THE IMPLEMENTATION OF THE TRADE FACILITATION AGREEMENT

Challenges for Developing and Least Developed Countries

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Introduction

After a long stalemate, the Doha Development Agenda (DDA) moves forward in small steps. The 9th Ministerial Conference of the WTO concluded with optimism following the unanimous adoption (159 Members) of the Bali Package last December 7, 2013. Of the areas included in the package, the one that has caused more enthusiasm is the Trade Facilitation Agreement (TFA) due to the several benefits it could bring.

The TFA will certainly lead to a more efficient coordination among WTO Members on trade facilitation and customs compliance issues. In the end, the simplification and harmonization of international trade procedures will facilitate imports and exports of goods and reduce transaction costs. Nevertheless, this will be a challenging task for LDCs and developing countries given the financial problems and administrative obstacles each country could face for its implementation.

The implementation of the TFA will require capacity building and technical assistance, for which major investments are needed. Developed countries have committed to provide assistance for these investments; doing so is clearly in their own interest. However, the required investments will take time and in the agreement there is no clear obligation for developed countries to provide them. Furthermore, while developing countries and LDCs have the right to implement the provisions in different periods, great difficulties may arise in this process. Therefore, the costs for developing countries and LDCs might be high and the benefits will only materialize gradually over time. Therefore, it is important to identify the challenges that these countries could face and conduct a cost-benefit balance on the implementation of the TFA.

- ### Methodology

This note is a comprehensive analysis of the different challenges that LDCs and developing countries might face in implementing the TFA, and the different alternatives to overcome them. The first part of the note will introduce a background and brief description of the TFA; the second part will specify the main challenges for its implementation; and the third part will suggest the main alternatives to overcome these challenges.

The TFA

- ### Background

Trade facilitation has been on the international agenda for several years, first in the GATT and then in the WTO. Since the Singapore Ministerial Conference of 1996 it was proposed to start exploring the simplification of trade procedures. However, it was not until 2004 when formal negotiations were launched with the aim to further expediting the movement, release and clearance of goods, including goods in transit.

Given the great difficulties to reach a full agreement on the DDA, negotiations on trade facilitation remained in the background. After nine years of negotiations, it was decided to achieve agreements on specific issues within the DDA. Trade facilitation was one agreement that all WTO members were willing to adopt as long as the different levels of development and capacities were considered.

- ### Description

After intense negotiations, finally an agreement on Trade Facilitation was reached as part of the Bali Package. The TFA contains provisions for faster and more efficient customs procedures. It also includes provisions for technical assistance and capacity building for developing and least-developed countries (LDCs).[1] The TFA is divided into two sections.

- Section I contains technical aspects and explains in detail the necessary provisions for expediting the movement, release and clearance of goods.

- Section II provides the basis for special and differential (S&D) treatment provisions for developing countries and LDCs through technical assistance and capacity building. The implementation of the provisions is divided in three categories (A, B and C) with specific deadlines that can be classified depending on the needs of each country.

Additionally, the TFA requires that the General Council shall meet no later than 31 July 2014 to annex to the agreement notifications of Category A commitments, to adopt the Protocol drawn up by the Preparatory Committee, and to open it for acceptance until 31 July 2015.

Moreover, a Committee on Trade Facilitation will be established and will meet at least once a year in order to give countries the opportunity to consult on any matters related to the operation of the agreement. Also, each member shall establish a national committee on trade facilitation to ease both domestic coordination and implementation of the provisions.

Special and Differential Treatment

After a brief description of the TFA, it is important to refer to the S&D treatment of developing countries and LDCs, and the proposed mechanisms to ensure it. The main flexibilities given to these countries are:

1) They can self-designate the provisions to implement immediately (category A) and after a transitional period (category B), and those for which they need technical and financial assistance (category C).

2) The obligation to implement would be conditional on their acquisition of capacity through provision of technical and financial assistance by developed country Members of the WTO or other organizations.[2]

- **Flexibilities for developing countries and LDCs**

An important concession included in the Ministerial Declaration was that if developing countries and LDCs lack the necessary capacity, the implementation of the provisions would not be required until implementation capacity has been acquired.

This is important because LDCs will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.

