



Review of Australia's National Committee on Trade Facilitation



**Centre for Customs and Excise Studies
Charles Sturt University**

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This report has been prepared by the Centre for Customs and Excise Studies, Charles Sturt University, for and on behalf of the AITTIDF.

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Abbreviations and Acronyms

ABF	Australian Border Force
ACCI	Australian Chamber of Commerce and Industry
AEO	Authorised Economic Operator
AFIF	Australian Federation of International Forwarders
AGVET	Agricultural and veterinary
AITTIDF	Australian International Trade and Transport Industry Development Fund
ANCTF	Australia's National Committee on Trade Facilitation
APEC	Asia-Pacific Economic Cooperation
APVMA	Australian Pesticides and Veterinary Medicines Authority
ARTG	Australian Register of Therapeutic Goods
ASEAN	Association of South East Asian Nations
ATT	Australian Trusted Trader
BICON	Biosecurity Import Conditions System
CAG	Compliance Advisory Group
CAPEC	Conference of Asia Pacific Express Carriers
CBFCA	Customs Brokers and Forwarders Council of Australia
CCES	Centre for Customs and Excise Studies, Charles Sturt University
CSU	Charles Sturt University
CTO	cargo terminal operators
DAWR	Department of Agriculture and Water Resources
DCCC	Department of Agriculture Cargo Consultative Committee
DEC	Defence Export Controls
DFAT	Department of Foreign Affairs and Trade
DHA	Department of Home Affairs
DIBP	Department of Immigration and Border Protection
DIIS	Department of Industry, Innovation and Science
DIRD	Department of Infrastructure and Regional Development
DOD	Department of Defence
DOH	Department of Health
DPMC	Department of Prime Minister and Cabinet
ECA	Export Council of Australia
EDI	Electronic Data Interface
EDN	Export Declaration Number

ESCAS	Export Supply Chain Assurance System
EU	European Union
EXDOC	Export Documentation System
FSANZ	Food Standards Australia New Zealand
FTA	Free Trade Agreement
GATF	Global Alliance for Trade Facilitation
GST	Goods and Services Tax
ICC	International Chamber of Commerce
ICT	Information and Communication Technology
IFIS	Imported Food Inspection Scheme
INCU	International Network of Customs Universities
ITC	International Trade Centre
KCS	Known Consignor Scheme
LWG	Legislative Working Group
NCTF	National Committee on Trade Facilitation
NICNAS	National Industrial Chemicals Notification and Assessment Scheme
NTFB	National Trade Facilitation Body
OECD	Organisation for Economic Co-operation and Development
OTS	Office of Transport Security
PSCG	Private Sector Consultative Group
RKC	Revised Kyoto Convention
RRWG	Regulatory Reform Working Group
SAFE	WCO Framework of Standards to Secure and Facilitate Global Trade
SAL	Shipping Australia Ltd
SEW	Single Electronic Window
SME	Small and Medium Enterprise
SSWG	Sector Specific Working Group
SW	Single Window
SWWG	Single Window Working Group
TFA	WTO Trade Facilitation Agreement
TFWG	Trade Facilitation Working Group
TFIWG	Trade Facilitation Initiative Working Group
TFF	Trade Facilitation Facility
TFSP	Trade Facilitation Support Program
TGA	Therapeutic Goods Administration

TOR	Terms of Reference
TTIAG	Trusted Trader Industry Advisory Group
UN	United Nations
UN/CEFACT	United Nations Centre for Trade Facilitation and Electronic Business
UNCTAD	United Nations Conference on Trade and Development
UNECE	United Nations Economic Commission for Europe
UNESCAP	United Nations Economic and Social Commission for Asia and the Pacific
UNNEXT	United Nations Network of Experts for Paperless Trade and Transport in Asia and the Pacific
US	United States
WCO	World Customs Organization
WEF	World Economic Forum
WSA	Western Sydney Airport
WTO	World Trade Organization

1. Executive Summary

The Australian International Trade & Transport Industry Development Fund (AITTIDF) commissioned Charles Sturt University's Centre for Customs and Excise Studies (CCES) to review Australia's National Committee on Trade Facilitation (ANCTF) in order to develop an industry position for presentation to Government.

The World Trade Organization's (WTO) Trade Facilitation Agreement (TFA) includes a specific requirement that National Committees on Trade Facilitation (NCTFs) be established "to facilitate both domestic coordination and implementation of the provisions of this Agreement".¹ Australia's National Committee on Trade Facilitation (ANCTF) has already been established, and is currently chaired by the Department of Immigration and Border Protection (DIBP). Its Terms of Reference (TOR) are consistent with the WTO requirements.

The research has identified ways to enhance the Committee's ability to influence a meaningful trade facilitation agenda that better reflects the needs and aspirations of Australia's international trading community.

As a starting point, this involves the ANCTF providing clear evidence of how Australia complies with each of the articles of the TFA, including those provisions that are mandatory, "best endeavours" and "alternative approaches". Without such evidence, it is not possible for the ANCTF to "facilitate both domestic coordination and implementation of the provisions" of the TFA, which is its essential purpose.

Having undertaken this fundamental task, the ANCTF is encouraged to review and expand its mandate, as appropriate, in order to maximise its contribution to trade facilitation in the medium- to long-term. While the broader mandate envisaged by this report may be achievable without amendment to the Committee's TOR, it is noted that the TOR are currently being re-examined (see Section 4.1 below).

A review of the Committee's mandate will allow it to determine its priorities and translate those priorities into an effective work plan that defines the scope of work to be undertaken, allocates appropriate resources and sets deadlines for completion of the work. This discipline currently appears to be lacking. High quality outcomes will help ensure the sustainability of the ANCTF, provided that they are appropriately delivered and communicated to the wider public and private sector audiences involved in international trade.

In terms of the ANCTF's constitutional basis, it is recommended that the Committee give consideration to formalising the basis for its existence in some more substantial form than currently applies, but a formal legislative basis is not considered necessary.

The research has also identified that the current arrangements for chairing the Committee (i.e. DIBP) leads to the perception that the ANCTF is a "customs" committee, thereby unnecessarily narrowing its focus or remit. Recognising that many of the articles of the TFA fall squarely within the area of customs management, many others are either the responsibility of other agencies or the joint or interacting responsibilities of DIBP/ABF and those other agencies. As a key objective of the TFA is to ensure more efficient communication and coordination between all relevant border agencies, it is argued that it may be inappropriate to vest responsibility for the management of that process in one of the key operational agencies involved.

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

The research has also identified a need for the accountabilities, responsibilities and decision-making capacity of the ANCTF and its members to be more clearly identified, and for the lines of reporting within and across agencies and industry to be transparent and properly observed. Finally, the research points to the need for the ANCTF to consider the benefits of collaborating with its counterparts in other countries.

The report makes the following recommendations:

Recommendation 1 That the six current public sector members of the ANCTF (DIBP/ABF, Austrade, DFAT, DAWR, DIIS, DIRD) be retained and consideration be given to supplementing the committee's public sector membership with representation from the following, either on a permanent or *ad hoc* basis:

- Department of Prime Minister and Cabinet
- Office of Transport Security
- Department of Defence
- Productivity Commission
- Infrastructure Australia.

Recommendation 2 That the 13 current private sector members of the ANCTF be retained, but restrict committee attendance to one representative per organisation; and that consideration be given to inviting additional representation from the following sectors:

- a wider range of importer, exporter and shipper organisations,
- banks and other financial institutions,
- insurers,
- port, airport and container terminal operators,
- logistics companies,
- certification agencies, and
- technical software providers.

Recommendation 3 That the Board of the AITTIDF strongly endorse the instruction of the Chair of the ANCTF that, in order to facilitate the ANCTF's obligations under Article 23.2, DIBP produce a document outlining Australia's compliance with the TFA. This should provide an article-by-article summary of all relevant border agencies' confirmation of whether, and if so, to what extent, Australia complies with the mandatory, "best endeavours" and "alternative approaches" articles of the TFA, together with supporting evidence.

Recommendation 4 That, following its consideration of an expanded membership, ANCTF review its mandate and TOR with a view to encompassing as wide a range of issues as feasible to maximise its contribution to trade facilitation.

Recommendation 5 That, following a review of its mandate, ANCTF introduce a mechanism for prioritising issues and incorporate those priorities in a work program.

Recommendation 6 That ANCTF develop mechanisms to measure and communicate the delivery and impact of its work.

Recommendation 7 That ANCTF give consideration to formalising the constitutional basis for its existence in some more substantial form than currently applies.

Recommendation 8 That the ANCTF review its chairmanship following resolution of its future mandate.

Recommendation 9 That the ANCTF develop and publicise formal mechanisms for reporting its outcomes and accounting for its activities, noting that the latter should not necessarily rest with the Secretary or Minister of the Department providing the Chair and Secretariat.

Recommendation 10 That funding of the ANCTF continue to be provided by the government agency providing the Chair and Secretariat, and be made public. Participation of representatives of public and private sector organisations should continue to be borne by their respective organisations.

Recommendation 11 That meetings of the ANCTF be held at least twice yearly, that the agreed schedule be adhered to, and that consideration be made to aligning the ANCTF meeting cycle with that of the Budget.

Recommendation 12 That the internal communication of the ANCTF (i.e. between the Secretariat and members) be by regular email; and that all relevant documents be posted on the NCTF Govdex portal page promptly, using standardised structure and naming protocols.

Recommendation 13 That the ANCTF consider its appetite for engaging in collaboration with other NCTFs, by assessing the associated potential benefits and costs, and identifying the likely targets of such collaboration.

2. The Research Project

The research project is a review of Australia's National Committee on Trade Facilitation (ANCTF). It is designed to develop an industry position for presentation to Government on the membership, mandate and governance arrangements of ANCTF with a view to enhancing the Committee's ability to influence a meaningful trade facilitation agenda that reflects the needs and aspirations of Australia's international trading community.

The research has been funded by the Australian International Trade & Transport Industry Development Fund (AITTIDF), with the support of the Australian Federation of International Forwarders (AFIF), the Customs Brokers and Forwarders Council of Australia Inc. (CBFCA), the Export Council of Australia (ECA), the Conference of Asia Pacific Express Carriers (CAPEC) and Shipping Australia Ltd. (SAL). The research is being undertaken by the Centre for Customs and Excise Studies (CCES) at Charles Sturt University (CSU).

This report provides an analysis of the current ANCTF organisational arrangements, its priorities, work plans and activities to date in the context of:

- World Trade Organization (WTO) policies and recommendations, in particular as they relate to the WTO Trade Facilitation Agreement (TFA), now in force;
- international trends and developments;
- the broader Government agenda with potential linkages to trade facilitation; and
- industry's priorities and ambitions in relation to the facilitation of international trade.

The analysis identifies potential areas of improvement in the ANCTF membership, mandate and governance arrangements that may enhance the Committee's ability to influence a meaningful trade facilitation agenda that properly reflects the needs and aspirations of Australia's international trading community.

2.1. Background

In December 2013, WTO members concluded negotiations on the TFA at the Bali Ministerial Conference, as part of a wider 'Bali Package'. On 27 November 2014, WTO members adopted a Protocol of Amendment to insert the new Agreement into Annex 1A of the WTO Agreement. On 23 February 2017, the TFA entered into force upon two-thirds (i.e. 110) of the WTO's 164 members, having completed their domestic ratification process.

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

Each Member shall establish and/or maintain a national committee on trade facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of the provisions of this Agreement.

In addition, Section III, Article 23.1.4 provides that the WTO's Committee on Trade Facilitation "shall develop procedures for the sharing by Members of relevant information and best practices as appropriate" (see Annex 1).

Australia has already established its NCTF, the ANCTF, which is currently chaired by the Department of Immigration and Border Protection (DIBP). According to the Australian Government Organisations Register, which is maintained by the Department of Finance:

The NCTF provides a forum for the discussion of strategic issues affecting Australian Industry stakeholders in the international trade environment. The NCTF will discuss opportunities for reform and improvements to the international trade environment. The NCTF will fulfil the obligations required by the World Trade Organization's Agreement on Trade Facilitation, and serve as the Department of Immigration and Border Protection's Ministerial Advisory Committee on Deregulation for trade facilitation issues.²

The purpose of the ANCTF as reflected in its Terms of Reference (TOR) is to "fulfil the obligations required by the World Trade Organization's Agreement on Trade Facilitation by providing the forum to facilitate both domestic coordination and implementation of the provisions of the World Trade Organization Agreement on Trade Facilitation".³

The TOR further state that the "NCTF is responsible for facilitating and monitoring Australia's implementation of the World Trade Organization's Agreement on Trade Facilitation and to review and provide advice to the Australian Government on trade facilitation including:

- Emerging strategic issues in the international trade operating environment;
- The tasking of issue-specific working groups as required;
- Opportunities to improve the international trade environment, including exploring opportunities to realise efficiencies and deregulation at the border;
- Implementing established UN and WCO tools and guidelines;
- Coordinating support to developing trade partners;
- Roll back of existing protectionist measures especially non-tariff barriers;
- Improvements to the global trade system for the emerging digital economy; and
- Any associated recommendations for policy, regulation or legislative change".⁴

During the early stage of its operation, concerns were raised about the way in which the ANCTF was being managed and run. At a fundamental level, it took several months to agree that the TOR should reflect the requirements of the TFA, and initially DIBP commented: "We were advised to keep the terminology consistent with a monitoring role as opposed to a facilitating role due to the NCTF's restricted powers".⁵ Other concerns included: the tendency of the Committee to focus on minutiae such as the interpretation of certain provisions of the Customs Act rather than the more strategic issues; the apparently limited role being played by the Department of Foreign Affairs and Trade (DFAT); and the makeup of stakeholder membership. Some members, including CBFA and AFIF, raised concerns about the likely effectiveness of the Committee in terms of its contribution to matters of strategic significance.

2.2. Purpose of the Research

The primary objective of the research was to ensure that the ANCTF is as effective and efficient as possible. The research project was designed to achieve this objective by influencing decision makers to amend, where appropriate, the ANCTF membership, mandate and governance arrangements with a view to enhancing the Committee's ability to influence a meaningful trade facilitation agenda that genuinely reflects the needs and aspirations of Australia's international trading community. It sought to achieve this by:

1. Identifying the current ANCTF organisational arrangements, priorities, work plans and activities to date;
2. Identifying relevant WTO policies and recommendations, including those related to the mandate, charter, institutional framework, sustainability and future adaptability of NCTFs;
3. Examining international trends and developments, including experiences in relation to matters such as:
 - a. The scope and level of issues being dealt with by other NCTFs,
 - b. Governance arrangements such as who should lead/chair the Committee, membership selection, accountability, communication, as well as arrangements relating to decision-making, reporting, public visibility and financial support,
 - c. The role of the private sector and involvement of Small and Medium Enterprises (SMEs),
 - d. Relationships with international counterparts,
 - e. Identifying and prioritising deliverables;
4. Examining the broader Government agenda and identifying those issues with potential linkages to trade facilitation;
5. Identifying industry priorities and ambitions in relation to the facilitation of international trade;
6. Analysing the findings of (1) in the context of the findings of (2) to (5); and
7. As a result of this analysis, identifying changes to the membership, mandate and governance arrangements of the ANCTF that are likely to enhance its efficiency and effectiveness.

The outcome of the project will potentially benefit the Australian international trading community as a whole, as it seeks to enhance what is (or should be) Australia's most influential forum on trade facilitation. The project will also contribute to AITTIDF's specific objectives of promoting, supporting, advancing and enhancing:

- projects in Australia which benefit the commercial, operational, legislative and regulatory processes supporting Australia's international trade and transport industry;
- projects in Australia to assist Australian industry to facilitate international trade with its trading partners; and
- projects in Australia that encourage more efficient international supply chain solutions for Australian industry.

3. Methodology

3.1. Project Phases

The following research methodology was adopted:

- Phase 1: Prepare Inception Report and finalise methodology.
- Phase 2: Undertake desk-based research to identify and document the current ANCTF organisational arrangements, priorities, work plans and activities.
- Phase 3: Undertake desk-based research and targeted interviews to identify and document relevant WTO policies, recommendations, trends and developments.
- Phase 4: Undertake desk-based research and targeted interviews to identify and document other international trends and developments including experiences of other countries in relation to the establishment and operation of NCTFs.

Target organisations included the World Customs Organization (WCO), United Nations Conference on Trade and Development (UNCTAD), World Bank, United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), International Trade Centre (ITC), United Nations Economic Commission for Europe (UNECE), World Economic Forum (WEF), G20 and B20.

Note: during the course of the study, the WTO released the results of its own comprehensive survey of over 100 countries. Consequently, a decision was made to utilise the country-specific information from that survey rather than attempt to duplicate the effort.

- Phase 5: Undertake desk-based research to identify and document the broader Australian Government agenda to identify initiatives and priorities that may impact or be impacted by the work of the ANCTF.
Target agencies included, among others, DFAT, DIBP, the Department of Agriculture and Water Resources (DAWR), the Department of Infrastructure and Regional Development (DIRD) and the Department of Industry, Innovation and Science (DIIS), Office of Transport Security (OTS).
- Phase 6: Through a series of surveys, industry workshops and targeted interviews, research and document industry priorities and ambitions in relation to the facilitation of international trade within the scope of the TFA. This included workshops specifically designed to obtain input from the industry, including members of the following key industry associations: AFIF, CAPEC, CBFCA, ECA and SAL.
- Phase 7: Analyse the findings of Phase (2) in the context of the findings of Phases (3) to (6).
- Phase 8: Based on the analysis, develop proposals that will enhance the ability of the ANCTF to influence a meaningful trade facilitation agenda that reflects the needs and aspirations of the international trading community. Prepare Draft Report.
- Phase 9: Prepare Final Report following discussion of Draft with key industry associations.
- Phase 10: Follow up as required through discussions/presentations to government officials, either with individual agencies or in the context of the ANCTF.

The overall project work plan is presented at Annex 3.

3.2. Constraints and Project Risks

The project required the cooperation and support of the relevant sectors of industry in order to ensure meaningful feedback. It also required a degree of cooperation from interviewees, including at multilateral institutions, and the agencies of other governments with NCTFs.

A potential constraint on the implementation of research recommendations is a lack of political will on the part of the Government to adopt its recommendations. In this regard, it is not possible to predict the appetite of the authorities to adopt the recommendations at this point in time. However, given Australia's formal commitment to support WTO trade initiatives such as TFA, it is reasonable to expect that appropriate recommendations will be acted upon.

A key risk to the successful completion of the project was the potential inability to gain access to meaningful input and guidance from the WTO and other NCTFs, in particular due to the very recent inception of TFA implementation. A further risk was the potential failure to obtain adequate industry input. Strategies adopted to mitigate these risks involved the inclusion of members of the project team with strong links with the WTO and other NCTFs; and the agreed support of key Australian industry organisations.

3.3. Project Team

The project team for this aspect of the research project was comprised of David Widdowson (principal investigator), Geoff Short, Bryce Blegen, Mikhail Kashubsky and Brent Juratowitch, together with a number of research assistants.

4. ANCTF – Current Situation

4.1. Organisational Arrangements

The ANCTF is constituted by the following government agencies and private sector organisations.

Government Agencies:

- Department of Immigration and Border Protection/Australian Border Force – Chair
- Australian Trade Commission
- Department of Agriculture and Water Resources
- Department of Foreign Affairs and Trade
- Department of Industry, Innovation and Science
- Department of Infrastructure and Regional Development

Not-for-Profit Private Sector Organisations:

- American Chamber of Commerce in Australia
- Australian Chamber of Commerce and Industry
- Australian Federation of International Forwarders
- Australian Industry Group
- Board of Airline Representatives of Australia
- Conference of Asia Pacific Express Carriers
- Customs Brokers and Forwarders Council of Australia
- Export Council of Australia
- Federal Chamber of Automotive Industries
- Food and Beverage Importers Association
- International Network of Customs Universities
- Shipping Australia Ltd.

Other Private Sector Organisations:

- Freight and Trade Alliance Pty Ltd.

Other agencies and organisations have attended meetings in an observer status, including the Department of the Environment and Energy, Digital Transformation Office, Infrastructure Australia and Office of Transport Security (OTS).

The November 2016 meeting of the ANCTF canvassed the possible future participation in the Committee as members by:

- State and Territory Governments
- Those providing insurance and financial services to the supply chain
- Industry Growth Centres
- Anti-Dumping Commission and OTS.⁶

The October 2017 meeting of the ANCTF again canvassed the potential expansion of the membership, both public and private sectors, and considered a proposal for membership to be limited to a two-year term, with renewals and new memberships subject to an Expression of Interest process. The Chair called for suggestions and comments to be forwarded to the Secretariat.

The ANCTF, as currently constituted, does not depend upon and is not supported by any legislative base, but is reliant upon the Federal Government's administrative arrangements. Membership of the ANCTF is at the discretion of the Chair.

The TOR of the ANCTF are at Annex 4. These indicate that:

The National Committee on Trade Facilitation (NCTF) will fulfil the obligations required by the World Trade Organization's Agreement on Trade Facilitation by providing the forum to facilitate both domestic coordination and implementation of the provisions of the World Trade Organization Agreement on Trade Facilitation.

Initially, however, there was reluctance on the part of the Chair to accept that the TOR should reflect the requirements of the WTO TFA. One comment from DIBP in response to requests to rectify the situation included: "We were advised to keep the terminology consistent with a monitoring role as opposed to a facilitating role due to the NCTF's restricted powers".⁷

The TOR, as they currently stand, prescribe the Governing Principles which apply to the ANCTF, viz:

Strategic. The ANCTF will be focused on strategic issues and exploring opportunities to realise mutual benefits for the Government and industry in the international trade environment.

Proactive. The ANCTF will be proactive in seeking out opportunities and initiatives and exploring solutions to strategic issues in the international trade environment. The ANCTF will be action-oriented, and outcomes will be reported to the DIBP executive and industry stakeholders.

Collaborative. The ANCTF members will be constructive, creative and strategic in their discussions, carefully weighing the impact of any proposals on all stakeholders.

Accountable. The ANCTF will be accountable for its recommendations. All recommendations must be objective, transparent and open to external scrutiny.

Group Focused. The ANCTF is a group forum and not an avenue to pursue individual agendas.⁸

The April 2015 meeting noted that the ANCTF would provide a forum for industry peak bodies to meet with the Australian Government to exchange views and experiences, with a view to improving trade facilitation. The Chair reiterated that the intent was to make the ANCTF action-oriented and goal-focused.⁹

At the September 2015 meeting, the Chair noted that ANCTF members were interested in improving Australia's implementation of the TFA, and the ANCTF needed to determine how best to continue to improve implementation.¹⁰

At the October 2017 meeting of the ANCTF, the first since the entry into force of the TFA, a draft revised TOR was presented by DIBP for discussion. The Chair undertook to ensure a marked-up version (highlighting changes from the previous version) of the proposed new TOR was provided to members and invited members to provide comments. Initial consideration of the draft suggested that, while it gave more emphasis to the potential strategic role of the Committee, it significantly diluted the role expressly provided for the Committee by Article 23.2 of the TFA.

In principle, the ANCTF is normally scheduled to meet twice each calendar year, with meetings variously in Canberra, Sydney and Melbourne. Extraordinary meetings may be scheduled at the

discretion of the Chair. All organisational costs associated with attending the ANCTF are borne by members. Typically, the meetings are scheduled for two hours duration. Agendas are circulated to members in advance of the meetings along with supporting papers as appropriate (e.g. discussion papers, reports, communications from relevant Australian or international agencies).

In contrast to the above principles, no meeting took place for almost 11 months between November of 2016 and October of 2017. Recent experience with the October 2017 meeting reflected inadequate notice being given by the Secretariat to members of the timing of the meeting and of the delivery of the agenda and supporting documents for the meeting. This curtailed the opportunity of members (particularly private sector members) to properly prepare for the meeting.

The meetings are chaired by the Deputy Comptroller-General of Customs (a position held by the Deputy Secretary, Policy of DIBP) or, as a delegate, First Assistant Secretary, Traveller, Customs and Industry Policy Division of DIBP. If, as anticipated, DIBP is subsumed into the Department of Home Affairs (DHA) from July 2018, it can be expected that, if the *status quo* prevails, the Chair will transfer to DHA. The format usually involves verbal reports from government and private sector members on the status of inter-sessional work on specific agenda items and allows for discussion and participation from all members.

DIBP currently provides secretariat services to the ANCTF. The minutes of each meeting are recorded and are intended to be circulated to members within two weeks of the meeting. The minutes of the previous meeting are included in the papers for each new meeting. To facilitate the management of the ANCTF's work, the minutes typically identify, for each relevant agenda item, the item number, the action arising from the meeting in respect of that item and the party responsible for completing that action.

As of the November 2016 meeting, the agendas, minutes and other relevant papers have been made available to ANCTF members on Govdex, the secure online collaboration platform hosted by the Australian Government. The October 2017 meeting noted inefficiencies in that approach and agreed to revert to email for the purposes of communication to and amongst members and to retain Govdex as the repository of relevant documents but subject to improved naming protocols to enhance navigation.

