



## REVISITING THE NEED FOR GLOBAL ACTION TO ELIMINATE CONSULARIZATION REQUIREMENTS

### COMMUNICATION FROM NORWAY AND THE UNITED STATES

The following communication, dated 16 April 2021, is being circulated at the request of the delegations of Norway and the United States.

#### Introduction

1. This Committee is convening against the backdrop of an unprecedented global health crisis that has disrupted supply chains, hampered cross-border mobility<sup>1</sup>, and caused a sharp increase in trade costs<sup>2</sup>. At a time when the movement of essential goods is of utmost importance, WTO Members must accelerate implementation of the Trade Facilitation Agreement (TFA) so as to reduce the time and cost of moving goods across borders and into the hands of citizens, health-care professionals, and other essential workers. It has been proven that predictability, simplicity, and uniformity in customs and border procedures under the TFA has resulted in greater customs efficiency, more effective revenue collection, and better access to new export opportunities for Micro, Small, and Medium Enterprises (MSME).

2. As Members, we are now preparing for the first review of the implementation and operation of the TFA. Given the current challenges we all face, the first implementation review has taken on even greater importance (TFA Article 23.1.6). As we take steps to support global and individual economic recovery, we encourage Members to take this opportunity to review their current practices with a view to addressing unnecessary restrictions and bottlenecks. Members should specifically re-examine their formalities and documentation requirements to consider changes that can reduce the time and costs for traders, especially MSMEs.

3. One practice long questioned as to its effectiveness and necessity are consular transactions. Consular transactions (sometimes referred to as "consularization" or "legalization") are procedures that require obtaining from a consul of an importing Member in the territory of the exporting Member or a third party, a consular invoice or visa for customs documentation in connection with the importation of the good. These consular transactions often require payment of a fee or charge that is sometimes a specific fee, sometimes a fee per document, and other times an ad valorem fee based on the value of the shipment. Consularization requirements thus place additional costs and delays on traders without contributing to legitimate customs-related processes and are precisely the type of bureaucratic red tape that the TFA seeks to eliminate.

<sup>1</sup> World Trade Organization, *Cross-Border Mobility, COVID-19, And Global Trade*, 25 August 2020, [https://www.wto.org/english/tratop\\_e/covid19\\_e/mobility\\_report\\_e.pdf](https://www.wto.org/english/tratop_e/covid19_e/mobility_report_e.pdf).

<sup>2</sup> World Trade Organization, *Trade Costs in Time of A Global Pandemic*, 12 August 2020, [https://www.wto.org/english/tratop\\_e/covid19\\_e/trade\\_costs\\_report\\_e.pdf](https://www.wto.org/english/tratop_e/covid19_e/trade_costs_report_e.pdf).

4. Recalling previous efforts<sup>3</sup>, we call on Members to eliminate consularization requirements as one action that Members can take to fulfil their TFA Article 10.1 commitment to reduce and eliminated formalities.

### **Eliminating Consularization through Implementation of TFA Article 10.1**

5. TFA Article 10.1 obligates Members to review their import, export, and transit formalities and documentation requirements with a view to minimizing their incidence and complexity.<sup>4</sup> The purpose is to ensure that these requirements are as simple and efficient as possible and eliminate trade practices that are duplicative, no longer necessary, or incur burdensome costs for traders. It is not credible to believe that consularization would withstand a review under the obligations set forth in TFA Article 10.1, given that consularization, as explained in more detail below, unduly burdens the private sector in exchange for little to no tangible benefits for any parties involved other than the consular office.

### **The High Cost of Consularization**

6. There is no legitimate trade enforcement purpose served by requiring traders through consularization to have invoices, bills of lading, or certificates of origin stamped or signed by foreign ministries or consulates as part of a Member's import process. Consularization requirements:

- add unnecessary costs, contributing to higher prices for importers and consumers. In some cases, consular fees amount to hundreds of dollars per shipment, which can exceed the invoice value of smaller consignments;
- cause unnecessary, time-consuming delays, not only as a result of the stamping and signing process, but also as a result of the need to travel to an embassy or consulate, which may not always be located in the same city or country as the exporter, and the need to accommodate the working hours of the consular office. Such delays are generally unacceptable in an age where the delivery expectations of customers are demanding; and
- all too often present opportunities for corruption, because of the inherent lack of transparency associated with the procedures and the frequent practice of paying cash for this formality, often without a clear basis for how fees will be calculated.

