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THE TRADE FACILITATION AGREEMENT: OPPORTUNITIES AND THREATS FOR THE PRIVATE SECTOR FROM THE PERSPECTIVE OF DEVELOPING COUNTRIES

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Abstract

This paper was presented at the Inaugural INCU Global Conference "Trade Facilitation Post-Bali: Putting Policy into Practice" 21–23 May 2014 in Baku, Republic of Azerbaijan. The article describes the concept of the Trade Facilitation Agreement, its significance and the reasons why the TFA was proposed. The author also researches the issues of trade facilitation initiatives by the WCO, the Southern African Development Community and Common Market for Eastern and Southern Africa position regarding trade facilitation and opportunities and threats for the private sector from the respective of developing countries.
Key words: Trade Facilitation, WTO, the private sector, the Revised Kyoto Convention.

Introduction

The Trade Facilitation Agreement (TFA) was concluded at the World Trade Organization's (WTO) ninth ministerial conference in Bali, Indonesia, in December 2013. ''It was taken out of the Doha Development Agenda as a low-hanging fruit ready for consummation'' (Devarakonda 2014). The aim of the TFA is to ease the burden of doing business by harmonising customs rules and regulations, among others.

African countries hold the view that the Bali package favours industrialised countries as it will ensure unimpeded market access for companies such as Apple, General Electric, Caterpillar, Pfizer, Samsung, Sony, Ericsson, Nokia, Hyundai, Toyota and Lenovo in developing and poor countries. On the other hand, industrialised countries block African exports into their markets by imposing stiff phytosanitary and technical standards (Devarakonda 2014).

If the TFA aims at alleviating poverty and promoting economic growth in developing countries, why did the United States of America threaten to withdraw the Africa Growth Opportunities Act (AGOA) facility if African countries insisted on provisional implementation of the agreement? Is it that developing countries do not know what is good for them?

1. Trade Facilitation

1.1. The concept of trade facilitation

The 9th WTO Ministerial Conference was held in Bali, Indonesia from 3 to 6 December 2013. The most significant part of the outcome of the conference was the ministerial decision on trade facilitation as a multilateral commitment to simplify customs procedures by reducing costs and improving speed and efficiency (Viljoen 2014).

The objectives of the TFA are: ‘‘to speed up customs procedures; make trade easier, faster and cheaper; provide clarity, efficiency and transparency; reduce bureaucracy and corruption, and use technological advances’’ (Mapalala 2014).

The International Trade Center (ITC) (2013) explains that trade facilitation ‘aims at simplifying not only the documentation required to clear the goods, however also the procedures employed by other border agencies.’

Although the WCO has developed and introduced various instruments focused on facilitation, it is clear that the topic remains on the global concern list, hence the most recent WTO conference with multilateral commitment on the agenda.

Buyonge and Kireeva (2007) define trade facilitation as ‘the simplification and harmonisation of international trade procedures.’ They further noted that the definition has been recently widened to include ‘transparency, and professionalism of customs authorities, harmonisation of various standards and conformity to international or regional regulations.’

The World Bank (2010) defines trade facilitation as ‘measures that include anything from institutional and regulatory reform to customs and port efficiency and are inherently far more intricate and costly to implement’.

The Organisation for Economic Cooperation and Development (OECD) (2001) explains that ‘facilitating trade is about streamlining and simplifying international trade procedures in order to allow for easier flow of goods and trade at both national and international levels’.

In addition to the above, the WTO (1998) also explains that the aim of trade facilitation is to ‘ease customs procedures and to facilitate the movement, release and clearance of goods.’ Thus, trade facilitation should cut bureaucracy and corruption in customs procedures and speed up trade and make it cheaper.

Grainger (2009) reinforces the above definitions by explaining that ‘trade facilitation is the simplification, harmonisation, standardisation and modernisation of trade procedures. It seeks to reduce trade transaction costs at the interface between business and government and is a priority agenda item within many customs-related activities.’

All the above attempts to define trade facilitation contain the common element of simplifying and harmonising customs procedures, with the aim of moving goods across borders faster and at lower costs. Naturally, facilitation is critically important for the Eastern and Southern Africa (ESA) region which is embracing the concept and in line with the recent World Customs Organization’s (WCO) Economic Competitiveness Package (ECP) guidelines realising that customs agencies can enhance their own countries’ competitive position in the global economy.