This concession is displayed in the flexibilities for each developing country and LDC to self-designate the provisions it is including under each of the Categories A, B and C. In addition, the extent and the timing of implementing the provisions shall be related to their implementation capacities. [3]

- **Technical assistance and capacity building**

[1] WTO, "Trade Facilitation", http://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm

[2] South Centre, "Key Issues still under Brackets in the Trade Facilitation Text Presented to the Ministerial Conference in Bali", 2013, http://bit.ly/1oMrrGZ

[3] WTO, *Ministerial Declaration and Decisions,* Bali, 3-6 December 2013, p. 33.

Given the special needs of developing countries and LDCs, targeted assistance and support should be provided to help them build sustainable capacity. Therefore, through the relevant development cooperation mechanisms, development partners shall endeavour to provide assistance and support in a way that does not compromise existing development priorities.

In order to create the capacity building for these countries, relevant WTO Members and non-members donors should reach the necessary arrangements to provide assistance and support. Particularly, the provisions that each country assigns to Category C will be the most difficult to implement and will require more support.

Therefore, donor WTO Members agreed to facilitate the provision of assistance and support for capacity building to developing countries and LDCs, on mutually agreed terms and either bilaterally or through the appropriate international organizations.[4]

- **Difficulties implementing the provisions**

The agreement considers the scenario in which developing countries and LDCs might experience difficulties in implementing the provisions.

Countries that experience these difficulties should notify the Committee on Trade Facilitation as early as possible prior to the expiration of the implementation deadlines. Then, the Committee shall take action to address the difficulties by extending the deadlines for the country.

A developing country or LDC that considers itself to be experiencing difficulties in implementing a provision that it has designated in Category B or C shall notify the Committee no later than 120 days for developing countries and 90 days for LDCs before such date.

The notification to the Committee shall indicate a new date of implementation for the provision concerned and the reasons for the expected delay in implementation. Such reasons may include the need for assistance not earlier anticipated or additional assistance to help build capacity.[5]

The Committee shall give sympathetic consideration to granting requests for extension taking into account the specific circumstances of the country submitting the request. These circumstances may include difficulties and delays in obtaining assistance.

If a country self-assesses that its capacity to implement a provision under Category C continues to be lacking, it should notify the Committee of its inability to implement the provision. The Trade Facilitation Committee shall immediately establish an Expert Group that will examine the issue and make a recommendation. This country shall not be subject to proceedings under the Dispute Settlement Understanding on this issue from the time it notifies the Committee of its inability to implement the relevant provision until the first meeting of the Committee after it receives the recommendation of the Expert Group.[6]

Challenges for LDCs and Developing Countries

Having explained the operation of the TFA and the flexibilities for developing countries and

[4] *Ibid*., p. 24.

[5] *Ibid*., p. 36.

[6] *Ibid*., p. 37.

LDCs, it is important to consider the benefits as well as the costs and challenges that these countries might face in implementing the provisions.

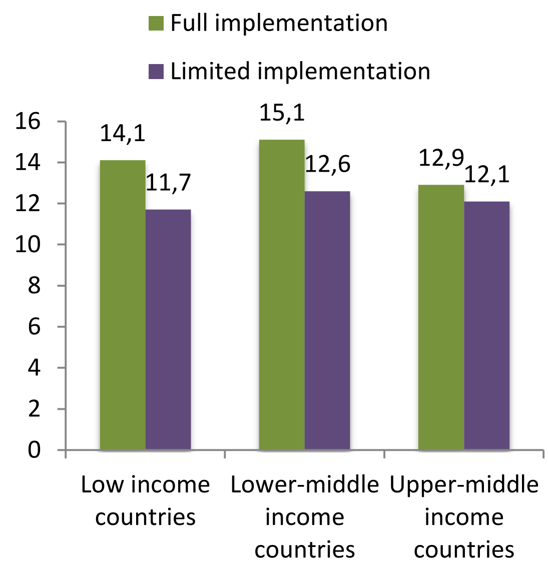
- **Benefits and gains**

It is undeniable that trade facilitation will bring many economic benefits for both importing and exporting countries. Harmonized procedures will eventually bring transaction costs lower. The benefits to the world economy are calculated to be between US$400 billion and US$1trillion by reducing costs of trade by between 10% and 15%.[7] A WTO Agreement on Trade Facilitation was concluded at the Bali Ministerial in December 2013. Since the TFA was concluded, the OECD has re-calculated its potential benefits taking into account the fact that WTO Members set aside a few provisions from their original agenda and classified others on a "best endeavours" basis. This re-calculation is based on two distinct scenarios:

a) A scenario where WTO Members would implement all the options contained in the agreement, including those formulated on a "best endeavours" basis.
b) A scenario where WTO Members would only implement the mandatory provisions contained in the agreement, leaving aside discretionary provisions.

