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AGREEMENT AND RULEMAKING IN
THE WTO: MILESTONE, MISTAKE OR
MIRAGE?**

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ABSTRACT

The Bali Trade Facilitation Agreement and Rulemaking in the WTO: Milestone, Mistake or Mirage?

The Agreement on Trade Facilitation (TFA) embodies the first set of new multilateral rules to have been negotiated under auspices of the WTO, part of a small package of decisions centering on matters of interest to developing countries that was “harvested” from the broader Doha round. This paper analyzes the outcome of the trade facilitation talks, assesses the role of the epistemic community that provided information to negotiators and reflects on the lessons and possible implications of the TFA experience for the prospects for new rule-making and cooperation on regulatory matters in the WTO. The TFA illustrates both the potential and the difficulty of negotiating generally applicable stand-alone agreements in the WTO and demonstrates the importance of issue linkage in achieving cooperation in trade policy matters.

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1. Introduction*

At the Bali Ministerial meeting in December 2013 WTO members successfully concluded the first multilateral agreement since the launch of the Doha Round in 2001. The Agreement on Trade Facilitation (TFA) continues the trend that was initiated in the Uruguay Round for negotiated disciplines to center on so-called “positive integration” – agreement to pursue specific practices and approaches to a policy area as opposed to agreement to refrain from using certain policies (e.g., quotas, export subsidies) or commitments not to exceed a negotiated level of protection for a product (e.g., tariff bindings).

The TFA is noteworthy in a number of ways beyond being the first agreement on new rules to have been negotiated under WTO auspices in almost 20 years.

- It is part of a small package of decisions centring on matters of interest to developing country WTO members that was “harvested” from the broader set of issues on the table in the Doha Development Agenda (DDA) negotiations.
- It has universal WTO membership and its disciplines apply in principle to all WTO Members, but it embodies an extensive à la carte approach to determining the timing of implementation by developing countries of its various disciplines.
- It goes beyond setting trade policy disciplines, calling for joint action by donor countries, development assistance providers and developing country WTO members to assist the latter to implement some provisions of the agreement.
- It incorporates a mechanism for experts to assess whether and why a developing country is not able to implement commitments according to the timeframe it scheduled before recourse can be made to the dispute settlement to enforce implementation.
- Despite having been agreed by consensus at the 9th WTO Ministerial conference, it continues the pattern established during the Doha Round of not meeting deadlines set by Ministers. The Bali Ministerial declaration called for a Protocol of Amendment incorporating the TFA into the WTO to be adopted before July 31, 2014. India blocked such adoption at the WTO General Council meeting held at the end of July 2014—not because it was opposed to the TFA but because it insisted on the WTO Members meeting its demands in another area (agriculture).

The TFA reflects a major effort by WTO Members to craft an agreement that extends WTO rules in a way that addresses the concerns of developing nations regarding implementation costs and capacity constraints. It may be the shape of things to come for multilateral cooperation on trade policy matters. It may also constitute the end of efforts to conclude universal agreements under WTO auspices on regulatory policies. Very different views can be (and have been) expressed regarding the TFA by trade policy analysts and commentators, regarding both the substance of its provisions and the implications of the Indian refusal to agree to adoption of the TFA Protocol in July 2014.

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The narrative coming from the WTO Secretariat (e.g., Neufeld, 2014), international organizations and most governments is that the TFA is a major milestone for the WTO because it addresses an area of policy that is of great importance from an economic development perspective and national welfare. It is also a milestone in demonstrating that WTO Members are able to agree on new rules and disciplines that apply to all countries and that the organization is capable of fulfilling its legislative function in addition to its transparency and dispute settlement functions. It demonstrates an ability to be innovative in recognizing differences in implementation capacity across nations by calling on developing countries to determine when they will apply specific provisions of the agreement and by linking implementation of some disciplines to the delivery of assistance from developed nations.

But some analysts who are otherwise strong supporters of action on trade facilitation and believe this is a key priority from an economic development perspective worry that the TFA may be a mistake for the WTO. They point to the fact that it moves the WTO away from binding, enforceable commitments (as many of its provisions have elements of “best endeavours” language); does not do enough to limit special and differential treatment (SDT) to the countries that need it; and further moves the WTO Secretariat into the realm of development assistance, something in which it has little capacity and no comparative advantage (Finger, 2002; Winters, 2007). Specific criticism has been expressed regarding the linkage that is established in the TFA between assistance from developed countries and the timing of implementation of commitments by developing countries, particularly the implication (and possible precedent) that governments need to be “paid” to undertake reforms that will benefit their traders and consumers (Finger, 2014).

Reservations have also been expressed that putting trade facilitation on the table in the WTO may have created perverse incentives to refrain from or delay taking action to reduce national trade costs in a misguided effort to use trade facilitation as a negotiating chip to obtain concessions in other areas of the DDA, with potentially significant opportunity costs (e.g., Finger, 2008; Hoekman, 2011). Indeed, as discussed below, doubts can be expressed regarding the appropriateness of addressing trade facilitation in the WTO given that most of its provisions do not internalize an international policy spillover—dealing with a prisoner’s dilemma situation where cooperation generates payoffs that exceed what a country can obtain through unilateral action. As a result, many of the provisions of the TFA are not self-enforcing, raising the question why this issue area should be dealt with in the WTO.

Others question the very premise that the subject matter addressed by the TFA is important from a development perspective and argue it is a mirage, doing little if anything to improve economic outcomes. There are different flavors of this argument. One points to the fact that major emerging economies may determine for themselves when to implement the TFA. Insofar as implementation is left to take place far into the future, the global gains will be much less than what has been projected in the policy research literature. Another points to “internal imbalances” in the provisions of the agreement, especially neglect of export competitiveness constraints, will result in an asymmetric distribution of benefits in favor of high-income countries and/or large multinationals and will worsen the balance of trade in developing countries (e.g., South Centre, 2011, 2013). A related line of argument is that the case for trade facilitation is grossly overblown by proponents, that the net benefits for developing countries are very uncertain and that the TFA may divert attention away from higher rate of return policy interventions in developing countries (e.g., Capaldo, 2013). Even if attention is limited to the area of trade facilitation, the specific matters addressed in the TFA may do little to reduce trade costs in a country or region because other factors – internal transport costs, corruption, etc. – account for the lion’s share of total trade costs.

A basic motivation for large multilateral trade rounds that span many countries and subjects is that this helps to agree on a set of disciplines that internalize policy spillovers by permitting issue linkages (Sebenius, 1983). A large negotiating set expands the potential for issue linkage, allowing losses in

one area to be more than offset by gains in another area. In the case of the DDA a package deal has not been feasible to construct so far, leading to calls for smaller “self-balancing” packages that are Pareto-improving in the sense that they benefit many if not all countries without making any nation worse off. However, proposals to move away from the Single Undertaking – “nothing is agreed until everything is agreed” – have been opposed by many WTO Members because of worries that this would lead to a situation where issues of most importance to them would be left off the table.¹

The TFA was negotiated in Bali as part of a small “development package” of ten decisions that mostly addressed matters of concern to developing countries (WTO, 2013). These included an understanding on tariff-rate quota administration (for agricultural products), a call for WTO members to put in place preferential rules of origin for least-developed countries (LDCs); a decision on operationalization of the LDC services waiver (calling for preferential treatment of LDC services exports); more extensive monitoring of duty-free and quota-free market access initiatives for LDCs; and the establishment of a WTO Monitoring Mechanism to review the implementation of the many provisions in the WTO calling for SDT of developing countries. One prominent Bali decision concerned public stockholding programs for food security purposes, in which it was agreed to revisit the provisions of the WTO Agreement on Agriculture pertaining to domestic production support. This decision reflected concerns by India that its food stock-holding program threatened to exceed the maximum permitted production subsidy under current WTO rules (10 percent of the value of domestic production), thus opening up the country to potential dispute settlement action.² WTO Members agreed in Bali to a four-year “peace clause” for developing country public food stock-holding programs for food security purposes as long as certain transparency-related reporting requirements were met, and committed themselves to negotiating a permanent solution to this matter before the 2017 WTO Ministerial conference. In July 2014 India blocked adoption of the protocol that would have incorporated the TFA into the WTO because of purported concerns that WTO members had not made enough progress in discussing the agricultural support question in the 6-month period following the Bali conference. At the time of writing it is unclear what will happen to the TFA.

This paper has two main objectives: (i) to discuss why trade facilitation matters and why and how an agreement on trade facilitation in the WTO can help improve upon what governments can (and should) do on their own; and (ii) to reflect on what we can learn from the TFA for future multilateral rule-making efforts in the WTO. The paper is structured as follows. Section 2 briefly discusses the genesis of the TFA talks and the economic rationale for negotiating on trade facilitation. Section 3 reviews the extant literature on the (potential) benefits and costs of trade facilitation and the state of knowledge available to negotiators and policymakers more generally regarding what to negotiate/focus on. Section 4 describes the main elements of TFA. Section 5 reflects on some of the factors that arose during the negotiations and that affected the eventual outcome. Section 6 discusses possible implications of the TFA experience for multilateral cooperation in the WTO looking forward. Section 7 concludes.

¹ Para. 47 of the DDA makes allowance for “early harvests” such as the TFA without prejudicing the ability of a WTO Member to assess the overall balance of whatever eventually might emerge from the DDA as a whole. This leaves open however, the question whether such harvests are applied provisionally or become permanent features of the WTO in case the DDA never comes to a successful conclusion.

² The Indian government buys food staples from domestic farmers at administered prices. The resulting public stockholdings are used to supply consumers with food staples at highly subsidized prices.

2. Why negotiate on trade facilitation?

Over the last 30 years governments around the globe have greatly reduced tariffs and removed quantitative restrictions on imports. Today the international flow of goods, services and knowledge is mainly constrained by real trade costs. These reflect a mix of discriminatory policies that inhibit the entry and operation of foreign firms that provide intermediate services – a major component of total operating costs for firms – and regulatory policies that apply equally to local and foreign firms and products. The latter increase costs more for foreign than domestic suppliers simply because regulations differ across countries, but more important is that the policies raise costs across the board and thus the price of goods and services for buyers, whether firms or households (Hoekman, 2014). According to the World Bank *Doing Business* report, on average it takes three times as many days, nearly twice as many documents and six times as many signatures to trade in many African countries than in high income economies (Djankov et al. 2010). Every extra day it takes in Africa to get a consignment to its destination is equivalent to a 1.5% additional tax (Freund and Rocha, 2011).

