

Neufeld, Nora

Working Paper

Implementing the Trade Facilitation Agreement: From vision to reality

WTO Staff Working Paper, No. ERSD-2016-14

Provided in Cooperation with:

World Trade Organization (WTO), Economic Research and Statistics Division, Geneva

Suggested Citation: Neufeld, Nora (2016) : Implementing the Trade Facilitation Agreement: From vision to reality, WTO Staff Working Paper, No. ERSD-2016-14, World Trade Organization (WTO), Geneva,
<https://doi.org/10.30875/b4710f9c-en>

This Version is available at:

<https://hdl.handle.net/10419/146915>

Standard-Nutzungsbedingungen:

Die Dokumente auf EconStor dürfen zu eigenen wissenschaftlichen Zwecken und zum Privatgebrauch gespeichert und kopiert werden.

Sie dürfen die Dokumente nicht für öffentliche oder kommerzielle Zwecke vervielfältigen, öffentlich ausstellen, öffentlich zugänglich machen, vertreiben oder anderweitig nutzen.

Sofern die Verfasser die Dokumente unter Open-Content-Lizenzen (insbesondere CC-Lizenzen) zur Verfügung gestellt haben sollten, gelten abweichend von diesen Nutzungsbedingungen die in der dort genannten Lizenz gewährten Nutzungsrechte.

Terms of use:

Documents in EconStor may be saved and copied for your personal and scholarly purposes.

You are not to copy documents for public or commercial purposes, to exhibit the documents publicly, to make them publicly available on the internet, or to distribute or otherwise use the documents in public.

If the documents have been made available under an Open Content Licence (especially Creative Commons Licences), you may exercise further usage rights as specified in the indicated licence.

World Trade Organization

Economic Research and Statistics Division

**Implementing the Trade Facilitation Agreement:
From Vision to Reality**

Nora Neufeld

Manuscript date: September 2016

Disclaimer: This is a working paper, and hence it represents research in progress. The opinions expressed in this paper are those of its authors. They are not intended to represent the positions or opinions of the WTO or its members and are without prejudice to members' rights and obligations under the WTO. Any errors are attributable to the authors.

Implementing the Trade Facilitation Agreement:

From Vision to Reality

Nora Neufeld¹

Abstract

After a decade of negotiations and additional preparatory work, the WTO Trade Facilitation Agreement (TFA) is poised to enter into force. It promises to streamline and substantially prune the red tape that all too often slows and impedes international commerce - thereby significantly reducing both cost and time needed to do business across borders.

The paper chronicles the path from the conclusion of the talks at the 2013 Bali Ministerial Conference to the present day as we prepare for the Agreement to take effect. It reviews the state of the ratification process, analyses implementation schedules and outlines work still to be done. The study shows that the emerging application of the TFA, like its negotiation, has once again confounded the sceptics - who first doubted that a TF Agreement would see the light of day and then questioned if it would ever be put into practice. While plenty remains to be done to implement the TFA across the full WTO membership, its entry into force is set to happen - a valedictory moment.

Keywords, JEL classification references:

Trade Facilitation Agreement, TFA, trade facilitation negotiations, category A, B and C notifications, ratification, entry into force, WTO Agreement, amendment protocol, Bali Ministerial Conference.

¹ The views expressed in this paper are those of the author alone and do not necessarily reflect the positions of the World Trade Organization. The author would like to thank Suja Rishikesh-Mavroidis, Roy Santana, Michael Roberts, Ben Czapnik and Mario Apostolov for very useful comments and suggestions. Special thanks are further due to María Alvarez de Cozar, who prepared virtually all of the charts and runs the underlying database. Paulette Planchette was so kind to take care of the formatting and editing of the paper.

I. WHERE NO AGREEMENT HAS GONE BEFORE: FROM BALI OVER THE POST-BALI MANDATE AND BEYOND

Great Expectations

The conclusion of the Trade Facilitation negotiations in December 2013 marked a milestone for world-wide efforts to cut back on needless red tape in international trade. Defying many sceptics, WTO Members were able to agree on a multilateral Agreement to expedite the movement, release and clearance of goods. The Bali Ministerial not only completed a decade-long undertaking, but also set the stage for implementing the results.

The expectations were – and continue to be – high. The new Trade Facilitation Agreement was hailed as a breakthrough for global facilitation reforms and is predicted to generate substantial economic and welfare gains. Trade transaction costs are expected to fall by up to 15 per cent² – a WTO study³ even estimates that the TFA will have a bigger impact on trade cost reduction than the elimination of all remaining tariffs around the globe.

The challenges on the road to effectively reaping those benefits were considerable as well. The long duration of the negotiations – they took almost ten years to conclude – gave rise to worries that the hard-fought agreement might never come to fruition. The draft TFA text had over 2000 brackets at some stage⁴ – WTO code for open issues that had to be resolved. Concerns were also expressed with respect to the prospects of swiftly enacting the Accord. The novel architecture of the Agreement with its multiphase implementation process was feared to result in obstacles and delays.

The paper seeks to examine the actual situation as it is unfolding. It chronicles the commitment notifications that are currently being presented by WTO Members and analyses the likely impact of the implementation map they collectively form. The study also outlines the next steps on the path towards full implementation of the TFA.

First milestones

Bali had set out a road map for TFA implementation and created the required institutional framework to oversee this process. Ministers established a Preparatory Committee (PrepCom) to “ensure the expeditious entry into force of the Agreement and to prepare for [its] ... efficient operation...”. Specific tasks included (i) the conduct of a legal review of the treaty language adopted in Bali,⁵ (ii) the receipt of commitments developing and least-developed countries designated for immediate⁶ implementation (the so-called “category A notifications”) and (iii) the drawing up of a protocol to insert the TFA into the existing WTO legal framework.⁷

Spurred by the momentum generated in Bali, Members were able to quickly accomplish the first task. The legal review of the treaty language was completed in a little over four months. PrepCom Chair Esteban Conejos was able to present the final English text in May 2014, followed by French

² The precise estimates are 14.5 per cent reduction of total trade costs for low income countries, 15.5 per cent for lower middle income ones and 13.2 per cent for upper middle income countries. OECD, Trade Policy Working Paper, no. 144, 2013. This was confirmed by the WTO’s 2015 World Trade Report, which found a reduction potential of 14.3 per cent.

³ WTO, World Trade Report 2015.

⁴ The fourth iteration of the draft Agreement showed 2161 sets of square brackets.

⁵ Such a review was especially important in light of the fact that negotiators had been under huge time pressure when finalizing their textual work in the run-up to the Bali Ministerial.

⁶ Immediate in the sense of the moment the Trade Facilitation Agreement enters into force.

⁷ “In particular, the Preparatory Committee shall conduct the legal review of the Agreement referred to in paragraph 1 above, receive notifications of Category A commitments, and draw up a Protocol of Amendment (the “Protocol”) to insert the Agreement into Annex 1A of the WTO Agreement” (Bali Ministerial Decision on Trade Facilitation, WT/MIN(13)/36, paragraph 2).

and Spanish versions two months afterwards.⁸ The speed with which the exercise was completed came as a surprise to most observers and participants. Mindful of how long it had taken to agree on provisions in the Negotiating Group - some points had required years to resolve - many expected the legal scrub to trigger lengthy debates. It might, however, have been precisely this experience that created a sense of focus and urgency. There was a widespread concern among delegations that any re-opening of the painstakingly negotiated language could disrupt the delicate balance they had fought so hard to achieve. This had already led to the review mandate being rather limited in scope. Ministers merely commissioned "*rectifications of a purely formal character that do not affect the substance of the Agreement.*"⁹ Members' practical interpretation of these terms was even more guarded. Mere corrections of recognized shortcomings were already likened to opening a Pandora's box and unable to generate consensus. It became clear that Members would rather live with an imperfect text than risk the unbundling of a carefully negotiated balance. Accepted changes were therefore largely limited to formatting issues (such as modifications of article numberings and of case sensitivities) and minor corrections in title headings, often to fix oversights or grammatical mistakes.¹⁰

Progress was also made on the notifications front. The first category A submission¹¹ was presented only a few weeks into the PrepCom's work. This was followed quickly by a wave of additional notifications over subsequent months.

... and reality checks

The third task - the drawing up of a so called "amendment protocol"¹² - turned out to be the most challenging one. The Bali timeline for its completion (no later than 31 July 2014) was missed, largely due to a political deadlock that had only a peripheral link to the Trade Facilitation Agreement. Much had to do with unsolved issues in other Doha Round debates, and it required a solution to the impasse for the TF track to become unblocked again. This took a few months to achieve. On 27 November 2014, Members were finally able to adopt the Trade Facilitation protocol in the General Council.¹³

Its terms were straightforward and resemble the language used for the TRIPS amendment protocol.¹⁴ The TFA is to be inserted into the existing legal framework - as part of the Marrakesh Agreement Establishing the World Trade Organization (WTO). Members are invited to complete

⁸ The final text in all official WTO languages was formally adopted in the Preparatory Committee on 10 July and circulated as document WT/L/931.

⁹ WT/MIN(13)/36, paragraph 2.

¹⁰ Article 4, for instance, which had carried the title "Appeal or Review Procedures" was re-named to read "Procedures for Appeal or Review". The heading of Article 9 was changed from "Movement of Goods under Customs Control Intended for Import" to "Movement of Goods Intended for Import under Customs Control", to give another example. Changes in the numbering consisted of modifications like the one done to Article 11, where provisions initially listed as 11:11.1 - 11:11.5 were re-enumerated to figure as 11:11 to 11:15 (without changing the content). The Spanish and French versions were subjected to additional changes, equally of a non-substantive character. See, for instance, the reference to "gestión de riesgo" in article 7:4 of the Spanish text which replaced the earlier "gestión del riesgo" (emphasis added), or the use of "Alternativamente" in place of "Como alternativa" (article 7:7:1). Examples of the modifications in the French version include the use of "pour l'importation" instead of "aux fins de l'importation" in article 5:3:1 or a change in word order in article 5:2 ("Un Membre informera dans le moindres délais le transporteur ou l'importateur" instead of ("Un Membre informera le transporteur ou l'importateur dans les moindres délais". The most visible change in all three languages was the creation of a new section III, which became the new home for some provisions previously listed in other places of the Agreement (without changing the substantive content).

¹¹ It originated from Hong Kong, China. For more details on the subsequent ones, see table 2.

¹² The Bali Ministerial decision referred to a *Protocol of Amendment (the "Protocol") to Insert the Agreement into Annex 1A of the WTO Agreement* (Bali Ministerial Decision on Trade Facilitation, WT/MIN(13)/36, paragraph 2).