According to the numbers in Figure 1, it can be seen that the potential trade cost reductions have a significant variation depending on the full or limited implementation of the TFA.

Figure 1. Overall potential trade costs reductions by income group OECD, 2014



- **Financial and administrative costs**

To achieve these benefits in the long term, countries will need to incur large costs in the short term. For developing countries, and especially LDCs, the costs will exceed both their financial and technical capabilities, thus the assistance of donor countries and international agencies is a major concern to implement the provisions of TFA in these countries.

Initially, the main concerns of developing countries and LDCs on trade facilitation were two: 1) potential costs and implementation challenges associated with the TFA and 2) failure to implement the commitments might potentially expose them to proceedings under the WTO dispute settlement system.[8]

Therefore it is important to make a balance that considers the needs, priorities and costs

[7] WTO, "Ninth WTO Ministerial Conference", 2013, *News Items*, http://www.wto.org/english/news_e/news13_e/mc9sum_07dec13_e.htm

[8] World Bank, "Needs, Priorities and Costs Associated with Technical Assistance and Capacity Building for Implementation of a WTO Trade Facilitation Agreement", November 2006, p. 6.

associated with technical assistance and capacity building for implementation of the TFA in developing countries and LDCs.

A distinction needs to be made between costs and challenges. On the one hand, the implementation of certain provisions will require significant funding. On the other hand, other provisions may be relatively inexpensive to put in place but may raise challenges in terms of their enforcement and sustainability in the long term.[9] In addition, there will be multiple administrative and regulatory difficulties that LDCs and developing countries may face in order to implement the TFA.

According to the Ministerial Declaration, enough assistance and donor contributions will be available to meet the needs of developing countries and LDCs in implementing the TFA. However, it is uncertain if such support and technical assistance would be enough to address the challenges that developing countries and LDCs would face in meeting the costs of implementing the TFA.

According to the OECD, the introduction and implementation of trade facilitation measures will include costs and challenges in the following areas: new regulation, institutional changes, training, equipment and infrastructure. Among the costs, equipment and infrastructure will be the most expensive; however, training appears to be the most significant. The funding needed to implement the trade facilitation measures will be between US$5 and US$26 million.[10] Between 70% and 90% of the costs will be for staff and equipment, and the rest will be related to procedural issues.[11]

Additionally, the initial investments will not be enough. These costs would not be limited to a one-time investment; most of them would be of a recurring nature.[12] For the deep implementation of the reforms across all government agencies each country will require a sustained commitment that will take more time and resources.[13] The annual operating costs directly or indirectly linked to trade facilitation will be around US$3.5 million.[14]

- **Assistance and support: binding or best endeavour?**

As mentioned before, the TFA clarifies that developing countries and LDCs will not be forced to implement the commitments of the agreement unless they receive the technical assistance to do so. But what if the provided technical assistance and financial support is not enough to implement all provisions?

Given the language of the ministerial declaration, the risk of a lack of support is still present. The TFA does not include any binding obligation for provision of financial and technical assistance by developed countries, the Ministerial Declaration only says: "development partners shall *endeavour* to provide assistance and support."[15]

Therefore, this language of good intentions can be dangerous for LDCs and developing

[9] OECD, "The Costs and Challenges of Trade Facilitation Measures", 4-5 December 2012, p. 3.
[10] *Ibid*., p. 7.

[11] European Commission, "EU pledges new financial support to help developing countries implement WTO Trade Facilitation Agreement", Brussels, December 2013, http://bit.ly/1dd36Dw
[12] Kinda Mohamadieh, "A WTO Treaty on Trade Facilitation? Regulatory, Institutional, Legislative, and Cost Challenges for Developing Countries", *South Centre Bulletin Article*, October 2013.
[13] World Bank, *op.cit.*, p. 11.
[14] OECD, *op.cit.* p. 7.
[15] WTO, "Ministerial Declaration and Decisions", 2013, p. 3, Bali, 3-6 December 2013, p. 39.

countries. Developed countries and international organizations should assume concrete commitments of financial and technical assistance.

- **Non-compliance of TFA provisions**

One of the main worries of developing countries and LDCs was the consequence of the non-compliance to implement the agreed provisions. They feared that they might be pressured into implementing these commitments when they have not acquired the required capacity and when they have more urgent national priorities to deal with.