The genesis of trade facilitation discussions in the WTO was concern by the global business community that inefficient border management procedures and controls were becoming an increasingly important impediment to global sourcing and international production sharing. WTO members put the subject of trade facilitation on the agenda of the Singapore Ministerial Meeting in 1996. As a result, trade facilitation became one of four so-called Singapore Issues, the others being investment policy, competition policy and transparency in government procurement. Working groups were formed to discuss the three other subjects, while trade facilitation was addressed by the WTO Council for Trade in Goods given that the subject matter was already covered by WTO disciplines. The aim of these deliberations was to determine whether to launch an effort to negotiate new rules of the game for these policy areas.

At the time the Doha Development Round was launched in 2001, many countries did not believe enough progress had been made to agree on a negotiating agenda for these issues and left it to the 2003 Ministerial conference in Cancun to determine if and how to launch negotiations. In the event it proved not to be possible to agree on how to proceed on these matters at Cancun. When WTO Members regrouped in Geneva in July 2004, it was decided that negotiations would only be launched on trade facilitation.³ Post-1996 work done by the WTO Council for Trade in Goods identified five broad areas to focus on: documentation requirements; official procedures; automation and use of information technology; transparency and consistency; and modernization of border-crossing administration (Hoekman and Kostecki, 2009).

Achieving a significant reduction in trade costs is a complex challenge. Trade liberalization has an important role to play, as traditional trade barriers are often still significant in low-income countries (Milner, 2013). However, much of the agenda revolves around administrative practices and procedures. Some factors leading to high trade costs are difficult or impossible to change. Thus, a small island state located in the middle of the Pacific Ocean or land-locked countries in Africa, Asia or Latin America will have higher trade costs than countries (or regions) that have access to nearby ports or are located close to large and dynamic economic agglomerations. But a large share of observed trade costs reflects policies or factors that can be affected by policy. Examples are border clearance procedures, the quality of domestic transport and communications infrastructure and the degree of competition on services markets. Without action to reduce transport costs from remote areas, increase connectivity and facilitate the movement of goods, services and people across borders, specialization

³ Space constraints preclude a detailed discussion of the negotiating history. See Eglin (2008) and Neufeld (2014) for discussions by WTO secretariat members that were involved in the genesis, design and process of TFA negotiations at different points in time; Evenett (2007) for discussion of the four Singapore issues.

opportunities cannot be fully exploited, if at all, and the potential gains from trade will not be maximized.

The multidimensionality of trade facilitation is reflected in differences in what the concept is understood to mean in different organizations. At the WTO, trade facilitation refers primarily to the reform of border management processes so as to make import and export transactions more transparent, predictable and efficient. In other fora, such as the Asia Pacific Economic Cooperation (APEC), trade facilitation refers to a broader set of measures that may have an impact on trade costs, including policies that affect the efficiency of transport and logistics services. An even broader view of trade facilitation is to include any measure that promotes trade. For example, the International Finance Corporation regards programs that expand access to trade finance as a trade facilitation activity. From an economic perspective trade facilitation might be defined as encompassing measures that reduce the difference between domestic farm or factory gate prices and the price obtained in a foreign market (i.e., the difference between the export and import price).

Extensive empirical evidence suggests that trade facilitation can give a significant boost to bilateral trade, support diversification along the extensive margin of trade, and increase aggregate welfare. Trade facilitation is invariably found to benefit both locals and foreigners, although the distribution of the gains is a function of market structure, the type of products concerned, etc. There will be losers – import-competing industries, customs officials and those who benefit from complexity and burdensome procedures (e.g., customs brokers) will all lose rents – but overall both importers and exporters should benefit. One important source of benefits is a reduction in uncertainty for traders regarding market entry conditions. This is particularly important for small firms, who find it more difficult to overcome the fixed costs of dealing with administrative requirements at the border, the unpredictable variable costs generated by delays, and the differences in regulations across markets.

For most economists trade facilitation is a “no-brainer” and the puzzle is why a country should need to include this in an international trade agreement. The economic literature has identified several possible motivations for trade agreements, including the internalization of terms-of-trade spillovers (Bagwell and Staiger, 1999); as a mechanism to address credibility problems (a commitment device—Maggi and Rodriguez-Clare, 1998); and to overcome domestic political economy constraints that prevent a government from pursuing welfare-increasing reforms (Bhagwati, 1988; Hillman and Ursprung, 1988; Ethier, 2007). Trade facilitation is difficult to fit into the formal terms-of-trade and commitment theories of trade agreements because a lack of trade facilitation simply increases the domestic prices of imports and reduces the profitability of exports (for a given world price the exporter gets a smaller share if it has to incur red tape costs and plan for delays). Not taking action to facilitate trade results in a deterioration of the terms of trade. Moreover, from a growth perspective, high trade costs will lock a country out of participation in the supply chain trade that is accounting for an ever increasing share of world trade, without generating benefits for local producers as often there will not be local demand for the specialized inputs that would otherwise be imported as part of supply chain trade production.

The puzzle therefore is that a government can unilaterally take actions that will improve its terms of trade without in the process creating an adverse impact on its trading partners. While the foreign country will benefit from a trading partner’s trade facilitation, it does not do so at the expense of the country concerned. There is therefore no prisoner’s dilemma situation of the type that often drives cooperation on trade policy. The TFA cannot be motivated by the terms-of-trade rationale that has

become the staple of the formal economic literature on trade agreements.⁴ Instead, the TFA reflects domestic political economy and international coordination/collective action considerations.

The political economy drivers revolve around the rents that accrue to government officials that are in charge of Customs and other border agencies, with the TFA negotiations providing a mechanism to mobilize importers, exporters and groups in favor of better economic governance around an agenda to enhance the efficiency of border management. The pursuit of concerted action by trading partners increases the gains and thus the incentives of traders to support trade facilitation reforms. The TFA can also be seen as an effort to help solve a coordination problem that is created by countries pursuing different approaches and/or imposing redundant costs on business and traders in the pursuit of very similar objectives. As discussed below, one dimension of this coordination problem is to address asymmetric implementation costs and capacity through technical and financial assistance.⁵ But much more important are the mechanisms and processes that will be created or bolstered in implementing the TFA, which will enhance the ability of domestic actors (importers, exporters, distributors) to defend their interests through domestic enforcement mechanisms.

Before proceeding, it is useful to address two incorrect claims that are sometimes made regarding the TFA. First, some analysts have argued that trade facilitation is a national matter and that there is therefore no need to negotiate it. While much can and should be done unilaterally, in many areas international cooperation can increase gains/reduce trade costs. This is most obviously the case for landlocked countries that depend on what neighbors do to facilitate trade. But more generally, given the redundancy in documentary requirements, information demanded, inspections undertaken, etc., there is significant scope to reduce overall trade costs through concerted action, i.e., international cooperation to adopt common approaches towards customs and related matters.

Second, trade facilitation is often equated with trade liberalization by advocates of activist industrial/trade policy interventions and objected to on the grounds that it will lower protection for domestic industries. While a lack of trade facilitation will increase domestic prices and thus benefit domestic import-substituting industries, the two areas of policy are quite distinct. Trade facilitation involves removing policies that generate excess costs. A country that makes active use of trade policy to protect national industries should also have an interest in trade facilitation as it will reduce the cost of whatever volume of imports it deems desirable. Using measures that raise the cost of trade is a very inefficient way of pursuing a protectionist policy—much better to directly support a desired domestic activity. Trade facilitation does not imply a country cannot use trade policies to support domestic industries. Arguments that trade facilitation should be opposed because it is disguised liberalization are therefore not compelling. Yes, trade facilitation will increase competitive pressures but if the policy goal is protection less costly and more transparent instruments should (and can) be used instead.

⁴ These arguments also imply that the TFA cannot be an example of governments seeking to address a credibility problem by committing to specific disciplines in a trade agreement. The commitment theory as elaborated by Maggi and Rodriguez-Clare is premised on there being a terms-of-trade effect: foreigners must have an incentive to enforce an agreement by being able to credibly threaten to withdraw “concessions” they have made. As there is no quid pro quo concession of the traditional type when it comes to trade facilitation – foreign countries have no incentive to start throwing rocks in their own harbor again to enforce a trade facilitation agreement – enforcement must involve other, domestic instruments.

⁵ Such side-payments are provided by high-income countries. As the transfers are time bound and linked to implementation they cannot be used as an enforcement mechanism for sustained application of the TFA’s disciplines over time. Once implemented, enforcement is left to the standard WTO mechanisms, including greater transparency for domestic consumers, the operation of the TFA Committee, and so forth.

3. What to negotiate? Assessing the impacts of trade facilitation

Trade costs drive a wedge between export and import prices. As a result of this wedge, producers export less than they would in a world with lower trade costs, and consumers purchase less of each traded product, as well as a narrower range of products, than they otherwise would. Trade facilitation reduces the size of the wedge. The big difference with textbook trade liberalization – removal of tariffs or quotas – is that a large part of the equivalent of tariff revenue or quota rents is not captured by customs officials or domestic industries but instead constitutes social waste (often called ‘red tape’ costs in the literature).

How large are these costs? And to what extent could they be reduced by trade facilitation measures? What are good practices in this regard? What specific measures would have the biggest benefit-cost ratio? How much can be achieved through unilateral action? How much more could be realized through international cooperation and concerted action? When is cooperation a necessary condition for achieving trade facilitation gains? Are the benefits of trade facilitation equally distributed between countries? What about distributional effects within countries? These were the types of questions confronting negotiators and more generally, economic policymakers.

Much was already known in the Customs and border management community on good practices through work done by the World Customs Organization (WCO) and UN bodies such as the Economic Commission for Europe. Much knowledge also existed in specialized units in international development organizations such as the World Bank, the regional development banks and UNCTAD, which have extensive experience in the design and implementation of trade facilitation projects. However, less was known about the relative impact of different forms of trade facilitation and their distributional effects. Negotiators could draw on a policy research literature that analyses trade costs, but it was only during the course of the TFA negotiations that research focused specifically on the effects of trade facilitation. Prior to the launch of the TFA talks, economic research in this area was relatively sparse and primarily motivated by economic development concerns, with a focus on what national governments could do to enhance the competitiveness of domestic firms and industries. An important contribution of the epistemic community that emerged around trade facilitation was to provide objective professional expertise and advice on good practices and areas in which cooperation would benefit everyone (see e.g., McLinden et al. 2010).

