

# **Special and Differential Treatment of Developing Countries in the WTO Agreement on Trade Facilitation**

Is there a cause for optimism?

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# Special and Differential Treatment of Developing Countries in the WTO Agreement on Trade Facilitation: Is there a cause for optimism?

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**Abstract:** The growing evidence of market failure, uncertainties in international cooperation and complexities of the problems of global inequalities has made special and differential treatment of developing countries (S&DT) not only increasingly necessary, but also increasingly difficult. In this paper, we examine the S&DT measures in the WTO Agreement on Trade Facilitation (TFA), in addressing the delicate balance between the concerns of developing countries and fostering the TFA's objectives of expediting the movement, release and clearance of goods, including goods in transit. We find that, while the S&DT appears, in the face value, to offer flexibility for developing countries especially the least developed countries in implementation of the TFA, this flexibility has been eroded by conditioning assistance and support for capacity building to notification of commitments. The linking of support to commitment creates not only dilemma for developing countries on the timing of commitment (implementation) but also exposes them to risks of taking on increasing commitment before prerequisite capacity. Given the 'best endeavour' nature of the relevant provisions, it is not apparent that the benefits of implementing the Agreement will outweigh its costs if developed countries relegate on their promise to provide assistance and support for capacity building.

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# 1 Introduction

In February 2018, the implementation of WTO Agreement on Trade Facilitation (TFA) entered its second year, having come into force on 22 February 2016. Concluded at the Ninth WTO Ministerial Conference in Bali (2013), the Trade Facilitation Agreement (TFA) aims at expediting the movement, release and clearance of goods, including goods in transit, and sets out measures for effective cooperation between customs and other relevant authorities on trade facilitation and customs compliance issues. To help developing countries adjust to the new commitment, the TFA contains provisions for technical assistance and capacity building in this area. Considering important commitments developing countries will assume in the Agreement,<sup>1</sup> what are the challenges and risks for developing countries, which comprise a majority of the WTO membership?<sup>2</sup> This paper addresses this question and highlights the approach developing countries might take to work to the realization of the development objective. It looks at the progress so far (TFA's implementation), about two years following its entry into force.<sup>3</sup>

Section II of the WTO Agreement on Trade Facilitation sets out the basis for special and differential treatment (S&DT) for developing countries and for the technical assistance and capacity building needed by them for the implementation of the agreement. The incorporation of S&DT provisions for developing countries in the TFA is out of recognition that market failures are pervasive and that any path to economic development requires differential policy towards developing countries and the least developed among them. It is "in the spirit of the Doha Round", since 2001 that the rules-based multilateral trading system requires a development dimension, which addresses the requirements and special needs of the weaker members especially least-developed countries.

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<sup>1</sup> "... 'assistance and support for capacity building' may take the form of technical, financial, or any other mutually agreed form of assistance provided" (Footnote 16, TFA).

<sup>2</sup> There are currently 47 least-developed countries on the UN list, 36 of which to date have become WTO members. Eight more least-developed countries are negotiating to join the WTO. They are: Bhutan, Comoros, Ethiopia, Sao Tomé & Príncipe, Somalia, South Sudan, Sudan and Timor-Leste. Africa is represented by 44 member countries within the WTO, most of them, least-developed countries.

<sup>3</sup> On 30 April 2017, 115 instruments of acceptance of the Protocol Amending the WTO Agreement had been received by the WTO, including 19 from African countries.

In Marrakesh Ministerial meeting (which led to establishment of the WTO), Ministers agreed that least-developed countries would only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs, or their administrative and institutional capabilities, reflected in the Decision on Measures in Favour of Least-Developed Countries. In the 1 August 2004 Decision of the General Council (July Package), Members reaffirmed their commitments made at Doha concerning LDCs, including due account to be taken of LDC concerns in the negotiations, assurance that the July Decision not to negatively affect LDCs in any way.

Considering decades of international efforts to trade facilitation, the purpose of this paper is to provide some insights into the development value of the special and differential treatment (S&DT) measures in the WTO Agreement on Trade Facilitation (TFA)—the extent to which developing countries will be in position to use them to address their trade facilitation and development needs—specifically,

- i) the role of the S&DT measures in addressing the delicate balance between the needs and concerns of developing countries and ensuring the TFA’s objectives of expediting the movement, release and clearance of goods, including goods in transit—the weights attached to specific policy clusters (e.g. capacity building, etc.) as well as the content, substance and legal applicability of the provisions are evaluated;
- ii) the risks and opportunities of implementing the Agreement. When transition periods fail to achieve their purpose because of insufficient resources or inadequate monitoring of developed countries’ action to support adjustment, the risk emerges of further marginalizing developing and least-developed countries and compromising their future integration into the multilateral trading system.

In what follows, Section 2 provides a contour of the WTO Agreement on Trade Facilitation, and considers the challenges to be faced if one wants to turn into reality the potential that trade facilitation holds for development. It also highlights the approach developing countries might take to work to the realization of the development objective. Section 3 then considers the progress in implementation. Section 4 concludes with a suggestion on the input that international partners could, and should, make to the realization of the development return from TFA.

## 2 Contour of the WTO Agreement on Trade Facilitation

The Bali (MC9) result is a text containing 13 articles of rules and sub-rules that go far beyond the GATT Articles V (regarding freedom of transit), VIII (customs fees and formalities) and X (the publication and administration of trade regulations) on this issue—presented in three sections: substantive provisions, provision of S&DT and institutional and cross cutting issues.<sup>4</sup>

The TFA recognizes, in its the preamble, the particular needs of developing and especially least-developed country Members requiring assistance and support for capacity building in the operation of the obligations under the Agreement, which reaffirms the acceptance of development as a central purpose of TFA.<sup>5</sup>

### 2.1 Substantive rights and obligations

Section I of the TFA contains provisions that deals with substantive rights and obligations, in 12 articles. The provisions (originating from Articles V, VIII and X of the GATT 1994) aim at expediting the movement, release and clearance of goods, including goods in transit.<sup>6</sup> These include the advance publication of customs rules and regulations, giving signatory countries a chance to comment on rules before their entry into force; the streamlining of customs fees and formalities with respect to imports and exports; the timely release and clearance of goods, especially expedited or perishable cargo; the freedom of transit for goods across the territory of other signatories; and cooperation between signatory countries' border management agencies, among others.

