



Unloading a recently arrived delivery in Jomsom, Nepal.



# 3

## WTO's Trade Facilitation Agreement

COVID-19 and implementation of the TFA	43
Implementation progress of the TFA	43
Key TFA provisions for LLDCs	46
Article 7: Release and Clearance of Goods	46
Article 8: Border Agency Cooperation	47
Article 11: Freedom of Transit	48
Rate of TFA implementation commitments	50
Technical assistance and capacity building support	50
Challenges to notifying technical assistance needs	52

The TFA contains several provisions for expediting the movement, release and clearance of goods, including goods in transit, and easing trade bottlenecks at borders. It sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues. A key pillar of the TFA is a series of provisions for technical assistance and capacity building (TACB). Entering into force on 22 February 2017, all 26 LLDCs who are WTO members have completed their domestic ratification process.

The TFA plays a vital role in boosting world trade and output and in facilitating trade by simplifying, modernizing and harmonizing the movement, release and clearance of goods. In particular LLDCs are expected to increase not only the volume and range of products exported but also the number and range of markets reached. By improving timeliness and predictability in the delivery of intermediate goods, the TFA is predicted to increase the opportunity for developing countries to participate in global value chains.

The TFA helps with the development of e-commerce and the trade of physical goods bought and sold across borders through the internet. The TFA contains measures which help exporters and importers engaged in digitally enabled trade:

- publication and availability of information;
- advance customs rulings;
- expedited shipments;
- rapid release and clearance;
- reducing customs formalities.

Digital approaches to trade facilitation encouraged by the TFA can also reduce trade bottlenecks at borders, increase revenues and facilitate the movement and participation of small traders and women in cross-border trade. Implementation of the TFA has already resulted in greater customs efficiency, more effective revenue collection and better access for MSMEs to new export opportunities. Improved transparency in customs practices, fewer documentation requirements and less red tape, together with trade facilitating measures such as allowing for processing of documents before goods arrive, all provide huge benefits to LLDCs.

“The TFA is predicted to increase the opportunity for developing countries to participate in global value chains.”

### UNCTAD's Automated System for Customs Data: ASYCUDA

ASYCUDA is a computerized customs management system, developed by UNCTAD, which covers trade procedures (e.g. manifests, customs declarations, accounting, transit), provides an electronic data exchange between traders and customs administrations, and generates trade data for economic analysis. ASYCUDA can be tailored to individual customs regimes and modified to take account of any changes.

ASYCUDA reports increases in customs revenue, greater availability of reliable trade statistics and reductions in average clearance times.<sup>1</sup> With more than 100 countries having adopted ASYCUDA, the programme is UNCTAD's largest technical assistance initiative, with 51 operational projects.

<sup>1</sup> See <https://asycuda.org/en/programme>.

## COVID-19 and implementation of the TFA

Just three years in force at the onset of the COVID-19 pandemic, the TFA has played a key role in ensuring security, stability and continuity of global supply chains, including facilitating and expediting the global supply of emergency relief goods, medicines and vaccines. The predictability, transparency and uniformity in customs and other border procedures resulting from TFA implementation is vital to overcoming the crisis.

Since September 2020, the WTO Committee on Trade Facilitation (CTF) has been working to support members to implement the TFA as one means to mitigate the challenges of the pandemic. This chapter draws on information provided by WTO members to the CTF through their notifications of individual TFA implementation roadmaps, TACB support requirements, and progress reports on the securing of TACB. It also draws on a series of information sharing activities within the CTF. Convinced of the value of continuing to share experiences with the view to improve their individual and collective response to the pandemic, members informed the CTF of the trade facilitating measures that they had taken to address COVID-19. Members also informed the CTF of the challenges they were facing as a result of the pandemic.<sup>1</sup>

## Implementation progress of the TFA

In order to get a clear picture of the implementation progress of the TFA, it is necessary to understand some of the special and differential treatment provisions it contains. Developed country WTO members implemented the TFA upon its entry into force.



↑ Aktau seaport serves as a multipurpose terminal on the Caspian Sea, Kazakhstan.

