

## **WTO Agreement on Trade Facilitation (TFA)**

### **1. What is the TFA?**

- The TFA, concluded at the WTO Ministerial Conference in December 2013, is the first multilateral Agreement concluded since the creation of the WTO.
- It provides for the modernization and simplification of customs and border procedures by all WTO Members.

### **2. What will be the economic impact of the TFA?**

- The WTO estimates full implementation of the TFA by WTO Members could boost global merchandise exports by up to \$1 trillion, including up to \$730 billion in export opportunities accruing to developing countries, and decrease trade costs for WTO Members by an average of 14 percent, including an average of nearly 17 percent for least-developed countries.
- While the real-world impact would be smaller in the event that not all WTO Members fully implement the TFA, it would nevertheless be significant.

### **3. When will the TFA enter into force?**

- The TFA will enter into force when two-thirds of WTO Members (i.e. 108 out of 162) have completed their domestic ratification procedures and submitted their instrument of acceptance to the WTO.
- As of June 14, 2016, 81 of the required 108 WTO Members have ratified the TFA. A list of WTO Members which have already ratified is available at the following website: <http://www.tfafacility.org/ratifications>
- While there is no specific deadline for WTO Members to ratify the Agreement, international efforts are ongoing, such as in the G7 and G20, to encourage other WTO Members to ratify the TFA promptly.

### **4. Who are the parties to the TFA?**

- All WTO Members agreed to the conclusion of negotiations on the TFA at the December 2013 WTO Ministerial Conference.
- All WTO Members will become parties once they ratify the Agreement.

### **5. Does the TFA cover all goods?**

- Yes, the TFA's provisions apply to trade in all goods between WTO Members.

**6. What are the benefits of the TFA for Canada?**

- The implementation of the TFA will cut red tape, enhance the predictability of trade and reduce the costs and delays of trading at international borders for Canadian exports.
- It will contribute to an environment in which Canadian businesses, particularly SMEs which are challenged by high trade administration costs, are better positioned to export.

**7. Why is Canada in the process of ratifying the TFA?**

- The Agreement is the first multilateral treaty to emerge from the WTO since its creation, reinforcing the important role of the WTO as a negotiating forum for global trade rules.
- Canada played a key role in the negotiation of the TFA and ratification would demonstrate Canada's support for the Agreement and the WTO.
- The TFA supports the government's efforts to promote trade and development and provides another vehicle to increase prosperity in developing countries.

**8. Will the TFA impact privacy/protection of confidential information?**

- No. The TFA does not require Canada to share information that would be contrary to Canadian privacy laws.
- Appropriate safeguards are provided in the TFA to enable governments to continue to protect confidential business information.
- Canada will apply these safeguards to prevent and limit sharing, use and disclosure of confidential information.

**9. How does the TFA differ from Canada's free trade agreements (FTAs)?**

- The TFA's provisions complement those found in Canada's FTA trade facilitation chapters. The TFA addresses a broader range of trade facilitation measures, since the TFA is a specialized agreement that reflects the more diverse priorities of WTO Members.

- Trade facilitation provisions in Canada's FTAs to date have focused on Canada's priorities, including transparency, release of goods, risk management and the advance issuance of decisions on tariff classifications (advance rulings).
- These interests are well reflected in the TFA and will serve to advance Canada's interests with countries with which it does not have an FTA.

**10. Does the TFA go further than the Canada-European Union Comprehensive Economic and Trade Agreement (CETA) or the Trans-Pacific Partnership (TPP)?**

- The TFA broadly aligns with the trade facilitation chapters in CETA and the TPP.
- In addition, the TFA is more ambitious in certain areas, such as:
  - streamlined customs procedures for low-risk shippers,
  - no mandatory requirement to use customs brokers, and
  - faster customs procedures for perishable goods.