4.2. Priorities

To date, there appears not to have been any overt effort to prioritise issues in terms of importance or urgency, or to characterise them by reference to specific aspects of the TOR. However, the following is a list of the issues upon which the ANCTF has focused so far:

- Single Window: liaison with the Australian Border Force (ABF) on its work on progressing this issue, including creation of a Single Window Working Group (SWWG) under the ANCTF,
- DFAT Free Trade Agreement (FTA) Portal: support and dissemination of information,
- Reviewing the Customs Act 1901 to remove redundant or irrelevant sections: giving rise to the Legislative Working Group (LWG),
- Issues regarding the definition of the word 'owner' in the Customs Act 1901 in relation to goods,
- Payments made under protest,
- Issues regarding the rigidity of amending cargo reporting: especially regarding assembly orders,
- Deregulation,

- International Chamber of Commerce (ICC) policy statement on rules of origin & Revised Kyoto Convention Annex K,
- Support for DIBP website redesign, including the Industry Hub and Tariff and Tariff Concession searchable database,
- Support for the Australian Trusted Trader (ATT) programme, including a new oversight role in respect of ATT Sector Specific Working Groups (SSWG) after the disbanding of the ATT Industry Advisory Group. Invitations to participate in SSWGs were scheduled to be sent to ANCTF members in early 2017 (though, at the time of writing, this appears not to have been fully coordinated),
- Support for ongoing DIBP Industry Summits,
- Provision of advice on consultation and engagement:
 - Advance notice of policy decisions and exposure drafts of legislation
 - DIBP’s review of Policy Statements, Procedural instructions and Standard Operating Process documents is expected to be completed by the end of 2017
 - Aim for improved publication of advice, rulings and guidance, including the definition of “owner” in the *Customs Act 1901*.¹¹

4.3. Work Plans

The ANCTF originally established Working Groups (effectively sub-committees of the full ANCTF membership) to focus on different areas for future work. These were:

Single Window Working Group (SWWG)

- Members self-selected
- SWWG would aim to inform Government of the opportunities and challenges of establishing a Single Window environment for international trade.

Regulatory Reform Working Group (RRWG)

- Contribution to DIBP’s Regulator Performance Framework self-assessment for 2015-16.

Legislative Working Group (LWG)

- Receive reports from ABF re:
 - 2017 changes to Harmonized Tariff
 - Expanded WTO Information Technology Agreement legislation
 - Tobacco indexation amendments
 - Future legislative amendments
 - Cost recovery options for low value consignments
 - Legislation on goods and services tax (GST) on low value goods
- The November 2016 ANCTF meeting agreed that:
 - future LWG meetings will be held twice per calendar year unless the Chair determines otherwise
 - there must be substantive business to be conducted in order for a meeting to be held
 - meetings required attendance by a quorum of members, including the Chair and two-thirds of industry members.¹²

Under the ANCTF TOR, the establishment of these Working Groups is at the discretion of the Chair of the ANCTF. Currently, no criteria have been developed in relation to the establishment of these and

any future Working Groups. The RRWG TOR were circulated to ANCTF members in March 2016 and the LWG TOR were updated and circulated to LWG members in November 2016.

The names and roles of the various NCTF Ancillary Groups have been subject to flux during 2017, with some (e.g. the SWWG) having been disbanded by DIBP without notice to the ANCTF (nor, in the case of the SSWG, to its members) and some (e.g. a Trade Modernisation Industry Advisory Group) having been created by DIBP without the involvement of the ANCTF.

The resultant confusion was the subject of discussion at the October 2017 meeting of the ANCTF. At the time of writing, the minutes of this meeting have not been finalised but the ancillary groups now apparently are:

- Legislative Working Group (LWG): discusses and reviews trade facilitation matters and customs-related law which may require a legislative or regulatory solution
- Regulatory Reform Working Group (RRWG): undertakes the external validation of DIBP's Regulator Performance Framework self-assessment. Only NCTF members are eligible to be members
- Compliance Advisory Group (CAG): considers the approach to trade and goods compliance issues and co-designs solutions to existing and emerging issues
- Trade Facilitation Initiatives Working Group (TFIWG): being the new denomination for the Trade Modernisation Industry Advisory Group (apparently created in September 2017) and incorporating the previous SSWG and having, as a further sub-group, the Trusted Trader Industry Reference Group.

4.4. Activities to Date

The activities of the ANCTF to date have included:

- Receipt of reports from DIBP, ABF, DFAT and other agencies on the issues listed above, discussion of the issues with provision for feedback to the agencies, and dissemination of information to members of the industry associations represented on the ANCTF,
- Establishment of the Working Groups listed above,
- Support for the Global Alliance on Trade Facilitation (GATF), and
- Initiating the production by DFAT/ABF of a document titled "NCTF Discussion Paper – Australia's Compliance with the ATF", ostensibly to provide an article-by-article outline of how Australia complies with the TFA:
 - The Discussion Paper was apparently circulated to ANCTF members on 7 November 2016, although several members did not receive it.
 - The Discussion Paper does not address Australia's compliance with the TFA on an article-by-article basis, as intended.
 - At the November 2016 ANCTF meeting, it was agreed that DFAT would coordinate provision of examples and further detail of Australia's compliance with individual TFA items with a view to focusing on those where Australia's performance could be further improved.
 - At the October 2017 ANCTF meeting, DFAT presented a "spider diagram" report by the OECD on Australia's trade facilitation performance. While informative, the meeting agreed that the report did not provide the requested analysis and the Chair committed DIBP to coordinating responses from all relevant agencies to provide evidence of Australia's compliance with the relevant articles of the TFA.

5. International Organisations: Trends and Developments

For several years, a number of major international organisations have been active in the promotion of trade (and transport) facilitation including the design, implementation and operation of national trade facilitation bodies, especially in the context of developing countries. The most significant of these are summarised below. It is evident that some very clear common themes span the work of the respective international organisations and, in relation to some aspects of national trade facilitation bodies, a consensus which should be instructive in considering any re-design of the ANCTF.

5.1. UNECE

The United Nations Economic Commission for Europe (UNECE) first published its Recommendation No. 4 (National Trade Facilitation Bodies) in 1974. The Recommendation was revised in 2015¹³ in light of the adoption of the TFA by the WTO, and integrates Guidelines that provide a detailed description of the steps for establishing a National Trade Facilitation Body (NTFB) as well as a model TOR for an NTFB which countries use or customise based on their national context. It also provides a non-exhaustive list of those stakeholders that should be represented in an NTFB, including: importers, exporters, freight forwarders, carriers, customs, other government agencies, banks, insurance companies and others.

It should be noted that Recommendation No. 4 deals with the broader concept of a National Trade Facilitation *Body* – not just a National *Committee* on Trade Facilitation established by a WTO member pursuant to Article 23.2 of the TFA. Its broad scope and many of its principles were developed in the context of an era when the virtues of trade facilitation were advocated on their own merits, without the imprimatur of the WTO's TFA or the binding obligation on contracting states to the TFA to establish NCTFs. Accordingly, the role anticipated by the Recommendation for NTFBs is, arguably, wider than the role of NCTFs under the TFA, which, on a narrow reading of Article 23.2, is limited to “facilitate both domestic coordination and implementation of the provisions of this Agreement.” Later sections of this report will discuss whether the TFA's scope imposes limits on NCTFs as implemented by contracting parties and whether it might otherwise be desirable in the Australian context to have the ANCTF take on the wider role advocated by the UNECE for NTFBs.

“Trade Facilitation”

UNECE defines trade facilitation as: “the simplification, harmonization and standardization of the procedures and associated information flows required to move goods and provide related services from seller to buyer and to make payments.”¹⁴

Role of NTFB

The Recommendation describes the overarching role of an NTFB in the following paragraphs:

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

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

7. An NTFB can establish collaboration between the public and private sectors for the design of measures to eliminate or drastically reduce the barriers to efficient and effective trading processes. This approach to solving problems in the international supply chain is greatly improved if the NTFB works with similar organizations at the regional, sub-regional and international levels, and participates in the work of international bodies dedicated to trade facilitation and to the development of international trading standards.”¹⁵

The Recommendation urges NTFBs to engage internationally by monitoring work on international standards (including the relevant United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) recommendations and guidance documents) and, where appropriate, suggesting national implementation, and by collaborating with other NTFBs.¹⁶

Prerequisites for an NTFB

In the Guidelines embedded in the Recommendation No.4, the UNECE suggests that the success of an NTFB depends upon the following prerequisites for the organization, administrative arrangements and operation of the body:

- Active participation of private and public sectors,
- Identification of factors affecting the cost and efficiency of the country's international trading performance, and the setting of priorities for action on these issues,
- Collaborative development of measures to reduce the cost and improve the effectiveness of international trade transactions,
- Resources (both human and financial) to support the implementation of agreed measures,
- Provision of a national focal point for the collection and dissemination of information on best practices and standards in international trade facilitation, and
- Participation in international efforts to improve trade facilitation efficiency.¹⁷

Sectors Represented on NTFB

The Recommendation notes that “trade facilitation requires considering the interlinked roles of the three main actors closely involved in the international trade sectors of the country where the NTFB is to be set up. These are the:

- Public sector (all relevant government trade-related agencies), in designing and implementing national laws and regulations regarding trade in a coordinated way by working together and by streamlining import, export and transit procedures;
- Private sector traders (importers and exporters), who can benefit from such solutions in their international trade transactions; and

- Private sector trade services providers (carriers, freight forwarders, multimodal transport operators, banking institutions, insurance companies, software providers, etc.), who can offer market-oriented trade and transport solutions within the framework of national and international trade and transport practices, obligations and laws.”¹⁸

Purpose of an NTFB

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

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

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

- Facilitate inter-agency coordination;
- Provide directives on major trade facilitation issues;
- Champion the national strategic trade priorities;
- Develop new national policies mapped against existing international, standardized and harmonized methods;
- Promote existing facilitation solutions and help implement them;
- Participate actively in the creation and maintenance of trade facilitation measures internationally;
- Contribute to the work of established international organizations such as UN working parties, WCO committees, the WTO under the framework of the Trade Facilitation Agreement and other recognized international bodies.”¹⁹

Participants in an NTFB

The Recommendation lists the preferred participants in an NTFB as follows:

“Government authorities/agencies

- Commerce or trade and their agencies (for example export development agency)
- Transport/roads/railways/waterways/ infrastructure and their agencies including Sea and Land Port agencies and others
- Finance/planning/economic development/industry ministries and their agencies including central banks, and others
- Customs agencies
- Government foreign trade institutes and think tanks
- Standards and accreditation organizations

Traders

- Importers and their associations
- Exporters and their associations

- Small and medium-sized exporters and importers and their associations

Related trade service providers

- Carriers or transporters
- Freight forwarders
- Chamber of commerce and their federations
- Private laboratories or certification agencies
- Technical software providers
- Banks, insurance companies
- Customs agents
- In all the cases above, their associations
- Academic institutions, non-public Think Tanks²⁰

Organisation of the NTFB

The Recommendation proposes a three tier organisational structure – strategic, operational and technical - as follows:

- “At the strategic level would be the **Board** of the NTFB. They would be responsible for implementing the trade facilitation plan (policy and priorities) advised by the Lead Agency that established the NTFB, whether this be from the government (as envisaged by the World Trade Organization in its Trade Facilitation Agreement – Article 23.2), the private sector or a partnership between trade and government. The Board would set the work programme of the NTFB and report back to the Lead Agency on its activities with any proposals, recommendations or other outcomes;
- At the operational level, **the NTFB** would prepare reports, develop proposals and offer recommendations for achieving the objective of the trade facilitation plan. These activities would be undertaken by permanent NTFB staff (in senior and managerial positions, including a secretariat) plus any seconded staff from the public or private sector. The results of this work would be presented to the Board for strategic consideration;
- At the technical level, **ad hoc Working Groups** (either permanent or temporary) could be formed to undertake specific tasks defined by the NTFB. The composition of the Working Groups should include representatives from trade and industry sectors, relevant consultants and individual trade experts. This approach should ensure the quality of input into the process and that outcomes/outputs presented to the NTFB at the operational level would be constructive and valuable.”²¹

Roles and Responsibilities of the NTFB Components

The Recommendation describes an indicative but not exhaustive list, as follows:

- “Trade facilitation strategy, inter-agency coordination, regional and multilateral collaboration
- Identifying problems and barriers to international trade identified by stakeholders
- Developing solutions, remedies and simplification measures

- Proposing work programmes, projects, action plans and preparing implementation strategies
- The formation of ad hoc working groups
- The allocation of tasks to the NTFB, stakeholders and other members.”²²

Work Programme of the NTFB

The Recommendation promotes the need for a focused work programme covering all aspects of international trade transactions and supply chains:

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

32. The NTFB should encourage national representatives in relevant international organizations (such as UN/CEFACT, the World Customs Organization, the World Trade Organization, International Chamber of Commerce) and regional coordination bodies to support the work of the NTFB. The NTFB agenda should reflect the activities of these external organizations and bodies as part of its international trade monitoring function.”²³

Coordination of Regional Organizations

The Recommendation proposes the formation of a Regional Trade Facilitation Organization constituted by representatives of National Bodies. It suggests that the TOR could include:

- “Monitor regional progress in trade and transport facilitation and to coordinate regional awareness raising activities
- Identify common barriers and inhibitors (technical, institutional or commercial);
- Identify common solutions and regional action required to solve existing problems,
- Support the region-wide use of trade related standards, recommendations, tariff structures, electronic data interchange and other simplification tools and techniques.”²⁴

Other Matters

The Recommendation also provides guidance on, amongst other things:

- Funding, budget and staffing of an NTFB,²⁵
- Model TOR for an NTFB,²⁶ and
- A questionnaire for use by countries to contribute details of their NTFB to the UNCTAD on-line repository of NTFBs around the world.²⁷

5.2. UNCTAD

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

- National Trade Facilitation Bodies (often called PRO or ‘procedural’ committees): Based on UNECE Recommendation No. 4, Pro-Committees deal with the facilitation of trade procedures and identify bottlenecks to trade and promote solutions,

- National Trade and Transport Facilitation Committee: These consultative inter-institutional bodies promote trade facilitation, study international trade and transport regulations, prepare recommendations and create transparency on major trade and transport issues,
- National Trade Facilitation Committees: Established as a coordination mechanism, they are advocated to streamline trade procedures and implement trade facilitation measures at national level,
- WTO Negotiations on Trade Facilitation Support Group: Created to support negotiators based in Geneva or delegates from capitals during the negotiations of the WTO Agreement of Trade Facilitation, and
- WTO TFA National Trade Facilitation Committees: Created on the basis of Article 23.2 of the WTO Trade Facilitation Agreement.

In 2006, UNCTAD published its Trade Facilitation Handbook: Part 1 – National Facilitation Bodies: Lessons from Experience.²⁸ Part I of this Handbook guides users in creating the institutional structure for processing trade facilitation measures. It focuses on the trade facilitation body - in the form of an interdisciplinary committee where private sector managers, public sector administrators and policymakers can work together towards the effective implementation of trade facilitation measures. Approaches to the setting up of a trade facilitation body by Albania, Nepal, Pakistan and Thailand are reviewed on the basis of case studies carried out by UNCTAD and relevant work by other institutions. From the review, key lessons are drawn for developing countries intent on establishing and operating trade facilitation committees, including:

- A trade facilitation body cannot be a stand-alone institution but needs to be linked with national, regional and international institutions. It is more likely to be effective in the context of a regional programme;
- A Government must be politically committed to establishing and supporting a trade facilitation committee as a national forum for promoting trade facilitation measures. The committee should be established by decree or within a legal framework, as appropriate. Technical and financial assistance from international agencies and donor support should be sought;
- Since trade facilitation relies heavily on cooperation among government agencies and the (private) trade and transport community, a balanced membership from these constituencies is essential. The lead agency may identify the public and private sector stakeholders needed for the programme of work of a particular committee. Members could be from Customs, brokers, freight forwarders, transport operators, Ministry of Trade/Commerce, Ministry of Transport, the port authority and operators, chambers of commerce, financial institutions, insurance companies and others. To harness the implementation of difficult reforms, it is imperative for members of the main committee (or steering committee — see below) to be high-level decision makers from the various organizations;
- The chair should be a senior and influential government official with the necessary inter-agency networking capacity, or the president of a business association who has a voice in the industry. If the private sector is to take the lead, the legal framework for formalizing the committee should be in place. The tenure of the chair should be a minimum period of three years. To ensure stability and long-term perspectives, an “extended chair system”, consisting of the incumbent, the previous chair and a vice chair who would succeed the chair, is advisable;
- A three-tiered structure is recommended as follows:

- (i) The main or whole committee;
- (ii) The steering committee; and
- (iii) Working group(s).

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

- Selection of a “champion” is possibly the clinching element for a successful NCTF. The committee needs visionary leadership and the right combination of people who can bring about change. The champion has to have a proven track record as a team leader. As the motivating engine of the committee he or she should be empowered to take major decisions in the implementation of reforms;
- The committee should set up a secretariat, supported by a technical team. A full-time secretary with an assistant should manage the day-to-day affairs of the committee;
- A sense of ownership, by both the public and private sector members, is one of the vital factors that can make or break a committee;
- Financial support from the Government, be it in the form of regular budgetary contributions or grants, is vital to sustaining the committee in its early development and throughout its existence. However, complementary income-earning activities are needed to bolster financial soundness – e.g. paid training courses, workshops, publication of reports, sale of forms and technical material;
- Nationwide recognition of the committee is essential. It needs to be publicized as the focal point of all trade-facilitation-related activities in order to give it the political edge and credibility to pursue the implementation of reforms;
- Establishing formal and informal relations with similar or regional bodies will assist the committee in accumulating experience as well as pave the way for bilateral and regional cooperation of mutual benefit.

These recommendations are, in a sense, aspirational. Few, if any, NCTFs currently in existence around the world would satisfy all of the recommendations and it is not suggested that the ANCTF could or should do so.

In an effort to enhance transparency and the free flow of information, UNCTAD has created an Online Repository for National Trade Facilitation Bodies²⁹ — an online platform promulgating information on NCTFs - and recently launched a multilingual version, with over 120 country cases. The objective is to compile data from NCTFs around the globe into a single standardized repertoire to expedite research and comparisons. It should, however, be noted that UNCTAD’s focus on NCTFs pre-dates the TFA and is not limited to bodies or committees which fall within the TFA’s prescription in Article 23.2, which means that the Online Repository cannot be viewed as a definitive or comprehensive source of current information on the implementation status of TFA-related NCTFs.

For each NCTF, the repository also covers a wide range of topics including the scope of the organization, motivations for its establishment, frequency of meetings, membership, lessons learned, etc., along with contact information for individual committees.

As of March 2017, the ANCTF is now included in the repository.³⁰

UNCTAD also provides its Empowerment Programme for National Trade Facilitation Bodies.³¹ This is an intensive professional programme for the Secretariat and NCTFs members, which assists with the implementation and coordination of trade facilitation reforms including the TFA. This programme is based on UNCTAD's 40 years of expertise in supporting the establishment of trade facilitation bodies in developing countries. It comprises five training modules:

- Module 0 – Establishing an NCTF: General concepts on trade facilitation; drafting TOR – applying best practices; adoption process of TOR and formal procedure; presentation of drafted documents to main political stakeholders to ensure buy-in;
- Module 1 – International Standards and Recommendations: general concepts on trade facilitation; trade facilitation and global supply chain management and the promotion of exports; standards and international framework for trade facilitation; implementation of WTO Trade Facilitation Agreement;
- Module 2 – Measuring and Implementing Trade Facilitation: How to analyse trade data; techniques to identify bottlenecks and analyse results; introduction to the use of information and communication technologies in trade facilitation; introduction to complex measures such as single window;
- Module 3 – Strengthening NCTF and Establishing a Trade Facilitation Roadmap; Guidelines and best practices to strengthening NCTFs; how to improve consultations/with emphasis on negotiation skills; how to establish a 3-5 year trade facilitation roadmap with key performance indicators;
- Module 4 – Training of Trainers: Training of trainers techniques; training of trainers presentations of topics; identified during the previous modules; establishing a procedure for training new members of the NCTF; identifying training needs for the NCTF for the next year.³²

In 2014, UNCTAD published its National Trade Facilitation Bodies in the World report.³³ This publication, based on an in-depth analysis of 50 trade facilitation bodies, provides a quantitative analysis of existing NTFBs and a set of recommendations extracted from the experiences of participating stakeholders. The study provides policy-oriented conclusions aimed at assisting those countries that are looking to set up or strengthen their national trade facilitation working groups. It puts forward a number of recommendations (see Annex 6), which may be summarised as follows:

Recommendation 1: The objectives contemplated by the trade facilitation body should be SMART, that is, sustainable, measurable, attainable, realistic and time-bound, and not expressed in terms of to-do lists or activities. The ability of a trade facilitation body to prioritize and thereafter monitor trade facilitation reforms – above and beyond implementing the World Trade Organization Agreement on Trade Facilitation – is essential to its sustainability and relevance.

Recommendation 2: Make it official – give the national trade facilitation body a strong legal backing.

Recommendation 3: Set clear game rules – define terms of reference in a comprehensive and inclusive way. They should be concrete but flexible and be agreed by all involved stakeholders.

Recommendation 4: Provide the national trade facilitation body with a permanent secretariat.

Recommendation 5: Meet regularly.

Recommendation 6: Be inclusive – trade facilitation is a cross-divisional and cross-sectorial endeavour.

Recommendation 7: Take every opportunity to raise awareness about trade facilitation.

Recommendation 8: Provide the national trade facilitation body with the necessary resources.

Recommendation 9: Establish monitoring and evaluating mechanisms to measure results.

Recommendation 10: Always involve the private sector.³⁴

5.3. UNESCAP

In 2007, the UNESCAP published its Study on National Coordination Mechanisms for Trade and Transport Facilitation in the UNESCAP Region.³⁵ It reported on progress on such mechanisms in the following subregions: Central Asia and the South Caucasus (Kazakhstan, Tajikistan, Kyrgyzstan, Armenia, Azerbaijan and Georgia), South Asia (Nepal and Pakistan), Southeast Asia (ASEAN Transport Transit Agreement, Greater Mekong Subregion Cross-Border Transit Agreement and trade/transport facilitation bodies in selected Southeast Asian countries) and East Asia (China and Mongolia). It also reported on progress on such mechanisms in other regions such as the United Kingdom, Sweden, Southeast Europe, Europe and West Asia, and it reviewed the activities and recommendations on such mechanisms by other international organisations including the Almaty Programme of Action which resulted from the International Ministerial Conference of Landlocked and Transit Developing Countries, Donor Countries and International Financial and Development Institutions on Transit Transport Cooperation, the United Nations Special Programme for the Economies in Central Asia, UNECE and UNCTAD.

It concluded with a series of recommendations (see Annex 7), which address the following issues:

- Purpose
- Form and role,
- Organization, membership, direction/accountability, staffing and meeting frequency,
- Functions,
- Work programme,
- Financing sources,
- Coordination with other national trade and transport facilitation coordination mechanisms of the region/sub-region or along specific transport corridors, and
- Strengthening of national trade and transport coordination mechanisms.³⁶

In 2011, UNESCAP published its Guidelines on Establishing and Strengthening National Coordination Mechanisms for Trade and Transport Facilitation in the ESCAP Region.³⁷ The main purpose of these guidelines espoused by UNESCAP is to help countries of the ESCAP region establish national coordination institutions for trade and transport facilitation in the countries where such institutions

do not exist and to reinforce them where they do exist. The guidelines aim to propose common baseline/requirements for an effective and efficient coordination institution which can be adapted and used depending on the national requirements.

The Guidelines note that coordination mechanisms may be permanent, temporary or case-based. They also make the point that it is desirable to have an appropriate mandate in the form of a legal basis for these institutions to be effective and sustainable over time. Experience has shown that without an appropriate legal basis, these institutions may have a difficulty in sustaining themselves for a long period of time.

“Trade and transport facilitation initiatives may result in redistribution or even loss of authority of some agencies over certain processes, causing conflict of interests and leading to efforts to block the implementation of such initiatives. Having an appropriate legal backing can prevent blockage of the implementation of reform measures by the vested interests. Moreover, presence of strong political will as manifested by instituting legal basis for the coordination institution gives a clear signal to the stakeholders within and outside the country about the commitment given to the trade and transport facilitation efforts and in this regard ensures continuity of efforts. A legal basis for the national coordination institution can increase its effectiveness and sustainability.”³⁸

The Guidelines note that the principal function of the coordination institutions is to provide a framework and a platform for inter-ministerial/inter-agency coordination and cooperation. They may help:

- Simplify, standardize and harmonize rules, procedures and documents;
- Use information and communication technology (ICT) tools in trade and transport facilitation;
- Study changes in the international trade and transport environment;
- Conceive, negotiate and implement trade and/or transport facilitation agreements; and
- Develop capacities of stakeholders.