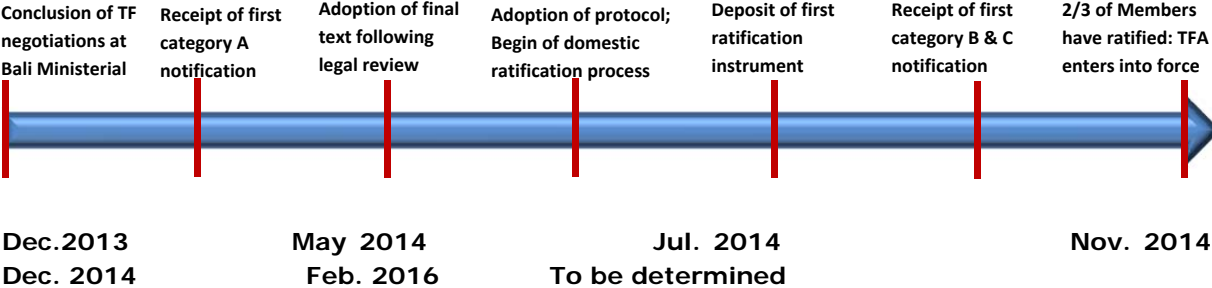
¹³ The final text was adopted by the General Council and circulated as document WT/L/940.

¹⁴ WT/L/641 of 8 December 2005.

their acceptance procedures without being given a deadline¹⁵ – and with no room for reservations.¹⁶ It was further decided for the protocol to enter into force in accordance with Article X:3 of the WTOA – which set a threshold of acceptance by two thirds of the Membership for the TFA to become operational.¹⁷

The adoption of the protocol cleared the way for the domestic ratification process to begin.¹⁸ Members were now able to formalize their willingness to be bound by the new Agreement, and soon the first acceptance instruments started to come in.

Chart 1: Milestones on the road to entry into force



Countdown to entry into force

The first deposit took place less than two weeks after the General Council had taken its decision. Hong Kong China needed only 11 days to table its acceptance instrument (presented on 8 December 2014). It was quickly followed by Singapore, the United States and Mauritius - the earliest African WTO Member to ratify the TFA. Malaysia, Japan, Australia and Botswana followed a few weeks later. Together with Trinidad and Tobago and Republic of Korea, they were among the first ten WTO Members to have completed their ratification process (see table 1 in the annex). Ratifications started to increase during the months that followed, reaching a first peak in October 2015 when the European Union deposited for itself and its member states. A second, somewhat less pronounced, surge was recorded in the run-up to the Nairobi Ministerial Conference, which several WTO Members wanted to use as an occasion to present their instrument (for details, see chart 2). The ratification flow then continued at a steady pace of an average of 3-4 deposits per month.

As of 27 September 2016, a total of 94 acceptance instruments were deposited, counting for 85 per cent of the ratifications required for the Trade Facilitation Agreement to enter into force. This is all the more impressive when compared to the lengthy time it usually takes for comparable multilateral treaties to become effective. Seven years were needed, for instance, for the Revised Kyoto Convention to obtain the necessary ratifications - and this despite a much lower threshold

¹⁵ An earlier approach of setting a timeframe (the Bali Ministerial decision had envisaged the protocol to be adopted no later than 31 July 2014 and left open for acceptance until 31 July 2015) was not maintained in the final agreement.

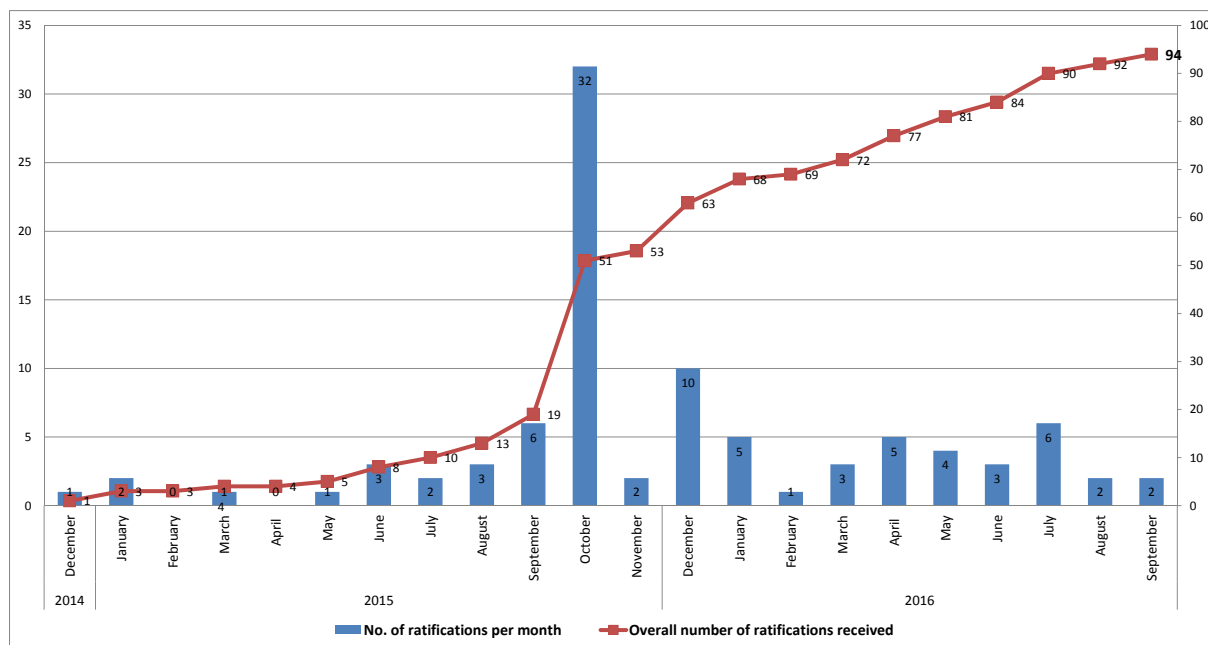
¹⁶ Reservations could only be entered into with the consent of the other Members – which the discussions in the Preparatory Committee clearly showed to be a highly improbable scenario.

¹⁷ According to the Bali Ministerial decision, “*The Protocol shall enter into force in accordance with Article X:3 of the WTO Agreement*”. (WT/Min(13)/36, paragraph 3.) Article X:3 of the Marrakesh Agreement holds that it “*shall take effect for the Members that have accepted them upon acceptance by two thirds of the Members and thereafter for each other Member upon acceptance by it.*”

¹⁸ This also shifted the focus from Geneva to capitals, where most of the ratification work has to be carried out.

level of merely 40 valid instruments. An amendment to the WTO TRIPS Agreement is yet to receive the required support – almost 11 years after Members were given the opportunity to accept it.¹⁹

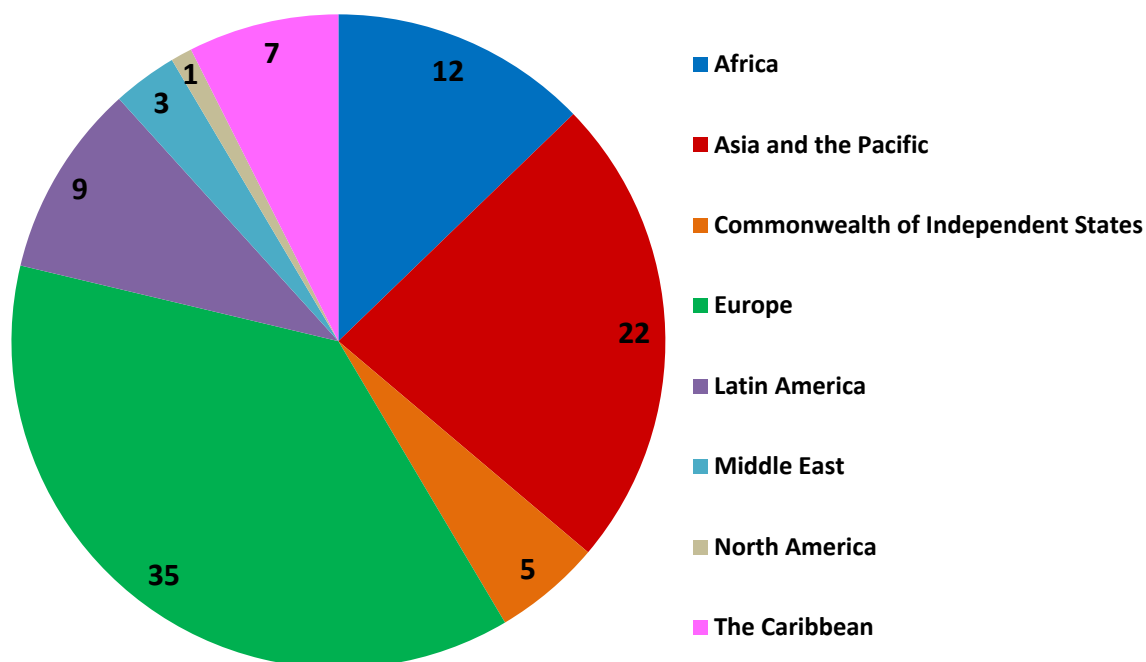
Chart 2: Ratification instruments received (up until end of September 2016)



Broken down by region, one finds Europe topping the ratification list with a total of 35 deposited instruments. It is followed by Asia and the Pacific (22 valid deposits) and Africa (12 instruments). Latin American currently holds the fourth place with nine completed ratifications – two more than the Caribbean with seven registered deposits. Five instruments originate from the Commonwealth of Independent States (CIS), 3 from the Middle East. North America (not counting Mexico, which is reflected as part of the Latin American region) so far only submitted a single instrument.

¹⁹ The TFA ratification process has revived momentum on this process too. It is now expected that the necessary number instruments will be reached very soon.

Chart 3: Regional breakdown of ratifications (deposits of acceptance instruments)



Additional ratifications from all regions are expected to be notified over the weeks and months to come. Many Members have launched their respective legal processes and are at various stages of advancement. Both domestic and international procedures need to be complied with. As far as the national component is concerned, individual requirements vary considerably. Many foresee a dual involvement of legislative and executive.²⁰ Often, ratification is primarily an executive act, but also requires approval by parliament. Some countries recognize the concurrent right of executive and legislative branches to introduce international treaties for ratification in parliament.²¹ Others require only the authorization by the head of state or government.²² A small number of countries have additional requirements, such as a mandatory waiting period to allow for a possible public referendum.²³ The situation is also special for members of the European Union. Approval by the European Parliament was followed by a positive decision by the Council. Only then could the European Union notify acceptance on behalf of the Union and its 28 member states.

