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**TBT AND TRADE FACILITATION AGREEMENTS:
LEVERAGING LINKAGES TO REDUCE TRADE COSTS**

Serra Ayrál

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TBT AND TRADE FACILITATION AGREEMENTS: LEVERAGING LINKAGES TO REDUCE TRADE COSTS

Serra Ayrál¹

ABSTRACT

The average international trade transaction is subject to numerous procedural and documentation requirements, which add to the costs of doing business as an importer or exporter and also use up scarce government resources. While these requirements can be necessary to fulfil policy objectives, questions are often raised about why and how they are implemented. The Trade Facilitation Agreement (TFA), adopted by WTO Members in 2014, seeks to expedite the movement, release and clearance of goods across borders and reduce these trade transaction costs - by an average of 14.3 per cent as estimated by the 2015 World Trade Report. At the same time, many WTO Agreements already contain provisions aimed at facilitating trade procedures and avoiding unnecessary costs. The Agreement on Technical Barriers to Trade (the TBT Agreement) is one of these: its provisions on transparency and conformity assessment procedures, some of which are applied at the border, are of particular relevance in this context. The TFA and TBT Agreements are in fact complementary, with the TFA introducing some new requirements/recommendations, which are likely to apply to certain TBT measures. This paper maps out the linkages between these two Agreements. It does so with a view to informing TBT officials of the requirements and best practices emerging in the trade facilitation area as well as raising awareness amongst trade/customs officials of existing rules and evolving practices in the TBT area. The 2015 World Trade Report refers to "border agency cooperation" as the main TFA implementation challenge identified by developing countries and also points to the importance of cooperation and coordination between ministries as one of the main success factors. Considering that a significant share of import/export procedures and controls arise from the implementation of TBT measures, a better understanding of the linkages between the TFA and the TBT Agreement (as well as other relevant WTO Agreements such as the SPS Agreement) will be crucial for effective implementation. It will also contribute to more streamlined technical assistance activities and raise awareness among TBT officials of the opportunities generated by trade facilitation projects. The procedures and practices of the WTO TBT Committee, especially with regards to transparency and specific trade concerns, could also be of interest to the future TFA Committee, as it embarks on its task of furthering the implementation of the TFA. All these in turn will help reap the expected benefits of the new Trade Facilitation Agreement.

Keywords: Trade facilitation, technical barriers to trade, non-tariff barriers, WTO

JEL Codes: F13, F53, K33

¹ Counsellor in the Trade and Environment Division, WTO Secretariat (serra.ayral@wto.org). The author would like to thank Marijke Smit for the research assistance provided and Hoe Lim, Nora Neufeld and Erik Wijkström for their valuable comments on an earlier draft. The views expressed in this paper should be attributed to the author only. They are not intended to represent the positions or opinions of the WTO or its Members and are without prejudice to Members' rights and obligations under the WTO. Any errors are attributed to the author.

1. INTRODUCTION

With the adoption and forthcoming entry into force of the Trade Facilitation Agreement (TFA), significant effort has been going towards explaining its content and expected benefits to stakeholders and leveraging resources for its implementation. This paper seeks to contribute to the understanding of the TFA by reviewing it through the lens of the TBT Agreement. It first provides a short general overview of the TFA followed by a more detailed study of the linkages between the provisions of the two Agreements. It concludes by highlighting possible implications of these linkages for implementation at the national level, for relevant work at the WTO and also for technical assistance and capacity building.

2. AN OVERVIEW OF THE TRADE FACILITATION AGREEMENT

a) The value added of the Trade Facilitation Agreement

The average international trade transaction is subject to numerous procedural and documentation requirements, which add to the costs of doing business as an importer or exporter and also use up scarce government resources. While these requirements can be necessary to fulfil policy objectives (protection of health or the environment, revenue generation, security, statistics, etc.) questions are often raised about "why" and "how" they are implemented. Typical problems mentioned relate to duplicative documentation requirements, inefficient border-crossing procedures, transport and transit impediments, lack of transparency and predictability, lack of automated/IT processes, all resulting in high trade transaction costs and delays.

The TFA sets forth a series of measures for improving the conditions for moving goods across borders, inspired by best practices from around the world. Governments as well as producers and traders, especially small and medium enterprises, are expected to benefit from the successful implementation of the TFA. Governments are expected to streamline, upgrade and modernize their procedures/systems to become more effective and efficient, including in ensuring compliance with their regulations and in revenue generation. Companies will have opportunities to become more competitive - thanks to reductions in trade transaction costs as well as easier access to information - which should encourage domestic investment and growth. As trade transaction costs fall, the TFA is expected to ease integration into global value chains and can also help attract foreign direct investment.

Developing countries are expected to see the biggest gains since they currently face some of the largest procedural obstacles. According to OECD estimates (OECD 2014),² the TFA is expected to reduce total trade costs by more than 14% for low-income countries, by more than 15% for lower middle-income countries and more than 13% for upper middle-income countries. Similarly, according to the 2015 World Trade Report of the WTO, full implementation of the TFA has the potential to reduce trade costs by an average of 14.3 per cent (WTO 2015).³

² Organization for Economic Cooperation and Development (OECD) (2014), *The WTO Trade Facilitation Agreement – Potential Impact on Trade Costs*, Paris: OECD

³ World Trade Organization (WTO) (2015), *World Trade Report 2015: Speeding up Trade: Benefits and Challenges of Implementing the WTO Trade Facilitation Agreement*, Geneva: WTO https://www.wto.org/english/res_e/publications_e/wtr15_e.htm

b) Brief history, current status and key features of the Trade Facilitation Agreement

Trade facilitation first became a topic of discussion at the WTO during the Singapore Ministerial Conference in December 1996⁴ and after several years of exploratory work, negotiations on trade facilitation became formally part of the Doha Development Agenda in July 2004, when Members were directed to *clarify and improve* relevant aspects of Article V (Freedom of Transit), Article VIII (Fees and Formalities connected with Importation and Exportation), and Article X (Publication and Administration of Trade Regulations) of the GATT 1994 “with a view to further expediting the movement, release and clearance of goods, including goods in transit”.⁵ After almost ten years of negotiations, the Trade Facilitation Agreement was concluded in December 2014 at the Bali Ministerial Conference as part of a wider Bali package⁶ and a Protocol of Amendment⁷ was adopted in November 2014 to insert the new Agreement into Annex 1A of the WTO Agreement, which includes thirteen other multilateral agreements on trade in goods, including the SPS and TBT Agreements.