Of the 12 substantive Articles, four of them deal directly with movement of goods and customs formalities—showing the significance attached to this issue: Article 7 (Release *and*

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<sup>4</sup> For the full text of the agreement, see WTO, “Agreement on Trade Facilitation,” Preparatory Committee on Trade Facilitation, W/L/931, July 15, 2015, available at [https://www.wto.org/english/thewto\\_e/20y\\_e/wto\\_tradefacilitation\\_e.pdf](https://www.wto.org/english/thewto_e/20y_e/wto_tradefacilitation_e.pdf).

<sup>5</sup> According to the Vienna Convention on the Law of Treaties (United Nations, 1969, article 31 (2)), the preamble is part of a treaty for the purpose of interpretation. It is the repository of the general aims and purposes of the agreement and offers a summary of the grounds upon which it is concluded. Thus, while preambles normally do not directly create rights and obligations for the parties to an instrument, they are relevant for the interpretation of its provisions.

<sup>6</sup> The TFA clarifies and improves the relevant articles (V, III, and X) of the General Agreement on Tariffs and Trade (GATT) 1994. Footnote to Annex D of the August 2004 Decision, states “It is understood that this is without prejudice to the possible format of the final result of the negotiations and would allow consideration of various forms of outcomes.

*clearance of goods*), Article 9 (*Movement of goods intended for import under customs control*), Article 10 (*Formalities connected with importation, exportation, and transit*), and Article 11 (*Freedom of transit*). Article 7 contains important provisions geared at expediting the movement and release of goods by establishing systems for (1) pre-clearing imports; (2) accepting electronic payments for customs duties, fees, and taxes; (3) separating the physical from the fiscal release of goods; (4) using risk management systems for customs processing; (5) deploying post-clearance audits; (6) publishing average release times for goods; (7) implementing trade facilitation measures for authorized economic operators; (8) expediting the release of goods delivered by air transport; and (9) releasing perishable goods in a timely way to prevent deterioration or loss of product.

Four of the 12 Articles deal directly with publication and dissemination of information related to import, export and transit procedures as well as associated fees and charges, trade laws and regulations, etc (in a timely, transparent, more accessible and non discriminatory manner)—that are central to trade facilitation efforts. In fact, Articles 1 to 5 of the TFA all aim to enhance transparency. Article 1 (*Publication and availability of information*), Article 2 (*Opportunity for comment, information before entry into force and consultations*), Article 3 (*Advance rulings*), Article 5 (*Other measures to enhance impartiality, nondiscrimination, and transparency*), and Article 6 (*Disciplines on fees and charges imposed on or in connection with importation and exportation and penalties*).

## **2.2 Special and differential treatment**

The Section II content of TFA is particularly important in reflecting development concerns. This begins with the choices countries make about the measures they wish to implement immediately, those they wish to implement later and those they will implement after receiving required assistance and support for capacity building.

### **2.2.1 Menu-driven approach**

Section II sets out the basis for special and differential treatment S&DT for developing countries and for the technical assistance and capacity building needed by them for the implementation of the agreement. Article 13 of the TFA sets out three categories of

measures (i.e. provides for a staged, a self-selected approach for developing countries to implementing their commitments across three categories of provisions): Category A for obligations that can be implemented immediately, Category B for obligations that require longer time frames, and Category C for obligations that need both longer time frames and technical assistance. Category C provisions allow developing countries to identify provisions that they will only be able to implement upon the receipt of technical assistance and support for capacity building.<sup>7</sup>

The extent and the timing of implementing the provisions of the Agreement is calibrated, in principle, to the implementation capacities of developing and least developed country Members. This ‘menu-driven’ approach means that individual developing countries have their own tailor-made form of special and differential treatment, which somehow is uncharted territory for the WTO. To benefit from S&DT, the TFA requires a member to categorize each provision of the Agreement, and notify other WTO members of these categorizations in accordance with specific timelines outlined in the Agreement.

Where technical and financial assistance and capacity building has not been provided or lacks the requisite effectiveness, developing countries and LDCs are not bound to implement the provisions notified under Category C. The mandate as in Annex D of August 2004 Decision, which guided the TFA process made it clear that developing and least-developed Members would not be obliged to undertake investments in infrastructure projects beyond their means. On the face-value, far-reaching flexibility has been granted to LDCs, which will only be required to undertake commitments to the extent consistent with their individual development, financial and trade needs or their administrative and institutional capabilities.

While this approach appears, in the face value, to offer flexibility for developing countries especially least developed countries, this flexibility has been eroded by conditioning assistance and support for capacity building to notification of commitments. In

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<sup>7</sup> “Category A contains provisions that a developing country Member or a least-developed country Member designates for implementation upon entry into force of this Agreement, or in the case of a least developed country Member within one year after entry into force, as provided in paragraph 3.”

the long-run, least developed countries are going to end up with some serious level and magnitude of commitment and this is unprecedented in the history of the WTO rule-making.

S&DT was expected to go beyond transitional periods. Paragraph 2 of Annex D of the July 2004 Decision of the WTO General Council indicates that “the principle of (special and differential treatment for developing and least-developed countries) should extend beyond the granting of traditional transition periods for implementing commitments”. It adds, “in particular, the extent and timing of entering into commitments shall be related to the implementation capacities of developing and least developed members.”

