



**LEGAL RECOMMENDATIONS FOR TFA  
ALIGNMENT**

**U.S. DEPARTMENT OF AGRICULTURE  
FOOD FOR PROGRESS  
BANGLADESH TRADE FACILITATION PROJECT**

May 30, 2021  
Washington D.C.

Submitted by:  
Brian Chen  
Philip Kariam  
Salma Shitia

To: Bangladesh Trade Facilitation Project  
Land O'Lakes Venture37  
3rd Floor Concord Bilkis Tower  
40/6 Madani Road, Gulshan-2  
Dhaka 1212, Bangladesh

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*This material is based upon work supported by the U.S. Department of Agriculture, Foreign Agricultural Service under Federal award No. FCC-388-2020/003-00. Any opinions, findings, conclusions, or recommendations expressed in this publication are those of the author(s) and do not necessarily reflect the view of the U.S. Department of Agriculture.*

Institute of International Economic Law – Georgetown University Law Center  
600 New Jersey Avenue, NW - Washington, DC 20001, USA

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in agricultural goods by addressing systemic constraints to agricultural trade at Bangladeshi ports; simplifying and automating import and export processes; improving the capacity of government agencies, laboratories, and warehouses; and by fostering private and public investment, especially in cold storage. In doing so, BTF will support Bangladesh to achieve the WTO Trade Facilitation Agreement, Schedule C measures covering Test Procedures, Risk Management, Perishable Goods, and Formalities. BTF collaborates closely with the key agencies at the Government of Bangladesh and private sector representatives to ensure deep-rooted change and long-term viability of trade facilitation reform. BTF is implemented by Land O'Lakes Venture37 a U.S. non-profit organization affiliated with Land O'Lakes, Inc. that delivers market insights and technical expertise to agricultural development projects around the world, working to improve agricultural and food systems.

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## **ABSTRACT**

Trade in agricultural goods can be highly sensitive to border constraints that delay their release. Such constraints are addressed by the World Trade Organization’s Trade Facilitation Agreement (TFA), a multilateral agreement designed to modernize, simplify, and harmonize global trade border procedures. Although Bangladesh has ratified the TFA, gaps in implementing its provisions remain, impacting the efficient importation of agricultural products into the country. The U.S. Department of Agriculture (USDA) Food for Progress FY20, Bangladesh Trade Facilitation (BTF) Project has requested that we identify legal and policy changes that Bangladesh could adopt to meet certain commitments under the WTO TFA, with a view to improving Bangladesh’s agricultural trade. The report will focus in particular on several aspects of the TFA, namely TFA Articles 7.9 (Perishable Goods), 7.4 (Risk Management), 5.3 (Test Procedures), and 10.1 (Formalities and Documentation). The report first identifies gaps in Bangladeshi law vis-à-vis the TFA and then, through comparative analysis, presents how other WTO Members have implemented these TFA obligations, concluding with recommendations on possible legal strategies for Bangladesh to strengthen implementation of the TFA and improve agricultural trade.

## EXECUTIVE SUMMARY

The World Trade Organization's (WTO) Trade Facilitation Agreement (TFA) entered into force in 2017 and is designed to promote the modernization and simplification of WTO Members' border procedures. These efforts are projected to bring significant economic gains through expanded global exports, with the benefits falling mainly on developing countries. Implementing the TFA's obligations can be particularly impactful in agricultural trade, where improving procedural efficiencies to allow for expedited importation of perishable goods can significantly affect trade flows and support food security. Countries like Bangladesh that heavily depend on agricultural imports can make substantial progress by streamlining their rules and inspection procedures to align with the TFA's provisions. Indeed, for agricultural goods, implementation of specific TFA measures could, in many cases, mean the difference between goods that can or cannot be sold.

However, Bangladesh faces a range of constraints that affect its agricultural trade. Aside from having limited infrastructure for cold storage and testing laboratories, gaps remain in Bangladesh's legal and policy framework with respect to some of the key TFA obligations of relevance to agricultural trade. These include provisions on Perishable Goods (Article 7.9), Risk Management (Article 7.4), Test Procedures (Article 5.3), and Formalities and Documentation Requirements (Article 10.1). In each of these areas, Bangladesh has made Category C notifications to the WTO, meaning that it has committed to implementation only after a transitional period and with technical assistance and support for capacity building.

This report identifies current gaps in Bangladesh's legal and policy framework with respect to these four obligations and, through a comparative analysis that considers regional and international best practices, makes recommendations for bringing Bangladeshi law and policy into alignment with TFA obligations. Our brief conclusions and recommendations are as follows:

**Perishable Goods:** While Bangladesh has policies that require customs officials to work outside of normal business hours to clear perishable goods, these policies do not appear to apply universally across all ports or to all goods. Further, clearance procedures set out in Bangladeshi law apply to all goods, irrespective of whether they are perishable or non-perishable. Moreover, Bangladeshi law does not

explicitly set out a requirement that Customs provide reasons for significant delay in the release of perishable goods. Our recommendations for TFA alignment are: (1) extending overtime hours to all authorities involved in the release of all perishable goods, where required by the importer, in order to expedite the release of those goods; (2) new measures, including legislative provisions, to give priority to perishable goods when scheduling inspections; and (3) requiring the Customs Authority and Counterpart Agencies to communicate reasons for any significant delay in the release of perishable goods.

**Risk Management:** Bangladesh has not yet developed an overarching risk management regime applicable across its many border authorities. As a result, risk management procedures are often arbitrary and vary between agencies. Bangladesh Customs has, however, introduced a three-pronged system where shipments are organized into low, medium and high-risk categories using customs documents. Low risk items with proper documentation and certification are subject to priority processing, whereas high-risk items with deficient documentation are subject to greater scrutiny. Our recommendations for TFA alignment are: (1) requiring Bangladeshi border authorities involved in processing agricultural trade to adopt a similar three-pronged approach to risk management as the approach currently applied by Customs; (2) bolster transparency by publishing risk management criteria; and (3) adopt an approach whereby traders are held solely responsible for their declarations so that border authorities can dedicate their efforts to inspecting high-risk consignments as opposed to curing deficient customs documentation.

**Test Procedures:** Although Bangladesh publishes a list of accredited laboratories where testing of imported goods can be conducted, this is not required by law. Moreover, Bangladeshi law does not outline guidelines for requesting a second test for goods. Our recommendations for TFA alignment are to analyze draft language from India and the International Trade Centre's National Implementation Plan to propose a legal, regulatory or policy framework for requesting a second test for imported agricultural goods.

**Formalities and Documentation Requirements:** While Bangladeshi law contains several formalities and document requirements with which an importer must comply, there are no legal provisions or policy documents that require border authorities to assess the trade facilitation impact of those requirements. However,

Bangladesh has established the National Trade and Transport Facilitation Committee (NTTFC), which has a mandate to review formalities and documentation requirements. Our recommendation for TFA alignment is to issue directives or conclude memoranda of understanding with the Customs Authority, all affected customs and Counterpart Agencies, and the NTTFC to ensure cooperation and information sharing to support these reviews.

# 1 INTRODUCTION

International trade in agricultural goods holds immense promise for Bangladesh. In the past decade, agricultural trade has increased substantially in volume and value of goods transacted and has resulted in deeper integration of the world's food systems.<sup>1</sup> Indeed, agro-food trade is increasingly taking place in global value chains that span several countries, connecting agro-food sectors with other industries and economies from around the world.<sup>2</sup> Ready and full access to these vast networks of agro-food trade creates opportunities for local farmers, other producers, and consumers alike to connect with global markets, which contributes to food security and promotes economic development.

These objectives are supported by the WTO TFA, which promotes the modernization and simplification of border procedures to bolster trade. The TFA's obligations include expedited procedures for perishable goods, implementation of risk management systems, and simplified and transparent testing and importation procedures, all of which have a direct impact on trade in agricultural goods. Since Bangladesh relies heavily on agricultural imports and experiences some of the longest border processing times in the region,<sup>3</sup> TFA alignment presents an opportunity to markedly improve Bangladesh's border procedures and rules and to promote food security and economic development.

This report provides recommendations for aligning Bangladesh's legal and policy framework with four TFA obligations that directly impact agricultural trade: **Perishable Goods** (Article 7.9), **Risk Management** (Article 7.4), **Test Procedures** (Article 5.3), and **Formalities and Documentation Requirements** (Article 10.1). We begin by elaborating on the significance of agricultural trade and the TFA for Bangladesh before outlining the scope and methodology of our assessment. We then address the relevant TFA obligations, gaps in Bangladesh's current legal and policy framework and relevant non-tariff measures (NTMs) impeding agricultural trade, and, finally, our recommendations for TFA alignment.

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<sup>1</sup> OECD, "Agricultural Trade", online: <https://www.oecd.org/agriculture/topics/agricultural-trade/>.

<sup>2</sup> *Id.*

<sup>3</sup> Importing goods into Bangladesh takes 34 days, which is above both the regional median and average. See Bayley, Anthony (2014): Policies to enhance trade facilitation in South Asia and Southeast Asia, ADBI Working Paper, No. 489, Asian Development Bank Institute (ADBI), Tokyo, 9.



## 2 AGRICULTURAL TRADE AND FOOD SECURITY IN BANGLADESH

The agricultural sector is a crucial component of Bangladesh's economy, accounting for 46 percent of total employment. Despite the importance of the sector, Bangladesh's agricultural trade is still relatively low. In 2016, agricultural trade comprised only 11.4 percent of Bangladesh's total trade.<sup>4</sup> Between 2015 and 2016, Bangladesh's agricultural imports totaled \$6.3 billion USD and 15.7 percent of total imports.<sup>5</sup> Still, Bangladesh is highly import-dependent in agriculture, which suggests relatively low levels of labor productivity in the sector.<sup>6</sup>

Key agricultural imports include crops and vegetables (ginger, lentils, onion, etc.), fruits and nuts, seed, sugar, livestock, poultry, and fishery and forestry products.<sup>7</sup> Bangladesh's main import partners are China, India, Kuwait, and the European Union.<sup>8</sup> Intra-regional trade in South Asia is notably low (see Figure 1). Trade among members of the South Asian Association for Regional Cooperation (SAARC) constitutes only a small portion of the region's global trade (5 to 6 percent),<sup>9</sup> and Bangladesh's agricultural trade with SAARC countries including India, Pakistan, Nepal, and Sri Lanka<sup>10</sup> is only 2.4 percent (\$1.7 billion USD) of its total global trade (\$72.6 billion USD).<sup>11</sup> Bangladesh's trading relationship with India is among the most expansive in the region,<sup>12</sup> constituting 12.4 percent of Bangladesh's agricultural exports and 22.2 percent of its agricultural imports.<sup>13</sup> Agricultural imports from SAARC countries generally account for 22.8 percent of Bangladesh's agricultural imports.<sup>14</sup>

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<sup>4</sup> Mustafizur Rahman & Estiaque Bari, Bangladesh's Formal and Informal Trade with SAARC Countries: Emerging Trends and Policy Changes, CENTRE FOR POLICY DIALOGUE, June 2018, at 2.

<sup>5</sup> *Id.*, at 5.

<sup>6</sup> *Id.*, at 1.

<sup>7</sup> *Id.*, at 5; India-Bangladesh Trade: Demystifying Non-Tariff Barriers to India-Bangladesh Trade in Agricultural Products and Their Linkages with Food Security and Livelihood, CUTS INTERNATIONAL 27 (2019).

<sup>8</sup> International Trade Centre, "Bangladesh: Country Brief", online:

<https://www.intracen.org/country/bangladesh/>.

<sup>9</sup> See Rahman & Bari, *supra* note [4], at 1-2.

<sup>10</sup> Rahman & Bari, *supra* note [4], at 4.

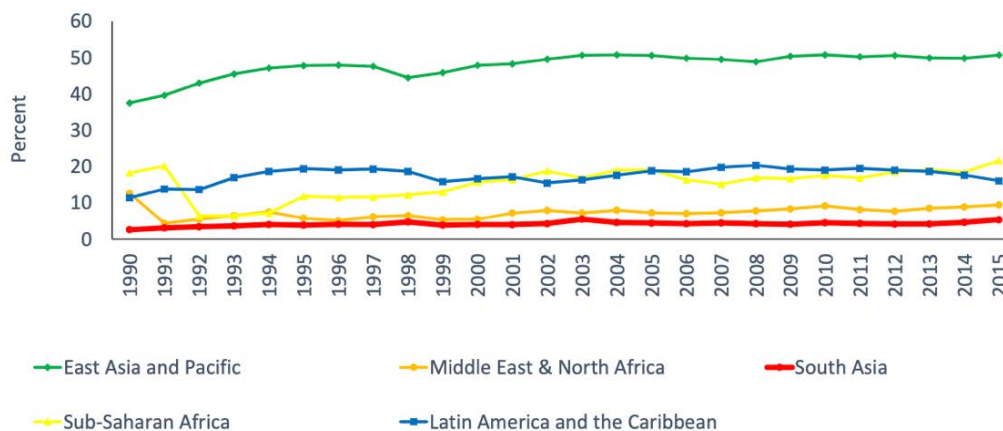
<sup>11</sup> Rahman & Bari, *supra* note [4], 3.

<sup>12</sup> Rahman & Bari, *supra* note [4], 1, ("[Bangladeshi-Indian trade is] driven by several factors including the cross-border nature of production and supply chains . . . , social networks among local people, existing networks among informal trades across the border.")

<sup>13</sup> Rahman & Bari, *supra* note [4], 3.

<sup>14</sup> Rahman & Bari, *supra* note [4], 5.

