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WTO Trade Facilitation Agreement & its Status in India

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ABSTRACT

The World Trade Conference during the BALI summit of 2013 introduced the Trade Facilitation Agreement, in order to reduce the trade related barriers at international borders. Various customs clearance and cross border formalities have become a major barrier in the ease of trade. WTO introduced the TFA with a view to harmonize and rationalize the trade related documentation and procedures for cross border trading. The TFA, which aims to reduce bureaucracy at borders, has the potential to provide a $1-trillion boost to global economy. India has made its stance clear that it will not easily give in to pressure from the Western world over trade protocols of the World Trade Organization, as was also discussed during the talks in Bali in December 2013. India fears that agreeing to the trade facilitation agreement (TFA) could compromise its own food security. In regarding to the same India through discussion and dispute settlement is on the verge of finalizing and signing to this agreement. Currently it is under consideration as up to what extent should India implement the TFA. Various modifications would be required in the EXIM policy of India to implement the TFA. It is forecasted that Indian Pharmaceutical export would experience a rise of 2 folds in Pharmaceutical exports and also would reach to the nations where currently our manufacturers are facing a large amount of Trade related barrier. Thus signing this agreement will not only streamline the imports to our country but will also enhance the globe limits of Indian Pharmaceuticals.

Key-words: World Trade Organization (WTO), Trade Facilitation agreement (TFA), Bali Package, India to ratify the TFA, Organization for Economic Co-operation & Development (OECD).

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Introduction

World Trade organization (WTO) was established in the year 1995 to promote better trade along the international borders & thereby harmonize the global trade and help producers of goods and services, exporters, and importers conduct their business globally . The World Trade Organization (WTO) is the only global international organization dealing with the rules of trade between nations. At its heart are the WTO agreements, negotiated and signed by the bulk of the world's trading nations and ratified in their parliaments. [1] WTO during its Ninth Ministerial Conference (NMC) also known as the BALI conference in the year 2013 concluded the Trade Facilitation Agreement which aims at making the trade over international borders efficient by expediting the movement, release and clearance of goods, including goods in transit. It also sets out measures for effective cooperation between customs and other appropriate authorities on trade facilitation and customs compliance issues. It further contains provisions for technical assistance and capacity building in this area [2]. Trade facilitation is the concept of reducing the costs and time involved in processing cross-border trade transactions. There is no standard definition of trade facilitation but it is universally accepted that it is a way to improve the efficiency of international trade. Institutions working in this area have evolved their own definitions consistent with their mandate, objectives, and work program. Even a cursory examination of these definitions, however, will show that trade facilitation covers the simplification, harmonization, standardization, and modernization of international trade and customs procedures. [3]

In broader sense the TFA deals with the movement of Goods along international borders. It keeps a vigilance to provide hassle free trade from the producer to the shelf of the retailer .In narrow view it deals at the regulatory aspects at the boarders. The TFA essentially creates a blueprint for customs modernization amongst the 161 members of the WTO. The TFA text covers issues such as advanced rulings, transparency, goods in transit, particular issues to respond to the concerns of small and medium-sized enterprises (SMEs) and simplifying customs formalities.

The need of TFA.

In the recent year's the manufacturer's across the globe have witnessed an increase in the cost of transportation of goods across the borders. Moreover the trade transaction cost was also been found to varying largely at different parts of the world. These was becoming a rising concern for the WTO , as it was becoming a major trade obstacle for small & large scale industries .Limiting their reach across different parts of the world. Not only the trade transactions, but also the elements of poor connectivity, lack of infrastructure, remote location, lack of road infrastructure were some of the concerns for the WTO. These obstacles were prominent in the case of Least Developed countries. As a result, there was seen a considerable increase of 40-45 % trade cost in such countries [4]. These rise in costs had significant effect on small-medium sized industries disproportionately. Moreover such small industries lack the knowledge to comply with the rules, and the high cost of compliance of custom clearance, border procedures and various other non-tariff measures which is not feasible investment of money & time to their small volume of trade. This ultimately reduces their interest in global business & which in long run reduces the existence of a competitive market.

The trade facilitation agreement, which will be binding on all 159 WTO Member States at the level of all border agencies, and not just customs authorities, has been described as a classic 'win-win' outcome. But because there are implementation concerns among some developing countries, and especially LDCs, the agreement includes some flexibility, including provision for technical assistance for its implementation.