1.2. Trade facilitation negotiations at the WTO

Trade facilitation was placed on the agenda of the WTO Singapore Ministerial Conference in 1996. Between 1996 and 2004 WTO Members conducted analytical work on trade facilitation in the Council for Trade in Goods. Negotiations were launched in August 2004. Their objectives were to update and develop understanding of GATT Article V which addresses issues related to freedom of transit like the elimination of unreasonable charges and delays of goods in transit; GATT Article VIII which deals with fees and formalities connected with importation and exportation; and GATT Article X which deals with promotion of transparency of trade rules and policy through publication and administration of trade rules with the objective of further expediting the movement, release and clearance of goods. Another objective was to facilitate border agencies cooperation with Customs and to improve technical assistance and build capacity in trade facilitation.

The TFA was reached in Bali, Indonesia in December 2013. International organisations, including the World Bank [1] and the WCO, participated in the negotiations as observers.

1.3. Trade facilitation initiatives by the WCO

According to the WCO, the role of Customs has expanded from revenue collection to include security and facilitation of legitimate trade from threats posed by terrorism, white collar crime, counterfeiting and piracy. The security role received more emphasis after the terrorist attacks of September 11, 2001 in United States of America.

To successfully execute its role, the WCO noted that there was a need for more efficient and effective customs procedures that promote economic competitiveness and investment in a secure trading environment. To this end, the WCO revised and updated its Kyoto Convention to ensure that it met the current demands of international trade. The Kyoto Convention is widely regarded as the blueprint for modern and efficient customs procedures in the 21st century. The desire of the WCO is to foster a seamless global supply chain which is both safe and secure through provision of predictable and efficient services (WCO 2013). The WCO's SAFE Framework of Standards to Secure and Facilitate Global Trade also enhances trade facilitation.

1.4. The link between WTO negotiations and WCO initiatives

As mentioned above, trade facilitation was placed on the WTO Singapore Ministerial Conference in 1996, negotiations were launched in 2004, and the final agreement was reached in December 2013 in Bali, Indonesia. On the other hand, the WCO reviewed its Kyoto Convention and updated it, taking into consideration trade facilitation issues. The Revised Kyoto Convention was adopted in 1999 and became effective in 2006. As of now, 95 members have acceded to the Convention and are implementing its provisions. They are receiving technical capacity from the WCO and international organisations, such the World Bank, are providing funding. As an example of the modernisation initiative chapter 6 of the General Annex to the Revised Kyoto Convention clearly guides Customs towards a risk management approach towards trade.

It is important to note that countries that actively participated in the construction of the Revised Kyoto Convention were also actively involved in trade facilitation negotiations at the WTO. It is also worth noting that international organisations such as WCO and the World Bank attended WTO trade facilitation negotiations as observers. It is therefore not surprising that the WCO Revised Kyoto Convention was used as a reference during the negotiations. A closer reading of the WTO legal negotiating text on trade facilitation showed that all the issues under negotiation are covered in the WCO Revised Kyoto Convention with minor differences in wording and terminology. For example, where the Revised Kyoto Convention discusses the 'authorised persons', the same concept was embraced with relevance to the 'authorised economic operator'.

The working relationship between the WCO[2] and the WTO jointly promotes a vision to

[1] The World Bank is helping developing countries to carry out self-assessment needs so that it can provide technical assistance in customs modernisation initiatives (WTO 2013).

[2] 'The WCO has supported customs modernization and trade facilitation through standard-setting, developing a pool of experts, providing capacity building and enhancing a customs network which can support the implementation of the Agreement on Trade Facilitation' (WCO 2014).

ensure the compatibility of WCO instruments. WCO tools should and do implement WTO principles. This relationship also facilitates collaborative capacity building efforts by international organisations such as the IMF, OECD, UNCTAD, WCO and the World Bank. This explains why the final negotiated document on WTO trade facilitation has similar provisions to the WCO Revised Kyoto Convention.

One of the main reasons why members favoured the WTO as a forum for rules on trade facilitation was that the WTO rules can achieve legal enforcement through the dispute-settlement mechanism which is not available under the WCO (Bolhöfer 2007). The Revised Kyoto Convention stands as an instrument providing minimum standards in customs procedures. The WCO persuades its Members to accede to it; however, if its Members choose not to, nothing can be done. In the Southern African Development Community (SADC) region Angola, Tanzania and the Seychelles are yet to accede to the Revised Kyoto Convention while Malawi was the latest member to signify its accession in September 2013.

