WTO OMC

The WTO
Trade Facilitation Agreement

WTO SPS COMMITTEE THEMATIC WORKSHOP ON CONTROL, INSPECTION AND APPROVAL PROCEDURES (ANNEX C) - Geneva, 2018

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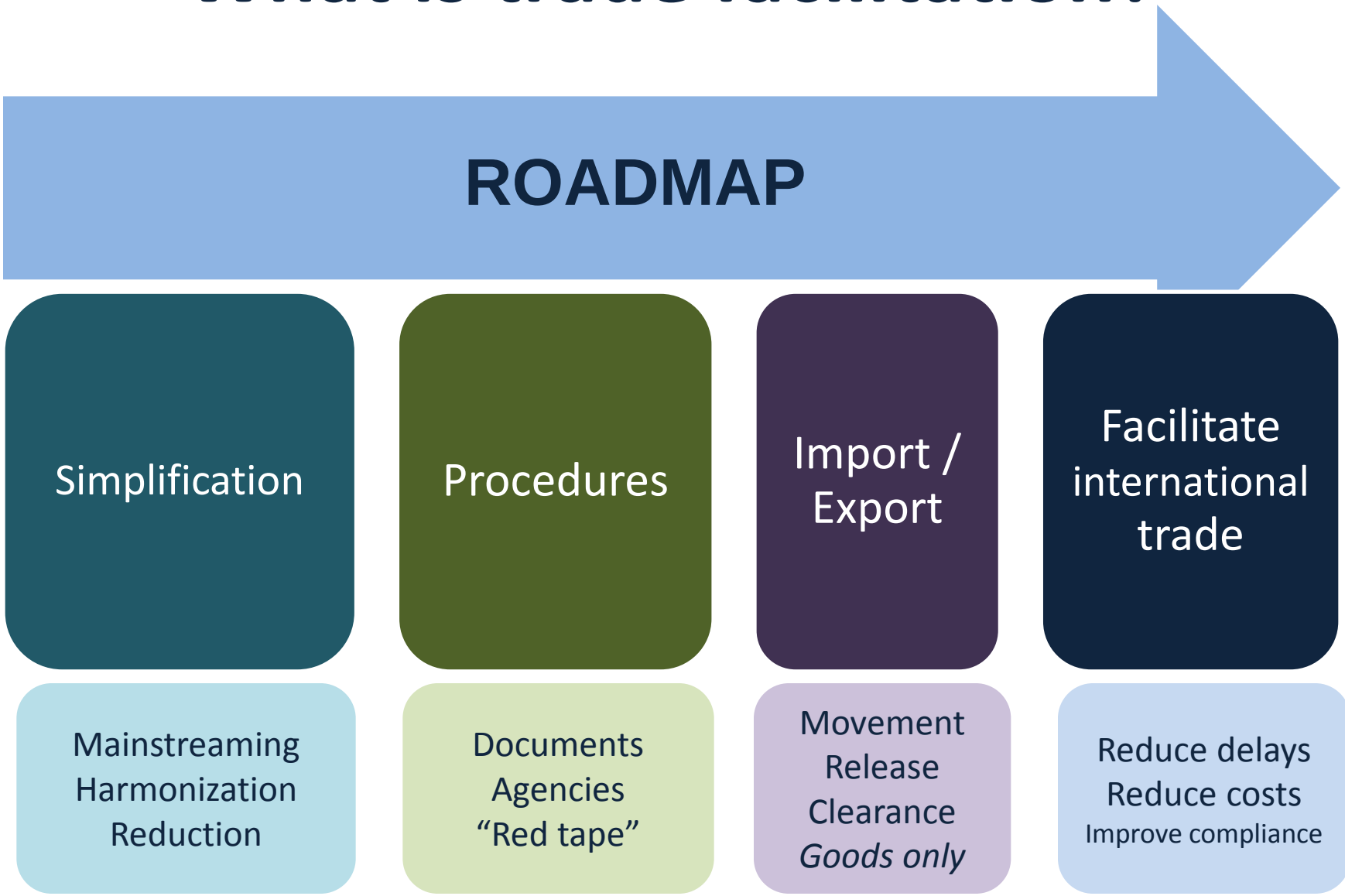
Objectives

1. Why a new Agreement?
2. How does the TF Agreement affect the operation of customs, businesses and other agencies overseeing import and export operations?
3. The substantive provisions of the Agreement (sample related to the SPS Agreement, Annex C)
4. How will the Agreement be implemented?