It is true that the right to self-designate the obligations under Categories A, B, and C is a great help to ensure that each country implements the provisions at its own pace. However, difficulties may arise when the only remaining provisions to be implemented are the ones in Category C. These countries could end up in a situation where they have to implement all the provisions without receiving the adequate financial support and technical assistance.[16]

These concerns are reflected in the final Ministerial Declaration. The text clearly states that a developing country or LDC could and should notify its inability to implement a Category C commitment to the Trade Facilitation Committee, and that it will not be subject to Dispute Settlement procedures from the time it notifies the Committee until it receives the recommendation of the Expert Group. Therefore, developing countries and LDCs are partially protected in the event of inability to comply with any provision.

[16] South Centre, *op.cit.*, p. 4.

Alternatives to overcome challenges

As shown in the previous sections, the challenges and costs of implementing the TFA are considerable and diverse. However, there are different alternatives that developing countries and LDCs can take to minimize the risks and overcome the challenges. The possible alternatives include:

- **Domestic alternatives**

It is important that developing countries and LDCs include trade facilitation as a national goal. Even with the necessary resources and technical assistance, if there is no national coordination and government will to comply with the commitments it will be hard to implement all provisions. Therefore, some measures to facilitate national implementation of TFA are:

- Conduct an inclusive consultation with all stakeholders involved in the export and import of products and services (Government, private sector, society, small farmers, SMEs).
- Promptly establish a national committee on trade facilitation integrated by experts to facilitate both domestic coordination and implementation of the provisions.
- Produce a detailed study of the requirements to implement each of the provisions to adequately classify them in Category A, B or C.

- **External alternatives**

Once that the domestic capabilities and resources have been evaluated, the amount of financial support and the type of technical assistance can me determined. Therefore, here are the external alternatives that developing countries and LDCs could use to overcome the challenges:

- Actively participate in the legal review for rectifications of the TFA in order to press for the inclusion of binding obligations to provide assistance and support for capacity building.
- Based on a national evaluation, determine the financial support and technical assistance that will be needed from other donor WTO Members and specific organizations.
- Clearly report to the WTO on the domestic capabilities and external assistance that will be needed to implement the TFA.
- Once it is estimated that there might be an inability to comply with any provision, it must be notified as soon as possible to the trade facilitation committee.

Conclusion

There is no doubt that the TFA is a major accomplishment that will bring great economic benefits and facilitate trade between countries. Despite this, it will be a challenging task for LDCs and developing countries. Although the agreement recognizes the particular needs and difficulties that these countries might encounter, there are some ambiguities that could bring substantial challenges for its implementation.

One is the fact that the TFA does not include any binding obligation for the provision of financial and technical assistance by developed countries or international organizations. Another one is that if they don't meet the commitments on time, they might suffer domestic and international pressure to implement the TFA.

Therefore, some alternatives were proposed here to minimize these challenges and thus facilitate the compliance of developing countries and LDCs with the agreements. The main alternative is first to make an accurate assessment of the capabilities of each country involving all stakeholders, and then ask for the necessary support maintaining constant communication with the committee on trade facilitation.

In the end, trade facilitation is a great achievement that will bring many benefits, but it should be implemented considering the different resources and capabilities of each member of the WTO. The very diverse situations of developing countries and LDCs indicate that the practical implementation of trade facilitation measures in each country will differ in the short term.

Annex 1

	Alternative	Implementation
Domestic Alternatives	Inclusive consultation	Conduct an inclusive consultation with all stakeholders involved in the export and import of products and services (Government, private sector, society, small farmers, SMEs).
	National Committee	Promptly establish a national committee on trade facilitation integrated by experts to facilitate both domestic coordination and implementation of the provisions.
	Detailed study	Produce a detailed study of the requirements to implement each of the provisions to adequately classify them in Category A, B or C.
	Type and level of assistance	Determine the type and level of assistance that will be required to implement the provisions in order to identify the domestic capacities and limitations.
External Alternatives	Legal review	Actively participate in the legal review for rectifications of the TFA in order to press for the inclusion of binding obligations to provide assistance and support for capacity building.
	Evaluation	Conduct an accurate evaluation on the financial support and technical assistance that will be needed from other donor WTO Members and specific organizations.
	Clear report	Clearly report to the WTO on the domestic capabilities and external assistance that will be needed to implement the TFA.
	Prompt notification	Once it is estimated that there might be an inability to comply with any provision, it must be notified as soon as possible to the trade facilitation committee.

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