Estimating the benefits of trade facilitation writ large

Economic analysis of trade facilitation has tended to involve empirical assessments of the magnitude of prevailing trade costs and their impacts on bilateral trade flows at a disaggregated product level.⁶ Empirical estimates of trade costs have also been incorporated into multi-country computable general equilibrium models that focus on industry-level and economy-wide impacts. The more recent empirical literature has relied heavily on the World Bank’s *Doing Business* database for indicators of trade facilitation costs (the “trading across borders” indicators). A representative example is Djankov, Freund and Pham (2010), who use export time as reported in the database as an indicator of national trade facilitation performance. This measure includes the time needed for document preparation, internal transport, passage through customs and other border agencies, and port and terminal handling. They find that the time to export measure is a statistically significant determinant of bilateral trade

⁶ The empirical literature is extensive and includes Djankov et al. (2010), Freund and Rocha (2011), Hoekman and Nicita (2010, 2011), Hoekstra (2013), Iwanow and Kirkpatrick (2007, 2009), Martinez-Zarzoso and Marquez-Ramos (2008), Nordas et al. (2006), Persson (2008, 2013), Portugal-Perez and Wilson (2012), Saslavsky and Shepherd (2014), Shepherd (2013), Spence and Karingi (2011), and Wilson, Mann and Otsuki (2003, 2005). See Maur and Wilson (2011) for a compilation of relevant research in this area.

flows, with each day's delay associated with a reduction in bilateral trade of at least one percent. In the case of Africa, Freund and Rocha (2011) find the number is 1.5 percent.

Extensive research of this type has been undertaken, all of which comes to similar conclusions: a lack of trade facilitation reflected in observed (differences in) trade costs matters importantly as a determinant of overall trade performance. For example, Wilson, Mann and Otsuki (2003, 2005) use a gravity model to estimate the effects of four "trade cost" variables – measures of port efficiency, customs clearance, the regulatory environment, and telecommunications infrastructure and connectivity – across 75 countries to estimate the bilateral trade impacts for manufactured goods from improving country-level performance in these areas to the average in the sample. On average, their port efficiency variable – which includes both harbors and airports – accounts for more than half of the trade costs imposed by policies in their four areas. Iwanow and Kirkpatrick (2007, 2009) undertake a similar analysis, estimating a gravity model augmented with trade facilitation, regulatory quality and infrastructure indicators to assess the impact of trade facilitation and other trade-related constraints on export performance. They find that a 10 percent improvement in trade facilitation would yield an increase in exports of about 5 percent, whereas identical percentage improvements in the regulatory environment and in quality of infrastructure would result in increases of 9–11 and 8 percent, respectively. Persson (2008) finds that reducing delays at borders in an exporting country by one day relative to the sample average would increase exports by 1 percent; and similar decline in an importing country would increase imports by 0.5 percent. Spence and Karingi (2011) show that trade facilitation in Africa, defined as improvements in the types of indicators used in the literature, increases total-factor productivity and exports, but that the quality and quantity of physical infrastructure also matters importantly. Dennis and Shepherd (2011) conclude that improving trade facilitation helps promote export diversification by making it easier for countries to expand exports along the extensive margin – new products or existing products to new markets. A 10 percent reduction in the costs associated with the aspects of trade facilitation considered by Djankov et al. (2010) is associated with a 3 percent increase in the number of products exported.

A conclusion from this research is that trade facilitation can contribute to better export performance, but that improvements in the quality of the regulatory environment more generally and basic transport and communications infrastructure ("connectivity") are equally or more important, in supporting export growth. Thus, trade facilitation narrowly defined need not result in a significant improvement in export performance. Guidance on how specifically observed trade costs can be reduced and what types of interventions would have the biggest cost reduction payoff requires country-specific analysis of the type that is undertaken by the World Bank and other development agencies which routinely undertake analytical work to identify priority areas for reform. Such analysis is equally important for developed countries. For example, Gresser (2013) notes that excessive paperwork for exports from the US is one reason why shipping a container through New York costs \$300 more than in competing ports: the US has some 46 separate federal agencies that require forms to be filled in, depending on the types of the goods concerned.

The economy-wide impacts of trade facilitation on real income (GDP) or welfare can be assessed using computable general equilibrium models. Research using such models generally finds that the income gains from trade facilitation can be large. Francois et al. (2005) conclude that the national income effects from improved trade facilitation can be 2 or 3 times greater than what would result from removing all tariffs on manufactured goods. WEF (2013) argues that the ratio is on the order of five or more, and that a concerted effort to raise national trade facilitation performance to halfway global best practice could increase global GDP by some 5 percent. Balistreri, Tarr and Yonezawa (2014) decompose trade costs into three categories: costs that can be lowered by trade facilitation, nontariff barriers, and the costs of business services, including transport. Using an 18-sector global trade model that includes sectoral estimates of the time costs generated by weak trade facilitation

performance, they find that action by East African Customs Union members to lower time costs by 20 percent results in significant gains for the four countries. Improved trade facilitation accounts for between 60 and 80 percent of the potential gains from deeper integration.⁷

Hufbauer and Schott (2013), based on a review of extant literature, both empirical and CGE, conclude that significant improvements in trade facilitation could increase exports of developing countries by approximately US\$570 billion and exports of developed countries by US\$475 billion—for a total of over \$1 trillion world export gains. As total world trade in 2013 was some \$22 trillion, this implies a 5 percent increase in global trade. This is not particularly large in percentage growth terms and is comparable to the estimated trade impact of removing remaining import tariffs (WEF, 2013). That said, such estimates may be too high given that the trade effects of facilitation will depend on trade potential. A problem with these type of exercises is that they ignore the endogeneity of observed trade facilitation performance in high-performing countries: if there is significant trade potential, countries have greater incentives to invest in trade facilitation. Thus, if Rwanda were to try to emulate what has been achieved by Singapore it would not realize the level of trade performance achieved by Singapore. Whatever the impacts in practice will end up being, what is distinct about trade facilitation relative to trade liberalization (tariff reduction/removal) is that the real income gains associated with a given reduction in trade costs is larger than what would be generated by an equivalent percentage reduction in tariffs because trade facilitation involves the removal of real costs as opposed to the redistribution of income from producers to consumers that is the primary result of tariff reductions.

From the perspective of negotiators the extant research suggests that trade facilitation, if pursued seriously, could account for a large share of the total potential net welfare gains that might be realized by concluding the DDA. At the same time the relevance of the research from a negotiators perspective was reduced because the TFA negotiations spanned only a subset of the “trade facilitation” measures analyzed. Moreover, most research focused on the benefits of *national* trade facilitation measures. There was little research focusing specifically on the magnitude of the gains from concerted, coordinated action by two or more governments. Practitioners identified many areas where such cooperation is a necessary condition for realizing trade facilitation gains – e.g., joint border posts; joint investment in infrastructure to ensure IT systems can “talk” to each other; sharing of data; adoption of common classification and risk management systems; adoption of the same administrative documents, etc. Negotiators had less research to draw on that identified where *international cooperation* (as opposed to national action) would have the highest net benefit. This reflects both the difficulty of doing such research and the focus of the suppliers of technical and other assistance, which is generally country-specific and not geared towards supporting international cooperation.

Mapping specific measures to trade cost reductions and potential welfare gains

While the economic analyses provided a strong basis for focusing policy attention on trade facilitation broadly defined, the economic literature was less helpful in identifying what specific trade facilitation measures more narrowly defined would have the biggest benefits. International organizations such as the WCO and the World Bank provided expert knowledge on good practices and cross-country experience with trade facilitation projects in developing countries, and provided information on what they deemed to be priorities.⁸ A recurring theme of the reports, briefings and presentations by trade

⁷ Other papers assessing the effects of trade facilitation using CGE models include Decreux and Fontagne(2014) and Zaki (2014).

⁸ Finger (2008) summarizes compilations of professional assessments and expert opinion on what types of interventions would have the greatest positive impacts. This generally ranked measures to adopt and use of international standards, to

facilitation and Customs experts was that the measures being proposed and considered in the TFA talks constituted good practices – i.e., they had been validated in practice and were endorsed by expert practitioners – but that identification of what needed to be done to most effectively facilitate trade required country-level analysis and diagnostics, and that priorities were endogenous – a function of many other factors (e.g., World Bank, 2006). However, as discussed in Finger (2008), the expert community did generally agree on what types of trade facilitation measures deserved to be prioritized in terms of likely impact on trade costs and which of these would give rise to relatively low as opposed to high implementation costs – both financial and in terms of administrative complexity.

Extensive diagnostic work was undertaken by the WTO, the WCO, the World Bank, regional development banks, the ITC and UN bodies (UNCTAD, UN regional Economic Commissions) to assess the “gap” between the status quo prevailing in a developing country on customs and transit matters that were the main focus of TFA talks and what would need to be done to implement a given set of potential disciplines, including informed guesstimates of the cost of closing the gaps (i.e., implementation costs associated with a TFA). This generally suggested that implementation costs of a TFA would be relatively small – with estimates on the order of US\$7-11 million for a sample of representative developing countries (see, e.g., McLinden, 2011; Jackson and McLinden, 2013; OECD, 2012).⁹ However, this detailed, technical work made no promises that implementation would generate gains of the order of magnitude suggested by the empirical research literature discussed above. The main focus of the various specialized international organizations was to provide information on best practice, lessons of experience, and tools to assess priorities and guide reforms.¹⁰ Staff from international organizations echoed the findings of the empirical research that while trade facilitation measures of the type discussed in the TFA talks would contribute to better trade performance and generate welfare gains, improvements in the quality of the regulatory environment and trade facilitation-related soft and hard infrastructure (“connectivity”) were equally or more important – areas not covered by the TFA talks. An important example is ensuring competition in the provision of transport, logistics/distribution and communications services (e.g., Borchert et al., 2012 and 2014; Francois and Hoekman, 2010). A major focus of the trade facilitation diagnostics and projects undertaken by development agencies tended to be on transport and logistics, both infrastructure and services, areas not covered by the TFA talks.

The OECD was the only organization to attempt to map what was on the table in the TFA to estimates of trade costs and potential trade cost reductions, thus giving a sense of where the potential

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ensure transparency, including online publication of trade regulations and procedures, risk management systems, and advance rulings on tariff classification as being among the priority measures to focus on. See also Duval (2006), Maur (2011), Grainger and McLinden (2013) and McLinden et al. (2010).

⁹ Surveys of professionals suggested that a major cost component associated with implementing trade facilitation measures is not related to regulatory reform, training or equipment costs, but is political – the required engagement at political level is often substantial given the rents that may be associated with the status quo (Duval, 2006).