Challenges encountered in the respective processes were discussed in the Preparatory Committee where Members shared their experiences. The complexities of multi-stakeholder involvement, parliamentary schedules already heavy with ongoing business, and the political nature of certain steps were among the circumstances most frequently cited as possible complications. Delegations also reported competing domestic priorities and the need for (sometimes time consuming) internal reviews.

²⁰ This is, for instance, the case for many Latin American (such as Bolivia, Chile, Colombia, Costa Rica or El Salvador) and most African countries (examples include Benin, Cap Verde, Cameroon, Chad, Congo, Cote d'Ivoire, Djibouti, the Gambia, Ghana, Guatemala, Guinea, Guinea-Bissau, Honduras, Madagascar, Malawi, Mauritania, Namibia, Nicaragua, Niger, Mozambique, Paraguay, Rwanda, Senegal, South Africa, Swaziland, Togo, Tanzania, Tunisia, and Zimbabwe. Some of those countries (such as Togo), further have expedited processes for pressing cases.

²¹ Most bills get proposed by governments whose parties enjoy majoritarian parliamentary support.

²² In Angola, Botswana, Kenya, Lesotho, Sierra Leone, Swaziland, Uganda and Zambia, for instance, ratification is an executive competence.

²³ Switzerland represents such a case. Parliamentary approval needs to be followed by a compulsory 90-day waiting period – during which a public referendum could be requested - before the government is able to express its consent.

In addition to the requirements of the domestic ratification procedures, Members needed time to comply with the last step of the overall process: the deposit of an acceptance instrument. Unlike the preceding stage, this represented a common, uniform act to be taken by all delegations, irrespective of the variations in their national procedures. According to Article X:7 of the Marrakesh Agreement which governs this process, acceptance is to take place by depositing a valid, legal instrument with the Director-General of the WTO.

Despite being designed as a relatively straightforward process – the instrument must essentially give clear and unambiguous expression of the relevant Member's intention and consent to be bound by the Protocol – it soon emerged that several submissions had to be revised in order to comply. A key source of misunderstanding is the fact that it is not the Trade Facilitation Agreement per se that needed to be accepted,²⁴ but the amendment protocol enabling its integration into the existing WTO legal framework. The fact that the text of the Bali Agreement had been modified as a result of the subsequent legal review did not make it easier. Challenges also resulted from requirements regarding dates, signatures and eligible signatories.²⁵

Fortunately, most of the shortcomings could be addressed relatively quickly and with limited effort. Over time, mistakes also became less frequent, highlighting countries' growing familiarity with the TFA and auguring well for its rapid and comprehensive entry into force.

Category A notifications

A second indicator of Members' engagement are the category A notifications. Together with the number of acceptance instruments, they represent an important 'leading indicator' of when we can expect the TFA to take effect.

The introduction of the category concept is a result of the requirements of the TF negotiating mandate.²⁶ Paragraph 2 had demanded that "*the extent and the timing of entering into commitments shall be related to the implementation capacities of developing and least-developed Members.*" Delegations decided to translate this concept into concrete action by offering the possibility of scheduling the TFA disciplines into three different groups with corresponding implementation flexibilities. Category A was meant to play a special role. Comprising those commitments a developing or least-developed Member designated for immediate implementation (as of the Agreement's entry into force), category A was designed to indicate which provisions will be given priority treatment in terms of when they will be applied on the ground.

Since Members' scheduling of commitments frequently takes place in parallel with their ratification of the Agreement, the submission of a category A notification often also signaled advancements on the ratification front. An analysis of the early category A notifiers shows that many of them were amongst the first to deposit their acceptance instruments as well.²⁷ Almost half (47 per cent) of the Members on the top 15 category A list (see table 2) were also amongst the first 15 developing/LDC Members to have ratified.²⁸

²⁴ I.e. the treaty language agreed upon by Ministers at the 2013 Bali Ministerial Conference.

²⁵ For details, see https://www.wto.org/english/tratop_e/tradfa_e/tradfa_agreement_e.htm.

²⁶ It is set out in Annex D of the General Council decision of 1 August 2004, issued in document WT/L/579.

²⁷ All information on category A, B and C notifications is based on Members' submissions (issued in a WTO document series with the number WT/PCTF/N/(...)). They can also be analysed through the WTO TFA database (www.wtotfadb.org)

²⁸ Ratifications by developed countries had to be excluded for the comparison since they are not entitled to submit a category notification.

Table 2: First WTO Members to have submitted a category A notification (top 15)
Bold font marks Members who were also among the first 15 developing countries to have ratified

<i>Number</i>	<i>Member</i>
1.	Hong Kong, China
2.	Mexico
3.	Costa Rica
4.	Rep. of Korea
5.	Colombia
6.	Singapore
7.	Chinese Taipei
8.	Paraguay
9.	China
10.	Nicaragua
11.	Mauritius
12.	Turkey
13.	Honduras
14.	Saudi Arabia
15.	Malaysia

An analysis of the category A submission timeline shows an early peak in July 2014. Apart from the momentum generated by the successful conclusion of the TF talks, this was largely the result of the Bali decision that "*The General Council shall meet no later than 31 July 2014 to annex to the Agreement notifications of Category A commitments ...*".²⁹ Several Members (mis)understood this to imply an end-of-July 2014 deadline for submitting those notifications and rushed to hand them in.³⁰ Input subsequently continued at a more moderate pace of an average of 2 notifications per month. As of 27 September 2016, 87 category A submissions have been received, bringing the number close to the overall A notifications likely to come in.³¹

In addition to foreshadowing when the TFA is likely to enter into force, the category A notifications are also a key component of the Agreement's implementation map since they indicate which provisions will be applied by which Member from the moment the Agreement takes effect.³²

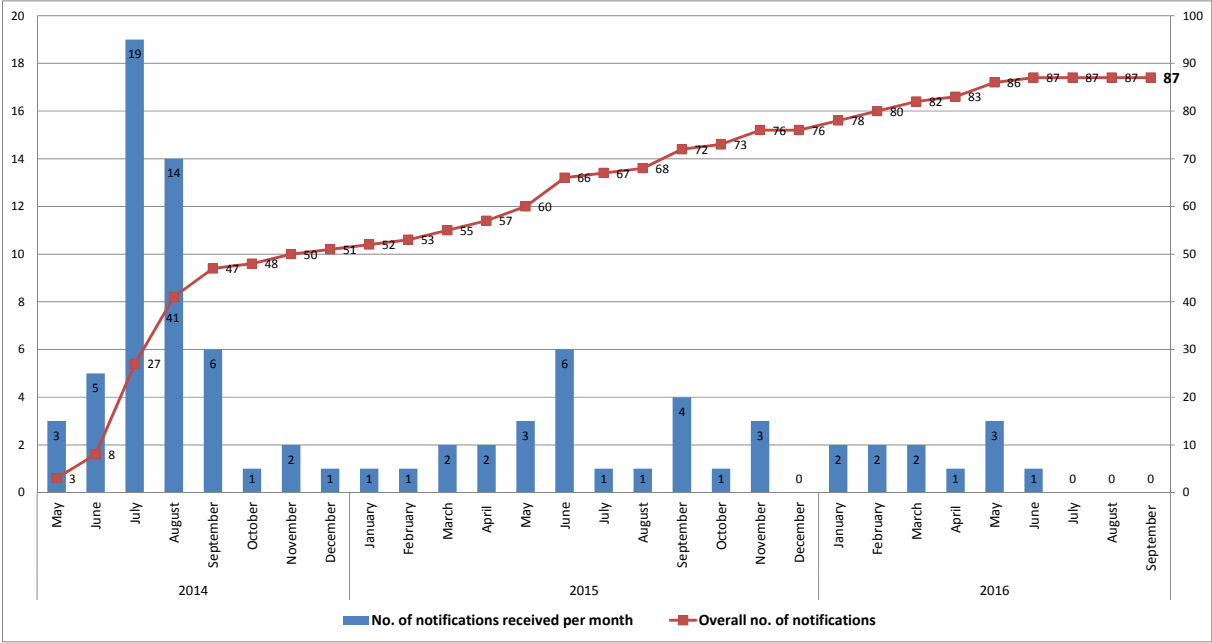
²⁹ Ministerial decision of 7 December 2013, WT/MIN(13)/36, paragraph 3.

³⁰ The actual deadline for presenting category A notifications was set to coincide with the day the Agreement enters into force. The TFA provides for an additional year for LDCs to submit their category A designations after legal entry into force.

³¹ A precise determination of the overall number is difficult to make due to there not being an official WTO list of developing countries. Many LDCs are expected to notify at a later stage since they were given additional time.

³² The flexibility is limited to determining the time of implementation (and, in the case of category C commitments, of required assistance and capacity building support.) There is no opt-out from any disciplines as such. All Members have to implement the entire Agreement, at the end of the day.

Chart 4: Timeline of category A notifications received (up until end of September 2016)



Source: Calculations based on the WTO notification database.

Implementation roadmap

This indicator function constitutes an important feature of the notifications and the TFA's implementation architecture overall. When negotiating the treaty, many Members had stressed the need for such information – ideally ahead of the Agreement's entry into force. Without such prior knowledge, they argued, they could not be expected to specify the commitments they would be prepared to undertake on their side. A balance had to be found between delegations seeking this information and others wishing to delay the determination of their engagements until they had more clarity on related issues such as available resources and other support. There was also considerable interest in assessing the implementation commitments of key trading partners on all sides.