The Guidelines also address the following issues:

- Organizational structures, including joint or separate trade and transport facilitation coordination institutions
- Funding and staffing of an office/secretariat
- Membership
 - Public sector: ministries of transport, commerce, finance, agriculture, health, defence and foreign affairs, foreign trade agencies, banking and insurance supervisors, Customs, border guard.
 - Business sector: professional associations, chambers of commerce and industry, customs brokers, import/export associations, banking and insurance associations.
- Chairperson – advisable to be the Minister for Transport or Commerce;
- Sustainability – a critical issue, dependent on two factors:
 - Financial support for office/secretariat, meetings, studies/seminars/workshops
 - Operational success – including delivery of tangible results to gain the confidence of stakeholders, and establishment of performance indicators.³⁹

5.4. ITC

In 2015, the International Trade Centre (ITC), in collaboration with UNCTAD and UNECE, published its report “National Trade Facilitation Committees – Moving Towards Implementation”.⁴⁰ It is designed to provide developing countries with a step-by-step approach to evaluate policy, organizational and funding options to create a detailed roadmap to set up NCTFs.

The guide notes that the stated aim in the Article 23.2 of the TFA is to facilitate ‘domestic coordination’ and ‘implementation of provisions of this Agreement’. The guide provides the following explanations of those aims:

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

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

One of the primary aims of an NTFB is to bring government and business closer together to discuss and apply trade facilitation measures. This means the most effective NTFBs involve the private sector. Indeed, in some countries, the private sector leads these bodies.”⁴¹

Chapter 3 of the guide provides a detailed step-by-step approach to creating an NTFB in a developing country. Of course, many of the steps apply equally in a developed country context. It references UNECE Recommendation No.4 in setting out the following considerations to be addressed at the outset:

- Why establish or maintain an NTFB?
- Should it be led by government or business?
- Who should champion it?
- Who else should be involved?
- Should the NTFB be part of the government process, or independent of it?
- To whom should it be accountable?
- Where will it be accommodated?
- How will it be funded?

It notes that: “Aside from building a rationale for the establishment of an NTFB, the two most crucial issues are who should lead it and how should it be funded. Without a committed champion, an NTFB may quickly lose its sense of purpose and support. It must be driven by a strong leader who believes

in the cause of trade facilitation. Without adequate funding, an NTFB can do nothing, and may not even get off the drawing board.”⁴²

The steps recommended by the guide in creating an NTFB (see details at Annex 8) are:

Step 1: Define the mandate

Step 2: Identify a champion and ensure strong leadership

Step 3: Define the governance and legal structure

Step 4: Ensure the right balance between public and private stakeholders

Step 5: Establish clear terms of reference, including the extent of the body’s independence

Step 6: Choose appropriate accommodation that reflects the body’s independence

Step 7: Establish a clear business or work plan of activities

Step 8: Ensure that the body is adequately and sustainably funded.⁴³

Chapter 4 of the guide discusses the shaping of public-private dialogue on trade facilitation and alternative approaches to consultation, including: permanent consultative committees; centres of excellence or expertise; network of subject-matter experts; peer-to-peer groups; implementation working parties; and conferences. In doing so, it references UNECE Recommendation No.40: “Consultation Approaches: Best Practices in Trade and Government Consultation on Trade Facilitation Matters”.⁴⁴

Annex 1 to the guide sets out model TOR for NTFBs, based on UNECE Recommendation No.4.

5.5. World Customs Organization

The WCO, a Brussels-based global intergovernmental institution established in 1952 as the Customs Co-operation Council,⁴⁵ has a membership comprised of 182 countries, which are generally represented by their customs administrations. It aspires to be “the global centre of Customs expertise” and considers itself “the only international organization with competence in Customs matters”.⁴⁶ The WCO’s current mission statement indicates that “The WCO provides leadership, guidance and support to customs administrations to secure and facilitate legitimate trade, realize revenues, protect society and build capacity”.⁴⁷ The WCO has a formal role in the administration of several multilateral conventions governing aspects of cross-border trade, notably the *International Convention on the Harmonized Commodity Description and Coding System* (HS Convention) and the *International Convention on the Simplification and Harmonisation of Customs Procedures* (known as the Revised Kyoto Convention, or “RKC”), and it has an advisory role in certain technical areas (e.g. customs valuation, origin) of the multilateral trading regime created by the GATT treaties.⁴⁸

While primarily focused on the needs and priorities of its members, the world’s customs administrations, as evidenced by the above mission statement the WCO does consider facilitation of trade—at least legitimate trade—as a priority. It has focused a considerable amount of resources and effort in this area, in particular since adoption of the WCO Framework of Standards to Secure and Facilitate Global Trade (generally known as the SAFE Framework), which commits its members to a set of principles focused on securing and facilitating the international supply chain.

The SAFE Framework, which has undergone a series of amendments over the past decade, contains as its second “pillar” customs-to-business partnership. In Section IV, Part 1, the SAFE Framework prescribes that:

“Each Customs administration will establish a partnership with the private sector in order to involve it in ensuring the safety and security of the international trade supply chain. The main focus of this pillar is the creation of an international system for identifying private businesses that offer a high degree of security guarantees in respect of their role in the supply chain. These business partners should receive tangible benefits in such partnerships in the form of expedited processing and other measures.”⁴⁹

The second pillar of SAFE Framework forms the basis for the Authorized Economic Operator (AEO) concept, providing the underlying framework for a large number of national AEO (or, in the Australian context, Trusted Trader) programmes, which focus on granting qualified international traders with incentives (or benefits, as noted above) for instituting secure procedures and high levels of compliance in their own organisations as well as those of their business partners. These programmes are consistent with the “authorised person” concept introduced in the RKC,⁵⁰ and further developed in the Article 7.7 provisions relating to “Authorized Operators” in the TFA.

Due in large part to its activities related to implementation of the SAFE Framework, the WCO has become increasingly cognizant of the value of open dialogue and sustained consultation and collaboration between Customs and business on cross-border trade, and even created a Private Sector Consultative Group (PSCG) to provide input on private sector concerns, initially in the specific context of the SAFE Framework (the PSCG is an active part of the WCO SAFE Working Group⁵¹ and even provides one of the co-chairs), which effectively acts as the WCO’s trade facilitation body. The SAFE Framework itself contains standards encouraging member customs administrations to consult with stakeholders:

“Customs should engage in regular consultation, at both the national and local level, with all parties involved in the international supply chain to discuss matters of mutual interest including Customs regulations, and

The Customs administration should establish mechanisms to allow for business partners to comment on proposed amendments and modifications that significantly affect their role in securing the supply chain.”⁵²

In 2015, in conjunction with the publication of the 2015 edition of the SAFE Framework, the WCO also published for its members a document “Customs-Business Partnership Guidance”,⁵³ which offers both a summary of guiding principles focused on benefits to Customs of pursuing closer partnership with business, as well as a relatively detailed set of guidelines on how to implement such a partnership approach effectively, with case studies and comments on best practices around the world. The document is closely informed by previous work on NCTFs (and Bodies) by the units of the United Nations (UN) discussed above, and indeed references those materials to a large extent. This document might be considered a broad endorsement of the idea of NCTFs by the WCO, but it should be noted that this endorsement is limited to the utility of the NCTF concept and related ideas for Customs-business collaboration in enabling WCO members - customs administrations - to better fulfil their mission of border enforcement—and is not necessarily an endorsement of the broader UN (or WTO) trade facilitation agenda by the WCO.

This rather limited approach to adoption of NCTF concepts at the WCO is further refined and focused in the most recent WCO publication in this area, “National Committees on Trade Facilitation: A WCO

Guidance”, which was published in March 2016 and is part of the WCO package of recommendations and guidance to its members in their efforts to implement the TFA.⁵⁴ In keeping with the Customs-centric focus of the previous “Customs-Business Partnership Guidance” document discussed above, the WCO NCTF guidance document immediately highlights “the need for Customs to be involved and take a prominent role in NCTFs”,⁵⁵ and proceeds to cite a number of justifications for Customs to take a leading role in such national committees, including in an expanded Annex III dedicated to that subject in particular.

The WCO document is intended to provide practical advice to WCO members on implementation of their NCTFs, and also includes annexes which outline a draft NCTF TOR document (Annex VI), a draft NCTF agenda (Annex VII), a template for a “national roadmap to TFA implementation” and, interestingly, an “action plan template to build a Single Window Environment and conduct Data Harmonization in the context of a NCTF” (Annex IX). This last annex, Annex IX, reflects the rather strained linkage in the WCO guidance document between establishment of an NCTF and the need for countries to establish/maintain a single window and “undertake National Data Harmonization”.⁵⁶ While Article 10.4 of the TFA does provide that “Members shall endeavour to establish or maintain a single window...”, it does not make reference to “data harmonization” as an obligation. The strong emphasis on these topics appears to reflect their priority in the eyes of the WCO, and in fact the guidance document states:

“The project to build Single Window and undertake National Data Harmonization requires high-level leadership and has to be brought to the attention of high-level decision-makers at the policy level that fits the role of the NCTF.”⁵⁷

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

Finally, it should be noted that the WCO instituted a Trade Facilitation Working Group (TFAWG) shortly after the 2013 Bali Ministerial meetings, which led to the conclusion of the TFA. The TFAWG, which has met a total of seven times since 2014, is a voluntary grouping comprised of WCO member representatives and also attended by representatives of accredited observer organisations, which include multilateral organisations (e.g. the WTO, UNCTAD), private sector associations, and academia (the INCU is an accredited observer). The TFAWG’s purpose was to provide a forum for WCO members and other interested parties to prepare for TFA implementation (starting well before TFA entry into force was assured). The agenda of the TFAWG has been driven by the WCO, although meetings included status updates and active participation by WTO representatives. As discussed in Section 6 below, the WTO’s own resources in relation to TFA preparation were highly limited prior to the TFA entry into force, and the TFAWG of the WCO was able to, in some sense, fill a gap by providing a forum for discussion in the period from 2014 to early 2017.

The most recent TFAWG meetings were held in March 2017, shortly after entry into force of the TFA, and in October 2017. The March meeting was focused in large part on discussion of WCO member experience with NCTF implementation.⁵⁸ Now that the TFA has entered into force, with the WTO currently engaged in constituting its Trade Facilitation Committee and TFA implementation plan (see Section 6 below), it remains to be seen whether the WCO will continue with the TFAWG, as the centre of gravity on TFA topics, including NCTF, now appears to have shifted to the WTO. Indeed, at the time of writing, it was not clear whether the WCO would even be granted observer status on the

WTO's Trade Facilitation Committee, which will have the primary role in administering the implementation of the TFA.⁵⁹

5.6. World Bank

The World Bank's Trade Facilitation Support Program (TFSP) is a multi-donor platform launched in June 2014 that provides developing countries with technical assistance to help them align with the TFA. To date, 30 countries have sought support from the \$30 million trust fund.⁶⁰

TFSP helps developing countries implement trade facilitation reforms aimed at improving trade systems, services, and practices, potentially leading to increased trade, investments, job creation, and private sector competitiveness.

There are two main components – technical assistance and knowledge, learning and management.

The main areas of technical assistance are:

1. Assistance with scheduling of commitments and implementation timelines
2. Review and validation of self-assessments and identification of reform gaps
3. Support and strengthening of National Trade Facilitation Committees
4. Review/revision and drafting of trade laws and implementation of regulations to ensure alignment with the TFA
5. Simplification, streamlining and harmonization of trade procedures and documents to reduce time and cost to trade
6. Improvement of transparency and accountability measures of trade practices
7. Fostering partnerships between public and private sectors to catalyse trade
8. Facilitation reforms
9. Integration of risk-based management systems and other contemporary border management approaches into border inspections and clearance processes
10. Review of inter-agency coordination and design of institutional capacity building plans
11. Support of regional solutions to facilitate the recognition of agreed upon standards for goods crossing borders
12. Implementation of policies and practices to facilitate the recognition of agreed upon standards for goods crossing borders
13. Support for the design and implementation of automated systems and innovative technologies to facilitate trade.⁶¹

The knowledge, learning and management tools offered by the World Bank include the TFSP Tracking Tool (to facilitate assessment of TFA alignment from both legal and de facto implementation perspectives) and the TFSP TFA Validation Assessment Guide (to determine a country's level of alignment with the TFA, its technical assistance and capacity-building support needs, and priorities in implementing the TFA).

5.7. ITC/UNNEXT/UNESCAP

In 2016, the ITC, the United Nations Network of Experts for Paperless Trade and Transport in Asia and the Pacific (UNNEXT) and UNESCAP published the report “Making the WTO Trade Facilitation Agreement Work for SMEs – Mainstreaming Trade Facilitation in SME Development Strategies”.⁶² It provides a succinct overview of articles of the TFA particularly relevant to SMEs and identifies examples of SME-specific programmes, measures and interventions that can support the implementation of such provisions. In order to maximize the benefits of the TFA for SMEs, it is suggested that the trade facilitation measures featured in the TFA be mainstreamed in the broader SME development and internationalization initiatives and programmes that may already be in place.

5.8. G20/B20

The B20 2016 Policy Recommendations to the G20 Released to the Public included “Encourage robust international trade and investment by (amongst other things)ratifying the Trade Facilitation Agreement (TFA) by the end of 2016 and committing to rapid implementation.”⁶³

The G20 Leaders’ Communique Hangzhou Summit 4-5 September 2016 included:

“27. We commit to ratify the Trade Facilitation Agreement by the end of 2016 and call on other WTO members to do the same. We note the important role that bilateral and regional trade agreements can play in liberalizing trade and in the development of trade rules, while recognizing the need to ensure they are consistent with WTO rules. We commit to working to ensure our bilateral and regional trade agreements complement the multilateral trading system, and are open, transparent, inclusive and WTO-consistent. WTO-consistent plurilateral trade agreements with broad participation can play an important role in complementing global liberalization initiatives...”⁶⁴

The G20 Leaders’ Declaration Hamburg 7/8 July 2017 included:

“We note the importance of bilateral, regional and plurilateral agreements being open, transparent, inclusive and WTO-consistent, and commit to working to ensure they complement the multilateral trade agreements. We welcome the entry into force of the WTO Trade Facilitation Agreement and call for its full implementation including technical assistance to developing countries. We commit to work together with all WTO members to make the eleventh WTO Ministerial Conference a success.”⁶⁵

6. NCTFs under the TFA: WTO Guidance & Expectations

6.1. History & Background

The road to the TFA began at the Singapore Ministerial Conference in December 1996, when WTO members directed the Council for Trade in Goods “to undertake exploratory and analytical work . . . on the simplification of trade procedures in order to assess the scope for WTO rules in this area.”⁶⁶ In 2004, the WTO agreed to launch negotiations on trade facilitation, with members agreeing that the negotiations “shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit”.⁶⁷ The negotiations on trade facilitation were concluded with an agreement at the Bali Ministerial Conference in December 2013, and on 27 November 2014, WTO members adopted a Protocol of Amendment to insert the new Agreement into the existing legal WTO framework, with entry into force once two thirds of all WTO members completed their domestic ratification procedures and deposited a valid acceptance instrument. This threshold was reached on 22 February 2017,⁶⁸ when the WTO received the 110th deposit, allowing the Agreement to take effect. The motivating factor behind the TFA was the potential for reduction of costs related to cross-border trade through removal of “border red tape”. The WTO has undertaken studies indicating:

“The full implementation of the TFA is estimated to reduce global trade costs by an average of 14.3%, with African countries and least-developed countries (LDCs) forecast to enjoy the biggest average reduction in trade costs. Full implementation has also been found to potentially reduce the average time needed to import by 47%. Cuts in export time will be even more dramatic: estimates predict a 91% reduction of the current average.”⁶⁹

The TFA is divided into three sections, with Section I (divided into 12 articles, many further divided into sub-articles) containing the substantive provisions to be implemented by contracting states. These are focused on expediting the movement, release and clearance of goods, and on customs cooperation. Section II, entitled “Special and Differential Treatment Provisions for Developing Country Members and Least-Developed Country Members” contains provisions relating to a phase-in of implementation of Section I requirements for contracting parties in those categories of countries. It is important to note, however, that the provisions of Section I went into full force for contracting states that are developed countries (such as Australia), as of the date of entry into force of the TFA, 22 February 2017.⁷⁰ Section III is discussed below.

6.2. Role of the NCTF in the TFA

Section III of the TFA, entitled “Institutional Arrangements and Final Provisions”, is divided into two articles, the first of which, Article 23 (see Annex 1), in its first part, deals with the establishment of a new WTO committee, the Committee on Trade Facilitation, and its role in implementation and oversight of TFA implementation. Article 23.2 deals with the establishment of NCTFs in contracting states, and provides:

“Each Member shall establish and/or maintain a national committee on trade facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of the provisions of this Agreement.”

This provision, at first glance very brief and straightforward, makes no explicit reference to previous standards (notably by units of the UN, as detailed above in Section 5). The text, on its face, appears to allow TFA contracting parties to either establish a new committee (as Australia has done),

maintain an existing one, or designate “an existing mechanism” to fulfil its obligation under Article 23.2 of the TFA. Once that “committee” or “mechanism” is in place, this provision clearly states that its role is to facilitate both “domestic coordination and implementation” of the TFA.

There is no other mention of the NCTF concept in the TFA, nor is there an explicit linkage between the NCTF, once set up, and the WTO Trade Facilitation Committee. There is no guidance within the text of the TFA itself in terms of NCTF make-up (e.g. membership, leadership, governance), although use of the term NCTF may be suggestive.

6.3. WTO Guidance on NCTFs

In terms of WTO guidance on NCTFs, or even in regard to the substantive provisions of TFA Section I in general, very little has been on offer since the conclusion of the TFA in Bali in 2013. This is not particularly surprising, since the TFA only went into effect some months ago, it is in the early stage of implementation in most countries, and there has been no opportunity as yet to bring issues of interpretation of TFA provisions to the attention of panels or utilise the WTO dispute resolution process to make determinations. Within the WTO itself, the Trade Facilitation Committee was only constituted in mid-May of 2017, and had its first real meeting (focused on procedural topics of the Committee itself) on 19 July 2017.⁷¹ Until such point as the new Committee is fully organised and can live up to its “purpose of affording Members the opportunity to consult on any matters related to the operation of this Agreement or the furtherance of its objectives”,⁷² little substantive guidance on how to interpret provisions of the TFA, including in reference to NCTFs, is to be expected.⁷³

Nevertheless, the WTO Secretariat recognised that establishment of NCTFs under Article 23.2 presents a set of challenges for countries looking to implement the TFA (particularly developing countries, which may not have a very robust tradition of constructive public-private sector collaboration on trade facilitation), and it conducted a workshop in June 2016 on this subject, and also conducted a survey of members’ practices on NCTFs. In June 2017, it launched a new “Trade Facilitation: Experience Sharing Series” line of publications with a document entitled “National Committees on Trade Facilitation: Current Practices and Challenges”,⁷⁴ which focuses on the outcomes of the workshop and the survey, and constitutes a source for “best practices” for NCTFs which are, at least tacitly, endorsed by the WTO. This document does provide some very useful insights into expectations for NCTFs in the TFA context.

In the Foreword to the WTO document, Article 23.2’s requirement that each contracting party implement an NCTF is called out as follows (emphases added):

“WTO members are currently in the process of developing national strategies and plans in order to maximize the benefits resulting from the TFA. For this reason, *it is essential for each member to have a well-functioning national body that will coordinate the individual actions of a broad range of stakeholders and work to ensure implementation of the Agreement.*

Many members have already established, or are about to establish, national committees, *as required under the TFA.*”⁷⁵

This is a clear statement of expectation by the WTO that each signatory member is required to establish a national committee, and that the committee’s role is to coordinate actions of “a broad range of stakeholders” and “work to ensure” TFA implementation in the country.

After summarising the status of NCTF implementation among the WTO membership (at the time of the survey, 98% of respondents had either already established an NCTF, or were engaged in planning

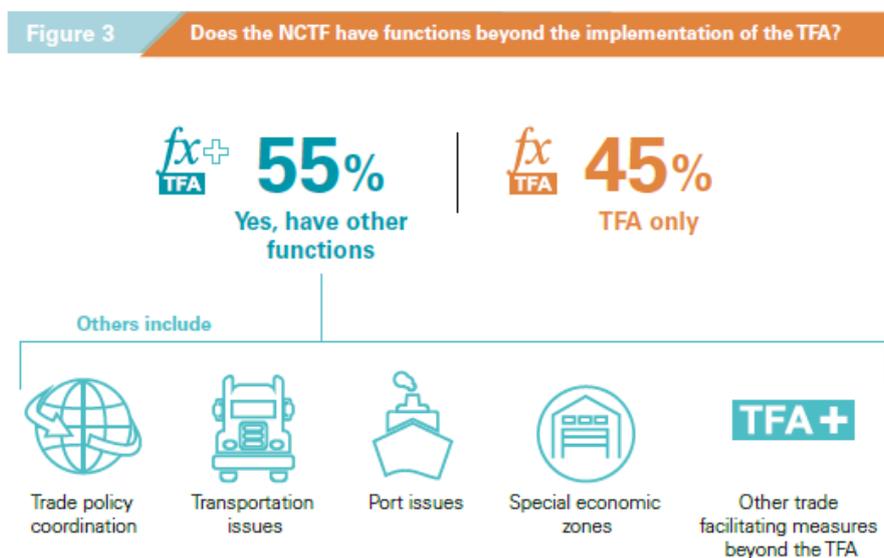
or implementing one),⁷⁶ the WTO document goes on to describe a number of challenges and issues faced by members in implementing their NCTFs, with reference to “best practices” providing implicit guidance to members on the WTO’s vision of the path forward. A number of these parallel the issues looked at and responses received from Australian industry in the workshops and survey conducted as part of this study (see Section 9 below), and are directly relevant to the discussion of the ANCTF. These are summarised below, by topic.

6.3.1. Mandate/Scope

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

“Having a clear mandate from the outset, which establishes the NCTF as the coordinating body for the implementation of the TFA and clearly identifies its objectives, saves the NCTF time and effort by creating understanding among the members of the committee as to its purpose. This, in turn, can assist committee members when articulating the objectives of the NCTF to their own constituencies. Once a clear mandate is in place and all actors coalesce their efforts around it, devising a clear structure and roadmap becomes easier, which in turn contributes to a well-functioning NCTF.”⁷⁷

Whether the NCTF’s mandate should be limited to the member’s TFA activities, or extends to a broader agenda, is a question which the WTO has looked at, and appears to be neutral on, while noting that members which have already implemented most of the TFA’s Section I obligations will have an easier time of dealing with a broader agenda than will those members who have not yet done so.⁷⁸ The WTO’s survey results on the issue of mandate were summarised as follows:



Source: WTO (2017); based on the e-survey on National Committees on Trade Facilitation, 2016.

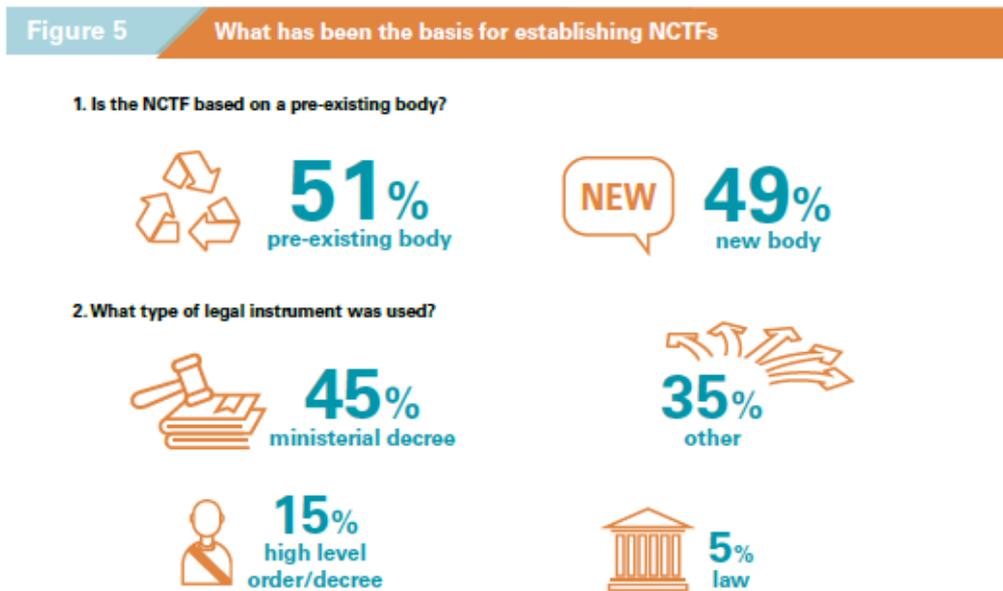
The WTO survey also looked at whether members had only one body handling trade facilitation issues, or multiple bodies, as can be the case where a new NCTF is set up for TFA purposes while pre-existing bodies with trade facilitation in their scope continue to exist, which may lead to conflicts or difficulties in definition of the NCTF mandate. Survey results indicated that 89% of respondents had only one NCTF, and had integrated pre-existing bodies into it, sometimes as sub-committees.⁷⁹

6.3.2. Institutional Framework

The WTO document highlights the importance of a clear institutional framework for the NCTF, stating:

“...the institutional framework of a NCTF, including the formal organizational structures and committee rules, is the vital element in ensuring the long-term effectiveness of a NCTF. Such a framework is necessary to ensure that the national committee maximizes its capacity to achieve its goals and minimizes the possibility that the NCTF may simply become a discussion forum.”⁸⁰

The institutional framework provides the basis of authority for its work, and needs to be tailored to the political and legal system of the member; the WTO survey results showed a relatively wide range of variation in terms of NCTF institutional frameworks:



Source: WTO (2017); based on the e-survey on National Committees on Trade Facilitation, 2016.

