Trade Facilitation Measures: Avoiding a 'one size fits all' approach

By:

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High trade costs and slow customs clearance procedures contribute to low intra-Africa trade and threaten the very core purpose of Regional Economic Communities (RECs). Moreover, inclusion of limited trade facilitation measures in REC agreements fail to inspire implementation. The Agreement on the Tripartite Free Trade Area (TFTA) between Common Markets for Eastern and Southern Africa (COMESA), Southern Africa Development Community (SADC) and East African Community (EAC) also features trade facilitation measures. Although those provisions mirror SADC's Protocol on trade, they neither build on the already existing trade facilitation measures contained in the individual REC agreements nor concretize legally binding obligations.

Annex 4 of the Agreement Establishing the African Continental Free Trade Area (AfCFTA) expounds on trade facilitation agenda. The main objectives include: to simplify and harmonise international trade procedures and logistics to expedite the process of importation, exportation and transit; and to expedite the movement, clearance and release of goods including goods in transit across borders. Most provisions under this Annex have borrowed largely from the World Trade Organization (WTO) Trade Facilitation Agreement (TFA). This post highlights distinctive features of the WTO's TFA which are particularly relevant to Developing and Least-Developed Member States.

Noting the different levels of economic development amongst AfCFTA State Parties, this post intends to shed light on implementation of Annex 4 to the benefit of all. This is in part due to the fact that the TFA steers away from the ‘one size fits all’ approach and instead introduces new, unique and innovative features to facilitate Members’ integration into the global value networks. Furthermore, I contend that the features discussed could serve as a model to further elaborate on Special and Differential Treatment (SDT) as a guiding principle within the context of trade facilitation measures.

TFA in a nutshell

The TFA entered into force on 22 February 2017. It is arguably the most successful outcome of the WTO’s Doha round of trade negotiations launched in 2001. According to the WTO’s 2015 World Trade Report, it is estimated that implementation of TFA will reduce transaction costs by up to 14.3 %. It is also estimated that the TFA will have a bigger impact on trade cost reduction than elimination of all remaining tariffs around the world. With implementation of the TFA, WTO Members aim: to expedite the movement, release and clearance of goods, including goods in transit; to facilitate effective cooperation among members on trade facilitation and customs and compliance issues; and, to enhance assistance and support for capacity building for developing and least developed country members.

The Agreement has three sections. Section I contains the substantive provisions, grouped in 12 articles covering the following areas: Publication and availability of information, opportunity to comment, information before entry into force, and consultation, advance rulings, appeal and review procedures, other measures to enhance impartiality, non-discrimination and transparency, disciplines on fees and charges imposed on or in connection with importation and exportation, release and clearance of goods, border agency cooperation, movement of goods under customs control intended for import, formalities connected with importation and exportation and transit, freedom of transit and customs cooperation. Section II includes the provisions on special and differential treatment for developed and least-developed county members, as well as the provisions on technical assistance and capacity building. Section III contains institutional arrangements and final provisions, covering the relationship with the other WTO agreements, the accession process of Members to the agreement after entry into force, the WTO committee on Trade Facilitation, and national trade facilitation committees to be established in all WTO Member States.

Ratification/ Implementation

At the time of writing, 141 (86%) WTO Members have deposited their instruments of ratification of the TFA. 32 of those are African countries. The rate of implementation of commitments stands at 61.9%.

Notification Requirements

1. **Transparency notifications**- Member states are obliged to publish information for governments and traders on: Import, export and transit procedures, the operation of single window, the use of custom brokers and contact points for the exchange of customs information.
2. **Implementation notifications**- For Developing and Least Developed Member States to benefit from Special and Differential Treatment (SDT), they must list each provision of the Agreement under Categories A B and C and notify other WTO Members of these categorizations in accordance with specific timelines outlined in the Agreement. Category A is for provisions that the Member will implement by the time the Agreement enters into force or in the case of a least developed country Member within one year after entry into force. Under Category B, the Member is required to notify the provisions to be implemented after a transitional period following the entry into force of the Agreement. Category C contains provisions that the Member will implement on a date after the transitional period following the entry into force of the Agreement and requiring the acquisition of assistance and support for capacity building.

3. **Information on assistance and support for capacity building**- Member states have to notify support for capacity building provided by donor members, process and mechanisms and contact points of developing countries and LDC Members seeking technical assistance and capacity building.

Distinctive features

The following are some of the distinctive features of the TFA which are useful for developing Member states:

1. The legal obligation to implement measures under section I is linked to the acquisition of implementation capacity, including through the provision of technical assistance. WTO secretariat delivers technical assistance to developing countries. WTO Members (both developed and developing) also devote aid resources, on a best endeavour basis, to assist developing countries with WTO matters and trade facilitation.
2. They are allowed to designate the implementation date for each TFA measure in addition to their technical assistance needs to acquire the necessary implementation capacity. They designate their commitments for implementation upon entry into force (Category A), implementation on a date after a transitional period of time (Category B), or implementation on a date after a transitional period of time and requiring the acquisition of implementation capacity through provision of assistance and support for capacity (Category C).
3. Developing Member states are allowed to alter their commitments and notifications during implementation. They are entitled to extend definitive implementation dates or shift measures from Category B to C following entry into force. For short extensions, less than 18 months for developing countries or less than three years for LDCs, the additional time is automatically granted. For longer extension, or where the Member requests multiple extensions for the same measure, the WTO Trade Facilitation Committee will be required to give sympathetic consideration for additional time.

Important to note is that though implementation of the TFA may be slow, it is progressive. Additionally, the Agreement recognizes that WTO Member states are at different levels of economic development. AfCFTA State Parties could consider adopting unique approaches, such as those mentioned above, and many others that could ensure smooth implementation of trade facilitation measures to allow for realization of the objectives set out in Annex 4.

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