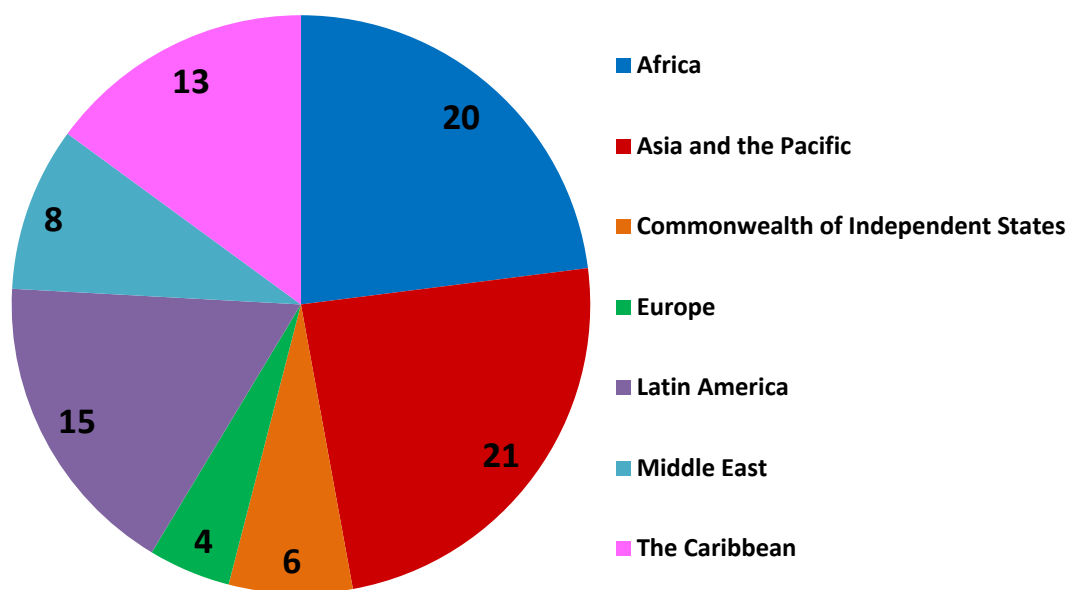
The solution that was ultimately agreed encouraged Members to present an early category A notification without legally obliging them to do so prior to the Agreement's entry into force. Many followed this invitation and submitted their input ahead of the deadline, including LDCs (even though the TFA provides them with additional time to notify).

Category A notifications

When drafting their notifications, developing Members chose three ways of presenting their input: the majority opted for a positive listing approach, referencing the provisions they considered ready for implementation as of entry into force. A smaller number preferred to submit a negative list, enumerating the provisions they did not wish to designate for immediate implementation ("all articles of the TFA except..."). This approach was usually chosen by Members which considered themselves ready to apply almost the entire Trade Facilitation Agreement as of the moment it enters into force (see, for example, the notifications by Brazil, Chile, China, Colombia, Malaysia, Turkey or Saudi Arabia). Six other Members – Hong Kong, China; Mexico, Republic of Korea, Singapore, Chinese Taipei and Israel – designated the entire Agreement as falling under category A, thereby committing to implement it like their developed partners, who are obliged to apply all provisions of the TFA from day one.³³

An origin analysis per region shows that most category A notifications come from the Asia and the Pacific (21 submissions), closely followed by Africa (20). A considerable number of input was also received from the Latin American region (15) and the Caribbean (13). Eight notifications originate from the Middle East and six were presented from CIS Members. Europe holds the last place with 4 registered category A notifications.³⁴

Chart 5: regional breakdown of category A notifications



Source: Calculations based on the WTO TFA notification database (TFAND).

Broken down by level of development, one finds the overwhelming majority of category A notifications to originate from developing countries.³⁵ Little more than 10 per cent (12) were submitted by LDCs. Given the deadlines stipulated by the TFA, this hardly comes as a surprise, since only developing Members are required to present their input by the time the Agreement enters into force. LDCs were given an additional year. The fact that several of them (11 as of 27

³³ In doing so, they preserved their right to seek implementation flexibilities under section II of the TFA.

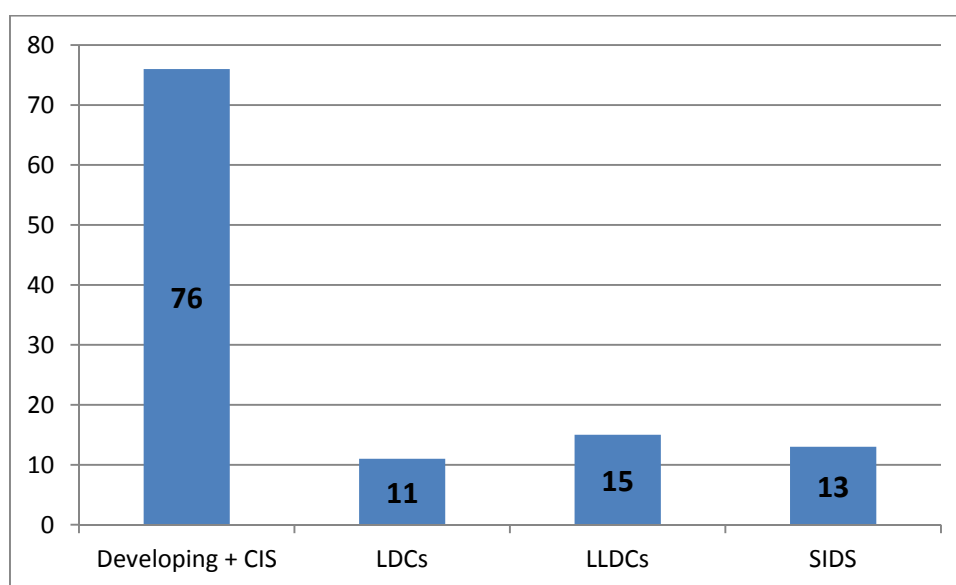
³⁴ With Mexico counted as forming part of Latin America, there is no North American country that would be eligible to notify – and hence no statistical reference to that region.

³⁵ This includes notifications from the Commonwealth of Independent States.

September 2016) nevertheless decided to already hand in their category A notification is therefore a particularly positive sign.

Landlocked developing countries (LLDCs) are also well represented in the group of WTO Members which have already submitted their A commitments. Almost half of them (15 out of the 32 existing LLDCs³⁶) have already submitted their A notification. A considerable number of inputs have also been received by small island developing states (SIDS), underlining the significance these Members attach to TF reforms.

Chart 6: Category A notifications by selected development groups



Source: Calculations based on the WTO's notifications database. Please note that Members can belong to more than one group.

A content analysis shows fairly high rates of promised early compliance. Of the approximately 36 notifiable measures (many of the 12 relevant TFA articles have sub-segments that can be notified separately),³⁷ 28 (i.e., almost 80 per cent) received immediate implementation pledges by over 50 per cent of eligible Members.³⁸ More than 70 per cent of them designated a quarter of all measures as belonging to category A. Almost 95 per cent of the Agreement's TF reforms received category A designations by over 40 per cent of Members. Only one measure was given an A listing in less than 30 per cent of all notifications. It relates to the establishment of a Single Window and is widely considered to represent the most resource intensive of the 'package' of trade facilitation reforms.

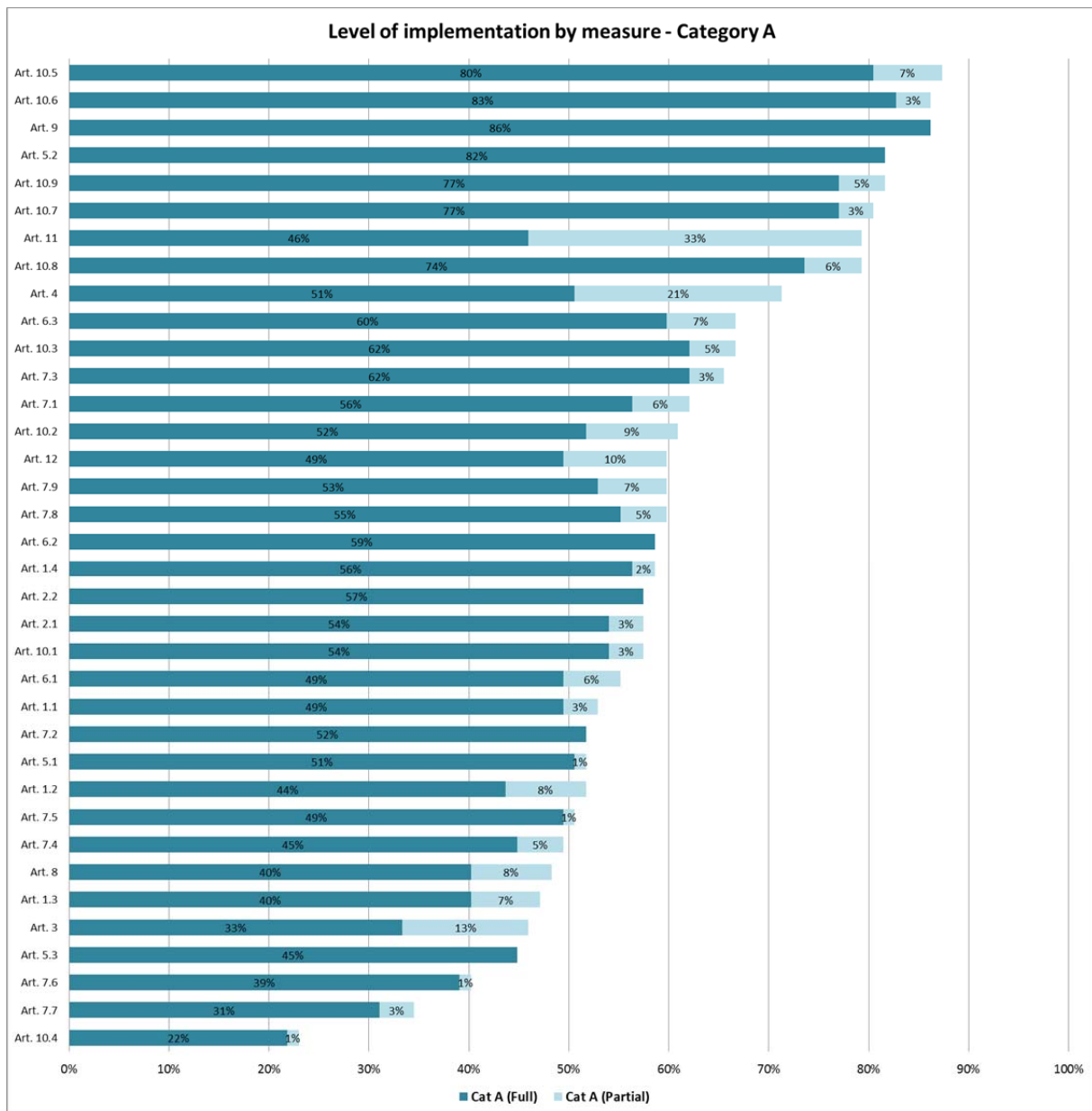
When considering that these developing country pledges will be complemented by the full and immediate implementation of the Agreement by the entire developed world, one can see that large parts of the TFA are going to be effectively applied from the moment it enters into force.

³⁶ LDCs are included in the LLDC group.

³⁷ For the purpose of their notifications, Members are allowed to break down the Agreement's articles into as many sub-sections as they like. Most delegations did, however, limit their specification to full articles and clearly marked subsections thereof, largely corresponding to the 36 measures identified for the purposes of the current analysis. This was also the approach used for assessing Members' TFA-related needs in the framework of a large WTO programme executed in cooperation with other organisations and support from various WTO Members.