6.3.3. Membership

The membership of an NCTF is the subject of much commentary and diversity of opinion. Nevertheless, TFA Article 23.2 itself provides no guidance on NCTF membership. The WTO document, however, explicitly notes the importance of “securing the right membership” for the NCTF, and makes something close to a recommendation, as follows:

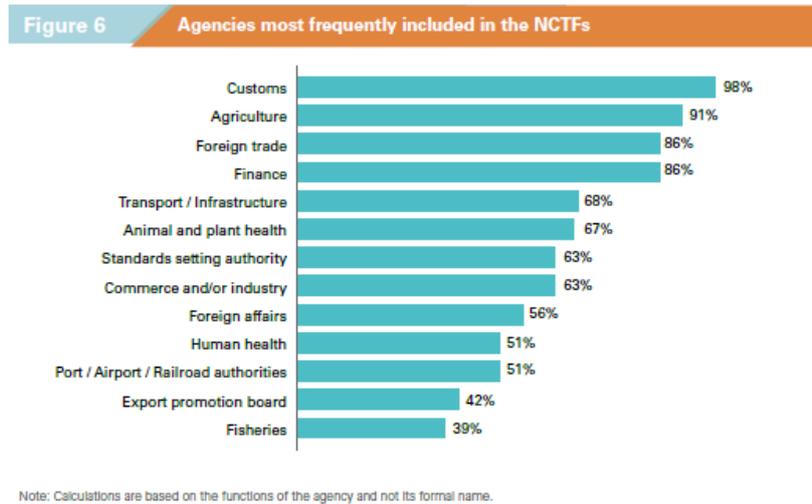
“An inclusive approach to the composition of the NCTF, which allows all stakeholders, including government officials, private sector stakeholders, and customs and border agencies, to take part in the definition of the institutional framework, appears to be an important success factor. It increases the ownership and active involvement of the different stakeholders and facilitates coordination amongst all stakeholders with a role in TFA implementation.”⁸¹

The WTO document goes on to discuss the importance of transparency and inclusiveness in the appointment of NCTF members, and notes the:

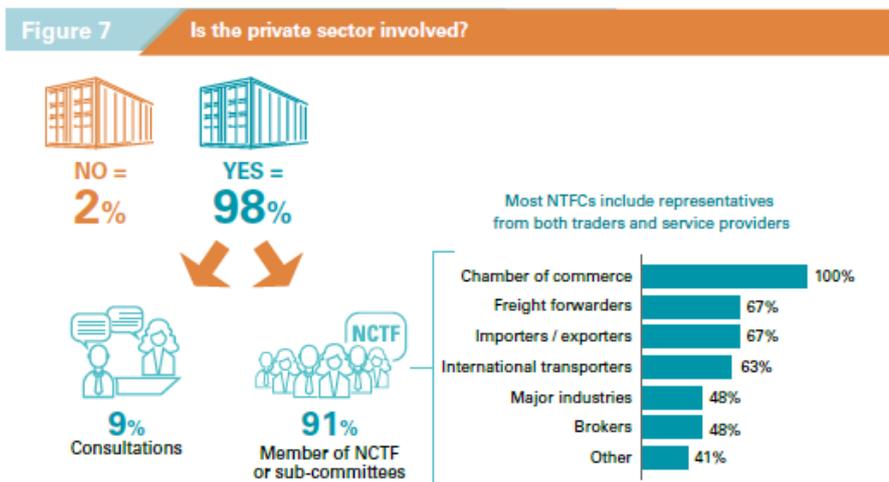
“...need to be aware of the resulting trade-off between having fully inclusive membership and the possible impact on the committee’s level of efficiency. For example, an NCTF that is

designed to be extremely inclusive and incorporate a large number of stakeholders can become inherently unwieldy to coordinate and, as a result, find it difficult to adopt decisions.”⁸²

The WTO survey looked at two important aspects of NCTF membership, that of government agencies involved, and the issue of whether, and how, to involve in the private sector in the NCTF. The survey results are encapsulated in the two figures below:⁸³



Source: WTO (2017); based on the e-survey on National Committees on Trade Facilitation, 2016.



Source: WTO (2017) above n 78; based on the e-survey on National Committees on Trade Facilitation, 2016.

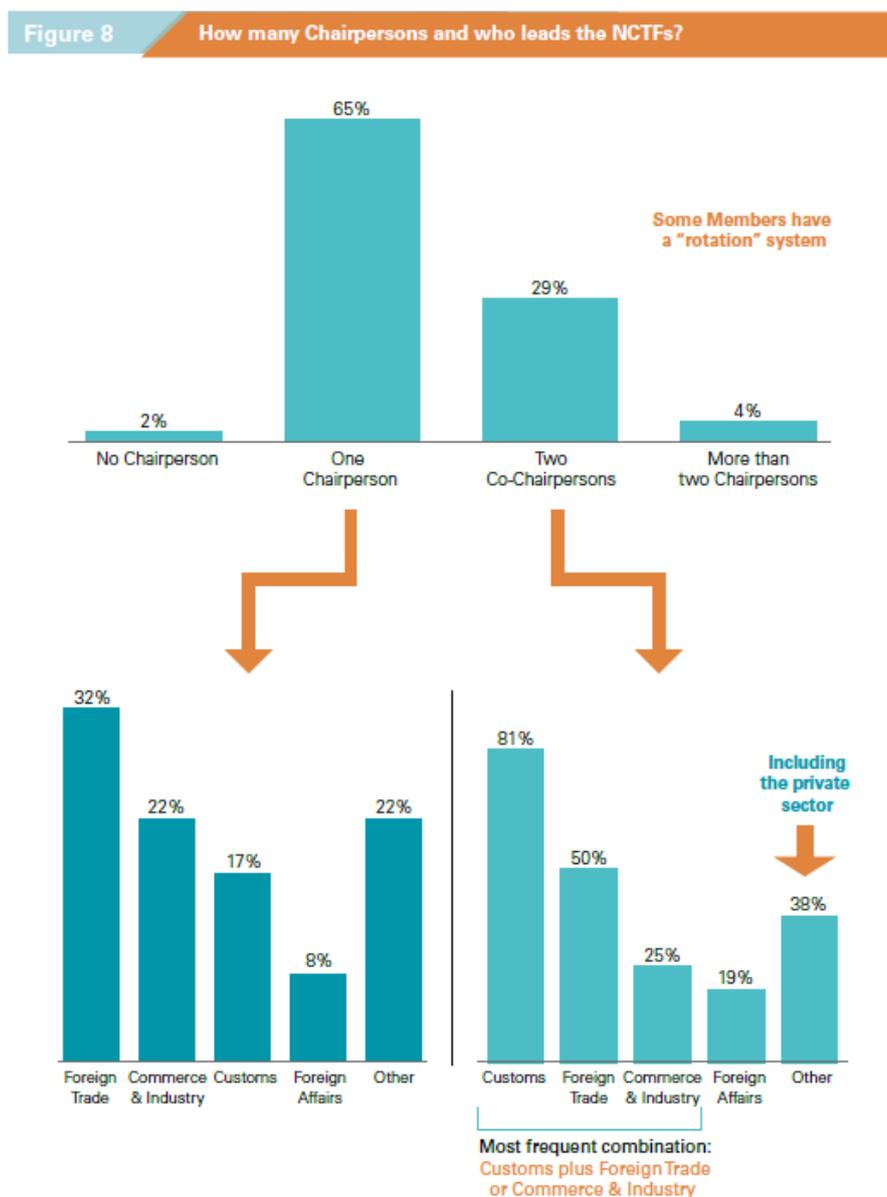
6.3.4. Leadership

The WTO document also addresses the critical issue of NCTF leadership, and noted the following with regard to the role of the NCTF chair:

...the selection of a chairperson has often led to rivalries and disagreements amongst committee members.... Competing priorities and rivalries can have an extremely negative impact on a committee, paralysing its work and diminishing the chances of generating the

cross-agency cooperation necessary for the implementation of the TFA. The chairperson plays a vital role in bridging those differences in an inclusive way, while ensuring that all stakeholders contribute to fulfilling the mandate in an active and consistent manner. In addition, NCTFs also need a champion to promote them, to ensure that they form strong linkages with international institutions and trade bodies, and to ensure visibility and public awareness of the NCTF's role, both nationally and internationally.⁸⁴

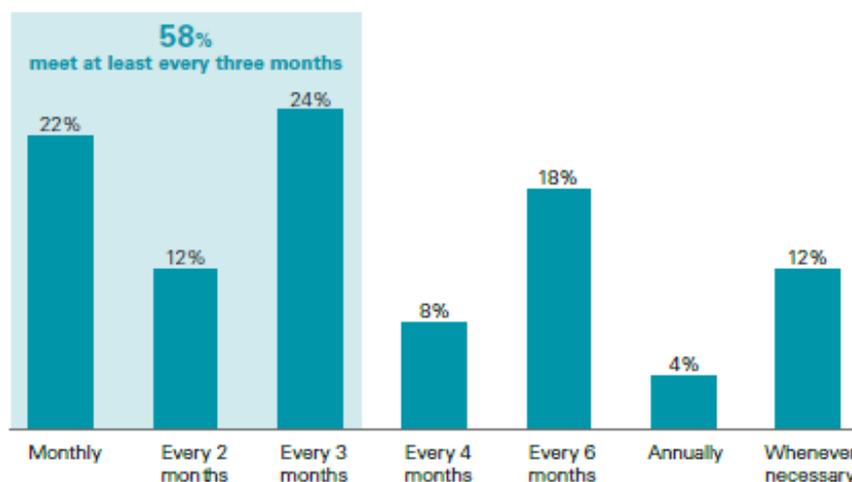
The NCTF chairperson is often linked to the lead agency delegated primary responsibility for the NCTF, and the WTO survey results indicated that while the lead agency is usually the trade ministry or Customs, a degree of variation exists:⁸⁵



Source: WTO (2017); based on the e-survey on National Committees on Trade Facilitation, 2016.

Focusing on another key aspect of NCTF administration, the WTO survey also canvassed the members with NCTFs as to the frequency of their meetings, indicating a rather intensive work schedule in many cases:⁸⁶

Figure 12 How frequently does the NCTF meet?

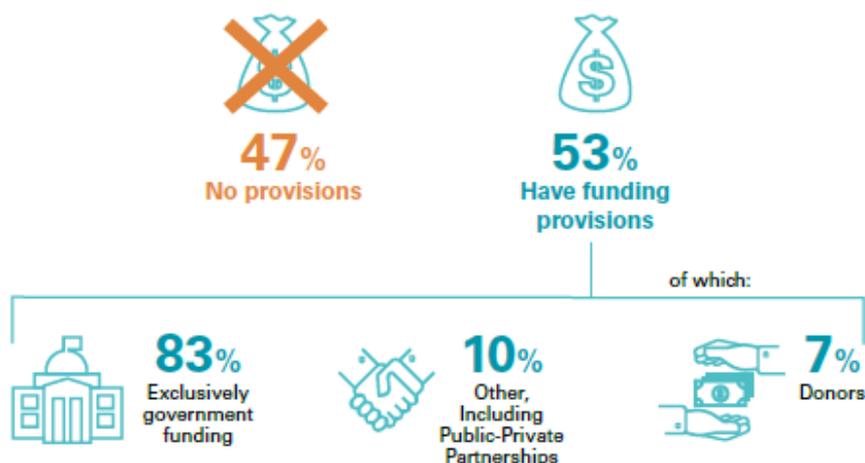


Source: WTO (2017); based on the e-survey on National Committees on Trade Facilitation, 2016.

6.3.5. Financial Support

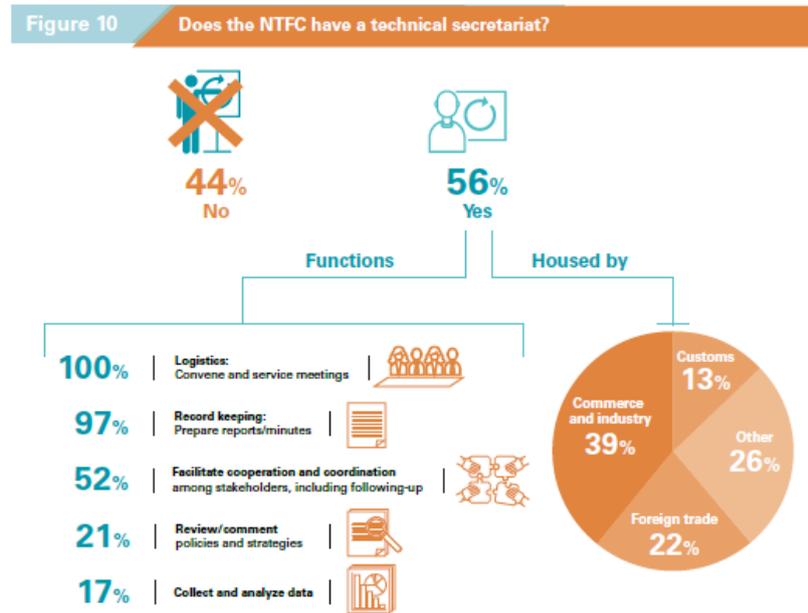
The WTO incorporates a discussion of the topic of NCTF funding and sources of financial support; while there appears to be a diversity of opinion among WTO members on this topic, there was overall consensus that “... NCTFs need to include in their operational procedures the task of ensuring that the committee has the financial resources necessary to carry out its work. And as much as possible, from the outset, the committee needs to receive assurance of public financial support for operational and overhead expenses.”⁸⁷ Nevertheless, the results of the WTO survey indicated that many members had not yet reached that point in their own road to NCTF implementation:⁸⁸

Figure 9 Does the NCTF have funding provisions?



Source: WTO (2017) above n 78; based on the e-survey on National Committees on Trade Facilitation, 2016.

On the closely related issue of administrative support for the NCTF, most members had established a secretariat staff for the NCTF (albeit with a diverse definition of services provided), and for those that had done so, in the large majority of cases, that secretariat facility was provided by the government, often by the agency given the lead role in NCTF coordination.⁸⁹



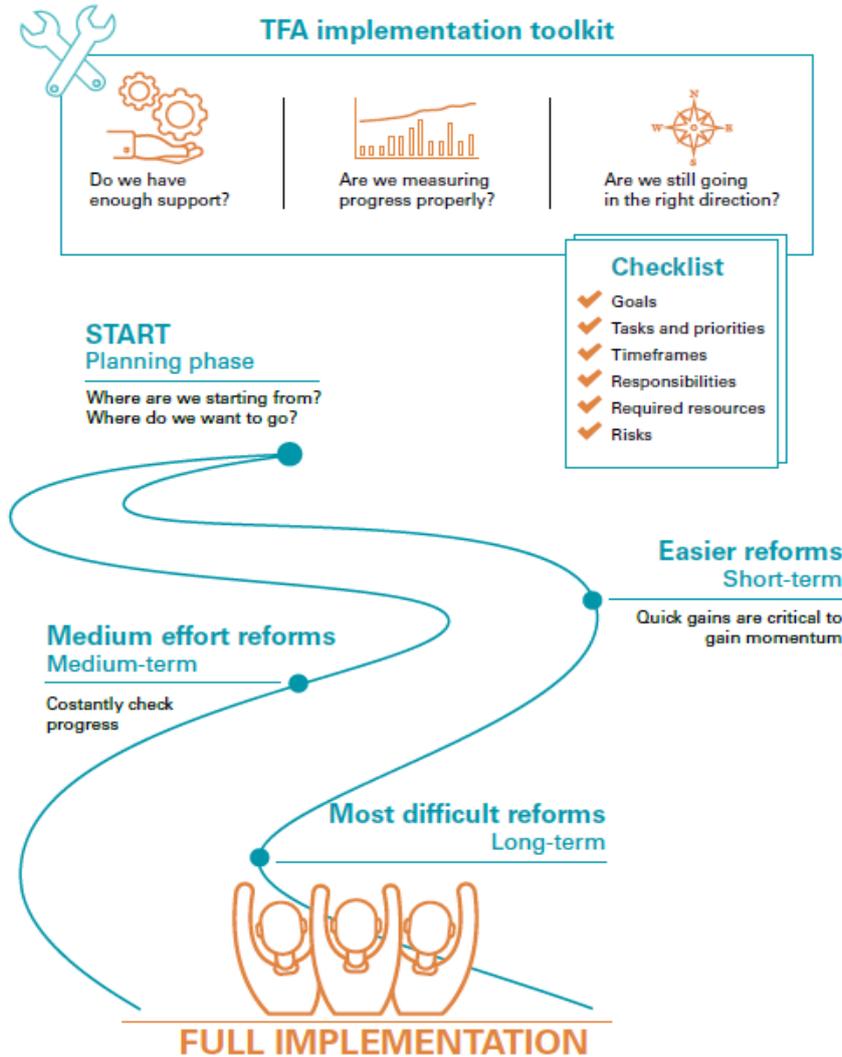
Source: WTO (2017); based on the e-survey on National Committees on Trade Facilitation, 2016.

6.3.6. Maintaining momentum/sustainability

The WTO also dedicates a good deal of discussion to the important issue of maintaining NCTF momentum over time, and the factors going into what might be characterised as NCTF sustainability. This involves ensuring that the NCTF agrees upon a Roadmap, which the WTO defines as “...an action plan containing clear goals and describing the tasks, timeframes, allocation of responsibilities, necessary resources and associated risks involved in achieving those goals within a given period of time”.⁹⁰ The WTO further notes “...that it is vital to set achievable, realistic targets that will result in success, rather than setting high targets that, realistically speaking, cannot be achieved. It is also important that the resulting achievements are meaningful for both the public and private sectors.”⁹¹ The WTO also notes the importance of strategy in tackling issues, an aspect incorporated in its vision of the Roadmap as follows:⁹²

Figure 11

A road map to implement the TFA



Source: WTO (2017); based on the e-survey on National Committees on Trade Facilitation, 2016.

The WTO further discusses the importance of maintaining NCTF momentum over the long term, to sustain the motivation of stakeholders. It notes:

“An important way of doing this is by concretely demonstrating that the national committee is having a positive impact on trade facilitation reform and delivering benefits for stakeholders. For some workshop discussants, one way of doing this is to instil a results-based ethos into committee members from the outset and to include an effective system of measurement and monitoring as an important part of the committee’s operational procedures,.... a communication strategy is also a vital part of the national committee’s operational procedures. Having a communication strategy in place from the outset allows committees to immediately and consistently communicate positive results and showcase the benefits of the committee’s work”.⁹³

Along these lines, the WTO emphasises that “NCTFs have to strive to ensure that they operate consistently as effective coordinating bodies over the long term, and do not degenerate into little more than talk-shops”,⁹⁴ and that adaptability to change in the trade environment is essential to their sustainability. The WTO then provides the below graphic summarising what it portrays as the keys for long term adaptability of the NCTF.⁹⁵

Figure 13 The keys for long term adaptability of the NCTF



Source: WTO (2017); based on the e-survey on National Committees on Trade Facilitation, 2016.

7. Broader Australian Government Agenda

There are many Australian Government Departments and Agencies whose activities touch on trade and its facilitation in some capacity. The discussion below focuses upon those whose impact is likely to be most significant – in terms of either operational activities or policy development – and the initiatives and priorities of those departments and agencies which are most likely to impact or be impacted by the work of the ANCTF. It will be a matter for consideration in respect of each of them as to whether those anticipated impacts would warrant participation by a particular department or agency in the work of the ANCTF – in either a full-time member capacity or as a by-invitation participant for the purposes of specific agenda items.

7.1. Department of Foreign Affairs and Trade

DFAT is responsible for Australia's participation in the WTO and for ensuring that Australia meets its obligations under the various multilateral agreements, including the TFA. A crucial aspect of the TFA is the creation and operation of the ANCTF.

Trade is one of the four pillars of the Government's economic diplomacy strategy (along with growth, investment and business). A key focus is trade liberalisation and DFAT is responsible for negotiating and implementing the FTAs to which Australia is a party. Those FTAs aim at boosting trade, primarily through trade liberalisation – but, liberalisation outcomes are regularly frustrated by complex, inefficient and costly border procedures. Arguably, in achieving the Government's economic diplomacy strategy, trade facilitation is at least as important as trade liberalisation. Facilitation can unblock the barriers to liberalisation. DFAT, then, should be in the vanguard of trade facilitation measures and the TFA must form a cornerstone of vital significance to its work.

7.2. Department of Immigration and Border Protection

DIBP is responsible for immigration and customs border policy and administration.

It aspires to be Australia's trusted global gateway - the conduit through which legitimate travellers, migrants, potential citizens and goods can pass, with the ability to close the gate against those who intend to circumvent Australia's border controls.

Its stated mission is to protect Australia's border and manage the movement of people and goods across it.

It manages the Migration Programme, the Humanitarian Programme, Australian citizenship, trade and customs compliance, offshore maritime security and revenue collection.

Its operational enforcement arm, the ABF, is responsible for investigations, compliance, enforcement and immigration detention operations, across air and seaports and land and maritime domains.

The combined roles of DIBP and ABF in managing Australia's borders and controlling the import of goods into, and the export of goods from Australia are extensive, and necessarily and vitally impact on the work of the ANCTF and, conversely, will be impacted by that work. For that reason, it is unnecessary to further discuss the specifics of DIBP/ABF responsibilities here.

7.3. Department of Agriculture and Water Resources

A number of the responsibilities of the DAWR impact and will be impacted by the work of the ANCTF. These have been elaborated upon here to illustrate the extent of their (often misconstrued) border management responsibilities.

Imports Generally

To help protect Australia's unique environment from unwanted pests and diseases, DAWR regulates the importation of certain products into Australia. The importation of some products is subject to certain biosecurity import conditions. Some products are not permitted entry while other products are only allowed entry subject to meeting import conditions that mitigate the biosecurity risks.

The Biosecurity Import Conditions System (BICON) represents a significant initiative in the context of trade facilitation, by automating and streamlining the determination of whether a commodity intended for import into Australia:

- is permitted
- is subject to import conditions
- requires supporting documentation
- requires treatment or
- needs an import permit.

It is the responsibility of importers to comply with DAWR's import conditions when importing into Australia. Cargo arriving in Australia can often be cleared by the DAWR using declarations and information provided by the importer.

DAWR will issue the importer, either directly or via a broker, with a directive that goods are released from biosecurity control or if any actions are required, e.g. inspection, treatment, isolation or hold pending further information or insect identification.

Inspection of cargo is undertaken on the basis of risk management, focusing on pathways that the DAWR has assessed to be higher risk pathways for pests and diseases. Cargo may also have to undergo inspection and treatment prior to clearance.

Containers, Aircraft, Ships

As well as goods, DAWR is responsible for managing the pest and disease risks associated with containers, aircraft and ships arriving in Australia. All aircraft, maritime vessels and military equipment arriving in Australian territory from overseas are subject to Australian biosecurity requirements.

DAWR has inspection and reporting requirements to ensure that all maritime vessels arriving in Australia comply with international health regulations and that any biosecurity risk is adequately managed. The biosecurity risk of each vessel entering Australian waters is assessed and necessary action is taken to ensure exotic pests and diseases are not introduced.

Food

DAWR is responsible for administering two sets of requirements for imported food. These requirements are designed to:

- protect Australia against biosecurity risks, under the *Biosecurity Act 2015*; and
- address food safety, as set out in the *Imported Food Control Act 1992*.

All imported food must meet biosecurity requirements to be allowed into the country. Once imported food has met these requirements, foods are monitored for compliance with the Australia New Zealand Food Standards Code. Food Standards Australia New Zealand (FSANZ) is the government body responsible for developing and maintaining the Australia New Zealand Food Standards Code.

Like food that is produced domestically, food that is imported into Australia must meet Australian food standards. The monitoring of imported food is a responsibility shared across many government agencies, including those at local, state, territory and federal levels.

Food entering Australia is subject to the *Imported Food Control Act 1992*, which provides for the inspection and control of imported food using a risk-based border inspection program, the Imported Food Inspection Scheme (IFIS). FSANZ advises DAWR on food that poses a medium or high risk to human health and safety, with DAWR classifying this food as risk for inspection under the IFIS.

From 2018, the Australian Government will be introducing changes to the way imported foods are monitored and inspected for compliance with food safety regulations. DAWR considers that these changes do not alter the requirement for all imports of food to comply with the *Biosecurity Act 2015*.

Exports

DAWR controls exports of agricultural products to assure Australia's trading partners that Australian agricultural products meet their import requirements. For prescribed products, the export control legislation defines the compliance requirements for export businesses.

Exporters of meat, fish, dairy, eggs, grain, horticulture, skins and hides, wool and meat by-products, such as pharmaceuticals, blood and pet food, use electronic certification and may generate their own health certificates and related documents by registering as an Export Documentation System (EXDOC) Electronic Data Interface (EDI) user.

