Trade Facilitation Agreement (TFA) - Implementing Implication

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Trade Facilitation Agreement (TFA) - Implementing Implications

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Summary

- *The Trade Facilitation Agreement (TFA) contains provisions for faster and more efficient customs procedures through effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues.*
- *TFA creates a significant opportunity to improve the speed and efficiency of border procedures, thereby reducing trade costs and enhancing participation in the global value chains that characterise international trade today.*
- *The TFA is expected to reduce total trade costs by more than 14 per cent for low-income countries, more than 15 per cent for lower middle-income countries and more than 13 per cent for upper middle-income countries.*
- *High costs incurred in implementing some of the provisions of the TFA.*
- *Trade Facilitation Agreement Facility (TFAF) created to assist developing and LDC to implement TFA*
- *This paper was presented at the High Level Policymakers Workshop on*
- *"Boosting Trade Competitiveness around Emerging "New Issues "in Multilateral Trade Agreements" , Colombo Sri Lanka March 2016*
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Headline Issues – Upside:

- TFA is the first multilateral trade agreement to be concluded since the WTO was established 20 years ago.

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- The Agreement is ground-breaking in that, for the first time in WTO history, the commitments of developing and least-developed countries are linked to their capacity to implement the TFA.
- Agreement states that assistance and support should be provided to help countries achieve that capacity.
- The Agreement will enter into force when two-thirds of WTO members ratify the TFA and deposit their instruments of acceptance with the WTO Secretariat.
- TFAF acts as a focal point for implementation of the Trade Facilitation Agreement and aims to support developing countries and LDCs.
- Several major international organizations - the International Trade Centre, the Organisation for Economic Cooperation and Development, the United Nations Conference on Trade and Development, the United Nations Economic Commission for Europe, the World Bank Group, and the World Customs Organization – have pledged to assist WTO members in implementing their commitments under the TFA.

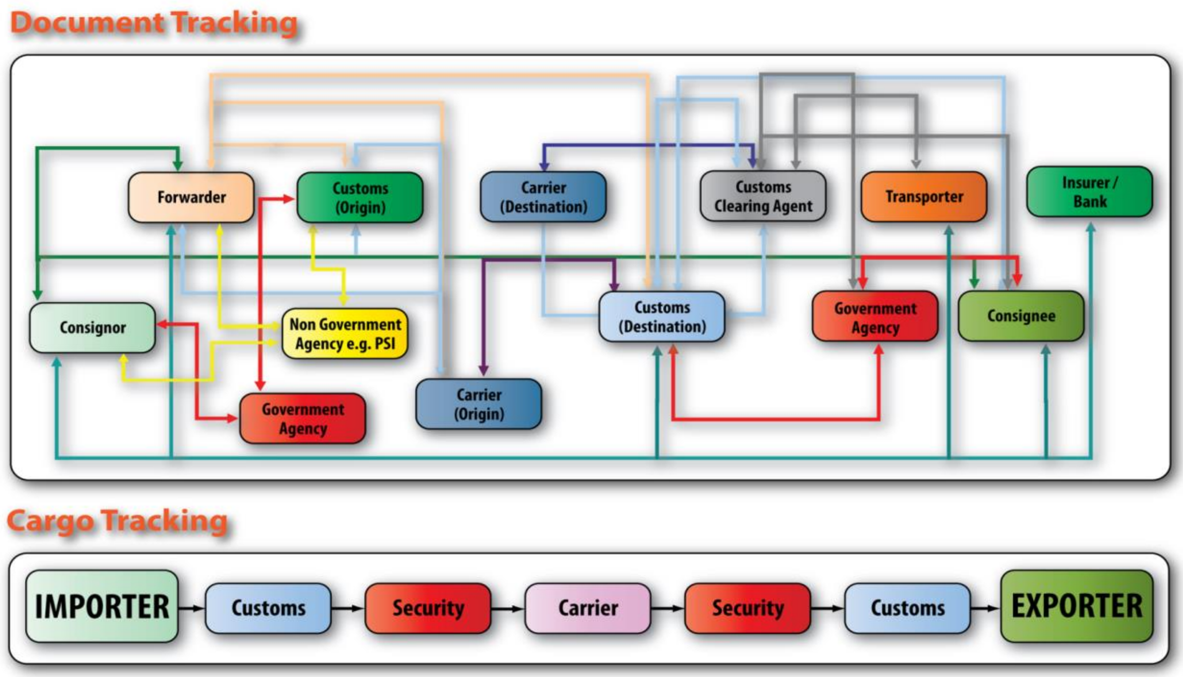
Headline Issues – Downside:

- 69 countries have deposited Instruments of Acceptance with WTO.
- EU members represent 40%.
- Almost 60% of countries that have ratified TFA can be classified as developed nations.
- The costs of introducing and implementing trade facilitation measures remain of concern to many developing countries and LDCs
- There is perception that a binding agreement on Trade Facilitation in the WTO would require developing countries to implement a set of rules reflective of the current trade facilitation practices of the developed countries.
- Imports into developing countries would be facilitated by the new rules.
- It is difficult to imagine how exports from developing countries could be similarly facilitated.
- A binding trade facilitation agreement could have serious consequence on some countries because many of the lesser developed countries still derive a significant share of their Government revenue from Customs activities

Context

Obstacles to moving goods across borders quickly, reliably and cheaply pose one of main development challenges. In most of the developing countries, the border control and procedures have not kept pace with the changing trading environment. It can be argued that these countries' border agencies practices and procedures are outdated and incompatible with modern trading requirements of the global economy. Outdated and overly bureaucratic border clearance processes imposed by customs and other agencies are now seen as posing greater barriers to trade than tariffs do. Cumbersome systems and procedures and poor infrastructure both increase transaction costs and lengthen delays to the clearance of imports, exports, and transit goods. Such costs and delays make a country less competitive—whether by imposing deadweight inefficiencies that effectively tax imports, or by adding costs that raise the price of exports. Moreover, inefficient border management deters foreign investment and creates opportunities for administrative corruption.

Trade Facilitation Landscape



The current international trade environment involves complex international trade processes with disparate system

An Overview: TFA

Trade facilitation is not fairly new issue that came under discussion from the World Trade Organization. It was given prominence in Singapore in 1996. However, prior to come under the focus of WTO, over several decades a lot of work on trade facilitation has been carried out by UN agencies such as United Nations Conference on Trade and Development (UNCTAD), the United Nations Economic Commission for Europe (UNECE) and the World Customs Organization

The WTO's Bali Ministerial Conference in December 2013 reached an agreement on a package of issues designed to streamline trade. The Trade Facilitation Agreement (TFA) contains provisions for faster and more efficient customs procedures through effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues

The WTO Trade Facilitation Agreement (TFA) creates a significant opportunity to improve the speed and efficiency of border procedures, thereby reducing trade costs and enhancing participation in the global value chains that characterise international trade today. The 2015 OECD Trade Facilitation Indicators (TFIs) find that the implementation of the TFA could reduce worldwide trade costs by between 12.5% and 17.5%. Countries which implement the TFA in full will reduce their trade costs by between 1.4 and 3.9 percentage points more than those that do only the minimum that the TFA requires. The opportunities for the biggest reductions in trade costs are greatest for low and lower middle income countries. However, it needs to be noted that to benefit from trade facilitation countries need to improve their export competitiveness else, for many countries improved trade facilitation may pose greater challenges for their industrialisation efforts as domestic competition may rise with increased and facilitated imports.

Provisions of TFA

The TFA contains provisions for expediting the movement, release and clearance of goods, including goods in transit. It also sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues

Table 1: The main Provisions of the TFA

Article	Provisions	Concerned Authorities
Artcle1	Publication and availability of information	Executive Authority All border agencies Trade Authority Revenue Authority Agency responsible for information management
Article 2	Opportunity to comment and information before entry into force	All border agencies Trade Authority Executive Authority Legislative Authority
Article 3	Advance Rulings	Customs
Article 4	Procedures for appeal or review	Customs Other border agencies
Article 5	Other measures to enhance impartiality, on discrimination and transparency	All border agencies
Article 6	General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation	Customs Other Border Agencies
Article 7	Release and Clearance of Goods	Customs Other Border Agencies
Article 8	Border Agency Cooperation	All border agencies
Article 9	Movement of goods intended for import under customs control	Customs
Article 10	Formalities connected with importation, exportation and transit	All border agencies
Article 11	Freedom of transit	All border agencies
Article 12	Customs Cooperation	Customs

Categorisation

TFA contains Special and Differential Treatment (SDT) provisions that allow developing and LDC Members to determine when they will implement individual provisions of the Agreement and to identify provisions that they will only be able to implement upon the receipt of technical assistance and support for capacity building.