Another reason why members also favoured the WTO was that the TFA will bind all its 159 members at the level of all border agencies and not just customs authorities (ITC 2013). The global drive is clear that countries not embracing facilitation will fall under the magnifying glass and accordingly their respective customs administrations would no longer have any excuse for non-compliance.

1.5. SADC and COMESA position regarding trade facilitation

Both SADC and COMESA have embraced trade facilitation initiatives. For example, the SADC Sub-Committee on Trade and Facilitation recommended its members accede to and implement provisions of the Revised Kyoto Convention. The Sub-Committee believes that if all members implement provisions of the Revised Kyoto Convention, it will go a long way towards achievement of trade facilitation within SADC and in harmonising and simplifying customs procedures (SCTF 2012). Both RECs have trade protocols that encourage harmonisation of customs procedures and documents, among others.

The proposed TFA covering COMESA, EAC and SADC has dedicated Annex 2, Part IV of the draft Agreement to customs cooperation and trade facilitation. This provision encourages implementation of international standards as provided by organisations such as the WCO.

2. The private sector

Collins Cobuild English dictionary (1995) defines the private sector as ‘industry and business which is owned by individual people or commercial companies, and not by the government or an official organisation’.

South African Concise Oxford (2002) dictionary states that the private sector is ‘the part of the national economy not under direct state control.’

For the purpose of this research the ‘private sector’ shall be considered to be industries and commercial companies not owned by the government that are in business to make a profit.

However, the private sector is not a homogeneous group of people. It comprises different players from all sectors of the economy that includes manufacturers, retailers and supply chain service providers. These players may look at the same thing from different angles which may result in some fully supporting an initiative and some opposing it.

2.1. Opportunities and threats of the private sector from developing countries

Having noted the interest and support the concept of trade facilitation has generated and gained from both international and regional institutions, what does the private sector in developing countries stand to benefit and what may be the side effects?

Opportunities

The United Nations' Almaty Programme of Action on addressing the special needs of landlocked developing countries, encourages landlocked and transit developing countries to be members of the WTO for them to benefit from the WTO`s special and differential treatment. It states that developing countries face high trading costs emanating from cumbersome border-crossing procedures and inadequate infrastructure. These are some of the challenges the TFA is attempting to address.

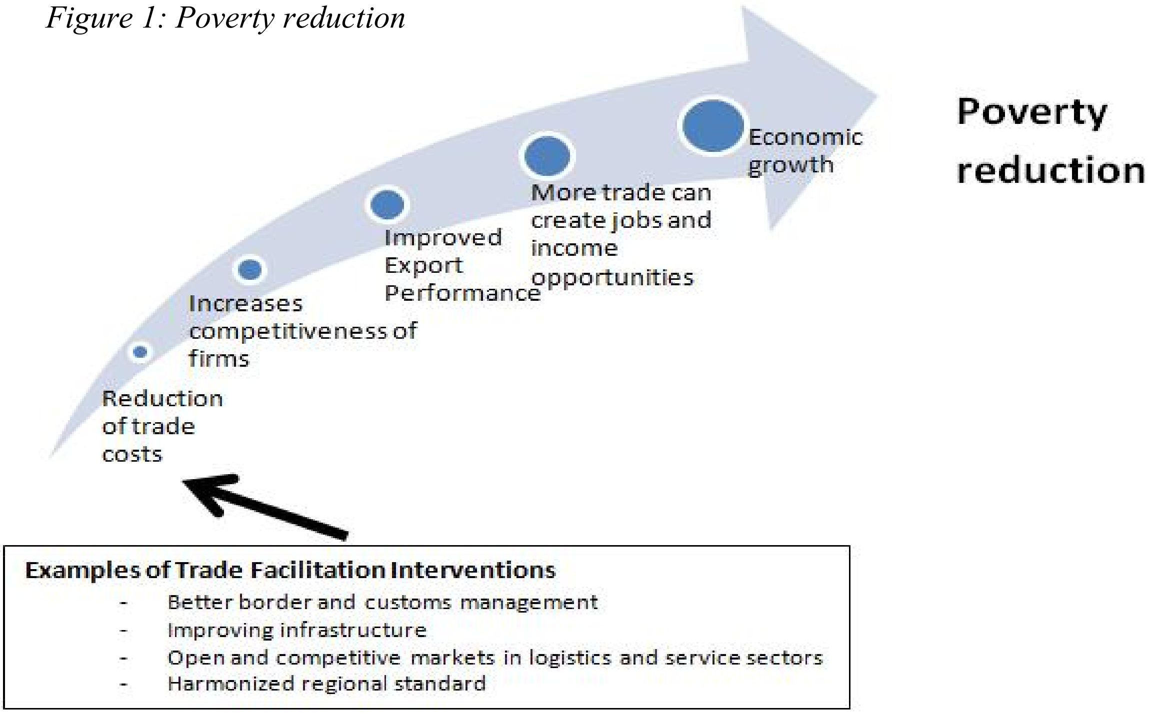
This observation by the United Nations' Almaty Programme is supported by Buyonge and Kireeva (2008, p. 42) who noted that Africa suffered from the highest average customs delays in the world, 12 days on average', and with 'up to 30 [border agencies involved], 40 documents [required and] 200 data elements' (Buyonge & Kireeva 2008, p. 41). The aim of the TFA is to improve this.