The Trade Facilitation Agreement Facility

Work on trade facilitation primarily takes place in the Preparatory Committee on Trade Facilitation. The Committee, which is open to all WTO members, is mandated under the Bali Ministerial Decision to "perform such functions as may be necessary to ensure the expeditious entry into force of the Agreement and to prepare for the efficient operation of the Agreement upon its entry into force." The decision tasks the Committee to:

(i) Conduct a legal review of the Trade Facilitation Agreement

(ii) Receive notifications from members on the commitments they can undertake immediately (Category A commitments)

(iii) Draw up a Protocol of Amendment to insert the Agreement into Annex 1A of the WTO Agreement.

The trade facilitation agreement has 3 sections.

- Section 1: Deals with expediting the custom processes, also aims at making the process of customs quick and easy. Contains provisions for expediting the movement, release and clearance of goods, including goods in transit.
- Section 2: Contains special and differential treatment (SDT) provisions that allow developing and least-developed countries (LDCs) to determine when they will implement individual provisions of the Agreement and to identify provisions that they will only be able to implement upon the receipt of technical assistance and support for capacity building.
- Section 3 contains provisions that establish a permanent committee on trade facilitation at the WTO, require members to have a national committee to facilitate domestic coordination and implementation of the provisions of the Agreement. It also sets out a few final provisions.The overall shape of the agreement is in the form of different articles as below.

The specific issues that have been agreed

Article 1: Publication and availability of information

Article 2: Prior publication and consultation

Article 3: Advance rulings

Article 4: Appeal or review procedures

Article 5: Other measures to enhance impartiality, non-discrimination and transparency

Article 6: Disciplines on fees and charges imposed on or in connection with importation and exportation

Article 7: Release and clearance of goods

Article 8: Border agency coordination

Article 9: Movement of goods under customs control intended for import

Article 10: Formalities connected with importation and exportation and transit

Article 11: Freedom of transit

Article 12: Customs cooperation

Article 13: Institutional arrangements

The cost & benefits of TFA

The OECD has forecasted the scenario based upon the strategy of benefits the countries would enjoy on implementing the TFA, the process is divided into two segments 1) Partly or Limited Implementation 2) Fully Implementation. It has stated that the member countries who would accepting the TFA and make required changes in their Trade policy would definitely benefit as there would be reduced custom procedures , streamline process of documentation and harmonization of trade fees .

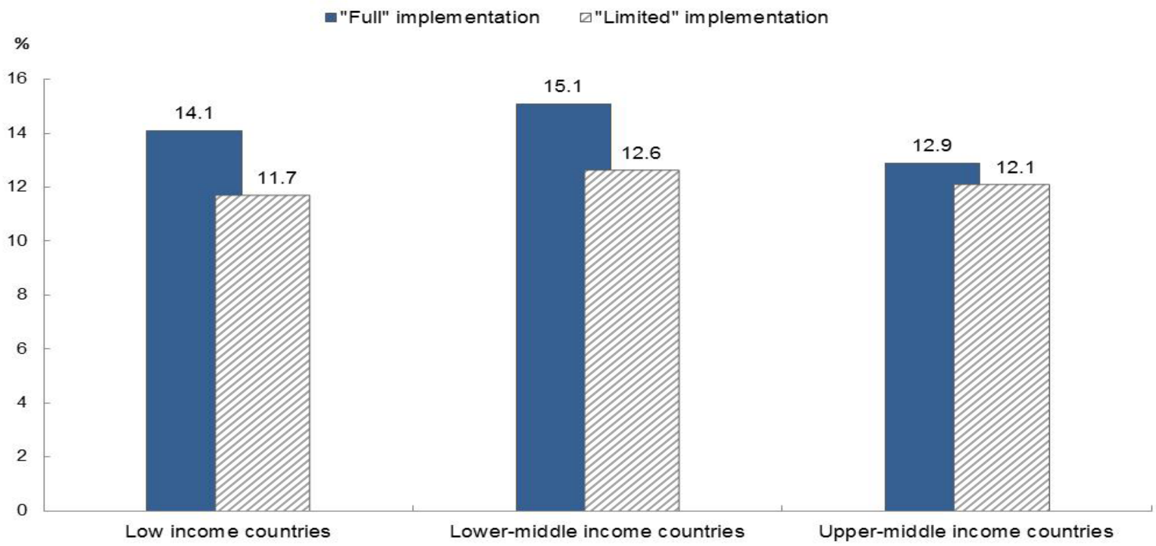

Figure 1 Overall potential trade costs reductions by income group [11]