¹⁰ Significant resources and effort was devoted to this. To provide just an example of the type of material that generated by Annex D and other organizations on the nuts and bolts of trade facilitation, what follows is a snapshot of the first page of a list of reports and toolkits posted on the website of the Global Facilitation Partnership for Transport and Trade (<http://www.gfptt.org/documents>): The New Frontier of Competitiveness in Developing Countries: Implementing Trade Facilitation; Trade Facilitation and Paperless Trade Implementation: 2013/14 Asia-Pacific Update; Developing a Trade Information Portal; Border Management Modernization; Trade and Transport Facilitation Assessment: A Practical Toolkit for Country Implementation; Risk-Based Compliance Management. Making it Work in Border Management Agencies; Preparation of a National Single Window, a Blueprint for Implementation; Trade and Transport Corridor Management Toolkit; Post Clearance Audit: Reference and Implementation Guide; Collaborative Border Management: A New Approach to an Old Problem; Freedom of Transit: UNCTAD Trust Fund for Trade Facilitation Negotiations Technical Note; Paperless Trade in International Supply Chains: Enhancing Efficiency and Security; Behind the Border Trade Facilitation in Asia-Pacific: Cost of Trade, Credit Information, Contract Enforcement and Regulatory Coherence; Trade Facilitation Opportunities for Landlocked and Transit Developing Countries.

benefits were the highest. Moïsé and Sorescu (2013), based on a comprehensive dataset of trade facilitation indicators compiled by Moïsé, Orliac and Minor (2012), estimated that implementing the various elements of what was emerging in the TFA talks would lower developing country trade costs by around 14 percent. They assess the impact of 16 trade facilitation indicators corresponding to the main policy areas under negotiation. The policy areas that were predicted to have the greatest impact on trade volumes and trade costs were the availability of trade-related information, simplification and harmonization of documents, streamlining of procedures and the use of automated processes. The combined effect of improvements in these areas was estimated to generate a 14.5 percent reduction in total trade costs for low income countries, 15.5 percent for lower middle income countries and 13.2 percent for upper middle income countries.¹¹

The cost side of the equation

Most of the economic literature on trade facilitation assumes that reforms are costless. This is clearly unrealistic and reduces the usefulness of the policy research literature from a policymaking/negotiating perspective. The response to this issue was threefold: (i) to explicitly consider the costs of trade facilitation; (ii) to refer to expert opinion and data on actual trade facilitation projects undertaken by countries to assess how high implementation costs were likely to be; and (iii) to limit analysis of potential impacts of trade facilitation to measures that do not involve major investments – i.e., to exclude infrastructure-related investments. All of these approaches indicated that the benefit-cost ratio of trade facilitation was always positive and often high. Buys et al. (2010), for example, find that improved road connectivity in Sub-Saharan Africa could expand overland trade by up to \$250bn over 15 years. Using detailed World Bank data on road projects, they estimate that the initial investment cost required would be of the order of \$20bn, with an additional \$1bn annually for maintenance. Thus, the costs of this type of trade facilitation would be offset by the associated trade gains. Similarly, Mirza (2009) concludes that increasing Sub-Saharan Africa's logistics performance by 1 percent would involve an up-front investment of some \$18bn, but that this would generate a welfare gain of some \$70bn. More detailed, micro-econometric studies of the impact of projects to facilitate trade also found that the return on investment was high and that benefits exceed costs (e.g., Cali and te Velde, 2011; Busse et al. 2012; Königer et al. 2011; Portugal-Perez and Wilson, 2012; Helble et al., 2012; Hoekstra, 2013).

4. The Bali Trade Facilitation Agreement

The WTO has no provisions dealing explicitly with trade facilitation. Instead, it has specific Articles dealing with aspects of the customs clearance process: Art. V GATT on the treatment of goods in transit; Art. VII GATT on valuation of goods and the Uruguay Round Agreement on Customs Valuation; Art. VIII GATT on fees and formalities; Art. X GATT requiring transparency of national trade regulations; the Agreement on Pre-Shipment Inspection (PSI),¹² the Agreement on Import

¹¹ Updated estimates published in OECD (2014) to take into account the outcome of the Bali negotiations were 14.1%, 15.1% and 12.9% for the three country groups, respectively. The highest impacts for low-income countries would stem from a reduction in documentary requirements; automation, and improved information availability (3%, 2.4% and 1.7% respectively). In contrast the top three impacts for upper middle-income countries would come from fewer procedures, automation and measures pertaining to advance rulings (2.8%, 2.3% and 1.3%).

¹² As the name suggests, PSI consists of inspection of goods by specialized firms before they are shipped to the country of importation.

Licensing and the Agreement on Rules of Origin.¹³ The Agreement on Trade Facilitation follows the precedent of the Agreement on Customs Valuation and other agreements (e.g., on antidumping and on subsidies and countervailing measures) by extending disciplines on matters addressed by one of more specific GATT articles—in this case GATT Arts. V, VIII and X.

Deliberations in the Council for Trade in Goods on trade facilitation after the 1996 Singapore Ministerial meeting made clear that while there was a general agreement on the importance of trade facilitation, many developing countries were not very enthusiastic about launching negotiations on the subject in the WTO. Part of the concern related to potential implementation costs. Some governments argued that they did not have the resources to modernize customs procedures and many were reluctant to take on legal obligations that might increase their exposure to WTO disputes. Developed countries sought the establishment of binding norms in the WTO; many developing nations preferred to identify voluntary guidelines or an accord focused on capacity-building, rather than legally-binding commitments. Many countries, including emerging economies such as Brazil, India and South Africa also sought agreement on modalities of cooperation between Customs authorities.

After years of exploratory discussions, and a failure to launch negotiations on trade facilitation at the 2003 WTO ministerial conference in Cancun, WTO members eventually agreed to commence negotiations in July 2004, on the basis of modalities contained in Annex D of the WTO General Council Decision on moving forward on the DDA – the so-called “July package” (WTO, 2004). Negotiations were to “aim to clarify and improve relevant aspects of” GATT Article V (Freedom of Transit), Article VIII (Fees and Formalities connected with Importation and Exportation), and Article X (Publication and Administration of Trade Regulations) “with a view to further expediting the movement, release and clearance of goods, including goods in transit...[and] enhancing technical assistance and support for capacity building in this area.”

Much of Annex D addresses the implementation cost concerns of developing countries. Separate articles specify that “the extent and timing of entering into commitments shall be related to the implementation capacities of developing and least-developed Members” (Art. 2); that “Members would not be obliged to undertake investments in infrastructure projects beyond their means” (Art. 2); that as “an integral part of the negotiations, Members shall seek to identify their trade facilitation needs and priorities ... and shall also address the concerns of developing and least-developed countries related to the cost implications of proposed measures” (Art. 4). Articles 8 and 9 call on international organizations (with specific mention of the IMF, OECD, UNCTAD, WCO and the World Bank – the so-called Annex D organizations) to undertake a collaborative effort to make technical assistance and capacity building in this area more effective and operational, and to ensure better coherence, and that due account be taken of the relevant work of the WCO and other relevant organizations in this area.

Art. 6 Annex D encapsulates one of the key challenges confronting negotiators in designing the TFA:

“Support and assistance shall also be provided to help developing and least-developed countries implement the commitments resulting from the negotiations. ...In this context, it is recognized that negotiations could lead to commitments whose implementation would require support for infrastructure development on the part of some Members. In these limited cases, developed country Members will make every effort to ensure support and assistance directly related to the nature and scope of the commitments in order to allow implementation. It is understood, however,

¹³ This agreement aims to foster the harmonization of the rules used by WTO Members for their nondiscriminatory (MFN) trade, i.e., it excludes rules that apply in the context of preferential trade agreements. Notwithstanding almost 20 years of discussion in a Technical Committee (serviced by the WCO, which acts as the secretariat for the committee) tasked with pursuing a harmonization work program, the WTO Committee on Rules of Origin has yet to agree on a common set of non-preferential rules of origin.

that in cases where the required support for such infrastructure is not forthcoming, and where a developing or least-developed Member continues to lack the necessary capacity, implementation will not be required. While every effort will be made to ensure the necessary support and assistance, it is understood that the commitments of developed countries to provide such support are not open-ended.”

The contours of a possible deal on substantive matters had become clear by 2008. This included an emerging consensus that a single and binding agreement was needed. It was expected that all WTO members would sign an agreement, with specific commitments detailed in an implementation plan (with varying timelines) based on three specific categories of commitments: those taking effect immediately; those requiring a transition period; and those requiring both additional time and technical assistance before entering into force. Examples of what might be embodied in an agreement included establishment of an enquiry point for information on trade regulations (drawing on precedents established in the WTO SPS and TBT Agreements); a requirement to provide advance rulings on tariff classification and valuation; creation of a formal border agency “cooperation mechanism” for the exchange of information among members; limits on inspection of goods in transit; and elimination of proscribed transit routes (WTO, 2008; Eglin, 2008). Much of this ended up being embodied in the TFA that was agreed in Bali in 2013, with much of the focus of discussions post-2008 centering on how substantive disciplines should be implemented by developing countries, and whether a TFA would constitute a stand-alone agreement or whether what was agreed would be limited to amending existing GATT provisions (Arts. V, VIII and X).

The TFA has three parts. Section I lays out substantive disciplines, Section II specifies special and differential treatment (SDT) provisions and defines the approach taken to implementation of disciplines by developing countries, and Section III deals with institutional arrangements (WTO, 2014).

The Substance: Section I of the TFA

What follows briefly summarizes the main elements of Section I TFA, including an indicative judgment of the extent to which a provision is binding as opposed to setting out good practices that should be applied insofar as possible (‘best endeavours’ type commitments). The latter is inherently subjective as there can be differences in view regarding whether best endeavours provisions are enforceable, and, indeed, how relevant in practice this distinction is, a matter discussed further below. Section I of the TFA includes provisions on:¹⁴

1. *Publication of information.* A requirement to publish regulations on trade procedures, taxes, fees, etc.; and best endeavours language on using the internet (portals; websites) and creating national enquiry points. (Mix of binding and best endeavour language)
2. *Opportunity to comment.* Commitment to provide opportunities to comment on proposed new regulations relating to movement, release, clearance etc. of goods. (Mix of binding and best endeavour language).
3. *Advance rulings.* Binding commitment to provide traders with advance rulings on a timely basis when requested to do so regarding tariff classification and origin criteria; a best endeavour’s commitment to do the same for the criteria used to determine valuation, exemptions, and quotas, including tariff quotas. (Mix of binding and best endeavour language)

¹⁴ What follows is a selective summary. Figures refer to the corresponding article number of the TFA; not all TFA articles are referenced.