Annex D does not specify what would be appropriate SDT provisions in the context of the TFA, although it indicates that the principle of special and differential treatment should be formulated in a way that would allow linking the extent and timing of commitments to the implementation capacities of developing and least-developed countries.

In broad terms, what developing countries expected was an innovative S&DT provisions—aimed at more than facilitating adjustment (as was the case during the Uruguay Round). Some commentators (e.g. OECD, 2006), envisaged SDT provisions that would at both facilitating adjustment and improving market access opportunities of developing countries. We find similar provisions in the TBT and SPS agreements, for example, SPS Article 10.2 provides for phased introduction of new SPS measures on products of export interest to developing countries, while SPS Article 9.2 provides for specific technical assistance to help developing countries fulfill SPS requirements of importing countries. Similarly, TBT Article 11.5 provides for technical assistance regarding the steps that should be taken by developing country producers wishing to have access to conformity assessment systems operated in the territory of the Member receiving the request.

In the context of a TFA, provisions following that model would take the form of specific measures requiring developed countries to provide more information to developing countries regarding their domestic requirements and procedures. Such arrangements would also include measures aimed at reducing any difficulties developing country exporters would face in complying with such requirements. Additional S&DT provisions would take the form of more favourable measures for certain categories of countries such as LDCs or landlocked countries—enquiry points that also provide “market access assistance” for

products of interest to those countries, lower fees and charges, Further simplifications in transit procedures, etc. (OECD, 2006).

This is not the only area that WTO agreements seem to have provided an incorrect diagnosis (and ending with an inappropriate remedy) for the problems developing countries face. In the customs agreement, the discipline covers only valuation, but project experience in developing countries has proved that “valuation is perhaps the last centimeter in a whole meter of customs processes that requires reform” (to borrow from Finger, 2001).

### **2.2.2 Measures that can be implemented immediately**

Developing countries were by and large not demandeurs of the Trade Facilitation rules. Most of the provisions in Section I came from developed countries and are in fact, to a large degree, the current practices of many developed countries. Developed countries committed to apply the substantive portions of the TFA from the date it takes effect (Category A). Developing countries and least-developed countries (LDCs), meanwhile, will only apply those substantive provisions of the TFA which they have indicated they are in a position to do so from the date of the TFA's entry into force. LDCs were given additional one year to do so. These commitments are set out in the submitted Category A notifications.

Challenges ranging from capacity constraint experienced by developing countries to political constraints make implementing the Agreement difficult. The S&DT provisions allow developing and least-developed countries (LDCs) to determine which provisions they want to implement immediately and when they will implement the remaining provisions of the Agreement.

Developing countries notifying under category A may target those measures that are longstanding practices which may not present a cost burden for them because they are already well incorporated into the customs administration's structure and operational budget (for instance, publication of applicable laws and regulations, advance rulings on origin, consultation and feedback mechanisms at the domestic level, co-operation between border agencies), and appeal mechanism. Measures which are not currently implemented by developing members, but which do not present additional complexities or resource burden and should be possible to implement relatively quickly, such as the publication of internal

procedures and guidelines are possible to notify under category A. These are ‘low-hanging fruits’ that developing countries can implement immediately – as category A provisions.

### **2.2.3 Measures requiring time for implementation**

Some measures, even though they may not require additional resources to implement or can be introduced by reallocating resources that were assigned to other tasks, their introduction requires time for on-the-job training of personnel for the necessary skills to implement them. This is the case for instance with advance rulings on valuation, or with the principle of separation of release from clearance, which presents difficulties for some countries still in the process of building confidence between traders and border authorities.

### **2.2.4 Measures requiring time and prior availability of capacity for implementation**

Requirements for implementation of TFA differ across the various provisions; some measures such as provisions on single windows, due process, risk management techniques, post clearance audits may require legislative reforms, infrastructure development, or new skills and more personnel in relevant departments. Depending on the starting point of developing countries such provisions may be very demanding and resource intensive (part of the Agreement) from the perspective of developing countries, which require technical and financial assistance in order to be introduced and additional time after their introduction in order to be properly implemented. Such provisions can be notified under category C.

Other measures may require prerequisite capacities and infrastructure in place for their successful introduction and implementation, for example, advance lodgment and processing of data requires a certain degree of automation of Customs systems. This is one, among many areas where integrated financing mechanism are required as opposed to traditional technical assistance anticipated in the context of a WTO trade facilitation agreement. Unfortunately, no real self-assessment of implementation capacity took place and the transitional periods granted for implementing such measures have not taken into account

whether prerequisite capacity building has already taken place or not or time needed to have prerequisite capacity in place.<sup>8</sup>

Developing countries wanted the implementation of Category C provisions to be conditional on the acquisition of sustained implementation capacity by developing countries and LDCs and the provision of adequate technical and financial assistance and capacity building measures by developed countries. It didn't work out for them that way; provision of support and capacity building remains unbinding. No commitments to financial assistance like in Multilateral Environmental Agreements (e.g. UN Desertification Convention), which despite pledges for 'complementary assistance' by 27 governments and organizations during the 4th Global Aid for Trade meeting in July 2013 (e.g. USD 381 million in 2011) the outcome is disappointing. Developing countries may end up in a situation where they have to implement the resource intensive provisions without receiving adequate support and technical assistance.

Developing countries are to take on permanent binding commitments under category C upon receipt of time-limited assistance. The question of whether their implementation capacity can be sustained over the long-term has not been addressed. □The position of developing countries on self-assessment is completely the opposite of what is in TFA; the TFA leave implementation capacity to be reviewed by a third party – an Expert Group who gives its recommendation to the TF Committee. LDC-flexibility in this area was not addressed. Developing countries and LDCs should have been allowed to self-assess their implementation capacity.