To benefit from SDT, a Member must categorize (A B C) each provision of the Agreement, as defined below, and notify other WTO Members of these categorizations in accordance with specific timelines outlined in the Agreement.

Category A

Provisions that the Member will implement by the time the Agreement enters into force (or in the case of a least-developed country Member within one year after entry into force)

Category B

Provisions that the Member will implement after a transitional period following the entry into force of the Agreement

Category C

Provisions that the Member will implement on a date after a transitional period following the entry into force of the Agreement and requiring the acquisition of assistance and support for capacity building.

Cost Implications

There are high costs incurred in implementing some of the provisions of the TFA and it is a major challenge to developing countries. The costs of introducing and implementing trade facilitation measures remain of concern to many developing countries and LDCs, which often have to decide whether and to what extent part of their limited financial resources should be allocated to trade facilitation reform. This type of concern often prevails when governments fear that the costs associated with trade facilitation reform might outweigh the anticipated benefits resulting from the adoption and implementation of trade facilitation measures. The implementation costs of trade facilitation can take various forms, depending on the type of trade facilitation measures considered. A distinction is usually made between the initial upfront costs associated with the introduction of trade facilitation measures, the upgrade and expansion costs, and the ongoing operational costs.

TFA cost components

Regulatory costs

The TF Agreement is likely to invoke new regulations and legislations or amendments in existing laws in order to have consistency with national regulatory and legislative process. This in turn will call for a considerable amount of resources that may be required for legislative and regulatory work depending on the country's legislative structures, procedures and frequency of changes in legislation. Besides major legislative changes, trade facilitation measures will entail operationalisation of legislation on electronic signatures and other procedural/administrative matters which will most likely incur additional costs. Trade facilitation measures are expected to involve the development of new units such as such as post-clearance teams, risk management teams and central enquiry points, which will need additional financial and human resources.

Institutional costs

Another vital challenge in regard to the implementation of trade facilitation measures may be the co-ordination and co-operation among various relevant authorities. While such coordination between various agencies is expected to result in significant reductions in time and costs for traders by aligning customs administration/procedures and ensuring compliance with documentary requirements (licenses, certificates, etc.), it may require creating formal and informal procedures, practices and mechanisms that will entail costs. One of the main costs of implementation of the TF Agreement will be the need for on-the- job training in order to expedite smooth flow of goods and services not only at the borders but also within the country.

Equipment/infrastructure costs

Equipment and infrastructure costs may be a corollary cost that would be necessary for trade facilitation to be effective. This cost is likely to be incurred for incorporating existing or new ICT systems and online support for documentation, data gathering, traceability, and risk and stock management.

Sensitising and Public Awareness

Implementation of trade facilitation measures also requires sensitisation and awareness-raising among relevant stakeholders such as policy makers, regulators, private/public entities, industry associations, CSOs and consumers

The costs incurred in the implementation of the TF Agreement may be high for many developing countries due to the difficulties they may encounter in undertaking some of the time-bound commitments owing to their resource limitations, capacity constraints and diverse priorities.

TFAF was created at the request of developing and (LDC) Members to help ensure that they receive the assistance they need to reap the full benefits of the Trade Facilitation Agreement, and to support the ultimate goal of full implementation of this Agreement by all Members.