The Trade Facilitation Agreement will enter into force once two-thirds of WTO Members have deposited their instrument of acceptance with the WTO. As of 23 May 2016, 108 Members would constitute two-thirds of WTO Members (162)⁸ and 79 of them have already deposited their instrument of acceptance.⁹ In the interim, the Preparatory Committee on the Trade Facilitation Agreement is mandated to “perform such functions as may be necessary to ensure the expeditious entry into force of the Agreement and to prepare for the efficient operation of the Agreement upon its entry into force.”¹⁰

The provisions of the TFA are laid out in three sections. Section I contains a series of provisions covering border-related procedures, processes and other obligations that governments are required (or encouraged) to implement. They promote transparency of laws, rules and procedures, fairness in border agency decisions, streamlined clearance procedures and seek to reduce administrative constraints in transit. While most provisions are to be implemented by customs administrations, many also apply to other agencies that deal with cross-border trade. In fact, these provisions are not necessarily new as they build upon existing practices as well as provisions contained in other legal instruments, which are already being implemented to varying degrees in countries around the world.¹¹ Box 1 lists the articles contained in Section I and Box 2 includes a “jargon buster” on some of the specific terminology used in the Agreement.

Section II of the Agreement contains unique special and differential treatment provisions for developing and least developed country Members. These Members have flexibilities in implementing the Agreement at their own pace and are to designate within specific timelines set out in the Agreement, which commitments they undertake to implement

⁴ Singapore Ministerial Declaration, para. 21, see https://www.wto.org/english/thewto_e/minist_e/min96_e/singapore_declaration96_e.pdf. See also the mandate and principles contained in the Doha Ministerial Declaration, para. 27 [WT/MIN\(01\)/DEC/1](https://www.wto.org/english/thewto_e/minist_e/min01_e/dec1_e.htm)

⁵ Decision Adopted by the General Council on 1 August 2004, Annex D 'Modalities for Negotiations on Trade Facilitation', para 1, see WT/L/579. See also Hong Kong Ministerial Declaration, para. 33 and Annex E WT/MIN(05)/DEC

⁶ Members adopted a slightly revised final text of the TFA in July 2014, incorporating some editorial, non-substantive modifications, see WTO document [WT/L/931](https://www.wto.org/english/thewto_e/minist_e/min14_e/min14_e.htm).

⁷ WTO document [WT/L/940](https://www.wto.org/english/thewto_e/minist_e/min14_e/min14_e.htm).

⁸ This number will go up if the total number of WTO Members increases.

⁹ See here for latest list: https://www.wto.org/english/thewto_e/minist_e/min14_e/min14_e.htm

¹⁰ Bali Ministerial Decision of 7 December 2013 on the Agreement on Trade Facilitation, para. 2, see https://www.wto.org/english/thewto_e/minist_e/min13_e/min13_e.htm

¹¹ For example, the World Customs Organization (WCO), with 179 customs administrations as members, has already developed a range of trade facilitation tools such as the Revised Kyoto Convention (RKC), SAFE Framework of Standards, Single Window Compendium, Time-Release Study (TRS) and WCO Data Model, which relate very closely to and support the implementation of provisions covered in the TFA. In light of the adoption of the TFA, the WCO is also revising its existing tools and developing new ones as necessary.

upon entry into force of the agreement - or within one year for LDCs- (Category A),¹² which they will implement after a transitional period (Category B) and which they will implement only after a transitional period and capacity building (Category C). While all WTO Agreements contain special and differential treatment provisions, the approach taken in the TFA is quite novel in that it allows each developing country and LDC Member to proceed at the pace they deem appropriate for their circumstances.

Box 1. Section I of TFA

ARTICLE 1: Publication and Availability of Information

ARTICLE 2: Opportunity to comment, information before entry into force and consultations

ARTICLE 3: Advance Rulings

ARTICLE 4: Procedures for appeal or review

ARTICLE 5: Other measures to enhance impartiality, non-discrimination and transparency

ARTICLE 6: Disciplines on fees and charges imposed on or in connection with importation and exportation and penalties

ARTICLE 7: Release and Clearance of Goods

ARTICLE 8: Border Agency Cooperation

ARTICLE 9: Movement of goods intended for import under customs control

ARTICLE 10: Formalities connected with importation, exportation and transit

ARTICLE 11: Freedom of transit

ARTICLE 12: Customs Cooperation

Box 2. Jargon buster

SINGLE WINDOW Enables traders to submit all documents and/or data required by customs and other border authorities through a single entry point (physical or electronic).

ADVANCED RULING Allows a trader to obtain reliable 'binding' information about tariff classification, origin, or other treatment of goods before importation.

AUTHORIZED OPERATORS Reliable operators, who meet specific criteria, can benefit from additional trade facilitation benefits, for example low rate of physical inspections.

RISK MANAGEMENT The methodology that customs uses to determine which import, export or transit transactions or operators should be subject to control and the type and degree of control to be applied - leading to a higher degree of control on high-risk consignments and expediting the release of low-risk goods.

TIME RELEASE STUDY Measuring the performance of customs and other border agencies with respect to the average time that it takes to release goods

Source: Compiled on the basis of explanations contained in Self-Assessment Guide (WTO document TN/TF/W/143/Rev.7).

Section III includes a number of provisions related to the overall implementation of the Agreement, including institutional arrangements such as the establishment of the WTO Committee on Trade Facilitation as well as of national committees to facilitate domestic coordination and implementation of the Agreement.

3. TFA-TBT AGREEMENT LINKAGES

a) General overview

The TBT Agreement recognizes the right of WTO Members to impose technical regulations and conformity assessment procedures to achieve legitimate policy objectives, such as the protection of human health and safety or protection of the environment. At the same time, it aims to ensure that these measures remain non-discriminatory and do not create unnecessary obstacles to trade in goods. The TBT Agreement strongly encourages Members to base their measures on international

¹² As of 23 May 2016, 84 Members have notified the WTO of their Category A commitments, i.e. those provisions which they will implement upon entry into force of the TFA. The latest list is available here: <http://www.tfafacility.org/>

standards as a means to facilitate trade. Its provisions on conformity assessment procedures (which are used to determine that relevant requirements in technical regulations or standards are fulfilled) aim to ensure that such procedures do not become unnecessarily burdensome or costly (see Box 3) and also encourage Members to accept results of conformity assessment procedures conducted in other Members, provided that certain conditions are met. In addition, through its transparency provisions, including on notifications and Enquiry Points, the Agreement aims to create a predictable trading environment. Put simply, the TBT Agreement has been drafted to "facilitate trade" while safeguarding governments' right to regulate.¹³

The Trade Facilitation Agreement focuses on expediting the movement, release and clearance of goods, including goods in transit and on reducing trade-related transaction costs. Although its primary focus is on customs procedures and authorities, all agencies involved in exportation, importation and transit are implicated. Indeed, some TFA provisions, which are looked at in further detail in the next section, could contribute further to the elimination of *unnecessary obstacles to trade* arising from the implementation of TBT measures, while not restricting Members' regulatory autonomy. These reinforcing linkages are most evident with regards to two specific areas: "transparency" and "conformity assessment procedures".

