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WTO Trade Facilitation Agreement

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Summary

The Trade Facilitation Agreement (TFA), finalized in December 2013, is the newest international trade agreement in the World Trade Organization (WTO), having entered into force on February 22, 2017, when two-thirds of WTO members, including the United States, ratified the multilateral agreement. Congress has an interest in the TFA since it may affect U.S. trade flows, the U.S. economy, and international capacity building efforts.

Trade facilitation measures aim to simplify and streamline international trade procedures to allow the easier flow of trade across borders and thereby reduce the costs of trade. There is no precise definition of trade facilitation, even in the WTO agreements. Trade facilitation can be defined narrowly as improving administrative procedures at the border or more broadly to also encompass behind-the-border measures and regulations.

The TFA aims to address multiple trade barriers confronted by exporters and importers, whether small and medium-sized enterprises engaged in e-commerce or large multinational firms managing complex global supply chains. These barriers include the lack of transparency on process and documentation requirements for exporting to a given country.

According to WTO estimates, global export gains from full implementation of the TFA could range from $750 billion to more than $3.6 trillion dollars per year. The Organization for Economic Co-operation and Development (OECD) finds that TFA implementation could lower trade costs as much as 12.5%-17.5% globally. Different sets of indicators and indices by various international organizations exist to measure levels of trade facilitation and could be used to monitor TFA effects.

The TFA has three sections. The first section is the heart of the agreement, containing the provisions, of which many, but not all, are binding and enforceable. The second section provides for special and differential treatment for developing country members and least-developed country members, allowing them more time and assistance to implement the agreement. The TFA is the first WTO agreement in which members determine their own implementation schedules and in which progress in implementation is explicitly linked to technical and financial capacity. The TFA requires that "donor members," including the United States, provide the needed capacity building and support to developing and least-developed members. Finally, the third section of the agreement contains the institutional arrangements for administering the TFA.

Existing and proposed U.S. free trade agreements (FTAs) include trade facilitation commitments. While the WTO TFA and U.S. FTAs share common features, there are also differences. U.S. FTAs generally include more enforceable provisions and specific time frames, and do not include special and differential treatment for developing country participants.

U.S. implementation of the TFA does not require changes from current processes, including planned efforts to update U.S. systems. In the United States, the U.S. Customs and Border Protection (CBP) seeks to balance its overarching objectives of promoting efficient trade flows with enforcing trade laws designed to protect consumers from dangerous and unlawful imports, and collecting customs duties. The CBP uses several instruments to collect information aimed at knowing who is importing and what types of goods are being imported, including the Customs-Trade Partnership against Terrorism (C-TPAT), the Automated Commercial Environment (ACE), and the International Trade Data System (ITDS).

This report provides an overview of the TFA, its provisions, and the United States' implementation and role in capacity building, and provides options for Congress to consider in relation to the TFA.

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Introduction

The Trade Facilitation Agreement (TFA),[1] finalized in December 2013, is the newest international trade agreement to enter into force at the World Trade Organization (WTO), after two-thirds of WTO member countries ratified the multilateral agreement as of February 22, 2017.[2] The TFA is important to Congress because it may affect U.S. trade flows, the U.S. economy, and international capacity building efforts. This report discusses the TFA, its background and current status, potential impact on U.S. trade agreement provisions, plans for implementation, and relevant policy options for Congress to consider. The TFA does not require further congressional approval because U.S. compliance with the agreement's commitments does not require changes to U.S. law.

The TFA aims to reduce trade costs by streamlining, modernizing, and speeding up the customs processes for cross border trade. Eliminating or reducing inefficiencies at the border may facilitate trade by lowering costs for importers (and possibly consumers), as well as exporters. By increasing transparency, instilling good governance practices, and simplifying processes at the border, the potential for corruption is also reduced. Furthermore, decreasing trade barriers at the border enables connectivity and may increase a country's foreign direct investment (FDI) inflows. Thus, improving trade flows benefits both exporting and importing countries and can be seen as a shared interest across all WTO members.

Improved trade flows require effective implementation of the TFA by all WTO members. While the TFA mandatory provisions are subject to WTO Dispute Settlement for enforcement, the agreement contains the Special and Differential Treatment provisions to provide additional implementation time and technical assistance and capacity building assistance for developing and least-developed countries. The United States is already in compliance with most measures represented in the TFA, and thus does not have to change its current practices to comply with the TFA provisions.

Background

WTO and the TFA

The World Trade Organization (WTO) was established on January 1, 1995, following the ratification of the Uruguay Round Agreements and today includes 164 member countries. It succeeded the General Agreement on Tariffs and Trade (GATT), which was created in 1947 as a part of the post-WWII effort to build a stable, open, and predictable international economic framework. The Doha Development Agenda (Doha Round) of multilateral trade negotiations, launched in 2001, was impeded by differences among developed and developing countries on key trade issues in agriculture, goods, and services. The WTO's 2015 Ministerial Declaration acknowledged the division over the future of the Doha Round, and did not reaffirm its continuation.[3]

[1] The full title of the popularly known "Trade Facilitation Agreement" or TFA is the *Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization*. Upon ratification, the TFA was inserted in Annex 1A of the Marrakesh Agreement (the "WTO Agreement").

[2] DG Azevedo, "WTO Press Conference — Entry into force of Trade Facilitation Agreement," World Trade Organization, February 22, 2017, https://www.wto.org/english/news_e/spra_e/spra157_e.htm.

[3] For more information on the WTO, please see CRS In Focus IF10002, *The World Trade Organization*, by Ian F.

As part of the Doha Round, WTO members launched negotiations on trade facilitation in July 2004. While most other aspects of the Doha Round were suspended, WTO members agreed to conclude the TFA as a stand-alone agreement in December 2013 at the Bali Ministerial Conference.[4] Hence, the TFA became the first new multilateral trade agreement concluded since the establishment of the World Trade Organization in 1995. The TFA builds on earlier related provisions in the GATT and further expedites the movement, release, and clearance of goods, including goods in transit.

What is Trade Facilitation?