### **2.2.5 Provision of support and technical assistance**

Upon entry into force of TFA, WTO Members were expected to have fully operational National Trade Facilitation Committee (NTFC) in place (Tables 1–3). In accordance with Article 15.2 of the TFA, LDCs have an additional period of one year to deposit their

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<sup>8</sup> "The extent and the timing of implementing the provisions of this Agreement shall be related to the implementation capacities of developing and least developed country Members. Where a developing or least developed country Member continues to lack the necessary capacity, implementation of the provision(s) concerned will not be required until implementation capacity has been acquired."

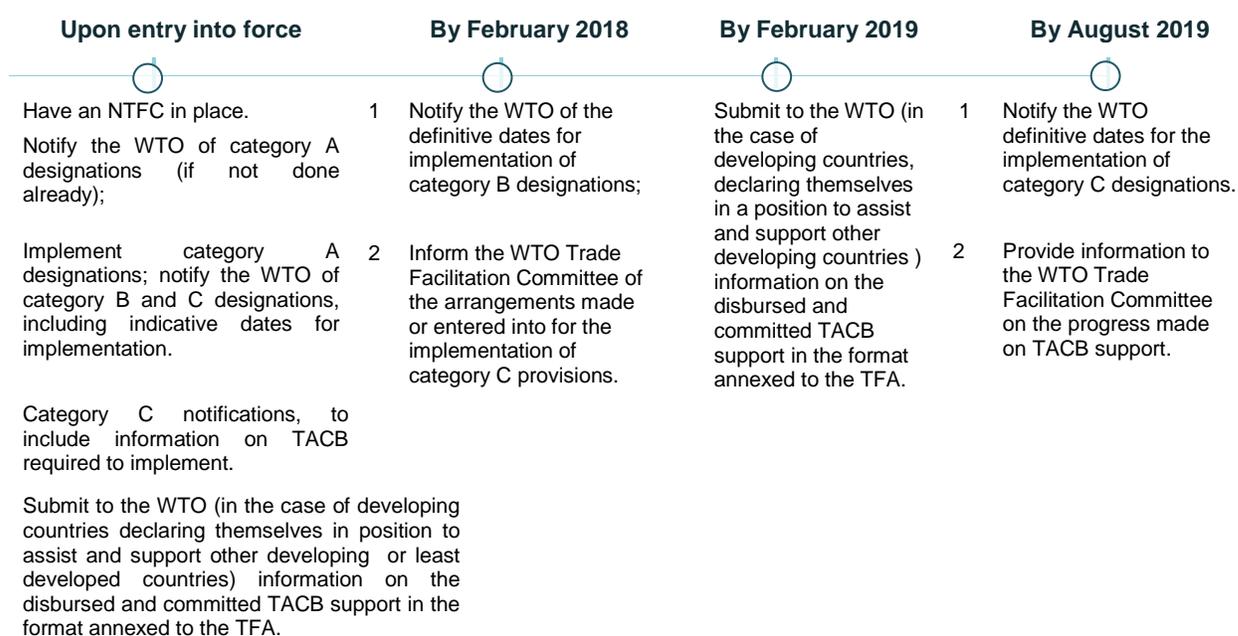
instrument of ratification following the entry into force of the TFA. To benefit from SDT, a developing Member must categorize each provision of the Agreement. Besides the notification of categories A, B and C designations, the TFA sets out different timelines for the notification of indicative and definitive dates for implementation of categories B and C commitments (Tables 1, 2 and 3). Under Category B commitments, developing Members were required to notify their indicative dates by 22 February 2017 and their definitive dates by 22 February 2018 (Table 2). LDCs *may* notify their indicative dates of implementation of category B commitment by 22 February 2018 and their definitive dates by 22 February 2020. In addition to the notification of indicative and definitive dates for the implementation of category C commitments, the TFA sets out different timelines for the notification of the technical assistance and capacity building support that Members require to implement these commitments, and on the part of developed countries on arrangements or progress made in terms of the provisions of technical and capacity building support developing countries.

**Table 1. Timeline: provision of technical assistance and support for capacity building by developed countries**



Source: UNCTAD, 2017.

Developing Members were expected to notify the technical assistance they require to implement their category C commitments by 22 February 2017 (Table 2). LDCs are given two more years to do so as indicated in Table 3 (i.e. they are expected to notify the technical assistance they require to implement their category C commitments by 22 February 2019).

**Table 2. Timeline for implementation and notification of technical assistance by developing Members**

Source: UNCTAD, 2017.

LDCs are also allowed additional one year to notify WTO of category B designations (i.e. up to February 2018) and up to August 2022 to notify the WTO of the definitive dates for the implementation of category C commitments.

**Table 3. Timeline for implementation and notification of technical assistance by least developed Members**

Source: UNCTAD, 2017.

The timeline given to the LDCs for implementation of their commitment is on assumption that assistance and support for capacity building they require to implement their category C commitments will come earlier enough and that there is sufficient time to undertake required legislative reforms, infrastructure development, or new skills and more personnel in relevant departments. Depending on their starting points and donor behavior, some LDCs will find the 6-year transition period (from 22 February 2017 to August 2022) impractical.

Already there are clouds of uncertainties over granting of assistance and support for capacity building given the ‘best endeavours’ nature of the relevant provisions. Provision of assistance for capacity building is full of clauses like the much criticized ‘best endeavours’ commitments on technical assistance in the Uruguay Round Agreement, a non-binding statement that

“... assistance and support should be provided to the least developed country Members so as to help them build sustainable capacity to implement their commitments.

...development partners shall endeavour to provide assistance and support in this area in a way that does not compromise existing development priorities.

... Members shall endeavour to apply the following principles for providing assistance and support for capacity building with regard to the implementation of this Agreement...” etc.