Box 3. Conformity assessment procedures

Article 5 of the TBT Agreement on "conformity assessment procedures" (including *inter alia* procedures for sampling, testing and inspection; evaluation, verification and assurance of conformity; and registration, accreditation and approval) is of particular relevance when considering possible linkages between the TFA and the TBT Agreement. It obliges Members to ensure that such procedures are not applied "more strictly than necessary" and requires that:

- conformity assessment procedures are completed as expeditiously as possible;
- standard processing periods are published;
- information requirements are limited to what is necessary;
- confidentiality of information is respected;
- fees are equitable in relation to those charged on domestic or foreign like products;
- siting of facilities and selection of samples do not cause unnecessary inconvenience; and
- a procedure exists to review complaints.

The relationship between the two Agreements is explicitly addressed via TFA Article 24.6, according to which "nothing in this Agreement shall be construed as diminishing the rights and obligations of Members..." under the SPS and TBT Agreements. While safeguarding Members' rights and obligations under the SPS and TBT Agreements, this provision also foresees situations where the TFA could actually introduce additional requirements or recommendations regarding SPS and TBT measures. The WTO Secretariat's SPS unit has already prepared an informal background note on the linkages

¹³ For further information on the TBT Agreement, see The WTO Agreement Series: Technical Barriers to Trade (WTO 2014a). https://www.wto.org/english/res_e/publications_e/tbttotrade_e.pdf

between the TFA and the SPS Agreement and highlighted some SPS-plus elements (WTO 2014b).¹⁴

A significant share of import/export procedures and controls are related to the implementation of TBT (and SPS) measures. An ITC study on non-tariff measures (NTMs) points out that SPS and TBT requirements and related conformity assessment procedures are among the main NTMs of concern for small businesses, not necessarily due to the stringency of the underlying regulations but rather due to related procedural aspects, which create delays, high fees and administrative burdens (ITC 2015).¹⁵ As mentioned above, the TBT Agreement already contains some provisions to ensure that such procedures do not pose unnecessary obstacles to trade. In some cases, the TFA introduces provisions, which are parallel or comparable to those already contained in the TBT Agreement, in others, the TFA contains some additional provisions, which will apply to TBT measures. These could be regarded as TBT-plus provisions – even though many are couched in best-endeavour language. Therefore, it is important for TBT officials to be aware of requirements and best practices emerging in the trade facilitation area and also for customs officials to be aware of existing rules and evolving practices in the TBT area.

b) Specific examples

This section examines TFA provisions that could affect TBT measures and assesses to what extent they could be considered as TBT-plus provisions. It does not analyse these provisions in depth but rather offers a non-exhaustive compilation of cases where certain linkages can be identified:

- **Publication and availability of information:** TFA Article 1 on Publication and Availability of Information has similarities to a number of transparency provisions contained in the TBT Agreement. TFA Article 1.1 requires that trade-related information, as listed in the Article, be published promptly and in a non-discriminatory and easily accessible manner, allowing other governments, traders and other interested parties to become acquainted with them. The list includes *inter alia* procedures for importation, exportation and transit and required forms and documents; fees and charges; and import, export or transit restrictions or prohibitions, some of which will be linked to technical regulations and/or conformity assessment procedures. The TBT Agreement also requires that technical regulations and conformity assessment procedures, which have been adopted, are published promptly (Articles 2.11 and 5.8) and there is likely to be some reinforcing overlap in terms of the coverage between the publication requirements of the two Agreements. However, as the TBT Agreement does not specifically require the publication of forms and documents or fees and charges; the corresponding obligations in the TFA could therefore be considered **TBT-plus** provisions.
- **Internet availability of information regarding import, export and transit procedures:** TFA Article 1.2 specifies the information that each Member is required to make available on the Internet, namely import, export and transit procedures, including forms and documents and contact information on its trade facilitation enquiry point. It also encourages further information to be made available on the Internet, including relevant trade-related legislation and other items listed in Article 1.1. The TBT Agreement does not require Members to make their measures available

¹⁴ World Trade Organization (WTO) (2014b), Informal Background Note on the Relationship between the Trade Facilitation Agreement and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) http://www.wto.org/english/tratop_e/sps_e/tf_sps_e.pdf

¹⁵ International Trade Center (ITC) (2015), The Invisible Barriers to Trade – How Businesses Experience Non-Tariff Measures, Geneva: ITC <http://www.intracen.org/publication/The-Invisible-Barriers-to-Trade---How-Businesses-Experience-Non-Tariff-Measures/>

on the Internet. As some of the procedures and forms and documents referred to in TFA Article 1.2 are related to TBT measures, this provision can also be considered **TBT-plus**. In practice, Members do use the Internet broadly for making available TBT-related information.