4. *Appeal or review of decisions.* Binding commitment on the right to either administrative and/or judicial review of decisions on a non-discriminatory basis on Customs matters; best endeavours commitment to offer the same for decisions of other border management agencies. (Mix of binding and best endeavour language)
5. *Other measures to enhance impartiality, nondiscrimination and transparency.* Lays out procedures to be followed when implementing enhanced SPS--related border controls (binding).
6. *Fees and charges.* Requirements on transparency (publication), permitted level of fees and charges (to be cost based) and the basis/process for imposition of penalties (binding).
7. *Release and clearance of goods.* (Mix of binding and best endeavour language). This article includes provisions calling for:
 - pre-arrival processing (binding);
 - use of electronic payment (best endeavours);
 - procedures allowing for separation of release of goods from final determination of payment liability (binding);
 - adoption and use of risk management systems for clearance control (best endeavours); adoption/use of post-clearance audits (binding);
 - measurement and publication of average release times (best endeavours);
 - providing at least three of seven possible types of additional facilitation measures for “authorized operators” – with eligibility to be determined on the basis of satisfying published criteria relating to risk and track record of compliance (binding);
 - putting in place procedures allowing for expedited release of air cargo shipments and specifying the types of criteria that may be used to condition eligibility for expedited release (binding); and
 - requirements pertaining to the release of perishable goods (binding).
8. *Border agency cooperation.* Call for cooperation between adjacent border posts (e.g., alignment of working times, procedures, common facilities, etc.) and exchange of information/data when requested (best endeavours).
9. *Formalities associated with cross-border movement of goods, including transit.* (Mix of binding and best endeavour language)
 - commitment to review and assess extant procedures from a trade facilitation perspective and to adopt the least trade restrictive measure to achieve underlying policy objectives;
 - acceptance of copies of documents already provided (mix of binding and best endeavour);
 - use of international standards (best endeavour);
 - establishment of “Single Window” systems (one-stop shops) (best endeavours);
 - a ban on mandatory PSI for classification/valuation (binding);
 - a ban on introduction of new requirements mandating the use customs brokers (binding); and
 - provisions on treatment of rejected goods and use of temporary admission programs for inward and outward processing of goods (binding).
10. *Freedom of transit.* Commitment not to impose non-transport-related fees or to seek voluntary restraints (binding); various disciplines on inspection and guarantee schemes (mostly binding).

11. *Customs cooperation*. Provisions calling for sharing of information on best practice and on cooperation between customs agencies to exchange information on consignments (best endeavours).
12. *Institutional arrangements (Section III, TFA)*. The agreement calls for the establishment of a Committee on Trade Facilitation in the WTO, with a mandate *inter alia* to maintain “close contact” with other international organizations in the field of trade facilitation such as the WCO (the only agency mentioned by name), and for the establishment of national trade facilitation committees in each WTO Member to facilitate the required domestic coordination and implementation of the TFA.

A number of these substantive disciplines build on work done in the WCO—in particular provisions on appeal and review (Art. 4 TFA) and release and clearance of goods (Art. 7 TFA) (ITC, 2013). In the 1990s, WCO members negotiated a revision of the 1974 International Convention on the Simplification and Harmonization of Customs Procedures. An updated and completely revamped Kyoto Convention establishing ‘international standards and facilitative customs procedures for the twenty-first century’ was completed in 1999 (WCO, 2002). This comprises a set of principles and detailed annexes that lay out standards and recommended best practices for customs procedures and related administrative practices, including risk assessment, electronic data interchange, use of ex-post, audit-based systems of control, import and export procedures, transit arrangements, and bonded warehousing. As of September 2014, 95 countries had signed the Revised Kyoto Convention, out of a total of 178 WCO member countries. Implementation of the TFA will imply that some areas covered by the Kyoto convention will over time extend to larger number of nations.

As is described above, some of the TFA provisions can in principle be enforced through the WTO dispute settlement system. Others are of a best endeavours nature. Many of the latter either address matters that will require investment in soft and hard infrastructure, or that are sensitive (e.g., Customs cooperation and exchange of information, something on which there were and are concerns by developed countries and not just developing economies). Binding commitments tend to pertain to matters relating to transparency, fees and procedures that are imposed or applied by customs authorities. The activities of other government agencies at the border, if addressed at all, tend to be of a best endeavours nature.

Several provisions in the TFA are of interest from a political economy perspective, including the ban on the use of preshipment inspection (PSI) for classification and valuation purposes and the provision precluding the adoption of new regulations requiring mandatory use of customs brokers by countries that do not require this at present. These provisions are noteworthy because the companies involved in providing the associated services are direct losers from the TFA. The bans reflect a drive by both traders and Customs authorities. Customs brokers provide valuable services to customers, but not all firms need their services. Mandatory use of customs brokers imposes an effective tax on companies that have the capacity to deal with customs compliance requirements at a lower cost than what they are required to pay a customs broker. PSI programs involve governments outsourcing Customs activities to private companies, often as part of an effort to reduce corruption and tax avoidance by traders through misclassification of goods and over-or under-invoicing of consignments. Not surprisingly, the Customs community is not supportive of such programs as they imply they are not doing their job; traders often oppose PSI because they perceive it as imposing too much of a burden.¹⁵

¹⁵ An Agreement on Preshipment Inspection was negotiated in the Uruguay Round and incorporated into the WTO in 1995 as a result of concerns by exporters regarding the methods used by inspection firms. The agreement requires countries that use PSI to ensure that this is done in an objective, transparent and nondiscriminatory manner, and that verification of contract prices satisfy certain methodological criteria. Research on the impact of PSI programs has found that they can

The prevailing view of the Customs community and many traders was that PSI may be helpful in the short-term to deal with corruption and tax avoidance, but that in the longer-run what is required is serious customs reform and institutional strengthening to allow a government to manage the border itself (Hoekman and Kostecki, 2009). The Customs community used the trade facilitation negotiations as an opportunity to reassert their exclusive authority to determine the classification and valuation of goods for tariff revenue collection purposes, while traders used it to ensure that there would be no new instances of WTO Members requiring the use of customs brokers and thus having to pay for services they did not need or desire.¹⁶ The ban on PSI is not necessarily a feature of the TFA that is consistent with trade facilitation given that it may be an effective mechanism to address severe instances of corruption in Customs.

Special and Differential Treatment: Section II TFA

Section I of the TFA contains a mix of binding disciplines and best endeavours commitments. These all apply to developed countries once the TFA enters into force. This is not the case for developing countries and the LDCs insofar as these countries invoke the TFA's SDT provisions. These are spelled out in Section II, which deals with the implementation concerns of developing countries by allowing them to determine unilaterally when they will apply the various provisions laid out in Section I. Implementation is divided into three categories: (A) provisions that will be applied unconditionally upon entry into force of the TFA (or after one year in case of a LDC); (B) provisions that will apply after a transition period that will be determined by each country itself; and (C) provisions that will apply after an *indicative* transition period *and* acquisition of the necessary implementation capacity through assistance and capacity-building. One year after that they are to notify definitive dates for implementation of category B commitments and to report on the arrangements made to obtain the assistance needed to implement category C commitments. LDCs have an extra year to undertake these actions.

There are no limits on the length of implementation periods that can be notified – the presumption is that countries will undertake a good faith effort to determine how much time they will realistically need and will not engage in games. There are detailed provisions on procedures to be followed if a country needs an extension of the transition period because it does not think it can implement a provision by the definitive date it specified in its schedule, including reporting the reasons for this and whether it is because of the need for additional assistance or not having received the assistance needed.¹⁷ If a country continues to notify implementation difficulties after transition periods have

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make a significant improvement in customs clearance times but that they can also be costly – companies may charge the government on the order of 1 percent of the value of goods imported (Low, 1995). Evaluations of PSI programs suggest they can be effective mechanisms to improve tariff revenue collection. Yang (2008) finds that PSI programs are associated with increases in tariff revenue collection and on average the increase in revenues exceeds the costs of operating the PSI programs by a factor of 2 or more.

¹⁶ It is suggestive that the ban on PSI for purposes of classification and origin concerns activities that are in the ambit of Customs, and that other TFA articles relating to these activities (transparency, review, appeal etc.) are binding and thus can be contested through the DSU.

¹⁷ To help address the possibility of some countries “falling through the cracks” as a result of coordination problems, the WTO set up a Trade Facilitation Agreement Facility in 2014. The aims of the facility are to enhance the WTO's technical assistance programs, support coordination between donors and recipients, and provide a source of funding for countries that are not able to access assistance through other channels for TFA implementation. It will do so by providing up to US\$30,000 for project proposal preparation (to submit to a donor agency for funding) and up to US\$200,000 for “soft infrastructure” projects if a country cannot find a donor to fund it (examples of potential projects include payment of consulting services for modernization of customs laws, in-country workshops, and training of officials). The Facility will become operational following the adoption of the TFA Protocol.

See http://www.wto.org/english/news_e/news14_e/fac_22jul14_e.htm.

expired, the TFA Committee is called to establish an Expert Group of five independent trade facilitation professionals to examine the situation and make recommendations. No recourse can be made to the DSU until the recommendation the Expert Group has been considered. In any event, there are long grace periods for dispute settlement: Category A provisions cannot be contested within 2 (6) years of the entry into force of the TFA for developing countries (LDCs); in addition, LDCs have an 8 year grace period following implementation of their Category B and C provisions. There is no grace period regarding Category B and C provisions of developing countries (Art. 20 TFA).

Donors are to provide assistance and capacity building support, either bilaterally or through international organizations, on mutually agreed terms.¹⁸ In the case of LDCs, there is a call for such aid to be additional – donors are to endeavour to provide aid in a way that does not compromise existing developmental priorities (Art. 21). A long list of principles are specified that aid should conform to, including taking into account existing programs of support and the importance of coordination between donors and use of existing in-country donor coordination mechanisms. Donors are also required to report annually on assistance provided, while international organizations will be invited to do so by the TFA Committee. In addition there is a call for the Committee to hold at least one annual session dedicated to review and discuss problems regarding implementation, review delivery of assistance, and share experiences obtained – i.e., to engage in a process of deliberation and learning.

Thus, the response to implementation concerns was to permit each country to determine its own transitional periods and to identify which specific provisions require technical or financial assistance and capacity building support. No mention is made of “infrastructure” as a potential necessary element of implementing the agreement as in the 2004 Annex D modalities; assistance is simply linked to ‘implementation’. There is no binding (enforceable) commitment on any Member to provide assistance, nor any language specifying whether assistance can have “strings”. Instances where a lack of assistance gives rise to implementation problems are to be resolved through a process of identifying willing donors and alternative sources of aid.

5. Reflections on process and outcome

The TFA illustrates that new rule-making is feasible in the WTO. For that reason alone it is a milestone, as looking forward it is clear that it is in the rule-making area that the WTO will confront increasing demands. Assuming it is adopted into the WTO, the TFA is also noteworthy by being a stand-alone agreement: all WTO Members signed off on it because they perceived it to be a Pareto improving deal.

Negotiations on the TFA took a decade. While this constitutes good performance compared to the other areas of the DDA, it is clearly a very long time, especially given the fact that the contours of the TFA were pretty clear already in 2008, and the basic principle of linkage between implementation by developing countries and assistance from developed nations had already been established in the 2004 negotiation modalities. At least five factors help explain the slow progress and the shape of the eventual agreement.