**11. What are Canada's plans for the establishment of a national committee on trade facilitation?**

- WTO Members are expected to establish or maintain a national committee on trade facilitation to facilitate domestic coordination and the implementation of the TFA.
- The Government of Canada uses well-functioning networks already in place to undertake the necessary strategic planning and to coordinate trade facilitation domestically, including with private sector stakeholders.
- More specifically, Global Affairs Canada and the Canada Border Services Agency use inter-governmental avenues of communication between the departments and agencies responsible for the application of import, export and transit requirements at the border, as well as existing mechanisms for consultations with private stakeholders.
- These processes will serve as Canada's national coordinating committee.

**12. Which government departments are responsible for trade facilitation in Canada?**

- In Canada, trade facilitation involves policies, procedures, legislation, and other measures implemented by the Canada Border Services Agency and partners in other government departments, including Health Canada and Environment and Climate Change Canada.

**13. How will Canada help developing countries implement the TFA?**

- Global Affairs Canada provided \$2 million in funding for the World Bank Group's Trade Facilitation Support Program (TFSP) launched in July 2014 to facilitate the implementation of the TFA.
- Canada is a founding donor to the Global Alliance for Trade Facilitation (GATF), a public-private platform that will support the TFA implementation efforts of developing countries by leveraging private sector expertise, leadership and resources to achieve commercially meaningful reforms. Canada is contributing \$10 million to the GATF over 7 years (2015-2022).

**14. Does Canada comply with the TFA?**

- Although Canada is compliant with the vast majority of the TFA's provisions, legislative amendments are required to enable Canada to comply with two specific provisions of the TFA. The amendments are contained in Bill C-13.

**15. Does Canada's Customs Self-Assessment (CSA) Program comply with the TFA?**

- The implementation of the TFA will not have an impact on the CSA program.
- The TFA requires WTO Members to provide additional trade facilitation measures to trusted traders known as "authorised economic operators". Canada follows the World Customs Organization (WCO) Authorized Economic Operators model and our CSA program already exceeds the requirements of the TFA.
- For more information on the CSA please see: <http://www.cbsa-asfc.gc.ca/proq/csa-pad/import-eng.html>

**16. What steps are required for WTO Members to ratify the TFA?**

- WTO Members are to submit an instrument of acceptance to the WTO once their domestic ratification procedures are complete.
- The submission of an instrument of acceptance to the WTO signals the consent of the Member to be bound by the TFA in international law.

**17. When will Canada ratify the TFA?**

- Canada will be in a position to submit its instrument of acceptance to the WTO, once Bill C-13, introduced in Parliament on April 13, 2016, receives Royal Assent.

## **Bill C-13**

### **18. Why was Bill C-13 introduced in Parliament on April 13, 2016?**

- Amendments to the *Food and Drugs Act*, *Pest Control Products Act*, *Radiation Emitting Devices Act*, *Canada Consumer Product Safety Act*, and the *Hazardous Products Act*, and the *Canadian Environmental Protection Act, 1999* are necessary to implement two provisions of the TFA related to the treatment of rejected goods and the freedom of transit of goods destined for other countries.
- The adoption of Bill C-13 will enable Canada to comply with, implement and ratify the TFA.

### **19. What are the implications of Bill C-13 for Canada?**

- Bill C-13 will provide the legislative authority to allow:
  - The Canada Border Services Agency, on behalf of Health Canada, to dispose of rejected goods that do not meet certain health and technical requirements, in lieu of allowing importers to return the goods to the exporter, and;
  - Health Canada and Environment and Climate Change Canada to exempt certain goods in transit from the requirement to comply with Canadian technical regulations, provided that certain conditions are met, where necessary, to protect health, safety and the environment, and to identify goods that may be diverted into the Canadian market.
- Bill C-13 will facilitate trade without affecting Canada's ability to protect the health and safety of Canadians and the environment from any risks associated with non-compliant goods or goods in transit through Canada.

### **20. Which types of products would be impacted by Bill C-13?**

- Pharmaceutical drugs, pesticides, radiation emitting devices, consumer products, cosmetics, cleaning products and hazardous products would be subject to the proposed amendments.