WHY AN AGREEMENT ON TRADE FACILITATION?

BACKGROUND

What is trade facilitation?

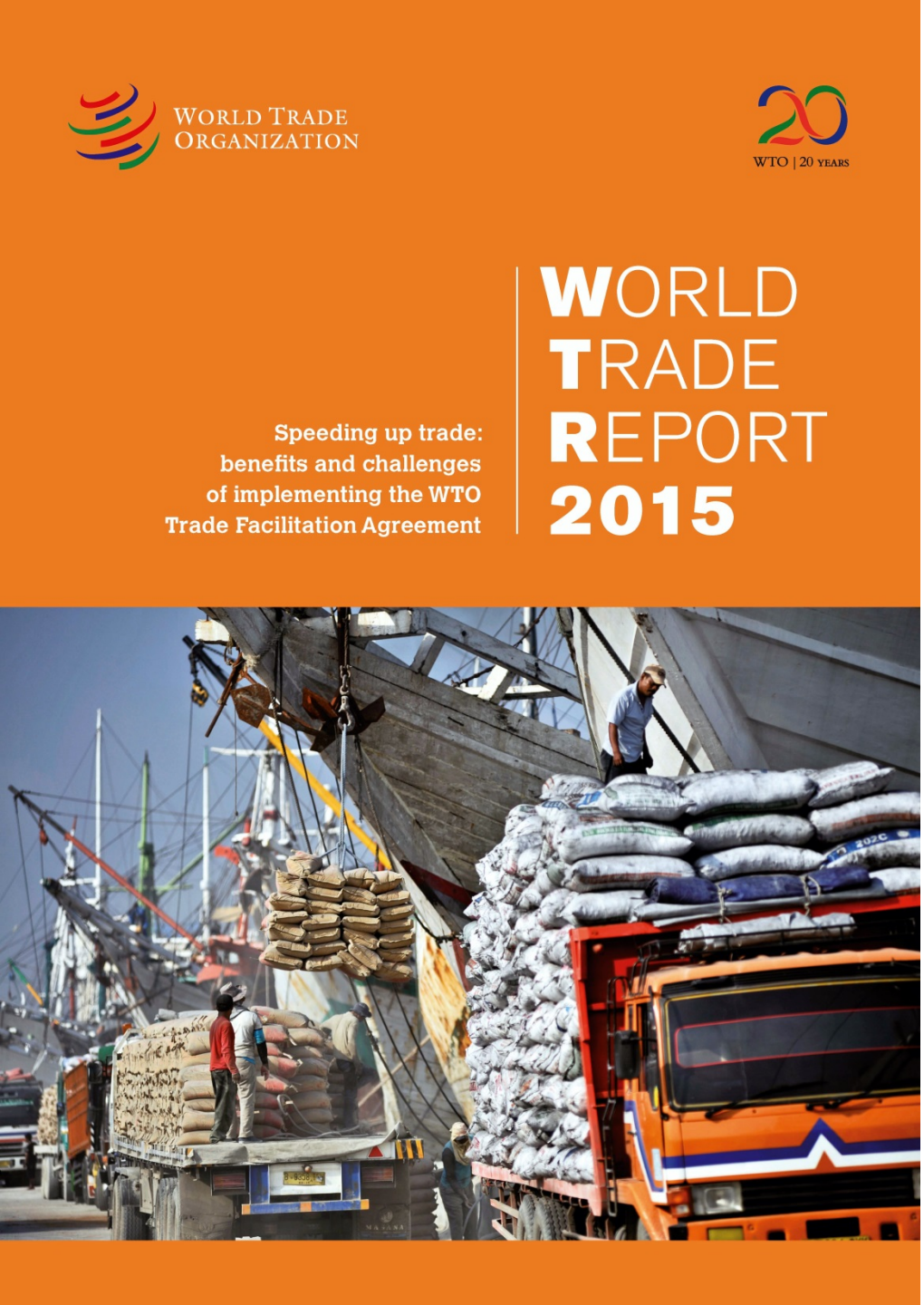


Inefficient and duplicative procedures

National capacity to connect to global value chains and international markets

Trade Facilitation reforms

- Ease to import / export and distribute goods are the backbone of international trade - http://lpi.worldbank.org/
- Trade facilitation reforms did not start with the WTO TFA and can be broader than the Agreement only: continuous improvements - http://www2.compareyourcountry.org/trade-facilitation
- No “legal” definition
- Several international agencies have their own standards, instruments and programmes