Fortunately, there is an acceptance that in cases where required support and assistance for such infrastructure is not forthcoming, and where a developing or least-developed Member continues to lack the necessary capacity, implementation will not be required. What happens to countries that had not ratified by the entry into force of TFA? WTO Members that ratify the TFA after its entry into force shall implement its category A commitments immediately on ratification, and category B and C commitments counting on the remaining period from the date of the entry into force of the agreement (Article 24.4 of TFA), thus having reduced periods for implementation. Members who have not yet ratified TFA will continue implementing only GATT Articles V, VIII and X (making them free ride on Members that have ratified the TFA) and have to implement TFA and GATT Articles V, VIII and X).

### **2.3 Institutional and cross-cutting issues**

Section III of the Agreement contains provisions that establish a permanent committee on trade facilitation at the WTO to periodically review the Agreement's operation and

implementation. The Committee held its first (inaugural) meeting on 16 May 2017, with Ambassador Daniel Blockert (Sweden) as the first chair. The TFA also brings important institutional changes at the national level. Under Article 23.2, WTO Member, either developed or developing country, is required to establish or maintain National Trade Facilitation Committee (NTFC). The NTFC provides a forum for consultation, information, coordination and engagement by representatives from the public and private sector towards the successful implementation of the Agreement. The UN Repository on NTFC provides evidence of 120 countries with functional NTFCs.<sup>9</sup>

### 3 Progress in TFA implementation

#### 3.1 Notifications across three categories

Out of the 256 notifications received by the WTO Secretariat by 18 June 2018, 69 of which are from African countries, 47.9 percent of the measures were notified under category A, 28.4 percent under category B, and 23.7 percent under category C. Of the 113 notifications under category A, 34 are from African countries.

Table 4 reports the progress in notifications to date. Out of the 69 notifications from African countries 30.1 percent of measures were notified under category A, 26.9 percent under category B, and 30.4 percent under category C, which means that 12.7 percent of measures are yet to be notified.

**Table 4. Implementation notifications, by 25 June 2018**

	Notified Category A	Notified Category B	Notified Category C
Number of members	113	67	56

Source: WTO database

Of the 56 Members that notified under category C, 18 are African countries, among which 13 are LDCs.<sup>10</sup> The share of measures notified under category C is 35.1 percent on average,

<sup>9</sup> Unctad.org/tfc

<sup>10</sup> The 18 countries are Angola, Botswana, Chad, Gambia, Lesotho, Madagascar, Malawi, Mali, Mauritius, Morocco, Mozambique, Niger, Nigeria, Rwanda, Seychelles, Sierra Leone, Togo, and Zambia.

compared to 33 percent in category A and 26.5 percent in category B. In addition to South Africa, which has already implemented most of the measures, 34 other African countries have already categorised measures under category A.<sup>11</sup> However, only South Africa and Morocco have over 90 percent. If we add category B commitments, assuming that they are implemented by the set deadline, Mauritius and Seychelles could reach a similar level of commitment.

Category B notifications from developing countries and LDCs list the provisions the WTO member will implement after a transitional period following the entry into force of the TFA. Sixty seven (67) Members have so far notified category B, 19 being African countries.<sup>12</sup> Only Botswana and Rwanda have above 50 percent share of measures notified under category B.

Articles 1 to 5 of the TFA all aim to enhance transparency. Tables 5 and 6 highlight the transparency notifications and assistance for capacity building. The provisions originate from Article X of the GATT. The first article of the agreement contains provisions on publication and availability of information.

Table 5. Transparency notifications, 18 June 2018

	Article 1.4	Art. 10.4.3, 34	Art. 10.6.2	Art. 12.2
Number of members	51	34	36	46

Source: WTO database

Fifty one (51) notifications have been received by WTO on Article 1.4 (Table 5). Article 1, paragraph 4 deals with importation, exportation and transit procedures, applied rates of duties and taxes, fees and charges, rules for the classification or valuation of products, laws, regulations and administrative rulings relating to rules of origin; import, export or transit restrictions or prohibitions, penalty provisions against breaches of import, export or transit formalities; appeal procedures; bilateral agreements, and procedures relating to the administration of tariff quotas.

<sup>11</sup> They are: Angola, Botswana, Burkina Faso, Burundi, Cameroon, Chad, Congo, Cote d'Ivoire, Democratic Republic of the Congo, Egypt, Gabon, Gambia, Ghana, Kenya, Lesotho, Madagascar, Malawi, Mali, Mauritius, Morocco, Mozambique, Namibia, Niger, Nigeria, Rwanda, Senegal, Seychelles, Sierra Leone, South Africa, Tanzania, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

<sup>12</sup> They are Angola, Botswana, Chad, Gambia, Lesotho, Madagascar, Malawi, Mali, Mauritius, Morocco, Mozambique, Niger, Nigeria, Rwanda, Seychelles, Sierra Leone, South Africa, Togo, and Zambia.

Thirty four (34) Members have (up to 25 June 2018) presented notifications on Article 10.4.3 and 36 Members have notified on Article 10.6.2. Article 10, paragraph 4(3) requires Members to notify to the Committee on Trade Facilitation the details of operation of a single window. Article 10, paragraph 6.2 requires each Member to notify and publish its measures on the use of customs brokers. It requires Members to promptly notify and publish any subsequent modifications thereof to the Trade Facilitation Committee.

Article 12.2 requires each Member to notify to the Committee the details of its contact point for the exchange of information set out in paragraph 6b. and/or c. for the purpose of verifying an import or export declaration in identified cases where there are reasonable grounds to doubt the truth or accuracy of the declaration. Up to 46 Members have by 25 June 2016 notified on this provision.

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Table 6. Assistance for capacity building, 25 June 2018

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	Article 22.1	Article 22.2	Article 22.3
Number of members	13	8	0

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Source: WTO database

Considering notifications by African countries, the measures relating to the single window (Article 10.4), average release times (Article 7.6), risk management (Article 7.4), enquiry points (Article 1.3) and border agency cooperation (Article 8) dominate notifications under category C.