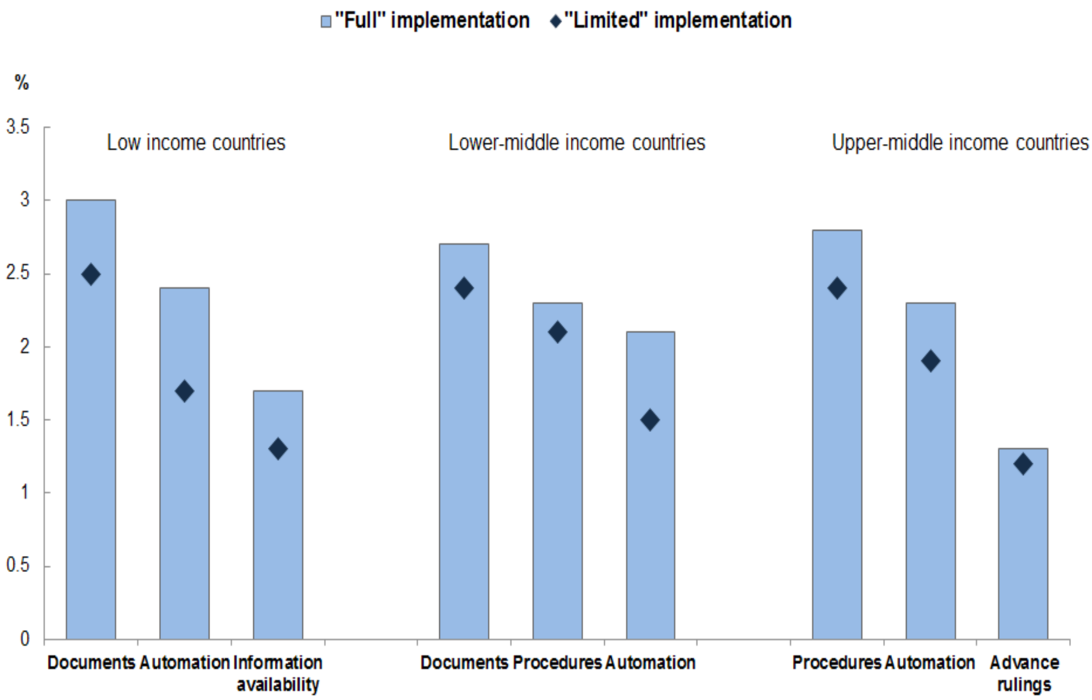

Figure 2 Potential trade costs reductions for the "top three"sets of measures

A lot of intensive study has been carried out to estimate & monitor the costs of border controls. The World Bank, OECD, UNCTAD and the World Customs Organization (WCO) have been particularly prominent, while the United Nations Centre for Trade Facilitation and Electronic Commerce (UN/CEFACT) has focused on best practice and the development of international standards, such as its Buy-Ship-Pay' model – see figure 3.[5]