**Figure 1: Intraregional Trade in South Asia is just 5% of Total Trade<sup>15</sup>**



These statistics ought to be interpreted in the context of the food security situation that Bangladesh now faces. In 2021, the Food and Agricultural Organization of the United Nations (FAO) Global Information and Early Warning System designated Bangladesh as a country in need of external assistance for overcoming severe localized food insecurity.<sup>16</sup> In its update, the FAO explained that recurrent floods in 2020 and a decline in remittances as a result of the Covid-19 pandemic have increased Bangladesh’s poverty and food insecurity levels.<sup>17</sup> Meanwhile, Bangladesh is sheltering approximately 860,000 Rohingya refugees (mainly in its Cox’s Bazar District).<sup>18</sup> These factors have exacerbated the difficult conditions of underemployment, inadequate access to land for cultivation, and social exclusion, among other pre-existing factors contributing to food insecurity in Bangladesh.<sup>19</sup> Among the poor, women are often expected to sacrifice their food consumption to feed children. Consequently, women and children are among the most vulnerable and malnourished.<sup>20</sup> However, Bangladesh’s food security threat extends across social and

<sup>15</sup> UKaid & International Finance Corporation, Trade Facilitation and Bangladesh, ECONOMIC REPORTERS FORUM, 5 (2015).

<sup>16</sup> Food and Agricultural Organization of the United Nations, online: <http://www.fao.org/gIEWS/country-analysis/external-assistance/en/>.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> The Borgen Project, “10 Facts about Hunger in Bangladesh”, online: <https://borgenproject.org/ten-facts-about-hunger-in-bangladesh/>.

<sup>20</sup> *Id.*

economic classes. Among wealthy families, 26 percent of children under the age of 5 are stunted in their growth while 12 percent are wasted.<sup>21</sup>

Given the importance of agricultural trade for Bangladesh and its current food security crisis, facilitating agricultural trade is a pressing priority for the country. In particular, customs procedures at borders for handling agricultural products are an appropriate target for reforms. The relevant international legal framework for these customs procedures is the TFA. In the following section, we provide an overview of the TFA and identify the key obligations that directly impact agricultural trade.

### **3 OVERVIEW OF THE WTO TRADE FACILITATION AGREEMENT**

The TFA entered into force in 2017 and, at the time of writing, has been ratified by 153 Member States, including Bangladesh. It emerged in response to the need, expressed by developing and developed countries alike, for simplified and harmonized customs rules to reduce time and consequential costs to trade.<sup>22</sup> According to a 2015 study by WTO economists, such costs are equivalent to an ad valorem tariff of between 130 and 214 percent for developing countries.<sup>23</sup> For the agricultural sector, achieving full implementation of the TFA's first 12 substantive articles by all 164 Member States is estimated to reduce costs of agricultural trade by approximately 10.4 percent.<sup>24</sup> Moreover, according to the WTO's 2015 World Trade Report, trade facilitation measures may create greater effects in developing countries that engage actively in agricultural trade. By setting out obligations for improving efficiency at the border, the TFA also contributes to several United Nations Sustainable Development Goals, including: (1) No Poverty, (2) Zero Hunger, and (8) Decent Work and Economic Growth, among others.

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<sup>21</sup> *Id.* The World Health Organization defines “wasting” as low weight-for-height. Wasting typically occurs when a person lacks access to quality or sufficient food. In children, wasting may result in death if improperly treated. See World Health Organization, “Malnutrition”, online: [https://www.who.int/health-topics/malnutrition#tab=tab\\_1](https://www.who.int/health-topics/malnutrition#tab=tab_1).

<sup>22</sup> World Trade Organization, “Trade Facilitation – Cutting ‘Red Tape’ at the Border”, online: [https://www.wto.org/english/tratop\\_e/tradfa\\_e/tradfa\\_introduction\\_e.htm](https://www.wto.org/english/tratop_e/tradfa_e/tradfa_introduction_e.htm).

<sup>23</sup> Ad valorem equivalent (AVE): defined by the WTO as a tariff estimated as a percentage of the price.

<sup>24</sup> World Trade Organization, “World Trade Report 2015”, online: [https://www.wto.org/english/res\\_e/booksp\\_e/world\\_trade\\_report15\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/world_trade_report15_e.pdf), 7.

The TFA contains 36 trade facilitation measures focused on expediting trade processing at borders.<sup>25</sup> The measures expand on provisions of the General Agreement on Tariffs and Trade by including processes such as publication of the regulations, fees, and procedures related to trade.<sup>26</sup> They also expand upon the World Customs Organization International Convention on the Simplification and Harmonization of Customs Procedures (Kyoto Convention) through various enforcement and appeal mechanisms. Lastly, the TFA reinforces the rules and transparency and documentation requirements under the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) and Agreement on Technical Barriers to Trade (TBT Agreement).<sup>27</sup>

The TFA is organized into three overarching sections: (I) sets out provisions that expedite movement, release, and clearance of goods as well as customs cooperation; (II) outlines special and differential treatment provisions that permit developing countries and least developed countries (LDCs) to implement individual provisions of the TFA on a differentiated timeline, in some cases only after receiving technical assistance and capacity building support; and (III) establishes a permanent committee on trade facilitation at the WTO while requiring that Members also establish a national committee to implement the Agreement and facilitate trade domestically.

Under Section II, developing and LDC members commit to undertake implementation of the TFA's substantive provisions based on the following categories:

- **Category A:** provisions that a member will implement at the time the Agreement enters into force;
- **Category B:** provisions that a member commits to implementing after a transitional period following the Agreement's entry into force; and

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<sup>25</sup> USAID, "Assessing the Benefits of the Trade Facilitation Agreement for Agricultural Trade", February 2019, 1.

<sup>26</sup> *Id.* There are indirect and direct trade costs. Direct costs consist of transportation, tariffs, documentation fees, additional fees, and charges from Customs and government agencies. USAID, *supra* note [25], 3. Indirect costs include time spent preparing documentation and awaiting the release of goods. The majority of the TFA aims to reduce indirect costs through measures that reduce time and increase efficiency like through the implementation of a national single window for foreign trade (TFA Art. 10.4) and a risk management system (TFA Art. 7.4).

<sup>27</sup> USAID, *supra* note [25], 2.

- **Category C:** provisions that a member commits to implementing only after a transitional period following the Agreement’s entry into force and if the member receives technical assistance and support for capacity building.<sup>28</sup>

When a Member State designates provisions of the TFA as Category B or C, it must provide specified dates for implementation of those provisions depending on whether the Member State is a developing country or LDC. At the time of writing, Bangladesh has implemented 34.5 percent of its Category A commitments.<sup>29</sup>

## 4 PROJECT MANDATE AND METHODOLOGY

The Bangladesh Trade Facilitation project is focused on (1) expanding trade in agricultural products by reducing the trade costs and release times of imported goods and (2) increasing agricultural productivity by improving processes through increased transparency, streamlining, and automated methods.<sup>30</sup> Meeting these objectives requires, among other things, improving infrastructure, training Customs and Counterpart Agency personnel,<sup>31</sup> implementing efficient and transparent trade processes and methods, and updating legal and policy instruments to align with the requirements of the TFA. While all aspects of trade facilitation must work in tandem, the focus of our analysis and recommendations is on one particular aspect – Bangladeshi law and policy and its alignment with the TFA.

Our assessment (1) identifies and describes the key TFA obligations relevant to agricultural trade; (2) assesses Bangladesh’s progress in implementing the relevant TFA obligations through an examination of its current laws, policies, regulatory measures, and governance mechanisms; (3) identifies international and regional best practices for each relevant TFA obligations through a comparative assessment; and (4) makes recommendations for filling the gaps on the basis of the best practices identified, including measures that should be prioritized to incorporate private sector concerns. In assessing Bangladesh’s progress and identifying gaps in its current

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<sup>28</sup> World Trade Organization, “The Trade Facilitation Agreement: An Overview”, online: [https://www.wto.org/english/tratop\\_e/tradfa\\_e/tradfatheagreement\\_e.htm](https://www.wto.org/english/tratop_e/tradfa_e/tradfatheagreement_e.htm).

<sup>29</sup> World Trade Organization, “Trade Facilitation Agreement Database”, online: <https://tfadatabase.org/members/bangladesh>.

<sup>30</sup> Land O’Lakes, “Land O’Lakes International Development awarded funds for new capacity building, food safety projects”, online: <https://www.landolakesinc.com/Press/News/International-Development-Awarded-Projects>.

<sup>31</sup> Counterpart Agencies include, for example, the Plant Quarantine Wing and the Bangladesh Standard Testing Institute.

domestic law, we also interviewed private sector stakeholders in Bangladesh from the fresh produce and processed additives sectors to take account of their experiences engaging with Bangladesh Customs and Counterpart Authorities.

With respect to the key TFA obligations relevant to agricultural trade, our study focuses primarily on **Articles 7.9: Perishable Goods, 7.4: Risk Management, 5.3: Test Procedures, and 10.1: Formalities and Documentation Requirements.** These obligations directly impact agricultural trade and are those with respect to which Bangladesh has made Category C notifications. Conforming to these obligations will contribute to the overall goal of expediting release and clearance of agricultural trade products while ensuring that Bangladesh meets its TFA obligations. The benefits of meeting the obligations mentioned above include overcoming NTMs<sup>32</sup> that impede trade, reducing trader inquiries about testing and government time invested in responding to those inquiries, reducing unnecessary document requirements and time invested to ensure border compliance, establishing faster procedures for perishable goods to reduce avoidable deterioration of agricultural products at borders, and clearing low-risk goods more quickly through an efficient clearance system.

While we focus our study on the four TFA obligations listed above, we note that there are several other TFA obligations that are relevant to agricultural goods trade. In this regard, the United States Agency for International Development (USAID) has categorized the TFA’s provisions into three groups: those with a direct impact on agricultural trade, those that provide a general benefit for agricultural trade, and those with only a minor impact on agricultural trade. We reproduce that table below.

**Table 1: TFA Articles Considered Relevant to Agricultural Trade<sup>33</sup>**

<b>Direct Impact</b>	<b>General Benefit</b>	<b>Minor Impact</b>
Art 1.2 Information Available through Internet	Art 1.1 Publication and Availability of Information	Art 1.4 Notifications
Art 5.1 Notifications for Enhanced Controls or Inspections	Art 1.3 Enquiry Points	Art 6.3 Penalty Disciplines

<sup>32</sup> Non-tariff measures (NTMs) refer to trade measures other than tariff duties imposed for domestic policy reasons. Where NTMs confer an advantage to a domestic producer relative to a foreign competitor, they may be considered non-tariff barriers (NTBs) and cannot be justified under WTO law.

<sup>33</sup> USAID, *supra* note [25], 39.

<b>Direct Impact</b>	<b>General Benefit</b>	<b>Minor Impact</b>
Art 5.2 Detention	Art 2.1 Opportunity to Comment and Information Before Entry into Force	Art 7.8 Expedited Shipments
Art 5.3 Test Procedures	Art 2.2 Consultations	Art 10.5 Pre-shipment Inspection
Art 7.1 Pre-arrival Processing	Art 3 Advance Rulings	Art 10.6 Use of Customs Brokers
Art 7.2 Electronic Payment	Art 4 Procedures for Appeal or Review	Art 10.9 Temporary Admission of Goods and Inward and Outward Processing
Art 7.3 Separation of Release	Art 6.1 General Discipline on Fees and Charges Imposed on or in connection with Importation and Exportation	
Art 7.4 Risk Management	Art 6.2 Specific Discipline on Fees and Charges for Customs Processing on or in connection with Importation and Exportation	
Art 7.5 Post Clearance Audit	Art 7.6 Establishment and Publication of Average Release Times	
Art 7.7 Trade Facilitation Measures for Authorized Operators	Art 11 Freedom of Transit Paragraphs 11.16-11.17	
Art 7.9 Perishable Goods	Art 12 Customs Cooperation	
Art 8 Border Agency Cooperation		
Art 9 Movement of goods intended for import under customs control		
Art 10.1 Formalities and Documentation Requirements		
Art. 10.2 Acceptance of Copies		
Art 10.3 Use of International Standards		
Art 10.4 Single Window		
Art 10.7 Common Border Procedures and Uniform Documentation Requirements		
Art 10.8 Rejected Goods		
Art 11 Freedom of transit Paragraphs 11.1-11.10		

Of the TFA provisions that Table 1 identifies as having a direct impact on agricultural trade, those for which Bangladesh has made Category C notifications include Articles 7.1: Pre-Arrival Processing, 7.5: Post Clearance Audit, and 11: Freedom of Transit. While not the focus of this report, we recommend that Bangladesh also prioritize meeting its obligations under these Articles. Further, SPS

and TBT measures are additional NTMs that may impede agricultural trade in Bangladesh. The applicable WTO agreements, the TBT Agreement and the SPS Agreement, generally require Members to harmonize their national TBT and SPS measures with standards set by relevant international standard-setting bodies.<sup>34</sup> Relevant measures may include, for example, requirements relating to how agricultural products are produced or labelled before they can be sold in the Bangladeshi market. While the obligations of the TBT Agreement and SPS Agreement are not the focus of this study, we would also recommend that Bangladesh prioritize meeting those obligations along with implementation of the TFA.<sup>35</sup>

With respect to our comparative assessment, our study considers the laws and policies of Singapore, Malaysia, Thailand, Indonesia, Viet Nam, Philippines, India, and Cambodia. We have chosen these comparator countries because they are South and South East Asian countries at varying stages of economic development that have implemented most of the relevant TFA obligations.<sup>36</sup> Further, some of these states, such as Viet Nam, have recently undergone changes to their trade facilitation legal framework to better align with the TFA, making them suitable comparators. However, where necessary due to a lack of information on the laws of the states listed above, we have supplemented our comparative assessment with an examination of the trade facilitation legal framework of other states, such as Canada and New Zealand, where they provide useful comparators. A table outlining the relevant laws and policies of these countries can be found in Annex II of this report.

In the following sections, we discuss each of the TFA obligations that are the focus of this study, the apparent gaps in Bangladeshi law and policy vis-a-vis these obligations, and our recommendations for TFA alignment.