### **21. What specific provisions of the TFA does Bill C-13 address?**

- Bill C-13 will enable Canada to comply with Articles 10.8.1 and 11.8 of the TFA.
- First, Bill C-13 will ensure that Canada's actions to seize or dispose of non-compliant goods fall within Article 10.8.1 of the TFA.
- Second, Bill C-13 would exempt goods in transit from the requirement to comply with technical regulations as per Article 11.8 of the TFA, provided certain conditions and safeguards are met, where necessary, to protect the health and safety of Canadians as well as the environment.

**22. How will the proposed legislative amendments deal with non-compliant goods (Article 10.8.1 of the TFA)?**

- Health Canada's proposed legislative amendments seek to ensure that its actions vis-à-vis non-compliant goods, such as seizure or disposal of such goods, fall within the exemption provided in TFA Article 10.8.1
- Health Canada's proposed legislative amendments would identify criteria under which non-compliant goods could be, either: (1) returned to the exporter, or (2) seized, detained, forfeited and/or disposed of.
- No amendments to Environment and Climate Change Canada statutes are required to comply with Article 10.8.1.

**23. How will specific products be impacted by provision 10.8.1 (non-compliant goods)?**

- Under the ***Food and Drugs Act***, health products such as formulations of acetaminophen products that are not approved for sale in Canada would be rejected at the border. The importer would then be offered the option of returning it to the sender or re-consigning it to a third-party outside of Canada.
- Pest control products (e.g., herbicides, fungicides, insecticides, etc.) that are non-compliant with the ***Pest Control Products Act*** would be returned/re-consigned to the importer unless they pose unacceptable risks to a third party.
- Under the ***Radiation Emitting Devices Act***, devices such as x-ray machines could be returned or re-consigned to the importer unless they pose unacceptable risks such as the level of radiation they emit, at which point the non-compliant product could be seized.
- Consumer products that are found to be non-compliant with the ***Canada Consumer Product Safety Act*** could be returned/re-consigned to the

importer, unless they pose a danger to human health or safety, in which case they would be seized and not returned.

- Hazardous chemicals that do not comply with the ***Hazardous Products Act*** could be returned/re-consigned to the importer unless they pose unacceptable risks to human health and safety, in which case they would be seized and not returned.

**24. What legislative amendments are being proposed in relation to goods in transit (Article 11.8 of the TFA)?**

- The legislative amendments proposed by Health Canada would create the legal authority to exempt certain goods in transit through Canada from the requirement to comply with technical regulations, subject to certain conditions being met.
- These conditions, which apply to goods covered by statutes administered by Health Canada, are intended to provide the oversight necessary to:
  - Identify goods in transit which may not comply with Canadian technical regulations, and
  - Protect the environment and the health and safety of persons who may come into contact with certain pesticides and pharmaceutical drugs.
- The legislative amendments proposed by Environment and Climate Change Canada would create the legal authority to exempt cleaning products and water conditioners in transit through Canada from the requirement to comply with technical regulations.

**25. How will specific products be impacted by provision 11.8 (goods in transit)?**

- Health products such as formulations of acetaminophen products that are not approved for sale in Canada would be permitted to transit through Canada provided that certain conditions are met to mitigate the risk of diversion.
- Unauthorized pest control products such as unregistered active ingredient concentrates would be permitted to transit through Canada only if certain conditions are met, to mitigate potential risks to the health and safety of workers, and to the environment associated by the transit of such goods.
- Cleaning products such as laundry detergents, dish-washing compounds, and household, commercial, or industrial cleaners that do not comply with technical regulations, would be permitted to transit through Canada.

**26. What are the risks of allowing transit through Canada of non-compliant goods?**

- These risks are limited and manageable.
- Existing measures under the *Customs Act* limit the risks that goods in transit could be diverted into the Canadian market.
- The proposed legislative amendments to the *Food and Drugs Act* will require parties shipping goods through Canada to indicate which goods are in transit to identify such products.
- Canada limits potential risks of accidents involving dangerous goods in transit by applying existing safeguards under the *Transport of Dangerous Goods Act* to protect the health and safety of Canadians as well as the environment.
- Health Canada's proposed legislative amendments to the *Pest Control Products Act* will maintain oversight for pesticides not captured under the *Transport of Dangerous Goods Act* by providing for measures to protect the environment and health and safety.