However, developing country members, including LDCs, have the possibility of implementation under the flexibilities provided in the TFA, which allow them to draw up their own roadmap for implementation by classifying their TFA commitments into three categories:

- category A commitments: they are in a position to implement upon entry into force.
- category B commitments: they need additional time after entry into force to implement.
- category C commitments: they need not only additional time after entry into force to implement them but also capacity support and technical assistance.

The current TFA implementation commitments figures are based on:

- (i) implementation of the TFA upon entry into force by developed country members;
- (ii) the commitments by developing country members to implement their category A designations by 22 February 2017;

- (iii) the commitments by LDCs to implement their category A designations by 22 February 2018; and
- (iv) category B and C commitments of both developing and LDCs with notified dates<sup>2</sup> for implementation which have lapsed at the time of writing.

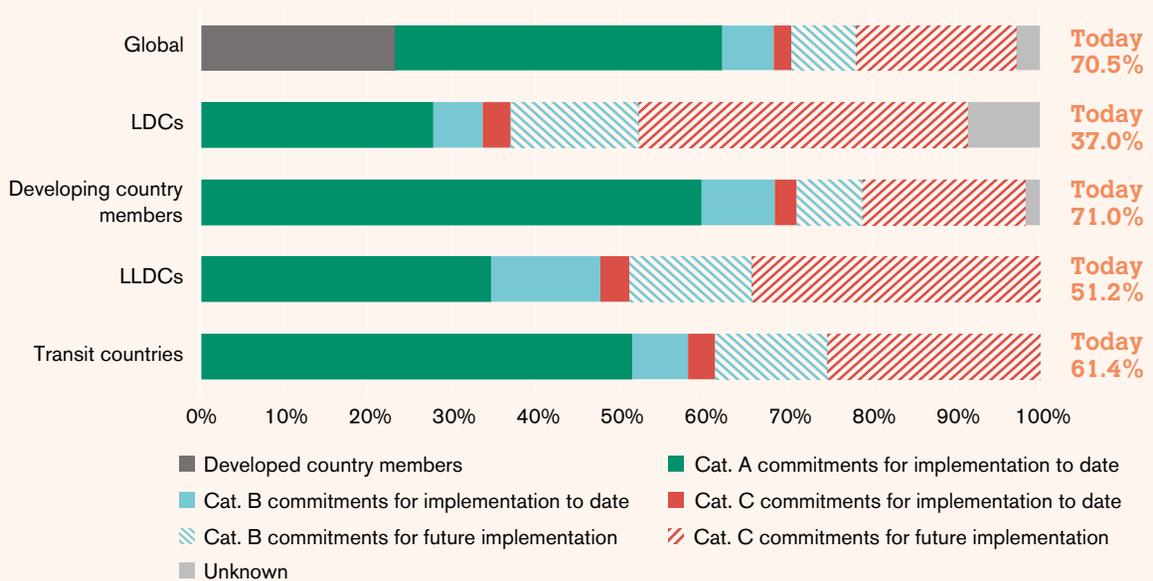
As of October 2021, the rate of TFA implementation commitments across the WTO membership was at over 70 per cent (see Figure 9).<sup>3</sup> Approximately, 8 per cent of implementation commitments have been notified to take place after a transition period from 2022 onwards (as category B commitments), while almost 20 per cent of implementation commitments are notified to take place after a transition period from 2022 onwards, upon receipt of

necessary TACB support (as category C commitments). Just under 3 per cent of commitments are yet to be notified under any category.

With regard to LLDCs, as of October 2021 the rate of their TFA implementation commitments stands at over 34 per cent. Almost 15 per cent of implementation commitments have been notified to take place after a transition period from 2022 onwards, while 34 per cent of implementation commitments are notified to take place after a transition period from 2022 onwards, upon receipt of necessary TACB support.

LLDCs depend on transit countries for most of their merchandise exports to reach their intended market, it is therefore very important to monitor the progress of implementation

**Figure 9: Progress of TFA implementation commitments**



Source: TFAD.



commitments of the TFA in transit countries. In this regard, there is a positive outlook, as transit countries have notified 61 per cent of their commitments as being implemented. In addition, approximately 13 per cent of their commitments have been notified to take place after a transition period from 2022 onwards, and 25 per cent to take place after a transition period from 2022 onwards and upon receipt of necessary TACB support.