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<sup>34</sup> The TBT Agreement applies to standards, technical regulations, and conformity assessment procedures. See Annex 1 to the TBT Agreement. An SPS measure is, generally, one applied to protect animal or plant life or health. See Paragraph 1 of Annex A to the SPS Agreement.

<sup>35</sup> In this regard we note that Bangladesh's Ministry of Commerce has established SPS and TBT National Enquiry Points to respond to enquiries from other members regarding technical requirements and SPS-related measures, as well as enquiries on standards, technical regulations, conformity assessment procedures.

<sup>36</sup> One exception is Viet Nam, which has made category C notifications for Test Procedures and Risk Management.



## 5 PERISHABLE GOODS

The first TFA obligation we assess relates to perishable goods and has perhaps the most direct impact on agricultural trade. Agricultural products can be highly perishable and vulnerable to deterioration if held for too long at the border, making alignment with the relevant TFA provision, Article 7.9, one of the most important objectives for Bangladesh. As a USAID report notes:

perishable goods have an ad valorem tariff equivalent of 43 percent in trade costs mostly derived from transportation costs and temperature controls maintained throughout the export and import process. By implementing the TFA, the cost of trading perishables could be reduced by more than 18 percent given the sensitivity of perishable goods to timely release to avoid spoilage.<sup>37</sup>

Border delays, and their effects on perishable goods, are understandably a key private sector concern. On the export side, for example, a representative of a Bangladeshi agricultural export association noted instances where agricultural products have deteriorated due to delays at the Bangladeshi border, a problem exacerbated by the lack of cold-chain storage and designated places for perishable goods. Moreover, these gaps cause agricultural goods to fail to meet quality standards in export markets. Similar degradation and spoilage occur due to delays in releasing perishable goods on the import side.

Below, we discuss Article 7.9 of the TFA and Bangladesh's current legal framework for perishable goods. We then summarize our comparative analysis and make recommendations on the following: extension of overtime hours to all authorities involved in the release of all perishable goods in order to expedite the release of perishable goods; new measures, including potentially legislative provisions, to give priority to perishable goods when scheduling inspections; and a requirement that the Customs Authority and Counterpart Agencies communicate reasons for any significant delay in the release of perishable goods.

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<sup>37</sup> USAID, *supra* note [25], at 1-2.

## 5.1 TFA OBLIGATION: ARTICLE 7.9

Article 7 of the TFA contains obligations related to the release and clearance of goods. Perishable goods are covered under Article 7.9, which requires Members to **adopt or maintain procedures for the importation of perishable goods** that:

- provide for **release within shortest possible time** (Article 7.9.1(a));
- provide for **release, where appropriate, outside Customs' normal business hours** (Article 7.9.1(b));
- give priority to such goods when **scheduling examinations** (Article 7.9.2);
- arrange or allow the importer to arrange for such **goods to be stored in appropriate conditions for their conservation** (Article 7.9.3);
- where practicable, and upon request, **allow release to occur at these storage facilities** (Article 7.9.3); and
- require Customs to give a **written explanation to the importer, on request, when there is a significant delay** in the release of goods (Article 7.9.4).

The full text of Article 7.9 is provided in Annex I of this report.

## 5.2 PERISHABLE GOODS UNDER BANGLADESHI LAW: GAP ANALYSIS

Bangladeshi law generally gives Customs more flexibility to deal with perishable goods on an expedited basis than it does for other goods. The Customs Act, 1969 provides that animals and perishable goods that have not entered and cleared or been warehoused or transhipped may be sold at any time, whereas other goods have a 30-day window.<sup>38</sup> Moreover, goods seized by a Customs Officer that are perishable or liable to rapid deterioration must be sold immediately.<sup>39</sup> The Import Policy Order, 2015-2018<sup>40</sup> also provides that quickly perishable food goods worth \$50,000 via Teknaf Customs Station and “essential food goods” can be imported against a “letter of credit authorization form” without a letter of credit.<sup>41</sup> The recent draft Customs Act includes a provision that allows the National Board of Revenue to vary by rule the requirements for release of live animals and perishable goods in order to simplify and

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<sup>38</sup> *Customs Act, 1969*, Section 82.

<sup>39</sup> *Id.*, Section 169. This provision is substantially similar to Section 204(4) of Bangladesh's new draft Customs Act.

<sup>40</sup> *The Import Policy Order, 2015-2018* remains in force though it is undergoing amendment.

<sup>41</sup> *Customs Act, 1969*, Section 8(3).

expedite their release.<sup>42</sup> Further, a recent study by the World Bank found that clearance procedures are, at least in practice, expedited for perishable goods.

Bangladesh has also adopted some measures extending the working hours of Customs, allowing it to clear perishable goods outside of normal business hours. Namely, in July of 2017, the Government of Bangladesh announced that it would keep Benapole and Chittagong ports operational 24 hours a day, seven days a week.<sup>43</sup> Further, Dhaka Customs House-Warehouse has a priority release gate for perishable commodities such as date-stamped periodicals and other time-sensitive goods, which continues to operate after hours. Therefore, at these ports and for these goods, there appears to be alignment with Article 7.9.1(b) to provide for the release of perishable goods outside of business hours.

Bangladeshi law also contains several provisions designed to give special treatment to food and other perishable goods in the scheduling of examinations. Namely, the Import Policy Order, 2015-2018 provides that once food goods arrive at a Bangladeshi port, the Customs Authority is required to collect samples twice per day and send them to the Bangladesh Atomic Energy Commission, which is required to report test results within 24 hours.<sup>44</sup> At least for these radioactivity tests, there appears to be alignment with the requirements of Article 7.9.2 to give priority in scheduling examinations to perishable goods. We note, however, that the Import Policy Order also contains other inspection and testing requirements for food goods, discussed in greater depth in Section 6 below, for which no priority is explicitly provided. Additionally, Bangladesh's Plant Quarantine Act, 2011 and Fisheries Quarantine Act, 2018 contain additional inspection requirements for perishable goods.

The Customs Act also provides for storage facilities and warehousing of goods, either by public or private arrangements. The warehouse keeper is responsible for the "safe custody" of the goods but claims against them are limited to cases where the loss or damage was caused by a wilful act or neglect.<sup>45</sup> However, there are no legal provisions dealing with the kinds of storage that might be required for perishable goods, such as cold storage. These warehousing provisions appear to align with the

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<sup>42</sup> *Import Policy Order, 2015-2018*, Section 106(e).

<sup>43</sup> Daily Star (Bangladesh), "Ctg, Benapole ports to stay open 24/7", 20 July 2017, online: <https://www.thedailystar.net/frontpage/ctg-benapole-ports-stay-open-247-1435864>.

<sup>44</sup> *Import Policy Order, 2015-2018*, Section 16(5). Note, however, that these procedures do not apply to food goods for which a separate procedure has been prescribed by the Ministry of Food.

<sup>45</sup> *Customs Act, 1969*, Section 116.

requirements of Article 7.9.3 to the extent that they allow importers to arrange for perishable goods to be stored in appropriate conditions for their conservation (i.e., private warehousing).<sup>46</sup>

However, there are also several apparent gaps between Bangladeshi law and the requirements of Article 7.9 of the TFA. First, while we have identified policies that address customs officials working outside of normal business hours in order to clear perishable goods, these policies do not appear to apply universally across all ports or to all goods. Second, generally, despite some special treatment for food and perishable goods in the scheduling of examinations, most examination procedures are uniform across all goods, irrespective of whether they are perishable or non-perishable. Last, while the Customs Act provides an appeal mechanism for most decisions made under its provisions, it does not explicitly set out a requirement that Customs provide reasons for significant delay in the release of perishable goods.

### **5.3 INTERNATIONAL BEST PRACTICES AND RECOMMENDATIONS**

The recommendations below consider, through a comparative analysis, how Bangladesh can clarify and expand provisions for the release of goods outside of business hours of customs, the priority status of perishable goods in the scheduling of examinations, and the communication of reasons for significant delay in the release of perishable goods so that there is demonstrable alignment with the requirements of Article 7.9 of the TFA. Our jurisdictional review of best practices considers the domestic laws of Singapore, Malaysia, Thailand, Indonesia, Viet Nam, the Philippines, India, Cambodia, and Canada. We note as a general matter that even among countries that have fully aligned their legal and policy frameworks with the obligations contained in Article 7.9 of the TFA, the means of achieving that alignment varies from country to country, and therefore our recommendations are meant to provide examples rather than requirements. A complete account of these laws can be found in Annex II.

#### **5.3.1 CUSTOMS OVERTIME HOURS**

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<sup>46</sup> We note, however, that in order for the availability of private warehousing to provide meaningful access to appropriate storage in accordance with the TFA's requirements, such facilities must actually exist.

India's Customs Manual provides the only example we were able to identify of a legal or policy instrument addressing working outside business hours of customs in order to release perishable goods. India's Customs Manual provides:

#### **Merchant Overtime Fee**

...

Normally, the trade is required to plan its activities requiring Customs supervision or presence during working hours on working days and within the Customs area. However, in certain cases, e.g., **in case of perishable cargo**, lifesaving drugs or other consignments required urgently which has landed at an airport after working hours or on holidays, **the importer may require immediate clearance**. Considering the difficulties of the trade, the services of Customs, after normal working hours or on holidays within the Customs area or at any time at a place beyond Customs area, are provided on payment of overtime fee.<sup>47</sup>

While Bangladesh does provide Customs clearance for perishable goods outside of business hours at some ports and for some goods, we recommend that Bangladesh implements a policy or guideline that establishes overtime hours for all authorities involved in the release of perishable goods at all ports to ensure alignment with Article 7.9.1 of the TFA. Clearance outside of normal business hours could be provided on an as-needed basis (i.e., where requested by the importer) and on payment of an overtime fee by the importer. We recommend a policy or guideline rather than a legislative provision, given the lack of precedent for a legislative provision. However, even to the extent that such a policy or guideline is already in place, we further recommend publishing the policy or guideline in a widely available document or manual, as is done by India. This would help assure importers of perishable goods that customs clearance will be available at all hours, if necessary, thereby reducing the perceived risk that perishable goods will deteriorate at the border.

### **5.3.2 PRIORITY TO PERISHABLES IN EXAMINATIONS**

The countries reviewed took different approaches to giving priority to perishable goods in the scheduling of examinations. The approach taken in Viet Nam's Law on Customs is one of the most direct ways of achieving alignment. Article 33 of that law provides that "Goods which are live animals or plants, hard to be preserved or other special goods shall be prioritized for inspection." Viet Nam law

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<sup>47</sup> Customs Manual 2018 (India), Central Board of Indirect Taxes and Customs, 6 (2018), online: [https://www.cbic.gov.in/resources/htdocs-cbec/deptt\\_offcr/customs-manual2018.pdf](https://www.cbic.gov.in/resources/htdocs-cbec/deptt_offcr/customs-manual2018.pdf), 104.

also requires goods owners to preserve and store goods at places for specialized inspection or at their storage places until customs authorities decide customs clearance.<sup>48</sup>

The Philippines has adopted a more detailed and prescriptive set of rules for dealing with perishable goods. Its Food Safety Act of 2013 provides that imports of foods shall undergo cargo inspection and clearance procedures by the Department of Agriculture and the Department of Health at the first port of entry to determine compliance with national regulations, and that this inspection shall always take place prior to assessment for tariff and other charges by the Bureau of Customs.<sup>49</sup> Section 419 of the Philippines' An Act Modernizing the Customs Tariff Administration (AMCTA) provides that priority in the examination of goods, where required, shall be given to live animals, perishable goods and other goods requiring immediate examination.<sup>50</sup>

Malaysian law is less explicit about assigning priority to perishable goods in inspections but does require such goods be cleared from warehouses in an expedited manner. Namely, Article 74 of the Malaysian Customs Act, 1967 provides that "Goods of a perishable nature deposited in a customs warehouse shall be cleared forthwith, and if not so cleared a senior officer of customs may sell such goods." Similarly, Singaporean law provides that the procedure for examination of imported meat products and fish products shall be carried out at the place where the consignment is being kept "immediately after its import"<sup>51</sup> and that, where a consignment of fresh fruits or vegetables has been imported, the authorised officer must "immediately deliver the sample to an authorised analyst for analysis."<sup>52</sup>

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<sup>48</sup> *Law on Customs*, Article 35 (Viet Nam).

<sup>49</sup> *Food Safety Act of 2013*, Section 12(b) (Philippines).

<sup>50</sup> The AMCTA also provides for other situations in which perishable goods are given priority over non-perishables. For example, under Section 111, written orders by customs officers regarding possible noncompliance with the AMCTA result in the suspension of processing the goods and inspection within 24 hours for perishable goods compared with 48 hours for non-perishables. Further, under Section 1116, orders for release or seizure of perishable goods are to be issued within 2 days upon the recommendation of the alerting officer, compared with 5 days for non-perishables. Finally, the procedures for the sale of perishable goods during forfeiture proceedings, as well as appeals in such cases, is expedited. See *An Act Modernizing the Customs Tariff Administration*, Sections 1118, 1125, and 1126 (Philippines).

<sup>51</sup> *Wholesome Meat and Fish (Import, Export and Transshipment) Rules*, Section 6(1) (Singapore).

<sup>52</sup> *Control of Plants (Import and Transshipment of Fresh Fruits and Vegetables) Rules*, Section 8(1) (Singapore).

Canada’s approach may also provide guidance as a potential best practice that differs from the approaches taken by Viet Nam, the Philippines, Malaysia and Singapore. Its laws do not specifically provide priority treatment to perishable goods for inspections. Rather, the Canadian Food Inspection Agency’s operational guidelines for postal and courier import inspection provide that “[i]nspections should be prioritized to ensure that shipments of live animals, plants, perishable products and expedited delivery shipments are handled first.” Moreover, the agency has developed the following priority table for perishable goods.