The TFAF will support Developing and LDC Members to assess their specific needs and to identify possible development partners to help them meet those needs through a diverse number of activities, including:

- Assisting Members in the preparation of their notification of special and differential treatment categories. To this end, the TFAF will continue administering the needs assessment program;
- The development and delivery of assistance and support for capacity building, with a view to ensuring that WTO Members fully understand the Agreement, the steps needed for its implementation, and the requirements to benefit from the special and differential treatment provisions. To this end, it will make available training materials, case studies, and best practices;
- Supporting developing and LDC Members to access the available implementation assistance from regional and multilateral agencies, bilateral donors and other stakeholders that offer a broad range of different programs, with a view to ensuring:
    - the best possible conditions for the flow of information between donors and beneficiaries, thereby promoting optimal match-making;
    - appropriate coordination among relevant assistance providers to discourage fragmentation and duplication in the delivery of implementation support.
    - that support is appropriately aligned to the identified needs, as well as to individual development, financial and trade needs of Members, and to differing levels of administrative and institutional capacity.
- Where no other funding source is available, the TFAF will offer two types of grants to Developing and LDC Members notifying Category C commitments: project preparation grants and project implementation grants.

The TFAF will provide two types of grants to developing and LDC Members notifying Category C commitments. Members may apply for these grants where no other funding source is available to meet their needs.

- Project preparation grants

  Project preparation grants will be available in circumstances where a Member has identified a potential donor, but it has been unable to develop a project for that donor’s consideration and to find funding from other sources to support the preparation of a project. The project preparation grant will be up to a maximum of US$30,000

- Project implementation grants

  Project implementation grants will be available for implementation of the Trade Facilitation Agreement provisions. These grants will be limited to “soft infrastructure” projects, such as modernization of customs laws through consulting services, in-country workshops, training of officials. etc. The project implementation grant will be up to a maximum of US$200,000.

Implementation status

As of February 25, 2016, 69 countries have deposited Instruments of Acceptance with WTO.

Table 2: TFA- Countries deposited Instruments of Acceptance with WTO

Developed	Developing / LDC
EU(28)	Belize
Australia	Botswana
China	Brunei
Hong Kong	Cambodia
Japan	Côte D'Ivoire
Korea Republic Of	Georgia
Liechtenstein	Grenada
Malaysia	Guyana
New Zeeland	Jamaica
Norway	Kenya
Singapore	Lao
Switzerland	Lesotho
Chinese Taipel	Mali
USA	Mauritius
	Myanmar
	Nicaragua
	Niger
	Pakistan
	Panama
	Saint Lucia
	Seychelles
	Thailand
	Macedonia (FYRO)
	Trinidad and Tobago
	Ukraine
	Vietnam
	Zambia
Total 41	**Total 28**

EU members represent 40% countries that have ratified TFA at WTO. Almost 60% of countries that have ratified TFA can be classified as developed nations. Most of the developing countries that have ratified TFA of typical submission from developing country. As the table clearly indicates, most of the provisions are listed under category C

Table 3: Example of TFA submission to WTO

Provisions/Article	Category A	Category B	Category C
1. Publication And Availability of Information	1.1 except 1.1 (j), 1.4	1.1 (j)	1.2, 1.3
2. Opportunity to Comment, Information Before Entry Into Force and Consultation		x	
3. Advance Rulings			x
4. Appeal or Review Procedures		x	
5. Other Measures to Enhance Impartiality, Non-Discrimination and transparency	x		
6. Disciplines on Fees and Charges Imposed on or In Connection With Importation and Exportation			x
7. Release and Clearance of Goods	7.1, 7.3		All others
8. Border Agency Cooperation			x
9: Movement of Goods Under Customs Control Intended For Import			x
10. Formalities Connected With Importation, Exportation and Transit			x
11. Freedom to Transit	x		
12: Customs Cooperation		x	
13. National Committee on Trade Facilitation			x

Reluctance to ratify and implement

According to OECD analysis, implementation of the TFA would have following impact:

- Reduction of total trade costs of:
    - 14.5% for low income
    - 15% for lower-middle income
    - 13.2% for upper-middle income countries
- Up to two-thirds of the total gains to be obtained by developing countries

Despite these perceived benefits, developing and LDC have been reluctant to ratify the TFA.

Reasons behind the partial or non-implementation of TFA:

- Lack of understanding

The stakeholders (private & public sectors) engaged in trade facilitation are not fully conversant of the dynamics of the TFA. Private sector usually is not fully conversant on the benefits of this agreement. There is a need to develop stronger partnerships with the private sector to successful implement the TFA. The implementation process needs to ensure frequent and regular consultation with private sector stakeholders for collecting their views and identifying legislative gaps or bottlenecks.