For developing country members, the rate of notified TFA implementation commitments currently stands at 71 per cent. In addition, approximately 8 per cent of total commitments are notified to be implemented after a transition period from 2022, and members have also notified that 19 per cent of commitments are to be implemented after a transition

period from 2022 and upon receipt of required TACB support.

Turning to LDCs, the rate of notified TFA implementation commitments currently stands at 37 per cent. In addition, approximately 15 per cent of total commitments are notified to be implemented after a transition period from 2022; and members have also notified that approximately 39 per cent of commitments are to be implemented after a transition period from 2022 and upon receipt of required TACB support.

While sharing their experiences with the CTF, some LLDCs noted that they had to strengthen their infrastructure and connectivity with the world in order to reduce logistics and transport costs and to achieve greater commercial and economic activity for the benefit of the most

↑ **Preparing tomatoes for transport, Armenia.**

vulnerable and affected sectors, such as women entrepreneurs, young people, MSMEs and farming areas. However, these sectors were often located far from the border customs points and facilitation and improvement at border points were not always sufficient. During the pandemic, solutions have been largely targeted towards facilitating bulk trade, but issues still persist for MSMEs and women traders.

Problems are still faced in transit cases where Article 11.2 is yet to be observed and challenges remain on the release of LDC goods in other markets. LLDCs, in a communication to the CTF (WTO document G/TFA/W/53), called “for the constructive cooperation of transit countries for the early and effective implementation of disciplines that will contribute to reducing transit time and costs, simplify procedures and introduce greater certainty in cross-border trade”.

### Key TFA provisions for LLDCs

Having identified some of the trade bottlenecks that LLDCs are experiencing, it underlines the particular significance of the TFA in addressing the high trade costs of LLDCs and landlocked LDCs. Before its entry into force, full implementation of the TFA was estimated to reduce LLDC trade costs by an average of 15.4 per cent.

Looking at the TFA in a granular manner, the following articles can be considered to have a specific importance for LLDCs and easing trade bottlenecks:

- Article 7: Release and Clearance of Goods.
- Article 8: Border Agency Cooperation.

- Article 10: Formalities Connected with Importation, Exportation and Transit.
- Article 11: Freedom of Transit.
- Article 12: Customs Cooperation.

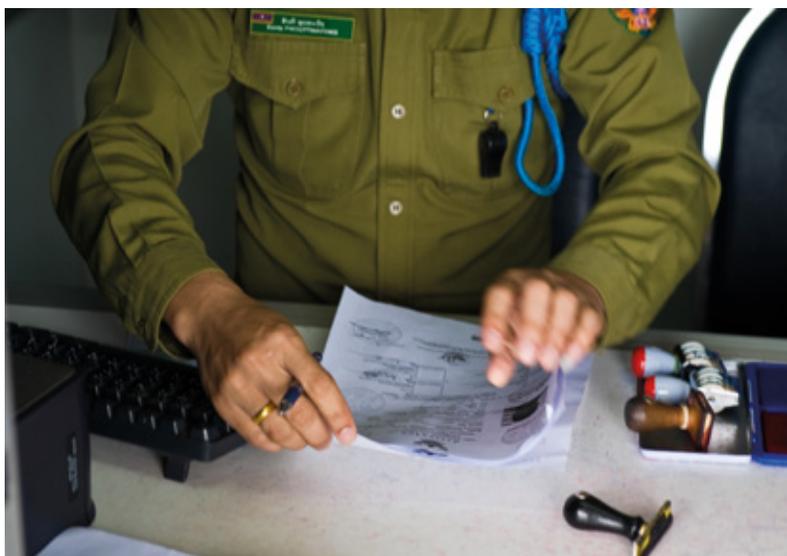
### Article 7: Release and Clearance of Goods

Article 7 of the TFA requires WTO members:

- to begin the processing of goods prior to arrival at the importing country (Article 7.1);
- to allow for e-payments of duties, taxes, fees and charges (Article 7.2);
- to allow goods to be released from customs with minimum risk (Article 7.3);
- to focus controls on high-risk consignments (Article 7.4);
- to follow up with post-clearance audit (Article 7.5).

