liquidated damages in cases of non-compliance.
Why are Customs Bonds Needed? Customs Bonds and Bank Guarantee Letters
<table>
<thead>
<tr>
<th>Bank Guaranty Letter in Vietnam</th>
<th>Customs Bond</th>
</tr>
</thead>
<tbody>
<tr>
<td>“Grace Period” for Duty and Tax Payment – 30 days maximum limit.</td>
<td>No “grace period” time limits.</td>
</tr>
<tr>
<td>Guarantee is <strong>only for payment of import duties and taxes</strong>. No guarantee for specialized inspection or regulatory requirements that apply to the goods.</td>
<td>Guarantees not only payment on time of duties and taxes but, fulfillment by the importer of <strong>all other legal and regulatory requirements</strong> that apply to the goods. This includes specialized inspection certificates, permits, and trade documents.</td>
</tr>
<tr>
<td>Importer will pay penalty interest to customs for each day used for grace period.</td>
<td>No penalty interest.</td>
</tr>
<tr>
<td>Importer will pay interest to the bank for the guarantee letter amount.</td>
<td>No interest payment to surety or financial institution, only the bond fee at the time of application.</td>
</tr>
<tr>
<td>Importer must have cash equivalent on deposit with bank equal to the amount of the guarantee letter.</td>
<td>No deposit of cash or other collateral required.</td>
</tr>
<tr>
<td>Importer’s deposit with the bank is blocked for the for the 30-day grace period and cannot be used for their business operations.</td>
<td>No reduction of importer’s credit and cash flow to finance new transactions.</td>
</tr>
<tr>
<td>Importer’s revolving or other credit to be used for business operations is lowered.</td>
<td>No reduction of importer’s credit and cash flow to finance new transactions.</td>
</tr>
<tr>
<td>Only transactions during the 30 day grace period up to the limit of the bank guarantee letter and interest costs are possible.</td>
<td>No value limit on transaction import duties and taxes and no time limit with continuous customs bond.</td>
</tr>
</tbody>
</table>
What Are the Benefits?

<table>
<thead>
<tr>
<th>Type of improvement at border management agencies</th>
<th>Benefits to government, to traders, and to the country</th>
<th>Reasonable range for estimated benefits</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reducing administrative costs</td>
<td>Reduced costs for government and traders</td>
<td>−0.1–0.5 percent of cargo value</td>
</tr>
<tr>
<td>Reducing clearance times</td>
<td>Reduced traders’ costs</td>
<td>−0.5–0.8 percent of cargo value</td>
</tr>
<tr>
<td>Reducing the variability of clearance time</td>
<td>Reduced inventory levels for traders, leading to reduced traders’ costs</td>
<td>For each 50 percent reduction in the standard deviation, −0.2 percent of cargo value</td>
</tr>
<tr>
<td>Increasing competitiveness</td>
<td>Increased export growth</td>
<td>+1 percentage point</td>
</tr>
</tbody>
</table>
The WTO TFA and Introduction of a Modern Customs Bond System

- The General Department of Vietnam Customs and relevant agencies have identified the following WTO TFA commitments as requiring additional time or, both additional time and technical assistance for implementation, typically 3 years.
  - “Pre-Arrival Processing” of imports (Article 7.1);
  - “Separation of Release from Final Determination of Duties and Taxes” (Article 7.3);
  - “Expedited Shipments” (Article 8);
  - “Formalities and Documentation” (Article 10.1);
  - “Temporary Admission of Goods and, Inward and Outward Processing” (Article 10.9);
  - “Freedom of Transit” (Articles 11.6 - 11.10).
4. Further to Article 6.4 of the TBT Agreement, where a Party maintains procedures, criteria and other conditions as set out in paragraph 1 and requires test results, certifications, and/or inspections as positive assurance that a product conforms to a standard or technical regulation, it:

a) shall not require the conformity assessment body testing or certifying the product, or the conformity assessment body conducting an inspection, to be located within its territory;

b) shall not impose requirements on conformity assessment bodies located outside its territory that would effectively require such conformity assessment bodies to operate an office in that Party’s territory; and

c) shall permit conformity assessment bodies in other Parties’ territories to apply to the Party for a determination that they comply with any procedures, criteria and other conditions the Party requires to deem them competent or otherwise approve them to test or certify the product or conduct an inspection.
The WTO TFA and Introduction of a Modern Customs Bond System

- **7.3** 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.
The WTO TFA and Introduction of a Modern Customs Bond System

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 (customs bond), a deposit, or another appropriate instrument provided for in its laws and regulations.
The WTO TFA and Introduction of a Modern Customs Bond System

- 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.
The WTO TFA and Introduction of a Modern Customs Bond System

- **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.
In 2018, we see serious trade conflicts arising such as between China and the U.S., amongst others.

This creates both opportunities and risks for Vietnam as Chinese firms are expected to transfer product production or processing of goods to Vietnam, for export to the U.S.

The U.S. Customs doctrine of “substantial transformation” will pose risks for goods processed in Vietnam that originated in China, yet are exported to the U.S. Customs bonds may help mitigate such risks.
Walmart Inc <WMT.N> has asked some beauty suppliers to consider sourcing products from outside China, as it looks for ways to mitigate the impact of a new set of tariffs on Chinese products proposed by the Trump administration.

In an email sent to some beauty suppliers on Aug. 7, seen by Reuters, the retailer asks if they have facilities outside China, and if not, whether they would consider investing in them, to broaden their sourcing ability.

Many cosmetics products like shampoos, lipsticks and makeup fall under the most recent list of proposed levies on Chinese goods.
The Global Alliance for Trade Facilitation Invites Business Associations in Vietnam and Interested Enterprises to Participate in the Customs Bond System Pilot being organized by GDVC.
Dialog – Q & A

For Additional Information, Please Contact:
Nestor Scherbey
CTRMS Viet Nam
172 Hai Ba Trung Street, District 1
Ho Chi Minh City
+84 8 7302 5772
nestor@ctrms.com