**Table 2:** Canadian Food Inspection Agency: Product and activity priority list<sup>53</sup>

<b>Priority 1</b>	Frozen loads and hot loads
<b>Priority 2</b>	Highly perishable products <ul style="list-style-type: none"> <li>● Fruit: blackberries, blueberries, raspberries, strawberries and other small berries</li> <li>● Vegetables: spinach and watercress</li> </ul>
<b>Priority 3</b>	Very perishable products <ul style="list-style-type: none"> <li>● Fruit: apricots, cherries, peaches, nectarines, plums, prunes, grapes and exotic fruit such as starfruit</li> <li>● Vegetables: asparagus, beans, Belgium endives, summer squash, zucchini, lettuce, mushrooms, parsley, fresh herbs, peas, rhubarb, leaf lettuce (except chicory), endives and produce with tops such as carrots, beets, onions, radishes, turnips and early potatoes</li> </ul>
<b>Priority 4</b>	Perishable products <ul style="list-style-type: none"> <li>● All other fruits and vegetables</li> </ul>
<b>Priority 5</b>	Weight or count inspections
<b>Priority 6</b>	Other <ul style="list-style-type: none"> <li>● Other destination inspections, including inspections of fresh cut and salad mix, that are delivered for purposes other than arbitration in accordance with section 40 (2) of the <i>Fresh Fruit and Vegetable Regulations</i> and are delivered if an inspector is available</li> </ul>

We recommend that Bangladesh consider adopting measures, including legislative language, that clearly establish a priority for perishable goods, both for release and scheduling inspections. The legislative language used by either Viet Nam

<sup>53</sup> Canadian Food Inspection Agency, “Destination Inspection Service: inspection priorities”, online: <https://inspection.canada.ca/importing-food-plants-or-animals/food-imports/food-specific-requirements/dis/inspection-priorities/eng/1303746546769/1303746782602>.

or the Philippines could serve as a benchmark.<sup>54</sup> We recommend that Bangladesh consider adopting this language in its Customs Act, if feasible, in a manner that accords with its legislative structure, so that priority is given to perishable goods for any inspection required by law. A potential legislative provision could read as follows:

Priority in the inspection of goods, wherever required by the Customs Act or any other law of Bangladesh, shall be given to live animals, perishable goods and other goods requiring immediate inspection.

We would also propose to adopt a definition of “perishable goods” similar to that found in footnote 10 of the TFA, namely, “goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.” Providing a definition of perishable goods has the benefit of clarifying for customs officials and importers which goods should be given priority treatment. However, this is also a broad enough definition to include goods such as pharmaceuticals that are liable to deterioration, which will help ensure priority treatment to highly perishable goods such as vaccines. Moreover, providing a definition similar to that contained in Article 7.9 is the clearest way to ensure alignment with the TFA.

Placing this legislative language in the Customs Act or a revised Import Policy Order could be seen as a preferable solution to a policy document for three reasons. First, the Customs Act and Import Policy Order are currently undergoing amendment, and there would be an opportunity to propose new language during the amendment process. Second, the Customs Act and Import Policy Order are framework legal instruments for customs procedures in Bangladesh and are, therefore, the most natural places for bringing Bangladesh’s legal system into alignment with the TFA. Third, a legislative amendment or revised order would have greater permanence than a policy or guideline, assuming that amending such a legislative provision or order in the future would be difficult and unlikely. We finally note finally that, though the provision should indicate that priority of inspections be given to perishable goods wherever those inspections are required by Bangladeshi law, requiring priority using similar language in other laws dealing with import and export of specific goods, such

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<sup>54</sup> Section 33 of Viet Nam’s *Law on Customs* provides: “Goods which are live animals or plants, hard to be preserved or other special goods shall be prioritized for inspection.” Section 419 of The Philippines’ AMCTA provides: “Examination of Goods. Examination of goods, when required by the Bureau, shall be conducted immediately after the goods declaration has been lodged. Priority in the examination shall be given to live animals, perishable goods and other goods requiring immediate examination.”



as the Plant Quarantine Act, 2011 and Fisheries Quarantine Act, 2018, could add legal certainty and clarity.

However, if a legislative amendment to the Customs Act or Import Policy Order were not pursued or at least not feasible initially, an alternative or preliminary approach would be to draft procedures or policy guidelines on perishable goods that customs officials would be required to follow. These guidelines could require customs officials to prioritize perishable goods when undertaking inspections in much the same language as proposed above. This approach would be similar to that taken by the Canadian Food Inspection Agency for postal and courier imports. While this solution would potentially not be as robust as a legislative amendment or order, it would also have the benefit of greater flexibility and would allow amendment by agency (rather than legislative) procedure. Moreover, as indicated, a guideline could be a suitable preliminary solution if a legislative provision were not possible at least initially.

We would further recommend that the Customs Authority, Bangladesh Standard and Testing Institution, or other appropriate Counterpart Agency publish an additional guideline that creates a hierarchy among perishable goods. Such a hierarchy would allow customs officials to easily determine, first, whether a good is indeed perishable and, second, which perishable goods ought to be given higher priority vis-à-vis other perishable goods. An example of such a hierarchy comes from the Canadian Food Inspection Agency and is set out in Table 2 above. If such a guideline were to be adopted, we also recommended that the specific HS codes associated with each of the categories of priority goods be provided. This would help make the Customs Authority's determinations of perishability and priority more transparent, automatic and objective. However, the intent of such a priority table would not be to set out rigid rules but rather flexible guidelines that would work in tandem with the experience and judgment of the customs officers and inspectors. Moreover, any system of prioritization for perishable goods would also have to operate simultaneously with a risk management regime, which we discuss further in Section 6 below.

### **5.3.3 REASONS FOR DELAY IN RELEASE**

While we did not identify precedent for a legal provision that requires the provision of reasons for any significant delay in the release of perishable goods, we recommend that Bangladesh adopt a procedure or legal provision that requires the Customs Authority and Counterpart Agencies to do so upon the importer's request. Such a measure could specify a timeline under which communications must be made to the goods owner after a specified number of days if those goods have not yet been released. Moreover, as Counterpart Agencies may account for much of the delay for these shipments, they should be subject to similar accountability and transparency requirements. These Counterpart Agencies include the Bangladesh Standard & Testing Institution (BSTI), the Bangladesh Council of Scientific and Industrial Research (BCSIR), the Plant Quarantine Wing (PQW), and the Bangladesh Atomic Energy Commission.

## **6 RISK MANAGEMENT**

The next TFA obligation we assess relates to risk management procedures, which also have a direct impact on agricultural trade. TFA Article 7.4 Risk Management contains obligations that aim to achieve effective customs controls while balancing countries' need to monitor border security with reducing clearance processing times and transaction costs.<sup>55</sup> Customs authorities are charged with efficiently facilitating the processing and movement of cargo while detecting fraud and other offenses; thus, customs and other border authorities apply risk management strategies to determine which products, means of transport, or parties should be examined and to what extent.<sup>56</sup>

Risk management programs must be continually updated with new advances in technology that allow customs authorities increased capacity to process larger quantities of transactions data. Currently, effective risk management programs employ predictive analytics and regression techniques to analyze the risk of arriving shipments using commercial invoices, exporter declarations, and other customs forms. Some countries have introduced artificial intelligence and machine learning technology to their risk management programs, though automated clearance legislation has not yet been implemented. Thus, legislation, regulation, or policy

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<sup>55</sup> United Nations Conference on Trade and Development, "UNCTAD Trade Facilitation Technical Note No. 12", online: [https://unctad.org/system/files/official-document/TN12\\_RiskManagement.pdf](https://unctad.org/system/files/official-document/TN12_RiskManagement.pdf).

<sup>56</sup> *Id.*

guidelines governing data, its protection, and channels through which they may be shared between border authorities must be in place.<sup>57</sup>

Risk management is particularly important to agricultural trade, where products are not only perishable but also often subject to additional SPS measures and other health and hygiene rules and standards and their associated review and certification processes. The TFA requests that WTO Members, using certain methods prescribed by the TFA,<sup>58</sup> concentrate their resources toward identifying and processing high risk consignments as well as prioritizing the release of low-risk consignments. While Bangladesh has recently revamped its risk management system, certain reforms to its current legal framework may further increase compliance and efficiency while decreasing the costs of agricultural trade.

In this Section we discuss Bangladesh's current legal framework governing risk management at the border and make the following recommendations: border authorities should (1) conduct pre-approval processing and identify low risk shipments such that only high risk consignments will need to be physically inspected; (2) publish their risk management evaluation criteria to encourage traders to comply, expediting processing times while lowering transaction costs; and (3) adopt a policy approach where traders are solely responsible for their declarations.

## **6.1 TFA OBLIGATION: ARTICLE 7.4**

Risk management in the trade facilitation space involves aligning countries' legal frameworks to provide customs and other border agencies easy access to shipping documents and a data-driven process for identifying high-risk cargo for further inspection or testing.<sup>59</sup> Risk management of agricultural products can ensure food products meet international safety standards and move across borders quickly,

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<sup>57</sup> In most countries, rules governing data sharing, use, protection, and classification are typically provided for a separate, general privacy act and are not alluded to in the customs act or pursuant regulations; thus, it is beyond the scope of this report to provide recommendations for managing data. However, because Bangladesh lacks an overarching privacy law that may be adopted by Customs and Counterpart Agencies, we recommend that the National Trade and Transport Facilitation Committee (NTTFC), which serves as the focal point for coordinate trade facilitation activities in Bangladesh, develop clear and concise channels and rules for data sharing and cooperation between Bangladesh Customs and Counterpart Agencies.

<sup>58</sup> World Trade Organization, Trade Facilitation Agreement Facility, "Release and Clearance of Goods", online: <https://www.tfafacility.org/article-7>.

<sup>59</sup> USAID, *supra* note [25], 12.

while imports that pose particular SPS, environmental, or other risks are scrutinized as necessary.<sup>60</sup>

WTO TFA Article 7.4 discusses risk management methodologies and processes that leverage shipping records and other data to identify high-risk shipments and to subject them to higher inspection or certification requirements.<sup>61</sup> Article 7.4 states that:

- Each Member shall, to the extent possible, adopt or **maintain a risk management system** for customs control.
- Each Member shall design and apply risk management in a manner as to **avoid arbitrary or unjustifiable discrimination**, or a disguised restriction on international trade.
- Each Member shall concentrate customs control and, to the extent possible other relevant border controls, on high-risk consignments and **expedite the release of low-risk consignments**. A Member also may select, on a random basis, consignments for such controls as part of its risk management.
- Each Member shall base risk management on an assessment of risk through **appropriate selectivity criteria**. Such selectivity criteria may include, inter alia, the Harmonized System code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance records, and means of transport.

The full text of Article 7.4 is provided in Annex I of this report.

## **6.2 RISK MANAGEMENT UNDER BANGLADESHI LAW: GAP ANALYSIS**

Bangladeshi Customs currently subscribes to the ASYCUDA World (AW) risk management program, and, in recent years, Customs, the National Board of Revenue (NBR), and other border authorities have taken substantive steps to align local risk management practices with TFA obligations. Bangladesh's Finance Act of 2019 provides that the NBR shall establish a Customs Risk Management Unit for the purpose of conducting overall customs risk management, including automated risk management.<sup>62</sup> The Unit has since been created; its mandate is to maintain a risk

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<sup>60</sup> *Id.*, 3.

<sup>61</sup> World Trade Organization, *supra* note [58].

<sup>62</sup> *Finance Act, 2019*.

management “register” and to coordinate risk management strategies and practices across border authorities.<sup>63</sup> Additionally, Bangladesh’s Ministry of Public Administration has approved the creation of a Risk Management Directorate within Customs and has already trained the relevant key personnel.<sup>64</sup> The World Bank is also assisting Customs in procuring updated multidimensional risk management software to modernize and thereby expedite clearance processes.<sup>65</sup> Other border authorities facilitating agricultural trade, including both the BSTI and PQW, have created internal risk management committees and focal points to coordinate and engage with Customs.<sup>66</sup> The PQW has also issued a draft standard operating procedure.<sup>67</sup>

Nonetheless, agricultural traders continue to experience inefficiencies during the clearing process due to gaps in Bangladesh’s risk management regime. Border authorities including the PQW and BSTI do not practice pre-approval processing. At the legislative level, neither the Import Policy Order nor the Customs Act currently in force contain provisions on implementing a comprehensive and overarching risk management program binding all border authorities. There is also no systematic application of a national risk management system by Customs or any other border authority. As a result, risk management processes are discretionary and may vary greatly between agencies, causing confusion unnecessary delays, and they may result in perishable products losing their value. For instance, the PQW carries out one hundred percent physical inspections, whereas Customs and other border authorities allow expedited release with little or no inspection or certification requirements for products with certain HS codes. In the case of agricultural trade, where products tend to be subject to the authority of more than one agency, uncoordinated risk management strategies between border authorities can result in significant delays, loss of value of perishable goods, and high transaction costs for traders. The lack of an efficient risk management system is thus an NTM frustrating trade for agricultural importers and exporters, especially given complex SPS and other health and hygiene related rules and standards that pertain to agricultural products.

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<sup>63</sup> World Bank Group, “Bangladesh’s Alignment with the WTO TFA Gap Assessment”, 31 (2019).

<sup>64</sup> *Id.*, 18.

<sup>65</sup> *Id.*

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*, 31.

### 6.3 INTERNATIONAL BEST PRACTICES AND RECOMMENDATIONS

The World Customs Organization defines risk management as “the systematic application of management procedures and practices which provide Customs with the necessary information to address movements or consignments which present a risk.”<sup>68</sup> World Bank data indicates that countries with developed risk management programs can reduce clearance time of imported products by one to five days.<sup>69</sup> In the agricultural sector, where products are often perishable and quick to lose their value, effectively identifying, analyzing, and then treating risks can lower costs related to transportation, storage, and related testing procedures, amongst others.