When exporters also register for the Single Electronic Window (SEW), EXDOC can generate an export declaration number (EDN) necessary for ABF's Integrated Cargo System clearance, to streamline the export process.

Exporters of feeder and slaughter livestock to Indonesia, Bahrain, Kuwait and Qatar must have an approved Export Supply Chain Assurance System (ESCAS) for all consignments.

The *Export Control Act 1982* and the *Export Control (Prescribed Goods—General) Order 2005* provide the legal framework for both 'prescribed' and 'non prescribed' goods.

Exporters must meet both the requirements of the *Export Control Act 1982* and its subordinate legislation and any importing country requirements to enable DAWR to provide the necessary documentation for commodities to be exported.

Australian Pesticides and Veterinary Medicines Authority (APVMA)

Australian law requires all agricultural and veterinary chemical products sold in Australia to be registered by the APVMA. Once a product is registered, it is approved for the purposes and uses stated on the product's label.

Approved agricultural and veterinary (AGVET) chemical products and active constituents are identified by an APVMA registration number on the label. Without the approval of the APVMA, an AGVET chemical cannot be legally imported, marketed, supplied or used in Australia. A product intended to be imported for supply in Australia must be registered.

Only registered products and approved active constituents can be imported without the need for further approval. Importing unregistered AGVET products or unapproved active constituents is an offence.

Before accepting exports of a chemical product from Australia, many countries require an assurance from the government authority responsible for regulating the product in Australia. The APVMA issues certificates containing the relevant details of such products through a range of common types of certificate.

7.4. Department of Infrastructure and Regional Development

The DIRD has a number of relevant responsibilities.

Coastal Shipping Reform

The Australian Government is committed to coastal shipping reform to ensure safe, secure and efficient coastal shipping as part of Australia's national transport system.

Operators and agents of both Australian and foreign flagged ships have raised a number of concerns about the operation of the current regime that regulates coastal shipping in Australia, specifically with regards to the administrative burden that it imposes.

DIRD has released a discussion paper to seek the views of stakeholders on proposed amendments to the regulatory regime to address these issues.⁹⁶ This consultation process is designed to:

- identify any implications of the proposed changes to the regulatory regime and related legislation; and
- identify any further possible improvements to the regulatory regime.

Stakeholders include: ship owners and operators, employee and employer representatives, users of shipping services, industry associations, maritime unions, government agencies, and interested members of the public.

National Freight and Supply Chain Strategy

The Australian Government has announced it will develop a long term (20 year) national freight and supply chain strategy to improve freight and supply chain efficiency and capacity and to reduce the costs of transporting goods through the major national container ports, airports and intermodal terminals.

The strategy is in response to Infrastructure Australia's Australian Infrastructure Plan, and will be informed by the findings of an independent inquiry. The inquiry will determine how to best lift the productivity and efficiency of Australia's freight supply chain.

When examining options for new and/or adaptive capacity to meet forecast freight growth, and possible productivity and efficiency improvements for freight and supply chain infrastructure, the inquiry will need to take into account a range of factors and possible interdependencies, including: urban, regional and investment planning; efficient markets; competition; innovation; connectivity; resilience; and safety.

Without limiting related matters, the inquiry and development of a national freight and supply chain strategy through consultation with industry will inform Transport and Infrastructure Council members, by:

1. Establishing the capacity of the key national ports, airports and intermodal terminals in comparison to international markets with similar characteristics, identifying trends occurring in the global supply chain and reviewing the adequacy of investment planning to efficiently meet forecast growth to keep Australia's position with its trading partners;
2. Determining the regulatory and investment barriers to improved efficiency and access to key national terminals, including road and rail corridors;
3. Establishing the opportunities for regulatory changes and targeted investment to lift the capacity of key supply chain nodes and improve efficiency of operations, including an analysis of the implications of the changing profile of ownership in large scale supply chain infrastructure such as ports and rail;
4. Identifying the costs and benefits of options at a national level to improve:
 - a. The efficient operation of the national supply chain system, including effective and transparent public performance measures for key national terminals; and
 - b. Broad first and last mile issues.
5. Providing options for scenario planning and predictions, where possible, related to the following areas:
 - a. Future developments across the supply chain e.g. distributed production and changes in technology;
 - b. Urban distribution and impacts of the movement of freight in urban areas due to population growth and changing consumer activities such as online shopping;
 - c. Decentralisation and redistribution of the population into regional centres;
 - d. Trade arrangements and the development of distribution systems in agriculture; and
 - e. Impacts on the supply chain following major climatic events.
6. Exploring opportunities to use big and open data and new digital technologies to improve the performance of the freight infrastructure; and
7. Identifying options and recommending regulatory changes and investment actions (public or private) that will benefit the economy over the next 20 years. Specifically through improved performance, productivity and efficiency of the freight and supply chain network and infrastructure.⁹⁷

7.5. Infrastructure Australia

Infrastructure Australia is an independent statutory body with a mandate to prioritise and progress nationally significant infrastructure. Its 'high priority projects' include Western Sydney Airport (WSA), the Perth Freight Link and the Bringelly Road Upgrade Stage 2 to service WSA. 'Priority projects' include the Murray Basin Rail Project (freight rail connection between north-west Victoria and the ports of Geelong and Portland) and the Inland Rail (Melbourne to Brisbane). 'High priority initiatives' include the Sydney Gateway (WestConnex to Sydney Airport and Port Botany) and the Port Botany freight rail duplication.

7.6. Office of Transport Security

The OTS is Australia's transport security regulator for aviation transport, maritime transport and the offshore oil and gas industry. Its role is to make sure Australians and the country's national interests are secure through regulation that supports industry and the community as they carry out trade and travel activities. OTS does this by working with other government partners and industry with the objective of maintaining a strong and comprehensive approach to transport security.

From 1 July 2017, screening requirements for air cargo to the United States (US) changed. These requirements were imposed on airlines by the US Government. All air cargo being transported to the US must either originate from a Known Consignor or be examined at piece level (box, carton, pallet or another deconsolidated form of cargo).

The requirements of the Known Consignor Scheme (KCS) are based on international best practice. Known Consignors must demonstrate that they have security measures and procedures in place to meet these requirements, and can secure their export air cargo from where it originates, until it is handed to another regulated business.

The security measures required under the KCS will depend on each individual business. This reflects the fact that exporters operate in a wide variety of environments.

Security measures include:

- physical access controls and facility security measures;
- information security measures;
- secure packing, handling and storage of air cargo;
- secure transportation of air cargo;
- security awareness training;
- background checking of employees to ensure they are of suitable character, including a requirement for staff in key roles to hold an Aviation Security Identification Card (ASIC);
- quality control procedures in place to monitor and manage compliance; and
- incident response and reporting procedures.⁹⁸

Cargo that originates from Known Consignors does not require further examination before uplift to the US. However, exporters of air cargo to the US which do not become Known Consignors will need to engage a freight forwarder who is approved to examine air cargo at piece-level, provided the goods are capable of piece-level examination by the methods used by the freight forwarder.

If the freight forwarder is unable to offer piece-level examination, the cargo will need to be deconsolidated and screened at the airport before being accepted for uplift to the US. Initially, the capacity of cargo terminal operators (CTOs) to undertake this screening was not known and delays were said to be expected. Recent anecdotal evidence, however, suggests that CTOs have sufficiently increased their screening capabilities and some shippers have altered their processes (eg by refraining from shrink-wrapping loaded pallets) so that, generally, the anticipated delays have not eventuated.

7.7. Department of Industry, Innovation and Science

The DIIS supports the internationalisation of Australian industry, encourages Australia's multilateral and bilateral industry and trade cooperation, and manages the Commonwealth's relationships with standards and conformity assessment bodies. It recognises that FTAs are an important aspect of the Australian Government's integrated trade, industry and innovation strategies. As part of a whole-of-

government approach, DIIS plays a key role in the negotiation and the ongoing administration of FTAs. It does this by advising on issues as varied as tariffs, rules of origin, services, investment, trade remedies and technical and product standards.

DIIS is also responsible for Australia's anti-dumping and countervailing system. The system is administered by the Anti-Dumping Commission and policy responsibility sits with the Portfolio Strategic Policy Division. The system provides Australian manufacturers with the ability to apply for anti-dumping and/or countervailing duties where they have experienced injury from dumped and/or subsidised goods being imported into Australia. In recent years, there have reports on streamlining Australia's anti-dumping laws and, in particular, its anti-circumvention framework in relation to anti-dumping measures.

7.8. Department of Health

The Department of Health (DOH) has a diverse set of responsibilities, based on a common purpose which is reflected in its vision statement: "Better health and wellbeing for all Australians, now and for future generations."⁹⁹

It aims to achieve its vision through strengthening evidence-based policy advice, improving program management, research, regulation and partnerships with other government agencies, consumers and stakeholders.

A number of agencies of the DOH have particular responsibilities in respect of imports and exports of specific categories of goods.

National Industrial Chemicals Notification and Assessment Scheme (NICNAS)

NICNAS helps protect the Australian people and the environment by assessing the risks of industrial chemicals and providing information to promote their safe use. Its focus is the industrial use of chemicals. This covers a broad range of chemicals used in inks, plastics, adhesives, paints, glues, solvents, cosmetics, soaps and many other products.

The laws which it administers, amongst other things:

- compel commercial importers and/or manufacturers to notify industrial chemicals that are new to Australia, and
- ensure that Australia meets its obligations under international agreements about chemicals.

Therapeutic Goods Administration (TGA)

The *Therapeutic Goods Act 1989*, administered by the TGA, applies to both the supply of therapeutic goods in Australia and the export of therapeutic goods from Australia.

Most products for which therapeutic claims are made must be listed or registered in the Australian Register of Therapeutic Goods (ARTG) before they can be supplied in, or exported from, Australia.

Licences and permits are required to import and export certain narcotic drugs, psychotropic substances, precursor chemicals, antibiotics and androgenic/anabolic substances. These substances are controlled under the *Customs (Prohibited Imports) Regulations 1956* and the *Customs (Prohibited Exports) Regulations 1958*.

7.9. Productivity Commission

The Productivity Commission is an advisory body. It does not administer government programs or exercise executive power. It contributes by providing independent advice and information to governments, and on the communication of ideas and analysis.

The Commission is an agency of the Australian Government, located within the Treasury portfolio. However, its activities cover all levels of government and encompass all sectors of the economy, as well as social and environmental issues.

The core function of the Commission is to conduct public inquiries at the request of the Australian Government on key policy or regulatory issues bearing on Australia's economic performance and community wellbeing. In addition, the Commission undertakes a variety of research at the request of the Government and to support its annual reporting, performance monitoring and other responsibilities. At any point of time, its remit may cover importing and exporting issues affecting a range of industry sectors.

Recently completed research includes “Developments in Anti-Dumping Arrangements” and “Rising Protectionism”. The “Developments in Anti-Dumping Arrangements” is research paper was released on 29 February 2016 and provides an economic stocktake of recent anti-dumping activity and the changes to Australia's anti-dumping system since the Commission's 2009 report. Amongst other things, it looks at the reasons for the recent increase in the usage of anti-dumping measures, analyses key recent changes to system requirements, and discusses the implications for the future evolution of the system.¹⁰⁰ The objective of the “Rising Protectionism” research project was to assess the impacts on Australia of possible international shifts in trade policy towards a more protectionist stance and implications this has for Australia’s trade policy.¹⁰¹

7.10. Department of Prime Minister and Cabinet

The Department of Prime Minister and Cabinet (DPMC) provides advice and support to the Prime Minister, the Cabinet, Portfolio Ministers and Assistant Ministers to achieve a coordinated and innovative approach to the development and implementation of Government policies. It coordinates and develops policy across the Government in economic, domestic and international issues, Aboriginal and Torres Strait Islander affairs and public service stewardship.

International policy is the Government’s response to global issues that affect Australia’s interests and people. DPMC advises the Prime Minister on Australia’s bilateral relations with other countries as well as the country’s role in global and regional cooperation. It contributes to outcomes on overseas trade, foreign aid and development, and international security on behalf of the Government and for the Australian community.

DPMC works with the DFAT and other government agencies with international responsibilities, as well as with business and community groups and non-government organisations. The objective is to ensure that different areas of the Australian Government are all working toward the same international goals, and are in step with the expectations of the Australian public.

7.11. Department of Defence

The matters dealt with by the Department of Defence (DOD) include:

- international defence relations and defence co-operation
- defence scientific research and development
- defence procurement and purchasing
- defence industry development and co-operation.

Within DOD, Defence Export Controls (DEC) is responsible for regulating the export of defence and strategic goods and technologies.

These goods and technologies include:

- Military items designed or adapted for military purposes or those that are inherently lethal, incapacitating or destructive; and
- Commercial items and technologies that may be used or adapted for use in a military program or contribute to the development and production of chemical, biological or nuclear weapons systems.¹⁰²

Australia's export control policies are in place to enable the export of defence and strategic goods where it is consistent with Australia's national interests and international obligations.

The export control system is the means by which this consistency is ensured.

DEC's mission is to enable the responsible export of defence and strategic goods and technologies by:

- providing early advice to producers and developers on the control status and exportability of their good, service and technology
- issuing permits and licences for controlled exports
- delivering outreach programs to enable exporters to meet their obligations under relevant Australian regulations and legislation
- contributing to Australia's international efforts to prevent the proliferation of weapons of mass destruction through participation in multilateral non-proliferation and export control regimes
- authorising end-user and non-transfer certificates for the import of controlled defence and strategic goods, and
- providing assistance with re-transfer approvals for foreign-sourced defence items.¹⁰³

These operations of DEC in regulating the export of defence and strategic goods and technologies necessarily impact and will be impacted by the work of the ANCTF.

8. Industry Priorities and Ambitions

8.1. Industry Workshops & Outcomes

A series of workshops was held in March 2017, with invited industry stakeholders in Brisbane, Sydney and Canberra. A subsequent web-based session was also conducted. In total, 17 representatives of 10 businesses and 6 trade associations (including representatives of 4 of the 5 associations constituting the governing board of the AITTIDF) took part in workshop discussions. Several of the participants noted that they had themselves represented their organisations at meetings of the ANCTF, and were therefore very familiar with its operations, while others were less so.

Participants were provided with a brief presentation on the background to the TFA and its provisions, in particular those relating to NCTF, as well as an overview of ANCTF history and current operational parameters. Participants were informed of the project survey (see below) and asked to provide their input. Workshop discussions were free-ranging, and the following is a synopsis of the comments received.

General observations

Australia's cross-border clearance arrangements are relatively efficient and the regulatory facilitation of trade is already considered to be at a high level.

While there is considered to be some room for improvement in relation to Australia's level of trade facilitation, the opportunities for improvement are far more limited than in developing countries.

It is noted with concern that Australia has recently declined in the rankings on the World Bank's Logistics Performance Index.

ABF is clearly taking its responsibilities under the TFA framework seriously. At the same time, however, it is struggling with its complex internal re-organisation which could potentially have a negative impact on trade facilitation. The ANCTF may prove to be a good avenue to assist the ABF in its efforts.

There is some concern that the strategic direction being taken by ABF (current and future focus on homeland security, immigration, organized crime) may detract from its focus on trade issues, particularly the facilitation of legitimate trade.

Import trade facilitation issues are not considered to be as urgent as export issues in eyes of industry - exporters have more to be concerned about, some of these topics are broader than those addressed by the TFA.

Some industry members are concerned that the government will simply "tick the boxes" of the TFA treaty requirements and say that Australia complies, without seriously engaging in reform efforts.

There is concern that DIBP sees the ANCTF more as a sounding board than a results-focused body, although it was noted that business shares in the blame, as it does not take the opportunity to advocate as much as it can and should. Industry therefore need to see the ANCTF as an opportunity to re-engage.

It was noted that the DAWR Cargo Consultative Committee (DCCC) works well and may be a good model for ANCTF. In addition, the DCCC should consider its involvement in TFA-related issues, thereby improving inter-agency cooperation and coordination.

ANCTF has the potential to improve the ability of industry and ABF to interact productively. To this end, having oversight at a higher level was seen as desirable.

ANCTF provides industry with an opportunity to work with government agencies in ensuring that meaningful reform becomes a reality rather than mere rhetoric.

When ANCTF was initiated, several agencies were actively involved, but active participation has dwindled down to DIBP and DFAT, with DIBP clearly the driver.

The ANCTF agenda appears to be straightjacketed by its member agencies and the scope of the TFA. However, significant issues that impact trade are seen to fall outside those parameters (e.g. trade and transport infrastructure).

Recommendations on ANCTF governance and operations

The mandate/scope of activity needs to be better defined. If it is to be limited to the TFA agenda, then that should be clearly stated. Similarly, if there is an opportunity for other issues to be introduced (by both industry and government), then the parameters should be clearly communicated.

In a similar vein, it was suggested that the accountabilities, responsibilities and decision-making capacity of the ANCTF and its members should be clearly identified. In addition, the lines of reporting (within and across agencies and industry) should be transparent.

It may be prudent for the ANCTF meeting cycle to be aligned with the budget cycle. That would particularly facilitate discussion of any issues that are likely to have a budgetary impact.

ANCTF leadership should be elevated to a higher level, given that it is purported to be Australia's highest forum on trade facilitation. This could involve elevation to the Office of the Prime Minister.

The private sector needs to have more of a role in setting the ANCTF agenda in order to better promote private sector consensus. This may involve pre-meetings within the private sector prior to plenary. It was also noted that this could be achieved independent of government agency endorsement.

Several commentators noted that the ANCTF needs to establish mechanisms that demonstrate accountability over time (metrics, measurable outcome criteria required), and recommended that a long-term strategy be agreed and adopted.

A shift is required from a traditional "Customs-centric" approach to a broader collaborative approach—ABF in focus for Customs issues, but other agencies for others—yet all within one ANCTF committee. In this regard, it was suggested that DIBP/ABF appears happy to drive the Committee and other agencies are happy to sit back and let them do the driving.

It was suggested that ANCTF should explore linking with other NCTFs to enhance the visibility of issues in goods flows between countries. Such an approach should initially focus on significant trading partners that are jointly identified by government and industry.

Recommendations on ANCTF topics for consideration

Industry-focused improvements in the end-to-end trade process, for example, using export data for import transactions should be explored. It was felt that such initiatives are all too readily placed in the “too hard” or the “let’s wait and see what the rest of the world does” basket.

It was suggested that the concept of “data matching” (advance manifest) could usefully be explored by the ANCTF.

Specific operational issues that are widespread, significant and ongoing could be placed on the agenda, provided such issues were addressed at a sufficiently strategic level. For example: issues involving trade from China such as systemic undervaluation; improving data accuracy.

Optimising methods of information dissemination to enhance informed compliance. For example: improving access to Australian border-related procedures to make them more “user-friendly”, and a system of linkages to similar information in other countries; regular dissemination of common trade compliance errors which can be readily corrected if identified.

True self-assessed clearance that may involve a simplified entry or no entry would be worthy of discussion. This could be incorporated into a broader consideration of “next steps’ in relation to the Trusted Trader programme.

Industry-initiated thoughts on ways in which government agencies could better cooperate and coordinate their activities. This may include, for example, DAWR assuming the role of client manager for Trusted Traders that primarily deal with biosecurity-related goods.

Maximising the benefits of e-commerce to facilitate trade.

8.2. Industry Survey & Outcomes

An online survey was developed (see Annex 5) intended to elicit industry responses on questions relevant to the ANCTF. These questions were formulated to cover the same general scope as the WTO member survey (discussed in Section 6 above), but with a specific focus on the private sector. The survey was primarily distributed by e-mail via the five AITTIDF governing board associations to their membership. The response period ran from March through June 2017. However, the survey only generated a total of 25 complete and 2 partial responses. No valid statistical results can be drawn from the small number of respondents. However, it is considered useful to include a synopsis of the responses received.

In the first question, respondents were asked to consider the costs and efficiency of international trade as experienced by their business, and describe up to three areas for improvement. Results to this question were wide-ranging and included costs associated with service providers, production for overseas markets and general administration. Question 2 had a specific focus on Australia’s import/export laws and procedures, with respondents being asked to describe up to three changes they would like considered to reduce their costs or improve the efficiency of international trade. Responses to this question were also wide-ranging, but showed a clear trend toward “streamlined” import processes, simplified documentation, simplified rules of origin and better collaboration between agencies with border authority.

A number of questions then specifically dealt with the ANCTF. In question 3, over half the respondents indicated that they were aware of the existence of the ANCTF prior to the survey, and of those, two-thirds had been directly involved in ANCTF consultations.

With regard to ANCTF governance, question 4 asked whether the ANCTF's basis of authority should be enshrined in a legal framework, with 56% indicating that it should be. When asked (question 5) about the extent of the role to be taken by the private sector in the ANCTF, a single respondent indicated that the private sector should have an advisory role only, while the majority felt that the private sector should either have an equal status with government representatives in setting the agenda and determining the outcomes of ANCTF sessions (74%) or should take the lead role in this regard (22%).

Question 6 asked who should chair the ANCTF, with 67% of respondents indicating that this should be held by a government agency, and 30% indicating that a private sector organisation should chair. Of those recommending a government agency, some two-thirds indicated that DFAT should have the chair, with others nominating DIBP/ABF. There was no clear stand-out among the responses for a private sector chair. As to whether the ANCTF chair should be rotated (question 7), responses were split down the middle, with no clear preference for or against. Among those for rotation, comments indicated a slight preference for a two-year term and for democratic elections. When asked about the option of joint chairs (question 8), a slight majority came out against the idea; among those who supported a joint-chair option, there was no clear consensus as to who should be appointed.

In question 9, relating to transparency, respondents were asked whether the ANCTF should make public its TOR, membership, mission/goals/objectives, and make periodic reports on its activities. Respondents were unanimous in answering "yes" to this question.

Question 10 asked whether the scope of the ANCTF should be limited to that outlined in Article 23.2 of the TFA, or be extended to a wider trade facilitation agenda, to which the majority (82%) indicated support for a broader agenda.

In relation to questions 11 and 12, which focused on funding and administration of the ANCTF, a majority (70%) of respondents felt that funding should be the responsibility of the government alone, while 30% preferred a combination of government and private sector funding. For the ANCTF secretariat, a majority of respondents thought that government could provide these services directly (52%) - with several indicating that this should be a DFAT responsibility, while 41% indicated that an independent secretariat should be established.

In question 13, respondents were asked to consider where ANCTF meetings should be held; the majority of respondents (63%) preferred a neutral venue, such as a hotel or university, while the remainder generally preferred a government (30%) venue. In terms of frequency of ANCTF meetings (question 14), the majority of respondents (41%) preferred a quarterly or twice-yearly (30%) schedule, with 18% indicating a preference for monthly or bimonthly meetings.

Question 15 asked respondents to indicate whether additional government agencies not currently represented in the ANCTF should be invited to participate. The question specifically indicated seven such agencies:

- i. Office of Transport Security
- ii. Department of Environment
- iii. Department of Finance
- iv. Department of Health

- v. Digital Transformation Office
- vi. Infrastructure Australia
- vii. State government agencies.

56% of respondents considered that OTS should be involved, 41% supported Infrastructure Australia's involvement and there was a lesser degree of support for others. Respondents indicated that other agencies to be considered should include the Anti-Dumping Commission and infrastructure and transport-related agencies at the state level.

In question 16, respondents were asked to indicate whether private sector organisations not currently represented in the ANCTF should be invited to participate, with the following being specifically named.

- i. Representatives of the insurance industry
- ii. Representatives of the finance industry
- iii. Port/airport operators
- iv. Private laboratories/certification agencies

56% indicated that port/airport operators should be involved, and a small number of respondents supported the involvement of the remaining groups. Other suggestions included the Australian Food and Grocery Council and National Farmers Federation.

In question 17, respondents were asked whether the ANCTF should actively liaise with NCTFs in key trading partner countries and with any Regional Committees for Trade Facilitation. Responses to this question were highly favourable, with 93% indicating "yes".

Finally, question 18 asked whether the ANCTF should actively engage in consultation between government and the wider business community, and if yes, by what means. 96% answered "yes", with suggested means of consultation including:

- i. Permanent consultative committees (37%)
- ii. Centres of excellence or expertise (41%)
- iii. Network of subject-matter experts (52%)
- iv. Peer-to-peer groups (26%)
- v. Implementation working parties (48%)
- vi. Conferences (33%)
- vii. Via private submissions and suggestions (4%)

9. Summary of Findings

9.1. Membership

ANCTF

Public Sector

The ANCTF currently has the following six Commonwealth Government agency members: Department of Immigration and Border Protection/Australian Border Force; Australian Trade Commission (Austrade); Department of Agriculture and Water Resources; Department of Foreign Affairs and Trade; Department of Industry, Innovation and Science; Department of Infrastructure and Regional Development.

Private Sector

It currently has the following 13 private sector organisation members: American Chamber of Commerce in Australia; Australian Chamber of Commerce and Industry; Australian Federation of International Forwarders; Australian Industry Group; Board of Airline Representatives of Australia; Conference of Asia Pacific Express Carriers; Customs Brokers and Forwarders Council of Australia; Export Council of Australia; Federal Chamber of Automotive Industries; Food and Beverage Importers Association; Freight and Trade Alliance; International Network of Customs Universities; Shipping Australia Limited.