³⁸ Members were given the opportunity to break down the notified measures into sub-elements, allowing them to designate certain parts as category A commitments while classifying others as belonging to categories B or C. Most of them preferred to keep their categorizations to entire measures or even whole articles, but a few opted to make use of the additional breakdown opportunity. This is reflected in the "full" and "partial" qualifications of the chart's results.

Chart 7: Category A commitments per article (overall)



Source: Calculations based on the WTO notification database.

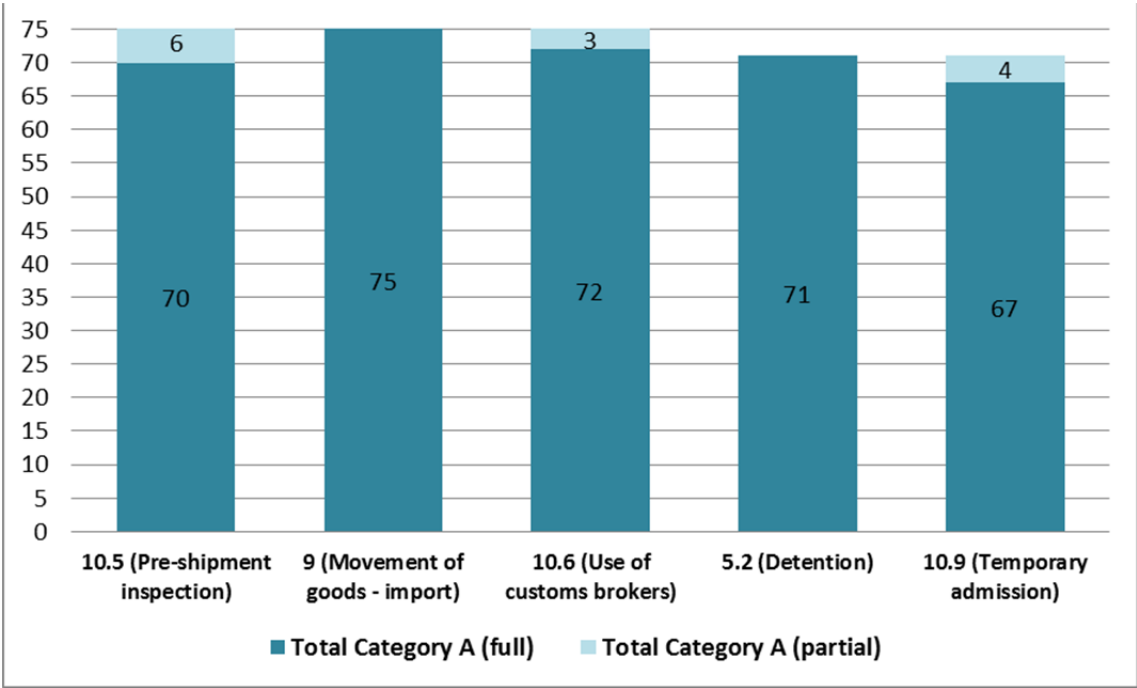
An analysis of the most frequently notified TFA measures shows a series of rather specific provisions topping the list. The Agreement's call not to use Preshipment inspection (PSI) for certain activities (article 10.5) takes first place.³⁹ With only a few Members still using PSI, this appears to have been a relatively easy commitment to make. A similar observation could be made with respect to the second-ranked provision – article 10.6. The ban on the introduction of the mandatory use of customs brokers was arguably a measure Members also found relatively simple to implement since it too did not require many changes from their current status quo policies. Article 9 has just as many category A designations. It requires WTO Members to allow for the movement of goods intended for import under customs control, and has a fairly narrowly defined scope of application. Articles 5.2 (detention⁴⁰) and 10.9 (temporary admission of goods and inward and outward processing) share the fourth rank. They, too, are quite specific in what they seek to

³⁹ This is mainly a reflection of the fact that few Members still use preshipment inspection at all.

⁴⁰ The provision requires each WTO Member to "promptly inform the carrier or importer in case of detention of goods declared for importation, for inspection by customs or any other competent authority."

address. It is only with the subsequent placements that the scope of the measures becomes somewhat broader. Article 10.7 (6th position) calls on each WTO Member to apply common customs procedures and uniform documentation requirements for the release and clearance of goods throughout its territory. It is followed by articles 10.8 (re-consignment/return of rejected goods⁴¹) and 11, setting out a series of measures to improve free transit of goods. Articles 4 (procedures for appeal or review), 6.3 (penalty disciplines) and 10.3 (use of international standards) also make it into the top 10.

Chart 8: Most frequently notified TFA provisions (category A)



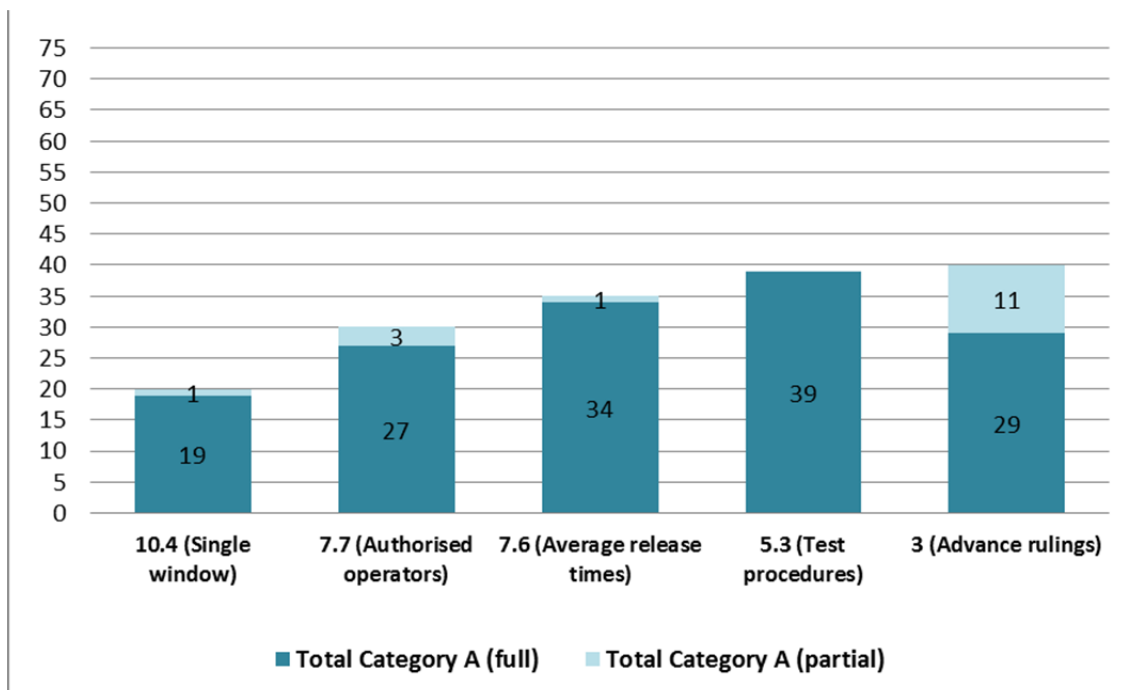
Looking at the opposite end of the list, one finds article 10.4 (Single Window) to be the least frequently notified category A measure (for reasons already suggested). It is followed by the Agreement's call to provide additional trade facilitation measures for authorized operators (article 7.7), which received only 27 full and three partial category A designations. The third least frequently notified A measure is article 7.6. It encourages the measurement and publication of average release time of goods. Articles 5.3 (test procedures⁴²) and 3 (advance rulings) round up the bottom five list. The relative low frequency of their category A designations should, however, not distract from the fact that even those measures have fairly high commitment rates, as already mentioned earlier⁴³.

⁴¹ The article states that "Where goods presented for import are rejected by the competent authority of a Member on account of their failure to meet prescribed sanitary or phytosanitary regulations or technical regulations, the Member shall, subject to and consistent with its laws and regulations, allow the importer to re-consign or to return the rejected goods to the exporter or another person designated by the exporter."

⁴² The provision forms part of an article dealing with examinations of controls or inspections at the border in respect of certain goods (foods, beverages, or feedstuffs covered under the notification or guidance for protecting human, animal, or plant life or health). It holds that: "A Member may, upon request, grant an opportunity for a second test in case the first test result of a sample taken upon arrival of goods declared for importation shows an adverse finding."

⁴³ An additional trend one can observe is a tendency for certain measures to be linked. For more on that, see UNCTAD, DTL/TLB/2016/1, Geneva, 2016.

Chart 9: Least frequently notified TFA provisions (category A)



Most of the TFA's measures were designated as category A commitments in their entirety. Only a few – such as articles 3 (advance rulings), 4 (procedures for appeal or review) and 11 (freedom of transit) – received more than occasional "partial" designations. In these instances, one frequently finds a correlation with the length of the respective provision, and the absence of sub-headings (which form the basis of the 36 measures identified for the purposes of the analysis). Article 11, for example, consists of 17 paragraphs, several of which are further sub-divided into various segments without individual titles. Article 3 entails a considerable number of provisions and sub-provisions as well. Paragraph 9, for instance, has four sections – (a) to (d) – of which two are further broken down into sub-components (marked as (i), (ii) etc.). Short provisions – such as articles 8 and 9 – did not receive a single partial notification. This also goes for provisions that are already broken down into sub-segments in the TFA (see, for instance, articles 2.2, 5.2, 5.3, 6.2 or 7.2).

There is only a small group of WTO Members that made extensive use of the possibility to break down the Agreement's provisions into discrete sub-segments with differing category designations (see, for example, the notifications by India,⁴⁴ the Seychelles⁴⁵ or Saint Kitts and Nevis.⁴⁶).

A commitment analysis at individual Member level shows a fairly high degree of ambition. In addition to the six delegations which designated the entire TFA as ready for immediate, "A-level", implementation, there are another 10 WTO Members which committed to fully applying over 90 per cent of the Agreement from the moment it enters into force (Chile, Qatar, Turkey and Uruguay – all 97 per cent – as well as Colombia, Costa Rica, the former Yugoslav Republic of Macedonia, Malaysia and Saudi Arabia – 94 per cent each. Georgia equally made it into the ≥ 90 with a commitment rate of 92 per cent). The number is even higher when including partial category A designations as well: 22 per cent of all notifying Members figure on that list. The number of countries with low ratings of less than 10 per cent is extremely small. Only four WTO

⁴⁴ WT/PCTF/N/IND/1 of 23 March 2016.