- **Official publications and websites:** TFA Article 1.4 requires Members to notify the WTO Committee on Trade Facilitation regarding the names of the official publications and the addresses of the websites where the information required by Articles 1.1 and 1.2 is available. In addition, Members are required to provide the contact information for the Trade Facilitation Enquiry Point. As per Article 15.2 of the TBT Agreement, Members are required to inform the Committee of the measures they have taken to ensure the implementation and administration of the TBT Agreement. The TBT Committee has agreed that this one-time statement of implementation should among others specify the names of publications where texts of technical regulations, conformity assessment procedures and standards are published and provide the names and addresses of Enquiry Points.¹⁶ The TBT Agreement does not require Members to provide the URLs of websites where they have made available TBT-related information but the TBT Committee has agreed to encourage Members to provide website addresses where Members can download the full text of a notified measure.¹⁷ The WTO Secretariat compiles and posts the updated lists of SPS and TBT Enquiry Points on the publicly available SPS and TBT Information Management Systems.¹⁸ The TBT IMS also provides a list of Members' publications. As the WTO Secretariat will also be responsible for compiling information required under the TFA, it might be worth assessing the best mechanism/ tool for doing so, taking into account parallel mechanisms in place for SPS and TBT.
- **Opportunity to comment and regular consultations:** According to TFA Article 2.1, traders and other interested parties must be given an opportunity and reasonable time to comment on proposals for new or amended laws and regulations related to the movement, release and clearance of goods, which should be made publicly available as early as possible before their entry into force. Presumably, some of these new or amended measures could relate to TBT measures, for example inspection and sampling of goods at the border to check conformity with TBT requirements before clearance. The TBT Agreement obliges Members to establish TBT notification authorities, notify other Members at an early stage about proposed TBT measures and allow a reasonable time for comments (Articles 2.9 and 5.6). As per the recommendations of the TBT Committee, such reasonable period of time should normally be at least 60 calendar days.¹⁹ Figure 1 shows the significant and increasing number of TBT notifications which have been circulated since 1995, reaching around 2,000 notifications per year in the last four years. There is also a requirement in the TBT Agreement to allow a reasonable interval between the publication and entry into force of technical regulations and conformity assessment procedures (Article 2.12 and 5.9) – normally six months as clarified in the Doha Decision on Implementation-related Issues and Concerns (WT/MIN(01)/17).²⁰ Interestingly, unlike the SPS and TBT Agreements, the TFA does not require notifications of new or amended laws and regulations to the WTO. Presumably, Members are to consult regularly the relevant websites of their trading partners to keep abreast of developments. At the same time, according to TFA Article 2.2, Members must provide for regular consultations between their border agencies and traders or other stakeholders within their territory. In light of the above, the TFA is less prescriptive than the TBT Agreement

¹⁶ WTO document G/TBT/Rev.12, paragraph 4.2.

¹⁷ WTO document G/TBT/1/Rev.12, para. 4.4.2.

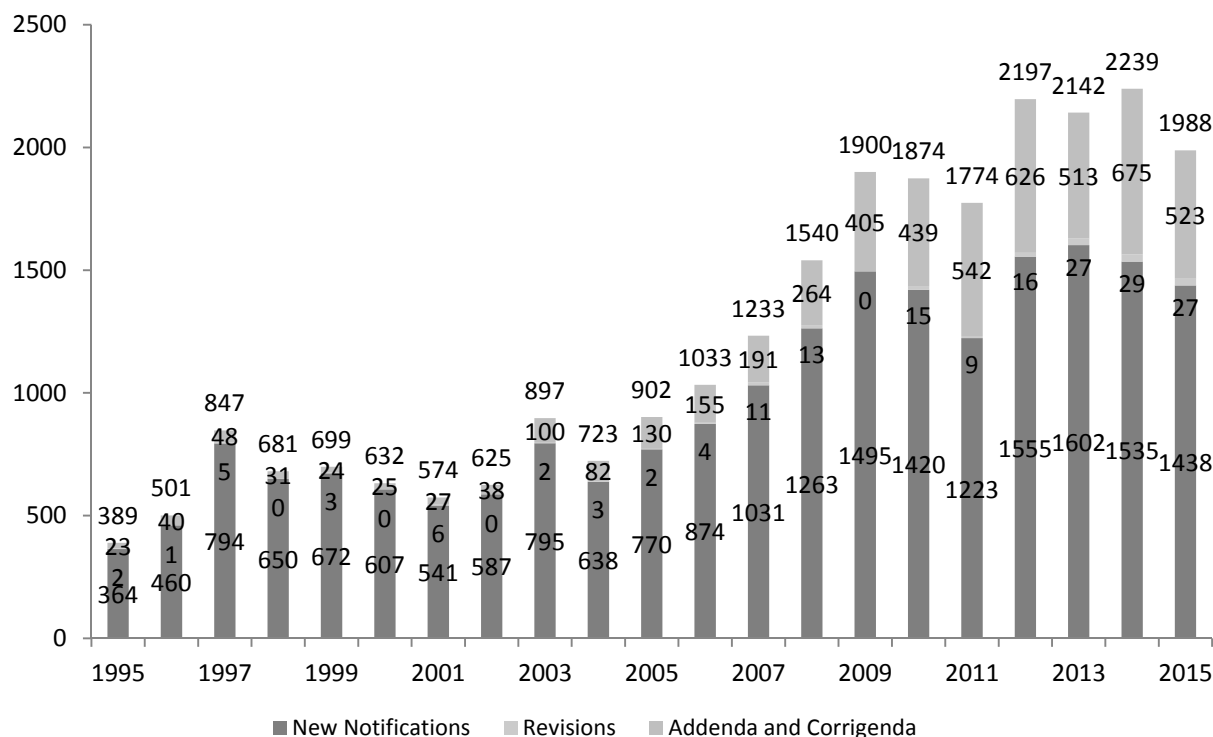
¹⁸ spsims.wto.org and tbtims.wto.org

¹⁹ WTO document G/TBT/1/Rev.12, para. 4.3.1.5.

²⁰ Similar requirements apply in the SPS area. See WTO document G/SPS/7/Rev.3

regarding opportunities to comment but has the additional requirement regarding regular consultations between border agencies and traders, a **TBT-plus element**.

Figure 1. Total TBT Notifications, 1995-2015



Source: Twenty-First Annual Review of the Implementation and Operation of the TBT Agreement, Note by the Secretariat (G/TBT/38/Rev.1)

- Advance rulings:** Article 3 sets out requirements regarding advance rulings. An advance ruling is a written decision provided by a Member to an applicant (exporter or importer) prior to the importation of a good that sets forth the treatment that the Member will apply to the good at the time of importation with regard to tariff classification and origin. Members are also encouraged to provide advance rulings on "any additional matters for which they consider it appropriate" (Article 3.9.(iv)). This Article is mainly focusing on customs matters but presumably advance rulings could also involve conformity assessment procedures. There is no reference to advance rulings in the TBT Agreement; therefore, this provision could also be considered to have a **TBT-plus** element, although on a best-endeavour basis.
- Procedures for appeal and review:** TFA Article 4 requires Members to provide traders with the right to appeal decisions by customs in an administrative and/or judicial proceeding. Members are also encouraged to make provisions of the Article applicable to appeals or reviews for administrative decisions issued by "relevant border agencies other than customs", which could include agencies in charge of TBT-related controls. Article 5.2.8 of the TBT Agreement requires Members to ensure that procedures exist to review complaints concerning the operation of a conformity assessment procedure and take corrective action when a complaint is justified. The TFA includes some more detail regarding procedures, but it is couched in best-endeavour language for "relevant border agencies other than customs". Therefore, the provisions in the two Agreements could be considered as complementary.