Very few of the countries surveyed had developed official and comprehensive risk management programs, especially the legislative level, and most continue to struggle with setting out the basic regulatory framework for coordinating risk management practices between Customs and Counterpart Agencies. For instance, studies have reported that Indonesian border authorities maintain independent risk management procedures and electronic systems,<sup>70</sup> while Malaysia Customs does not have a dedicated risk management unit and its other border authorities do not apply risk management.<sup>71</sup> Thailand is one of the only countries in the Southeast Asia region that has established a formal and dedicated risk management unit under Thai Customs that manages a risk profiling system, maintains a record of compliance levels by product, and offers risk management training events and seminars to border officers.<sup>72</sup>

As part of its Single Window obligation under Article 10.4 of the TFA, Viet Nam Customs launched the Viet Nam Automated Cargo Clearance and Port Consolidated System (VNACCS/VCIS) in April 2014,<sup>73</sup> which largely digitized commercial trading in Viet Nam for private sector enterprises and automated some

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<sup>68</sup> USAID, USAID-Bangladesh Trade Facilitation Activity (BTFA) Final Report (2018), 7. A more comprehensive or holistic definition of risk management is not necessary for our purposes of reviewing NTMs relevant to agricultural trade in Bangladesh and is beyond the scope of this report. For a more extensive discussion of the interpretations of risk management, *see* USAID, Customs Modernization Handbook: Applying Risk Management in the Cargo Processing Environment (2018), 5.

<sup>69</sup> USAID, *supra* note [68], at 6.

<sup>70</sup> USAID, Trade Facilitation Regional Agricultural Trade Environment (RATE) Summary (2013), 13.

<sup>71</sup> *Id.*, 14.

<sup>72</sup> *Id.*

<sup>73</sup> Viet Nam Customs, Press Release, “Viet Nam Customs successfully deployed VNACCS/VCIS” (Nov. 10, 2015), online:

<https://www.customs.gov.vn/Lists/EnglishNews/ViewDetails.aspx?ID=457&Category=News%20and%20Events&language=en-US>.

degree of risk management analyses at Viet Nam's borders. Through VNACCS/VCIS, traders submit customs documents such as contracts of sale of goods, commercial invoices, certificate of origin or inspection results, among others, and the automated technology organizes shipments, based on the information in these forms, into green, yellow, and red categories for processing. Each color corresponds with a risk profile, with green items being the least risky and subject to less stringent inspection or certification requirements.<sup>74</sup> Conversely, if certain products require further inspection under local law, or if imports are shipped with deficient records, they may be designated for the red lane and be subject to greater scrutiny by border authorities. Risk profiles and inspection processes for shipments designated for the yellow category fall somewhere between the green and red. We recommend that, while developing an automated system such as VNACCS/VCIS may not be feasible within the scope of the BTF project, border authorities involved in facilitating agricultural trade employ a similar systemic approach to risk management and conduct pre-arrival processing by sorting shipments into similar green, yellow, and red lanes. Under Bangladesh Customs, a policy framework already exists for sorting shipments into these categories, but the risk management analyses and procedures are not applied effectively. Table 2 sets out the percentage of shipments designated under each risk profile.

**Table 3: Bangladeshi Imports and their Risk Profiles (2018)<sup>75</sup>**

<b>Custom House</b>	<b>Lane (Color)</b>	<b>Percentage Designated</b>
Chattogram	Green	0%
	Yellow	80%
	Red	20%
Benapole	Green	0%
	Yellow	60%
	Red	40%
Dhaka	Green	0%
	Yellow	92%

<sup>74</sup> Khoa Dao Trong, Viet Nam Customs Procedures Executive Summary: 2015 Updates (Apr. 1, 2015), online: <https://www.slideshare.net/daotrongkhoa/Viet-Nam-customs-procedures-2015>.

<sup>75</sup> UKaid & International Finance Corporation, *supra* note 15.

<b>Custom House</b>	<b>Lane (Color)</b>	<b>Percentage Designated</b>
	Red	8%
ICD	Green	0%
	Yellow	68-84%
	Red	16-32%

The data above suggests that agricultural traders are largely unable to access green category review, which means their perishable goods are suffering extended processing times and diminishing in value. Each border authority involved in agricultural trade in Bangladesh should adopt similar procedures to Bangladesh Customs but seek to set out clear rules for organizing shipments based on their accompanying customs documents to allow some trusted business partners access to the green category and maximize efficiency. Doing so would allow for pre-arrival processing and circumvent the need for 100 percent physical inspection, as the PQW and other border authorities currently practice.

Additionally, on January 1, 2020, Viet Nam’s Circular 81/2019/TT-BTC (the Circular) regulating risk management at its borders came into effect. The Circular not only sets out a complex system for categorizing various levels of trader compliance but also publishes risk management criteria used by Viet Nam Customs and other border authorities in evaluating risk.<sup>76</sup> In theory, publishing evaluation criteria should bolster the quality of information gathered for evaluating compliance and allow border authorities to dedicate their limited resources to inspecting and processing higher risk consignments. Thus, we recommend that border authorities involved in facilitating agricultural trade, including the PQW and BSTI, adopt similar transparent practices by making evaluation criteria available to traders. Increased quality of customs documents should discourage errors on forms and violations of Customs or other law. Greater transparency will also allow border authorities to conduct pre-arrival processing of certain low risk agricultural products from trusted business partners so that they may be cleared immediately or shortly after their arrival at Bangladeshi borders. As a result, perishable goods subject to inspection or further

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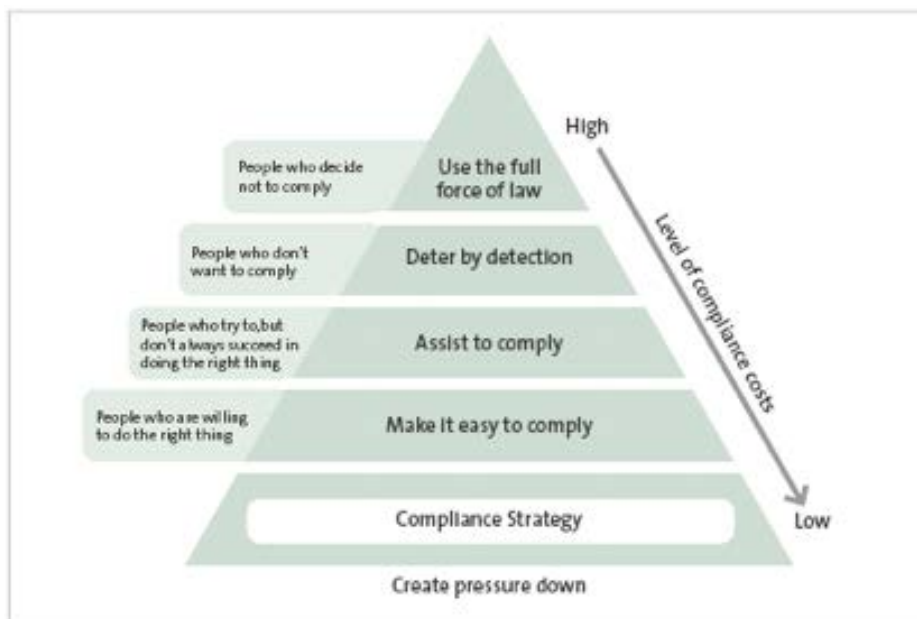
<sup>76</sup> Viet Nam News, “Customs all set to make risk management” (Oct. 30, 2020), online: <https://VietNamnews.vn/economy/804034/customs-all-set-to-make-risk-management-transparent.html>.



testing requirements may also experience shorter processing times, further reducing transaction costs for traders.

New Zealand’s risk management program could also provide a useful model for Bangladeshi border authorities involved with processing agricultural products as a more general approach to reforming law and regulation in this area. In 1996, New Zealand Customs passed the Customs and Excise Act which created a legislative framework that placed the burden of compliance upon the trader. Customs and other border authorities would intervene, only to the extent necessary, when customs documents were erroneous or deficient (see Figure 2 below).<sup>77</sup> Because traders are held solely accountable for the accuracy of their declarations, Customs and other border authorities could focus their efforts on assessing high risk transactions and only intervene when required.<sup>78</sup> The Customs and Excise Act also provided for pre-arrival clearance, deferred payment schemes (where the payment of a duty or tax can be made after physical clearance), and post-clearance audit mechanisms.

**Figure 2: New Zealand’s Approach to Risk Management**<sup>79</sup>



Using New Zealand’s law as a model, we recommend that Bangladeshi border authorities involved in processing agricultural trade adopt a similar approach for holding traders solely responsible for their declarations, especially if risk management

<sup>77</sup> New Zealand Customs Service, *Trade Facilitation Implement Case Study: Risk Management: New Zealand’s Experience* (2011), 4.

<sup>78</sup> *Id.* at 5.

<sup>79</sup> New Zealand Customs Service, *supra* note [77], 5.

criteria are published and accessible by all traders. Doing so would allow for more effective use of border authorities' resources and increased enforcement at the borders.

## **7 TEST PROCEDURES**

The third TFA obligation we assess relates to test procedures, which also have a direct impact on agricultural trade. WTO TFA Article 5 on Other Measures to Enhance Impartiality, Non-Discrimination, and Transparency lists obligations to increase impartiality and transparency of control for goods at the border. Article 5.3 relates to offering a second test for imports to promote transparency. Agricultural goods are often subject to sampling before release. In some cases, test results from sampled goods may yield a finding that is different from the imported goods declaration and unacceptable to the importing country ("adverse finding"). To promote transparency across the importation process, Article 5.3 outlines obligations for Member States to allow importers to challenge or confirm the first test's results through a second test.

Private sector importers must comply with several NTMs related to test procedures when importing into Bangladesh. Based on an interview with a Bangladeshi importer of agricultural food additives, importers face several procedural issues with testing infrastructure, including insufficient lab equipment and lack of testing personnel, which reduce the Customs Authority's ability to offer second tests. Additionally, the interviewee noted the time-consuming nature of applying for a second test, which could increase the amount of time products remain in the Customs Authority's possession. For agricultural goods, this could cause considerable damage to the products. The interviewee's experience remains relevant to agricultural importers who confront burdensome testing procedures that sometimes result in damages to imported goods.

For agricultural goods, a streamlined, non-discriminatory testing procedure is key. Agricultural goods that are deemed adverse by an initial test will not be cleared, increasing agricultural import damages. However, a testing procedure that meets the requirements of Article 5.3 would allow importers to apply for a second test to challenge the initial adverse finding. This would increase confidence in the customs import procedure. However, there is a gap between Bangladesh's laws and Article 5.3

to the extent that they lack a legal framework or process for offering such a second test.

## 7.1 TFA OBLIGATION: TESTING PROCEDURES

Article 5.3 covers certain aspects of laboratory testing for food safety, customs, and other regulatory purposes that involve border agencies that sample and test goods, including customs control and additional border agencies like SPS and standards authorities.<sup>80</sup> Article 5.3 addresses testing procedures in the context of impartiality, non-discrimination, and transparency rather than testing procedures more generally.

Article 5.3 provides that:

- A Member may, upon request, **grant an opportunity for a second test**, in case the first test result of a sample taken upon arrival of goods declared for importation shows an adverse finding.
- A Member may either **publish**, in a non-discriminatory and easily accessible manner, the name and address of any laboratory where the test may be carried out, or **provide the information** to the importer when it is granted the opportunity granted under paragraph 3.1.
- A Member shall **consider the result of the second test**, if any, conducted under paragraph 3.1, for the release and clearance of goods, and, if appropriate, may accept the results of such test.

The full text of Article 5.3 is provided in Annex I of this report.

Article 5.3 highlights that WTO Members may provide a second test for samples upon an adverse finding with the goal of increasing transparency and facilitating trade.<sup>81</sup> This measure is only applicable when the results of the first test differ from the declaration of the goods at the time of import, or otherwise result in an adverse finding according to the provision.<sup>82</sup> Additionally, the measure states that WTO members “may grant” a second test, highlighting that a second confirmatory test is not mandatory, but rather a decision that is left to the discretion of a country on

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<sup>80</sup> World Trade Organization, Trade Facilitation Agreement Facility, “Other measures to enhance impartiality, non-discrimination and transparency”, online: <https://www.tfafacility.org/article-5>.

<sup>81</sup> International Trade Centre, “Getting down to business: Making the Most of the WTO Trade Facilitation Agreement” (2020), online: <https://www.intracen.org/publication/Getting-Down-To-Business-Making-the-Most-of-the-WTO-Trade-Facilitation-Agreement/>, 36.

<sup>82</sup> *Id.*

a case-by-case basis.<sup>83</sup> Note there is no obligation to perform the second test in a different laboratory than the laboratory where the initial test was conducted.<sup>84</sup>

However, if they choose to conduct a second test, WTO Members must make the name and address of all laboratories where second tests can be conducted public in an open, transparent, and non-discriminatory manner. This information should be provided directly to the importer. Publishing names and addresses of laboratories will also reduce the amount of time public authorities spend responding to inquiries from trade importers. When granting a second test, Members must take results of the second test into consideration for the release or clearance of goods and if appropriate, accept the result.

If implemented, Article 5.3 would implicate border agencies that sample and test goods, border agencies that publish information, and importers. The regulation would mainly promote transparent sampling, and also potentially avoid an influx of queries from importers about testing laboratories.

## **7.2 TEST PROCEDURES UNDER BANGLADESHI LAW: GAP ANALYSIS**

While Bangladesh does publish a list of accredited laboratories where tests can be carried out, there is no legal framework or procedure for providing a second test. Moreover, there is no legal provision requiring the acceptance of the second test's results, but the interviewee discussed the possibility of a second test in practice. The interviewee stressed that the reapplication process is not considered a common practice and can take a significant amount of time as products remain seized, resulting in increased customs damages.

