

The Creation of a National Trade Facilitation Committee NTFC in Vietnam

– Some guiding principles –
-Draft-

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Hanoi, March 2015

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1 NTFC in Vietnam - Principles and requirements

The creation of a National Trade Facilitation Committee (NTFC) has become a policy priority of Vietnam both for reasons of satisfying obligations under international agreements and of the perceived need to create a tool to help design and implement a coherent national trade facilitation policy.

In December 2013 the WTO Ministerial Conference held in Bali concluded negotiations on the WTO Trade Facilitation Agreement (TFA). Subsequently, in line with the decision adopted in Bali, WTO members adopted on 27 November 2014 a Protocol of Amendment to insert the new Agreement into Annex 1A of the WTO Agreement. The TFA will enter into force once two-thirds of members have completed their domestic ratification process.

Article 23 of the TFA on Institutional Arrangements establishes a Trade Facilitation Committee at the WTO and calls on Members to establish a National Trade Facilitation Committee. To this end, Article 23.2 stipulates that *“Each Member shall establish and/or maintain a national committee on trade facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of provisions of this Agreement.”*

For purposes of the TFA it is thus mandatory, i.e. a binding obligation to establish and/or maintain an NTFC. It is also important to note that the obligation is not contained in Section 1 of the Agreement and that, consequently, and in accordance with Article 13 the provisions on Special and Differential Treatment for developing and least developed countries contained in Section 2 will not apply. This means that the obligation to create an NTFC cannot be categorized as category B or C. There is no S&DT for developing countries and LDCs. Committees or comparable mechanisms are to be set-up by ALL Members by the time the Agreement enters into force.

As the establishment of NTFCs is not part of Section 1 of the Agreement, technical assistance cannot be requested through the same channels as the other TFA provisions. However, countries are encouraged to approach donors on this issues independent of the categorization exercise. UNCTAD and other organizations are very active in this field supporting the creation and sustainability of NTFCs.

As far as the functions/mandates of the NTFC are concerned, the TFA establishes some minimum conditions, which are not specific but simply refer to *“... facilitating both domestic coordination and implementation of provisions of this Agreement.”* It is, however, clear that the arrangement must exist for the specific purpose of implementing the TFA.

Here are some decisions that must be taken when it comes to establishing the NTFC. Despite the formal obligation to establish the NTFC it is essential to assure political commitment to the process which is conditional for operations, effectiveness and sustainability of TF Committees. Furthermore, the Agreement is silent on the structure, governance, funding, membership, etc... of the Committee. The necessary decisions in this respect need to be taken at the national level, reflecting “institutional culture” and existing structures that could either serve as TF Committees or could serve as basis on which to build the infrastructure. The experience of various other countries so far can be a good guidance in this process.

Vietnam is, however, Party to a number of Agreements calling for the establishment of NTFCs or similar institutional arrangements. For Vietnam it would not be practical to have separate NTFCs for each Agreement. On the other hand it may not be possible to have one single body meeting the obligations under each of these Agreements. It is hence necessary to review respective requirements and to see how they could best be accommodated.

1.1 NTFCs under different Agreements to which Vietnam is Party

GMS Cross Border Transport Agreement CBTA

A process of institution building was initiated under the GMS Cross Border Transport Agreement (CBTA)¹ signed in Vientiane, Lao PDR on 26 November 1999. The Agreement calls for the establishment of “**National Transport Facilitation Committees**” (NTFC). While the Agreement is silent on the functions of the NTFCs it is quite explicit on the organizational requirements for their establishment. Thus, the Committees are to be:

- permanent,
- chaired by a Minister or Vice Minister or its equivalent,
- made up of representatives of all parties concerned with the implementation of the Agreement.

At the regional GMS level the CBTA furthermore provides for the establishment of a “**Joint Committee**” of the representatives of the respective NTFCs. Its terms of reference are to “...monitor and assess the functioning of the Agreement...serve as platform for discussion, a forum for amicable settlement of disputes, ...address advice to Contracting Parties and formulate proposals for amendment of the Agreement.”

A National Transport Facilitation Committee has been established subsequent to provisions of the CBTA involving relevant ministries/agencies. It is a relatively loose arrangement.

¹ See CBTA Part VIII: INSTITUTIONAL FRAMEWORK, Articles 28 and 29

In Vietnam the Ministry of Transport (MoT) is responsible for and chairing the NTFC under the CBTA. The NTFC was created in 2001 by Prime Minister's decree. The decree establishes the Vice Minister of Transport as chairman of the NTFC, while vice chairs and members are at the DG level. The membership of the NTFC extends to Ministries/Agencies of

- Transport,
- Finance (Customs),
- Planning and Investment,
- Agriculture and Rural Development,
- Health,
- Immigration and Police,
- Defense (Border Control), and
- VATA (Vietnam Automobile Association or Land Transport Association) as private sector association representing some 700 trucking companies.

It is interesting to note the absence of the Ministry of Industry and Trade MoIT from the membership of the NTFC/CBTA.

ASEAN Framework Agreement on the Facilitation of Goods in Transit

Countries members of ASEAN created “ **National Transit Transport Coordinating Committees**” (NTTCC) in fulfilling commitments entered into under the ASEAN Framework Agreement on the Facilitation of Goods in Transit signed in Hanoi, Vietnam on 16 December 1998. The Agreement caters for an integrated and harmonized transit transport system and simplified and harmonized transport, trade and customs regulations for the facilitation of goods in transit in ASEAN. Under the Agreement, Member Countries have committed to harmonize and simplify their domestic rules, regulations and administrative procedures relating to transit transport in accordance with the Framework Agreement. Consequently, each Member Country has established an NTTCC to warrant the effective and efficient coordination, monitoring and implementation of the Framework Agreement. Each NTTCC is given the overall responsibility for the simplification, harmonization or modernization of transit transport and trade practices and technology through the updating of relevant national regulations and practices to conform to principles and objectives of the Framework Agreement. ²

At the level of ASEAN the Framework Agreement also calls for the establishment of a **Transit Transport Coordinating Board** (TTCB) to oversee the overall coordination and implementation of the Agreement. In particular, one of the key tasks of the Board is the

² For institutional arrangements see *ASEAN Framework Agreement, Article 29, 1 and 2*

coordination with the National Transit Transport Coordinating Committees of ASEAN member countries and the ASEAN Secretariat to ensure effective implementation of the Agreement. Without going into the implementation of the Agreement itself, it can be stated that the institutional infrastructure created there under has never been able to adequately discharge of its functions under the Agreement nor to play a role as a dynamic driver of a national or regional facilitation process.