7. While these impacts have been known for a long time, it is now more difficult, expensive, and unsafe to travel to an embassy or consulate to have documents consularized than it has ever been. At a time when countries are desperate for free and fair access to personal protective equipment and medical supplies, requiring that importers visit or mail documents to foreign ministries and consulates is an egregious waste of resources. Governments and businesses around the world have recognized the need to close offices, including consulates, to reduce in-person contact and mitigate viral spread. Customs and border operators have followed suit to automate processes whenever possible.

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<sup>3</sup> The 2008 United States and Uganda co-sponsored *Prohibiting Consularization Requirements: Fulfilling A Longstanding Trade Facilitation Objective* (TN/TF/W/156) includes a summary of the history of efforts to eliminate consularization.

<sup>4</sup> WTO TFA Article 10.1 Formalities and Documentation Requirements - With a view to minimizing the incidence and complexity of import, export, and transit formalities and to decreasing and simplifying import, export, and transit documentation requirements and taking into account the legitimate policy objectives and other factors such as changed circumstances, relevant new information, business practices, availability of techniques and technology, international best practices, and inputs from interested parties, each Member shall review such formalities and documentation requirements and, based on the results of the review, ensure, as appropriate, that such formalities and documentation requirements are:

- (a) adopted and/or applied with a view to a rapid release and clearance of goods, particularly perishable goods;
- (b) adopted and/or applied in a manner that aims at reducing the time and cost of compliance for traders and operators;
- (c) the least trade restrictive measure chosen where two or more alternative measures are reasonably available for fulfilling the policy objective or objectives in question; and
- (d) not maintained, including parts thereof, if no longer required.

8. WTO Members must ask: what makes this consularization "essential" enough to require travel and in-person contact amidst a global health crisis? This service does not contribute to risk management processes upon importation, since diplomatic and consular officials rarely, if ever, have scientific and technical expertise. Shipments with consularized documentation are not exempt from physical inspections upon importation, so no customs or border process is served, and administrative steps are duplicated.

9. Now is the time to minimize the time, cost, and personal interactions necessary to swiftly move goods across borders. We call on all Member countries to reconsider the need to maintain such formalities. This process unduly burdens the private sector, especially MSMEs, in exchange for little to no tangible benefits for any parties involved other than the consular office itself.

### **Consularization Disadvantages for MSMEs**

10. The costs and delays associated with consularization requirements have an inordinate impact on MSME exporters. These exporters have even fewer resources, including time and money, to devote to fulfilling all the bureaucratic steps associated with consularization requirements and to cover the costs associated with the process. Even in normal times, these types of procedures can often mean that the small business does not make the sale.

11. For instance, a small business looking to export to a client in certain countries in the Middle East<sup>5</sup> may be required to consularize commercial documents through a multistep process. Prior to even entering the embassy or consulate to receive the required rubber stamp, an exporter has to complete a number of onerous preparatory steps, including having all documents notarized by either the National U.S.-Arab Chamber or a specific law firm. Each step requires the expenditure of precious resources in both time and cost (e.g., the cost of processing a single document, such as a commercial invoice, can exceed hundreds of dollars). Companies are often required to process several commercial documents per shipment. This process can take a minimum of several days, but often much longer, excluding additional delays incurred by travel or delivery time.

12. Although some countries have eased requirements in response to the COVID-19 pandemic, like accepting documents by mail, others have created additional obstacles. Some countries that maintain the requirement for in-person presentation only offer services by appointment. This can cause additional delays in processing.

13. MSMEs continue to struggle with operating amid disrupted supply chains, hampered cross-border mobility, and sharp increases in trade costs caused by the unprecedented global health crisis. Some are facing extreme resource constraints, while others have furloughed employees or closed altogether.