- **Detention /opportunity for a second test:** TFA Article 5 focuses on measures to enhance impartiality, non-discrimination and transparency. Article 5.1 addresses systems designed to increase controls on imports following detection of violations and relates more specifically to sanitary and phytosanitary measures. According to TFA Article 5.2, if customs or other border authority detains imported goods for inspection, it shall promptly inform the carrier or the importer. TFA Article 5.3 addresses the opportunity (but not an obligation) for a Member to provide for a second test if the first test result shows an adverse finding and the obligation to take the results of this test into account. It also obliges Members to publish the contact information of laboratories where tests can be carried out. The "detention" and "second testing" referred to in these two articles will sometimes be linked to conformity assessment procedures to check compliance with technical regulations. As the TBT Agreement is silent on these two specific points, they could be considered as **TBT-plus** provisions.

With respect to conformity assessment procedures, including testing, it is worth noting that the TBT Agreement does encourage Members to accept results of conformity assessment procedures conducted in other Members, provided that certain conditions are met, which would reduce the need for testing by the importing Member in the first place (Article 6). The TBT Committee has adopted an Indicative List of Approaches to Facilitate Acceptance of the Results of Conformity Assessment²¹ and discussions on conformity assessment procedures continue in the Committee, including through thematic sessions held back to back to with TBT Committee meetings. Accepting test results or certificates from internationally accredited bodies,²² relying on sectoral schemes,²³ concluding mutual recognition agreements, and accepting suppliers' declaration of conformity for low-risk products are some of the options which have been highlighted as facilitating trade. Effective implementation of such options will contribute to reducing trade costs while ensuring fulfilment of regulatory requirements.

- **Review of fees and charges:** Article 6.1 regulates fees and charges other than import and export duties and certain internal taxes and would presumably cover those related to conformity assessment procedures, for example fees for testing. It requires Members to publish information on fees and charges, to accord an adequate time between the publication of new or amended fees and their entry into force and to periodically review these with a view to reducing their number and diversity, where practicable. The TBT Agreement requires that any fees imposed for assessing the conformity of products originating in territories of other Members are equitable in relation to fees imposed on like products of national origin, taking into account costs that may vary (Article 5.2.5), but does not specifically call for their review. The TBT Agreement also includes advance notification and publication requirements for conformity assessment procedures but there is no explicit requirement to include information on fees and charges. As it adds more specificity on transparency and requires periodic review of fees and charges, Article 6.1 could be classified as **TBT-plus**. Articles 6.2 and 6.3 relate more specifically to customs-related fees, charges, and penalties.

²¹ WTO document G/TBT/1/Rev.12: Decisions and Recommendations Adopted by the WTO Committee on Technical Barriers to Trade since 1 January 1995, Annex 1 to Part I.

²² Accreditation is the independent evaluation of conformity assessment bodies against recognized standards to ensure their impartiality and competence. The International Accreditation Forum (IAF) works in the fields of management systems, products, services, personnel and other similar programmes of conformity assessment and International Laboratory Accreditation Cooperation (ILAC) on laboratory and inspection accreditation.

²³ For example, the IEC System of Conformity Assessment for Electrotechnical Equipment and Components, known as the CB scheme.

- **Facilitating release and clearance of goods:** TFA Article 7 on Release and Clearance of Goods includes detailed provisions on nine issues, including pre-arrival processing; electronic payments; risk-based controls; post-clearance audit; average release times; authorized operators; and perishable goods. Some of these provisions could relate to TBT conformity assessment procedures, for example to pre-arrival submission of certificates of conformity, inspection of products based on certain risk-based criteria, and proper storage and priority inspection of perishable products. In fact, many Members already do apply these principles in the implementation of TBT measures. Still, while the TBT Agreement contains general provisions to ensure that conformity assessment procedures are not applied more strictly than necessary (TBT Article 5.1.2) and are undertaken as expeditiously as possible (Article 5.2.1), it does not contain the kind of detail that the TFA introduces. Therefore, many of the provisions of TFA Article 7 could be considered as **TBT-plus** and reinforcing what is contained in the TBT Agreement.

At the same time, expediting the release and clearance of goods could potentially undermine Members' right to implement TBT-related controls. However, TFA Article 7.3.6 recognizes this right by stating, "nothing in these provisions shall affect the right of a Member to examine, detain, seize or confiscate or deal with the goods in any manner not otherwise inconsistent with Member's WTO rights and obligations" (see also Article 7.8.3). In addition, TFA Article 24.6 also stipulates that the TFA does not diminish Members' rights under the SPS and TBT Agreements.

- **Simplification/reduction of formalities/documentation requirements:** TFA Article 10 on Formalities connected with Importation, Exportation and Transit aims to minimize the incidence and complexity of formalities and simplify document requirements. Among others, it includes provisions on simplification or reduction of formalities/documentation requirements;²⁴ acceptance of copies; use of international standards; establishment of "single window"s; pre-shipment inspection; common border procedures and uniform documentation requirements; and rejected goods. Article 10.8 makes explicit reference to TBT measures by calling on Members to allow the importer re-consign or return goods, which have been rejected on account of their failure to meet prescribed sanitary or phytosanitary regulations or technical regulations. Many of the provisions in Article 10 could be classified as **TBT-plus** (some in best-endeavour language) as the TBT agreement is silent on these points.

TFA Article 10.3 "encourages" Members to use international standards as a basis for import, export, import or transit formalities and procedures while not identifying any specific standard-setting bodies. The TBT Agreement also strongly encourages Members to base their technical regulations and conformity assessment procedures on relevant international standards but does not specify any particular international standard-setting organization either (TBT Articles 2.4 and 5.4). With respect to TBT-related formalities and documentation requirements (which could be part of conformity assessment procedures), the work of international bodies such as Codex, ISO and IEC could be relevant. For example, Codex has adopted "Principles for Food Import and Export Inspection and Certification", "Guidelines for Food Import Control Systems" and also "Guidelines for the Exchange of Information between Countries on Rejection of Imported Foods".²⁵ This also underlines the importance of the involvement of all relevant international standard-setting bodies and not only customs-related ones in trade facilitation discussions.