International Comparisons

Public Sector

UNECE Recommendation No.4 notes that one of the three main actors in an NTFB is the public sector – “all relevant government trade-related agencies”- specifically:

- Commerce or trade and their agencies (for example export development agency)
- Transport/roads/railways/waterways/ infrastructure and their agencies including Sea and Land Port agencies and others
- Finance/planning/economic development/industry ministries and their agencies including central banks, and others
- Customs agencies
- Government foreign trade institutes and think tanks
- Standards and accreditation organizations

UNESCAP’S 2007 Study on National Coordination Mechanisms for Trade and Transport Facilitation in the UNESCAP Region recommended that the membership of the coordination mechanism comprise representatives of all organizations involved in international trade and transport. These organizations, from the public sector, could include (but not necessarily be restricted to):

- Trade regulatory authority (most often, ministry of commerce or trade)
- Transport regulatory authority (most often, ministries of transport)
- Other government regulatory or planning authorities (e.g. ministry of finance, ministry of planning, ministry of interior, ministry of defence, ministry of agriculture, ministry of health, ministry of industry, ministry for ICT, customs authority, immigration authority, border

guards, traffic police, transport management authority, authorities for quarantine/product quality control, central bank).

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

The WTO notes that it is important to secure the right membership for an NCTF, and, in terms of public sector members, those seen as most important were reflected in the survey results (see Section 6.3.3 above), which indicated that agencies in NCTFs almost always include customs, agriculture, foreign trade and finance, with most countries also including transport/infrastructure, health (animal/plant/human), and the government agency responsible for commerce/industry.

Private Sector

Another consistent theme across the international organisations is that it is essential to involve the private sector – e.g. Recommendation 10 of the 2015 UNCTAD “National Trade Facilitation Bodies in the World” report.

UNECE Recommendation No.4 notes that the other two of the three main actors in an NTFB are:

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

UNESCAP’S 2007 Study on National Coordination Mechanisms for Trade and Transport Facilitation in the UNESCAP Region recommended that the membership of the coordination mechanism include the business sector, specifically chambers of commerce, transport associations, trading banks, and associations of insurance companies, Customs agents and freight forwarders.

The WTO survey (see Section 6.3.3 above) noted that 98% of members responding indicated that their NCTF’s involved the private sector, including both traders (importers, exporters) and service providers (e.g. forwarders, transport providers, brokers). The WTO also noted that an inclusive approach to allowing stakeholders to take part appears to be a success factor in NCTFs, but cautions on going too far in terms of inclusiveness, as this can have a negative impact on the NCTF’s level of efficiency, and impede the committee in its ability to come to consensus on decisions.

Australian Private Sector Perspectives

With regard to membership, as noted above, the ANCTF already includes a range of both public and private sector organisations. In the survey of Australian private sector trade stakeholders, the focus was therefore on whether the current make-up of the ANCTF was adequate, and diverse enough, in the view of respondents.

In relation to Public Sector stakeholders, respondents indicated that the current representation of agencies on the ANCTF was appropriate, but indicated that the OTS and Infrastructure Australia should also be represented on the ANCTF.

When asked whether current private sector representation on the ANCTF is sufficient, respondents indicated that the addition of port/airport operators, the Australian Food and Grocery Council and National Farmers Federation to the current representatives would be appropriate.

Workshop participants were generally satisfied with the scope of representation, but noted that the Department of Agriculture's Cargo Consultative Committee (DCCC) works well, suggested that the DCCC could be represented on the ANCTF, which would further help to improve inter-agency cooperation and coordination on matters of trade facilitation.

Participants also welcomed the fact that the ANCTF provides industry with an opportunity to work with government agencies in ensuring that meaningful reform becomes a reality rather than mere rhetoric. They commented that, while the ANCTF has the potential to improve the ability of industry and ABF to interact productively, there was a need to ensure that representation was at a sufficiently high level.

Workshop participants further differentiated between participation and active participation, noting that, when the ANCTF was initiated, several agencies were actively involved, but active participation has dwindled down to DIBP and DFAT, with DIBP clearly the driver.

9.2. Mandate

ANCTF

Article 23.2 of the Trade Facilitation Agreement

Article 23.2 provides 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 the provisions of this Agreement."

Clause 1 of the ANCTF's TOR notes that its purpose is to "fulfil the obligations required by the World Trade Organization's Agreement on Trade Facilitation by providing the forum to facilitate both domestic coordination and implementation of the provisions of the World Trade Organization Agreement on Trade Facilitation."

Clause 1.1 defines the functions of the ANCTF:

The NCTF provides a forum for government and industry stakeholders to discuss strategic issues relating to trade facilitation affecting Australian industry stakeholders in the international trade environment. The NCTF will discuss opportunities for reform and improvements to Australia's domestic trade facilitation environment and engagement with the international trade environment.

For the purposes of the NCTF, trade facilitation refers to measures designed to expedite the movement, release and clearance of goods, including goods in transit. The NCTF will explore opportunities to improve trade facilitation including the delivery of efficiencies and deregulation at the border and any associated recommendations for policy, regulation or legislative change.

Clause 1.2 defines the responsibilities of the ANCTF:

The NCTF is responsible for facilitating and monitoring Australia's implementation of the World Trade Organization's Agreement on Trade Facilitation and to review and provide advice to the Australian Government on trade facilitation including:

- Emerging strategic issues in the international trade operating environment
- The tasking of issue specific working groups as required
- Opportunities to improve the international trade environment, including exploring opportunities to realise efficiencies and deregulation at the border
- Implementing established UN and WCO tools and guidelines
- Coordinating support to developing trade partners
- Roll back of existing protectionist measures especially non-tariff barriers
- Improvements to the global trade system for the emerging digital economy, and
- Any associated recommendations for policy, regulation or legislative change.

DIBP has proposed a re-draft of the TOR and the outcome will be subject to the deliberations of the Committee members.

Priorities

To date, there appears not to have been any overt effort to prioritise issues in terms of importance or urgency, or to characterise them by reference to specific aspects of the TOR. However, the list of the issues upon which the ANCTF has focused so far, which are set out in Section 4.2 of this report, provide an indication of the Committee's implied priorities.

Work Plan

The ANCTF does not appear to have articulated any defined work plan for the Committee as a whole but has established a number of Working Groups (effectively sub-committees of the full ANCTF membership) to focus on a number of areas for future work. Initially, they were the SWWG, the RRWG and the LWG. Following the October 2017 meeting of the ANCTF, they now appear to be the LWG, RRWG, CAG and TFIWG. The issues addressed by these groups are described in Section 4.3 of this report.

Under the ANCTF TOR, the establishment of these Working Groups is at the discretion of the Chair of the ANCTF. The criteria used to justify the establishment of these and any future Working Groups, however, have not been publicised. Although the LWG TOR were updated and circulated to LWG members on 7 November 2016, there is otherwise little transparency about the TOR and membership of the respective Working Groups.

Outcomes

The outcomes of the ANCTF to date are described in Section 4.4 of this report. The most substantive output has been its initiation of the production by DFAT/DIBP of a document titled "NCTF Discussion Paper – Australia's Compliance with the ATF", ostensibly to provide an article-by-article outline of how Australia complies with the TFA. In this regard:

- While the Discussion Paper was apparently circulated to ANCTF members on 7 November 2016, several members did not receive it;
- the Discussion Paper does not address Australia’s compliance with the TFA on an article-by-article basis, as intended;
- at the November 2016 ANCTF meeting, it was agreed that DFAT would coordinate the provision of examples with further detail of Australia’s compliance with individual TFA items with a view to focusing on those where Australia’s performance could be further improved.
- At the October 2017 ANCTF meeting, DFAT presented a “spider diagram” report by the OECD on Australia’s trade facilitation performance. While informative, the meeting agreed that the report did not provide the requested analysis and the Chair committed DIBP to coordinating responses from all relevant agencies to provide evidence of Australia’s compliance with the relevant articles of the TFA.

International Comparisons

Article 23.2 of the Trade Facilitation Agreement

As noted in Section 5.1.4, in 2015, the ITC, in collaboration with UNCTAD and UNECE, published its report “National Trade Facilitation Committees – Moving Towards Implementation”. This guide provides developing countries with a step-by-step approach to evaluate policy, organizational and funding options to create a detailed roadmap to set up NCTFs pursuant to Article 23.2.

After noting that the stated aim in Article 23.2 of the TFA is to facilitate ‘domestic coordination’ and ‘implementation of provisions of this Agreement’, the guide provides the following explanations of those aims:

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

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

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

That description helps define the minimum mandate for the ANCTF. However, the ITC makes the salient point that such a minimum mandate should not necessarily suffice. Step 1 of its recommended steps in forming an NCTF is to define the mandate:

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

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

Guidance on some of the “Article 23.2 Plus” roles of an NCTF can be found in Section 5 of this report. As noted there, the promulgation of NTFBs by international organisations such as UNECE, UNCTAD and UNESCAP, and the creation of NTFBs in various forms by numerous countries, pre-dated the WTO's Trade Facilitation Agreement. Accordingly, the mandate of many of those bodies does not necessarily reflect the terms of Article 23.3, unless expressly updated in recent years to do so. This fact establishes, however, that, even before Article 23.2 required the creation of NCTFs by WTO members, there were sound reasons for international organisations to promote, and for numerous countries to create, NTFBs. The mandates of those NTFBs therefore warrant consideration in the context of the preferred mandate for the ANCTF.

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

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

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

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

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

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

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

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

UNCTAD's 2015 publication "National Trade Facilitation Bodies in the World" notes its first recommendation as:

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

UNESCAP's 2007 "Study on National Coordination Mechanisms for Trade and Transport Facilitation in the UNESCAP Region" incorporated several recommendations including the following:

Purpose

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

Role

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

Functions

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

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

- (l) To review the international conventions relating to trade and transport facilitation and provide advice to national government on accession to the conventions;
- (m) To monitor and coordinate the implementation of the acceded international conventions relating to trade and transport facilitation;
- (n) To monitor the dissemination of information to the trading and transport communities on changes or revisions to border control procedures and documentation;
- (o) To organize workshops and seminars on facilitation of international trade and transport; and
- (p) To serve as national focal points for international facilitation programmes and assistance.”

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

Having a clear mandate from the outset, which establishes the NCTF as the coordinating body for the implementation of the TFA and clearly identifies its objectives, saves the NCTF time and effort by creating understanding among the members of the committee as to its purpose. This, in turn, can assist committee members when articulating the objectives of the NCTF to their own constituencies. Once a clear mandate is in place and all actors coalesce their efforts around it, devising a clear structure and roadmap becomes easier, which in turn contributes to a well-functioning NCTF.¹⁰⁴

Whether the NCTF’s mandate should be limited to the member’s TFA activities, or extends to a broader agenda, is a question which the WTO has looked at, and appears to be neutral on, while noting that members which have already implemented most of the TFA’s Section I obligations will have an easier time of dealing with a broader agenda than will those members who have not yet done so.¹⁰⁵ The WTO’s survey results did, however, indicate that a majority of members had implemented a mandate for their NCTF which went beyond the TFA.

Work Plan

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

“31. The development of the work programme should be undertaken in consultation with all stakeholders and other interested parties. These actors should be encouraged to formulate their views using tried-and-tested techniques such as workshops, seminars, or "brainstorming" sessions. The results would then be presented to the NTFB. The work programme needs to be flexible enough to take into account issues that might arise which could not have been anticipated.”¹⁰⁶

UNESCAP’s 2007 “Study on National Coordination Mechanisms for Trade and Transport Facilitation in the UNESCAP Region” included the following recommendation in relation to work programs:

It is recommended that each facilitation body have a detailed annual work programme setting out the objectives, expected outputs and schedule of its major activities.”¹⁰⁷

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

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

What an NTFB does and how it performs goes to the very heart of its external reputation. The business plan is therefore linked closely to reputation. This means a good work programme should include realistic timeframes and schedules to achieve goals, as well as concrete actions and initiatives to meet the goals, with clear responsibilities for all members.¹⁰⁸

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

Outcomes

UNCTAD's 2015 publication "National Trade Facilitation Bodies in the World" includes the following recommendation:

Establish monitoring and evaluating mechanisms to measure results. For a well-functioning trade facilitation body, presenting concrete results and/or monitoring results is considered essential. However, only a few trade facilitation bodies use these kinds of tools in a systematic way. There is a need, therefore, to develop evaluation and monitoring techniques adapted to the needs of trade facilitation bodies.¹⁰⁹

The WTO notes the importance of showing accountability for the success of an NCTF, suggesting that "concretely demonstrating that the national committee is having a positive impact on trade facilitation reform and delivering benefits for stakeholders" is critical to the success of the committee; this includes instituting a "results-based ethos into committee members from the outset and to include an effective system of measurement and monitoring as an important part of the committee's operational procedures".¹¹⁰

Australian Private Sector Perspectives

Mandate (Article 23.2 of the TFA or beyond)

On the question of whether the scope of the ANCTF should be limited to that outlined in Article 23.2 of the TFA, or be extended to a wider trade facilitation agenda, a substantial majority of respondents indicated support for a wider trade facilitation agenda than just TFA implementation.

Workshop participants indicated that the ANCTF agenda appears to be straightjacketed by its member agencies and the scope of the TFA. They noted that some significant issues that impact trade and its facilitation are seen to fall outside those parameters and are likely to be overlooked without the active participation of responsible agencies. One particular issue of concern was trade and transport infrastructure.

In a similar vein, participants noted that the ANCTF should move from a traditional "customs-centric" approach to a broader multi-agency collaborative approach which sees DIBP/ABF in focus for Customs issues, but other agencies for others. In this regard, it was suggested that DIBP/ABF

appears happy to drive the Committee and other agencies are happy to sit back and let them do the driving.

Participants further considered that the mandate and scope of activity need to be better defined. They noted that, if the mandate/scope is to be limited to the TFA agenda, then that should be clearly stated. Similarly, if there is an opportunity for other issues to be introduced (by both industry and government), then the parameters should be communicated overtly.

Priorities

In terms of priorities for the ANCTF's work program, a number of private sector participants in the workshops (as well as respondents to the survey) expressed a focus on streamlining and simplifying end-to-end import and export processes, including in cooperation with countries on the other end of particular international trade lanes. Simplified import entry and genuine self-assessed clearance arrangements were also identified as matters of interest, which may involve a simplified entry or the elimination of entries, noting that this could be incorporated into a broader consideration of "next steps" in relation to the Trusted Trader programme. It was felt that such initiatives are all too-readily placed in the "too hard" or the "let's wait and see what the rest of the world does" basket.

Workshop participants suggested that industry-initiated thoughts on ways in which government agencies could better cooperate and coordinate their activities should be considered by the ANCTF, noting that currently the focus was more a briefing on what agencies themselves were doing to achieve this. It was suggested that this may include, for example, DAWR assuming the role of account manager for Trusted Traders that deal primarily with biosecurity-related goods.

Participants also indicated the need to optimise methods of information dissemination to enhance informed compliance, particularly improving access to Australian border-related procedures to make them more "user-friendly", and a system of linkages to similar information in other countries.

Workshop participants further commented that operational issues that are widespread, significant and ongoing could be placed on the agenda, provided such issues were addressed at a sufficiently strategic level. For example: issues involving trade from China such as systemic undervaluation; improving data accuracy.

Work Plan and Outcomes

Industry workshop participants favoured the development of a long-term strategy, a clear agenda, and periodic reporting of progress. Several participants commented on the need for the ANCTF to focus on follow-up and accountability over time, noting that metrics and measurable outcome criteria would be required, and recommended that it adopt a long-term strategic perspective.

Survey respondents were unanimous in indicating that the ANCTF needs to be transparent and communicative, making its mission, goals, and objectives public, and making publicly available periodic reports on its activities

9.3. Governance

ANCTF

Constitution/Legal Base

The ANCTF does not depend upon and is not supported by any legislative base, but rather has been established under Federal Government administrative arrangements.

Form

The ANCTF consists of a single committee constituted by all of the public and private sector representatives, with initially three Working Groups – the LWG, the RRWG and the SWWG – but now apparently four Working Groups – the LWG, the RRWG, the CAG and the TFIWG - reporting to it, these having been constituted by volunteers from within and outside the main committee.

Terms of Reference

The ANCTF's TORs are at Annex 4 of this report and are discussed in Section 9.2 above. A proposed re-draft of the TORs is currently under consideration by ANCTF members.

Chair

The Chair of the ANCTF is the Deputy Comptroller-General of Customs (a position held by the Deputy Secretary, Policy of DIBP) or, as a delegate, First Assistant Secretary, Traveller, Customs and Industry Policy Division of DIBP. The TORs do not contemplate fixed finite terms or rotation of the Chairmanship.

Hosting

Meetings of the ANCTF are hosted by DIBP which also provides the Secretariat. From July 2018, it is anticipated that hosting will be provided by DHA. Meetings to date have been held at offices of the ABF or at hotels.

Accountability/Reporting

Clause 2.1 of the ANCTF's TORs provides that one its Governing Principles is:

Accountability - the NCTF will be accountable for its recommendations. All recommendations must be objective, transparent and open to external scrutiny.

Clause 1.2 notes that: "The deliberations of the NCTF and any recommendations it makes will be reported to the Secretary of the Department of Immigration and Border Protection and/or the Commissioner of the Australian Border Force for their consideration and action as appropriate."

Funding

The Secretariat and meetings costs are met by the DIBP budget. The size of that budget and any limitations on it in future have not been disclosed to members of the ANCTF. It is assumed that the cost of attendance by public sector representatives (including at interstate meetings) is met by the budget of their employing agency. Private sector representatives meet the costs of attendance either personally or through the budget of the organisation they represent.

Meeting Frequency

Clause 3.1 of the ANCTF's TORs provides that the NCTF will meet twice per calendar year, on a rotation basis across locations, as agreed by members and that extraordinary meetings may be scheduled at the discretion of the Chair.

The last meeting was held in Canberra in October 2017. The previous meeting was held in Melbourne in November 2016. The next meeting is scheduled for 27 March 2018 in Sydney.

Communication

One of the Governing Principles espoused in Clause 2.1 of the ANCTF's TORs is:

Engaging/Communicative – the NCTF will ensure relevant information is available to members and the general public.

Clause 3.3 of the TORs provides that: "The Secretariat will communicate relevant information to NCTF members and provide updates on ongoing issues to NCTF members between NCTF meetings. The Secretariat will maintain a NCTF website presence to provide relevant information to the general public."

Internal communication from the Secretariat to members was originally by email. Meeting agendas, minutes of meetings and supporting documents have also been made available by email. In 2016, the Secretariat advised that, in future, key documents would be posted on the NCTF page of Govdex, the secure online collaboration portal for the Australian Government. Some documentation is currently available on that page but the collection of documents is incomplete, and members are unaware of documents being uploaded to the page unless specifically advised.

Communication to and amongst members via Govdex has proven to be inefficient and the cataloguing of documents on Govdex has been confused. The October 2017 meeting of the ANCTF agreed that, in future, communication will be by email, that Govdex will remain the repository of relevant documents but that more efficient naming protocols will be adopted to facilitate navigation of documents within Govdex.

Access to Govdex is not available to the public; the Secretariat's strategy for communication with the public is unknown.

Collaboration with Regional NCTFs

Apart from Clause 1.2 of the TORs noting that one of the responsibilities of the ANCTF is "Coordinating support to developing trade partners", the TORs are otherwise silent on the prospect of any relationship with other NCTFs.

International Comparisons

Constitution/Legal Base

The 2006 UNCTAD publication "Trade Facilitation Handbook: Part 1 – National Facilitation Bodies: Lessons from Experience" notes that:

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

The 2014 UNCTAD publication “National Trade Facilitation Bodies in the World” includes the following recommendation:

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

The 2011 UNESCAP “Guidelines on Establishing and Strengthening National Coordination Mechanisms for Trade and Transport Facilitation in the ESCAP Region” note that it is desirable to have an appropriate mandate in the form of a legal basis for these institutions to be effective and sustainable over time. Experience has shown that without an appropriate legal basis, these institutions may have a difficulty in sustaining themselves for a long period of time:

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

The 2015 ITC report “National Trade Facilitation Committees – Moving Towards Implementation” comments on defining the governance and legal structure:

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

The WTO highlighted the need for a strong institutional framework for the NCTF, but stated that the legal basis for the ANCTF is in large part a function of the country’s overall cultural and legal framework; of the WTO survey respondents, a minority had anchored their NCTF formally in law, while in a substantial proportion the NCTF had been instituted by decree or other ministerial actions.¹¹¹

Form

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

At the strategic level would be the *Board* of the NTFB. They would be responsible for implementing the trade facilitation plan (policy and priorities) advised by the Lead Agency that established the NTFB, whether this be from the government (as envisaged by the World

Trade Organization in its Trade Facilitation Agreement – Article 23.2), the private sector or a partnership between trade and government. The Board would set the work programme of the NTFB and report back to the Lead Agency on its activities with any proposals, recommendations or other outcomes;

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

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

The 2006 UNCTAD publication “Trade Facilitation Handbook: Part 1 – National Facilitation Bodies: Lessons from Experience” recommends a three-tiered structure comprised of the main or whole committee, the steering committee and working group(s).

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

UNESCAP’s 2007 “Study on National Coordination Mechanisms for Trade and Transport Facilitation in the UNESCAP Region” includes the following recommendation relating to Form:

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

The study also recommends that the organizational structure of the national trade/transport facilitation coordination mechanism be adapted from the structures shown in Figures 6.1 or 6.2. These figures portray multilevel structures featuring, in the case of Figure 6.1, a National Trade and Transport Facilitation Body, Trade and Transport Facilitation Sub-Bodies and Specialist Working Groups.

The 2015 ITC report “National Trade Facilitation Committees – Moving Towards Implementation” comments:

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

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

Terms of Reference

The 2015 UNCTAD publication “National Trade Facilitation Bodies in the World” recommends:

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

The 2015 ITC report “National Trade Facilitation Committees – Moving Towards Implementation” discusses the importance of establishing clear terms of reference, including the extent of the body’s independence:

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

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

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

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

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

Chair

The 2006 UNCTAD publication “Trade Facilitation Handbook: Part 1 – National Facilitation Bodies: Lessons from Experience” recommends:

The chair should be a senior and influential government official with the necessary inter-agency networking capacity, or the president of a business association who has a voice in the industry. If the private sector is to take the lead, the legal framework for formalizing the committee should be in place. The tenure of the chair should be a minimum period of three

years. To ensure stability and long-term perspectives, an “extended chair system”, consisting of the incumbent, the previous chair and a vice chair who would succeed the chair, is advisable.

The 2011 UNESCAP “Guidelines on Establishing and Strengthening National Coordination Mechanisms for Trade and Transport Facilitation in the ESCAP Region” indicate that it is advisable that the Chairperson be the Minister for Transport or Commerce.

The 2015 UNCTAD publication “National Trade Facilitation Bodies in the World” recommends:

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

The 2015 ITC report “National Trade Facilitation Committees – Moving Towards Implementation” notes that:

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

As summarised in Section 6.3.4 above, the WTO dedicates a good deal of discussion to the importance of NCTF leadership. The WTO points out that the NCTF Chair should “be a robust champion for the committee” and set a clear direction, as “competing priorities and rivalries can have an extremely negative impact on a committee, paralysing its work and diminishing the chances of generating the cross-agency cooperation necessary for the implementation of the TFA.” The Chair acts also as a champion to promote the NCTF and its work, and plays a key role in establishing linkages, “to ensure visibility and public awareness of the NCTF’s role, both nationally and internationally”.¹¹²

Hosting

The 2015 ITC report “National Trade Facilitation Committees – Moving Towards Implementation” comments on the need to choose appropriate accommodation that reflects the body’s independence:

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

Accountability/Reporting

UNESCAP’s 2007 “Study on National Coordination Mechanisms for Trade and Transport Facilitation in the UNESCAP Region” recommended:

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

Closely tied with the issue of NCTF leadership, the WTO notes the importance of accountability and reporting (see Section 6.3.6 above) in the general sense, e.g. to the public, but does not go into detail about how the NCTF should formally report within a national governmental structure.¹¹³

Funding

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

The 2006 UNCTAD publication "Trade Facilitation Handbook: Part 1 – National Facilitation Bodies: Lessons from Experience" notes that:

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

UNESCAP's 2007 "Study on National Coordination Mechanisms for Trade and Transport Facilitation in the UNESCAP Region" recommended:

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

The 2015 ITC report "National Trade Facilitation Committees – Moving Towards Implementation" notes that:

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

The WTO notes that funding is important for the continuity of an NCTF, especially in the context of developing countries, and provides those countries guidance on obtaining funding;¹¹⁴ nevertheless the WTO survey indicated that almost half (47%) of the NCTFs did not have a permanent source of funding, but of those that did, most came from the national government.¹¹⁵

Meeting Frequency

The 2015 UNCTAD publication "National Trade Facilitation Bodies in the World" recommends:

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

UNESCAP's 2007 "Study on National Coordination Mechanisms for Trade and Transport Facilitation in the UNESCAP Region" recommended the following in respect of meeting frequency:

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

The WTO included the topic of meeting frequency in the survey of its members; the results indicated the majority scheduled meetings at least quarterly.¹¹⁶

Communication

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

The 2006 UNCTAD publication "Trade Facilitation Handbook: Part 1 – National Facilitation Bodies: Lessons from Experience" notes that:

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

The 2015 UNCTAD publication "National Trade Facilitation Bodies in the World" recommends:

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

As discussed more extensively in Section 6.3.6 above, the WTO notes that public communication of NCTF's activity is essential, and states that "Having a communication strategy in place from the outset allows committees to immediately and consistently communicate positive results and showcase the benefits of the committee's work".¹¹⁷

Collaboration with Regional NCTFs

The UNECE's Recommendation No.4 proposes the formation of a Regional Trade Facilitation Organization constituted by representatives of National Bodies. It suggests that the terms of reference could include:

- Monitor regional progress in trade and transport facilitation and to coordinate regional awareness raising activities

- Identify common barriers and inhibitors (technical, institutional or commercial)
- Identify common solutions and regional action required to solve existing problems
- Support the region-wide use of trade related standards, recommendations, tariff structures, electronic data interchange and other simplification tools and techniques.