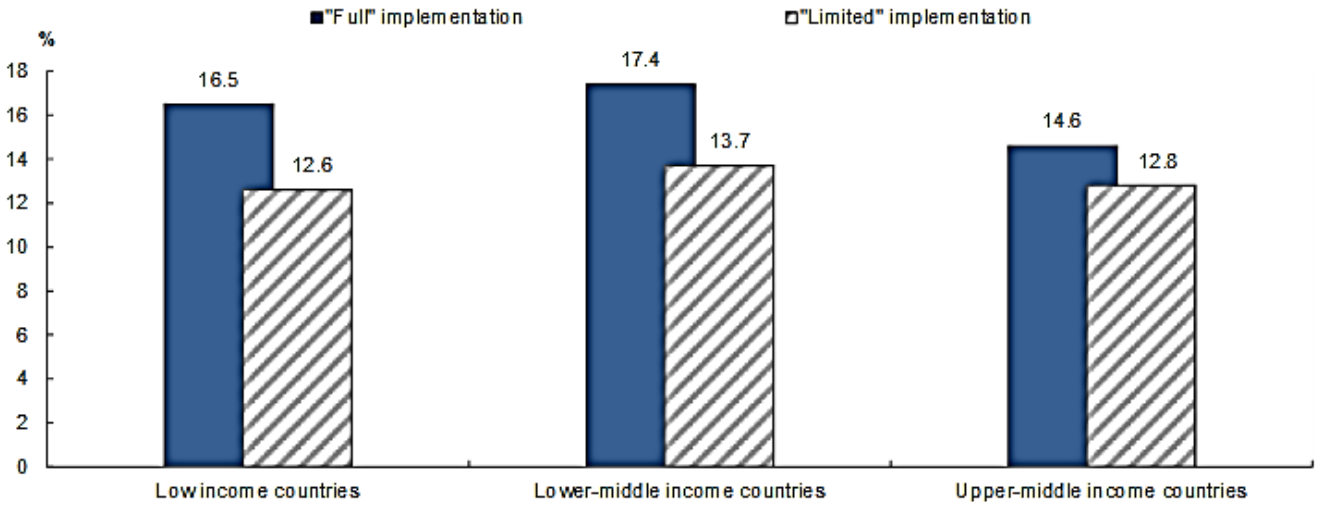
Average reduction of trade costs: 14.5%

WTO World Trade Report 2015

Benefits of TFA implementation

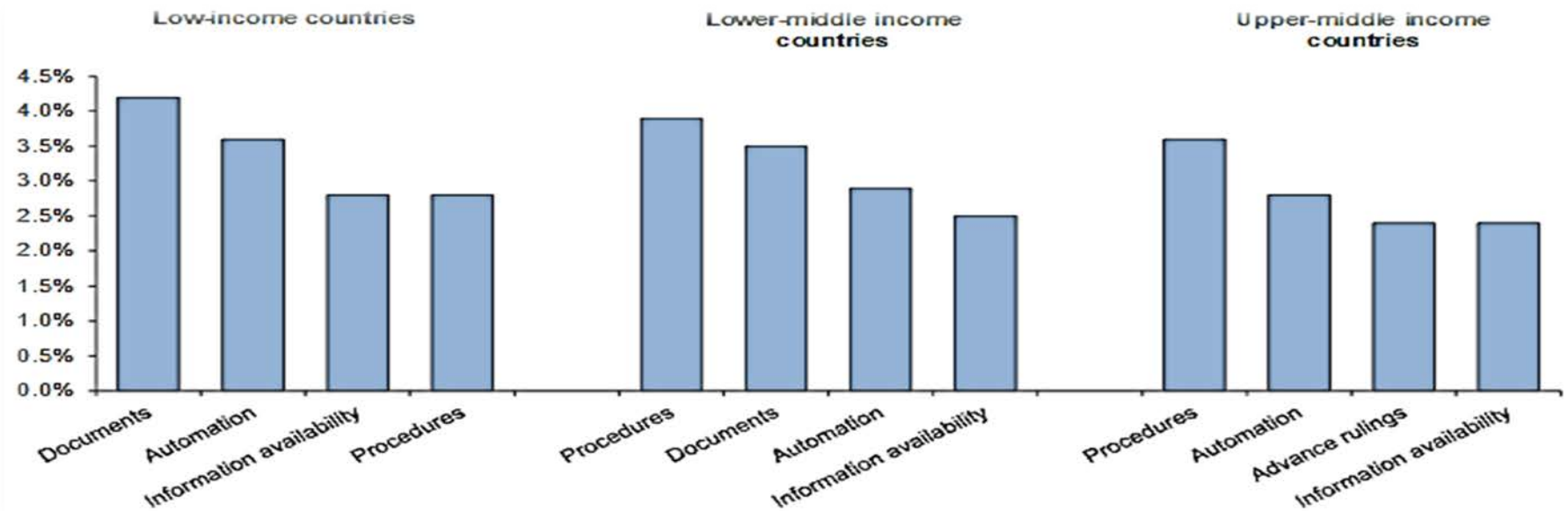
- Greater benefits for more ambitious TF agenda
- Reduction of trade costs higher for developing countries
- Export diversification (products)
- Export diversification (markets)
- Enhanced participation in GVCs
- Improved environment for SMEs
- More FDI
- Greater customs collection
- Lower incidence of corruption

Trade facilitation reforms: cut the costs of trading and doing business



Potential reduction of trade costs from the implementation of the TFA

(OECD 2015)



WHY AN AGREEMENT AT THE WTO?

BACKGROUND

TRADE FACILITATION ROADMAP

COMPLEMENTARY

TF in the WTO

- ✓ Common rules for all 164 Members
- ✓ Build on existing provisions (in particular Articles V, VIII, and X) but also SPS, TBT, ILP, RoO, etc.
- ✓ Enforcement: Binding on all Members + dispute settlement

Large number of key stakeholders

Policy making entities

- Ministry of Trade
- Ministry of Foreign Affairs

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- Ministry of Transport
- Ministry of Finance