²⁴ including choosing the least trade restrictive measure where two or more alternatives are reasonably available and not maintaining them if they are no longer needed (TFA Article 10.1).

²⁵ The Codex Committee on Food Import and Export Inspection and Certification Systems (CCFICS) is the main Codex body whose work is of direct relevance for "trade facilitation discussions": <http://www.codexalimentarius.org/committees-and-task-forces/en/?provide=committeeDetail&idList=5>

- **Freedom of transit:** Article 11.8 states that "Members shall not apply technical regulations and conformity assessment procedures within the meaning of the TBT Agreement to goods in transit." It would seem that this article aims to prevent Members from using measures such as conformity assessment procedures as a pretext to block or slow down goods in transit. The provision is not softened by best-endeavour language; rather it is a straightforward obligation. The text of the TBT Agreement does not contain specific provisions on transit, nor does it indicate whether goods in transit are included or excluded from its coverage. Nevertheless, it is possible that situations arise where Members deem it necessary to impose technical regulations on goods in transit. For example, particular requirements could apply to hazardous materials, explosives or (nuclear) waste being transported through a Member's territory. Such requirements might fall under the TBT Agreement and Members have submitted TBT notifications affecting such goods.²⁶ However, in light of TFA Article 11.8, it would seem that such measures would no longer be allowed under the TFA Agreement. It is notable that Article 11.8 does not make reference to the SPS Agreement, presumably recognizing that goods in transit might pose sanitary or phytosanitary risks – for example, live animals being transported could spread diseases or plants in transit could spread pests. This difference in treatment between SPS and TBT appears to imply that Members wishing to nevertheless impose technical regulations on goods in transit might need to resort to Article XX, as "all exceptions and exemptions under the GATT 1994 shall apply to the provisions of the..." TFA (Article 24.7).

In summary, some of the key TBT-plus elements (some of a binding nature, some in best-endeavour language) mentioned above are:

- publication of forms and documents; fees and charges (TFA 1.1);
- availability of information related to import, export, transit procedures through the Internet (TFA Article 1.2);
- regular consultations between border agencies and traders or other stakeholders (TFA Article 2.2);
- advance rulings (TFA Article 3);
- procedures for detention and second testing (TFA Article 5);
- periodic review of fees and charges (TFA Article 6.1);
- risk-based controls and priority inspection of perishable products (TFA Article 7);
and
- establishment of single windows, common border procedures, uniform documentation requirements, rejected goods (Article 10).

With the forthcoming entry into force of the TFA, it is important for officials working in the TBT area to acquaint themselves with these provisions and collaborate with their counterparts directly involved in the implementation of the TFA, who could in turn benefit from experience gained in the implementation of similar provisions through the

²⁶ For example, see Canada's TBT notifications G/TBT/N/CAN/88 on Proposed Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations and G/TBT/N/CAN/362 (and Add.1) on Proposed Explosives Regulation; Kenya's TBT notification G/TBT/N/KEN/444 on Predisposal Management of Radioactive Waste.

TBT Agreement. Enhanced dialogue and harmonized approaches will maximize the expected benefits from the new Trade Facilitation Agreement.

4. INSTITUTIONAL IMPLICATIONS

a. WTO's TBT and TFA Committees

TFA Article 23.1 establishes a Committee on Trade Facilitation, open for participation by all Members. The Committee is to establish close contacts with other international organizations in the field of trade facilitation, such as the WCO, to secure best available advice and avoid duplication of effort. The Committee is also mandated to review the operation and implementation of the Agreement four years after its entry into force and periodically thereafter. In addition, it shall encourage and facilitate ad hoc discussions among Members on specific issues with a view to reaching a prompt mutually satisfactory solution.

The functions of the TBT Committee are similar to that of the future Committee on Trade Facilitation (see Articles 13 and 15.3-4). Its work involves two broad areas: (i) discussion of specific trade concerns (STCs) raised by Members regarding their trading partners' TBT measures (usually in response to notifications) and (ii) strengthening the implementation of the TBT Agreement through exchange of experiences on topics such as transparency and good regulatory practice and adoption of decisions and recommendations to facilitate implementation.

As can be seen in Figure 2, the TBT Committee has witnessed the discussion of an increasing number of specific trade concerns over the past 20 years (some discussed over a number of meetings) and has registered its 500th specific trade concern during its meeting of March 2016.²⁷ Using the multilateral forum of the TBT Committee to raise specific trade concerns is regarded as a pragmatic way of seeking solutions to trade problems and avoiding more resource-intensive options, such as the dispute settlement proceedings. While no statistics are currently compiled regarding the share of trade concerns which are actually resolved through the Committee process, the fact that Members continue to choose to use this forum is indicative of the perceived usefulness of this mechanism.

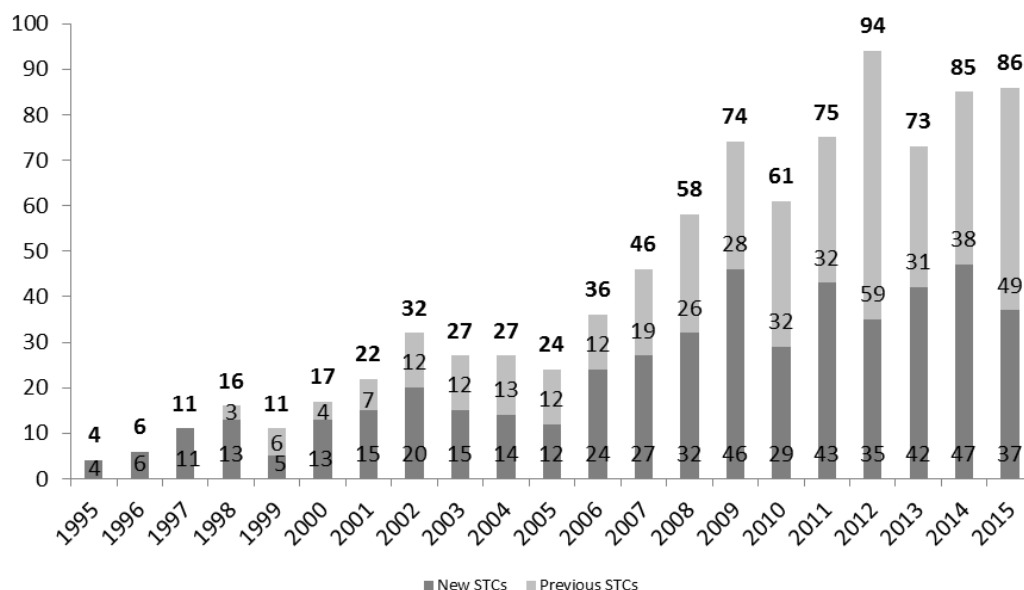
A review of these STCs reveals that some of them relate closely to issues covered by the TFA. Specific complaints related to TBT measures have pointed to:

- unclear or unpublished import procedures;
- lack of clear time periods for administrative decisions;
- failure of the importing country to share results of tests conducted showing non-compliance;
- lack of responses or confusing/insufficient responses to enquiries raised;
- lack of recourse to challenge rejections or other administrative decisions; discriminatory sampling requirements;
- duplicative testing/registration/documentation requirements within a country or a customs union;
- high or discriminatory fees; requirements to disclose confidential data/information; and
- overall time-consuming, costly, burdensome import procedures.²⁸

²⁷ https://www.wto.org/english/news_e/news16_e/tbt_11mar16_e.htm

²⁸ All specific trade concerns raised in the TBT Committee are recorded in the TBT Information Managements System (TBT IMS): <http://tbtime.wto.org/web/pages/search/stc/Search.aspx>. The WTO

Figure 2. Specific Trade Concerns raised in the TBT Committee, 1995-2015



Source: Twenty-First Annual Review of the Implementation and Operation of the TBT Agreement, Note by the Secretariat (G/TBT/38/Rev.1)

Some of the issues raised are addressed directly by the TBT Agreement and some others in standards, guidelines developed by relevant standard-setting organizations. Many of the TBT-relevant provisions of the TFA reinforce these points while some of them include more explicit procedural guidance, for example, the requirements to publish fees, to review formalities and documentation requirements, to adopt risk-based controls and also the recommendations to establish joint controls, one-stop border posts or single windows. With the eventual introduction of some additional obligations/recommendations on TBT measures through the TFA, it is to be seen which forum Members choose to use to raise which type of specific trade concerns and how possible overlap of issues is handled. An effective implementation of the TFA may indeed reduce the number of procedure-related STCs that are brought the TBT Committee. At the same time, the TFA Committee could study the procedures used by the TBT (and the SPS) Committee as it develops its own procedures for discussion of specific measures adopted by Members.

The WTO Committees on TFA and TBT could also benefit from information exchange on horizontal areas, such as transparency, and the procedures and experiences of the TBT Committee could be helpful as the TFA Committee sets up its own procedures. As noted earlier, the TFA, similar to the SPS and TBT Agreements, includes a series of provisions related to transparency, including requirements on notifications, publication of regulations and establishment of Enquiry Points. Since 1995, the SPS and TBT Committees have developed extensive guidance on the implementation of the transparency provisions contained in the SPS and TBT Agreements²⁹ and have served as fora for sharing of experiences among Members, including through dedicated workshops on transparency.

Secretariat Note prepared for the Twenty-first Annual Review of the TBT Agreement contains further details and data on specific trade concerns raised in the TBT Committee (G/TBT/38/Rev.1).

²⁹ WTO documents G/SPS/7/Rev.3 and G/TBT/1/Rev.12 Part I Section 4.

The WTO Secretariat has also developed systems (SPS IMS, SPS NSS, TBT IMS, TBT NSS) to assist Members monitor and submit notifications thereby facilitating implementation. In addition, the WTO Secretariat, in collaboration with UN DESA and ITC, is currently working on the development of an on-line SPS/TBT notification alert mechanism (expected to be launched in November 2016). The objective is to facilitate access by government agencies and other stakeholders, in particular small and medium size enterprises (SMEs), to SPS and TBT notifications of interest, thereby enhancing their market access opportunities. The future Committee on Trade Facilitation (or the current Preparatory Committee) could benefit from the work already undertaken in these areas as it embarks on its task of furthering the implementation of the TFA. At the same time, the TBT Committee could benefit from updates on the TFA and take into account some of the TBT-plus provisions in the TFA, for example on transparency, as it develops further guidance on implementation, including in the context of its Triennial Reviews.

b. National arrangements

TFA Article 1.3 requires Members to establish one or more **Enquiry Points** to answer reasonable queries and provide related forms and documents and they are encouraged not to require a fee or limit it to cost of services rendered. The TBT Agreement also requires Members to establish Enquiry Point(s) to answer reasonable queries, provide relevant documentation (Article 10.1) and supply requested documents at the same price (if any) as for nationals, apart from costs of delivery. In addition, the TBT Committee has adopted recommendations regarding the operation of Enquiry Points³⁰ and served as a forum for exchange of experiences. The WTO Secretariat has recently been mandated to develop a practical guide for the operation of TBT Enquiry Points (expected to be published by the end of 2016).³¹ There could be some overlap or complementarity regarding the information that is to be furnished by the TF and TBT (and SPS) Enquiry Points. Therefore, it is important that the Enquiry Points communicate, share information regularly and benefit from synergies, for example in setting up trade portals.³²

TFA Article 8 on **Border Agency Cooperation** mandates Members to ensure that all their agencies responsible for border controls and procedures dealing with importation, exportation and transit cooperate and coordinate their activities in order to facilitate trade. It also calls on Members with common land borders to cooperate and coordinate procedures to facilitate cross-border trade, for example through alignment of working days and hours, joint controls or establishment of one stop border posts. These provisions could also apply to agencies responsible for implementing technical regulations and conformity assessment procedures and could indeed contribute to enhancing effectiveness and efficiency of border controls. There is no specific reference to cooperation among border agencies in the TBT Agreement. The 2015 World Trade Report refers to "border agency cooperation" as the main TFA implementation challenge identified by developing countries and also points to the importance of cooperation and coordination between ministries as one of the main success factors (WTO 2015). The World Bank's 2014 Logistics Performance Index (LPI) report also indicates that "coordination among government control agencies will remain essential in trade facilitation efforts – as will introducing best practices in automation and risk management in non-customs control agencies, which have generally been less open to

³⁰ WTO document G/TBT/1/Rev.12: Decisions and Recommendations Adopted by the WTO Committee on Technical Barriers to Trade since 1 January 1995, para. 4.5.