14. For all WTO Members, MSMEs are the backbone of our economies. As we seek to support a global economic recovery, we all need to consider ways we can support those small businesses that are the source of growth and jobs so vital to economic recovery. These efforts should extend to the elimination of customs-related formalities and requirements that place inordinate burden on MSMEs, especially those requirements that serve no legitimate import-related purpose. One small but important change that would be helpful is to eliminate consularization.

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<sup>5</sup> The examples in this paper are based on the requirements found on the official webpages of WTO Member consulates and embassies and regional affiliations: Kuwait: Commercial Documents, via Embassy of the State of Kuwait in Washington, DC (<https://www.kuwaitembassy.us/page/commercial-documents>); United Arab Emirates: Commercial Invoices & Shipping Documents via the UAE Embassy in Washington, DC (<https://www.uae-embassy.org/services-resources/legalization-documents/commercial-invoices-shipping-documents>); Egypt: Authentication of Commercial Documents – Embassy of Egypt, Washington DC (<http://www.egyptembassy.net/consular-services/legalization/commercial-legalization-procedure>); National US-Arab Chamber: Commercial Documents - National US-Arab Chamber of Commerce (<http://www.nusacc.org/commercial.html>); Additional information: Commercial Invoice Legalization via the Arab American Chamber of Commerce (<https://www.arabchamber.com/commercial-invoice-legalization>).

### **How One WTO Member Eliminated its Consularization Requirements**

15. TFA Article 10.1.2 allows for the Committee to "develop procedures for the sharing by Members of relevant information and best practices, as appropriate". Members have consistently shared their experiences implementing the TFA since the Agreement went into force in 2017.

Jordan was the first Member who provided information to Members regarding its decision to eliminate consularization requirements in an effort to streamline trade requirements. Jordan notified Members of this action on 25 August 2020, in the document, Elimination of Consularization Requirement (G/TFA/W/23) and introduced its notification during the October 2020 Committee meeting. We invite other Members to follow Jordan's example and share with the Committee their valuable experiences in the elimination of consularization requirements.

### **Conclusion**

WTO Members should utilize the tools afforded to them in TFA Article 10.1 to review their trade requirements and minimize unnecessary and costly formalities, including consularization requirements. National Trade Facilitation Committees (NTFCs) can look to the private sector as a critical and important first step in identifying needless bottlenecks. The private sector and Members have identified consularization requirements as one such bottleneck because it fails to contribute to legitimate customs-related processes. Therefore, during this time of economic global crisis, we call on Members to eliminate consularization requirements to fulfil their TFA Article 10.1 commitment to reduce and eliminated unnecessary and costly formalities.

Attachment 1: TN/TF/W/156

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# WORLD TRADE ORGANIZATION

TN/TF/W/156  
14 July 2008

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Negotiating Group on Trade Facilitation

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## COMMUNICATION FROM UGANDA AND THE UNITED STATES

The following communication, dated 11 July 2008, is being circulated at the request of the Delegations of Uganda and the United States.

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### PROHIBITING CONSULARIZATION REQUIREMENTS: FULFILLING A LONGSTANDING TRADE FACILITATION OBJECTIVE

1. In a joint communication (TN/TF/W/104 of 10 May 2006), Uganda and the United States submitted a textual proposal proposing that "a Member shall not require a consular transaction, including any related fee or charge, in connection with the importation of any good". Joint submissions had been made earlier, proposing elements of a commitment of this nature (TN/TF/W/22 of 21 March 2005 and TN/TF/W/86 of 4 April 2006).

2. The proposal defines "consular transaction" (also sometimes referred to as "consularization" or "legalization") as the procedure of obtaining from a consul of the importing Member in the territory of the exporting Member, or in the territory of a third party, a consular invoice or a consular visa for a commercial invoice, certificate of origin, manifest, shippers' export declaration, or any other customs documentation in connection with the importation of the good.

3. In light of the NGTF's move to more focused discussions of Member proposals, and to advance Members' understanding of the consularization proposal, Uganda and the United States are providing Members with additional information on the costs and burdens associated with consularization requirements, as well as the historical efforts to eliminate consularization.