In Vietnam, the NTFC created under the CBTA also acts as NTTCC under the ASEAN Transit Framework Agreement.

Other Agreements/Arrangements

There are a number of other Agreements or regional arrangements which cover trade facilitation issues, but which are less explicit on the creation of facilitation related infrastructure. These are notably the ASEAN Trade Facilitation Work Programme 2007 – 2015 (ATFWP) and the GMS Strategic Framework for Action on Trade Facilitation and Investment (SFA TFI).

The ATFWP is based on guiding principles that are equally valid for GMS Trade Facilitation Programmes. While the status of the ASEAN work programme is not clearly defined, the joint statement issued at the occasion of the fortieth AEM underlines the importance of trade facilitation initiatives in the integration process. Ministers stated that “Given the dynamic nature of the business trends and practices, the Ministers agreed the ASEAN Trade Facilitation Work Programme as a living document that would be reviewed on a regular basis to allow for further enhancement through identification of new initiatives and measures necessary in facilitating trade in ASEAN. The Ministers noted the progress in the development of the ASEAN Trade Facilitation Framework, which would serve as guidelines for Member States in undertaking trade facilitation policies including assessing their trade facilitation measures and adopting a common indicators to ensure comparability of the outcomes of the assessments.”³

What is important to note is that the ATFWP is “adopting a holistic approach to trade facilitation” which also implies that there are no sectorial separations but a uniform approach that builds on sectorial initiatives in an integrated manner.

In order to be able to effectively build and sustain such integrated approach to trade facilitation the ATFWP clearly establishes essential prerequisites that need to be put in place by ASEAN and its member States. Among others, these necessary conditions include the establishment of an institutional infrastructure capable of handling such a comprehensive

³ For the Ministers’ decision on the ATFWP see the Joint Media Statement of the Fortieth ASEAN Economic Ministers’ (AEM) Meeting Singapore, 25-26 August 2008, para 23. Specific TF issues on ASEAN Single Windows, Customs Cooperation and Standards, Technical Regulations and Conformity Assessment Procedures covered at that meeting are reflected in paras 24 to 29 of the same document.

work programme. Specifically, the ATFWP calls for the establishment of national TF bodies, regional TF bodies and the need for Change Management. To this effect, the ATFWP calls, inter alia, for the establishment of a National Trade and Transport Facilitation Committee (NTTFC) which would be the main driver of trade facilitation at the national level. If one already exists, efforts must be made to make it effective and functioning. The membership of NTTFC should be open to all stakeholders from both the public and private sector.

While the work programme is not of a mandatory character and hence there is no immediate obligation to establish the institutional infrastructure referred to therein, it is nevertheless clear that ASEAN Governments have seen the necessity to establish structures within their countries that would be in a position to drive – and implement - a coherent and comprehensive trade facilitation agenda. At the same time, it is also clear that common institutions will have to deal with different trade facilitation programmes developed under different umbrellas, in particular the WTO, APEC, ASEAN and GMS. Unless this is being done, there is the inherent risk that different agendas be designed and implemented in a suboptimal manner depriving national industries and consumers of the full benefits of trade facilitation.

A similarly loose arrangement can be found in the GMS SFA TFI. The SFA TFI sets out Guiding Principles which are largely those that need to be reflected in the institutional infrastructure of trade facilitation, be it in the GMS context or any wider regional or multilateral setting.

Following the “Statement of the Second Meeting of the Joint Committee for the CBTA” of 20 March 2007, national Plans of Action should have been developed. It does not appear, however, that GMS based NTFCs have done so.

1.2 Implications for the establishment of an NTFC

The present situation with regard to the requirements for the establishment of NTFCs gives rise to two clear conclusions.

Firstly, it would not be practical nor useful for Vietnam to have a separate NTFC for each Agreement. This would lead to a proliferation of institutions that would only contribute to duplication of work and hence an institutional fatigue.

Secondly, it would be difficult for one single layer entity to represent all aspects of trade facilitation and the obligations stemming from the various agreements to which Vietnam is a party.

Based on these two fundamental considerations it can be concluded that the institutional arrangement best meeting the needs and requirements of Vietnam would be a single multi layered institution consisting of a policy level Committee and below it a series of expert level working groups with differing membership reflecting the requirements of the various

Agreements as well as the particular TF needs of Vietnam. The following deliberations/proposals are based on this fundamental NTFC model.

2 Establishment of the NTFC

2.1 Creating the NTFC

Government decree may need to be issued to establish the NTFC and to determine its main functions and characteristics.

There are a number of issues that need to be addressed in the process of establishing national TTF institutions. The logic for their existence as well as the requirement for an embracing, coherent approach has been spelled out above.

Institutional modernization is one of the most critical aspects in the design and implementation of Trade and Transport Facilitation programmes. There are a number of considerations that need to be reflected in the process of creating and/or reforming necessary institutions at the national – and to some extent also at the sub regional – level. These considerations in one way or another center around the inter-ministerial nature of cross border trade transport and consequently of trade facilitation. Even though Vietnam like most other countries has designated the Ministry of Commerce and Industry to deal with policy issues pertaining to international trade, it is clear that the complexity of trade transactions is such that a number of other ministries or administrative entities are equally involved in regulating foreign trade operations.

There are thus three basic levels of coordination that need to be reflected in the NTFC being created with the objective of establishing coherent and effective facilitation programmes. These three levels involve:

- inter-ministerial and inter-agency coordination;
- public/private sector cooperation, and to some extent
- regional cooperation/coordination among trade partners

Inter-ministerial coordination

Inter-ministerial and inter-agency coordination and cooperation is at the core of the NTFC reflecting the very nature of trade facilitation. It is this aspect that is also at the center of the institutional requirements set up by Art 23 of the WTO TFA. International trade and transport operations have grown increasingly complex with an ever larger number of actors regulating different elements thereof in an often uncoordinated manner. Thus, whatever the detailed functions and work programme, the NTFC has to contribute to an administrative streamlining

that reduces bureaucracy and eliminates obsolete procedural requirements and related cost. It is exactly this requirement that is reflected in the paradigm shift away from public management by institution to management by objective. On the public sector side it needs to be accepted that trade facilitation covers activities and competencies of various ministries and Government agencies, most typically of Ministries of Transport, Trade, Health (Agriculture) and Finance. It is thus issue oriented rather than institution oriented as Government agencies have traditionally tended to be. Inter-ministerial cooperation is essential, but not sufficient.