**27. Is there any environmental risk involved with the proposed amendment to the *Canadian Environmental Protection Act*?**

- The risk of increased environmental impacts as a result of this proposed amendment to provide for the exemption of goods in transit from the application of technical regulations is low.
- The particular risk that cleaning products or water conditioners in transit would end up in the water is also considered low.
- Existing measures under the *Customs Act* limit the risks that goods in transit could be diverted into the Canadian market.

**28. Why are no amendments required to the *Canada Consumer Product Safety Act* (CCPSA) to comply with Article 11.8?**

- Authorities already exist under the CCPSA to exempt goods in transit from the application of technical regulations.

**29. How will the TFA and Bill C-13 impact pharmaceutical drugs manufactured in Canada for export only? Will a pharmaceutical Drug Establishment License or pre-market review be required?**



- The intent of the TFA is to facilitate trade, including for Canadian exporters. Food, pharmaceutical drugs, cosmetics and devices manufactured in Canada for export only will be required to comply with foundational requirements in the *Food and Drugs Act*, generally targeting deception, unsanitary manufacturing and products posing a risk of injury. Bill C-13 does not propose requirements for a pharmaceutical drug establishment license or pre-market approval.

**30. Will the proposed amendments to the *Food and Drugs Act* apply to natural health products?**

- While most of the proposed amendments to the *Food and Drugs Act* will apply to all products, amendments to s. 37 for products manufactured or prepared in Canada intended for export only will not apply to natural health products within the meaning of the *Natural Health Products Regulations*.

**31. Does the TFA and Bill C-13 address counterfeit, grey market and/or unlawful goods seized from non-authorized importers?**

- The proposed amendments maintain Canada's ability to react to these types of goods and provide additional tools to deal with unlawful imports, so that counterfeit goods, and otherwise unlawful goods - whether or not grey market - may be seized or forfeited if they pose a risk to the health and safety of Canadians or the environment.

**32. How will Health Canada ensure that the proposal to amend the label definition in the *Pest Control Products Act* would not have unintended consequences? How will Health Canada ensure the new label definition would not apply more broadly (e.g., to advertising and promotional materials)?**

- The amendments to the definition of label take into account definitions from other Health Portfolio legislation, including the *Safe Food for Canadians Act (SFCA)*, as well as relevant aspects of the U.S. Federal *Insecticide, Fungicide and Rodenticide Act*.
- Changes to this definition would not affect the way Health Canada regulates the labelling of pest control products other than the added flexibility to address health and safety information requirements for goods transiting through Canada.
- The *Pest Control Products Regulations* specify the labelling requirements for registered pest control products which include health, safety and use information on the principal and secondary display panels.

## FAQs on TFA & Bill C-13 (for publication on GAC's website)

- The Pest Management Regulatory Agency, on behalf of the Minister of Health, may also require the label of a registered pest control product to set out product specific conditions relating to, among other things, the product's safe use and storage.
- Any other information on or accompanying the product that is not part of the approved label would be subject to the same requirements in place now, which is that the product cannot be labelled in a way that is false, misleading or likely to create an erroneous impression regarding its character, value, quantity, composition, safety or registration.

### **33. Bill C-13 proposes to amend Section 13 of the *Hazardous Products Act* to provide authority, consistent with other Health Canada legislation, to implement international agreements, such as the TFA. Will it apply to other international agreements, beyond the TFA?**

- At this time, it is foreseen that its application is only relevant to the TFA. However, the selected wording will enable Canada to comply with other international agreements which may be negotiated in the future.

### **34. When will Canada enact Bill C-13?**

- Enacting Bill C-13 will depend on the parliamentary process currently underway.