First, the overall difficulty of moving the DDA negotiations forward was an important factor. Trade facilitation was often singled out by WTO negotiators as one area where there was a constructive atmosphere in which good progress was being made, but the deadlock that prevailed for long periods

¹⁸ Footnote 16 of the TFA specifies that assistance and support for capacity building “may take the form of technical, financial, or any other mutually agreed form of assistance provided.” The inclusion of the word ‘financial’ was a negotiating objective of many developing countries, whereas some developed countries preferred to leave the type of assistance undefined.

of time on the DDA market access agenda meant that there was less pressure on negotiators on trade facilitation to agree on a text in a more timely fashion. At the same time the deadlock itself is partly explained by a desire on the part of some countries to extract a “payment” for agreement on trade facilitation. This is part and parcel of the *modus operandi* of the WTO (making the outcome of a trade round a ‘single undertaking’). While there is arguably little negotiating leverage associated with trade facilitation for the reasons discussed in Section 2, countries nonetheless sought to pursue issue linkage. Ultimately linkage incentives led to India’s refusal to adopt the TFA protocol, but that was simply another – albeit extraordinary – instance of a strategy that had been pursued throughout the negotiations by a number of countries, not just India.

Second, trade facilitation is a technical area, and much learning was required by trade officials who are not necessarily aware of what is involved in putting in place risk management systems, what is implied by a “single window” for border management and customs clearance, etc. A very substantial effort was undertaken by the WTO and Annex D organizations to provide information and educate not just negotiators but stakeholders more generally. This was arguably effective in that the initial skepticism on the part of many developing countries regarding trade facilitation was overcome, and negotiations proceeded relatively smoothly without major fundamental substantive differences of the type that characterized negotiations on intellectual property rights in the Uruguay Round, to give one example.¹⁹ However, the very length of the negotiations meant that there was regular turnover of negotiators, implying a need for repeated learning on the part of a new set of officials to get up to speed on the substance of the many technical issues that were on the table.²⁰ This was a factor that affected developing countries in particular but it also affected the “supply side” – sustaining the engagement and support of specialized agencies and trade facilitation professionals in a process that lasts many years without a clear prospect of coming to a resolution is difficult, especially for development-focused organizations where performance is assessed on the basis of the impacts of projects and activities in which resources are invested.

Third, and related to the foregoing, a feature of the negotiations from the start was not just to ensure that poor countries would benefit from whatever was agreed but that they would be able to implement an agreement so as to realize the benefits. The issues here were to figure out what would be needed for effective implementation, how to obtain a credible commitment from developed countries that they would provide the assistance needed for implementation to the countries that indicated that this was needed, and to address concerns by developing countries about being subject to disputes and the threat of retaliation for not having been able to implement TFA disciplines. As discussed above, although in principle the link between implementation and assistance had already been agreed in 2004, exactly how this was to work was left to negotiators to determine. It proved difficult to craft an approach that was acceptable to everyone around the table, with the end result the adoption of the *à la carte* approach regarding the timing of implementation of the various TFA provisions by developing economies. Key elements of what was ultimately included in Section II of the TFA were only agreed a few days before the Bali conference.

Trade facilitation will require some investments, and negotiators initially confronted substantial uncertainty as to what would be involved in implementing TFA provisions in their countries. The response to this uncertainty included an extensive process of national “needs assessments” by the

¹⁹ Because strengthening IPRs has redistributive effects and thus need not be win-win. Research has demonstrated that the TRIPS agreement implied a significant net transfer from many developing countries. See e.g., McCalman (2001).

²⁰ The many seminars and workshops arguably were less effective in changing attitudes towards the trade facilitation *negotiations* than they were in increasing understanding of the salience of the subject from a national development perspective. The technical assistance seminars and workshops delivered by development organizations tended to focus on what constitutes good practice as opposed to understanding where joint action was needed to lower trade costs.

WTO Secretariat and Annex D organizations and numerous trade facilitation seminars and workshops. The outcome of national needs and gap assessments were not made public, however, reflecting the perverse incentives associated with taking a “negotiation mind-set” to the issue. This uncertainty created a problem for developed country providers of assistance as well, as they did not want to be confronted with open-ended financial commitments. Nor were they willing to create a fund with earmarked resources to support trade facilitation (whether managed by development agencies as advocated by some analysts, e.g., Bhagwati (2005), or in the WTO). In large part this reflected a desire not to create a precedent that would increase the incentives for countries to take a “pay me for reform” position in future negotiations. But it also reflected desire to abide by the Paris Declaration on Aid Effectiveness, under which donor countries have committed to align support with the priorities established by developing countries in their national development strategies when allocating assistance (country ownership and alignment principles).

The TFA leaves it to developing country governments to determine when to implement provisions based on their own self-assessment and in that sense is consistent with the aid effectiveness principles. It is important to note however that the TFA does not have language regarding the “conditionality” that might be imposed by donors. While the implicit presumption may be that assistance will be grant-based, in practice this type of aid is increasingly earmarked for the poorest countries. Middle income countries – whether large nations such as India or Brazil (assuming they make any category C commitments) or small island economies such as Barbados or Mauritius – may not be eligible for grant based assistance. Throughout the negotiations and after the Bali meeting the international organizations made clear that they stood ready to support developing countries, but what conditions would apply to assistance were often left ambiguous. Thus, a joint statement issued by the ITC, OECD, UNCTAD, the UN Regional Economic Commissions, the World Bank and the WCO on July 22, 2014 says nothing about this (Joint Statement, 2014). As far as its own support is concerned the World Bank made it clear that assistance for TFA implementation through its Trade Facilitation Support Program “will prioritize (1) International Development Association-eligible, low-income, and fragile and conflict affected countries; and (2) middle-income countries that act as gateways to LDCs and/or whose performance significantly impact on the performance of regional LDCs as well as those that are willing to co-finance technical assistance activities” (World Bank, 2014).²¹

Donors consistently argued that they could be trusted to deliver the amounts needed and international agencies repeatedly stated that they would provide assistance if requested to do so. Recall that expert assessments suggested that TFA implementation costs would be in the range of US\$7-11 million for a representative sample of developing countries, ignoring investments in hard infrastructure (e.g., roads, bridges, warehouses, laboratories, etc.). If we assume a rather conservative US\$10 million and assume further that most developing country WTO Members request assistance we are talking about at least US\$ \$1 billion. This is not a huge amount, especially considering that costs will be spread over several years and that some developing countries may not make Category C commitments. But this amount is a lot larger than what the various grant facilities that have been set up by different international organizations add up to. For example, the World Bank Trade Facilitation Support Program was launched with an initial funding commitment of just US\$30 million. In practice the resources needed to pursue trade facilitation more broadly will be much greater than \$10 million per country. It seems clear that many developing countries should plan to tap available resources under general development assistance programs and borrow the needed funds from the multilateral

²¹ Six donors have committed to contributing US\$30 million to this facility, with the World Bank website indicating that the IMF, IDB, UNCTAD, the WCO and the WTO are partners, although the documentation provided does not discuss what the role of these other organizations is. See <https://www.wbginvestmentclimate.org/advisory-services/regulatory-simplification/trade-logistics/trade-facilitation-support-program/our-partners.cfm>.

development banks. Given the high rates of return to trade facilitation discussed in Section 3 this will be money well spent, but there is a risk that some countries may argue that having to borrow for trade facilitation projects addressing matters covered by the TFA is not what they were looking for.

Fourth, the TFA negotiations broke no new ground as regards the criteria for eligibility for SDT. Developing country status is self-defined in the WTO, so that in principle SDT applies to Argentina or Brazil in the same way as it does to Armenia or Belize. The only formally defined group of developing countries in the WTO are the LDCs, which benefit from additional SDT. As a result, how much of a difference the TFA will make in lowering global trade costs will depend importantly on what the emerging economies decide to do in terms of implementation of the various TFA provisions, i.e., which they will implement immediately and which will be left for later, and how long the self-determined implementation periods will be for the latter category. As the time of writing this remains unknown. From a systemic perspective the positive impact of the TFA would be enhanced if the BRICS and other advanced developing economies were to implement all provisions under Categories A and B, and commit to short implementation periods. If so, this would help address a major problem that characterizes the approach towards SDT in the WTO and that arguably made it more difficult to get to yes in the DDA—the fact that such a broad range of countries can and do claim developing country status in the WTO. It has proven to be impossible to deal with this matter head-on in the WTO. The TFA offered an opportunity to address this question at least for purposes of trade facilitation, but this opportunity was not pursued.

How the large emerging economies – the BRICS, Indonesia, Turkey, etc. – decide to implement the TFA and effective delivery of aid for trade facilitation to low-income countries will be two key determinants of the success of the TFA. To maximize the development/real income impacts, the focus of attention must go beyond the TFA provisions narrowly defined, whether binding or best-endeavours, as the research literature and country experience makes very clear that lowering trade costs involves action on a broader front (e.g., logistics, transport service sector, etc.). This implies that much depends on the extent to which the process of implementation of the TFA will be integrated into national development trade strategies, and the extent to which the TFA Committee and the various facilities that are established to provide support take a broader perspective. If the TFA helps countries to focus on the broader trade facilitation agenda in the process of implementing the agreement, it can become an important focal point for deliberation and reform and add value to what development organizations are already doing. Even if this is not achieved, the TFA adds value by focusing attention on a number of areas where cooperation between countries will be beneficial (i.e., is a necessary condition for gains). If the TFA serves as a coordination device – between agencies within countries, across countries, and between providers of assistance – it will generate the greatest benefits for members. This is of course not assured by any means. The burden of coordination rests on the countries concerned, and depend on the ability of governments to identify priorities for action and how the various TFA provisions “fit” into the broader national (and regional) trade facilitation agenda.

Finally, negotiators were not just seeking to ensure that the TFA would be Pareto-improving in a self-balancing sense – i.e., ensuring that the substantive rules constituted good practices for trade development and that implementation constraints would be addressed. They were also concerned about the distribution of the overall gains from trade facilitation. An illustration of this was the argument that global value chains (GVCs) tend to be dominated by large “lead” firms that are headquartered in developed nations and that trade cost reductions will be mostly appropriated by these companies because they have market power and/or their suppliers are locked into dealing with specific lead firms (Mayer and Milberg, 2013). A key issue then is whether firms have market power and if it is used to extract rents. There is very little empirical evidence on this issue. Hoekman and Shepherd (2013) analyze available firm-level data for a large number of developing countries to assess the effects of observed changes in average trade time costs and find that firms of all sizes benefit from

improved trade facilitation – all firms export more in response to reductions in the time required to export goods. While suggestive, this does not address the question of how trade facilitation benefits are distributed, which requires information on profits (rents) as opposed to trade volumes. This is an area where more research would have been helpful.