The structure of commitments by African countries reflects their desire and strategic call for technical assistance and support they require to implement the TFA. It may also be reasonable to say, the current level of commitment by African countries reflect a degree of caution, which could be explained by the deterrent effect of implementation costs. This resonates with the position of African trade ministers who insisted on binding financial commitments from developed countries for technical assistance.

### 3.2 Notification of indicative & definitive dates for implementation

Besides the notification of categories A, B and C designations, the TFA sets out different timelines for the notification of indicative and definitive dates for implementation of categories B and C commitments as highlighted in Tables 1–3.<sup>13</sup>

Table 5 shows that 56 developing Members have until 18 June 2018 presented notifications of indicative dates for implementation of category B commitment.<sup>14</sup>

	Category B		Category C	
	No.	Percent	No.	Percent
Members that have presented notifications	67		56	
Have provided ALL indicative dates	56	83.6	42	75.0
Have NOT provided ANY indicative dates yet	10	14.9	12	21.4
Have provided SOME indicative dates	1	1.5	2	3.6
Have provided ALL definitive dates	32	47.8	10	17.9
Have NOT provided ANY definitive dates yet	35	52.2	45	80.4
Have provided SOME definitive dates	0	0.0	1	1.8

Source: WTO database

Only 32 developing Members have until 18 June 2018 presented notifications of definitive dates for implementation of category B commitment.<sup>15</sup>

<sup>13</sup> Under Category B commitments, developing Members were required to notify their indicative dates by 22 February 2017 and their definitive dates by 22 February 2018. LDCs *may* notify their indicative dates of implementation of category B commitment by 22 February 2018 and their definitive dates by 22 February 2020.

Under Category C commitments, developing Members were required to notify their indicative dates by 22 February 2017 and their definitive dates by 22 August 2019. LDCs may notify their indicative dates of implementation by 22 February 2021 and their definitive dates by 22 August 2022.

<sup>14</sup> The 56 Members are Albania, Argentina, Armenia, Kingdom of Bahrain, Bangladesh, Belize, Plurinational State of Bolivia, Botswana, Brazil, Brunei Darussalam, Cambodia, China, Columbia, Cuba, Dominican Republic, Kingdom of Eswatini, Fiji, The Gambia, Guatemala, Guyana, Honduras, India, Indonesia, Jamaica, Jordan, Lao People's Democratic Republic, Lesotho, Macao, China, Madagascar, Malawi, Malaysia, Mauritius, Republic of Moldova, Mongolia, Montenegro, Morocco, Nicaragua, Nigeria, Pakistan, Paraguay, Peru, Philippines, Rwanda, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, South Africa, Sri Lanka, Thailand, The former Yugoslav Republic of Macedonia, Togo, Tonga, Trinidad and Tobago, Ukraine, and Vanuatu.

<sup>15</sup> The 32 Members are Albania, Argentina, Kingdom of Bahrain, Belize, Botswana, Brazil, China, Columbia, Cuba, Kingdom of Eswatini, Fiji, Guatemala, Guyana, Honduras, India, Indonesia, Jordan, Macao, China, Mauritius, Mongolia, Pakistan, Paraguay, Peru, Philippines, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Seychelles, South Africa, Sri Lanka, Thailand, The former Yugoslav Republic of Macedonia, and Ukraine.

Forty two (42) Members have until 18 June 2018 presented notifications of indicative dates for implementation of category C commitment<sup>16</sup> against 10 Members that have presented notifications of definitive dates for implementation of category C commitment (Albania (some), Kingdom of Bahrain, Botswana, Guatemala, Honduras, Jordan, Mongolia, Peru, Philippines, Saint Kitts and Nevis).

### 3.3 Technical assistance and support for capacity building

In addition to the notification of indicative and definitive dates for the implementation of category C commitments, the TFA sets out different timelines for the notification of the technical assistance and capacity building support that Members require to implement these commitments. As Table 6 shows, 36 members had by 25 June 2018 notified technical assistance requirements for ALL designations.<sup>17</sup>

**Table 8. Category C notification for technical assistance, by 25 June, 2018**

	Number	Percent
Members that have presented notifications	56	
Have notified technical assistance requirements for ALL designations	36	64.3
Have notified technical assistance requirement for SOME designations	1	1.8
Have NOT yet notified any technical assistance requirements	19	33.9

Notes: Developing Members were expected to notify the technical assistance they require to implement their category C commitments by 22 February 2017. LDCs are expected to notify the technical assistance they require to implement their category C commitments by 22 February 2019.