Trade facilitation measures aim to simplify and streamline international trade procedures to allow for the easier flow of trade across borders and thereby reduce the costs of trade.[5] Tools of trade facilitation include transparent and efficient procedures, clear public information and communications, the elimination of as much red tape as possible, and cooperation between border agencies, both internally and externally.[6] There is no single definition of trade facilitation even in the WTO. Trade facilitation can be defined narrowly as improving administrative procedures at the border or more broadly to also encompass behind-the-border measures and regulations. Some definitions of trade facilitation include investment in infrastructure, from railways to information technology equipment, while other definitions focus only on procedures and processes.[7]

Entry into Force

On November 27, 2014, WTO members agreed to consider the TFA and triggered the process for amending the WTO Agreement.[8] The TFA entered into force on February 22, 2017, when two-thirds of the WTO members had ratified it domestically[9] by depositing an "instrument of acceptance" at the WTO to formally accept the agreement.[10] If three-quarters of the WTO members agree, then any member which has not accepted it within a specified time may elect to withdraw from the WTO or accept the obligations of the Amendment.[11]

Congress supported the TFA as part of its U.S. trade negotiating objectives in the 2015 Trade Promotion Authority (P.L. 114-26).[12] Adoption of the TFA did not require further congressional activity because U.S. compliance with the agreement's commitments did not require changes to U.S. law. The United States formally accepted it on January 23, 2015, the third WTO member to do so.

Fergusson and Rachel F. Fefer, or https://www.wto.org/english/thewto_e/whatis_e/whatis_e.htm.

[4] The WTO Ministerial Conference is the topmost decision-making body of the WTO. Ministerials are usually held every two years. Past conferences are often referred to by their location (e.g., Bali in 2013), followed by "Ministerial."

[5] Organization for Economic Co-operation and Development (OECD) definition, http://www.oecd.org.

[6] Moïsé, E., T. Orliac and P. Minor (2011), "Trade Facilitation Indicators: The Impact on Trade Costs," OECD Trade Policy Working Papers, No. 118, OECD Publishing.

[7] For more information, see World Trade Organization, "World Trade Report, 2015," p. 36, https://www.wto.org/english/res_e/booksp_e/world_trade_report15_e.pdf.

[8] WTO members agreed to a Protocol of Amendment that would, upon ratification by the required number of members, insert the TFA into Annex 1A of the Marrakesh Agreement (the "WTO Agreement").

[9] DG Azevedo, "WTO Press Conference — Entry into force of Trade Facilitation Agreement," World Trade Organization, February 22, 2017, https://www.wto.org/english/news_e/spra_e/spra157_e.htm.

[10] The WTO follows the established United Nations depositary practice, based in international treaty law, in which the instrument of acceptance gives clear and unambiguous expression to the relevant Member's intention and consent to be bound by the agreement in question (e.g., the Protocol to adopt the TFA).

[11] The WTO amendment process follows Article X, Provision 3, of the WTO Marrakesh Agreement.

[12] TPA included the negotiating objective "to expand competitive market opportunities for United States exports and to obtain fairer and more open conditions of trade, including through the use of global value chains, through the negotiation of new WTO multilateral and plurilateral trade agreements, such as an agreement on trade facilitation."

Core Provisions

The TFA has three sections. The first section is the heart of the agreement, containing the provisions—of which many, but not all, are binding and enforceable. The text further clarifies relevant articles of the GATT and includes provisions for customs cooperation. Mandatory articles include requiring members to publish information, including certain items online; issue advance rulings in a reasonable amount of time; and provide for appeals or reviews, if requested. Some TFA articles encourage, rather than oblige, members to do certain things, including provisions that advise members to provide information without charging fees; to take into consideration voluntary disclosure of breaches as a mitigating factor when assessing penalties; to measure and publish average release time of goods; and to use international standards for developing authorized operator schemes and as the basis for import and export formalities and processes. See **Table 1** for a summary of the provisions.

The second section provides for special and differential treatment for developing country members and least-developed country (LDC) members, allowing them more time and assistance to implement the agreement. The third section of the agreement contains the institutional arrangements for administering the TFA. For example, it establishes the Committee on Trade Facilitation, which comprises all members.

Table 1. Provisions of Section I of the Trade Facilitation Agreement

Section I: Articles	Summary of Provision
Article 1: Publication and Availability of Information	Increases transparency by requiring members to publish information related to import, export, and transit procedures, fees, and regulations, and to establish an enquiry point to respond to inquiries. The information on import, export, and transit procedures; form and documentation requirements; and enquiry points must be published online.
Article 2: Opportunity to Comment, Information Before Entry into Force, and Consultations	Requires members to provide an opportunity for interested parties to comment on proposed laws and regulations and provide for stakeholder consultation with border agencies.
Article 3: Advance Rulings	Sets notification requirements on advance rulings regarding the treatment of a good to be imported.
Article 4: Procedures for Appeal or Review	Requires members to establish nondiscriminatory procedures for appeal on administrative decisions.
Article 5: Other Measures to Enhance Impartiality, Nondiscrimination, and Transparency	Sets requirements related to notifications and testing for foods, beverages, or feedstuffs related to foods, protecting human, animal, or plant life or health.
Article 6: Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation and Penalties	Obligates transparency and notice on all fees; limiting any fees or charges to the costs of services rendered; and that any penalties are imposed only on person(s) responsible for any breaches and explained in writing.
Article 7: Release and Clearance of Goods	Requires members to adopt procedures for submitting import documentation, encouraging electronic documents and payment; procedures for the release of goods; nondiscriminatory risk management systems; and post-clearance audit, encouraging publication of release time information. Requires members to provide special measures related to "authorized operators" who meet published criteria; procedures specific to qualifying expedited air cargo shipments; processes for the prioritization and prompt release of perishable goods.