#### **Costs and Burdens Associated with Consularization**

4. The utility of consularization requirements has long been questioned, at least since 1923. In the modern trading environment they are clearly obsolete. The fees and delays associated with consularization requirements have an inordinate impact on exporters from developing-country Members – particularly least-developed and landlocked countries. For small- and medium-sized enterprises (SMEs) from all Members, consularization requirements can present a barrier to market access in the following ways, among others:

- Consularization requirements add unnecessary *costs*, contributing to higher prices for importers and consumers. In some cases, consular fees amount to hundreds of dollars per shipment, which can exceed the invoice value of smaller consignments.

- Consularization requirements cause unnecessary, time-consuming *delays*, not only as a result of the stamping and signing process, but also the need to travel to the nearest embassy or consulate, which may not always be located in the same city or country as the exporter, and the need to accommodate the working hours of the consular office. Such delays are generally unacceptable in an age where the delivery expectations of customers are demanding.
- Furthermore, businesses report that consular requirements all too often present a genesis for *corruption*, because of the inherent lack of transparency associated with the procedures. Frequently, it is unclear whether document A, B or both have to be legalized, and how many copies are needed. The frequent practice of paying cash for this formality, often without a clear basis for calculating the fees, presents opportunities for corruption.
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5. For Uganda, a landlocked, least-developed country with an economy dependent on small-sized enterprises, consularization has been a great barrier to access into markets of countries applying that requirement.

6. Furthermore consularization requirements serve no discernible legitimate customs-related function. Consularization does not contribute to risk management, nor can it be defended for reasons of health, environment and security. Diplomatic and consular officials rarely, if ever, have scientific and technical expertise. Further, such inspections are usually conducted by technical experts at the point of entry into the importing Member and consularization requirements add an additional, unrelated burden.

### **Historical Efforts**

7. In light of the costs and burdens associated with consularization requirements, there has been a long history of efforts to eliminate them, going back at least to 1923. Elimination of consularization has been a persistent theme under the GATT and WTO since 1948. Attachment 1 contains some key events in the nearly century-long effort to eliminate consularization requirements. Notably, the GATT CONTRACTING PARTIES recommended their elimination in decisions between 1952 and 1962 that remain in effect in the WTO today.<sup>2</sup>

8. Despite steady progress, however, the GATT/WTO recommendation has not been fully implemented by all Members. The fact that a few countries at any given time have not followed the recommendation has led to continued efforts by other countries over the years to eliminate the fees, whether bilaterally in regional trade agreements or multilaterally, including in the accession context. Eliminating consularization requirements would be a significant accomplishment of these trade facilitation negotiations.

### **Conclusion**

9. Eliminating consularization requirements would result in cost savings to traders and administrators alike, and would remove a practice that continues to prevent traders in developing countries and LDCs from enjoying the maximum benefits from the WTO Agreement and the results of the Doha Round negotiations (including the Trade Facilitation negotiations). It would also achieve a long-standing goal of the GATT CONTRACTING PARTIES and WTO Members.

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<sup>1</sup> See "Legalisation of trade documents as an unnecessary trade barrier"; Statement from the Committee on international trade facilitation, NorStella, Norway.

<sup>2</sup> The Abolition of Consular Formalities, and Code of Standard Practices, Recommendation of 7 November 1952 (BISD 01S/25); Consular Formalities, Decision of 17 November 1956 (BISD 05S/33); Consular Formalities, Recommendation of 31 October 1962 (BISD 11S/59). Article 1.b(iv) of the GATT 1994 incorporates the decisions of the CONTRACTING PARTIES; thus, the recommendation in the 1952, 1956 and 1962 decisions to abolish consular formalities remains in effect.

Attachment 1

Efforts to Abolish Import-Related Consular Formalities in the GATT and WTO

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1923: International Convention Relating to the Simplification of Customs Formalities, Article 11(8) provides that consularization fees should be as low as possible. (Cited in US – Customs User Fees, BISD 35S/245, para. 71).