- The existing legal framework
    - Existing legal framework may prevent implementation of some TFA provisions
- Lack of resources
- (ICT) and infrastructure issues
- Lack of inter-agency cooperation
- Lack of organizational framework
- Import facilitation

There is perception that a binding agreement on Trade Facilitation in the WTO would require developing countries to implement a set of rules reflective of the current trade facilitation practices of the developed countries. They would not address the urgent need to expand the productive and export capacities of the developing countries. Thus, while imports into developing countries would be facilitated by the new rules, it is difficult to imagine how exports from developing countries could be similarly facilitated.

- Political cost

The main cost component associated with implementing some of the TFA measures may often not be related to regulatory, training, or equipment costs, but to political costs. Indeed, implementation of TFAs involves various degree of change in how things are done and change is often perceived negatively, at least in the short-term. Therefore, Governments may need time flexibility for implementing TFAs with perceived high political costs.

- Revenue Implications

A binding trade facilitation agreement could have serious consequence on some countries because many of the lesser developed countries still derive a significant share of their Government revenue from Customs activities.

- High Inland transport cost

Inadequate infrastructure can be a serious stumbling block to facilitating trade. For example, hazardous roads, lack of capacity of ports and airports, and railways hampered by decaying networks; are the main contributory factors to high trade costs in land lock countries. Costs related to trading in Land lock Africa countries are among the highest globally and are 50% higher than in the United States and Europe, according to the World Bank. Transport costs attributed to 75% of the value of exported goods. Reduce the cost of transport remain one of the main challenges to land lock countries. In East Africa, along the Northern Corridor, transport costs are considerably high. These high transport costs are brought about through a combination of poor infrastructure, high fuel costs, older, inefficient trucks and considerable delays at weighbridges and poor transit regimes.

There is necessity to replaces extensive and time-consuming border checks at intermediate borders; while, at the same time, providing customs authorities with the required security and guarantees such as TIR. The TIR Convention establishes an international customs transit system with maximum facility to move goods in sealed vehicles or containers from a customs office of departure in one country to a customs office of destination in another country.

Trading Across Borders indicators, 2014

	Documents to export (number)	Time to export (days)	Cost to export (USD per container)	Documents to import (number)	Time to import (days)	Cost to import (USD per container)
Sub-Saharan Africa	7.6	30.5	2,201	8.9	37.6	2,931
EAC Partner States	7.6	26	2,459	9.6	30.6	3,350
TIR countries (average)	6.1	20.5	1,479	7.2	23.1	1,757

Source: World Bank Doing Business indicators

The Trading Across Borders indicators 2014 clearly evidence that, on average, countries employing the TIR system enjoy time and cost benefits over both Sub-Sahara African countries and EAC partner States.

Conclusion

1. TF can benefit countries which have most of the provisions in category A or B. However, countries which find themselves with high number of category C, TF can be extremely binding and costly agreement.
2. Largely import dependent countries may benefit form TF but these countries, which are mainly small states or Land locked countries, have limited financial resources to implement TFA.
3. There is an urgent need for countries to estimate the cost implications for putting in place different provisions. Based on these cost estimations, the countries should raise their demand for fund requirement for TF implementation. The TF facility needs to be approached.
4. While TF has long been identified as an important constraint to trade, a large number of countries have often neglected this area for the mere fact that they have other priorities like hunger, malnutrition, poverty eradication, etc. which demand their fund allocation. Given the SDGs these other priorities have become even more important for countries to allocate their limited financial resources. All countries have to agree that any expectations of commitments at the multilateral level for TF needs to matched with the allocated external funds for the same.

The Trade Competitiveness Section

The Trade Competitiveness Section provides technical assistance to Commonwealth member countries in four areas, namely market access; export development; export of services; and trade facilitation, in order to exploit opportunities offered by international trade. The Section works with government ministries, agencies, regulators and their stakeholders to provide assistance to develop their trade competitiveness. Areas of recent intervention include national trade policy formulation, export strategies, aid for trade strategies, competitiveness implications of trade agreements, trade facilitation and gendering trade policy.

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