6. Possible implications for cooperation looking forward

What does the TFA suggest for future rule-making in the WTO? Four aspects of the TFA experience appear particularly relevant to this question: (i) the feasibility/desirability of universal membership agreements as opposed to plurilateral cooperation; (ii) the balance between hard law and self-enforcing agreements versus “softer” forms of cooperation; (iii) linkages between the implementation of new rules and aid for trade; and (iv) the challenge of achieving “policy coherence” within governments, within the WTO and across the development community. These issues are all interrelated.

More universal membership, self-balancing agreements?

The TFA is noteworthy from a systemic perspective because it demonstrates that the WTO membership is capable of negotiating new rules of the game that apply to all countries *and* devising mechanisms to assist those members that need it to implement what all have agreed are good practices. This is an important precedent. There has been much discussion in the literature about the need for the institution to do a better job in recognizing the diversity across its membership *and* the need to do more to agree to rules of the game for policies that can generate negative international spillovers. Numerous voices have suggested that greater consideration be given to the pursuit of plurilateral cooperation under the umbrella of the WTO (e.g., Hoekman and Mavroidis, 2013). During the period when the DDA deadlock prevented movement on trade facilitation suggestions were made that a plurilateral agreement could be an alternative (e.g., Finger, 2008).

A plurilateral agreement might have allowed a “tighter” agreement to be concluded, with less in the way of best endeavours language. However, it may well be that much of what is best endeavours in the TFA would have stayed that way in a plurilateral as OECD nations do not see eye-to-eye on a number of provisions that ended being best endeavours – e.g., customs cooperation. It will be interesting in this regard to see what will be achieved in those areas in the TPP and TTIP. There is much to be said for having multilateral agreement on a set of good practices, even if many Members may take a significant length of time to implement them and many of these practices have a significant best endeavours dimension.

The real question is the extent to which WTO Members are willing to pursue Pareto-improving deals on a stand-alone basis. This is a question that affects both plurilaterals and efforts to conclude universally applicable agreements and is very much a function of both the feasibility of constructing a Pareto-enhancing deal and the willingness of countries to abstain from efforts to link agreement to areas that lie outside the ambit of whatever is the focus of a deal. The TFA illustrates that issue linkage incentives can be expected to be strong in the context of the WTO and may be a binding constraint on the pursuit and successful conclusion of stand-alone agreements. This constraint applies also to the plurilateral track. For example, a potential response to a continuing situation where the Indian government’s concerns regarding its ability to pursue its food stockpiling and distribution programs precludes adoption of the TFA would be for the majority of WTO Members to pursue the TFA on a plurilateral basis. However, making the TFA a formal Annex 4 plurilateral WTO agreement will require consensus, and it seems clear that no such consensus will obtain. As discussed at greater length in Hoekman and Mavroidis (2013) and Hoekman (2014), for plurilateral options to become more feasible in the WTO the consensus constraint needs to be addressed. If this cannot be done the result is

likely to be ever more preferential trade agreements and a greater focus to pursue issue-specific cooperation on areas such as trade facilitation *outside* the WTO framework.²²

Best endeavours commitments and the self-enforcing nature of WTO commitments

The TFA contains a mix of binding and best endeavours language. A simple count of best endeavours provisions (measured by the use of the word “should”) in related WTO agreements (on customs valuation and import licensing) makes clear that the TFA has about twice as many such provisions than these comparators. An implication is that there is less emphasis on “hard law” and more of a focus on cooperation aimed at achieving a set of good practices that all governments support. Examples are not just the emphasis on aid for trade facilitation (Category C provisions) but also the provisions for early warning/notification of problems; the use of an Expert Group to assess the situation in a Member once notified implementation periods have expired, and use of the TFA Committee as a forum for the exchange of experiences and deliberation. Clearly the DSU is (will be) applicable to all binding provisions over time, and some of the best endeavours provisions with conditional language such as “to the extent practicable” or “to the extent possible” may be enforceable in that a country could ask a panel to assess whether implementation by the country concerned has become practicable and possible. But it is clear that the TFA is an agreement with less of an emphasis on the standard mechanism to ensure compliance – it is much less of a self-enforcing agreement than is the case with other WTO agreements. One reason for this is that the standard remedy in cases of noncompliance – withdrawal of concessions – is not really available: why would a country throw rocks in its harbour in retaliation for noncompliance by another nation? Thus, implicitly, and to some extent explicitly, different channels are foreseen to sustain cooperation.

Assessing whether the rather large number of best-endeavours commitments and the linkages to aid for trade constitute an effective and efficient approach to improving policies and practices as opposed to a more straightforward set of binding disciplines is impossible *ex ante*. In some areas of regulation that generate trade costs and negative spillovers it may be impossible for governments to agree on hard (binding) cooperation. What is needed is agreement on principles and processes to foster greater communication and exchange of information, to identify redundant and duplicative procedures, and to work together in implementing new norms. The many best endeavour provisions in the TFA can be criticized as being non-enforceable, but in practice they may work more effectively than binding norms would do to lower trade costs for traders over time insofar as the TFA provides a focal point for domestic stakeholders to hold governments accountable for better trade facilitation outcomes.

²² In the case of the TFA it is difficult to adopt the agreement on a critical mass basis as there is no mechanism for Members that wish to do so to schedule their trade facilitation commitments. The only channel to do so is GATT XXVIII on Modification of Schedules. GATT schedules are primarily designed to list tariff and related product-specific commitments, not general non-tariff concessions of the type that are the focus of the TFA. In principle GATT XXVIII could be used to list such commitments but will require prior agreement on the modalities for doing so. The Accession Protocols that have been used for countries that joined the WTO after 1995 might offer a model for the modalities to make “additional commitments”. Matters are more straightforward under the GATS where Members may make “additional commitments” that are applied on a MFN basis (Art.XVIII GATS). If the efforts to adopt the TFA were to fail, another option would be to move it outside the WTO. One consequence would be losing access to the DSU. As the grace periods for disputes under the TFA are long this would not be an immediate constraint. In the longer term, other mechanisms exist that could be used by countries if they want to employ them as part of a non-WTO TFA – e.g., by bolstering the dispute resolution system of the WCO or by using the arbitration services of the International Centre for the Settlement of Investment Disputes (ICSID) under its “additional facility rules.” These provide for dispute settlement services in non-investment related matters. An advantage of such an approach is that it would offer the opportunity for the TFA to be amended to permit companies to raise non-implementation concerns.

The extent to which the TFA will help countries around the world improve the operation and governance of national border management systems and reduce uncertainty and trade costs for traders will depend on what countries decide to do – how long transitional implementation periods will last and the extent to which assistance is successful in helping developing countries to implement the agreement. Arguably most important is the extent to which the norms contained in the TFA are seen to benefit traders and consumers. The effectiveness of the transparency and surveillance mechanisms associated with the TFA – both domestic and in the WTO – are likely to be particularly important in helping to converge towards the norms that are incorporated in the TFA.

Linkages between policy commitments and aid for trade

Finger (2014) argues the TFA is a repeat of what negotiators have done in the past under the GATT/WTO: to create the appearance of legal obligations for developing countries but at the same time to avoid substantive disciplines. This is because the TFA's provisions are not made legally binding by developing countries accepting technical assistance and capacity building support. If developing countries obtain assistance but end up not complying with TFA provisions, there is no mechanism in the agreement to force governments to return the equivalent of the resources that were provided for implementation assistance. Conversely, if a country makes commitments conditional on receiving assistance, there is no mechanism to force developed countries to provide the required resources. While in such cases there is no threat of dispute settlement and enforcement, non-implementation implies no benefit from participating in the TFA.

These are important considerations and some of the provisions of the TFA suggest they were recognized by negotiators—e.g., having an Expert Group determine what would need to be done to permit implementation in instances where a developing country ends up notifying it cannot meet the timetable it has scheduled. As noted previously, a key feature of the TFA is that it establishes norms that all WTO Members agree make sense. Whether the approach that was adopted will work is an empirical question. The proof of the pudding will be in the eating—once the TFA is incorporated into the WTO we will learn whether such concerns are valid. Insofar as they are validated, it would prove the critics of embedding aid linkages in WTO agreements correct in that there are potentially serious opportunity costs associated with the approach that was taken. In practice there are no constraints on the availability of technical and financial support from the development agencies. Tapping those resources may involve borrowing, but as noted above the return on investment will be high. Not investing because of perceptions or the reality of donors not providing grants makes no sense from an economic development perspective. But the extent to which governments will actively sustain implementation of the norms that are embodied in the TFA will depend more on how effective the TFA-related institutional features – especially the domestic ones – will be in dealing with situations where vested interests resist trade facilitation.

Coherence

The extent to which aid for trade linkages will have a positive impact on trade facilitation outcomes in low-income economies will depend importantly on the degree to which the TFA will help domestic firms and traders pressure government agencies to implement its norms and principles. But it will also depend in part on the effectiveness of the assistance that provided, which in turn depends on the willingness and ability of the government to manage the donors. Here one worry is that the TFA will lead to a proliferation of development assistance facilities and greater coordination challenges for governments. The new TFA facility that will be established in the WTO implies one more development assistance fund under the WTO umbrella, adding to the already existing Enhanced Integrated Framework facility (for LDCs) and the Standards and Trade Development facility (STDF).

The WTO facilities are part of an increasingly crowded scene. There are already many funds and facilities that have been put in place by the international organizations and bilateral development programs.²³

Low income developing countries face a major problem in managing the plethora of donors and assistance providers given weak institutional capacity. In their Joint Statement (2014), the International Trade Centre (ITC), the OECD, the United Nations Economic Commission for Europe (representing the UN Regional Commissions), UNCTAD, the World Bank Group and the WCO committed themselves to coordinate their support to developing and transition economies in implementing the TFA, in close collaboration with the WTO and the donor community. How this coordination is to be achieved is not spelled out. It will not happen without putting in place institutional mechanisms that create incentives for the various providers to do so. Currently such incentives are quite weak. Note that the joint statement only involves a subset of the international agencies providing support – e.g., the regional development banks were not included. How the various national providers of funding and assistance will co-ordinate within their own governments the allocation of assistance so as to support their national trade policy objectives and their international trade commitments is another challenge. In practice, at the end of the day coherence will require developing country governments to determine their priorities and manage the complicated menu of options they are presented with.