These measures ease trade bottlenecks at LLDC border crossings by freeing up customs resources and expediting the release of goods (with specific reference to air cargo shipments and perishable goods).

↓ Customs officer in the Lao People's Democratic Republic clears goods for entry into Thailand.



**Table 6: Article 7 notification data**

	Category A current (%)	Category B current (%)	Category C current (%)	Category B future (%)	Category C future (%)
<b>Article 7.1: pre-arrival processing</b>					
Global	40	8	3	6	18
LDCs	29	3	6	6	49
Developing members	61	14	3	8	13
Transit countries	57	13	3	3	23
LLDCs	23	15	3	15	42
<b>Article 7.4: risk management</b>					
Global	31	3	2	1	36
LDCs	14	6	3	3	66
Developing members	51	4	3	1	39
Transit countries	43	10	10	–	37
LLDCs	30	4	–	–	66
<b>Article 7.5: post-clearance audit</b>					
Global	40	3	2	4	25
LDCs	37	3	–	3	49
Developing members	59	5	3	6	26
Transit countries	56	8	3	3	30
LLDCs	42	4	–	4	50

Source: WTO Secretariat.

However, the notification data show that the current rate of implementation commitments for three trade facilitating measures particularly significant for LLDCs – pre-arrival processing, risk management and post-clearance audits – are below 50 per cent (see Table 6). For two of the provisions, at least 50 per cent of the TFA implementation commitments will be implemented at a future date and upon receipt of the necessary TACB support.

### Article 8: Border Agency Cooperation

The provisions on border agency cooperation are of significant importance to LLDCs to ease trade bottlenecks. Increased internal cooperation and coordination at the border between customs and other border agencies lead to a significant reduction in the delays and costs for

traders. Required external cooperation and coordination with border control authorities and agencies of neighbouring members with which it shares a common border will reduce red tape and duplication of documents required to complete border procedures and to clear goods.

LLDCs face multiple border crossings, complex administrative transit and border procedures, so the benefits of reducing trade bottlenecks are even greater. However, insufficient border agency cooperation has been a challenge during the COVID-19 pandemic. The notification data for rate of TFA implementation commitments by LLDCs around border agency cooperation show over 70 per cent of the measures to be implemented are placed in category C (see Table 7). LLDCs have thus a strong need for TACB support.

**Table 7: Articles 8 and 11 notification data**

	Category A current (%)	Category B current (%)	Category C current (%)	Category B future (%)	Category C future (%)
<b>Article 8: Border Agency Cooperation</b>					
Global	29.4	5.1	1.2	4.1	33.7
LDCs	0.5	5.7	5.7	3.3	76.2
Developing members	53.1	7.0	3.3	6.1	31.5
Transit countries	30.6	3.3	–	10.0	52.8
LLDCs	23.7	3.8	–	0.6	71.8
<b>Article 11: Freedom of Transit</b>					
Global	45.3	6.4	1.7	7.3	13.3
LDCs	30.7	3.5	2.9	21.5	32.8
Developing members	70.2	10.2	2.0	4.9	11.3
Transit countries	50.5	6.0	3.7	10.8	29.0
LLDCs	43.6	9.9	4.9	20.9	20.7

Source: WTO Secretariat.

## Article 11: Freedom of Transit

Article 11 sets out provisions to facilitate the transit of goods through a country (see Table 8):

- transit fees, regulations and formalities (Articles 11.1-11.3);
- strengthening non-discrimination of traffic in transit (Article 11.4);
- transit, procedures and controls and transit infrastructure (Articles 11.5-11.10);
- guarantees (Articles 11.11-11.15).

WTO members are obliged to reduce or eliminate (if no longer required) regulations or formalities in connection with traffic in transit, to restrict fees or charges to transportation costs or to the cost of services rendered.

Trade bottlenecks can be eased through the implementation of Article 11 provisions, which:

- enhance border and customs controls coordination, cooperation and information sharing;

- minimize restrictions on transit;
- simplify and harmonize transit regulations and requirements;
- strengthen border and customs controls coordination, cooperation and information sharing – including through the use of ICT.

Article 11 encourages members to appoint a national transit coordinator to whom other members can make enquires and proposals, and currently two LLDCs have notified information regarding their transit coordinators.