The OECD (2014) reiterates that the WTO TFA will have an effect on reducing trade costs. It states that if there was limited implementation by developing countries, the potential trade cost reduction would be 11.7% which is 2.4% less than if there is full implementation of the agreement.

According to FERSATA, the border post truck waiting cost ranges from $250.00 to $500.00 per day. It is expected that the implementation of TFA will result in the reduction of the cost of doing business leading to an increase in intra-regional trade.

Rippel (2011) goes further to argue that such reduction of trade costs will result in poverty reduction (Figure 1).

Figure 1: Poverty reduction



Source: Rippel 2011.

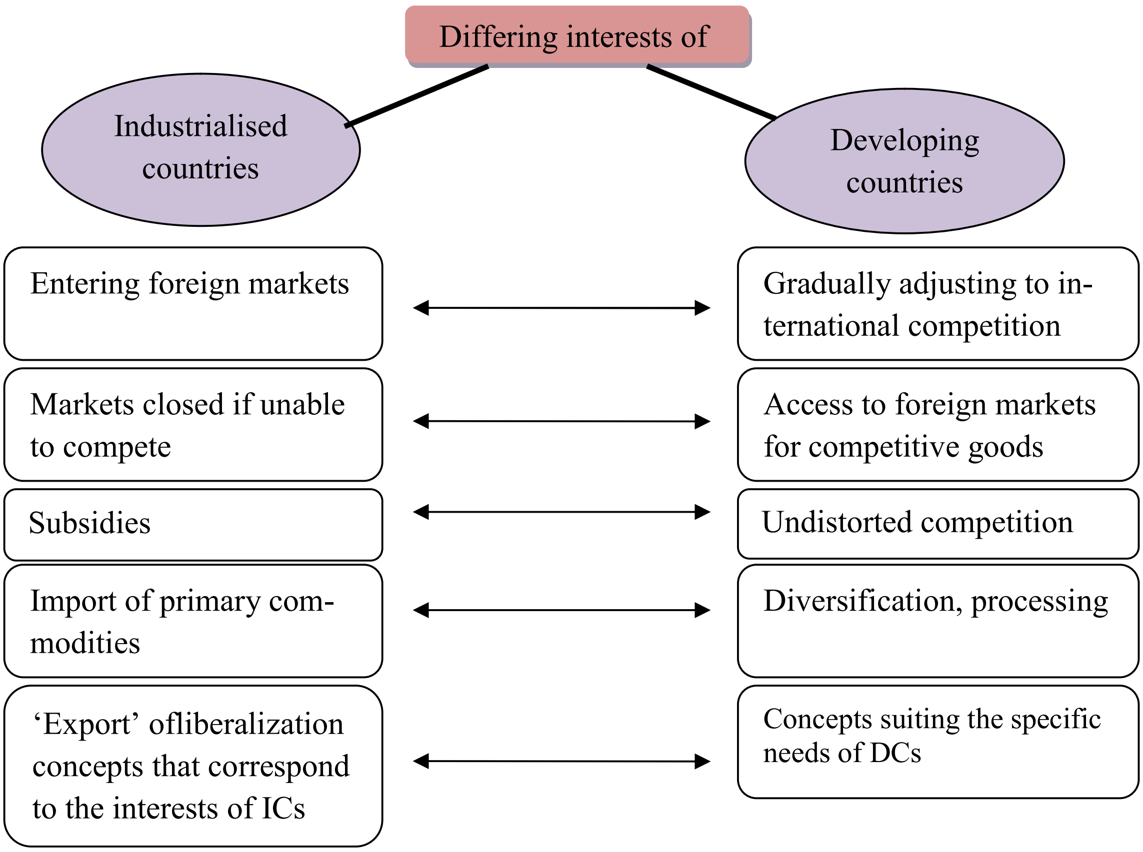
Another benefit from the implementation of the TFA accrues from its provisions for transparency. This enables business planning as traders can predict the costs and time involved. Traders are also able to pre-clear their consignments and access legislation from wherever they are.