Section I: Articles	Summary of Provision
Article 8: Border Agency Cooperation	Requires internal cooperation between a member's border control authorities and agencies, and encourages cooperation between member states to facilitate border crossings.
Article 9: Movement of Goods Intended for Import under Customs Control	Requires that members allow for goods to be moved between customs offices within their territory.
Article 10: Formalities Connected with Importation, Exportation, and Transit	Mandates that members review and use least trade restrictive formalities and documentation requirements; and encourages acceptance of paper or electronic copies, use of international standards, and establishment of a single window. Prohibits pre-shipment inspection requirements and mandatory use of customs brokers. Requires uniform procedures and documentation throughout a member's territory, processes for re-consigning or returning rejected goods, and temporary admission of goods intended for re-exportation without fees, allowing for inward and outward processing of such goods.
Article 11: Freedom of Transit	Clarifies how members can regulate goods in transit through a territory to minimize charges or delays, and encourages cooperation and coordination between members to enhance transit.
Article 12: Customs Cooperation	Encourages sharing best practices in managing customs compliance and sets terms for exchanges of information requests and responses between members while protecting confidentiality.

Source: CRS description based on WTO, Agreement on Trade Facilitation, July 15, 2014, https://www.wto.org/english/tratop_e/tradfa_e/tradfa_e.htm.

Addressing Trade Barriers

Part of the U.S. International Trade Commission's (ITC's) statutory function is to examine the potential impact of trade deals on the U.S. economy for Congress and the White House.[13] According to the ITC, "the most direct effects [of trade agreements] are the removal of barriers to cross-border trade in goods and services and the facilitation of cross-border investment."[14] To that end, the TFA aims to address multiple trade barriers U.S. exporters confront. These include the lack of transparency on process and documentation requirements for exporting to a given country, which could also create opportunities for corruption. For example, according to an ITC report, "lack of clear information concerning duties and taxes on goods imported into the EU is also problematic for U.S. small and medium-sized enterprises (SMEs)."[15] In business, delays at the border caused by extensive paperwork requirements, inefficient transport or processes, and lack of coordination between various border authorities within or between countries can be costly for U.S. firms.

The U.S. Trade Representative (USTR) annual 2016 National Trade Estimate Report describes several trade barriers across the globe that the TFA aims to address.[16] Some examples follow.

[13] For more information on ITC, see https://www.usitc.gov/press_room/about_usitc.htm.

[14] U.S. International Trade Commission, *Economic Impact of Trade Agreements Implemented Under Trade Authorities Procedures, 2016 Report*, June 2016, p. 125, https://www.usitc.gov/publications/332/pub4614.pdf.

[15] U.S. International Trade Commission, *Trade Barriers That U.S. Small and Medium-sized Enterprises Perceive as Affecting Exports to the European Union*, Investigation No. 332-541, March 2014, pp. 2-11, https://www.usitc.gov/publications/332/pub4455.pdf.

[16] USTR, *2016 National Trade Estimate Report*, https://ustr.gov/sites/default/files/2016-NTE-Report-FINAL.pdf.

- In Brazil, "specific information related to non-automatic import license requirements and explanations for rejections of non-automatic import license applications are lacking. The lack of transparency surrounding these procedures creates additional burdens for U.S. exporters.... U.S. companies continue to complain of burdensome documentation requirements for the import of certain types of goods that apply even if imports are on a temporary basis."
- In the European Union (EU), "not only are the Customs Code Committee (CCC) and other EU-level institutions ineffective tools for achieving the uniform administration and application of EU customs law, but the EU also lacks tribunals or procedures for the prompt review and EU-wide correction of administrative actions relating to customs matters.... Thus, obtaining corrections with EU-wide effect for administrative actions relating to customs matters is a cumbersome and frequently time-consuming process."
- In Indonesia, "customs relies on a schedule of reference prices to assess duties on some imports rather than using actual transactions as required by the WTO Agreement on Customs Valuation. Indonesia's Director General of Customs and Excise makes a valuation assessment based on the perceived risk status of the importer and the average price of a same or similar product imported during the previous 90 days."
- "Clearing goods through Algerian customs is the single most frequently reported problem facing foreign companies operating in Algeria. Delays can take weeks or months, and in many cases are not accompanied by official explanations."[17]

Potential Economic Impact

Modernizing customs and border processes can have benefits for both international businesses and exporters as well as domestic customers and government agencies. (See South Korea case study in **Text Box**.) Exporters and shippers can save time and money; importing agencies can become more efficient, thereby saving money (while also collecting fees and taxes faster); and end customers can receive goods faster at lower costs if the seller passes along the related savings. In this way, customs and border reform efforts are of benefit to both importing and exporting countries, improving their terms of trade, transparency, and good governance.

Case Study: South Korean Reforms

The Korea Customs Service's (KCS's) implementation of a single window produced positive results for both traders and the administrative agency. The single window automated and streamlined the clearance process online so that traders did not need to visit multiple offices responsible for customs and licensing. The "one-stop shop" helped traders by saving time and reducing transport and transaction costs, as well as paperwork redundancies. The new system reduced clearance times by approximately one day, and showed a positive return on investment for the agency.[18]

U.S. companies, from very small businesses to large multinational firms, face trade barriers that the TFA may alleviate. E-commerce platforms allow SMEs to easily reach a global customer base, but many may be hesitant to serve foreign markets because of the complexity of global

[17] Ibid, pp. 54, 176. 223, 8.

[18] Thomas Cantens, Robert Ireland, and Gaël Raballand, *Reform by the Numbers: Measurement Applied to Customs and Tax Administrations in Developing Countries*, The World Bank, 2013, p. 139, https://openknowledge.worldbank.org/bitstream/handle/10986/11967/735160PUB0EPI00date0of0pub010031012.pdf?sequence=1.

shipping and delivery. Compared with larger companies, SMEs have fewer resources to deal with the regulatory hurdles of international shipments, and trade costs represent a larger proportional burden for them.[19] Reforms to reduce these costs could therefore boost SME willingness to participate in international trade. For example, if each country posts customs information online, SMEs could more easily understand export and import processes and requirements. If TFA implementation efforts were to also establish a standardized international format or template for posting required information, it could further reduce the burden on buyers and sellers trying to export to multiple countries.

Reform efforts also help large multinational firms exporting large volumes or managing complex global value chains (GVCs) that rely on predictable, constant flows of imports and exports. For example, the use of automation and risk management required by the TFA will allow firms to submit information in advance so that an entire shipment is not delayed upon arrival at the border while officials determine what to inspect. For express delivery firms, in particular, a shipment's smooth and rapid border crossing is crucial for providing good customer service to their customers.