The notification data from LLDCs indicate their rate of TFA implementation commitments for Article 11 currently stands at over 58 per cent (see Table 7). LLDC notifications indicate that an additional 21 per cent of Article 11 obligations will be implemented after a transition period and a further 21 per cent will be implemented after a transition period and the acquisition of capacity through technical assistance.

Transit country data indicates that their rate of TFA implementation commitments for Article 11 currently

**Table 8: Deconstructing Article 11**

Transit provisions	
<p><b>Transit formalities, fees and regulations</b></p> <p>The first three paragraphs of Article 11 set out the general rules for transit operations. They clarify that regulations and fees on transit shall be limited to that which is necessary to ensure its smooth procedures. In that sense, these provisions use language similar to that in Articles XX and VIII of GATT, which has been subject to ample elucidation in dispute settlement cases.</p> <p>Paragraph 3 is there to prevent the transit country insisting on another country to limit the flow of vehicles carrying transit goods.</p>	<p>Paragraph 1: Any regulations and formalities shall not be maintained if circumstances/objectives no longer exist or can be applied in a less trade-restrictive manner, constitute a disguised restriction on trade.</p> <p>Paragraph 2: Traffic in transit shall not be conditioned on collection of fees (except cost based, transport and administrative expenses).</p> <p>Paragraph 3: Prohibition on imposing voluntary restraints on traffic in transit.</p>
<p><b>Non-discrimination</b></p> <p>This is a very important provision which reinforces a principle already enunciated in Article V of GATT. Nevertheless, whether this provision is equivalent to national treatment is still open to interpretation.</p>	<p>Paragraph 4: Products in transit shall be treated no less favourably than products transported from their place of origin to their destination without going through the transit country.</p>
<p><b>Transit infrastructure, procedures and controls</b></p> <p>Paragraphs 5-10 contain further clarification and detail on the conduct of transit operations and their regulations. The general orientation of these rules is to facilitate transit operations and eliminate certain practices that increased uncertainty and costs.</p>	<p>Paragraph 5: Separate infrastructure for traffic in transit is encouraged.</p> <p>Paragraph 6: Formalities, documents, and controls shall not be more cumbersome than necessary to: identify goods; and ensure fulfilment of transit requirements.</p> <p>Paragraph 7: There shall be no charges, delays, or restrictions once goods cleared for transit.</p> <p>Paragraph 8: TBT measures shall not be applied to goods in transit.</p> <p>Paragraph 9: Authorities shall allow and provide the possibility of advance filing and processing of transit documentation.</p> <p>Paragraph 10: Authorities shall promptly terminate transit operation once exit point is reached.</p>
<p><b>Rules on guarantees</b></p> <p>In the conduct of transit operations, one of the main objectives of the customs authorities is to ensure that these do not circumvent the collection of duties that would be otherwise due. To fulfil this objective, a guarantee system is normally put in place. This ensures that the duties and taxes which are suspended during a transit operation will be paid if the goods do not exit the transit country and increases the likelihood that the goods in transit will not disappear on the way. The TFA agreement sets out rules so that these guarantees are not more cumbersome than necessary and do not unduly increase trade costs.</p>	<p>Paragraph 11: Guarantees shall be limited to ensuring transit requirements are fulfilled.</p> <p>Paragraph 12: Once the transit operation is over, they shall be discharged without delay.</p> <p>Paragraph 13: Guarantees may allow multiple transactions or renewals.</p> <p>Paragraph 14: Authorities shall publish the information used to set guarantees.</p> <p>Paragraph 15: Convoys or escorts shall be used only in high-riskcases and their rules shall be published.</p>
<p><b>Customs cooperation and transit coordinators</b></p> <p>Finally, Article 11 includes two best endeavours provisions aimed at increasing coordination between authorities on issues of transit that complement the more general provisions in Articles 8, 12 and 23.2.</p>	<p>Paragraph 16: Members will endeavour to cooperate to enhance transit and understandings on: charges; formalities and legal requirements; and the practical operation of transit regimes.</p> <p>Paragraph 17: Members will endeavour to appoint a national transit coordinator.</p>

Source: WTO Secretariat.

stands at over 60 per cent. It also appears that transit countries have a higher level of provisions in category C (29 per cent) which shows the importance of rollout of implementation of the TFA across all the membership to accrue greater benefits for all members.