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External donors

- International organisations
- Regional banks
- Donor countries

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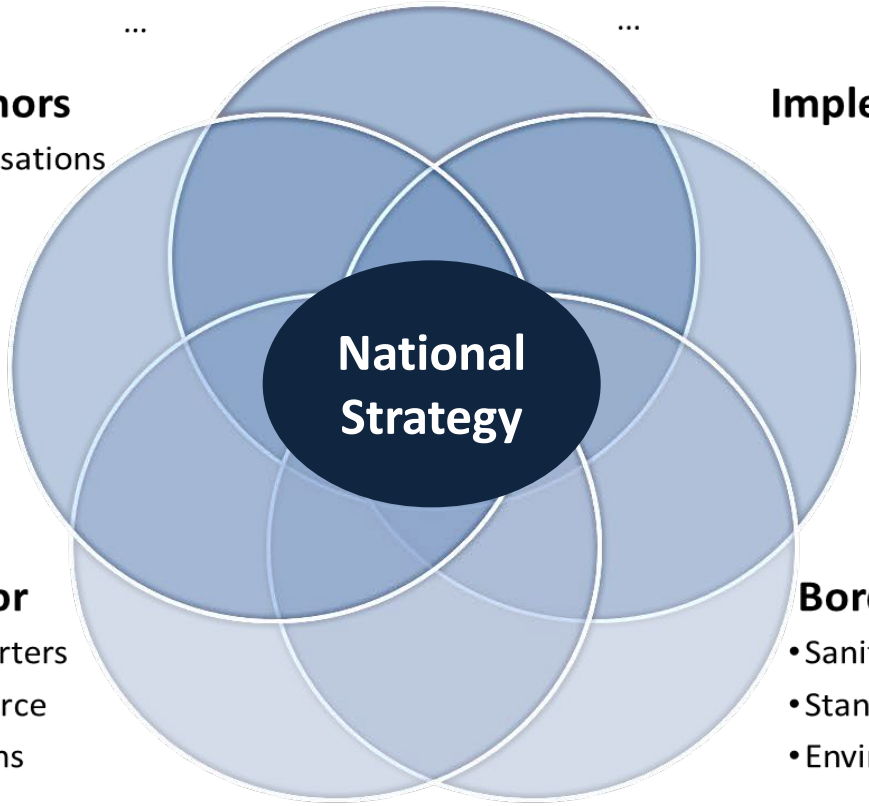

Implementing agencies

- Customs
- Port authority
- Airport authority
- Board patrol
- Coast guard
- Post offices

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Private sector

- Exporters and importers
- Chamber of commerce
- Business associations
- Foreign investors
- Consumers
- Civil society

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Border-control agencies

- Sanitary and phytosanitary
- Standards
- Environment

...

WHAT DOES THE TF AGREEMENT CONTAIN?

THE SUBSTANTIVE PROVISIONS (SPS Agreement, Annex C)

Section I

12 Articles with approximately 40 “technical measures”

Article 1
Publication & Availability of Information

Article 2
Comment and Consultations

Article 3
Advance Rulings

Article 4
Procedures for Appeal or Review

Article 5
Measures to Enhance Impartiality, Non-Discrimination & Transparency

Article 6
Disciplines on Fees and Charges

Article 7
Release and Clearance of Goods

Article 8
Border Agency Cooperation

Article 9
Movement under Customs Control

Article 10
Import, Export &Transit Formalities

Article 11
Freedom of transit

Article 12
Customs Cooperation

TFA: several links with SPS

Art. 1	• Publication; information available through the internet, enquiry points, notification
Art 2:	• Opportunity to comment, information before entry into force and consultation
Art. 5:1	• Enhanced controls or inspections: risk, uniformity, transparency
Art. 5:2	• Detention of goods (inspection)
Art. 5:3	• Test procedures (offer second test)
Art. 6	• Fees and charges in connection with imp. & exp. and penalties
Art. 7	• Release and clearance of goods (incl. pre-arrival processing, electronic payment, perishable goods)

TFA: several links with SPS

Art.8	• Border Agency cooperation
Art. 10	• Formalities, including acceptance of copies and single window
Art. 10:5 Footnote 12	• Pre-shipment inspection: no mandatory requirement, no new requirements
Art. 10:7(2)	• Common border procedures
Art. 10:8	• Rejected goods
Art. 23:2	• National Committee on Trade Facilitation
Art. 24:6	• Final provisions (relationship with the SPS agreement)

SPS / TFA complementarity (ex.)