The 2006 UNCTAD publication “Trade Facilitation Handbook: Part 1 – National Facilitation Bodies: Lessons from Experience” notes that:

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

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

UNESCAP’s 2007 “Study on National Coordination Mechanisms for Trade and Transport Facilitation in the UNESCAP Region” includes the following recommendations:

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

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

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

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

While Article 23 of the TFA strongly implies that one of the roles of the NCTF is to coordinate national TFA-related activities to the WTO’s own Trade Facilitation Committee, the WTO in its guidance to date does not focus on collaboration between the NCTFs of different members, while noting that they can play a role in regional economic integration.¹¹⁸

Australian Private Sector Perspectives

General Matters of Governance

Feedback from Australian industry on the topic of ANCTF governance did not indicate a preference for either continuation of the current administrative arrangements or the introduction of a legal framework.

Survey respondents generally indicated that the ANCTF should:

- Be funded by government and supported by a government-provided secretariat,
- Continue to be chaired by a government agency, with those who were of this opinion indicating that it should be chaired by either DFAT or DIBP/ABF,
- Hold its meetings at a neutral venue, and
- Hold meetings on a quarterly or twice-yearly basis, noting that it may be prudent for the ANCTF meeting cycle to be aligned with the budget cycle, thereby facilitating discussion of those issues that may have a budgetary impact.

There was broad support for ANCTF transparency, the consensus being that its TOR, membership, mission/goals/objectives, and activities should be published periodically and made available to the general public. In this regard, there was general industry support for active ANCTF engagement with both government and the wider business community, and that the establishment of a network of subject-matter experts, a centre of excellence, and the implementation of subject-focused working parties may be good methods of achieving this.

Responsibilities and Accountabilities

The majority of survey respondents and workshop participants indicated that the private sector should have an equal status with government representatives in setting the agenda and determining the outcomes of ANCTF sessions. In this context, it was noted that the private sector should adopt a more proactive role in setting the agenda in order to ensure that private sector views were appropriately addressed. Some suggested that the private sector should seek to obtain consensus on such matters, which may require pre-meetings of the private sector prior to plenary. It was also noted, however, that this could be achieved independent of government agency endorsement.

Workshop participants also indicated that the accountabilities, responsibilities and decision-making capacity of the ANCTF and its members should be clearly identified.

Collaboration with Regional NCTFs

Both industry workshop participants and survey respondents indicated a rather strong interest in having the ANCTF actively liaise with NCTFs in key trading partner countries and with relevant Regional Committees for Trade Facilitation. This would also serve to enhance the visibility of issues in goods flows between countries. It was noted that such an approach should initially focus on significant trading partners that are jointly identified by government and industry.

10. Observations and Recommendations

10.1. Membership

Observations - Public Sector

The current ANCTF membership includes a number of the key government agencies recommended by UNECE and UNESCAP – e.g. trade (DFAT and Austrade), transport and infrastructure (DIRD), customs (ABF), agriculture and quarantine (DAWR), immigration (DIBP) – but does not include the full breadth of agencies recommended by those bodies or included by some other countries in their NCTFs.

Of course, the range of public sector agencies that should be part of the ANCTF depends very much on the preferred charter of the committee (discussed below). An expansive charter will necessarily involve input from a wider range of government agencies. But regardless of the final position adopted on the preferred charter, the roles of certain other agencies would seem to warrant their participation in the ANCTF, either on a regular basis or an *ad hoc* issue-specific basis. Key amongst those agencies would be:

- OTS – as the transport security regulator for aviation and maritime transport, its work vitally impacts efforts to facilitate the means by which goods are imported to and exported from Australia.
- Infrastructure Australia – a significant number of its priority and high priority projects and initiatives involve creating or improving key transport corridors which affect the efficiency of the import and export of goods. Its work, and that of the ANCTF, if coordinated could ensure optimum outcomes from both.
- Productivity Commission – it is axiomatic that the outcome of effective trade facilitation is an increase in the productivity of the many sectors involved in international trade and, ultimately, of the wider Australian economy. In a general sense, the input into ANCTF deliberations of the Commission, whose remit is the enhancement of productivity, could be expected to be a positive contribution. But the Commission's participation would also be likely to have a very practical benefit because of its extensive experience with the detailed operations of various sectors of the Australian economy, and how they interact with each other – a breadth of vision which could not be expected from the other individual agencies on the ANCTF, but which could be invaluable in ensuring that proposed trade facilitation initiatives are effective and without unintended adverse consequences.
- DPMC – the potential effectiveness of the ANCTF is contingent on many factors, among which are the level of support it receives from the Government and the level of Government to which it is accountable. The higher the level, the greater the potential effectiveness. Overt support from the Prime Minister and accountability to the Prime Minister would likely optimise the effectiveness of the ANCTF.
- DOD – in a world of increasing military and counter-terrorist tensions, the control of trade in defence and strategic goods and technologies is vitally important. Australian industry is increasingly active in the import and export of such goods. In this context, DEC representation on the ANCTF would be prudent.

While the benefit of including these agencies in ANCTF membership is clear, other agencies or organisations could arguably also be considered for participation, at least on an issue-specific basis, such as those dealing with standards, film/literature classification, radiation, moveable cultural heritage and specific industry sectors such as wine, horticulture, etc. At the same time, it is important to heed the advice of the WTO which notes the potential trade-off between a fully inclusive membership and the committee's level of efficiency.

Recommendation 1 That the six current public sector members of the ANCTF (DIBP/ABF, Austrade, DFAT, DAWR, DIIS, DIRD) be retained and consideration be given to supplementing the committee's public sector membership with representation from the following, either on a permanent or *ad hoc* basis:

- Department of Prime Minister and Cabinet
- Office of Transport Security
- Department of Defence
- Productivity Commission
- Infrastructure Australia.

Observations - Private Sector

The 13 private sector organisations which are currently members of the ANCTF include groups representing traders, such as the Export Council, the automotive industry and food and beverage importers. They also include representatives of key trade services providers, such as customs brokers, freight forwarders, shipping lines, airlines and express carriers, along with a range of ancillary service providers with relevant expertise and experience, including chambers of commerce, academic institutions and advocacy groups.

When compared to the groups identified as likely participants by international organisations, or the groups actively participating in some other NCTFs, there are some conspicuous absences. Foremost amongst them are:

- a wider range of importer, exporter and shipper organisations,
- banks and other financial institutions,
- insurers,
- port, airport and container terminal operators,
- logistics companies,
- certification agencies, and
- technical software providers.

Advantage could also be gained from involvement of a wider range of chambers of commerce, industry associations and academic institutions. Again, however, a trade-off between a fully inclusive membership and the committee's level of efficiency must be considered. To some extent, this issue can be addressed by limiting attendance at plenary (as opposed to working groups) to one representative per organisation. Further, it may be appropriate to invite some organisations on an *ad hoc* basis.

Recommendation 2 That the 13 current private sector members of the ANCTF be retained, but restrict committee attendance to one representative per organisation; and consideration be given to inviting additional representation from the following sectors:

- a wider range of importer, exporter and shipper organisations,
- banks and other financial institutions,
- insurers,
- port, airport and container terminal operators,
- logistics companies,
- certification agencies, and
- technical software providers.

10.2. Mandate

Observations - Article 23.2 of the Trade Facilitation Agreement

The current TOR of the ANCTF make it clear that its primary purpose is to be the forum by which Australia complies with its obligations under Article 23.2 of the TFA. However, the TOR also provide for expanded functions which are expressed as broadly as discussing “strategic issues relating to trade facilitation in the international trade environment”, and providing “advice to the Australian Government on trade facilitation including: Emerging strategic issues in the international trade operating environment”.

It is pertinent to note that, in terms of its Article 23.2 obligations, the original draft of the TORs proffered by DIBP did not include reference to the requirement “to facilitate both domestic coordination and implementation of the provisions of the World Trade Organization Agreement on Trade Facilitation”. This express reference was inserted into the TORs upon the request of private sector representatives on the ANCTF. DIBP offered a draft revised TOR at the October 2017 meeting of the ANCTF but the final form of any revised TOR is still subject to deliberation by the ANCTF members.

Private sector representatives also took the view that, in order for the ANCTF to achieve its purpose under Article 23.2, it would need evidence of how the Australian Government purported to comply with each of the articles of the TFA. Accordingly, an article-by-article report was requested. In November 2016, a document was produced to the ANCTF titled “NCTF Discussion Paper – Australia’s Compliance with the ATF”, ostensibly to meet the above request. While the document carries no government agency logo or attribution, it was presumably prepared by DFAT.

The Discussion Paper fails to address Australia’s compliance with the TFA on an article-by-article basis, as intended. The introduction to the Discussion Paper defines three categories of obligations under the TFA, that is, mandatory, “best endeavours” and “alternative approaches”. In respect of the mandatory obligations, it states “it is not necessary to enact or amend legislation in order to implement the ATF, as Australian border procedures already comply with the ATF.” However, no evidence is provided to support this assertion. Without such evidence, it is not possible for the ANCTF to “facilitate both domestic coordination and implementation of the provisions” of the FTA, as it is required to do under Article 23.2. Accordingly, it is incumbent upon the government representatives of the committee to provide that evidence, preferably in the article-by-article analysis originally requested by private sector representatives. Without this, the ANCTF will fail its fundamental purpose.

In respect of the “best endeavours” and “alternative approaches” obligations, the Discussion Paper makes somewhat terse, unsubstantiated assertions about the extent of Australia’s compliance or anticipated compliance but, again, without citing any evidence to support the assertions. This shortcoming should also be remedied.

Assuming a whole-hearted commitment by the Australian Government to full compliance with the TFA, it would be in its interests to require each agency with responsibility to deliver operations to meet the various TFA articles to declare exactly how it complies – e.g. by reference to legislation, guidelines, publications, documents, forms, practices, procedures, etc. It would also be a valuable endorsement of that commitment to have the ANCTF review that evidence.

At the October 2017 meeting of the ANCTF, the Chair committed DIBP to coordinating responses from all relevant border agencies to provide evidence of how they meet the mandatory requirements of the TFA.

While this coordinating role of the ANCTF is mandated by the TFA and therefore is an unavoidable obligation of the Australian Government, it should be firmly embraced as a means of ensuring compliance with the TFA's provisions. Should these steps uncover any shortcomings in compliance, this should be perceived as a positive, not negative, outcome, as it will facilitate the direction of resources to address the shortcoming in order to achieve full compliance. This would seem to present itself as an important first priority for the ANCTF.

In terms of the expanded functions outlined in the current ANCTF TOR, it is suggested that the greatest contribution of the ANCTF to trade facilitation in Australia will be made in the medium to long term by adopting as broad a mandate as feasible. A broad mandate does not necessitate addressing innumerable issues simultaneously, or descending into matters of limited importance or application. The work of the ANCTF, given its finite resources, should always be guided by prudent prioritisation of issues for its attention. Equally, however, it should not be constrained by an overly-restrictive mandate.

The mandate-enlarging phrases contained in the ANCTF's current TOR are open to interpretation and seem to be limited to discussion, review and advice – which may be appropriate. However, they appear to encompass a narrower range of functions than those promoted by the UNECE, UNCTAD and UNESCAP (accepting that some of these have a developing country focus) and adopted by counterpart committees in some other countries – which may also be appropriate. It is beyond the scope of this research project to articulate a preferred mandate for the ANCTF – that should be the responsibility of the ANCTF properly constituted by all the relevant public and private sector stakeholders. As noted above, the members of the ANCTF are currently considering a proposed re-draft of the TOR. However, it is the strong view of the authors that the mandate of the ANCTF should not be limited to the narrow Article 23.2 obligation – important and necessary though that is – but should be expanded to allow it to make the greatest possible contribution to trade facilitation in the medium to long term.

Recommendation 3 That the Board of the AITTIDF strongly endorse the instruction of the Chair of the ANCTF that, in order to facilitate the ANCTF's obligations under Article 23.2, DIBP produce a document outlining Australia's compliance with the TFA. This should provide an article-by-article summary of all relevant border agencies' confirmation of whether, and if so, to what extent, Australia complies with the mandatory, "best endeavours" and "alternative approaches" articles of the TFA, together with supporting evidence.

Recommendation 4 That, following its consideration of an expanded membership, ANCTF review its mandate and TOR with a view to encompassing as wide a range of issues as feasible to maximise its contribution to trade facilitation.

Observations – Priorities and Outcomes

The ANCTF has, and will probably continue to have, finite, indeed limited, resources. To be effective, it will need to develop a deliberate mechanism for prioritising issues for consideration and be rigorous in the deployment of that mechanism. The actual priorities chosen, necessarily, will be dependent on the mandate that the ANCTF adopts.

Having reviewed its mandate, the focus of the ANCTF should be to determine its priorities and translate those priorities into an effective work plan that defines the scope of work to be undertaken, allocates appropriate resources and sets deadlines for completion of the work. Work plans should also be developed for the working groups that report to the ANCTF.

High quality outcomes will help ensure the sustainability of the ANCTF. These outcomes must be relevant to the trade facilitation agenda and consistent with the ANCTF's mandate. They must be delivered to the appropriate public and/or private sector stakeholders to which they relate and should also be communicated to the wider public and private sector audiences involved in international trade in order to enhance the profile of the ANCTF, garner ongoing support and help shape its agenda.

Recommendation 5 That, following a review of its mandate, ANCTF introduce a mechanism for prioritising issues and incorporate those priorities in a work program.

Recommendation 6 That ANCTF develop mechanisms to measure and communicate the delivery and impact of its work.

10.3. Governance

Observations - Constitution/Legal Base

UNCTAD, UNESCAP and the ITC outline cogent reasons for providing a legal base for trade facilitation institutions – although it is not clear whether that is intended to mean a legislative basis (i.e. founded in a specific statute). However, their suggestions are generally in relation to National Trade Facilitation Bodies, rather than National Trade Facilitation Committees created pursuant to Article 23.2 of the TFA.

While an NTFB may be summarily disbanded for political or other reasons if not founded in a legal base, the fact that an NCTF is founded in Article 23.2 provides it with significant protection. The creation of an NCTF by a contracting state to the TFA is a mandatory obligation which, if not met, is subject to the complaint and dispute resolution procedures of the WTO. Given the historically strong commitment of the Australian Government to its WTO obligations, it is highly unlikely that the ANCTF would be disbanded for political reasons.

It could be argued, however, that the current basis for the ANCTF – created as part of the Government's administrative arrangements – may be inadequate. Formalising the constitutional basis for the ANCTF in some more substantial form (e.g. legislation or some other form of legislative instrument, Prime Ministerial or other Ministerial action) would deliver a number of benefits, including:

- safeguarding the ANCTF's ongoing existence,
- providing transparency and clarity as to its status,
- crystallising its mandate,

- publicising its existence and role to the public and private sectors, and
- re-affirming to Australia's trading partners and to the international trading community that Australia is fully committed to the TFA and to promoting trade facilitation.

In the event that the constitutional basis of ANCTF was to be formalised, it would be necessary to review the TOR to ensure they appropriately reflect the new arrangements.

Recommendation 7 That ANCTF give consideration to formalising the constitutional basis for its existence in some more substantial form than currently applies.

Observations - Form

The UNECE, UNCTAD, UNESCAP and the ITC all favour a model of three or more tiers. The ANCTF currently operates on a two-tier model of the full membership committee and three working groups which report to it. This model appears to have served reasonably well in the nascent stages of the ANCTF during which it has been constituted by 19 members and has had a relatively modest agenda.

This report proposes consideration of increasing the number of public and private sector organisations comprising the ANCTF and deepening and broadening its agenda. With more members to manage and more issues to deal with, a more sophisticated (multi-tier) structure may be beneficial to the effective operation of the ANCTF. However, no change is recommended at this point.

Observations – Chair

ANCTF is currently chaired by the Deputy Comptroller-General of Customs (a position held by the Deputy Secretary, Policy of DIBP) or, as a delegate, First Assistant Secretary, Traveller, Customs and Industry Policy Division of DIBP. From July 2018, with the proposed absorption of DIPB into the Department of Home Affairs, it is anticipated that, assuming the *status quo*, the Chair will be provided by that Department.

UNCTAD suggests that the Chair should be senior and influential government official with the necessary inter-agency networking capacity, or the president of a business association. UNCTAD and UNESCAP varyingly suggest that leadership of an NTFB should be with the Ministries for Trade, Commerce or Transport.

Industry representatives generally indicate a preference for either DFAT or DIBP, but some caution against the *status quo*, which is perceived to be a “Customs” committee, unnecessarily narrowing the ANCTF focus or remit. There is no doubt that many of the articles of the TFA fall squarely within the area of Customs border management and, therefore, the responsibility of DIBP/ABF. However, many others are either the responsibility of other agencies or the joint or interacting responsibilities of Customs and those other agencies.

One of the key objectives of the TFA is to ensure more efficient communication and coordination between all relevant border agencies in order to facilitate trade, and the fundamental mandate of the ANCTF is to facilitate both domestic coordination and implementation of the provisions of the TFA. Arguably, it may be inappropriate to vest responsibility for the management of that process in one of the key operational agencies involved.

As such, it may be more appropriate for the role of ANCTF chair to be the responsibility of an agency that does not have an operational role at the border. DFAT is a logical candidate, given its trade policy remit and its responsibility for ensuring Australia's compliance with its international treaty obligations, including the TFA. DFAT, arguably, could bring a broader perspective to bear in the

deliberations of the ANCTF, including consideration of issues that fall outside the remit of the various border management agencies, such as infrastructure. Similarly, a 'neutral' agency would arguably be better placed to oversee issues on which operational agencies may have differing viewpoints, such as the industry suggestion that DAWR assume the role of client manager for Trusted Traders that primarily deal with biosecurity-related goods.

Another suggestion is that DPMC assume the role of ANCTF chair. There is clear benefit in having the ANCTF supported by, and reporting to, the highest level of government possible. Support from the Prime Minister and accountability to that office would arguably optimise the profile and effectiveness of the ANCTF, and appointing a senior executive of the DPMC as Chair would facilitate that outcome. Given the overarching breadth of the remit of DPMC, it would also remove the risk of the ANCTF being perceived as a narrowly-focused creation of an operational Department.

On a related matter, hosting obligations would normally fall to the agency which leads the ANCTF and provides its Chair, and currently it is being hosted by DIBP/ABF at either ABF offices or hotels. Industry has indicated a preference for ANCTF meetings be held at a neutral (i.e. non-government agency) venue, and while some suggest that this may give a greater perception of neutrality, it is considered that the choice of venue is more one of convenience, and is unlikely to impact the effectiveness of the committee.

Recommendation 8 That the ANCTF review its chairmanship following resolution of its future mandate.

Observations – Accountability, Reporting, Funding and Frequency

The current TORs of the ANCTF require reporting of deliberations and recommendations to the Secretary of DIBP and/or the Commissioner of the ABF. UNESCAP recommends accountability to a high level of government, such as the Deputy Prime Minister.

It is anticipated that the ANCTF's accountability and reporting obligations will ultimately depend upon which agency chairs the Committee. Consequently, should the chairmanship of the Committee change, it will be necessary to revisit the associated reporting arrangements. Regardless, industry has identified a need for the accountabilities, responsibilities and decision-making capacity of the ANCTF and its members to be more clearly identified, and emphasised the need for the lines of reporting within and across agencies and industry to be transparent.

The requirement for funding to support the activities of the ANCTF is axiomatic, and while there is no indication that the Government's funding of the ANCTF into the future will not be adequate, it would be preferable for the budget allocation to be made public. While the majority of industry representatives consider that the ANCTF should continue to be government-funded, they also appear to be content to continue to cover the costs of their respective participation.

The ANCTF's TORs call for two meetings per year. The last meeting was held in Canberra in October 2017 but the previous meeting was held in Melbourne in November 2016 (some 11 months earlier). Private sector representatives generally prefer meetings to be held on a quarterly or twice-yearly basis, noting that it may be prudent for the ANCTF meeting cycle to be aligned with the budget cycle, thereby facilitating discussion of those issues that may have a budgetary impact. The meeting of the ANCTF Working Groups, should be decided in the context of their respective work programmes.

Recommendation 9 That the ANCTF develop and publicise formal mechanisms for reporting its outcomes and accounting for its activities, noting that the latter should not necessarily rest with the Secretary or Minister of the Department providing the Chair and Secretariat.

Recommendation 10 That funding of the ANCTF continue to be provided by the government agency providing the Chair and Secretariat, and be made public. Participation of representatives of public and private sector organisations should continue to be borne by their respective organisations.

Recommendation 11 That meetings of the ANCTF be held at least twice yearly, that the agreed schedule be adhered to, and that consideration be made to aligning the ANCTF meeting cycle with that of the Budget.

Observations – Internal Communication and Collaboration

The internal communication of the ANCTF (i.e. between the Secretariat and members) should be by regular email. All relevant documents should continue to be posted on the NCTF Govdex portal page, but the structure of that page and the navigation and naming protocols should be standardised and instructions provided to members.

Finally, apart from Clause 1.2 of its TORs noting that one of the responsibilities of the ANCTF is “Coordinating support to developing trade partners”, there appears to have been no public notification of any such collaboration. Consideration should be given to the appetite for engaging in such collaboration, assessing the associated potential benefits and costs, and identifying the likely targets of such collaboration. In this regard, industry workshop participants and survey respondents indicated a rather strong interest in having the ANCTF actively liaise with NCTFs in key trading partner countries and with relevant Regional Committees for Trade Facilitation. This would also serve to enhance the visibility of issues in goods flows between countries. It was noted that such an approach should initially focus on significant trading partners that are jointly identified by government and industry.

Recommendation 12 That the internal communication of the ANCTF (i.e. between the Secretariat and members) be by regular email; and that all relevant documents be posted on the NCTF Govdex portal page promptly, using standardised structure and naming protocols.

Recommendation 13 That the ANCTF consider its appetite for engaging in collaboration with other NCTFs, by assessing the associated potential benefits and costs, and identifying the likely targets of such collaboration.

11. Next Steps

It is now for the AITTIDF to decide how to proceed with this research. Assuming that the Fund agrees to take some or all of the recommendations forward, a proposed approach is:

1. Circulate the report to the key industry associations for their comment.
2. Present the report to the chair of the ANCTF with a covering letter that either:
 - a. endorses the report’s findings and recommendations in full; or
 - b. endorses the report’s findings and recommendations in part.
3. Following discussions with the ANCTF chair, circulate the report to other relevant government agencies, and make the report publicly available.
4. If it is agreeable to the ANCTF chair, a presentation could also be made to current members of the ANCTF at its next meeting.

12. Annexes

Annex 1: TFA Article 23 – Institutional Arrangements

1 Committee on Trade Facilitation

- 1.1 A Committee on Trade Facilitation is hereby established.
- 1.2 The Committee shall be open for participation by all Members and shall elect its own Chairperson. The Committee shall meet as needed and envisaged by the relevant provisions of this Agreement, but no less than once a year, for the purpose of affording Members the opportunity to consult on any matters related to the operation of this Agreement or the furtherance of its objectives. The Committee shall carry out such responsibilities as assigned to it under this Agreement or by the Members. The Committee shall establish its own rules of procedure.
- 1.3 The Committee may establish such subsidiary bodies as may be required. All such bodies shall report to the Committee.
- 1.4 The Committee shall develop procedures for the sharing by Members of relevant information and best practices as appropriate.
- 1.5 The Committee shall maintain close contact with other international organizations in the field of trade facilitation, such as the WCO, with the objective of securing the best available advice for the implementation and administration of this Agreement and in order to ensure that unnecessary duplication of effort is avoided. To this end, the Committee may invite representatives of such organizations or their subsidiary bodies to:
 - (a) attend meetings of the Committee; and
 - (b) discuss specific matters related to the implementation of this Agreement.
- 1.6 The Committee shall review the operation and implementation of this Agreement four years from its entry into force, and periodically thereafter.
- 1.7 Members are encouraged to raise before the Committee questions relating to issues on the implementation and application of this Agreement.
- 1.8 The Committee shall encourage and facilitate ad hoc discussions among Members on specific issues under this Agreement with a view to reaching a mutually satisfactory solution promptly.