2.2 Public/private sector cooperation

Public/private sector cooperation is another aspect that is important for the design and implementation of a trade facilitation programme and hence of a NTFC. While private sector cooperation is not expressly mentioned in the provision of Art 23 of the Trade Facilitation Agreement, it is nevertheless in the spirit of ensuring implementation of the Agreement as a whole.

Trade facilitation is an area where participation of the private sector is absolutely essential to the relevance and effectiveness of programmes and measures. The development and implementation of an effective trade facilitation agenda cannot be envisaged without the proper participation of the private sector. This participation needs to be ascertained from the beginning of the development of facilitation programmes and institutions. It is essential that an institutionalized dialogue be instigated already at the design and inception phase of the NTFC. Failure to do so will turn the programme into a fishing expedition without clear sense of needs and priorities, most likely dictated by external sources.

VCCI and Business Sector Role in Trade Facilitation

The Vietnam Chamber of Commerce and Industry (VCCI) is the most embracing private sector representative organization in Vietnam. VCCI represents all private sector businesses in the country. In this function it maintains close cooperation with the public sector. Such interaction takes place both at the formal and informal levels. Following a Government initiative a “Prime Minister’s dialogue” has been installed which is meant to meet at annual intervals and at which Business can raise its concerns with the PM and line Ministers. The possible linkage between the “Prime Minister’s dialogue” and the NTFC would need to be clarified.

As far as existing TF arrangements are concerned, VCCI has participated in its work on an ad hoc basis and in an advisory function, but has so far not extended cooperation beyond ad hoc contacts which came about when deemed necessary by the public sector.

VCCI is a natural partner in the new NTFC as they already now play a role in specific facilitation measures implemented in Vietnam. In this context and by way of example it is worthwhile to mention their role as issuer and guarantor of ATA carnets.

There are other associations that would lend themselves as private sector partners in the NTFC. While they may also be members of the VCCI they represent important specific interest in the development of a coherent trade and transport facilitation programme. Such associations could be, for instance, the VATA (Vietnam Automobile Association or Land Transport Association) as private sector association representing trucking companies or the Vietnam International Freight Forwarders Association (VIFFAS) representing primarily but not exclusively ocean forwarding companies. These associations are mentioned by way of example and a public/private sector dialogue should be initiated to determine more clearly the extent of participation and substantive role of the private/business sector in the NTFC.

Regional cooperation/coordination among trade partners

Regional cooperation in the area of trade facilitation would be expected to be achieved in the context of more embracing cooperative arrangements, such as GMS, ASEAN, APEC, etc. A summary of existing or foreseen arrangements is reflected in the first chapter above.

Figure 1: Launching a National Trade Facilitation Committee - flow of supportive steps

- Preliminary identification of issue(s)
- Survey of scope/need for collaboration
 - definition of major constraints
 - institutional assessment
 - specific studies
 - stakeholder analysis
- Identification of mechanisms for interaction
 - national champions
 - task forces
 - legal changes
 - procedural/operational changes
 - interagency collaboration
- Forum: identification of key issues
 - national committees
 - regional cooperation
- Development of action plan or strategic plan
- Setting of action plan within project context of donor/local funding
- Identification of performance indicators
- Monitoring and evaluation

Based on : World Bank Trade and Transport Facilitation in Southeast Europe Program (TTFSE)
<http://www.seerecon.org/tfse/tfse-launch.htm>

3 Functions and Work Programme of the NTFC

It is critical to clearly establish the functions and work programme of the NTFC as they directly flow from the trade and transport facilitation agenda established in Vietnam. While functions reflecting commitments of Art 23 of the TF Agreement are to be included, there may be other facilitation needs and priorities that are to be taken up by the NTFC. These needs and priorities need to be established in order to ensure programme coherence and institutional relevance. As there is no *one size fits all*, it is not possible to provide generally valid guidelines that would prejudge the facilitation assessment exercise that Vietnam will have to go through in order to determine the NTFC agenda. It is nevertheless possible to reflect on guiding principles that might be reflected in the country specific process of establishing NTFC functions and work programmes. The critical importance of establishing NTFC functions and work programmes is also reflected in the flow of steps contained in Figure 1 above.

Trade and transport facilitation is not a short term remedial activity but needs to reflect the strategy and identified priorities in advancing trade based development processes. Hence, there is a need for a mandate covering the whole of international trade and related transport transactions, based on an in-depth assessment of the trade situation in the country. In a second step, this broad mandate will need to be translated into focused and time bound work programmes that reflect the needs and priorities of the domestic traders and service suppliers as well as the commitments flowing from international agreements, not only the WTO TFA but also regional and sub-regional agreements on trade and transport. A number of such agreements have been referred to above.⁴ In this process, Vietnam may wish to seek external technical assistance that would extend to assistance in drawing up trade and transport facilitation plans and providing capacity building programmes aimed at raising awareness of the importance and potential benefits of facilitation programmes among all actors involved in foreign trade transactions.

Functions and programmes will need to reflect the broad categories of facilitation approaches, such as simplification (of rules and regulations, procedures, documentation), standardization and harmonization, covering the areas of international trade and transport, including the important area of Customs. In this process, there is one highly important mechanism to be strengthened through the work of the NTFC, that is the inter ministerial

⁴ See section 1 above

coordination mechanism. As international trade and transport operations have grown increasingly complex with an ever larger number of actors regulating different elements thereof in an often uncoordinated manner, the NTFC has to contribute to an administrative streamlining that reduces bureaucracy and eliminates obsolete procedural requirements and related cost. It is exactly this requirement that is reflected in the paradigm shift away from public management by institution to management by objective.