³¹ The SPS Agreement also requires Members to establish SPS Enquiry Points. A Step-by-Step Manual for the Operation of SPS Notification Authorities and Enquiry Points is available here: https://www.wto.org/english/tratop_e/spis_e/transparency_toolkit_e.htm

³² For example, the Lao Trade Portal, established with assistance from the World Bank, contains information on SPS and TBT requirements and links to the SPS and TBT Enquiry Points. <http://laotradeportal.net/index.php?r=SearchMeasures/index>

reform". In addition, the report points to the fact that customs agencies have in general obtained higher LPI ratings than all other agencies in border management (World Bank 2014).³³ In this context, a better understanding of the linkages between the TFA and the TBT Agreement (as well as other relevant WTO Agreements such as the SPS Agreement) will be crucial for effective implementation.

TFA Article 23.2 requires Members to establish a National **Committee on Trade Facilitation** to facilitate domestic coordination and implementation of its provisions. While there is no such obligation under the TBT Agreement, many Members have – as means of better implementing the TBT Agreement - established national TBT Committees. Some of these national Committees are quite operational and effective while others are rather dormant. Given the linkages between the agreements, it is important for the national TBT and TFA Committees to be aware of each other's work, communicate regularly and have representatives/contact points in each other's structures.

5. TECHNICAL ASSISTANCE AND CAPACITY BUILDING

A significant amount of support and funding from donors, regional/international agencies³⁴ and other stakeholders has been going towards "trade facilitation" projects.³⁵ Moreover, the WTO's Trade Facilitation Agreement Facility³⁶ became operational in November 2014 to complement existing efforts and act as a focal point for the implementation of the TFA. Under the Facility, the WTO Secretariat will expand its existing technical assistance programmes, provide information on the assistance programmes made available by donors and other organizations and assist with matchmaking of donors and recipients. It will also offer grants in situations where no other source of assistance is available.

The 5th Global Aid for Trade Review, held on 30 June–2 July 2015, was themed "Reducing Trade Costs for Inclusive Sustainable Growth" and focused mainly on "trade facilitation" issues. A WTO-OECD joint report highlighted the importance for developing countries and LDCs of reducing trade costs in order to benefit from international trade opportunities and cited the TFA as an important step towards achieving this goal (OECD-WTO 2015).³⁷

Some of the funding and technical assistance going towards the implementation of the TFA could also benefit agencies working on TBT matters, among others. Projects to create comprehensive trade portals on the Internet could encompass TBT-related information that TBT Enquiry Points are usually tasked to provide. For example, the Lao PDR Trade Portal, developed under a trade facilitation project of the World Bank, incorporates information on all regulatory requirements, including those related to SPS and TBT measures and includes links to SPS and TBT Enquiry Points.³⁸ "Single window" projects can also incorporate TBT-related documentation requirements. For example, Rwanda's electronic "single window", developed with assistance from TradeMark East

³³World Bank (2014), *Connecting to compete, Trade logistics in the global economy*, Washington D.C: The World Bank <http://www.worldbank.org/content/dam/Worldbank/document/Trade/LPI2014.pdf>

³⁴ Several major international organizations, including the ITC, OECD, UNCTAD, UNECE, the World Bank and the World Customs Organization, are assisting WTO members in implementing their commitments under the TFA.

³⁵ Including the Global Alliance for Trade Facilitation: a public-private partnership to mobilize business sector support to advance the implementation of the TFA <http://www.tradefacilitation.org/about-the-alliance.html>

³⁶ <http://www.tfafacility.org/>

³⁷ Organization for Economic Cooperation and Development (OECD) and World Trade Organization (WTO) (2015), *Aid for Trade at a Glance 2015: Reducing Trade Costs for Inclusive, Sustainable Growth*, Paris, Geneva: OECD; WTO

³⁸ <http://www.laotradeportal.gov.la/index.php?r=site/index>

Africa and benefitting from UNCTAD's ASYCUDA programme, incorporates procedures related to quality inspection for imported goods as well as health regulations for imported medicines and medicine equipment and is connected, among others, to the Rwanda Bureau of Standards and the Ministry of Health.³⁹ Therefore, it is important for officials working on TBT matters to be aware of these opportunities and reach out to their counterparts in customs or other relevant bodies for better coordination and collaboration, if not already the case. At the same time, donors and providers of technical assistance and capacity building also need to be aware of the linkages between the various WTO agreements to be able to provide appropriate guidance.

In the area of SPS, the Standards and Trade Development Facility (STDF)⁴⁰ has funded research to review how SPS measures are applied to imports and exports in selected countries in Southeast Asia and Southern Africa and the extent to which these measures might unnecessarily increase the cost of doing business without enhancing the safety of the traded goods. Suggested good practices contained in the STDF Briefing Note on Implementing SPS measures to Facilitate Safe Trade (STDF 2016) include: improving transparency on SPS requirements, streamlining document requirements and control procedures, implementing risk-based approaches, strengthening collaboration between SPS and other border management agencies and promoting greater use of equivalence and unilateral/mutual recognition.⁴¹ The Note also encourages SPS authorities to take advantage of the momentum created by the Trade Facilitation Agreement and leverage additional funds for SPS capacity building from larger programmes focused on trade facilitation. These suggestions would indeed apply equally in the TBT area.

6. CONCLUSION

A significant share of import/export procedures and controls, which can at times become unnecessarily burdensome, are related to the implementation of TBT (and SPS) measures. This paper underlines the complementarity between the TBT Agreement and the TFA in addressing these and highlights some new requirements/recommendations, which will apply to certain TBT measures under the TFA. It points to the need for information exchange and collaboration among national agencies working on TBT and trade facilitation issues as well between the TBT and TFA Committees at the WTO. Over time, experience gained in the implementation of the TFA, further discussions at various WTO bodies and possibly even WTO jurisprudence will further clarify some of the linkages between these agreements.

The new Trade Facilitation Agreement is expected to significantly reduce trade transaction costs and boost trade opportunities and growth prospects, especially for developing countries. At the same time, cooperation and coordination between ministries has been identified as one of the main factors for the successful implementation of the TFA. In this context, it will be important to sustain continued dialogue among all institutions involved in this endeavour so as to reap the expected benefits.

³⁹ Rwanda electronic single window <https://sw.gov.rw/>

⁴⁰ STDF is a global partnership that supports developing countries in building their capacity to implement international sanitary and phytosanitary (SPS) standards, guidelines and recommendations as a means to improve their human, animal, and plant health status and ability to gain or maintain market access. <http://www.standardsfacility.org>

⁴¹ The STDF research findings, the Briefing Note on Implementing SPS Measures to Facilitate Safe Trade, a film entitled Safe Trade Solutions as well as other relevant information can be found here: <http://www.standardsfacility.org/facilitating-safe-trade>

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