The Bangladesh Policy Import Order does not outline a second test procedure. However, there is a general practice in which importers request a second test after receiving an adverse finding. If an importer is not satisfied with the lab test report of an imported product conducted in the PQW, BSTI), Department of Livestock Services (DLS, Bangladesh Atomic Energy Commission (BAEC), Department of Fisheries (DOF), or Bangladesh Customs Lab, then the importer may send the sample to other government laboratories for a second test. The second test must be conducted in

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<sup>83</sup> *Id.*

<sup>84</sup> *Id.*, 37.

government laboratories. Government offices are generally opposed to accepting private lab reports. There is no legal framework outlining the details of this process.

The recommendations below focus on filling this gap in Bangladesh's legal framework. It should be noted, however, that for legal changes to be effective, the necessary infrastructure for performing second tests will need to be in place. This includes the infrastructure and facilities necessary to perform second tests, at least for many commodities and points of entry. The proposed legal framework should, therefore, be seen as only a part of what is needed for alignment with the TFA and should be considered in tandem with infrastructural improvements such as establishing additional accredited laboratory facilities to ensure that all tests can be performed. While second tests do not need to be conducted in laboratories separate from where first tests are conducted, performing second tests for adverse findings has would potentially increase the amount of import tests Bangladesh would perform. This would require adequate facilities to sustain the increase in testing.

### **7.3 INTERNATIONAL BEST PRACTICES AND RECOMMENDATIONS**

Procedures for performing second tests are scarce across the Southeast Asian region. Among the comparison countries, only one has precise legal language that indicates implementation of a second test pursuant to Article 5.3. According to India's 2018 Customs Manual,<sup>85</sup> detailed guidelines for second tests, referred to as "retests", must be made within a specified time by the importer, or the Additional/Joint Commissioner of Customs may grant an agent a retest as a trade facilitation measure.<sup>86</sup> Guidelines for retesting are detailed in Circular No. 30, 2017.<sup>87</sup> India approaches second tests by requiring that:

- Importers must communicate their intentions to request a retest from the Additional/Joint Commission of Customs within a period of ten days from the receipt of the communication of the first test results.

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<sup>85</sup> India's Customs Manual is published by the Central Board of Indirect Tax and Customs to summarize India's updated Customs regulations.

<sup>86</sup> See Customs Manual 2018 (India), Central Board of Indirect Taxes and Customs, online: [https://www.cbic.gov.in/resources/htdocs-cbec/deptt\\_offcr/customs-manual2018.pdf](https://www.cbic.gov.in/resources/htdocs-cbec/deptt_offcr/customs-manual2018.pdf), 6.

<sup>87</sup> Central Board of Excise & Custom (India), Circular No. 30/2017, Detailed guidelines for re-testing samples-reg (Issued on July 18, 2017).

- The Additional/Joint Commission of Customs must clearly provide, in writing, the name and address of the laboratory/institution where the retest will be carried out.
- Retests should be only made on remnants of samples originally tested or on duplicative representative sealed samples in the custody of Customs. To avoid delays, samples for retests must be marked as “immediate” before sending to the laboratories.
- If fresh samples must be drawn, such samples should be collected in the presence of the importer or the importer’s representative/customs broker.
- Retest requests on the ground that the original sample was unrepresentative should only be allowed if the consignment is still in Customs control. At the time of drawing samples, the importer or the importer’s representative must be present and certify that samples drawn are representative.
- Competent authorities shall consider retest results without prejudice to the results of the first test.
  - If there is a difference between the first test and the retest, the competent authority must make the decision relying on either of the tests and specifying the grounds for the decision taken in writing.
  - If the competent authority is unable to decide whether to rely on the first test results or the retest, then it may order a third test if the consignment is still within customs control. (This is not to be taken in every case where there is a variation between the first test and a retest).
- Occasionally, there may be situations in which a customs officer is constrained and may deny results from retesting facilities. The denial is expected to be on reasonable grounds recorded in writing.

India’s approach to aligning with Article 5.3 clearly provides for an opportunity to request a second test, but it does not require a test to be related to transparency, impartiality, or non-discrimination. This is an important point in the broader context of the measure that Bangladesh should underscore as it considers establishing procedures to permit second tests. Additionally, India’s approach clearly provides for innovative solutions to potential discrepancies between first and second tests by providing third tests in the event that the competent authority is unable to make a decision. Note that second test samples are given an “immediate” label to ensure better trade facilitation. This labeling requirement helps reassure importers that

they will not face unreasonable delays that may damage their agricultural goods during a retest.

Like India, Bangladesh should consider potential situations that are not accounted for in the TFA and how it would grapple with those situations while promoting non-discrimination and impartiality. Situations include but are not limited to: handling discrepancies between first and second tests, allowing testing requests when imported goods are no longer in Customs control, and denying second test requests based on Customs officer constraints. However, it should be noted that India’s testing procedures requiring fresh samples to be drawn in the presence of the importer or importer’s representative could contribute to significant delays in some cases.

An International Trade Centre study analyzing ways in which to maximize the benefits of the TFA maps a process for a national implementation framework to comply with Article 5.3. The implementation plan (1) provides traders with the opportunity to request a second test, (2) ensures the contact information of any laboratory where a second test may be conducted is published accessibly, and (3) highlights that second test results are taken into consideration for release and clearance. The following template may serve as a starting point. However, because Bangladesh does not yet have an existing law, regulation, or procedure to allow second tests, government institutions will need to amend the processes to allow for second test requests, depending on required information and communications technology capacity to ensure all relevant information is published on the internet.

**Table 4:** Preparing a National Implementation Plan<sup>88</sup>

Implementation Sequence	<p>Preparatory phase</p> <ul style="list-style-type: none"> <li>● Determine legal, procedural and technical needs for creating/improving current testing procedures systems.</li> <li>● Identify the border agencies predisposed to handle samples and tests.</li> </ul>
	<p>Set-up phase</p> <ul style="list-style-type: none"> <li>● Establish or improve the legal, technical and institutional basis for an efficient system of publishing information about testing procedures, including contact information about laboratories.</li> <li>● Set up mechanisms for inter-agency cooperation when more than one ministry or agency is involved with testing procedures.</li> <li>● Establish guidelines/criteria/regulations for conducting second</li> </ul>

<sup>88</sup> International Trade Centre, *supra* note [81], 37.

	tests. <ul style="list-style-type: none"> <li>• Link the system with risk analysis (or to an existing risk management system), to evaluate future risks.</li> </ul>
	Management and follow-up phase <ul style="list-style-type: none"> <li>• Set up a mechanism for monitoring and evaluating results of testing procedures to improve the import testing process.</li> </ul>
Average time for implementation	Between one and a half to two years.
Leading implementation agency	Customs is most commonly chosen as the leading implementation agency, with the ministry of trade.

Legal and administrative frameworks are key to ensuring that Article 5.3 obligations are met. We recommend that such frameworks clearly define traders' rights to second tests, outline criteria for conducting second tests, and meet transparency publication requirements. Annex III provides India's full circular that incorporates legal language and retest guidelines. It is also crucial that the confirmatory testing system implemented is efficient and reliable to uphold a transparent process and facilitate trade. Therefore, we first recommend that Bangladesh focus on establishing the legal framework it would need to offer second tests.

Given that Bangladesh's agricultural imports are so crucial to Bangladesh's food security, we also recommend that Bangladesh heavily prioritizes meeting obligations that directly affect speed of release. Article 5.3 mostly focuses on transparency rather than speed of release. Because agricultural goods in Bangladesh are suffering from lengthy clearance time, Article 5.3's direct contribution to trade facilitation does not primarily address these clearance concerns in the way that other obligations, including Article 7.9, deal with clearance time.

## **8 FORMALITIES AND DOCUMENTATION**

The final TFA obligation we assess relates to formalities and documentation requirements. This obligation is relevant to trade in all goods, including agricultural goods, and it is important because reducing and simplifying formalities and documentation requirements will help increase efficiency at the border and make it easier and faster for the private sector to import goods such as cotton, crops, vegetables, fruits and nuts into Bangladesh. Formalities and documentation



requirements are particularly relevant to perishable goods, because delays at the border, which pose a risk to perishable goods, are commonly due to cumbersome conformity documentation and questions arising from the information presented on certificates. Moreover, as we note below, imports into Bangladesh require 8 documents and take 34 days, which is above both the regional median and average.<sup>89</sup> Formalities and documentation requirements also lead to longer processing times for Bangladesh agencies. For example, information gathered by Venture37 from private sector industry associations has shown that the Bangladesh Land Port Authority requires approximately 30 minutes to complete a document check.

We begin our discussion below with relevant TFA provision, Article 10.1, and the documentation requirements contained in Bangladeshi customs law. We then summarize our comparative analysis and make recommendations on a legal mechanism to ensure cooperation and information sharing by all affected customs and counterpart agencies with the National Trade and Transport Facilitation Committee during its reviews of formalities and documentation requirements.

### **8.1 TFA OBLIGATION: ARTICLE 10.1**

Article 10 of the TFA is concerned with Formalities Connected with Importation, Exportation, and Transit. Article 10.1 regulates import, export, and transit documentation requirements and formalities, implicating all border agencies.<sup>90</sup> Specifically, it requires that:

- Members **periodically review** formalities and documentation requirements with a view towards **simplifying or reducing them**.
- Documentation requirements or formalities should be **as fast and efficient** as possible. They should not be adopted if a **less trade-restrictive solution** is available and should be **eliminated or modified** if no longer necessary.

The full text of Article 10.1 is provided in Annex I of this report.

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<sup>89</sup> Bayley, Anthony *supra* note [3], 9.

<sup>90</sup> World Trade Organization, Trade Facilitation Agreement Facility, “Formalities connected with importation, exportation and transit”, online: <https://www.tfafacility.org/article-10>.

## 8.2 FORMALITIES AND DOCUMENTATION UNDER BANGLADESHI LAW: GAP ANALYSIS

The Import Policy Order, 2015-2018 contains several formalities and documentation requirements that apply to importers. It requires importers to submit documents to the Import Control Authority regarding the price of imported goods.<sup>91</sup> It also requires, in all cases of import, that the “country of origin” shall be mentioned clearly on the package and container of the goods, and “[a] certificate regarding ‘country of origin’ issued by the concerned Government agency, approved authority or organization of the exporting country” be submitted along with import documents to the Customs Authority at the time of release of goods.<sup>92</sup>

Section 8 of the Import Policy Order provides that, unless otherwise specified, no import license shall be necessary for import of any item.<sup>93</sup> In general, all import transactions require letter of credit authorization forms (LCAs) irrespective of the source of finance.<sup>94</sup> For most goods, imports must be accompanied by an irrevocable letter of credit, although “each consignment of quickly perishable food goods worth US dollar 50,000 (Fifty Thousand) via Teknaf Customs Station” and “essential food goods” can be imported against an LCA form without a letter of credit. Along with the LCA form, importers must submit to their nominated banks an “LC Application Form duly signed by the importer”, “Indents for goods issued by Indentor or a Proforma Invoice obtained from the foreign supplier”, and an “Insurance Cover Note”.<sup>95</sup>

Private sector importers must also provide the following documents:

- Valid membership certificate from the registered local Chamber of Commerce and Industry or any Trade Association established on all Bangladesh basis, representing any special trade or business;
- Renewed Import Registration certificate for the concerned financial year;
- Declaration, in triplicate, that the importer has paid income tax or submitted income tax return for the preceding year;
- Proof of having Tax Identification Number (ETIN) in all cases of imports, excepting personal use;

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<sup>91</sup> *Import Policy Order, 2015-2018*, Section 5(4)(a).

<sup>92</sup> *Id.*, Section 5(6)(b).

<sup>93</sup> *Id.*, Section 8(1).

<sup>94</sup> *Id.*, Section 8(2).

<sup>95</sup> *Id.*, Section 8(11).

- Any such document as may be required as per Public Notice, or Order issued by Chief Controller, from time to time under this Order;
- Any necessary papers or documents according to this order; and
- Insurance Cover Note either from Sadharan Bima Corporation or from any Bangladeshi Insurance Company and duly stamped insurance policy against this cover-note, which shall have to be submitted to the Customs Authority during release of goods.<sup>96</sup>

Under Section 9, importers must apply to the Import Control Authority to register as an importer under a particular category corresponding to the ceiling value of the overall annual import. This registration requires annual renewal.

While there are no legal provisions that require border authorities to assess the trade facilitation impact of formalities and document requirements with which an importer must comply,<sup>97</sup> Bangladesh has made recent changes to better align its policies with the requirements of Article 10.1. Namely, it has established the National Trade and Transport Facilitation Committee (NTTFC), which has a mandate to review formalities and documentation requirements. While this appears to achieve alignment with the obligations of Article 10.1 of the TFA, the discussion below considers other best practices and legal measures that could help ensure cooperation among agencies with the NTTFC.

### **8.3 INTERNATIONAL BEST PRACTICES AND RECOMMENDATIONS**

The formalities and documentation requirements across the Southeast Asian region vary significantly. An Asian Development Bank Institute study developed the following table indicating the number of documents and time taken for export and import transactions in the South Asian region.

**Table 5:** South and South East Asia Import Documentation Requirements<sup>98</sup>

<b>Economy</b>	<b>Documents for Import (no.)</b>	<b>Time to Import (days)</b>
Singapore	4	4
Malaysia	6	8

<sup>96</sup> *Id.*, Section 8(13).

<sup>97</sup> This is not to say that there should be such provisions, however. As noted below, there is no precedent for legal provisions requiring periodic reviews of formalities and documentation requirements in the countries we reviewed.

<sup>98</sup> Bayley, Anthony *supra* note [3], 9.