The translation of the NTFC mandate into a manageable work programme is of critical importance for the success and sustainability of the Committee. The drawing up of a work programme will be established through consultations with all interested parties, using workshops, seminars, or "brainstorming" sessions. It needs to be flexible enough to be able to react to future unforeseen developments. It is essential, that achievable objectives and a time frame are clearly established together with priority action that will lead to the achievement of the objectives.

This new strategic approach is increasingly linked to the development and application of information technology tools. While accepting that the principle of coordinated action embedded in such tools as Risk Management or Single Windows is to be seen on the basis of own inherent merits, their factual application will be more difficult and less beneficial in the absence of an adequate IT environment. Reality is that trade facilitation tools are increasingly IT based and this will need to be reflected in the functions and capabilities of the trade facilitation infrastructure.

4 Organization of the NTFC

Nature of the Committee

The nature of the Committee is determined by its function and its terms of reference. There are basically two such functions. The first one is that of an instrument of inter-ministerial or inter-agency coordination, the second one is that of a consultative organ between various stakeholders involved in international trade and transport transactions and operations. It is important to note that the Committee is not an executive organ, it does not replace Ministries or Agencies in their respective fields of competence, but it provides for a permanent forum where they can ensure coordination of their work. While a certain degree of coordination may take place also in the absence of the Committee, it makes a big difference inasmuch as it raises it from an ad hoc level to an institutionalized permanent arrangement.

Determining Membership

Once the functions and the nature of the Committee are determined, one of the first question of an institutional or organizational nature is the one of determining its membership. While details of it will factually have to be established following consultation among prospective members, there are some standards in determining membership that reflect the guiding principles spelled out above. These relate to the notions of inclusiveness and the collaborative efforts of private and public sector stakeholders. Thus, Figure 2 indicates possible membership structures based on public sector involvement in trade and transport transactions and corresponding private sector counterparts.

Figure 2: Possible Membership in the NTFC

Key Partners in International Trade and Transport	
<p><i>Public sector</i></p> <ul style="list-style-type: none"> • Commerce/Trade <ul style="list-style-type: none"> – Ministry of Industry and Trade – Foreign Trade Agencies. • Finance <ul style="list-style-type: none"> – Ministry of Finance --General Department of Customs - (Banking & Insurance supervisors) • Transport <ul style="list-style-type: none"> – Ministry of Transport -- Local gov't/Infrastructure providers – (Parastatal companies) • Plant/Animal Health/Food safety <ul style="list-style-type: none"> – Ministry of Health - Ministry of Agriculture and Rural Dev • Police, Immigration 	<p><i>Private sector</i></p> <ul style="list-style-type: none"> • Commerce <ul style="list-style-type: none"> – VCCI – IMP/EXP associations – Banking & Insurance associations • Finances <ul style="list-style-type: none"> – Prof. associations – Customs agents • Transport <ul style="list-style-type: none"> – Prof. associations -- Operators, agents associations (VATA,VIFFAS) • Specialized trade <ul style="list-style-type: none"> -- Trade associations

Figure 2 provides an indicative list of possible partners in the NTFC. This list will, however, need to be seen in the light of possible problems of manageability of the Committee and its ability to maintain a meaningful decision making process. This proviso particularly refers to private sector participation, which could, to some extent, be ascertained through VCCI. In such an environment, the Chamber would accept a role of coordinating private sector views and positions and thus represent a significant share of private interest in the conduct of international trade and transport transactions.

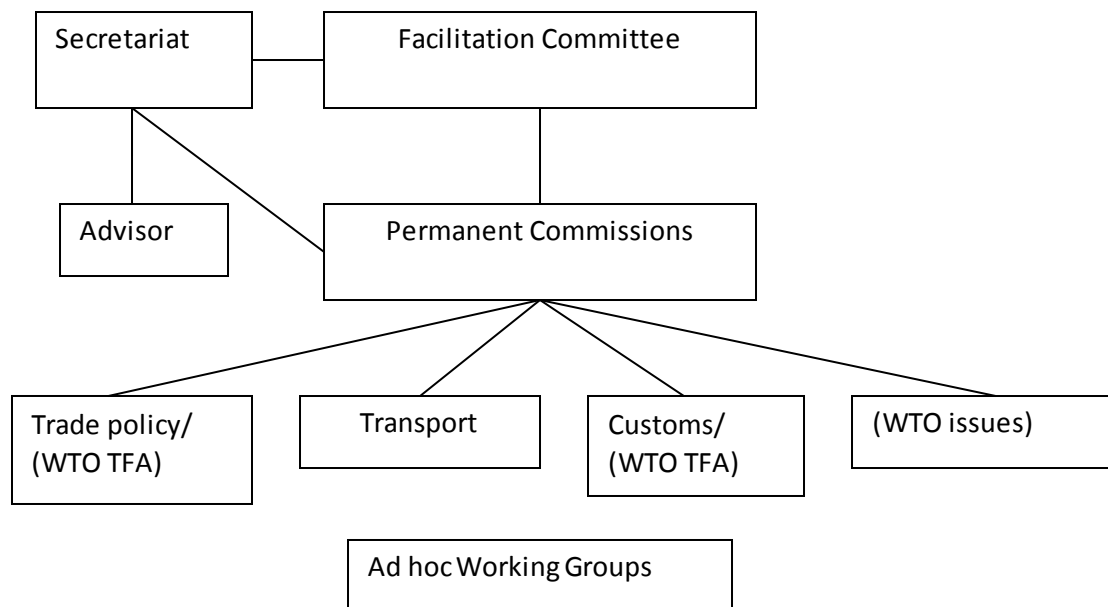
Minimum organizational requirements

Some basic organizational issues need to be resolved in the institutional setup. Basic organizational requirements relate both to the actual coordinating mechanisms and the

substantive support functions. The following graph (Figure 4) establishes minimum relations among partners in the facilitation exercise.

The minimum institutional arrangements as established here, would consist of three distinctly different layers - a policy, a technical and a support (secretariat) layer. The “Facilitation Committee” is the policy coordination organ which ensures consistency and coherence of work undertaken in the Permanent Commissions and ad hoc working groups. It meets at regular but not too frequent intervals, such as, for instance, bi-annually. It is serviced by the Secretariat, whose composition, location and functions are dealt with in more detail below.