According to the WTO's 2015 annual report, trade costs in developing countries are equivalent to applying a 219% ad valorem[20] tariff on international trade, while in developed countries the tariff equivalent is 134%.[21] However, full implementation of the TFA provisions has the potential to "reduce trade costs of manufactured goods by 18% and of agricultural goods by 10.4%."[22] Similarly, the Organization for Economic Co-operation and Development (OECD) finds that TFA implementation could lower trade costs 12.5%-17.5% globally.[23] Furthermore, the OECD Trade Facilitation Indicators (TFIs) show relatively higher results when countries' implementation goes beyond the TFA's mandatory provisions to include the non-mandatory, suggested practices. While all reform efforts related to the TFA are estimated to have positive impacts, the OECD sees the largest potential gains from improving trade formalities, such as simplifying documentation, streamlining border procedures, and automating the border processes. (See **Table 1** for a summary of TFA Section 1 provisions.)

TFA implementation could potentially have multiple positive outcomes, including

- improved customs clearance processes for exports and imports;
- improved predictability and management of GVCs;
- minimized loss of perishable goods due to reduced wait and processing times;
- increased SME exports due to lower trade costs;
- increased inflows of foreign direct investment (FDI) for small countries;
- improved and faster collection of taxes, fees, and duties; and
- decreased corruption at borders due to increased automation and transparency.

[19] Trade costs are defined as all the costs incurred in getting a good to the final user, other than the cost of production itself, such as transportation costs, information costs, customs fees and charges, etc.

[20] Ad valorem refers to the levying of tax or customs duties in proportion to the estimated value of the goods or transaction concerned.

[21] World Trade Organization, World Trade Report 2015, p. 7, https://www.wto.org/english/res_e/booksp_e/world_trade_report15_e.pdf.

[22] Ibid.

[23] Organization for Economic Co-operation and Development, Implementation of the WTO Trade Facilitation Agreement: The Potential Impact on Trade Costs, June 2015, http://www.oecd.org/trade/WTO-TF-Implementation-Policy-Brief_EN_2015_06.pdf.

According to WTO estimates, export gains from full implementation of the TFA could range from $750 billion to over $3.6 trillion dollars per year. Looking at 2015-2030, the WTO estimates it could increase world export growth by 2.7% a year and world GDP growth by over .5% a year.[24]

U.S. Companies Support the TFA

"The TFA will produce concrete results, in terms of streamlining trade and reducing administrative time and costs. It's going to help US exporters, especially small and medium size exporters because they are most affected by complicated customs procedures around the world.... We anticipate that improved customs performance over time is going to enable us to provide better service to our customers in terms of time and costs associated with moving their packages across borders."—Ralph Carter, Managing Director, Legal, Trade & International Affairs, Federal Express

"The agreement will provide many benefits to apparel, footwear, and travel goods companies by cutting red tape at the border, increasing supply chain transparency, and decreasing costs—benefits that will pass along value to American consumers, and potentially add to the 4 million Americans already working in the industry."—American Apparel & Footwear Association.

Trade Facilitation in U.S. FTAs

Existing and proposed U.S. free trade agreements (FTAs) include trade facilitation commitments. Provisions are usually addressed in a specific customs administration chapter. For example, the recent U.S. FTA with South Korea (KORUS) and the proposed Trans-Pacific Partnership (TPP) FTA, from which the United States withdrew on January 30, 2017, each have a chapter titled "Customs Administration and Trade Facilitation."[25]

Customs and trade facilitation provisions have evolved in U.S. FTAs, with a focus first on customs administration and then expanding to incorporate broader enforceable trade facilitation provisions.[26] Since 2004, the United States has included provisions specific to expedited shipments, eventually mandating that partners have dedicated channels for express shipments. Some U.S. FTAs include a specific *de minimis* provision, but observers have noticed its absence from the recent proposed TPP.[27] **Figure 1** reflects the diversity of customs administration and trade facilitation provisions across U.S. FTAs.

The WTO TFA and U.S. FTAs share common features. Like the TFA, U.S. FTAs encourage the use of international standards, cooperation, and transparency. In general, the TFA is more prescriptive and provides more detailed discussion to provide greater clarity on the obligations. The TFA contains a stronger emphasis on transparency, internal coordination, and procedures, perhaps reflecting a lowest common denominator to suit all WTO parties across all levels of

[24] World Trade Organization, World Trade Report 2015, p. 8, https://www.wto.org/english/res_e/booksp_e/world_trade_report15_e.pdf.

[25] The TPP is a proposed free trade agreement (FTA), signed by the United States and 11 Asia-Pacific countries on February 4, 2016, from which the United States withdrew on January 30, 2017. For more information on the TPP, please see CRS Insight IN10646, *The United States Withdraws from the TPP*, by Brock R. Williams and Ian F. Fergusson.

[26] U.S. International Trade Commission, *Impact of the Trade Agreements, 2016 Report*, June 2016, https://www.usitc.gov/publications/332/pub4614.pdf.

[27] The de minimis value level (19 U.S.C. 1321, as amended), is the value threshold below which unaccompanied shipments may enter U.S. commerce without the need for formal entry procedures or payment of customs duties. For more on customs administration and trade facilitation in the TPP, see CRS Report R44489, *The Trans-Pacific Partnership (TPP): Key Provisions and Issues for Congress*, coordinated by Ian F. Fergusson and Brock R. Williams.

development. Compared with U.S. FTAs, the TFA is more likely to endeavor or encourage best practices rather than obligate parties, such as for formalities and documentation requirements.