### Rate of TFA implementation commitments

Currently, the TFA articles with the highest rate of implementation commitments (above 70 per cent) among LLDCs are:

- pre-shipment inspection (which is a negative commitment not to use this type of system);
- movement of goods;
- detention;
- use of customs brokers (also a negative commitment);
- temporary admission of goods and inward and outward processing;
- rejected goods;
- common border procedures.

The articles with the lowest rate of TFA implementation commitments (below 40 per cent) include:

- single window;
- test procedures;
- authorized operators;
- border agency cooperation;
- risk management;
- enquiry points;
- expedited shipments;
- information available online;
- advance rulings average release times;
- use of international standards.

Figures 10 and 11 detail measures with the highest and lowest implementation commitment rates in LLDCs as of September 2021.

The measures with the lower rates of implementations commitments are often measures that require the most

investment and technical knowledge in order to implement them. Examples include the updating of customs methodologies and procedures to apply a risk management programme as well as providing preferential customs treatment for authorized operators determined to present low risk of non-compliance with legal requirements.

In addition to the built-in flexibilities which allow developing and least-developed countries to self-determine how they will implement the TFA in accordance with their specific roadmap, the TFA also provides for the adjustment of the roadmap as implementation progresses.

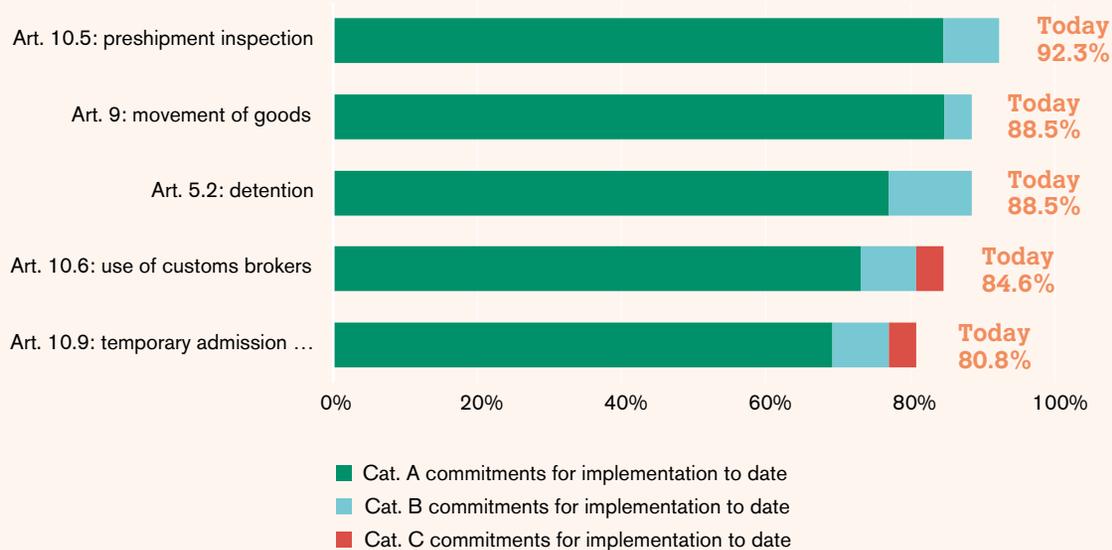
Members can also request technical assistance to implement certain articles that they had not originally considered necessary within the framework of provisions for the shifting of notified categories, which means LLDCs can request to shift provisions from category B to category C when the transitional period alone is found to be insufficient to implement the provision. The WTO provides TACB to implement these provisions. A number of members cited the impact of the COVID-19 pandemic as being a factor in their unanticipated need for TACB support. Requests involved a total of 13 provisions and included those measures with the lowest implementation commitment rate.