Figure 3: Minimum NTFC Institutional Requirements



Technical work is being undertaken by the Permanent Commissions, in this case on “Trade policy/WTO TFA”, “Transport”, “Customs/WTO TFA”, and possibly a separate Commission on WTO issues.

The Commissions are of a standing nature and have a pre-defined minimum meeting schedule, such as monthly. The frequency of meetings can be augmented in case of need, reflecting the most urgent trade and transport requirements. The Permanent Commissions report to the Facilitation Committee, who also approves their work programmes. The third meeting level is that of ad-hoc Working Groups that may be established in order to meet

particular requirements. Such ad-hoc groups can be direct sub-groups of sectorial standing committees, but can also be partly or fully cross sectorial in nature. In the example of Figure 3 above, the WTO TFA issues are being covered under the specific permanent commissions, but it could equally be envisaged to have a cross sectorial group established in response to the requirements of Art 23 of the WTO.

Sectorial *Ad hoc groups*, if needed, report to the Standing Commissions, while cross sectorial ones report directly to the Facilitation Committee.

5 The Secretariat

The provision of Secretariat services is indispensable for the functioning of the NTFC. The committee should set up the secretariat, supported by a technical team. The professional experience should be in trade, transportation and Customs as the main areas of facilitation work. The technical team should be motivated to undergo training and be offered the opportunities for permanent upgrading of skills in line with trade and transport developments.

There are various ways secretariat services can be ascertained depending on the nature and functions of the NTFC. In Vietnam it is most likely the public sector that will drive the facilitation agenda. Hence it is substantively desirable and financially realistic that the public sector also provides base facilities and resources (both staffing and financial) that are required to ascertain the functioning of a Secretariat. This does not necessarily prejudge the nature of the Secretariat, which can be either independent or incorporated in a Ministry/Government Agency. There are clear advantages and shortcomings for either one of the two approaches and examples exist for both arrangements. In principle, the advantages of independence would need to be weighed against the resource requirements, including the potential implications for sustainability of the arrangement. Whatever arrangement might be chosen, the bottom line is that there is a need for secretariat functions to be performed, as the NTFC will not be able to function otherwise.

The exact role and functions that a Secretariat is to fulfill will, of course, depend on the terms of reference and the organizational arrangements of the NTFC itself. In general terms, the

role of the Secretariat must be to provide organizational and substantive support to the NTTFC. In practice this means:

- Support to the “Facilitation Committee”
 - a. Preparing and organizing meetings
 - b. Establishing substantive agenda
 - c. Preparing and disseminating meeting documentation
 - d. Preparing and facilitating decision making
 - e. Reporting on meetings
 - f. Disseminating results
 - g. Following up implementation of decisions.
 - h. Institutional promotion of the NTFC.

- Support to the “Permanent Commissions” and “ad hoc Working Groups”
 - a. Preparing and organizing meetings
 - b. Establishing substantive agenda
 - c. Preparing and disseminating meeting documentation
 - d. Preparing and facilitating decision making
 - e. Reporting on meetings
 - f. Disseminating results

It is important to note in this context, that substantive support for the Permanent Committees and ad hoc Working Groups may at times go beyond the Secretariat’s capacities, given the wide variety and complexity of issues under consideration. In those cases it may be necessary to resort to expertise to be provided either by other public sector institutions and/or the private sector participating in the in the work of the particular Committee or Working Group.

- Supporting the advancement of the trade and transport facilitation agenda
 - a. Identifying national trade and transport facilitation needs and requirements for consideration by the NTTFC
 - b. Following and reporting on international facilitation developments and best practices
 - c. Preparing reports on specific trade and transport practices and possible facilitation solutions

- Providing services to stakeholders
 - a. Providing trade and transport and related documents
 - b. Information and support services
 - c. Organizing meetings and seminars

These services could possibly be provided on a cost sharing basis

As has been mentioned above, the organizational question that needs to be resolved is whether a secretariat is to be created within a Ministry/Government Agency or as an independent unit, possibly linked to or benefitting from the support of a private sector institution, such as the VCCI.

Secretariat services of a coordinating mechanism would most likely be provided by a participating Ministry, most sensibly the Ministry that holds the chair of the NTFC, resp its Facilitation Committee. The Secretary should be of Director level and the work to be performed by the staff reflected in their job descriptions. In this case it is important that, for support work for the Standing Commissions and ad hoc Working Groups the Secretariat is supported by the line Ministries/agencies and the private sector concerned. Thus, for the Customs Commission, for instance, it would be necessary to bring substantive expertise from Customs, brokers and possibly users to the Secretariat to ensure proper consideration of the issues at stake. This expert support is indispensable to create and maintain credibility of the process with the stakeholders. At any rate, the technical team must have expert knowledge of the main elements of the facilitation agenda or should be motivated to undergo training, and possibly participate in exchange programmes.

Staff and know how

The nature of the work of the NTFC reflects the interdisciplinary nature of trade facilitation. The complexity of the task requires new job profiles, the hiring of specialists with experience and qualifications at times beyond those available in Government offices. There may be a need for upgrading of the skills of personnel both in terms of improving the understanding of trade and transport processes and resulting TF requirements at the Central Government level and the use of up to date processes and modern technologies, particularly IT for trade and transport documentation and automated customs procedures. Secretariat staff will have to receive the necessary training and, in turn, will have to share their knowledge with public and private sector stakeholders. The multiplier effect thus achieved is an important aspect of a new national trade facilitation culture.

6 Sustainability of TTF Institutions

Sustainability is one of the most critical issues when it comes to assessing the scope and potential of the NTFC. Sustainability has different facets and goes far beyond the issue of financial sustainability, even though this is unquestionably an important aspect of ascertaining the long term success of facilitation policy and the related institutional infrastructure.

The willingness to work for a common cause is at the basis of trade and transport facilitation policies and measures. Cooperation between ministries and other governmental agencies, supplemented by trade and transport operators' interest – be they public or private sector operators – is required to promote understanding of differing interests and to create a sense of joint ownership among stakeholders. The sustainability of a committee also depends on:

- international technical assistance for initial guidance, assessment of trade and transport facilitation needs and priorities and setting objectives
- proactive and supportive public and private sector participation
- its promotion at national and international forums
- strong linkages with international institutions and trade bodies
- an independent secretariat and technical team of experienced professionals with commensurate remuneration
- the identification of the appropriate lead agency and the selection of a “champion”
- its successful transfer from project dependency to a lead agency
- high-level decision makers with influence in government ministries
- assurances from the outset of public financial support for operational and overhead expenses

A number of these issues are already critical at the inception phase of the NTFC. It is important to note that considerations that drive the decision making processes at the time of institution building, remain relevant during their lifetime as conditions for the success of the NTFC.