Thailand	5	13
Indonesia	7	23
Sri Lanka	6	19
Viet Nam	8	21
<b>Bangladesh</b>	<b>8</b>	<b>34</b>
Philippines	8	14
India	11	20
Cambodia	10	26
Myanmar	9	27
Bhutan	12	38
Lao PDR	10	26
Nepal	11	38

The data tends to show that the more developed economies in the region (Singapore, Malaysia and Thailand) are able to process imports the quickest and also require the least number of documents. Bangladesh requires 8 documents (on the median and slightly less than average for the region) and it takes approximately 34 days to import goods (above both the regional median and average).

The obligation contained in Article 10.1 of the TFA is to periodically review formalities and documentation requirements with a view towards simplifying or reducing them. None of the countries surveyed meet this obligation through legislative requirements, at least not directly. Article 8 of Viet Nam’s Law on Customs, for example, provides as follows:

The State shall give priority to investment in modern technical equipment and facilities and advanced technologies to ensure the effective customs management; encourage entities to participate in developing advanced technologies and technical equipment to ensure the application of modern customs management methods. Entities involved in import and export are responsible for participating in developing and performing electronic transactions and electronic customs formalities.<sup>99</sup>

While this provision speaks to the responsibility of entities for developing advanced technologies to ensure modern customs management methods, it does not explicitly require customs entities to conduct periodic reviews in order to simplify or reduce formalities and documentation requirements. Another approach, implemented by Malaysia, is to include a review function or objective in the customs authority’s mandate. Malaysia’s Customs Division’s Profile indicates that one of the objectives of

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<sup>99</sup> *Law on Customs*, Article 8 (Viet Nam).

the Division is “[t]o study and review policy and/or procedure concerned for enhancement and simplification to ensure predictability in its implementation.”<sup>100</sup>

Given the lack of precedent for a legislative provision requiring that customs agencies periodically review formalities and documentation requirements, we do not recommend that such a provision be included in Bangladesh’s Customs Act or Import Policy Order. Moreover, as mentioned, Bangladesh has already established the NTTFC with a mandate to conduct reviews of formalities and documentations requirements, thereby aligning its policy framework with the requirements of the TFA. The NTTFC, as a centralized committee, serves as the focal point for coordinating the periodic reviews. However, there are many different agencies involved in customs administration, each of which may have different internal procedures and documentation requirements. The reviews necessarily involve coordination among these agencies. We recommend that this coordination be supported by a directive to the Customs Authority and all Counterpart Agencies, or through the conclusion of memoranda of understanding (MOUs) between the NTTFC, the Customs Authority and Counterpart Agencies, requiring them to cooperate and share information with the NTTFC to facilitate its completion of the periodic reviews.

The directive or MOUs should set out the information required to conduct a systematic and regular review of formalities, business processes and documentation requirements relating to import, export and transit. In addition to requiring cooperation and document sharing during the reviews, the directives should also encourage the Customs Authority and Counterpart Agencies to meet the objectives set out in the TFA, namely, to simplify the process by eliminating outdated and redundant procedures and documentation requirements. Further, the Customs Authority and Counterpart Agencies should be encouraged in their review to refer to international standards. The reviews should also create mechanisms for the participation of all relevant stakeholders, including public agencies and the private sector, so that these stakeholders have a forum for discussing and proposing reforms. Following is a non-exhaustive list of the agencies that are involved in Bangladesh customs procedures (both Customs and Counterpart Agencies) which should be included in the any directive or MOU:

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<sup>100</sup> Royal Malaysian Customs Department, “Customs Division Profile”, online: [http://www.customs.gov.my/en/ci/Pages/ci\\_cd.aspx](http://www.customs.gov.my/en/ci/Pages/ci_cd.aspx).

- Customs Agencies:
  - Customs Authority
  - Office of Chief Controller of Imports and Exports (CCI&E)
  - Customs Bond Commissionerate
  - VAT / Excise Department
- Counterpart Agencies:
  - Bangladesh Standard & Testing Institution
  - Bangladesh Council of Scientific and Industrial Research (BCSIR)
  - Bangladesh Atomic Energy Commission
  - Plant Quarantine Wing
  - National Board of Revenue

## 9 CONCLUSION: SUMMARY OF RECOMMENDATIONS

The following is a summary of the report's recommendations to improve Bangladesh's agricultural import procedures while aligning with its TFA obligations:

### **Perishable Goods:**

- **Extend overtime hours to all authorities involved in the release of perishable goods**, where required by the importer.
- **Develop new measures, including legislative provisions if feasible, to give priority to perishable goods** when scheduling inspections wherever required by Bangladeshi law.
- **Require the Customs Authority and Counterpart Agencies to communicate reasons for any significant delay in the release of perishable goods.**

### **Risk Management:**

- Seek to implement **pre-approval processing** by developing clear rules for reviewing customs documents and organizing shipments into green (low risk), yellow (medium risk), and red (high risk) categories for more efficient processing.
- Adopt transparency practices by **publishing evaluation criteria** and making them widely available to agricultural traders to encourage better quality reporting.

- Adopt a policy approach where **traders are solely responsible for their declarations** to allow for more effective use of Customs and Counterpart Agencies' resources and increased enforcement at borders.

**Test Procedures:**

- Analyze draft language from India and the International Trade Centre's National Implementation Plan to **propose a legal framework allowing importers to request second tests** in the context of non-discrimination, transparency, and impartiality.

**Formalities and Documentation Requirements:**

- Issue a directive or conclude MOUs with the Customs Authority and all affected Counterpart Agencies and the NTTFC to ensure cooperation and information sharing during the NTTFC's reviews of formalities and documentation requirements.

## **ANNEX I: TFA OBLIGATIONS**

### **ARTICLE 5: OTHER MEASURES TO ENHANCE IMPARTIALITY, NON-DISCRIMINATION AND TRANSPARENCY**

...

#### **3 Test Procedures**

3.1 A Member may, upon request, grant an opportunity for a second test in case the first test result of a sample taken upon arrival of goods declared for importation shows an adverse finding.

3.2 A Member shall either publish, in a non-discriminatory and easily accessible manner, the name and address of any laboratory where the test can be carried out or provide this information to the importer when it is granted the opportunity provided under paragraph 3.1.

3.3 A Member shall consider the result of the second test, if any, conducted under paragraph 3.1, for the release and clearance of goods and, if appropriate, may accept the results of such test.

### **ARTICLE 7: RELEASE AND CLEARANCE OF GOODS**

...

#### **4 Risk Management**

4.1 Each Member shall, to the extent possible, adopt or maintain a risk management system for customs control.

4.2 Each Member shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or a disguised restriction on international trade.

4.3 Each Member shall concentrate customs control and, to the extent possible other relevant border controls, on high-risk consignments and expedite the release of low-risk consignments. A Member also may select, on a random basis, consignments for such controls as part of its risk management.

4.4 Each Member shall base risk management on an assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, inter alia, the Harmonized System code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport.

...

#### **9 Perishable Goods<sup>101</sup>**

9.1 With a view to preventing avoidable loss or deterioration of perishable goods, and provided that all regulatory requirements have been met, each Member shall provide for the release of perishable goods:

- (a) under normal circumstances within the shortest possible time; and
- (b) in exceptional circumstances where it would be appropriate to do so, outside the business hours of customs and other relevant authorities.

9.2 Each Member shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

9.3 Each Member shall either arrange or allow an importer to arrange for the proper storage of perishable goods pending their release. The Member may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorizations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. The

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<sup>101</sup> For the purposes of this provision, perishable goods are goods that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.



Member shall, where practicable and consistent with domestic legislation, upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

9.4 In cases of significant delay in the release of perishable goods, and upon written request, the importing Member shall, to the extent practicable, provide a communication on the reasons for the delay.

## ARTICLE 10: FORMALITIES CONNECTED WITH IMPORTATION, EXPORTATION AND TRANSIT

### **1 Formalities and Documentation Requirements**

1.1 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.

1.2 The Committee shall develop procedures for the sharing by Members of relevant information and best practices, as appropriate.

## **ANNEX II: CROSS-JURISDICTIONAL COMPARATIVE ASSESSMENT**

	Singapore	Malaysia	Thailand	Indonesia	Viet Nam	Philippines	India	Cambodia
<b>Article 5.3 Test Procedures</b>								
<b>TFA Notification</b>	A	A	B	A	C	A	A	A
<b>Legal or Policy Provisions</b>	No legal or policy provisions found	No legal or policy provisions found	No legal or policy provisions found	No legal or policy provisions found	No legal or policy provisions found	No legal or policy provisions found	<b>F.No. 450/15/2017-Cus IV</b> (Refer to Annex III for language)	No legal or policy provisions found
<b>Article 7.4: Risk Management</b>								
<b>TFA Notification</b>	A	A	A	B	C	A	B	A
<b>Legal or Policy Provisions</b>	No legal or policy provisions found	No legal or policy provisions found	No legal or policy provisions found	No legal or policy provisions found	No legal or policy provisions found	No legal or policy provisions found	No legal or policy provisions found	No legal or policy provisions found
<b>Article 7.9: Perishable Goods</b>								
<b>TFA Notification</b>	A	A	A	A	B	A	A (80%)/B (20%)	B
<b>Legal or Policy Provisions</b>	<p><b><u>Wholesome Meat and Fish (Import, Export and Transshipment) Rules</u></b>  Procedure for examination of imported meat products and fish products  6.—(1) The examination of any consignment of meat products or fish products which has been imported into Singapore shall be carried out at the place where the consignment is being kept immediately after its import.</p> <p><b><u>Control of Plants (Import and Transshipment of Fresh Fruits and Vegetables) Rules</u></b>  <b>Procedure for taking samples for analysis</b>  8.—(1) Where a consignment of fresh fruits or vegetables has been imported and an authorised officer takes a sample of the consignment for analysis under section 39 of the Act, the authorised officer shall —  ...  (e) immediately deliver the sample to an authorised analyst for analysis.</p>	<p><b><u>Customs Act, 1967</u></b>  <b>Government lien over goods deposited in a customs warehouse</b>  74. (1) Goods of a perishable nature deposited in a customs warehouse shall be cleared forthwith, and if not so cleared a senior officer of customs may sell such goods.  ...  <b>Return or disposal of goods</b>  115. (1) Where any goods have been seized under this Act, a senior officer of customs may, at his discretion—  (c) sell or destroy goods, as appropriate in the circumstances, where the goods are living creatures, where it is a living creature or where, in the opinion of a senior officer of customs, the goods are of perishable or dangerous nature or likely to speedily deteriorate in quality or value, and where the goods are so sold, he shall hold the proceeds of sale to abide the result of any prosecution or claim, or a forfeiture under section 131, as the case may be.</p>	<p><b><u>Customs Act</u></b>  <b>Section 109</b>  If goods remained in a customs custody are perishable goods with a sign of decay or putrefaction, the Director-General may order to destroy or to proceed any measure at any time as he deems fit, and may collect expenses from an importer or a transporter of goods.  ...  <b>Section 171</b>  If seized goods are perishable goods, or a delay of proceeding may present a risk for damage or require an unreasonable storage cost the Director-General may order to sell the goods by auction or by other methods before they become properties of the State pursuant to the rules specified by him. The proceeds of the sale under paragraph one shall be retained in lieu of the goods after a deduction of all expenses and charges.</p>	<p><b><u>Law No. 10/1995 Concerning Customs Law</u></b>  <b>Article 65</b>  (1) Unclaimed goods shall be:  a. the goods stored at the Temporary Storage that have exceeded the period as referred to in Article 43 paragraph (2);  b. the goods that have not been released from the Bonded Storage of which the license has been revoked for the period as referred to in Article 47; or  c. goods sent by mail:  1. that have been refused by the addressee or the Person to whom the goods are sent and cannot be returned to the sender;  2. that have been received back due to refusal or that cannot be sent to the addressee outside the Customs Territory and that are not settled by the sender within a period of thirty days as of the date of receipt of the notification from the postal service.  ...  <b>Article 66</b>  ...  (3) The goods as referred to in Article 65 paragraph (1) that:  a. are rotten shall be destroyed immediately.</p>	No legal or policy provisions found	<p><b><u>Tariff and Customs Laws of the Philippines</u></b>  SECTION 2607. Disposition of Articles Liable to Deterioration. — Perishable articles shall not be deposited in a bonded warehouse; and, if not immediately entered for export or for transportation from the vessel or aircraft in which imported or entered for consumption and the duties and taxes paid thereon, such articles may be sold at auction, after such public notice, not exceeding three days, as the necessities of the case permit.</p> <p>When seizure shall be made of property which, in the opinion of the Collector, is liable to perish or be wasted or to depreciate greatly in value by keeping, or which cannot be kept without great disproportionate expense, whether such property consists of live animals or of any article, the appraiser shall so certify in his appraisal, then the Collector may proceed to advertise and sell the same at auction, upon notice as he shall deem to be reasonable.  ...  <b><u>An Act Modernizing the Customs and Tariff</u></b></p>	<p><b><u>Customs Act, 1962</u></b>  31. Imported goods not to be unloaded from vessel until entry inwards granted. - (1) The master of a vessel shall not permit the unloading of any imported goods until an order has been given by the proper officer granting entry inwards to such vessel. (2) No order under sub -section (1) shall be given until an import manifest has been delivered or the proper officer is satisfied that there was sufficient cause for not delivering it. (3) Nothing in this section shall apply to the unloading of baggage accompanying a passenger or a member of the crew, mail bags, animals, perishable goods and hazardous goods.  ...  48. Procedure in case of goods not cleared, warehoused, or transhipped within # [thirty days] after unloading. - If any goods brought into India from a place outside India are not cleared for home consumption or warehoused or transhipped within ## [thirty days] from the date of the unloading thereof at a customs station or within such further time as the proper officer may allow or if the title to any imported goods</p>	No legal or policy provisions found