### Technical assistance and capacity building support

In accordance with the TFA, when members designate provisions into category C, they are also required to identify the TACB support that they require in order to implement the provisions. Figure 12 provides a

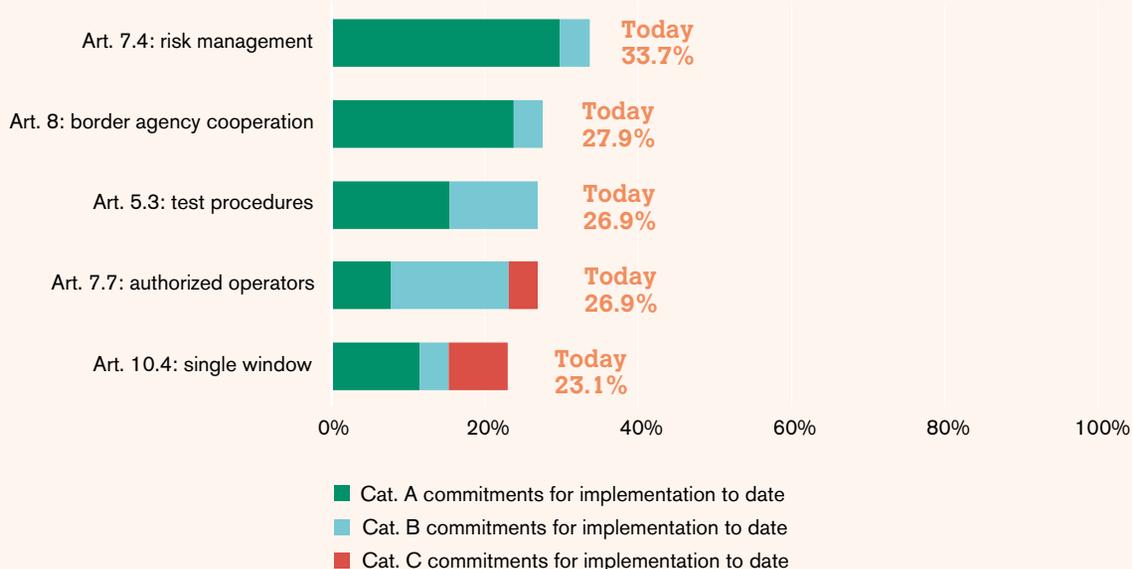
“As of October 2021, the rate of TFA implementation commitments across the WTO membership was at over 70 per cent.”

**Figure 10: Top five measures with the highest rate of TFA implementation commitments by LLDCs**

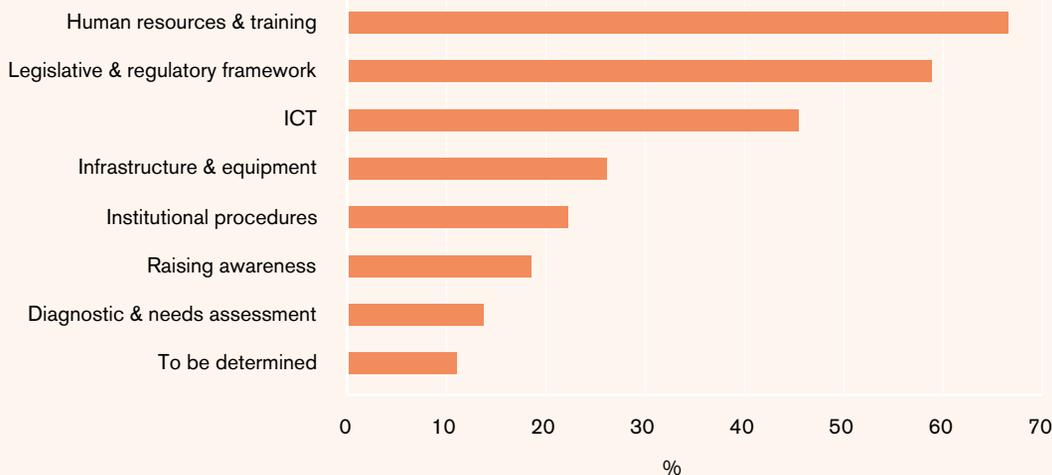


Source: TFAD.

**Figure 11: Bottom five measures with lowest rate of TFA implementation commitments by LLDCs**



Source: TFAD.

**Figure 12: Type of technical assistance required**

Source: TFAD.

breakdown of the TACB support requirements identified by LLDCs.