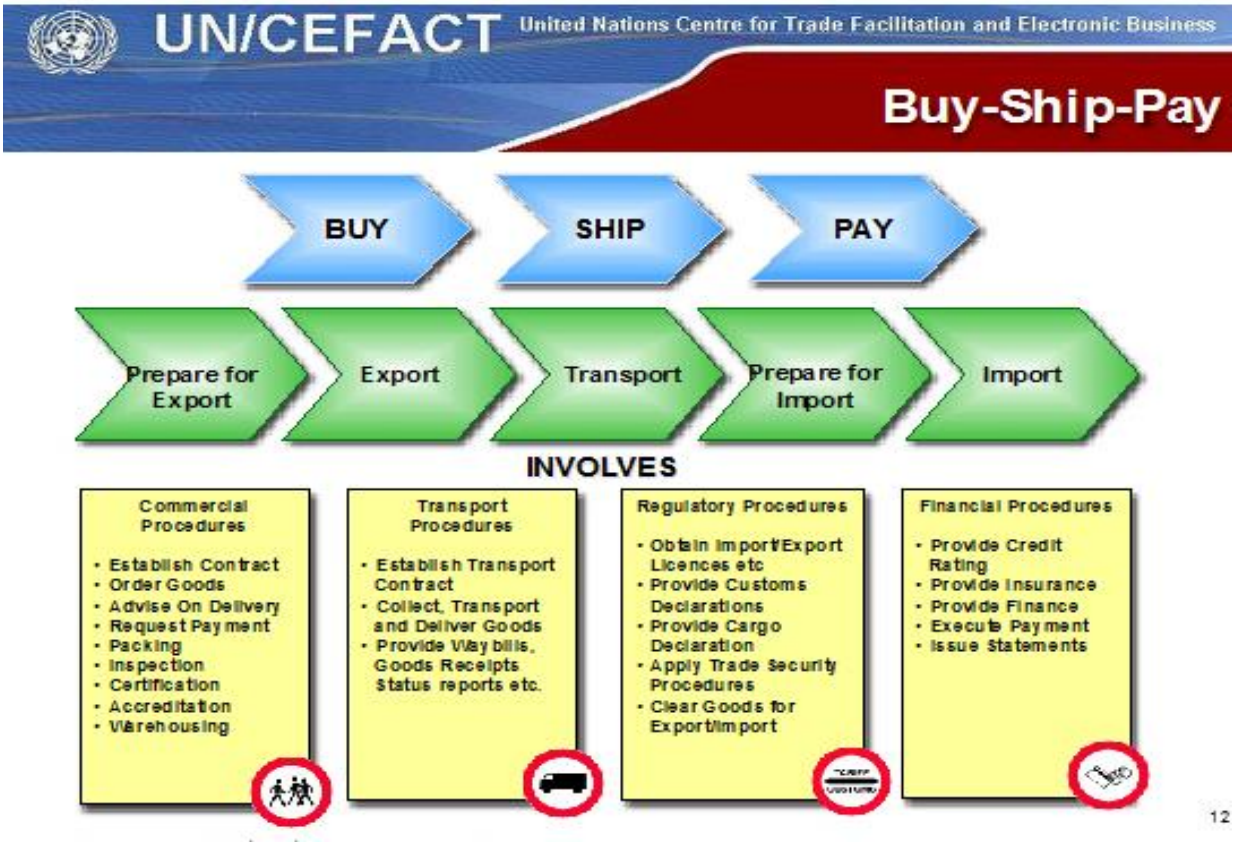

Figure 3 Buy-Ship-Pay model

(The Buy-Ship-Pay model developed by UN/CEFACT describes the main processes and parties in the international supply chain. The supply chain ensures that goods are ordered, shipped and paid for while complying with regulatory requirements and supporting trade security. The Buy-Ship-Pay model identifies the key commercial, logistical, regulatory and payment procedures involved in the international supply chain, and provide an overview of the information exchanged between the parties throughout its successive steps. The model presents a 'top-down' view of the supply chain, linking the detailed 'bottom up' actions derived from the business requirements that are specified in the UN/CEFACT standards development process.)

The World bank publishes an annual report which includes a chapter on Trading across borders , Depending upon various parameters such as time , documentation & procedures required for custom clearance for a typical 20 foot container for both import & export and compares the 189 countries . Thus it acts as a tool to measure which country has easy & cost efficient trade facilities . Also guides the countries to bring reforms in their trade policy to achieve a better trade index. India ranks 130th in the 2015 report of World Bank.

Trade facilitation and economic efficiency [6]

Economists have estimated the cost of cross-border trading at more than $2 trillion per year, due largely to duplicative, unnecessary customs procedures, customs and border fees, and administrative requirements. The TFA could reduce this by up to $1 trillion by streamlining procedures and standardizing trade facilitation rules across borders, providing a significant boost to the global economy. The OECD has estimated that the TFA is likely to reduce the cost of trading by up to 14.1% of total costs for low-income countries, 15.1% for lower middle-income countries, and 12.9% for upper-middle-income countries. Trade facilitation is aimed at reducing one of the 'less visible barriers produced by inefficient administration and organization of the trade transaction process' that is increasingly a focus as other, more obvious barriers, such as tariffs, are gradually negotiated away. Trade facilitation constitutes those policies that deal with the entry of goods into a country and with the transparency and provision of information relating to the entry of goods. The WTO has not provided a formal definition of trade facilitation, although the 1996 Singapore Ministerial Conference authorized exploratory work 'on the simplification of trade procedures in order to assess the scope for WTO rules in this area'. Elsewhere, the WTO defined trade facilitation as the 'simplification and harmonization of international trade procedures, including activities, practices and formalities involved in collecting, presenting, communicating, and processing data required for the movement of goods in international trade'.