In the widest sense it is important for sustainability to remain focused, provide added value to all stakeholders, and – in a most general way – avoid mistakes.

6.1 Financial sustainability

Financial sustainability of the NTFC is one of the major issues to be resolved in order to ensure its long term viability. The actual financing issues that arise are, however, dependent on the type of institution that is being created and the tasks that are being performed. It goes without saying that an institution performing substantive tasks will have larger funding requirements than one that is only coordinating substantive agencies. At the same time, however, the former one will also have more potential for revenue generation. Similarly, an NTFC aimed at substantial private sector participation will most likely look for a broader revenue base than one that is confined to inter-ministerial coordination.

An institution primarily providing inter-ministerial coordinating functions will have limited financing requirements and will most likely not incur problems of financial sustainability. Even if it is envisaged that the coordination is not being carried out on an ad hoc basis but rather through established institutionalized mechanisms, there would not necessarily be a need for separate budgeting but the expenses rather be absorbed in the budgets of participating ministries/agencies. Secretariat functions would be limited and could be carried out within lead agencies supported by staff from other ministries/agencies. Even in such cases, however, it is essential that sufficient financing is made available to ensure the everyday functioning of the institution.

The question of funding poses itself differently in the case of NTFCs that combine public and private sector participation. Given public budgetary constraints there has been growing expectation of private sector funding, or of auto financing mechanisms. Experience shows, however, that such expectation may, at least partly, be unfounded. European PRO Committees that have both public and private membership, such as SWEPRO of Sweden, are provided with public base financing to ensure the agencies' functioning and the provision of core services.

Private sector funding tends to be more elusive. Traders and transport operators are faced with various demands for scarce resources, be they financial, organizational or substantive in nature. These resource requirements extend to such organizations as

- Chambers of Commerce
- Professional associations
- Shippers Councils
- Etc.

These demands make it unlikely for private sector operators to be very receptive to calls for more resources to support facilitation institutions. This reluctance is even more pronounced as traders and transporters tend to believe that facilitation is a purely governmental undertaking that should also be funded by public means.

When considering the type of funding required, it can be generally differentiated between

- start up funding
- sustainable base funding
- additional activity related funding.

Start-up funding is critical for any NTFC and will hardly ever come from private sector sources. In the case of Vietnam there are basically two options possibly available, one being purely domestic governmental funding (probably MoIT or MoF/Customs) or a combination of domestic and external assistance funding. This latter combination could prove to be particularly useful as it addressed not only the need for start up funding, but also the issue of technical support improving organizational and substantive credibility which is decisive for determining success or failure of the institution right from the beginning.

The transition from start up to operational funding may at times prove difficult. Again, resorting to grant funding may provide for a solution to overcome particular operational bottlenecks and serve as seed funding for achieving long term sustainability. Access to funds with specific purposes attached may provide more and longer term funding security than simple resorting to general government support budgets with inherent volatility and potentially large numbers of competing uses.

A supplementary source of funding would be auto financing, i.e. the provision of services against remuneration to members and/or non members of the NTFC. While this is definitely one way of supplementing financing and augmenting the funding base, it is also important to bear in mind the restrictions of this funding source, both in terms of its general availability as well as the amount of funds possibly generated in this way. Independent NTFC secretariats cannot realistically be expected to generate base funding through training activities, sale of publications, provision of information and advice, if there are no resources to set up and conduct income-generating activities, such as training courses, in the first place. Operating expenses need to be met independently of such activities; otherwise it is not possible for the NTFC to meet longer term obligations.

While complementary income earning activities may be needed to bolster financial soundness, they should not be undertaken for the primary purpose of revenue generation. They should rather be part of the organizations strategic goals and priorities and as such be coherent part of their work programmes. Unless this is the case, there is an inherent danger that revenue generation becomes the driving force of activities undertaken by the NTFC losing focus and losing sight of the requirements and priorities of the trading community.

6.2 Sustainable performance and work programme

The second major element of ensuring sustainability is that of institutional performance. The willingness of all stakeholders to participate on a regular basis in the work of facilitation institutions will be dependent on a stream of benefits to the trading and transport communities that will only materialize if certain minimum conditions are met and mistakes avoided. Some of the issues that will determine sustainability will include the ones spelled out below.

Be focused

Trade and Transport Facilitation is an ambitious undertaking. The NTFC needs to be pro-active in shaping an environment conducive to trade and transport and react to constantly changing demands. Yet, it also needs to be focused and clear in its directive in order to have the impact needed to advance the national trade and transport sectors. Thus it is necessary to avoid undertaking too many activities at the same time. In general, it is better to concentrate on fewer activities in a shorter period of time rather than launching too many in parallel. For sustainability it is necessary to produce tangible results.

Being focused does not mean working in isolation. To the contrary, the NTFC might find it advantageous, for instance, to work in conjunction with related infrastructure investment projects that impact on the development of the trading sector, thus helping to optimize the use of such infrastructure.

The need for focus not only refers to the work of the NTFC in general, but also to the meeting schedules and contents in particular. A number of NTFCs suffer from vagueness, meaning that meetings are not held at a regular basis, often rescheduled and lacking a clear, specific agenda.

Establish monitoring mechanisms

The types of activities undertaken by the NTFC are at times difficult to monitor and evaluate. It is thus the more important that objectives are clearly established from the beginning together with achievable time frames and performance indicators. This is the more important as international facilitation commitments need to be met – such as those of the WTO TFA, ASEAN or GMS instruments - and progress be achieved in a measurable way. Comprehensive intermediate reporting is necessary particularly for those measures where benefits reflected in operational improvements may not emerge until sometime after the facilitation measures have been instituted.