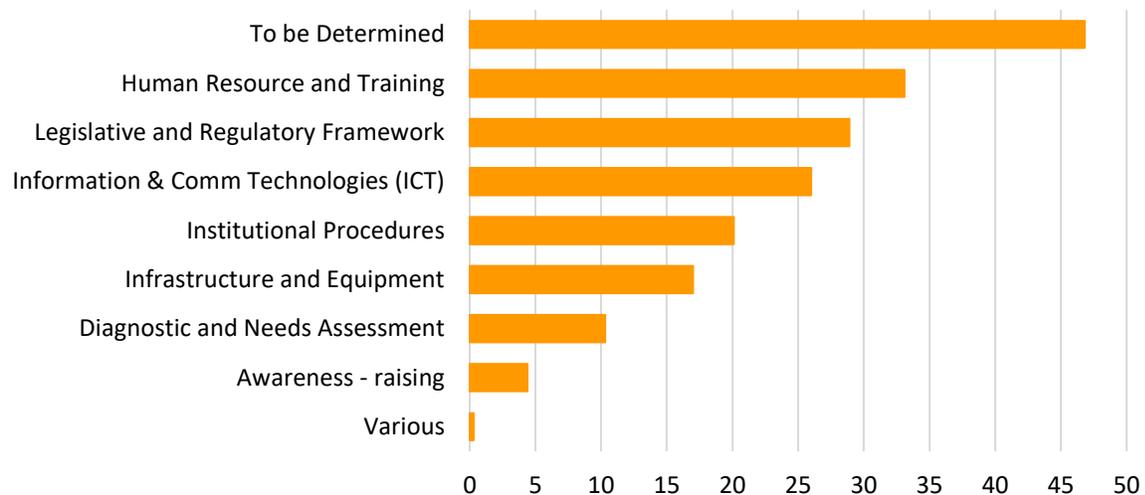
<sup>16</sup> They are Albania, Armenia, Kingdom of Bahrain, Belize, Plurinational State of Bolivia, Botswana, Cambodia, Cuba, Dominican Republic, Kingdom of Eswatini, Fiji, The Gambia, Guatemala, Guyana, Honduras, Jamaica, Jordan, Lao People's Democratic Republic (some), Lesotho, Madagascar, Malawi, Mauritius, Republic of Moldova, Mongolia, Montenegro, Morocco, Nicaragua, Nigeria, Pakistan, Paraguay, Peru, Philippines, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Seychelles, Sierra Leone, Sri Lanka, Togo, Tonga, Trinidad and Tobago, Ukraine, and Vanuatu.

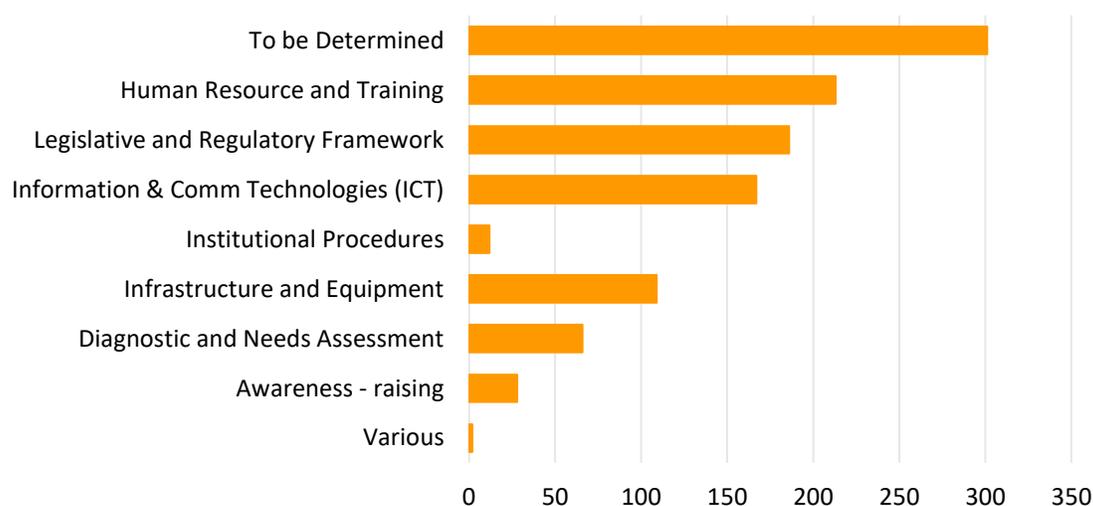
<sup>17</sup> They include Albania, Armenia, Kingdom of Bahrain, Belize, Botswana, Costa Rica, Cuba, Dominican Republic, Kingdom of Eswatini, Fiji, Georgia, Guatemala, Guyana, Honduras, Jamaica, Jordan, Malawi, Mauritius, Republic of Moldova, Mongolia, Montenegro, Morocco, Nicaragua, Nigeria, Pakistan, Paraguay, Peru, Philippines, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Seychelles, Sri Lanka, Togo, Tonga, Trinidad and Tobago, Ukraine. Among LCDs in Sub-Saharan Africa, Malawi and Togo. Bolivia has notified technical assistance requirement for SOME designations

Nineteen (19) developing members (Afghanistan, Angola, Bangladesh, Cambodia, Chad, Gambia, Lao People's Democratic Republic, Lesotho, Madagascar, Mali, Mozambique, Myanmar, Nepal, Niger, Rwanda, Sierra Leone, Solomon Islands, Vanuatu, and Zambia) have until 18 June 2018 not notified any technical assistance requirements.

Figure 1 displays the type of technical assistance and support for capacity building that developing Members have requested so far. Clearly, developing countries are yet to decide what type of technical assistance they need as evidence by over 45 percent of the requests which purposes are yet to be determined (Figure 1). Otherwise, current priorities are attached to development of human resources (skills) and technical assistance in area of legislative development. Surprisingly, infrastructure issue is relatively less prioritised than most requirements.

Figure 1. Share of technical assistance (%) by 18 June 2018



**Figure 2. Number of Request by 18 June 2018**

Source: WTO database

## 4 Conclusions

In this paper, we examine the role of the second-generation special and differential treatment (S&DT) measures in the WTO Agreement on Trade Facilitation (TFA) in addressing the delicate balance between the needs and concerns of developing countries and ensuring the TFA's objectives of expediting the movement, release and clearance of goods, including goods in transit. As the finding demonstrates, the linking of support to commitment has created two dilemmas for developing countries; the choice between the risks of taking on increasing commitment before prerequisite capacity, and the extent and timing of entering into commitments (taking into account implementing capacities) and the cost of delaying the much needed assistance and support for capacity building. Flexibility for developing countries and least developed countries in implementation of trade facilitation obligations has been eroded by conditioning assistance and support for capacity building to notification of commitments. Given the 'best endeavour' nature of the relevant provisions and other important priorities for developing countries (e.g. poverty reduction, etc. which demand their fund allocation), it is not apparent that the benefits of implementing the Agreement will outweigh its costs.