	Singapore	Malaysia	Thailand	Indonesia	Viet Nam	Philippines	India	Cambodia
				<p>b. due to their characteristics, are quickly spoiled, hazardous, destructive or required high handling costs, may immediately be auctioned with a written notification to the owner;</p> <p>...</p>		<p><b>Administration</b>            (gg) Perishable Good refers to goods liable to perish or goods that depreciate greatly in value while stored or which cannot be kept without great disproportionate expense, which may be proceeded to, advertised and sold. at auction upon notice if deemed reasonable;</p> <p>...</p> <p><b>CHAPTER 2</b>  <b>EXAMINATION OF GOODS</b></p> <p>SEC. 419. Examination of Goods.- Examination of goods, when required by the Bureau, shall be conducted immediately after the goods declaration has been lodged. Priority in the examination shall be given to live animals, perishable goods and other goods requiring immediate examination.</p> <p>...</p> <p><b>CHAPTER 4</b>  <b>SEIZURE AND FORFEITURE</b></p> <p>SEC. 1116. Seizure or Release of Goods. -The District Collector shall issue an order of release or a warrant of seizure within five (5) days, or two (2) days in case of perishable goods, upon the recommendation of the alerting officer or any other customs officer. The District Collector shall immediately make a report of such seizure or release to the Commissioner.</p> <p>...</p> <p><b>CHAPTER 10</b>  <b>DISPOSITION OF PROPERTY IN CUSTOMS CUSTODY</b></p> <p>SEC. 1144. Disposition of Perishable Goods. - Perishable goods as defined under this Act when certified as such by the Bureau, may be sold at a public auction within five (5)</p>	<p>is relinquished, such goods may, after notice to the importer and with the permission of the proper officer be sold by the person having the custody thereof: Provided that –</p> <p>(a) animals, perishable goods and hazardous goods, may, with the permission of the proper officer, be sold at any time;</p> <p>...</p> <p>64. Owner's right to deal with warehoused goods. - With the sanction of the proper officer and on payment of the prescribed fees, the owner of any goods may either before or after warehousing the same –</p> <p>...</p> <p>(d) deal with the goods and their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;</p> <p><b>Customs Manual</b></p> <p><b>7. Destructive Insects &amp; Pests Act, 1914, PFS Order, 1989 and Plant Quarantine (Regulation of Import into India) Order, 2003:</b></p> <p>...</p> <p>(i) Registration of application: The importer or his authorized representative is required to file an application at the Plant Quarantine Station in respect of each consignment immediately upon arrival at the port. In case of perishable consignments, such application can be filed in advance to enable the Plant Quarantine authorities to organize inspection/ testing on priority.</p> <p><b>Merchant Overtime</b></p> <p>1.1 At times, the trade requests for Customs clearance facilities or for Customs supervision of loading/unloading of vessels,</p>	

	Singapore	Malaysia	Thailand	Indonesia	Viet Nam	Philippines	India	Cambodia
						days, after a three (3)-day notice. For this purpose, perishable goods shall include goods liable to perish or be wasted, or those that depreciate greatly in value while stored, or which cannot be kept without great disproportionate expense. The Bureau shall proceed to advertise and sell the same at auction upon notice as shall be deemed to be reasonable.	stuffing, de-stuffing of containers, examination of cargo etc. beyond normal working hours of Customs or on holidays. ... Normally, the trade is required to plan its activities requiring Customs supervision or presence during working hours on working days and within the Customs area. However, in certain cases, e.g. in case of perishable cargo, life saving drugs or other consignments required urgently which has landed at an airport after working hours or on holidays, the importer may require immediate clearance. Considering the difficulties of the trade, the services of Customs, after normal working hours or on holidays within the Customs area or at any time at a place beyond Customs area, are provided on payment of overtime fee.	
<b>Article 10.1: Formalities and Documentation Requirements</b>								
<b>TFA Notification</b>	A	A	A	A	A	A	A	A
<b>Legal or Policy Provisions</b>	No legal or policy provisions found	<b>Customs Division Profile Objective Of Division</b> ... • To study and review policy and/or procedure concerned for enhancement and simplification to ensure predictability in its implementation.	No legal or policy provisions found	No legal or policy provisions found	<b>Law on Customs Article 8.</b> Customs modernization 1. The State shall give priority to investment in modern technical equipment and facilities and advanced technologies to ensure the effective customs management; encourage entities to participate in developing advanced technologies and technical equipment to ensure the application of modern customs management methods. Entities involved in import and export are responsible for participating in developing and performing electronic transactions and electronic customs formalities.	No legal or policy provisions found	No legal or policy provisions found	No legal or policy provisions found

	Singapore	Malaysia	Thailand	Indonesia	Viet Nam	Philippines	India	Cambodia
					2. The system of technical standards for communication of electronic data and legal validity of electronic legitimate documents when following electronic customs formalities shall comply with the law on electronic transactions.			

## **ANNEX III: INDIA ARTICLE 5.3 RE-TEST GUIDELINES**

(2) India has placed a number of trade related measures negotiated under the TFA in Category A. Article 5.3.1 envisages granting an opportunity for a second test in case the first test result of a sample taken upon arrival of goods declared for importation shows an adverse finding. Further Article 5.3.3 makes it obligatory to consider the result of the second test, if any, for the release and clearance of goods, and, if appropriate, may accept the results of such test. The aforementioned Articles have been placed in category A. In order to have uniformity in approach among the field formations with regard to re-testing of samples, the following procedure is prescribed:

Customs officers may draw the samples from import consignments for testing in case of consignments wherever needed. The results of all test reports, adverse or otherwise, shall be communicated to the importer or his authorized representative/ Customs Broker immediately on its receipt.

In case the importer or his agent intends to request the Additional/ Joint Commissioner of Customs for a re-test, then the same shall be made in writing to the said officer within a period of ten days from the receipt of the communication of the test results of the first test. Customs officers may take a reasoned view in case the importer or his authorized representative Customs Broker is unable to do so for reasons beyond his control.

Where the Additional/Joint Commissioner of Customs grants an opportunity for a second test, he must clearly indicate in writing the name and address of the laboratory/ institution where the second test can be carried out. Such referral for re-testing may be made only after being reasonably sure that the desired re-testing facilities exist at the laboratory/ institution.

Re-tests should be made only on the remnants of the samples originally tested or on duplicate representative sealed samples in the custody of the Customs. Further, to avoid delays, samples for second tests shall be marked as "immediate" before sending to the laboratory. In a case it may so happen that fresh samples have to be drawn, then such sampling should be done in the presence of the importer or his representative/customs broker.

The requests for re-testing of samples on the ground that the original sample was not representative should be entertained only if the consignment is still in Customs control. At the time of drawing the samples, the importer or his representative shall be present and certify that the samples drawn are representative.

The competent authority shall consider the results of the re-test without prejudice to the results of the first test. In case there is a variation in the results of the first test and the re-test, the competent authority shall take the decision relying upon either of the tests specifying the grounds in writing for the decision so taken. In case the competent authority is unable to decide whether to rely upon the first or the re-test results, then it may order a second re-test provided the consignment is still within the customs control. However, this option should not be resorted to in every case of variation between the first test and re-test results.

The facility of re-testing is a trade facilitation measure, which should generally not be denied in the ordinary course. However, there might arise circumstances where the customs officer is constrained to deny the re-testing facility. Board expects that such denial would be occasional and on reasonable grounds to be recorded in writing.

Where the re-testing procedure is done at the instance of the department instead of the importer, the above procedure shall be followed *mutatis mutandis*.

## BIBLIOGRAPHY

- An Act Modernizing the Customs Tariff Administration* (Philippines).
- Bayley, Anthony (2014): Policies to enhance trade facilitation in South Asia and Southeast Asia, ADBI Working Paper, No. 489, Asian Development Bank Institute (ADBI), Tokyo.
- Canadian Food Inspection Agency, “Destination Inspection Service: inspection priorities”, online: <https://inspection.canada.ca/importing-food-plants-or-animals/food-imports/food-specific-requirements/dis/inspection-priorities/eng/1303746546769/1303746782602>.
- Central Board of Excise & Custom (India), Circular No. 30/2017, Detailed guidelines for re-testing samples-reg (Issued on July 18, 2017).
- Control of Plants (Import and Transshipment of Fresh Fruits and Vegetables) Rules* (Singapore).
- Customs Act, 1969* (Bangladesh).
- Customs Manual 2018 (India), Central Board of Indirect Taxes and Customs, 6 (2018), online: [https://www.cbic.gov.in/resources/htdocs-cbec/deptt\\_offcr/customs-manual2018.pdf](https://www.cbic.gov.in/resources/htdocs-cbec/deptt_offcr/customs-manual2018.pdf).
- Daily Star (Bangladesh), “Ctg, Benapole ports to stay open 24/7”, 20 July 2017, online: <https://www.thedailystar.net/frontpage/ctg-benapole-ports-stay-open-247-1435864>.
- Finance Act, 2019* (Bangladesh).
- Food and Agricultural Organization of the United Nations, online: <http://www.fao.org/giews/country-analysis/external-assistance/en/>.
- Food Safety Act of 2013* (Philippines).
- India-Bangladesh Trade: Demystifying Non-Tariff Barriers to India-Bangladesh Trade in Agricultural Products and Their Linkages with Food Security and Livelihood, CUTS INTERNATIONAL 27 (2019).
- Import Policy Order, 2015-2018* (Bangladesh).
- International Trade Centre, “Bangladesh: Country Brief”, online: <https://www.intracen.org/country/bangladesh/>.
- International Trade Centre, “Getting down to business: Making the Most of the WTO Trade Facilitation Agreement” (2020), online: <https://www.intracen.org/publication/Getting-Down-To-Business-Making-the-Most-of-the-WTO-Trade-Facilitation-Agreement/>.
- Khoa Dao Trong, Viet Nam Customs Procedures Executive Summary: 2015 Updates (Apr. 1, 2015), online: <https://www.slideshare.net/daotrongkhoa/Viet-Nam-customs-procedures-2015>.
- Land O’Lakes, “Land O’Lakes International Development awarded funds for new capacity building, food safety projects”, online: <https://www.landolakesinc.com/Press/News/International-Development-Awarded-Projects>.
- Law on Customs* (Viet Nam).
- Mustafizur Rahman & Estiaque Bari, Bangladesh’s Formal and Informal Trade with SAARC Countries: Emerging Trends and Policy Changes, CENTRE FOR POLICY DIALOGUE, June 2018.



New Zealand Customs Service, *Trade Facilitation Implement Case Study: Risk Management: New Zealand's Experience* (2011).

OECD, "Agricultural Trade", online: <https://www.oecd.org/agriculture/topics/agricultural-trade/>.

Royal Malaysian Customs Department, "Customs Division Profile", online: [http://www.customs.gov.my/en/ci/Pages/ci\\_cd.aspx](http://www.customs.gov.my/en/ci/Pages/ci_cd.aspx).

The Borgen Project, "10 Facts about Hunger in Bangladesh", online: <https://borgenproject.org/ten-facts-about-hunger-in-bangladesh/>.

UKaid & International Finance Corporation, *Trade Facilitation and Bangladesh, ECONOMIC REPORTERS FORUM* (2015).

United Nations Conference on Trade and Development, "UNCTAD Trade Facilitation Technical Note No. 12", online: [https://unctad.org/system/files/official-document/TN12\\_RiskManagement.pdf](https://unctad.org/system/files/official-document/TN12_RiskManagement.pdf).

USAID, "Assessing the Benefits of the Trade Facilitation Agreement for Agricultural Trade", February 2019.

USAID, *Customs Modernization Handbook: Applying Risk Management in the Cargo Processing Environment* (2018).

USAID, *Trade Facilitation Regional Agricultural Trade Environment (RATE) Summary* (2013).

USAID, *USAID-Bangladesh Trade Facilitation Activity (BTFA) Final Report* (2018).

Viet Nam Customs, Press Release, "Viet Nam Customs successfully deployed VNACCS/VCIS" (Nov. 10, 2015), online: <https://www.customs.gov.vn/Lists/EnglishNews/ViewDetails.aspx?ID=457&Category=News%20and%20Events&language=en-US>.

Viet Nam News, "Customs all set to make risk management" (Oct. 30, 2020), online: <https://VietNamnews.vn/economy/804034/customs-all-set-to-make-risk-management-transparent.html>.

*Wholesome Meat and Fish (Import, Export and Transshipment) Rules* (Singapore).

World Bank Group, "Bangladesh's Alignment with the WTO TFA Gap Assessment", 31 (2019).

World Health Organization, "Malnutrition", online: [https://www.who.int/health-topics/malnutrition#tab=tab\\_1](https://www.who.int/health-topics/malnutrition#tab=tab_1).

World Trade Organization, "The Trade Facilitation Agreement: An Overview", online: [https://www.wto.org/english/tratop\\_e/tradfa\\_e/tradfatheagreement\\_e.htm](https://www.wto.org/english/tratop_e/tradfa_e/tradfatheagreement_e.htm).

World Trade Organization, "Trade Facilitation Agreement Database", online: <https://tfadatabase.org/members/bangladesh>.

World Trade Organization, Trade Facilitation Agreement Facility, "Other measures to enhance impartiality, non-discrimination and transparency", online: <https://www.tfafacility.org/article-5>.

World Trade Organization, Trade Facilitation Agreement Facility, "Release and Clearance of Goods", online: <https://www.tfafacility.org/article-7>.

World Trade Organization, "Trade Facilitation – Cutting 'Red Tape' at the Border", online: [https://www.wto.org/english/tratop\\_e/tradfa\\_e/tradfa\\_introduction\\_e.htm](https://www.wto.org/english/tratop_e/tradfa_e/tradfa_introduction_e.htm).

World Trade Organization, “World Trade Report 2015”, online:  
[https://www.wto.org/english/res\\_e/booksp\\_e/world\\_trade\\_report15\\_e.pdf](https://www.wto.org/english/res_e/booksp_e/world_trade_report15_e.pdf).