Threats

Despite the opportunities stated above, certain manufacturers in developing countries are noting the disadvantages of implementing the TFA in isolation of other items on the Doha Development Agenda. The main purpose of the DOHA Development Agenda was to promote the economic growth of developing countries. It focused on lowering subsidies for developed countries' agricultural industries. The idea was to enable developing countries to increase their agricultural exports. In turn, developing countries would allow developed countries to invest in services. According to The Economist (July 2008), 'the main reason the Doha talks collapsed was because the U.S. and EU were not willing to give up their agricultural subsidies.'

Altemöller (2014) summarises the differing interests of industrialised countries and developing countries in Figure 2:

Figure 2: Perspectives of the world trade system after the ministerial conference in Bali



Source: Altemöller 2014.

Producers in developing countries argue that the TFA is liberalising trade. The borders are being opened. If the developed countries are going to flood markets in developing countries with their goods while blocking exports from developing countries through phytosanitary and technical standards, what effect will it have on producers in developing countries and poverty levels?

In addition to producers, some service providers in the supply chain view provisions of Article 10, paragraph 6(1) as a threat to their businesses. This provision deals with the use of customs brokers. From the entry into force of the agreement, Members shall not introduce the mandatory use of customs brokers. This provision promotes the use of in-house clearing facilities. Clearing agents fear that this will lead to loss of business resulting in a decrease in employment levels. This, in turn, has a negative effect on income tax and pay as you earn tax contributions to the fiscus. They further argue that there is no guarantee that this lost revenue will be compensated by multinational firms trading in their countries as some of them may be involved in tax evasion or transfer pricing malpractices.

However, some countries such as South Africa and Zimbabwe, among others, already have a flexible arrangement whereby traders with the required competencies can choose either to outsource the clearing service or do it internally. On the other hand, other countries such as Mozambique have a scenario in which there is more than one middleman between a trader and customs administration. Mozambique has transit bond holders who cannot deal with customs administration but will need to seek the services of a customs broker. In the Mozambican scenario, the provision of the TFA will bring great relief to traders.

African countries are of the view that Bali lacks balance as it favours industrialised countries. These countries had directed their negotiators to suggest that the TFA will be implemented on a provisional basis and on completion of the entire Doha Round of negotiation. They based this recommendation on paragraph 47 of the Doha Declaration which enables WTO members to implement the agreement either on a provisional or definitive basis. The industrialised countries such as the United States of America and the EU responded by threatening African countries that it would withdraw facilities such as the Africa Growth Opportunities Act (AGOA) if they did not rescind their position. The WTO advised against the position taken by African countries as may be deduced from the WTO Director-General Roberto Azevêdo's remark at an informal trade negotiations committee meeting on 25 June 2014:'I am aware that there are concerns about actions on the part of some delegations [African countries] which could compromise what was negotiated in Bali last December'.

The threats divided African countries with Nigeria and Mauritius refusing to join the ministerial consensus to implement the agreement on a provisional basis. However, countries such as South Africa, India, Uganda, Tanzania, Solomon Islands and Zimbabwe are demanding that 'there has to be a clear linkage between the implementation of the TFA and the rest of the Doha Development Agenda on the basis of the Single Undertaking, which stipulates that nothing is agreed until everything is agreed' (Devarakonda 2014).

3. Recommendations

In view of these developments, it is recommended that both industrialised and developing countries continue engaging with each other with the aim of achieving a win-win situation. Implementing an agreement in which the other party feels pressured into it, is like forcing an unwilling partner into a marriage. The marriage may not last and if it does, it will always be rocked with challenges.

On the other hand, developing countries should continue implementing foreign direct investment (FDI) attractive policies. They should attract investors who are willing to manufacture in Africa and other developing countries to add value to their natural resources before exportation. Industrialised countries should assist developing countries to produce goods that meet their standards. There should be a transfer of skills, knowledge and technology.

Summary and concluding remarks

The concerns raised by African countries are genuine. There is a serious threat to their infant industries if the TFA is implemented in complete isolation of other items on the Doha Development Agenda.

Despite the concerns raised by the private sector in developing countries through their ministers, the TFA appears to be on-course for complete implementation.

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