Figure 1. Express Delivery and Customs Administration and Trade Facilitation Provisions in U.S. Bilateral and Regional Trade Agreements

Table G.1: Express delivery and customs administration and trade facilitation provisions in U.S. bilateral and regional trade agreements

		Cross-border trade in services		Customs administration and trade facilitation									
Country or region	Year	Postal monopoly	Transport services	Release of goods	Express shipment	Risk Assess.	Publ. & notif.	Admin.	Advance rulings	Rev. & appeal	Automation	Technical cooperation	Capacity building
Israel	1985	○	○	○	○	○	○	○	○	○	○	○	○
NAFTA	1994	○	● (land)	○	○	○	○	○	●	●	○	●	○
Jordan	2001	○	○	○	○	○	○	○	○	○	○	○	○
Chile	2004	●	○	●	●	●	●	○	●	●	○	●	○
Singapore	2004	○	○	●	●	●	●	●	●	●	○	○	○
Australia	2005	●	○	●	●	●	●	●	●	●	○	●	○
Bahrain	2006	●	○	●	●	●	●	○	●	●	●	●	○
CAFTA	2006	●	○	●	●	●	●	○	●	●	●	●	●
Morocco	2006	●	○	●	●	●	●	○	●	●	●	●	○
Oman	2009	●	○	●	●	●	●	○	●	●	●	●	○
Peru	2009	●	○	●	●	●	●	○	●	●	●	●	○
Colombia	2012	●	○	●	●	●	●	○	●	●	●	●	○
KORUS	2012	●	○	●	●	●	●	○	●	●	●	●	○
Panama	2012	●	○	●	●	●	●	○	●	●	●	●	○

Source: Compiled by Commission staff from U.S.-Israel FTA, NAFTA, U.S.-Jordan FTA, U.S-Chile FTA, U.S.-Singapore FTA, U.S.-Australia FTA, CAFTA-DR, U.S.-Bahrain FTA, U.S.-Oman FTA, U.S.-Morocco FTA, U.S.-Peru FTA, U.S.-Panama TPA, U.S.-Colombia TPA, and KORUS.

Note: The column headings refer to disciplines in the agreements that affect express delivery providers. A filled circle (●) indicates that a given agreement contains such a discipline, while a hollow circle (o) indicates that it is lacking.

Disciplines on transportation services and competition between private express firms and national postal monopolies are included in the Cross-Border Trade in Services chapters in trade agreements. By contrast, disciplines that address, among other things, the release of goods and the treatment of express shipments at customs checkpoints are found in agreements' Customs Administration and Trade Facilitation chapters. In addition, publication and notification disciplines (abbreviated as publ. & notif.) in an agreement's Customs chapter require that trade agreement partner countries publish their customs laws, regulations, and administrative procedures on the Internet. Review and appeal disciplines (abbreviated as rev. & appeal) require that partner countries have access to administrative and judicial review procedures with respect to customs matters.

Source: U.S. International Trade Commission, *Impact of the Trade Agreements, 2016 Report*, June 2016, p. 335, https://www.usitc.gov/publications/332/pub4614.pdf.

Notes: The proposed TPP and pending TFA are not included.

The TPP was the most recent free trade agreement that the United States negotiated and serves as an example of the most extensive and enforceable WTO "plus" commitments on trade facilitation. On January 23, 2017, President Trump directed the USTR to withdraw the United States as a signatory to the Trans-Pacific Partnership (TPP) agreement; the acting USTR gave notification to that effect on January 30.

Compared with recent U.S. FTAs, the TPP text contained similar but expanded provisions. As a stand-alone agreement, the TFA contains more detailed provisions that may provide guidance to developing and least-developed countries with limited customs administration experience. For example, the TFA article on publication and availability of information specifies the information that needs to be published, and the article on customs cooperation spells out the information to be included in a written request between members. The TPP, on the other hand, simply stated: "Each Party shall make publicly available, including online, its customs laws, regulations, and general administrative procedures and guidelines, to the extent possible in the English language."[28] The emphasis on English, as opposed to "one of the official languages of the WTO," as is included in TFA, reflects the strong influence of the United States in the TPP negotiation.

In general, the TPP included more precise and enforceable terms than the TFA. For example, the TPP provided specific timelines (e.g., 150 days for issuing an advance ruling, 48 hours for release of goods, etc.) while the TFA provisions use phrases such as a "reasonable, time-bound manner" and "as rapidly as possible." Both agreements refer to risk management, with TPP requiring use of such a system for assessing and targeting while TFA requires risk management "to the extent possible." Both agreements encourage the use of international standards, with the TPP endorsing

[28] TPP Article 5.11.

recommendations from the World Customs Organization (WCO) and Asia Pacific Economic Cooperation (APEC) forum.

However, while the TPP did not mention *de minimis*, the TFA encourages members to establish such a provision for expedited goods (Article 7.8.2.d). The TFA also includes provisions related to the movement of goods under customs control within a single territory and freedom of transit for transshipments. Finally, TFA Section II contains articles on special and differential treatment for developing and least-developed countries, something not in TPP (see below).

U.S. Trade Facilitation Measures

The United States is already in compliance with most measures represented in the TFA, and thus does not have to change its current practices to comply with the TFA provisions. U.S. customs administration processes are often viewed as examples of good implementation from which other countries can learn. In rankings of trade facilitation measures such as those outlined in the TFA, the United States scores relatively high in terms of availability of customs information, advance rulings, appeal procedures, documentation, automation, and other factors.[29]

U.S. customs procedures are based on a "shared responsibility" approach, in which U.S. Customs and Border Protection (CBP) is responsible for informing importers and exporters of their rights and responsibilities under customs laws and regulations, and traders must be aware of those legal obligations and make their own customs duty and valuation determinations through the process of "informed compliance." Importers and exporters are legally responsible for their shipments and must exercise "reasonable care" to comply with customs laws and regulations.[30] If importers have questions about country of origin, classification, or valuation of merchandise, they may apply to CBP for a binding customs ruling prior to importation.[31]

U.S. Trade Priorities

In the United States, as in all countries, there is an inherent tension between efforts to promote efficient trade flows and trade enforcement (including consumer protection and duty collection). Of particular concern to U.S. officials following the attacks of September 11, 2001, is import security, or preventing the entry of chemical, biological, radiological, and nuclear (CBRN) weapons.[32]

Several instruments used by CBP seek to balance these overarching objectives, and are aimed at knowing who is importing and what types of goods are being imported. Many of these programs rely on CBP partnerships with the trade community, including importers, carriers, consolidators,

[29] World Economic Forum and the Global Alliance for Trade Facilitation, *The Global Enabling Trade Report, 2016*, p. 309, http://wef.ch/getr16.