Whether TFA framework will deliver development gains for developing countries will depend on the efforts of the latter to use lessons from past trade facilitation initiatives and

set clear targets, with core trade facilitation reforms especially in the area of transport and customs. Seen this way, assistance and support for capacity building in the framework of the TFA will remain a key priority in years to come. Collaborative solutions between landlocked and transit developing countries based on international best practices with core trade facilitation reforms can assist dialogue on facilitation issues (including systemic issues such as the design and implementation vehicles of transit regimes) and inter-country initiatives, and between private and public stakeholders. This is one area that international development agencies, in collaboration with regional organizations, need continue and intensify their efforts. Developing transit corridor performance measurement systems that are cost effective and sustainable will help facilitate benchmarking of performance between corridors. Lastly, knowledge sharing through maintaining a repository of best practices regarding transit facilitation and related policy areas and improving the knowledge about TFA in landlocked developing countries and transit countries through training and capacity-building remaining essential component of future endeavour.

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**Annex 1**

Table 1A. WTO Members that have ratified the TFA

<b>Country/ WTO Member (date of ratification)</b>	
1	Afghanistan (29 July 2016)
2	Albania (10 May 2016)
3	Antigua and Barbuda (27 November 2017)
4	Argentina (22 January 2018)
5	Armenia (20 March 2017)
6	Australia (8 June 2015)
7	Bahrain, Kingdom of (23 September 2016)
8	Bangladesh (27 September 2016)
9	Barbados (31 January 2018)
10	Belize (2 September 2015)
11	Benin (28 March 2018)
12	Bolivia, Plurinational State of (30 January 2018)
13	Botswana (18 June 2015)
14	Brazil (29 March 2016)
15	Brunei Darussalam (15 December 2015)
16	Cambodia (12 February 2016)
17	Canada (16 December 2016)
18	Central African Republic (11 January 2018)
19	Chad (22 February 2017)
20	Chile (21 November 2016)
21	China (4 September 2015)
22	Congo (5 October 2017)
23	Costa Rica (1 May 2017)
24	Côte d'Ivoire (8 December 2015)
25	Cuba (12 March 2018)
26	Djibouti (5 March 2018)
27	Dominica (28 November 2016)
28	Dominican Republic (28 February 2017)
29	El Salvador (4 July 2016)
30	European Union (formerly EC) (5 October 2015)
31	Fiji (1 May 2017)
32	Gabon (5 December 2016)
33	Gambia (11 July 2017)
34	Georgia (4 January 2016)
35	Ghana (4 January 2017)
36	Grenada (8 December 2015)
37	Guatemala (8 March 2017)
38	Guyana (30 November 2015)
39	Honduras (14 July 2016)
40	Hong Kong, China (8 December 2014)
41	Iceland (31 October 2016)
42	India (22 April 2016)
43	Indonesia (5 December 2017)
44	Israel (8 December 2017)
45	Jamaica (19 January 2016)
46	Japan (1 June 2015)
47	Jordan (22 February 2017)
48	Kazakhstan (26 May 2016)
49	Kenya (10 December 2015)
50	Korea, Republic of (30 July 2015)
51	Kuwait, the State of (25 April 2018)
52	Kyrgyz Republic (6 Dec 2016)
53	Lao People's Dem. Rep (29 Sept 2015)
54	Lesotho (4 January 2016)
55	Liechtenstein (18 September 2015)
56	Macao, China (11 April 2016)
57	Madagascar (20 June 2016)
58	Malawi (12 July 2017)
59	Malaysia (26 May 2015)
60	Mali (20 January 2016)
61	Mauritius (5 March 2015)
62	Mexico (26 July 2016)
63	Moldova, Republic of (24 June 2016)
64	Mongolia (28 November 2016)
65	Montenegro (10 May 2016)
66	Mozambique (6 January 2017)
67	Myanmar (16 December 2015)
68	Namibia (9 February 2018)

Contd.

<b>Country/ WTO Member (date of ratification)</b>	<b>Country/ WTO Member</b>
69 Nepal (24 January 2017)	101 Togo (1 October 2015)
70 New Zealand (29 September 2015)	102 Trinidad and Tobago (29 July 2015)
71 Nicaragua (4 August 2015)	103 Turkey (16 March 2016)
72 Niger (6 August 2015)	104 Ukraine (16 December 2015)
73 Nigeria (16 January 2017)	105 United Arab Emirates (18 April 2016)
74 Norway (16 December 2015)	106 United States (23 January 2015)
75 Oman (22 February 2017)	107 Uruguay (30 August 2016)
76 Pakistan (27 October 2015)	108 Viet Nam (15 December 2015)
77 Panama (17 November 2015)	109 Zambia (16 December 2015)
78 Papua New Guinea (7 March 2018)	
79 Paraguay (1 March 2016)	
80 Peru (27 July 2016)	
81 Philippines (27 October 2016)	
82 Qatar (12 June 2017)	
83 Russian Federation (22 April 2016)	
84 Rwanda (22 February 2017)	
85 Saint Kitts and Nevis (17 June 2016)	
86 Saint Lucia (8 December 2015)	
87 Saint Vincent & the Grenadines (9 January 2017)	
88 Samoa (21 April 2016)	
89 Saudi Arabia, Kingdom of (28 July 2016)	
90 Senegal (24 August 2016)	
91 Seychelles (11 January 2016)	
92 Sierra Leone (5 May 2017)	
93 Singapore (8 January 2015)	
94 South Africa (30 November 2017)	
95 Sri Lanka (31 May 2016)	
96 Swaziland (21 November 2016)	
97 Switzerland (2 September 2015)	
98 Chinese Taipei (17 August 2015)	
99 Thailand (5 October 2015)	
The former Yugoslav Republic of Macedonia (5 100 October 2015)	