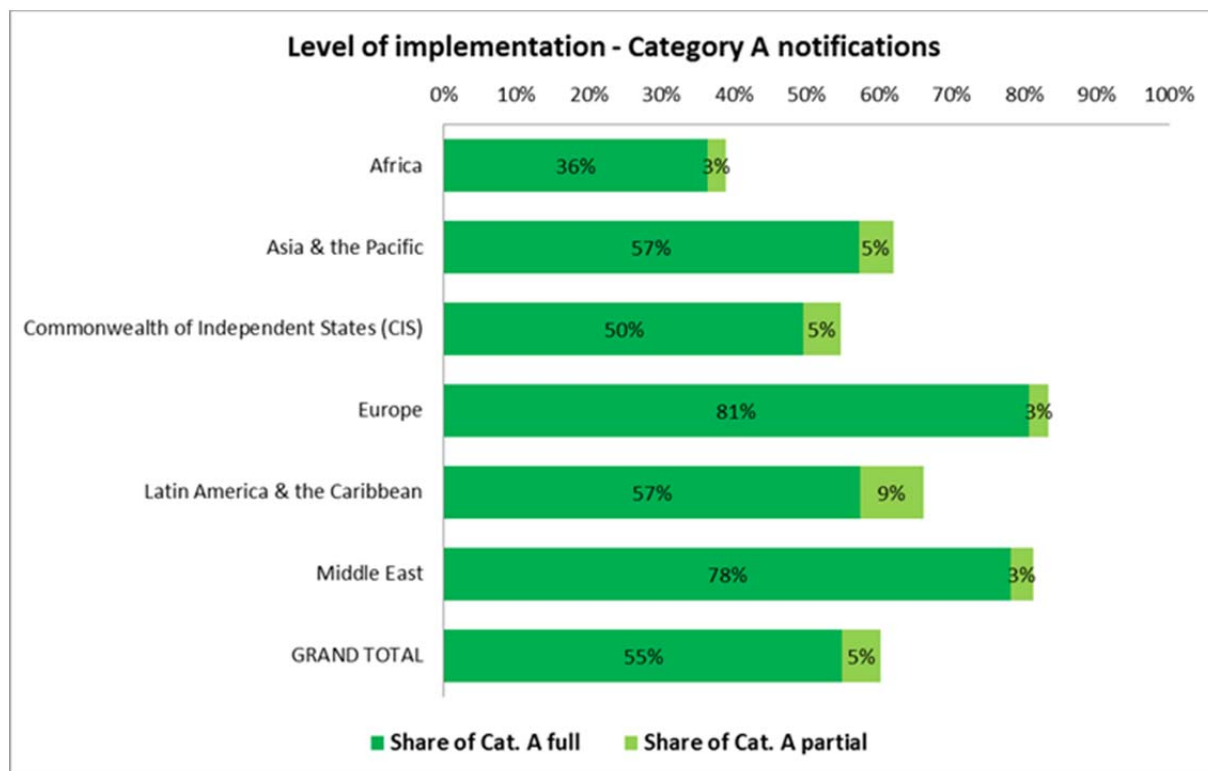
⁴⁵ WT/PCTF/N/NSC/1 of 17 September 2015.

⁴⁶ WT/PCTF/N/KNA/1 of 2 June 2015.

Members⁴⁷(including two LDCs) - representing less than five per cent of all category A notifications - fall under this category. (For details, see table 3 in the annex).

Analyzed by region, one finds Europe to have the largest share of category A commitments with average designation rates of over 80 per cent. They are followed by the Middle East (share of full category A classifications of 78 per cent). Latin America and the Caribbean take the third place when including partial A designations. Limited to full category designations, they share that rank with Asia and the Pacific which both show average designation rates of 57 per cent. Classifications from CIS countries show commitment shares of 50 per cent, followed by Africa with 36 per cent.

Chart 10: Category A notifications per region



Source: Calculations based on the WTO notification database.

Category B and C notifications

An examination of Members' B and C notifications is currently of limited epistemic value due to the low number of inputs so far. With only five⁴⁸ submissions having been tabled by 27 September 2016 for each of the two categories (of which merely three contain information beyond the simple category designations themselves⁴⁹), the statistical base remains too narrow to draw meaningful conclusions of broader applicability. This remains valid even when considering that there is additional information contained in the category A submissions in that all measures without "A" designations have to be classified as belonging to either category B or C (and that there are six WTO Members which gave the entire Agreement "A"-status, thereby declaring not to require any

⁴⁷ Cameroon, Indonesia, Nepal and Zambia.

⁴⁸ They originated from Georgia, Malawi, Mauritius, the Solomon Islands and Zambia (circulated in WT/PCTF/N/GEO/1, WT/PCTF/N/MWI/1, WT/PCTF/N/MUS/2 WT/PCTF/N/SLB/1 and WT/PCTF/N/ZMB/1.

⁴⁹ This is perfectly in line with the legal requirements set out by the TFA which only requires developing countries to provide time frames and capacity building needs by the time the Agreement enters into force. LDCs do not have to notify anything until a year later – and even then they are only obliged give their B and C designations, without also having to indicate corresponding implementation dates and technical assistance/capacity building needs. For further details, see article 16 of the TFA.

transition periods, nor capacity building). Findings will therefore be limited to conclusions about the individual notifications alone, without suggesting that they indicate a larger trend.

At the same time, those submissions represent the best (to some extent, the only) source of information on category B and C commitments so far. It therefore still seems worth subjecting them to some preliminary analysis.

A noticeable feature is the relatively low number of TFA measures designated as belonging to categories B or C. The first full B and C notification – full in the sense of not only indicating the category designations but also giving related requirements in terms of implementation time and capacity building support – listed only one measure as a B commitment, and two as falling under category C. The two complete listings that followed had higher rates (4 and 5 for category B and 7 and 6 for category C) – but still within moderate range. Even the least-developed Member among them – Malawi – designated only 8.3 per cent of the TFA's measures as category B, and 14.6 per cent as category C.

The two partial notifications that followed – both originating from LDCs - show significantly higher rates. The Solomon Islands designated 36.1 per cent of its scheduled commitments as belonging to category B, and 30.5 per cent under category C. Zambia notified 34.2 per cent of its commitments as category B and 55.3 per cent as category C.

Taking both groups of notifications together, one finds an average of 18.9 per cent of all TFA measures listed under category B and 24.3 per cent under category C. 56.7 per cent of all commitments were designated as belonging to category A. When analyzing these numbers, one should further consider that 60 per cent of all notifying Members are LDCs.

Table 4: Percentage of TFA measures designated as representing category B and C commitments (percentage of total commitments⁵⁰ notified as belonging to either category A, B or C). LDCs are marked in bold font.

WTO Member	Category B	Category C
Georgia	2.6 per cent	5.2 per cent
Malawi	8.3 per cent	14.6 per cent
Mauritius	13.51 per cent	16.2 per cent
Solomon Islands	36.1 per cent	30.5 per cent
Zambia	34.2 per cent	55.3 per cent

Calculations by the author based on category B and C notifications submitted by WTO Members

Another noteworthy feature is the indicated time frames for categories B and C. According to the architecture of the TFA, developing countries and LDCs are free to self-select the time they consider to require for implementing the Agreement's measures.⁵¹ When negotiating these terms, the freedom to determine the deadlines was a cause of serious concern to several WTO Members. Fears were expressed that the absence of any upper limit could lead to extremely long time frames for applying the agreed reforms.

An analysis of the concrete grace periods requested so far suggests that these worries were largely unfounded. The longest time frame solicited amounts to five years from the moment the Agreement enters into force.⁵² It was only set by one Member and for a total of two provisions

⁵⁰ While not far from the default number used when counting the measures set out by the TFA (36), there are some variations in how some of the five WTO Members decided to determine their commitments down. Georgia broke the Agreement down into a total of 38 measures, Mauritius used 37, Malawi 48, the Solomon Islands 36 and Zambia 38.

⁵¹ For details, see article 16 of the TFA.

⁵² The TFA envisages the determination of required time frames to take place in two steps: a provisional indication is followed by a definitive fixation at a later stage. For details, see article 16 of the TFA.

alone (risk management and trade facilitation measures for authorized operators). The most frequently stipulated time frame is 2-3 years. Some measures have an even shorter deadline. Georgia, for instance, listed 1 January 2017 as the time it will be ready to implement a measure – and did not ask for more than the end of 2018 to implement other measures.⁵³

Concerns had also been raised with respect to technical assistance and capacity building needs. This had been one of the most contentious aspects of the negotiations, and a key challenge for designing the TFA's implementation architecture. Indeed, discussions had already been heated when debating the negotiating mandate. Many developing and least-developed countries had sought complete freedom to self-determine their assistance needs without any limits in terms of nature and amount of the solicited support. Others, especially developed Members, had worried that this could lead to unreasonable wish lists and unfulfillable demands. The compromise ultimately reached tried to achieve a carefully crafted balance between these differing positions. On the one hand, it was acknowledged "*that the provision of technical assistance and support for capacity building is vital for developing and least developed countries (...)*"⁵⁴ and agreed that such support should be provided to help them implement the commitments. This was, however, qualified with the caveat that this was to take place "*in accordance with their nature and scope.*"⁵⁵ Infrastructure-related support was especially sensitive since it came with the biggest resource implications. Some Members wanted to exclude it from the scope of eligible assistance while others saw it as its most important feature. The ultimately agreed approach marked another carefully phrased compromise. The mandate "*recognized that negotiations could lead to certain commitments whose implementation would require support for infrastructure development on the part of some Members*" and stated that "*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 then went on to state that "*While every effort will be made to ensure the necessary support and assistance, it is understood that the commitments by developed countries to provide such support are not open-ended.*"⁵⁶

In translating these terms into concrete TFA language, negotiators agreed that "*assistance and support for capacity building should be provided to help developing and least developed country Members implement the provisions of this Agreement, in accordance with their nature and scope.*"⁵⁷ It was further set that this aid "*may take the form of technical, financial, or any other mutually agreed form of assistance provided.*"⁵⁸ "Donor Members" agreed "*to facilitate*" the provision of such support "*on mutually agreed terms either bilaterally or through the appropriate international organizations*". While this language fell short of some developing and least-developed countries' wish to mandate the provision of aid in legally enforceable terms, they succeeded in obtaining complete freedom to determine their assistance needs. In addition, they were given assurances that, in the absence of obtaining the required support, they would not be obliged to implement the Agreement.⁵⁹

Given the sometimes difficult and fraught debate over the provision of technical assistance during the TFA negotiations, it is striking how reasonable Members' specific requests have turned out to be so far. One of the most frequently voiced concerns – that demands would be unspecific and therefore difficult to respond to – has not materialized in the notifications received.⁶⁰ Indeed, most

⁵³ The provision in question is article 6.2 of the TFA, dealing with disciplines on fees and charges imposed on or connection with importation and exportation.