[30] This approach was adopted in the Customs Modernization Act of 1993 ("Mod Act"), Title IV of P.L. 103-182. The Act reduced the customs agency's role in valuation, classification, and duty determination in favor of freeing up assets to modernize the import process through automation. In the Ways and Means Committee report accompanying the underlying legislation, House lawmakers suggested that importers consider using varied means of assistance. See U.S. Congress, House Committee on Ways and Means, North American Free Trade Agreement Implementation Act, report to accompany H.R. 3450, 103rd Cong., 2nd sess., November 15, 1993, H. Rept. 103-361(I) (Washington: GPO, 1993).

[31] U.S.C. 1625, as amended. CBP, What Every Member of the Trade Community Should Know About: U.S. Customs and Border Protection Rulings Program, CBP Informed Compliance Publication series, https://www.cbp.gov/trade/rulings/informed-compliance-publications.

[32] C-TPAT was authorized by Title II of P.L. 109-347, the Security and Accountability for Every Port Act of 2006 (SAFE Port Act) the Security and Responsibility for Every Port Act of 2006 (6 U.S.C. 942).

customs brokers, and manufacturers, and enhance import security and enforcement activities while providing enhanced benefits in trade facilitation.

The largest "trusted trader" program implemented by CBP is the Customs-Trade Partnership against Terrorism (C-TPAT),[33] a voluntary public-private partnership program through which the agency works in close cooperation with trade community to secure their supply chains. C-TPAT members are considered to be of low risk, and enjoy a number of benefits, including a reduced number of CBP examinations, shorter wait times, and access to special expedited lanes for customs clearance at the border.

TFA and U.S. Automation Efforts

Overseeing U.S. imports and exports is a multi-agency process involving CBP and 47 other participating government agencies (PGAs)[34] with a direct role in the trade process. Past processes were largely paper-based, requiring importers and exporters to submit the same data through multiple electronic systems and to multiple agencies at multiple times. CBP efforts to replace its legacy automated systems with the public-facing Automated Commercial Environment (ACE) and the partner agency-facing International Trade Data System (ITDS) faced multiple cost overruns and took longer than expected.[35] Despite these issues, the United States, when compared to its trading partners, has scored relatively high marks in online availability of customs information and ease of use of its automated systems.[36]

Single Window

TFA Article 10.4 encourages members to establish and maintain a single window, which the agreement describes as "enabling traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies." This TFA provision is in line with congressional negotiating objectives, and was also a priority for the Obama Administration. On February 19, 2014, President Obama signed an executive order directing that U.S. agencies with a role in international trade must complete development of an electronic "single window" through which "businesses will transmit data required by participating agencies for the importation and exportation of cargo." The order further required that all participating agencies have "capabilities, agreements, and other requirements in place" by December 31, 2016.[37]

The Trade Facilitation and Trade Enforcement Act of 2015 (P.L. 114-125, §106) provided additional funding to "complete the development and implementation" of ACE, and required CBP to submit a report detailing its progress on ACE, ITDS and other customs modernization systems to the House Committee on Ways and Means and the Senate Finance Committee, also by December 31, 2016.[38] A follow-up report is due by September 31, 2017. The legislation also

[33] U.S. Customs and Border Protection website: https://www.cbp.gov/border-security/ports-entry/cargo-security/c-tpat-customs-trade-partnership-against-terrorism.

[34] PGAs include the Census Bureau, the Fish and Wildlife Service, the Federal Aviation Administration, The Consumer Product Safety Commission, and the Environmental Protection Agency.

[35] The ITDS was mandated by Section 405 of P.L. 109-347, the Security and Accountability for Every Port Act of 2006. See also CBP website, "ACEopedia December 2016), https://www.cbp.gov/document/report/aceopedia.

[36] World Economic Forum and the Global Alliance for Trade Facilitation, *The Global Enabling Trade Report, 2016*, p. 309, http://wef.ch/getr16.

[37] Executive Order 13659, "Streamlining the Export/Import Process for America's Businesses," 79 *Federal Register* 10657, February 19, 2014.

[38] The report to Congress had not been received as of this writing.

required a Government Accountability Office (GAO) report on the deployment of ACE by December 31, 2017. Section 107 of the act further required that each agency use the ITDS as its primary means of receiving import and export information and documents.

Status of ACE and ITDS

CBP had planned to deploy post-release capabilities including notices of liquidation of goods, statements, duty drawback, and protests in ACE by January 14, 2017, but postponed the deployment with no new target date.[39] On December 12, 2016, CBP published a final rule stating that, by January 14, 2017, CBP official notices of liquidation, suspension of liquidation, and extension of liquidation be posted on the CBP website rather than mailed or posted in customhouses or stations.[40] CBP stated that electronic notification of liquidation activities would be posted as planned.

Agencies' integration into the system is varied, as CBP must conduct pilot testing of each agency's capabilities to receive data and documents through the ITDS.[41] In December 2016, then-CBP Commissioner Gil Kerlikowske announced that as part of the single window effort, CBP's partner agencies have automated more than 300 paper forms.[42]

TFA Implementation, Monitoring, and Enforcement

A key issue with the TFA is effective implementation by all WTO members. Trade agreement implementation is not always smooth. For example, there have been ongoing issues with South Korea's implementation of KORUS provisions on express delivery shipment inspection and delays.[43]

The World Customs Organization (WCO) is working with the WTO on implementation of the TFA. It has released implementation guidance for each Section I article of the agreement.[44] The guidance not only explains the provisions but provides tools, examples of member implementation that can be considered best practices, and quantitative indicators a country could use. For example, the WCO highlights U.S. Customs Mutual Assistance Agreements (CMAAs) as a member implementation of Article 12.

Different sets of indicators by various international organizations exist to measure levels of trade facilitation and could be used to monitor TFA implementation and impact (see Text Box). Monitoring and publicizing metrics could help overcome some of the challenges related to implementation, such as lack of coordination or political will.

[39] See https://www.cbp.gov/trade/automated.

[40] Department of Homeland Security, Department of the Treasury, U.S. Customs and Border Protection, *Electronic Notice of Liquidation*, Final Rule, December 12, 2016. The term "liquidation" refers to the final disposition and payment of duties on goods entering the United States.