SPS only provisions

- Equivalence
- Level of protection

TFA only provisions

- Advance Rulings
- Second Testing

SPS + TFA provisions

- Publication
- Appeal and Review

SPS / TFA OVERLAP

Example: **Perishable goods** (TFA Art. 7.9):

- **Members must release perishable goods within the *SHORTEST POSSIBLE TIME***
- *"provided that all regulatory requirements have been met"*
- *"under normal circumstances"*
- *Justify significant delays to the extent practicable at the request of importer*

Undermines the ability of governments to conduct risk assessment and enforce measures to protect human, animal, and plant health in accordance with the SPS Agreement?

SPS / TFA complementarity

Art. 24.6 TFA: Notwithstanding the general interpretative note to Annex 1A to the Marrakesh Agreement Establishing the World Trade Organization, nothing in this Agreement shall be construed as diminishing the obligations of Members under the GATT 1994. In addition, **nothing in this Agreement shall be construed as DIMINISHING THE RIGHTS AND OBLIGATIONS of Members under the** Agreement on Technical Barriers to Trade and the **Agreement on the Application of Sanitary and Phytosanitary Measures**.

Nature and scope of obligaions in the TFA

Binding

Art. 1.1 (Publication): "Each Member **shall** promptly publish …"

Best endeavour

Art. I.3 (Enquiry Points): Members **are encouraged** not to require…"

Combination

Art. 1.2 (Information through internet): "Each Member **shall** make available the following…" "Members **are encouraged** to make available"

HOW WILL THE AGREEMENT BE IMPLEMENTED?

THE SPECIAL AND DIFFERENTIAL TREATMENT PROVISIONS

Flexible implementation according to an INDIVIDUAL assessment of NATIONAL CAPACITY

(for Developing countries and LDCs)

CATEGORY A	CATEGORY B	CATEGORY C
• Implementation upon Entry Into Force of the Agreement • +1 year for LDCs • Annex to TFA	• Implementation after a transitional period from the entry into force • Additional time needed	• Implementation only after acquisition of capacities through TA&CB • Need time + support

Based on country's own assessment!

Additional flexibilities

Early Warning Mechanism (Art. 5)

- Extend implementation period
- Notify new date and reason for delay
- Automatic extension for 1st request
- "Sympathetic consideration" for further requests

Expert Group(Art. 6)

- Assess country's capacity to implement
- Third-party review
- Category C measures
- No extension granted

Category Shifting (Art. 7)

- Between B and C
- Provide info on TA and CB needed

DSU grace period (Art. 8)

- 2 years after entry into force for developing country Members – Category A
- 6 years after entry into force for LDC Members – Category A
- 8 years after implementation of Categories B and C measures by LDC

WHAT ARE THE LATEST DEVELOPMENTS?

STATE OF PLAY REGARDING RATIFICATION, NOTIFICATION AND IMPLEMENTATION

Ratifications (137)

2/3 of WTO Members ratified the TFA: 22 February 2017

http://www.tfafacility.org/

Implemenetation - overview

Notification Status

Share of Categories A, B, C

Based on % of all notifiable items

A – 25.6% B – 42.9% C – 31.5% Not yet notified – 0.0%

Rate of implementation commitments

37.8%	rate of implementation commitments to date
31.1%	rate of implementation commitments from September 2018 to June 2023 without capacity building support
31.1%	rate of implementation commitments from December 2018 to June 2022 upon receipt of capacity building support

Ratified on the 27 October 2015

Detailed notification breakdown

https://www.tfadatabase.org/

For more information about the TFA:

THE TFA FACILITY / THE TFA DATABASE

www.tfafacility.org

The TFAF site serves as a focal point for WTO members, donors and others seeking information on the Trade Facilitation Agreement

tfaf@wto.org

www.tfadatabase.org

The TFA Database is a tool to track and analyse WTO Members' commitments under the Trade Facilitation Agreement

tfad@wto.org

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THANK YOU!