⁵⁴ WT/L/579, paragraph 5.

⁵⁵ WT/L/579, paragraph 6.

⁵⁶ See footnote 54.

⁵⁷ Article 13 of the TFA, paragraph 2.

⁵⁸ TFA, footnote 16.

⁵⁹ They further benefit from a series of additional flexibilities such as the possibility to extend the self-selected implementation time frames, to subsequently shift between categories B and C and to enjoy grace periods from the application of dispute settlement procedures.

⁶⁰ This had already been an often invoked source of unease when carrying out needs assessments to help developing and least developed countries determine their prospective aid requirements.

of the indicated requirements are fairly specific. Georgia, for instance, asked for support with "*structuring and adopting the relevant primary and secondary legislation*" for establishing an authorized economic operator (AEO) scheme. It then went on to specify a series of specific features the Georgian government wants the system to perform (such as granting AEO status by issuing an appropriate certificate, the definition of criteria for granting AEO status or a monitoring function). The only other assistance need it has expressed is equally specific. A series of measures were requested to implement a segment of article 11 dealing with freedom of transit (paragraph 9). They included the provision of "*assistance in setting up a team responsible for the implementation of the business processes and a team responsible for the IT aspects aiming at the implementation of a new computerized transit system*" as well as support for "*elaborating functional specifications for [a] Transit Module*"⁶¹. Mauritius, to give another example, asked for "*training and capacity building in conducting [a] time release study*" under article 7.6 (dealing with the establishment and publication of average release times).⁶² Malawi's needs were equally specific. One of the items the Malawian delegation requested was "*support for [the] review and update of legislation*" on procedures for appeal or review.⁶³

Previous worries about unreasonable "Christmas-tree-lists" equally seem largely unfounded at present. A significant share of the communicated needs are for training and technical assistance in developing procedures and legislation. Calls for infrastructure support are fairly limited and typically of a "soft" nature (such as IT development). The phrasing of the commitments - and the clear limits on their scope - seem to offer sufficient protection against disproportionate demands. While it remains to be seen whether future notifications will follow that path, the existing ones clearly show the B and C schedules are off to a good start.

II. ROAD AHEAD

Remaining work to be done

These positive developments should not distract from the fact that there is still work ahead. While the TFA has now come close to entering into force there is still a considerable number of WTO Members that have yet to hand in their ratification instruments. Getting the entire membership to apply the TFA is of great importance since only then can the Agreement deliver its full benefits.

Other important unfinished business concerns the submission of category B and C notifications. The TFA requires all developing Members wishing to benefit from the far-reaching implementation flexibilities set out in section II of the treaty⁶⁴ to notify their B and C designations and the corresponding indicative dates for implementation. LDCs have additional time to follow suit. As of 27 September 2016, only two developing countries tabled their respective notifications – less than three per cent of the submissions likely to come in.⁶⁵ Even when adding notifications from LDCs (three of the 36 LDCs that are WTO Members), this number remains very low.

⁶¹ For more details, see WT/PCTF/N/GEO/1.

⁶² For more details, see WT/PCTF/N/MUS/2.

⁶³ For more details, see WT/PCTF/N/MWI/1.

⁶⁴ No developing or least-developed Member is obliged to implement the TFA according to the conditions set out in section II of the Agreement. But if such a Member decides to benefit from the favourable terms set out therein, it has to accept the entire framework of the section. (Article 24:3 states: "*Developing country Members and least-developed country Members that choose to use the provisions of Section II shall implement this Agreement in accordance with Section II.*") This allows a Member to implement the TFA like a developed country without setting an act that could be interpreted as questioning its developing country (self)designation. Article 24:3 was added upon the request of the Russian Federation.

⁶⁵ In addition to the challenge of there not being a definitive list of developing WTO Members, it is not yet clear how many of them will decide to make use of the implementation flexibilities offered by the TFA. (See footnote 63.)

Beyond the outstanding notification and ratification work, preparations also have to intensify in order to actually implement the Agreement in practice. The category notifications merely tell us which parts of the TFA a Member is committed to applying and when – they do not tell us how the actual implementation is proceeding. An analysis of this critical step is made more difficult by the fact that WTO Members are not required to provide progress reports. Having said this, it is well known from needs assessments and country reports⁶⁶ that no country is starting from scratch. Virtually all WTO Members were already at least partially compliant with the TFA before it was even adopted. Even LDCs are known to have a TF solid base on which to build further reforms. Another positive – albeit indirect – indicator of implementation advancements is rate of establishment of national TF Committees (NTFCs). According to a recent survey conducted by the WTO,⁶⁷ 57 per cent of all Members already have such a body, with another 22 per cent being very close to setting it up. While the existence of a NTFC should not rigidly be equated with implementation of substantive measures,⁶⁸ it is certainly a reflection of commitment to TF reforms.

Currently the best source of information on already executed implementation efforts comes from the OECD. Under the heading of "Trade Facilitation Indicators", it launched a comprehensive study that examines the state of preparations for putting the TFA into practice. The program covers over [130] countries and its scope continues to expand. A 2014 report already showed high compliance rates – a time when the domestic process of ratifying the Agreement had not even begun. Most of the TFA provisions were reported to have been put in practice to a notable extent. Implementation rates were especially high with respect to articles 1 (publication and availability of information), 3 (advance rulings), and 4 (appeal or review procedures) – although the reforms often fell short of covering the provisions in their entirety and rates varied across income groups.⁶⁹ Implementation rates of comprehensive disciplines – such as articles 7 and 10 (which both have 9 distinctive sub-segments) – were uneven and would need to be examined for each measure to draw meaningful conclusions. All do, however, show execution rates of over 30 per cent.

Implementation of all parts of the TFA has continued since this report was issued. Indeed, with the Agreement's approaching entry into force, Members have reported an intensification of compliance efforts.⁷⁰ However, judging from what they notified as commitments under categories B and C (either directly in a B or C notification or indirectly by exclusion from a designation as category A), it is clear that a considerable amount of work remains before we can expect full application of the entire Accord.

The importance of being early

For all of these encouraging signs of progress, time remains of the essence. While the spotlight is currently on the ratifications that are still outstanding, attention is expected to shift to the missing category B and C notifications the moment the Agreement enters into force. Their speedy tabling will be of particular benefit to developing and least-developed countries as they seek to arrange

⁶⁶ The WTO, in cooperation with other international and regional organisations, carried out a multiyear program to assist developing and least developed countries with the assessment of the implementation needs. Many WTO Members reported their results and shared related experiences.

⁶⁷ For additional information, see http://www.tfafacility.org/sites/default/files/case-studies/2016-06-09_wto_e-survey_on_nctf_-_preliminary_results.pdf

⁶⁸ The commitment to establish or maintain a national Trade Facilitation Committee is also not subject to the A, B, C notification mechanism.

⁶⁹ Around 40 per cent of countries across all income groups already publish information as early as possible before their entry into force (as required by article 2.1.2), for instance, but fewer countries consistently provide opportunities to comment (article 2.1.1) and consultations (article 2.2). A similar situation can be found with respect to article 3 of the TFA. More than 70 per cent of countries across all income groups were found to issue binding advance rulings as mandated by paragraphs 1 and 5 of article 3. Implementation rates of other elements of the article – such as provisions about validity (3.3), revocation (3.4) or reviews (3.7), on the other hand, are strongly related to the income levels of the countries examined.

⁷⁰ Such reports were, for instance, made at a WTO experience sharing workshop in June 2016. For more information, see <http://www.tfafacility.org/wto-hosts-first-workshop-national-trade-facilitation-committees>.

required implementation support. Donors need to know what these countries are looking for in order to prepare their assistance programs - and many have signaled their intention to reward early notifications (and the precise identification of needs) with an equally swift response.

Speedy implementation further has the advantage of offering the full scale of the Agreement's time-bound flexibilities, such as grace periods for the application of dispute settlement procedures.⁷¹ Developing and least-developed countries should further be aware that delayed ratification – in the sense of accepting the Agreement after it already took effect – has an impact on their (self-)determined time frames. According to article 24:4 of the TFA, the transition periods for category B and C commitments shall count "from the date this Agreement enters into force", in such cases.⁷²

III. CONCLUDING OBSERVATIONS

Twenty years after starting dedicated work on Trade Facilitation in the WTO and over a decade since the launch of negotiations on a multilateral accord - the TF Agreement is finally about to enter into force. Overcoming many obstacles and defying no small number of sceptics, Members were able to agree on a series of measures that promise to substantively improve trading realities on the ground.

Looking at the terms of the negotiating mandate and comparing its objectives with the language finally adopted, one finds that Members remained faithful to their initial goals. In agreeing on meaningful provisions that are also well adjusted to the needs of a diverse membership, they were able to live up to the high hopes that had accompanied the undertaking from the very beginning.

The conclusion of the negotiations was followed by other achievements in quick succession. Once again defying many sceptics, Members completed a legal review of the Bali language in record time and were also able to take the last action that required a consensus decision: the adoption of the amendment protocol that integrated the TFA into the existing legal WTO framework. This also cleared the way for the final hurdle to be taken for the Agreement to enter into force as Members were now able to initiate their domestic ratification processes.

They did so with impressive speed. The first acceptance instruments were deposited just a few days after the adoption of the Protocol, and many more followed soon thereafter. Within 12 months, almost 50 per cent of all required ratifications were already registered, and numerous others announced. The stream of deposits never stopped, each bringing the Agreement one step closer to taking effect. At the current rate of deposits, the Trade Facilitation Agreement is only a heartbeat away from entering into force.

What was equally encouraging is the fact that instruments were tabled by Members from all regions, across all levels of development. The frontloading of commitments by many LDCs is another positive factor. It supports the argument that proponents of a Trade Facilitation Agreement made from the beginning: that such an instrument represented a win-win deal for everybody involved.

This positive development should not, however, distract from the fact that the TFA needs additional steps to be effectively applied on the ground. The Agreement's novel implementation architecture provides for a staged process, one that is tailored to each Member's particular needs⁷³. A core

⁷¹ For more information, see article 20 of the TFA.

⁷² If, for instance, a Member indicated to require four years to implement a certain measure, but ratifies the Agreement only two years after it entered into force, this four year period will have reduced itself by half.