[41] Individual PGA pilot testing is implemented by CBP. CBP announces the conclusion of the test after determining the test's success. For example, see 78 *Federal Register* 75931, December 13, 2013 for an announcement of the test of the Food Safety and Inspection Service (FSIS) and its conclusion in 81 *Federal Register* 6252, September 9, 2016.

[42] CBP, "Reaching Major Milestones at East Coast Trade Symposium," press release, December 13, 2016, https://www.cbp.gov/newsroom/spotlights/reaching-major-milestones-east-coast-trade-symposium.

[43] USTR, *2016 National Trade Estimate Report*, p.280, https://ustr.gov/sites/default/files/2016-NTE-Report-FINAL.pdf.

[44] For more information, see http://www.wcoomd.org/en/topics/wco-implementing-the-wto-atf/atf.aspx.

Existing Indicators Relevant to Trade Facilitation

Each set of indicators provides rankings and/or profiles related to trade facilitation. Such metrics can be used to identify shortcomings and areas for potential change, while enabling assessment of the impact of reforms over time.

The OECD Trade Facilitation Indicators (TFIs) cover the full spectrum of specific border procedures for 163 countries across income levels, geographical regions, and development stages.

The World Bank's Doing Business (DB) project looks at domestic small and medium-size companies and measures aspects of regulation that enable or prevent private sector businesses from starting, operating, and expanding and their enforcement across 190 economies and selected cities at the subnational and regional level.

The World Bank's Logistics Performance Index (LPI) contains qualitative and quantitative measures of the performance along the logistics supply chain within a country for both international and domestic perspectives. The index provides benchmarking and profiles of logistics friendliness for each country.

The World Economic Forum's Enabling Trade Index (ETI) takes a broad view and assesses the extent to which economies have in place institutions, policies, infrastructures, and services facilitating the free flow of goods over borders and to their destination.[45]

The OECD maintains Trade Facilitation Indicators (TFIs) that align with policy areas covered by specific TFA provisions.[46] The TFIs measure the status of implementation, and are useful indicators of TFA implementation. For example, the TFIs measure information availability (Article 1), internal and external border agency cooperation (Article 8), and formality documentation and automation (Articles 7 and 10).

The World Bank's Logistics Performance Index (LPI) focuses on logistics and measures the efficiency of international supply chains, an outcome of TFA implementation. The LPI index ranks countries based on six dimensions (customs; infrastructure; ease of arranging shipments; quality of logistics services; tracking and tracing; and timeliness).[47] The top annual performers in the LPI 2010-2016 for each level of development were Germany, South Africa, India, and Uganda.[48]

The World Bank Doing Business report is another possible mechanism for measuring implementation of the TFA. The 2017 report shows that overall reform efforts are gaining momentum, with 137 economies studied adopting reforms to make it easier to start and operate SMEs.[49] The "trading across borders" indicators show increased use of a customs single window, supporting TFA implementation, but also highlight variations among countries.[50] Digitalization efforts show benefits including higher revenue yields, faster processes, and lower corruption.[51]

One concern with trade agreements is how to ensure commitments are effectively and fully implemented and, when necessary, use enforcement mechanisms through dispute settlement provisions. Section III of the TFA is titled "Institutional Arrangements and Final Provisions." The first provision establishes a Committee on Trade Facilitation to meet at least annually for

[45] For more information, see http://www.oecd.org/trade/facilitation/indicators.htm#About-TFI, http://www.doingbusiness.org/about-us, http://lpi.worldbank.org/, and https://www.weforum.org/reports/global-enabling-trade-report-2014/.

[46] For more information, see http://www.oecd.org/trade/facilitation/indicators.htm.

[47] For more information, see http://lpi.worldbank.org/.

[48] World Bank, "New Ranking of 160 Countries Highlights Lag in Least Developed Countries' Progress," June 28, 2016, http://www.worldbank.org/en/news/press-release/2016/06/28/germany-tops-2016-logistics-performance-index.

[49] World Bank, "Doing Business 2017," October 25, 2016, World Bank, http://www.doingbusiness.org/reports/global-reports/doing-business-2017.

[50] World Bank, "Trading Across Borders: Technology gains in trade facilitation," http://www.doingbusiness.org/~/media/WBG/DoingBusiness/Documents/Annual-Reports/English/DB17-Chapters/DB17-CS-Trading-across-borders.pdf.

[51] Ibid.

members to consult on matters related to the agreement. In addition to sharing experiences, the TFA encourages members to use the meetings to identify issues related to implementation, facilitate discussions, and aim to reach a mutually satisfactory solution. This process could be similar to the specific trade concerns members raise in other WTO committee meetings. The TFA also requires each member to establish a National Committee on Trade Facilitation for domestic coordination and implementation of the agreement.

The committee will maintain close contact with other international organizations dealing with trade facilitation, such as the WCO or the World Bank, and may draw from their expertise.

Assistance for Implementation

Special and Differential Treatment (SDT) Provisions

Many of the WTO developing and LDC members voiced concern about the time and costs related to TFA implementation. Implementing the various commitments could mean multiple types of costs including (1) diagnostic, (2) regulatory, (3) institutional, (4) training, (5) equipment and infrastructure, (6) awareness-raising, (7) political, and (8) operational. To help alleviate their concerns, and promote implementation, the TFA is the first WTO agreement in which members determine their own implementation schedules and in which progress in implementation is explicitly linked to technical and financial capacity.

Section II of the TFA contains the Special and Differential Treatment (SDT) provisions that allow developing countries and LDCs to determine implementation timelines for each provision and to identify those provisions for which they require technical assistance and capacity building support. To benefit from SDT, the country must categorize each provision into one of three categories.

A. Implementation when TFA enters into force (one year after for LDCs),
B. Implementation after a transition period; or
C. Implementation after a transition period that requires assistance and support.

The member must submit a notification to the WTO for each category and define any transition periods, in accordance with specific timelines outlined in the Agreement. For two years after entry into force, developing countries are not subject to dispute settlement for Category A provisions, and notifications under Categories B and C provide a country with a longer transition time before being subject to the dispute settlement provisions.