### Challenges to notifying technical assistance needs

Some LLDCs and landlocked LDCs have indicated that they are having difficulties notifying their technical assistance requirements to implement the category C measures. This can result from a lack of capacity to do so, particularly in the efforts to transpose the identified needs into coherent and relevant projects according to the requirements of the TFA.

Such circumstances can lead to a delay in demand-driven technical assistance being made available to WTO members and this would indicate that LLDCs and landlocked LDCs need support to notify their requirements. This can be a significant trade bottleneck for them, as it places immediate obstacles in front of the first step towards securing TACB support to implement the TFA.

A second step in the TACB process is the requirement for all members requesting TACB support to notify the arrangements they have entered into with donors to receive assistance, plus a report on the progress being made under those arrangements. The purpose of their notification is to allow members to identify where progress is being made in securing technical assistance, but it is also a very useful tool to help the CTF to identify where gaps remain and to mobilize their appropriate mechanisms in attempt to address those gaps.

However, this notification on arrangements entered into and progress made has one of the lowest rates of return across members. In the same way that capacity constraints can delay members' notification of their specific assistance needs, those same capacity constraints can also delay the reporting mechanism.

Eight LLDCs have notified the CTF of the arrangements and progress that they have made in securing TACB of a total of 89 TFA measures. Among those eight members, their top five provisions measures requiring TACB were once again: risk management; average release times; border agency cooperation; use of international standards; and enquiry points. They reported varying levels of progress in securing all the assistance needed.

The wide-ranging implementation flexibilities contained in the TFA, the categorization of provisions that need a transition period to enable implementation, plus the categorization of provisions that additionally need technical assistance over time, put a progressively clearer focus on where members have the greatest challenges to implement the TFA, and ultimately highlight important gaps between what LLDCs have identified that they need and the extent of assistance that is being provided to them.

This process is helping to narrow in on the trade bottlenecks that LLDCs face in terms of trying to implement the TFA for their own benefit, and

trade bottlenecks being faced by other members, including transit countries – which are also of importance for LLDCs.

LLDCs depend on trade and the expedited free movements of goods, and trade bottlenecks deny them the economic stability and prosperity trade provides. The implementation of the TFA calls for the minimization of administrative and procedural barriers. It is critical to guarantee transparent and predictable trade with the LLDCs' main trading partners. The TFA plays a major role in ensuring security, stability and continuity of global supply chains, including facilitating and expediting the global supply of emergency relief goods and vaccines. Its role in easing trade bottlenecks will supporting business recovery and resilience across different goods sectors.

TFA provisions help LLDCs to withstand and recover from the severe impact of the COVID-19 pandemic and to continue to engage in the global supply chain. The significant challenges and bottlenecks to trade LLDCs continue to face can be reduced by fully implementing the TFA.

## Endnotes

- 1 The contributions of COVID-19 responses from CTF members and observers can be found in WTO document G/TFA/W/40. It includes links to presentations made to the CTF by a number of Annex D+ partner organizations.
- 2 Section II of the TFA provides that Members benefiting from its flexibilities are to first notify indicative date for implementation and to notify definitive dates for implementation after a designated period.
- 3 The current and future rate of implementation figures are based on the implementation of the TFA upon entry into force by developed country members, the commitment by developing country members to implement their category A designations by 22 February 2017 and the commitment by LDCs to implement their category A designations by 22 February 2018. Categories B and C commitments of both developing countries and LDCs are taken into account when definitive dates have been notified, otherwise they are counted as implementation commitment date "unknown".

### Trade Facilitation Agreement Facility

At the request of developing and least-developed country members, the WTO established the TFAF to ensure members receive the assistance they need to ease trade bottlenecks and to reap the full benefits of implementation of the TFA.

The TFAF assists members through a range of activities, such as workshops and national events, to identify their needs and to prepare their notifications. Members seeking technical assistance and donor organizations able to provide the required assistance are brought together by the TFAF. Where it is not possible to identify donor support, the TFAF also provides project preparation and implementation grants. Currently, Mongolia, an LLDC, has been awarded a project preparation grant for four TFA provisions, and Namibia, a transit country, has been awarded a grant for eleven TFA provisions.