7 Executive Summary – The way forward

7.1 General reflections

There are a certain number of general reflections that need to be considered as being at the root of a reformed trade facilitation institutional landscape. These reflections take in the generally accepted logic and the generally perceived need for a coherent, integrated trade facilitation agenda that is not sectorally driven but rather a holistic response to international trade problems and challenges facing the national business community. This approach is also reflected in the WTO Trade Facilitation Agreement.

Article 23 of the TFA on Institutional Arrangements establishes a Trade Facilitation Committee at the WTO and calls on Members to establish a National Trade Facilitation Committee. To this end, Article 23.2 stipulates that *“Each Member shall establish and/or maintain a national committee on trade facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of provisions of this Agreement.”*

For purposes of the TFA it is thus mandatory, i.e. a binding obligation to establish and/or maintain an NTFC. It is also important to note that the obligation is not contained in Section 1 of the Agreement and that, consequently, and in accordance with Article 13 the provisions on Special and Differential Treatment for developing and least developed countries contained in Section 2 will not apply. This means that the obligation to create an NTFC cannot be categorized as category B or C. There is no S&DT for developing countries and LDCs. Committees or comparable mechanisms are to be set-up by ALL Members by the time the Agreement enters into force.

In general it can be observed that presently existing trade facilitation arrangements in Vietnam are unsatisfactory. There may be a number of reasons for this, but they seem to largely reflect generally prevailing administrative characteristics and culture that put an emphasis on regulating rather than facilitating systems. Similarly, the practice of inter-ministerial cooperation and coordination as well as cooperation of different levels of Government (central and regional) may not be sufficiently developed. Trade Facilitation institutional mechanisms will thus have to be developed that overcome some of these shortcomings and can ascertain the design and implementation of a coherent national facilitation agenda.

National trade related ministries and agencies pursue a facilitation agenda that is primarily driven by international commitments stemming from membership in particular organizations or intergovernmental agreements, such as WTO, ASEAN, APEC, GMS or bilateral agreements. The resulting agendas are taken up in a segregated manner by various agencies dealing with general relations of Vietnam with these particular organizations. Such approach deprives the

national trading community of the benefits of a coherent, domestically driven trade facilitation policy. The establishment of integrated coordinating trade facilitation mechanisms does, however, not imply that the particular agendas themselves (e.g. the development of e-Customs) and the responsibilities of the implementing agencies would be substantially affected. There will continue to be four major ministries/agencies that will be responsible for substantive elements of the facilitation agenda, i.e. Min of Industry and Trade, Min of Finance/Customs, Min of Transport and Min of Health. Given the interlinked nature of trade facilitation policies and measures and the need for traders to respond to various resulting procedural requirements simultaneously, it would be desirable to install the necessary coordinating mechanisms that could ensure a harmonized approach.

Facilitation institutions responding to specific requirements of commitments stemming from international agreements, both multilateral and regional, are at the root of the prevailing fragmentation of the TF agenda. The resulting specialization is artificial in nature, however, as policy issues and facilitation measures are often overlapping and in no way support the institutional fragmentation.

There is thus a strong need for a “political push” of the NTFC in order to ensure its creation and general support. Similarly, there is a need to enhance capacities both of the institution NTFC as well as of the staff working therewith. All of these issues form part of an endeavour to create sustainability of the institution. The availability of sufficient funding would go into the same direction.

There may also be a need for provincial level committees in those provinces where there are border checkpoints. These provincial institutions could be of importance as they are part of the linkage between capital based policy institutions and implementation at local (border) levels. In order to ensure these linkages it would be important that local level representation at an adequate level be ascertained in the NTFC, primarily through incorporation of provincial structures.

7.2 Creating the NTFC

Given the obligations of the WTO TFA as well as the need for the development and implementation of a national Trade Facilitation Agenda, there is a need to create a National Trade Facilitation Committee.

For this purpose a Government decree will need to be issued, formalizing the establishment of the NTFC and setting out its main characteristics. At the same time it will be necessary for the Customs Department together with the Ministry of Industry and Trade (MoIT) to initiate

an awareness campaign in order to disseminate knowledge of the functions and benefits of the NTFC among potential public and private sector stakeholders.

7.3 Proposed General Functions of the NTFC

It is proposed to create a National Trade Facilitation Committee (NTFC) that would take up the function of coordination at the policy level, both for purposes of the implementation of the WTO TFA and of improving the coherence of national policies and regulations governing foreign trade transactions. There would be two distinct levels of work at the NTFC, a policy and a technical level where the former will determine general guidelines and the latter ensuring coordinated implementation at the technical level. It is this coordinating role that is at the heart of the NTFC. Design and implementation of specific measures would continue to be the prerogative of the respective line ministry/agency

The NTFC will have to work on the basis of a clearly defined programme of work, reflecting both treaty obligations and national trade facilitation needs and priorities. It is essential that such programme of work be established on a priority basis in order to avoid some of the shortcomings that have up to now adversely affected the work of some of the trade facilitation institutions that were created in Vietnam. Cooperation at the regional level (ASEAN, GMS, etc.) might be helpful in this process.

7.4 Possible Membership and Organizational Arrangement of the NTFC

The NTFC should have comprehensive membership including all trade related parties (Min of Industry and Trade, Min of Transport, Min of Finance/Customs, Min of Agriculture and Rural Development Min of Health, Min of Planning and Investment) and should extend to the private sector (Chamber of Commerce VCCI and Trade associations, etc.). As private sector consultation is often carried out on an ad hoc basis, their participation in NTFC needs to be enhanced and lifted to a standing membership. In this context it will be particularly important to integrate representation of the VCCI into the process in order to ensure linkages and inclusiveness. Membership of private sector representatives in the specialized commissions is to be guaranteed in principle, while details could be decided on a case by case basis depending on the nature of the commissions themselves and the issues under consideration.

Furthermore, the NTFC should

- have representation at the Ministerial/Vice Ministerial level (Chair) or DG level (participating agencies) for the policy level ;

- be chaired by a “Champion” who has both political weight and a substantive interest in Trade Facilitation. This could be either the Prime Minister’s office or one of the line Ministries with particular exposure to the Trade Facilitation agenda (MoIT or MoF/Customs);

- meet at regular intervals with established agenda on the basis of plenary sessions

- deal with major TF policy issues and provide general policy guidance to specialized Committees, including the coordination of Programmes of Action relating to different TF initiatives;

In a possible NTTFC the issue of adequate participation would arise and arrangements would need to be found to ensure participation of all the main actors. There is a clear need to better incorporate all actors, including Min Health, Min Agriculture, Immigration, local/regional agencies involved in border management, etc., more closely into any arrangement.