Developing countries must notify Category B and C provisions at the time of entry into force and are given a year to set the transition periods and provide an implementation date for Category B items. A year after entry into force these countries must also specify the assistance needed for Category C provisions. Least-developed countries are given longer time periods for notification of implementation dates (Category B) and to submit requests for assistance (Category C). Article 17 of the agreement provides timelines and requirements for notification of any delays.

China (considered a developing country with respect to the WTO) accepted the TFA and notified all provisions as Category A except for provisions related to the establishment and publication of average release times; single window; temporary admission of goods and inward and outward processing; and customs cooperation. Similarly, Brazil's narrow list of excepted provisions from Category A included publishing the time period for issuing an advance ruling or providing the good's tariff classification with such a ruling; pre-arrival processing; the types of additional trade facilitation measures for authorized operators; and allowing for the advance filing and processing of documentation for goods in transit.

India submitted a more extensive list of Category B provisions for which it commits to a five-year implementation time frame. India's Category B provisions included many of the transparency and publication provisions; establishment of an enquiry point to answer questions, a risk management system, and a single window; and cooperation with other border agencies of other members.

Technical Assistance and Capacity Building

The United States has considerable experience in and has numerous programs that assist other countries in trade capacity building efforts related to customs administration. For example, a U.S. Agency for International Development (USAID) program on Trade and Accession Facilitation for Afghanistan (TAFA) aimed to boost trade in that nation.[52] More broadly, CBP works with other federal agencies including USAID and the Department of Defense to provide training and technical assistance to other countries to improve execution of their border operations.[53] Through the APEC Committee on Trade and Investment, the United States works with its partners to promote trade facilitation and provide capacity building.[54]

The TFA requires that donor members, including the United States, provide the needed support to developing and LDC members. Each donor member is required to provide specified information on the assistance and capacity building given over the past year and committed to for the upcoming year.[55] These members must also submit contact information for the agencies providing the aid and regularly update all information.

In the 114th Congress, Senator Bob Corker introduced a bill (S. 2201) that would instruct the executive branch to ensure coordination of U.S. capacity building efforts. The bill aims to create a whole-of-government strategy as part of the U.S. effort to achieve the ambitious goals of the TFA. It would establish an interagency coordinating committee, chaired by the Secretary of State and informed by a newly created trade capacity advisory committee comprised of public and non-public organizations, to develop a biennial strategic plan for trade capacity building efforts to be submitted to Congress.

TFA Capacity Building

Donor members agree to facilitate the provision of assistance and support for capacity building to developing country and least-developed country members on mutually agreed terms either bilaterally or through the appropriate international organizations. The objective is to assist developing country and least-developed country members to implement the provisions of Section I of this Agreement. (Section II, Article 21)

Along with other TFA donor members, by promoting harmonized practices and sharing implementation experiences, from documentation templates and website formats to processes for collecting customs or coordinating domestic agencies, the United States can help advance effective implementation of the TFA. The WTO International Forum for National Trade Facilitation Committees, launched in January 2017, provides a forum for such "dialogue and collaboration."[56] In addition, there are two international collaborations dedicated to supporting TFA implementation.

[52] For more information, see https://www.usaid.gov/node/50531.

[53] For more information, see https://www.cbp.gov/border-security/international-initiatives/international-training-assistance#.

[54] For more information, see http://www.apec.org/Groups/Committee-on-Trade-and-Investment.aspx.

[55] WTO TFA, Section III, Article 22.

[56] Speech by WTO Durector General Azevêdo, "International Forum for National Trade Facilitation Committees — Palais des Nations," January 23, 2017, https://www.wto.org/english/news_e/spra_e/spra153_e.htm.

Trade Facilitation Agreement Facility

In July 2014, the WTO launched the Trade Facilitation Agreement Facility (TFAF) to provide implementation assistance.[57] Aid will include helping members prepare their SDT notifications, provide technical assistance and capacity building, and support LDC members to access assistance from other organizations. The TFAF will also offer two types of limited grants for project preparation and implementation related to Category C commitments. The United States, through USAID, is a donor member as are other developed countries, international, regional, transport, and assistance organizations.[58] In FY2012, U.S. government agencies provided nearly $1 billion for overall trade capacity building activities in more than 120 countries, customs territories, and regional groupings, with USAID being the largest contributor, with $418 million dedicated to trade capacity building.[59]

Global Alliance for Trade Facilitation

The Global Alliance for Trade Facilitation (GATF) is a public-private partnership that aims to bring together businesses and governments to help accelerate TFA reform implementation.[60] Housed at the World Economic Forum, the GATF secretariat is located in Geneva, Switzerland. The alliance plans to support local efforts in 12-15 countries, while engaging with other international bodies at a global level to promote dialogues, workshops, and best practices. To start, the GATF will conduct pilot projects in Colombia, Ghana, Kenya, and Vietnam. U.S. companies such as Federal Express and UPS participate in GATF activities. The GATF In-Country Programs committee, for example, is chaired by UPS.

Issues for Congress

No congressional approval is needed for the United States to implement the TFA because it requires no change in U.S. law. However, as implementation of the TFA may affect U.S. businesses, the U.S. economy, and international capacity building efforts, Congress could

- Conduct oversight of effective and efficient country implementation, as well as the U.S. single window, by CBP.
- Conduct oversight of U.S. involvement in TFA capacity building through the TFAF and GATF to ensure that U.S. funds are being spent effectively to achieve desired results.
- Instruct the executive branch to ensure coordination of U.S. capacity building efforts.
- Examine the benefits of a future expansion of the TFA to raise the level of commitments, for example by adopting clearer *de minimus* levels for expedited customs processing.

[57] For more information, see http://www.tfafacility.org/wto-assistance.

[58] A full list of donors is at http://www.tfafacility.org/implementation-support.

[59] Government Accountability Office, "USAID Should Update Its Trade Capacity Building Strategy," August 2014, http://www.gao.gov/assets/670/665280.pdf.

[60] Alliance participants include Australian, Canadian, German, British and U.S. governments as well as the World Economic Forum, the International Chamber of Commerce and the Center for International Private Enterprise. For more information on the Alliance, please see http://www.tradefacilitation.org/.

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