⁷³ For a discussion of the novelty factor see Czapnik, "The Unique Features of the Trade Facilitation Agreement: A Revolutionary New Approach to Multilateral Negotiations or the Exception Which Proves the Rule?" Journal of International Economic Law, November 2015.

element of this innovative structure is the different categories of commitments developing countries are allowed to notify. Much of the initial emphasis was placed on category A since it signals the provisions which a contracting party designates for implementation as soon as the Agreement enters into force. Getting this information at an early stage of the process was considered important by many delegations since it will only be with the existence of all category notifications that a collective implementation road map can be drawn. This is why it was widely welcomed when so many of the category A submissions were tabled soon after the completion of the negotiations – and all ahead of the stipulated deadline.

The broad scope of those measures that will quickly be implemented is equally good news. While individual designations vary, the average overall commitment rates are clearly meaningful. More than half of the developing membership agreed to implement almost 80 per cent of the TFA's measures from the moment it enters into force. Over 70 per cent designated at least a quarter of all measures as belonging to category A.

The content of developing countries' category B and C notifications – another key piece of the implementation puzzle – is equally promising. The indicated timeframes for implementation – which notifying members were allowed to self-select – do not appear to be excessive and are indeed quite moderate in length. Despite the absence of an upper limit, no Member has currently requested a grace period of more than 5 years, and most limited their timeframes to only half that. As for the stipulated assistance needs, here too the requests do not seem unreasonable in nature and scope. Both factors should put widespread fears of overstated demands largely at rest, and settle a point of contention that lasted for over a decade.

This is not to suggest that there would not be room for further advancements. One element with clear room for improvement is the number of tabled B and C notifications. With only a handful of submissions, this clearly remains unfinished business. The fact that the deadline for submitting such notifications is fast approaching makes their presentation all the more pressing. More efforts will also have to be put into actual work of implementation. Progress in ratifying the Agreement is not synonymous with progress in getting the TFA up and running. With much of the political spotlight being focused on the legislative progress, there is a risk that attention will drop once the Agreement has entered into force, leaving the treaty without the push it still needs to be effectively implemented on the ground.⁷⁴

Overall, it seems fair to note that the story of implementing the Trade Facilitation Agreement has been a highly – even surprisingly – successful one. Both ratification numbers and implementation notifications are very promising and continue to defy the sceptics. This is not to overlook or underestimate the outstanding challenges or work that lie ahead. We still need the remaining ratifications to come in, and for Members to present their outstanding notifications, especially on categories B and C. Preparations for the actual implementation of the TFA's measures also have to accelerate and intensify in scope and depth. But against the background of what it has taken to get to this point, and when considering the challenges posed by the broader environment, it is no exaggeration to observe that much of the visions that drove the negotiations over a decade ago are on the verge of becoming reality.

⁷⁴ The problem could be particularly acute for late notifiers who will have to watch the clock running on in-built flexibilities.

Annex

Table 1: WTO Members which have already ratified the Trade Facilitation Agreement as of 27 September 2016

Number	WTO Member	Date of deposit
1.	Hong Kong China	8 December 2014
2.	Singapore	8 January 2015
3.	United States	23 January 2015
4.	Mauritius	5 March 2015
5.	Malaysia	26 May 2015
6.	Japan	1 June 2015
7.	Australia	8 June 2015
8.	Botswana	16 June 2015
9.	Trinidad and Tobago	29 July 2015
10.	Republic of Korea	30 July 2015
11.	Nicaragua	4 August 2015
12.	Niger	6 August 2015
13.	Chinese Taipei	17 August 2015
14.	Belize	1 September 2015
15.	Switzerland	2 September 2015
16.	China	4 September 2015
17.	Liechtenstein	18 September 2015
18.	Lao (People's Rep of)	29 September 2015
19.	New Zealand	29 September 2015
20.	Togo	1 October 2015
21.	Thailand	5 October 2015
22-49 ⁷⁵	EU (on behalf of the Union and its Member States)	5 October 2015
50.	Macedonia, Former Y. Rep. of	19 October 2015
51.	Pakistan	27 October 2015
52.	Panama	17 November 2015
53.	Guyana	30 November 2015
54.	Côte d'Ivoire	08 December 2015
55.	Grenada	08 December 2015
56.	Saint Lucia	08 December 2015
57.	Kenya	10 December 2015
58.	Brunei Darussalam	15 December 2015
59.	Viet Nam	15 December 2015
60.	Myanmar	16 December 2015
61.	Norway	16 December 2015
62.	Ukraine	16 December 2015
63.	Zambia	16 December 2015
64.	Georgia	04 January 2016
65.	Lesotho	04 January 2016
66.	Seychelles	11 January 2016
67.	Jamaica	19 January 2016
68.	Mali	20 January 2016
69.	Cambodia	12 February 2016
70.	Paraguay	01 March 2016

⁷⁵ The calculation of acceptances for the European Union and its 28 member states was regulated in the Trade Facilitation Amendment protocol (WT/L/940). According to footnote one of this protocol "For the purposes of calculation of acceptances under Article X.3 of the WTO Agreement, an instrument of acceptance by the European Union for itself and in respect of its Member States shall be counted as acceptance by a number of Members equal to the number of Member States of the European Union which are Members to the WTO."

71.	Turkey	16 March 2016
72.	Brazil	29 March 2016
73.	Macao, China	11 April 2016
74.	United Arab Emirates	18 April 2016
75.	Samoa	21 April 2016
76.	India	22 April 2016
77.	Russian Federation	22 April 2016
78.	Albania	10 May 2016
79.	Montenegro	10 May 2016
80.	Kazakhstan	26 May 2016
81.	Sri Lanka	31 May 2016
82.	Saint Kitts and Nevis	17 June 2016
83.	Madagascar	20 June 2016
84.	Moldova, Republic of	24 June 2016
85.	El Salvador	04 July 2016
86.	Honduras	14 July 2016
87.	Mexico	26 July 2016
88.	Peru	27 July 2016
89.	Saudi Arabia	28 July 2016
90.	Afghanistan	29 July 2016
91.	Senegal	24 August 2016
92.	Uruguay	30 August 2016
93.	Bahrain	23 September 2016

Table 3: Percentage of TFA measures (counted as a total of 36) notified per WTO Member as representing full and/or partial category A notifications

Country/territory	% of measures given full category A designations	% of measures given full or partial category A designations
Hong Kong, China	100%	100%
Israel	100%	100%
Korea, Republic of	100%	100%
Mexico	100%	100%
Singapore	100%	100%
Taipei, Chinese	100%	100%
Chile	97%	97%
Qatar	97%	97%
Turkey	97%	97%
Uruguay	97%	97%
Costa Rica	94%	100%
Malaysia	94%	97%
Colombia	94%	94%
Macedonia, former Yugoslav Republic of	94%	94%
Saudi Arabia, Kingdom of	94%	94%
Georgia	92%	94%
Brazil	89%	97%
China	89%	89%
Macao, China	89%	89%
United Arab Emirates	86%	89%

Brunei Darussalam	86%	86%
Morocco	83%	83%
Argentina	81%	97%
Peru	81%	81%
Philippines	78%	78%
El Salvador	75%	94%
Thailand	72%	89%
Jordan	72%	81%
Kuwait	72%	78%
Albania	69%	75%
Mauritius	69%	72%
Tajikistan	69%	72%
Malawi	69%	69%
Panama	69%	69%
Dominica	67%	69%
Nicaragua	67%	69%
Dominican Republic	64%	67%
Honduras	61%	72%
Montenegro	61%	67%
Grenada	61%	64%
Namibia	61%	61%
Bahrain	58%	61%
Kazakhstan	53%	53%
Botswana	53%	53%
Senegal	53%	53%
Guyana	50%	81%
Tunisia	50%	53%
Moldova	50%	50%
Seychelles	47%	53%
Saint Kitts and Nevis	44%	67%
Antigua & Barbuda	44%	50%
Oman	44%	50%
Paraguay	42%	42%
Guatemala	39%	92%
India	39%	86%
Rwanda	39%	44%
Cote d'Ivoire	39%	42%
Lao PDR	36%	36%
Viet Nam	33%	39%
Saint Lucia	33%	33%
Solomon Islands	33%	33%
Barbados	31%	47%
Ecuador	31%	33%
Mongolia	31%	31%
Samoa	31%	31%
Papua New Guinea	28%	31%
Sri Lanka	28%	31%

Trinidad and Tobago	25%	28%
Burundi	25%	25%
Ukraine	22%	33%
Gabon	22%	22%
Suriname	22%	22%
Pakistan	19%	42%
Egypt	19%	33%
Congo, Republic of	19%	25%
Belize	19%	22%
Uganda	19%	22%
Jamaica	17%	19%
Nigeria	17%	19%
Tanzania	17%	17%
Saint Vincent and the Grenadines	11%	44%
Kenya	11%	17%
Kyrgyz Republic	11%	14%
Indonesia	8%	8%
Zambia	8%	8%
Nepal	6%	6%
Cameroon	3%	6%

Source: Calculations based on the WTO notifications database.

Bibliography

Czapnik Ben, "The Unique Features of the Trade Facilitation Agreement: A Revolutionary New Approach to Multilateral Negotiations or the Exception Which Proves the Rule?" *Journal of International Economic Law*, November 2015.

Neufeld Nora, Trade Facilitation under the Regional Trade Agreement Umbrella: Origins and Evolution, in: *Regional Trade Agreements and the Multilateral Trading System*, edited by Rohini Archaya, Cambridge University Press, September 2016

Neufeld, Nora, The Long and Winding Road: how WTO Members finally reached a Trade Facilitation Agreement, WTO Working Paper ERSD-2014-06, April 2014

OECD, Trade Facilitation Indicators: The Potential Impact of Trade Facilitation on Developing Countries' Trade, Trade Policy Working Paper, No. 144, 2013

OECD, OECD Trade Facilitation Indicators: State of Implementation, <http://www.oecd.org/tad/facilitation/TFI-state-implementation-june-2014.pdf>, June 2014

UNCTAD, Trade Facilitation and Development, UNCTAD/DTL/TLB/2016/1, Geneva, 2016.

World Trade Organization, Agreement establishing the World Trade Organization ("Marrakesh Agreement"), signed on 15 April 1994

World Trade Organization, Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization, Decision Adopted by the WTO General Council on 27 November 2014, WT/L/940, 28 November 2014

World Trade Organization, Doha Development Agenda Work Programme, Decision Adopted by the WTO General Council on 1 August 2004, WT/L/579, Annex D, 2 August 2004

World Trade Organization, Bali Ministerial Decision on Trade Facilitation of 7 December 2013, WT/MIN(13)/36;

World Trade Organization, World Trade Report 2015: Speeding up trade: benefits and challenges of implementing the WTO Trade Facilitation Agreement, 2015