1927: World Economic Conference affirms 1923 Convention on consularization fees, stating that such fees should be fixed, not exceed costs and not be a source of revenue. (Cited in US – Customs User Fees, BISD 35S/245, para. 71)

August 1948: The Chairman of the GATT CONTRACTING PARTIES states that consular taxes were covered by Articles I and VIII of the GATT. (BISD II/12)

November 1952: GATT CONTRACTING PARTIES recommend the abolition of consular formalities by 31 December 1956. (BISD 01S/25)

December 1954: A GATT Technical Group examining the notifications of countries maintaining consular formalities notes that some progress towards the removal of consular fees had been made and expresses the hope those countries would gradually reduce existing measures and provide for final elimination by December 31, 1956. (BISD, 3S/91)

November 1956: Only nine Contracting Parties continued to generally impose consular formalities. Seven other Contracting Parties maintained consular formalities only in a few exceptional circumstances. (L/595 p.9)

Just before the deadline for the abolition of consular formalities, the CONTRACTING PARTIES issue a Decision to maintain their 1952 recommendation. They recommend that countries still applying consular formalities examine *urgently* the possibility of introducing measures to abolish or reduce them at the earliest possible date. (BISD 05S/33)

November 1957: The CONTRACTING PARTIES again reaffirm their recommendations of 1952 regarding the abolition of consular formalities. They further recommend that consular invoices be abolished in favor of commercial invoices and that fees for certifying or visaing commercial documents be kept free-of-charge or at a nominal rate. (BISD 06S/25)

March 1962: A Panel of Experts on Consular Formalities reported that Argentina, Chile, Cuba and the United States had suppressed entirely their previously expansive use of consular formalities. Only eight Contracting Parties continue to normally require consular intervention in trade. (L/1743 p. 2)

October 1962: Ten years after the recommendation to abolish consular formalities, the CONTRACTING PARTIES again recommend that they be removed. (BISD 11S/59)

March 1966: Contracting Parties maintaining requirements for consular formalities were invited to report on their reasons for maintaining these requirements and on their future policy. Six countries submitted reports, including one stating consular formalities had been removed. (L/2563 and Add./1-4)

December 1969: Consular Fees & Formalities were included on the Illustrative List of Non-Tariff Barriers to be addressed by the GATT Committee on Industrial Products. (L/3298 p. 8)

February 1971: The report of the GATT Committee on Industrial Products Working Group on Customs and Administrative Entry Procedures summarizes the proposal of countries not maintaining consular

formalities to phase out consular formalities and fees over five years and a maximum flat-rate cap in the interim. (L/3496, p. 12)

November 1988: The Uruguay Round Negotiating Group on Non-Tariff Measures includes consular formalities in the category of measures proposed for a multilateral rule-making approach. (MTN.GNG/13 p.6)

May 1989: The Secretariat prepared a background note on Customs and Consular Formalities for the Negotiating Group on Non-Tariff Measures, recording past efforts in the GATT and elsewhere to abolish consular formalities, which continued to be perceived as a barrier to trade. (MTN.GNG/NG2/W/29)

June 1989: A study prepared for the Working Party on Facilitation of International Trade Procedures of the United Nations Economic Commission for Europe and submitted to the Negotiating Group on Non-Tariff Measures recommends that appropriate steps be taken to press for the abolition of consular formalities. (MTN.GNG/NG2/W/34)

January 1995: The GATT 1994 entered into force. Article 1.b(iv) incorporates the decisions of the CONTRACTING PARTIES; thus, the recommendation in the 1952, 1956 and 1962 decisions to abolish consular formalities remains in effect.

March 2005: Uganda and the United States submit a proposal to prohibit import-related consular requirements to the Doha Round Negotiating Group on Trade Facilitation, followed up with proposed text in May 2006. (TN/TF/W/22; TN/TF/W/104)

November 2005: Egypt reports in a national experience communication to the Negotiating Group on Trade Facilitation that consular fees and invoices were phased out by a Ministerial Decree in 2005. (TN/TF/W/75)

2003-2006: Notifications of Non-Tariff Barriers to the Negotiating Group on Market Access include consular formalities measures (e.g. TN/MA/W/46/Add. 1-17).

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