The establishment of working level WGs or technical commissions would be an important initiative in ensuring technical relevance of the work of the NTFC as forum able to address concrete and specific measures impacting on trade. Apart from that it would also help to channel specific expertise to the solution of corresponding specific problems without overstressing the capacity of ministries/agencies to participate in the work of the NTFC.

Such specialized commissions should

- be organized along particular issues and have all major parties interested in the issues as members; this implies that membership will differ from one commission to another;

- have representation at the DG (Chair), or Director level (participating agencies) and the private sector;

- be chaired by a “Champion” that has weight and specific substantive interest in issues under consideration (e.g. “Customs” in a Customs Commission);

- meet at regular intervals with established agenda on an expert group basis;

- report to the policy level NTFC on a regular basis and it will receive policy guidance from the NTFC.

As spelled out above, under such an integrated system it could be envisaged to create an NTFC which would be headed at the Minister/Vice Minister level. Chairmanship would need to be determined as well. The need for an integrated, holistic approach to trade facilitation would speak in favour of a lead role of MoIT as both the the WTO and ASEAN trade facilitation agendas are already formally coordinated in that Ministry. As, however, there is a strong bias towards Customs issues in the TF agenda, MoF/Customs chairmanship would also be possible, as would be an alternating Chairmanship between the two Ministries. This question would

also need to be addressed in light of the Ministries' ability to allocate resources to secretariat functions.

7.5 The Secretariat

The work of the NTFC as well as the Commissions needs to be supported by a **Standing Trade Facilitation Secretariat**. The Secretariat should, in principle, be located within the Ministry providing the Chair of the NTFC. The Ministry concerned should have the benefit of privileged relations with both domestic governmental and private sector organizations, international trading partners and multilateral/regional trade related institutions dealing with trade facilitation. The work of the Secretariat, particularly as it relates to the Specialized Commissions needs to be strengthened by expertise made available by the Ministries/agencies with lead roles therein. The Secretariat will play a critical role in ensuring organizational continuity as well as substantive relevance of the work of the NTFC. To this end, it will also be instrumental in developing Trade Facilitation Programmes of Action. The capacity of the Secretariat to provide the necessary linkages between "trade" and "administration" is based on a sound understanding of the requirements of trade and transport service users and suppliers. It is essential that this capacity be ascertained and possible gaps be closed if policy measures are to be developed that reflect a fair balance between different stakeholders' interest.

Another issue that is of critical importance is Capacity Building, certainly for the NTFC secretariat. Basic training will need to be provided on all aspects of cross border trade and transport and possibly even on some more fundamental issues, such as English language. Considerable external support may need to be provided in this process.

Additionally, there is a need to accompany the process of designing and implementing a coherent trade facilitation agenda by external assistance which would create awareness and help translate internationally agreed TF measures and instruments into national policy and trade realities. The presently ongoing trade related projects supported by USAid or UK FCO could serve as an example here.

7.6 Sustainability

Sustainability is one of the most critical issues when it comes to assessing the scope and potential of the NTFC. Sustainability has different facets and goes far beyond the issue of financial sustainability, even though this is unquestionably an important aspect of ascertaining the long term success of facilitation policy and the related institutional infrastructure.

The sustainability of a committee also depends on:

- international technical assistance for initial guidance, assessment of trade and transport facilitation needs and priorities and setting objectives
- proactive and supportive public and private sector participation
- strong linkages with international institutions and trade bodies
- an independent secretariat and technical team of experienced professionals with commensurate remuneration
- the identification of the appropriate lead agency and the selection of a “champion”
- its successful transfer from project dependency to a lead agency
- high-level decision makers with influence in government ministries
- assurances from the outset of public financial support for operational and overhead expenses

In the widest sense it is important for sustainability to remain focused, provide added value to all stakeholders, and – in a most general way – avoid mistakes.

7.6.1 Financial sustainability

An institution primarily providing inter-ministerial coordinating functions will have limited financing requirements and will most likely not incur problems of financial sustainability. Even if it is envisaged that the coordination is not being carried out on an ad hoc basis but rather through established institutionalized mechanisms, there would not necessarily be a need for separate budgeting but the expenses rather be absorbed in the budgets of participating ministries/agencies. Secretariat functions would be limited and could be carried out within lead agencies supported by staff from other ministries/agencies. Even in such cases, however, it is essential that sufficient financing is made available to ensure the everyday functioning of the institution.

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When considering the type of funding required, it can be generally differentiated between

- start up funding
- sustainable base funding
- additional activity related funding.

Start-up funding is critical for any NTFC and will hardly ever come from private sector sources. In the case of Vietnam there are basically two options possibly available, one being purely domestic governmental funding (probably MoIT or MoF/Customs) or a combination of domestic and external assistance funding. This latter combination could prove to be particularly useful as it addresses not only the need for start up funding, but also the issue of technical support improving organizational and substantive credibility which is decisive for determining success or failure of the institution right from the beginning.

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7.6.2 Sustainable performance and work programme

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Trade and Transport Facilitation is an ambitious undertaking. The NTFC needs to be pro-active in shaping an environment conducive to trade and transport and react to constantly changing demands. Yet, it also needs to be focused and clear in its directive in order to have the impact needed to advance the national trade and transport sectors. Thus it is necessary to avoid undertaking too many activities at the same time. In general, it is better to concentrate on

fewer activities in a shorter period of time rather than launching too many in parallel. For sustainability it is necessary to produce tangible results.

There is a definite need to establish monitoring mechanisms, even if the types of activities undertaken by the NTFC are at times difficult to monitor and evaluate. It is thus the more important that objectives are clearly established from the beginning together with achievable time frames and performance indicators. This is the more important as international facilitation commitments need to be met – such as those of the WTO TFA, ASEAN or GMS instruments - and progress be achieved in a measurable way. Comprehensive intermediate reporting is necessary particularly for those measures where benefits reflected in operational improvements may not emerge until sometime after the facilitation measures have been instituted.

7.7 Time line for NTFC creation

Figure 4: Time line for the establishment of the NTFC