2 National Committee on Trade Facilitation

Each Member shall establish and/or maintain a national committee on trade facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of the provisions of this Agreement.

Annex 2: TFA Article 10.4 – Single Window

- 4.1 Members shall endeavour to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.
- 4.2 In cases where documentation and/or data requirements have already been received through the single window, the same documentation and/or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances and other limited exceptions which are made public.
- 4.3 Members shall notify the Committee of the details of operation of the single window.
- 4.4 Members shall, to the extent possible and practicable, use information technology to support the single window.

Note: Articles 10.1, 10.2 and 10.3 are also of relevance.

Annex 3: Project Workplan and Key Deliverables

Table 1: Project Timetable

Project Stage	Activity	Timing
1	Finalise research methodology & prepare Inception Report	December 2016
2	Research current NCTF arrangements	Jan 2017
3	Research WTO policies and recommendations	Jan/Feb 2017
4	Research international NCTF trends and developments <ul style="list-style-type: none"> • International organisations • National Committees 	Jan/Mar 2017
5	Research the broader Government agenda	Jan/Mar 2017
6	Research industry priorities and ambitions regarding NCTF <ul style="list-style-type: none"> • 6 (a) Backgrounder and Survey • 6 (b) Industry workshops (20-24 March) • 6 (c) Targeted interviews 	Jan/Feb 2017 Mar 2017 Mar/Apr 2017
7	Analyse findings and formulate recommendations regarding ANCTF	Mar/Jul 2017
8	Research current status of Government's Single Window agenda	May/Aug 2017
9	Research international Single Window trends and developments	May/Aug 2017
10	Research industry priorities and ambitions regarding Single Window and paperless trade	May/Sep 2017
11	Prepare Draft Report on NCTF and provide AITTIDF briefing	Jul 2017
12	Prepare Final Report Part 1: ANCTF	Aug 2017
13	Prepare Draft Report on Single Window and provide AITTIDF briefing	Oct 2017
14	Prepare Final Report Part II: Single Window	Nov 2017
15	Follow-up discussions with stakeholders (as required)	Nov 2017-Jan 2018

Table 2: Schedule of Key Deliverables

Milestone/Deliverable	Date
Inception Report	23 Dec 2016
Interim report on status of research relating to ANCTF	5 May 2017
Draft Report on NCTF and AITTIDF briefing	24 Jul 2017
Interim report on status of research relating to Single Window	23 Aug 2017
Final Report Part 1: ANCTF	23 Aug 2017
Draft Report on Single Window and AITTIDF briefing	23 Oct 2017
Final Report Part II: Single Window	23 Nov 2017
Follow-up discussions with stakeholders (as required)	23 Jan 2018

Figure 1: Project Gantt Chart

Stage	Dec 16	Jan 17	Feb 17	Mar 17	Apr 17	May 17	Jun 17	Jul 17	Aug 17	Sep 17	Oct 17	Nov 17	Dec 17	Jan 18
1														
2														
3														
4														
5														
6 (a)														
7														
8														
9														
10														
11														
12														
13														
14														
15														

Annex 4: ANCTF Terms of Reference

National Committee on Trade Facilitation (NCTF)

Terms of Reference

1. Purpose

The National Committee on Trade Facilitation (NCTF) will fulfil the obligations required by the World Trade Organization's Agreement on Trade Facilitation by providing the forum to facilitate both domestic coordination and implementation of the provisions of the World Trade Organization Agreement on Trade Facilitation.

1.1. Functions of the Committee

The NCTF provides a forum for government and industry stakeholders to discuss strategic issues relating to trade facilitation affecting Australian industry stakeholders in the international trade environment. The NCTF will discuss opportunities for reform and improvements to Australia's domestic trade facilitation environment and engagement with the international trade environment.

For the purposes of the NCTF, trade facilitation refers to measures designed to expedite the movement, release and clearance of goods, including goods in transit. The NCTF will explore opportunities to improve trade facilitation including the delivery of efficiencies and deregulation at the border and any associated recommendations for policy, regulation or legislative change.

NCTF industry members will serve as the Department of Immigration and Border Protection's Ministerial Advisory Committee on Deregulation for trade facilitation issues in accordance with the Regulator Performance Framework.

1.2. Responsibilities

The NCTF is responsible for facilitating and monitoring Australia's implementation of the World Trade Organization's Agreement on Trade Facilitation and to review and provide advice to the Australian Government on trade facilitation including:

- Emerging strategic issues in the international trade operating environment;
- The tasking of issue specific working groups as required;
- Opportunities to improve the international trade environment, including exploring opportunities to realise efficiencies and deregulation at the border;
- Implementing established UN and WCO tools and guidelines;
- Coordinating support to developing trade partners;
- Roll back of existing protectionist measures especially non-tariff barriers;
- Improvements to the global trade system for the emerging digital economy; and
- Any associated recommendations for policy, regulation or legislative change.

The deliberations of the NCTF and any recommendations it makes will be reported to the Secretary of the Department of Immigration and Border Protection and/or the Commissioner of the Australian Border Force for their consideration and action as appropriate.

2. Governance

2.1. Governing Principles

The NCTF will advocate the following principles:

- **Strategy** - the NCTF will be focused on strategic issues and exploring opportunities to realise mutual benefits for the Government and industry in the international trade environment.
- **Proactivity** - the NCTF will be proactive in seeking out opportunities and initiatives and exploring solutions to strategic issues in the international trade environment. The NCTF will be action-oriented, and outcomes will be reported to the Department of Immigration and Border Protection Executive and industry stakeholders.
- **Collaboration** - members will be constructive, creative and strategic in their discussions, carefully weighing the impact of any proposals on all stakeholders.
- **Accountability** - the NCTF will be accountable for its recommendations. All recommendations must be objective, transparent and open to external scrutiny.
- **A Group Focus** – the NCTF is a group forum and not an avenue to pursue individual agendas.
- **Engaging/Communicative** – the NCTF will ensure relevant information is available to members and the general public.

2.2. Membership

The Chair of the NCTF is the Deputy Comptroller-General (or delegate) of the Department of Immigration and Border Protection.

The NCTF will be comprised of representatives of Government agencies and industry stakeholders. Current members are listed at Attachment A.

Industry organisations and/or peak bodies may be invited to submit an expression of interest for membership to the NCTF. NCTF membership is at the discretion of the Chair.

NCTF membership will be reviewed every two (2) years or at the discretion of the Chair as required.

2.3. Working Groups

The Chair of the NCTF may establish temporary working groups as appropriate, to provide input on specific priority issues. These groups will provide a means for the Government and industry to work together on policy development, programme design, operational implementation and strategies to address complex issues.

The NCTF will be responsible for reviewing and endorsing any outcomes from the working groups.

2.4 Reporting Groups

The Chair may invite consultative groups working on matters relevant to trade facilitation to report to the NCTF as appropriate.

3. Logistics

3.1. Frequency of Meetings

The NCTF will meet twice per calendar year, on a rotation basis across locations, as agreed by members.

Extraordinary meetings may be scheduled at the discretion of the Chair.

3.2. Attendance

Each member of the NCTF may nominate one representative, or delegate, to attend meetings. An observer may be granted access, on request to the Secretariat, in cases where members require additional expertise on a particular subject matter. Non-member industry stakeholders may be granted observer status at meetings on request to the Secretariat.

All costs associated with attending NCTF meetings and any associated working groups participation will be borne by members.

3.3. Secretariat

The Department of Immigration and Border Protection will provide secretariat services to the NCTF. The Department will commit to circulating draft minutes within 2 weeks from each meeting for member's comments.

The Secretariat will communicate relevant information to NCTF members and provide updates on ongoing issues to NCTF members between NCTF meetings.

The Secretariat will maintain a NCTF website presence to provide relevant information to the general public.

Attachment A

Commonwealth Government Agencies

- Austrade
- Department of Agriculture and Water Resources
- Department of Foreign Affairs and Trade
- Department of Immigration and Border Protection
- Department of Industry, Innovation and Science
- Department of Infrastructure and Regional Development

Industry

- American Chamber of Commerce in Australia
- Australian Chamber of Commerce and Industry (ACCI)
- Australian Federation of International Forwarders (AFIF) Ltd
- Australian Industry Group (AIG)
- Board of Airline Representatives of Australia (BARA)
- Conference of Asia Pacific Express Carriers (CAPEC)
- Customs Brokers and Forwarders Council of Australia (CBFCA)
- Customs and Trade Advisory Group (CTAG)
- Export Council of Australia (ECA)
- Federal Chamber of Automotive Industries (FCAI)
- Food and Beverage Importer Association (FBIA)
- Freight and Trade Alliance (FTA) Pty Ltd
- International Network of Customs Universities (INCU)
- Shipping Australia Limited (SAL).

Annex 5: ANCTF Survey

Respondent Data

1. Your name (first, last):

2. Your Organisation: _____
3. Job title: _____
4. Email: _____
5. Telephone: area code (___), number (_____)
6. Type of business organisation (tick as many as apply to your business):
 - a. Customs brokerage
 - b. Forwarder
 - c. Manufacturer
 - d. Importer
 - e. Exporter
 - f. Express carrier
 - g. Carrier
 - h. Shipping agent
 - i. Port operator
 - j. Other, please specify _____
7. Size of organisation:
 - a. Employs less than 50 persons
 - b. Employs 50 or more persons
8. Location:
 - a. Brisbane
 - b. Sydney
 - c. Canberra
 - d. Melbourne
 - e. Hobart
 - f. Adelaide
 - g. Perth
 - h. Darwin
 - i. Other, please specify _____

ANCTF Survey Questions

1. Thinking about the costs and efficiency of international trade as experienced by your business, please describe up to three areas for improvement.
 - a. _____
 - b. _____
 - c. _____

2. Thinking about Australia's import/export laws and procedures, please describe up to three changes you would like to see which could reduce costs or improve the efficiency of international trade.
 - a. _____
 - b. _____
 - c. _____

3. Prior to learning of the project of which this survey forms a part, were you aware of the existence of the Australian National Committee on Trade Facilitation (ANCTF)?
 - a. Yes
 - b. No

If your answer to 3 was yes, have you been consulted by government or by an industry association on issues related to the ANCTF?

 - c. Yes
 - d. No

4. Currently, the ANCTF operates under the government's administrative arrangements. Should the existence of the ANCTF be enshrined in a legal framework?
 - i. Yes
 - ii. No

5. How strong should the role of the private sector be in the ANCTF?
 - i. Private sector representatives should set the agenda, and should determine the outcomes of ANCTF sessions
 - ii. Private sector representatives should have an equal status with government representatives in setting the agenda and determining the outcomes of ANCTF sessions
 - iii. Private sector representatives should have an advisory role only; the government representatives should set the agenda and determine the outcomes of ANCTF sessions

6. Who should chair the ANCTF?
 - i. Department of Immigration and Border Protection
 - ii. Australian Border Force
 - iii. Department of Foreign Affairs and Trade
 - iv. Other Government agency, please specify _____
 - v. Private sector organisation, please specify _____

7. Should the chairmanship be rotated?
- i. Yes (please specify how you think the rotation should work) _____
 - ii. No
 - iii.
8. Should there be joint Chairs of the ANCTF?
- i. Yes
 - ii. No
- j. If your answer to (e) was yes, please indicate your recommendation as to whom the joint chairs should be: _____
9. Should the ANCTF make public its Terms of Reference, Membership, Mission/Goals/Objectives, Work Plans and periodic reports on its activities?
- i. Yes
 - ii. No
10. Should the Terms of Reference of the ANCTF be limited to its role under Article 23.2 of the WTO Trade Facilitation Agreement (“domestic coordination and implementation of the provisions of the Agreement”) or extend to a wider trade facilitation agenda for Australia?
- iii. Limit to Art. 23.2
 - iv. Extend to wider trade facilitation agenda
11. Who should fund the ANCTF?
- i. Government, please specify agency
 - ii. Private sector, please specify organisation(s)
 - iii. Combination of government and private sector
12. Who should provide the Secretariat of the ANCTF?
- i. Government, please specify agency
 - ii. Private sector, please specify organisation
 - iii. Establish/fund dedicated secretariat
13. Where should ANCTF meetings be held?
- i. Government office, please specify agency _____
 - ii. Private sector premises, please specify organisation _____
 - iii. Neutral venue (e.g. hotel, university)
14. How often should the ANCTF meet?
- i. Once per year
 - ii. Every six months
 - iii. Every quarter
 - iv. Every month
 - v. Other, please specify _____
15. The Government agencies currently represented on the ANCTF are the Department of Immigration and Border Protection, the Australian Border Force, the Department of Foreign Affairs and Trade, Austrade, the Department of Agriculture and Water Resources, the

Department of Industry, Innovation and Science and the Department of Infrastructure and Regional Development. Which other Government agencies, if any, should participate?

- i. Office of Transport Security
- ii. Department of Environment
- iii. Department of Finance
- iv. Department of Health
- v. Digital Transformation Office
- vi. Infrastructure Australia
- vii. State Government agencies, please specify _____
- viii. Other, please specify _____ -

16. The private sector and academic organisations currently represented on the ANCTF are the Australian Federation of International Forwarders, the Customs Brokers and Forwarders Council of Australia, the Export Council of Australia, the Conference of Asia Pacific Express Carriers, Shipping Australia Limited, the American Chamber of Commerce in Australia, the Australian Chamber of Commerce and Industry, the Australian Industry Group, the Board of Airline Representatives of Australia, the Federal Chamber of Automotive Industries, the Food and Beverage Importers Association, Freight and Trade Alliance and the International Network of Customs Universities. Which other private sector organisations, if any, should participate?

- i. Representatives of the insurance industry
- ii. Representatives of the finance industry
- iii. Port/airport operators
- iv. Private laboratories/certification agencies
- v. Other, please specify _____

17. Should the ANCTF actively liaise with National Committees for Trade Facilitation in key trading partner countries and with any Regional Committees for Trade Facilitation?

- i. Yes
- ii. No

18. Should the ANCTF actively engage in consultation between government and the wider business community?

- i. Yes
- ii. No
- iii. If yes, by which means?
 1. Permanent consultative committees
 2. Centres of excellence or expertise
 3. Network of subject-matter experts
 4. Peer-to-peer groups
 5. Implementation working parties
 6. Conferences
 7. Other, please specify _____

Annex 6: UNCTAD Recommendations

In 2014, UNCTAD published its study on National Trade Facilitation Bodies in the World, which puts forward the following ten recommendations:

Recommendation 1: Be SMART when setting up the objectives and scope of a national trade facilitation body. The objectives and scope of a trade facilitation body will determine the goals pursued when establishing the group as well as the main functions allocated to it. The objectives contemplated by the trade facilitation body should be SMART, that is, sustainable, measurable, attainable, realistic and time-bound, and not expressed in terms of to-do lists or activities, as is currently often done (Doran, 1981). The ability of a trade facilitation body to prioritize and thereafter monitor trade facilitation reforms – above and beyond implementing the World Trade Organization Agreement on Trade Facilitation – is essential to its sustainability and relevance.

Recommendation 2: Make it official – give the national trade facilitation body a strong legal backing. As trade facilitation is a policy area that includes different public stakeholders, institutionalization at the governmental level may be beneficial, in order to prevent conflicts of interest and in order to increase participation and ensure high-level political commitment. The implementation in national law of the World Trade Organization Agreement on Trade Facilitation may be a good starting point.

Recommendation 3: Set clear game rules – define terms of reference in a comprehensive and inclusive way. Terms of reference should be defined and used as a tool to support the sustainability and efficient work of the trade facilitation body. They should be concrete but flexible and be agreed by all involved stakeholders.

Recommendation 4: Provide the national trade facilitation body with a permanent secretariat. Countries should consider whether the Ministry of Trade should assume the role of coordinating agency or whether this role may be shared with other public organizations (e.g. customs authorities) essential for trade facilitation or with the private sector (e.g. chamber of commerce). Resources should be allocated to the establishment of a permanent secretariat. Support from donors and international agencies should be provided for the latter, especially in the case of least developed countries.

Recommendation 5: Meet regularly. The regularity and frequency of meetings can contribute to the sustainability of a trade facilitation body. Establishing that the body will meet on the first Wednesday of each quarter, for instance, will help members to plan their calendars based on fixed dates and ensure that they are present for each session of the working group. The regularity of meetings is essential for monitoring and following up on the activities of the trade facilitation body, which was noted by respondents as an important success factor.

Recommendation 6: Be inclusive – trade facilitation is a cross-divisional and cross-sectorial endeavour. Developing countries and least developed countries should make an effort to increase the number of participants in their trade facilitation bodies, especially from the private sector.

Recommendation 7: Take every opportunity to raise awareness about trade facilitation. The establishment of a website may be a useful tool for strengthening the trade facilitation body

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

Recommendation 8: Provide the national trade facilitation body with the necessary resources. As the lack of financial resources can strongly influence the sustainability of a trade facilitation body, it is especially recommended that developing and least developed countries systematically include tasks and budget allocations for trade facilitation bodies when applying for international funds for concrete projects in trade facilitation. Sharing costs among public and private institutions may also be a solution in this regard.

Recommendation 9: Establish monitoring and evaluating mechanisms to measure results. For a well-functioning trade facilitation body, presenting concrete results and/or monitoring results is considered essential. However, only a few trade facilitation bodies use these kinds of tools in a systematic way. There is a need, therefore, to develop evaluation and monitoring techniques adapted to the needs of trade facilitation bodies.

Recommendation 10: Always involve the private sector. The majority of obstacles faced by trade facilitation bodies are in relation to the members of the body and their behaviour towards the group. The chairperson of the group should be carefully selected and, if necessary, undertake specific training, such as on negotiation techniques and how to deal with difficult members, among others. This will help the leader of the group to turn possible challenges into opportunities. The public sector and/or lead agency of the trade facilitation body should actively and genuinely involve the private sector in the body, as this is the most important success factor for the body. The public sector should ensure that the involvement of the private sector is inclusive and representative. It is not enough to invite the private sector to meetings of the group. Rather, the private sector should also participate in the formulation of the terms of reference. The public sector should employ the necessary techniques to encourage and promote participation. One possibility may be shared chairpersonship or leadership by rotation between the public and private sectors.”

Annex 7: UNESCAP Recommendations

In 2007, UNESCAP published its Study on National Coordination Mechanisms for Trade and Transport Facilitation in the UNESCAP Region. Its recommendations are as follows:

Recommendation 1: Purpose

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

Recommendation 2: Form and role

(i) Form

Recommendation 2.1:

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

(ii) Role

Recommendation 2.2:

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

Recommendation 3: Organization, membership, direction/accountability, staffing and meeting frequency

(i) Organization

Recommendation 3.1

It is recommended that the organizational structure of the national trade/transport facilitation coordination mechanism be adapted from the structures shown in Figures 6.1 or 6.2.

(ii) Membership Composition

Recommendation 3.2

It is recommended that the membership of the coordination mechanism comprise representatives of all organizations involved in international trade and transport. These organizations could include (but not necessarily be restricted to):

- Trade regulatory authority (most often, ministry of commerce or trade);
- Transport regulatory authority (most often, ministries of transport);
- Other government regulatory or planning authorities (e.g. ministry of finance, ministry of planning, ministry of interior, ministry of defence, ministry of agriculture, ministry of health, ministry of industry, ministry for ICT, customs authority, immigration authority, border

guards, traffic police, transport management authority, authorities for quarantine/product quality control, central bank);

- Business sector (chamber of commerce, transport association, trading banks, association of insurance companies, association of Customs agents, association of freight forwarders).

Facilitation bodies should be owned by all the member organizations, institutions and agencies. The joint ownership of facilitation bodies needs to be embodied in all rules of the bodies and in the selection of members.

(iii) Direction and accountability

Recommendation 3.3

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

(iv) Staffing

Recommendation 3.4

Each body should staff its offices and secretariat with persons recruited through a competitive recruitment process and with experience in the fields of trade/transport regulation, exporting or importing, transport operation, or trade service provision. Alternatively, existing staff in the office of the chairing organization of the body can provide services to the body.

(v) Meeting frequency

Recommendation 3.5

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

Recommendation 4: Functions

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

- (a) To continuously monitor and assess the quantity flows of trade and transport across national borders;
- (b) To identify bottlenecks in the entire process of international trade and transport (using the UNESCAP Trade Facilitation Framework and Time/Cost-Distance Model, as appropriate)
- (c) To review and assess the adequacy of international trade and transport-related infrastructure (including seaports, airports, roads, railways, river ports and inland cargo storage facilities), and propose investment projects, as necessary;
- (d) To study and propose measures for improving the operational performance of international trade and transport;

- (e) To coordinate to establish harmonized documentation and procedures for international trade and transport;
- (f) To identify, propose and follow through changes to border control procedures and documentation needed to improve trade/transport efficiency and reduce costs;
- (g) To coordinate and cooperate for implementation of Single Window clearances and Single Stop inspections at border crossings;
- (h) To promote the application of information and communication technology to documentation and procedures in the management of international trade and transport operations;
- (i) To coordinate the national positions in negotiation of agreements on international trade and transport with multi-sectoral nature;
- (j) To identify, propose and follow through changes in trade and/or transport policies and in the bilateral or multilateral agreements through which these policies are enforced, when such changes are required to improve trade/transport performance;
- (k) To coordinate the implementation of agreements on international trade and transport with multi-sectoral nature;
- (l) To review the international conventions relating to trade and transport facilitation and provide advice to national government on accession to the conventions;
- (m) To monitor and coordinate the implementation of the acceded international conventions relating to trade and transport facilitation;
- (n) To monitor the dissemination of information to the trading and transport communities on changes or revisions to border control procedures and documentation;
- (o) To organize workshops and seminars on facilitation of international trade and transport; and
- (p) To serve as national focal points for international facilitation programmes and assistance.

Recommendation 5: Work programme

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

Recommendation 6: Financing sources

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

Recommendation 7: Coordination with other national trade and transport facilitation coordination mechanisms of the region/sub-region or along specific transport corridors

Recommendation 7.1

In order to ensure the smooth movement of goods and people and the harmonization and standardization of border crossing documentation and procedures between the countries, it

is recommended that national bodies establish permanent links and a schedule of meetings with their counterpart bodies in other countries, within the subregion or along specific transport corridors.

Recommendation 7.2

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

Recommendation 7.3

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

Recommendations 8: Strengthening of national trade and transport coordination mechanisms

It is recommended that the member countries prepare national action plans to enhance the existing national trade and transport coordination mechanisms in accordance with the recommendations of the study.

Annex 8: ITC Recommended steps in creating an NTFB

In 2015, the ITC published a recommended step-by-step approach for creating an NTFB, as follows.

Step 1: Define the mandate

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

An NTFB must have a clear mandate and ambition to deliver worthwhile outputs. The key purpose of NTFB, as mentioned in the UNECE Recommendation No. 4, is to act as an open forum to promote trade facilitation, facilitate inter-agency coordination and provide directives on major trade facilitation issues. This should include both the goal of engagement with government and business, and institutional mechanisms for engagement. It must also be able to deliver well-considered recommendations and proposals

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Some prerequisites for establishing an NTFB (according to UNECE Recommendation No. 4) are:

- 1) Include trade facilitation as part of a national integrated strategy for trade policy and sustainable economic development:
- 2) Identify issues affecting the cost and efficiency of their country's international trade:
Identification of issues involves dialogue with traders who are affected by a country's border measures. An NTFB should therefore act as a forum both for sharing of experiences by traders and raising concerns with governments. Traders should be asked to identify the main obstacles to the efficient and timely clearance of goods at borders and what they would like to see improved.
- 3) Develop measures to reduce the cost and improve the efficiency of international trade:
- 4) Assist in the implementation of those measures:
- 5) Provide a national focal point for the collection and dissemination of information on best practices in international trade facilitation:
- 6) Participate in international efforts to improve trade facilitation and efficiency:

In relation to the implementation of the TFA itself, an NTFB should be involved at the national level in assessing the various obligations contained within the Agreement. These include assessing the categorization of the obligations under the Agreement and helping to vet and approve notifications to the WTO for project proposals requiring technical assistance.

Step 2: Identify a champion and ensure strong leadership

Step 3: Define the governance and legal structure

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

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

Step 4: Ensure the right balance between public and private stakeholders

A truly effective NTFB must be able to balance both sides evenly, so that trade facilitation advocacy can be seen as impartial and well-intended. Neither government nor business gets it right all the time.

Some process or mechanism for the rotation of chairs or co-chairs may also be helpful, to ensure that all key stakeholders are included.

Step 5: Establish clear terms of reference, including the extent of the body's independence

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

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

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

excessively on business interests at the expense of other policy and regulatory objectives.

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

Step 6: Choose appropriate accommodation that reflects the body's independence

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

Step 7: Establish a clear business or work plan of activities

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

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

Step 8: Ensure that the body is adequately and sustainably funded

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

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