The TFA deals with a rather narrow set of policies centred on border clearance processes and transit regimes. As discussed previously, the trade facilitation agenda goes far beyond the subjects dealt with by the TFA, which is constrained by the Doha ministerial mandate to issues captured by GATT Articles V, VIII and X. Other relevant GATT disciplines – for example, on customs valuation, pre-shipment inspection, import licensing, product standards – also have a direct bearing on the costs associated with getting goods into foreign markets. The same is true of the GATS – which offers the opportunity to make specific commitments on important logistics-related services such as transport, distribution, warehousing, etc. that research has shown often accounts for a major share of total trade costs confronting firms (e.g., Francois and Hoekman, 2010; Freund and Rocha, 2011). The TFA does not require governments to do anything to improve services-related policies that impact on trade costs. Indeed, a number of the policy areas that matter for trade facilitation are not on the WTO table at all – such as competition policy or restrictions on foreign investment in logistics, transport and distribution services. One message that consistently comes from the research literature on trade costs, competitiveness and trade facilitation is that a broad view of the trade facilitation agenda at the national, regional and multilateral levels is needed.

From this perspective a key question is whether the TFA will reduce the attention that is given by governments to the trade cost agenda broadly defined. The creation of national trade facilitation committees and the process of implementing the TFA may do so. In practice it will be inevitable that matters not covered by the TFA will arise in national deliberations and inform the design of trade facilitation projects. The extent to which such positive spillover effects will arise depends on the willingness of government agencies to look at the trade facilitation agenda more broadly. Here again this is primarily a domestic challenge. It does not help that there are so many different WTO

²³ Global programs include the EIF (WTO); the Trade Facilitation Facility (World Bank); the Trade Facilitation Support Program (World Bank) and the UNCTAD-ITC Partnership on Trade Facilitation. In addition there are many regionally-focused programs, e.g., the Trade Facilitation Programme (EBRD); the Africa Trade Fund (AfDB); TradeMark East Africa (DFID), the Support to West African Regional Integration Programme (DFID); the West Africa Customs Administration Modernization project (WCO), the South Asia Subregional Economic Cooperation Trade Facilitation Program (Asian Development Bank); and numerous bilateral trade support programs funded by donor agencies and the EU.

agreements that have a bearing on trade facilitation, with Committees serviced by different parts of the WTO Secretariat.

From the perspective of international business and consumers around the world, attention is needed within governments and in the WTO – and more generally in trade agreements – to address the potential “silo problem” that can lead to a focus on the trees instead of the forest. Fostering regular communication and interaction between the various committees dealing with different dimensions of trade facilitation can help governments to identify gaps and possible overlaps that are important from a trade cost reduction perspective. This could be addressed through periodic joint sessions of the various committees; by the TFA Committee considering matters with a direct bearing on trade facilitation that are covered in other agreements; and/or through complementary mechanisms that bring in the business community and take a ‘whole of the supply chain’ view of assessing progress made in facilitating trade, without regard to whether policies are covered by WTO agreements (Hoekman, 2014). A complementary mechanism to enhance coherence could be to expand the mandate of the Trade Policy Review Body to incorporate not just a focus on what countries are doing to implement the TFA but to include a whole of the supply chain assessment of prevailing policies in WTO Members, thereby helping governments to identify areas where there is the greatest potential to lower trade costs.

7. Conclusion

The TFA: milestone, mistake or mirage? Clearly only time will tell. The TFA is innovative for the WTO by encompassing a set of rules that apply to all WTO members while allowing for extensive differentiation in terms of timing of implementation and explicitly addressing developing country concerns regarding their ability to implement specific provisions. If more such agreements can be crafted the TFA would be a milestone by demonstrating that new rule-making need not be confined to preferential trade agreements. Numerous analysts have called for greater effort by policymakers to conclude plurilateral agreements under the WTO as a way of addressing the difficulty of crafting new policy disciplines that make sense for all 160 WTO Members. One reason for this is that it often will not be desirable to negotiate one-size-fit-all rules of the game on regulatory matters given the heterogeneity of the WTO’s membership.²⁴ But even where it is desirable, the first 20 years of the WTO have made many increasingly pessimistic about the prospects of negotiating agreements on rules among the membership as a whole. The Bali deal on the TFA proves the pessimists wrong.

While the TFA is a landmark for the WTO, it may not be a milestone in the sense of defining the shape of things to come. The difficulty in getting to yes on a subject that so unambiguously will improve welfare for all countries suggests the scope for WTO Members to agree on rules of the game for other policy areas may be quite limited, even if there is willingness to replicate the TFA-precedent of self-defined implementation periods. Other policy areas are likely to entail much greater variance in the distribution and incidence of costs and benefits of proposed rules and greater differences in the preferences of governments regarding the substance of new norms. If so, even if there is continued willingness by developed countries to provide implementation assistance, there will be more limited prospects of getting to yes on a stand-alone basis.

For proponents of active pursuit of trade facilitation initiatives and projects the trade facilitation negotiations were rather depressing. Why negotiate about actions that unambiguously promote economic welfare? Why insist on strong commitments by developed countries to provide assistance for implementing trade facilitation measures that are often low cost and have very high rates of return for the countries concerned? Why pay governments to remove rocks that they have themselves

²⁴ See Hoekman and Mavroidis (2013) for discussion and references to the literature.

dumped in their harbor? Development practitioners have a hard time justifying the convoluted deal that is the TFA, especially the aid for trade linkages. From a more conceptual perspective one can question whether an agreement that is not self-enforcing should be part of the WTO. Many would argue that this is an area where policymakers should figure out what make sense and then just do it, with assistance from the development community if needed, which is there to do just that and does not need any help from the WTO. As the social rates of return to trade facilitation are high, any resources needed for implementation are well spent. Those who take this view would argue that Section II of the TFA is a mistake.

These are all valid concerns, but it must also be recognized that the TFA does more than simply define a set of good practices that benefit the countries that adopt them no matter what their trading partners do. It also identifies areas where joint action will reduce trade costs – e.g., through cooperation between Customs in areas like information exchange and collaboration between border agencies. It creates a focal point for governments in an area that matters importantly from a trade cost reduction perspective, and offers an opportunity for businesses and traders to get governments to engage on trade facilitation more broadly, thus providing a mechanism to help address the reasons why governments have not been able to address trade facilitation domestically. How effective the institutional mechanisms associated with the TFA are in ensuring that trade facilitation gets more attention by governments and supporting the intra-government communication and coordination needed for identifying actions to reduce trade costs for firms will be an important factor.

Another important factor will be whether the TFA will help or hinder efforts by governments to coordinate the many suppliers of technical and financial assistance in this area. Both cross-country research and experience clearly reveals that trade facilitation as defined by the TFA is just part of the agenda. The large potential trade and welfare gains that are identified in the research literature require a focus on trade facilitation more broadly defined. This is the bread and butter of multilateral development banks, which have the capacity and mandate to take a more holistic approach that considers logistics, distribution and transport services and infrastructure in addition to the Customs and border management-related matters that are covered by the TFA. Realizing big gains from trade facilitation requires going beyond what is covered by the TFA. But also important is that within the narrower ambit of the TFA providers of assistance do not duplicate their activities and do more than talk the talk of coherence and adherence to the principle of comparative advantage. The potential for intra- and inter-agency turf tussles and empire building should never be underestimated – or the problems of the left hand not knowing what the right hand is doing. The proliferation of trade facilitation assistance facilities that have been announced by agencies and donors illustrates how difficult it is – and will be – to ensure greater coherence.²⁵

The TFA demonstrates both the potential for, and the challenge of, constructing Pareto-sanctioned agreements that address substantive policy matters and apply on a stand-alone basis. One reason it took 10+ years to negotiate the TFA is because a lot of learning was required regarding why trade facilitation matters for income growth and economic development, what constitutes good practices, and what kinds of disciplines would benefit all WTO Members. This learning took time, and occurred with the support and active engagement of an epistemic community comprising the international Customs community, trade facilitation practitioners in international development agencies and

²⁵ An example is offered by the World Bank, which announced a new trade facilitation support program in July 2014 when it already had a donor-funded trade facilitation assistance facility in place – with different donors involved in the two mechanisms, perhaps reflecting the unwillingness of donors contributing to the TFA specific fund to put resources into the already existing facility because it had a broader mandate in terms of the coverage of trade facilitation measures.

research analysts.²⁶ But this was not sufficient. The issue linkage that was required to get agreement in Bali puts into question the feasibility of (incentive to negotiate) stand-alone agreements in the WTO.

The TFA experience is particularly pertinent in this regard because the subject it addresses does not lend itself well to issue linkage dynamics. Trade facilitation predominantly benefits firms and consumers in the country that takes measures to lower trade costs. In contrast to tariffs or subsidies that benefit domestic industries and that can shift the terms of trade in a nation's favor, a neglect of trade facilitation simply raises costs for all industries, domestic as well as foreign. The absence of terms of trade effects should imply that the "linkage value" associated with withholding agreement on trade facilitation is limited—nobody should be willing to "pay" much (i.e., make concessions in other areas like agriculture) to get a deal done. Nonetheless, many developing countries tried to pursue issue linkage tactics in the trade facilitation talks because they wanted other things that mattered more to them. This is rational in the context of the mercantilist dynamics that drive WTO negotiations, but it was not very effective because of the 'win-win' nature of trade facilitation. This allowed the TFA to be negotiated as a stand-alone agreement. But the July 2014 decision by India reveals the strength of issue-linkage incentives and how these can result in the blocking of an agreement that all WTO Members regard as Pareto-improving.

Both the Indian decision in July 2014 and the efforts of a number of developing countries during the negotiations to link the TFA to other issues of importance to them suggests doubts whether the TFA will be the first of more stand-alone agreements in the WTO – assuming the Protocol is eventually adopted. The Indian action may induce other countries to pursue similar tactics in the future. Even the prospects of such behaviour may have a chilling effect on the willingness of governments to engage in efforts to negotiate stand-alone compacts. The end result may be to induce even more of a focus on regional/plurilateral cooperation on rule-making. Alternatively, it may lead WTO Members to go back to the drawing board and work on crafting a broad agenda that offers better prospects of a Single Undertaking to be negotiated than has been the case with the DDA—something that many analysts and commentators have been advocating for some time.²⁷

From the perspective of trade facilitation outcomes "on the ground" it may not matter too much whether the TFA becomes part of the WTO. Insofar as one takes the view that the primary value of the TFA is to provide a focal point at the country level for trade facilitation reforms, much of value of the TFA lies in the hard work of agreeing on a set of good practices and norms and the implementation mechanisms that the TFA calls for. The weakness of the TFA in terms of offering foreign export interests strong mechanisms to enforce its provisions and thus to make the TFA self-enforcing means other institutional arrangements can and must be used to support implementation, including regional integration arrangements and concerted action by multilateral development agencies. The epistemic community that supported the TFA effort does not need the WTO to continue to provide support to governments and stakeholders that aims to improve trade facilitation performance.

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²⁶ See Haas (1992) for a discussion of the role of epistemic communities can play in the process of designing international cooperation.

²⁷ See for example Evenett (2014) and Wolfe (2013).

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