The cost of a shipment is inversely proportional to the time required to complete it, which affects the volume of trade that may take place. Every day a product is delayed from leaving the factory before being shipped is equivalent to a reduction in trade of more than 1%. To give an idea of the divergent time rames in play, it takes 116 days for a container to move from a factory in the Central African Republic onto the ship at the port (including all of the customs, administrative, and port requirements), while it only takes five days from Copenhagen. The fact that the Central African Republic is landlocked cannot alone explain the staggering discrepancy in time required.

Concerns of developing countries.

While trade facilitation may seem innocuous, with limited goals that benefit most countries by reducing the cost of trading, from a development perspective it raises issues relating to infrastructure, capacity building, and whether developing countries should prioritize trade facilitation over other development concerns. It is not clear that a new agreement on trade facilitation will harm developing countries. A trade facilitation agreement could provide a global economic boost of one trillion dollars and most countries are in agreement that an agreement on trade facilitation is desirable[7][9]. Some have argued, however, that the cost of making necessary changes to the customs regimes of developing countries will be prohibitively expensive, and that they have not been afforded sufficient protection under the S&DT provisions in the draft TFA. The negotiations initially focused more on simplifying, harmonizing, and standardizing border and customs procedures than on providing methods for developing countries to increase and facilitate exports. The concern from developing countries is that expansion of exports requires a different type of trade facilitation, and that the result of this agreement would be an increase in imports from developed countries without corresponding higher exports from developing countries. India, in particular, vocally pushed for changes to the draft agreement, citing the substantial cost burdens placed on developing countries. Its claims included a call to make it compulsory for customs authorities globally to allow exporters to take back a portion of rejected consignments at the borders before nullifying the entire shipment. The OECD, on the other hand, stated that a trade facilitation deal would particularly benefit developing countries in places like Africa where long border delays and poor infrastructure have been a major issue in increasing regional trade. Although critics who focus on developing country issues are right to be concerned with the effect of the TFA on developing countries, and with the success of the Bali Ministerial in addressing development concerns generally, the TFA is arguably a bigger success for furthering the development agenda than the more widely touted Decision on Public Stockholding for Food Security Purposes, whose limited timeframe became the key sticking point blocking India's acceptance of the TFA. India's temporary veto of the TFA, while a political move aimed at renegotiating food security issues rather than a reflection of problems with the TFA itself, seemed particularly out of place given the TFA's strong focus on developing countries and their needs.

Understanding the role of India in TFA.

India being a developing country has to curb many issues among which food security is the major one. The food security bill in India is pretty much complex and involves a large economic gap. In order to overcome this issue the policy runs in a way where the government purchases the goods at very high rates from the farmer's so that they get sufficient wages, the same production is than sold in the market at subsidized rates at government grocery stores so that maximum population can get access to the farm produce at an affordable rates. Looking at the current scenario India has surplus storage of such food produces, this is considered as a threat that developing countries like India may sell this over produced crops at high rates into the global market. To overcome this issue WTO has mentioned in the clause that such nations would require having a transparency system of their stock piling in the international market. It will not be able to add protein heavy grains like say, lentils, if it wants to, due to riders in the peace clause [8]. Third, it might seem unfair to developing countries to not crack down on farm subsidies that the United States provides to its farmers to the tune of more than $20 billion per year. While the WTO is binding the developing countries to protocols, the issue of subsidies by developed giants like US seems to be off the table. WTO argues that if the developing countries continue to give prices to farmers which are higher than the market prices, it might harm the poor farmers in other parts of the world. It also says the deal could add $1 trillion to global gross domestic product and 21 million jobs, by cutting down red tapes. Also according to media reports, the developed world wants the issue of food security to be delinked from the TFA, and could be discussed later. In the year 2015 , India has talks with USA for dispute settlement in the TFA , it was however reported that India would be signing the Pact in December 2015 end. Top American trade and business groups have applauded both the countries saying that, new development would boost global trade and economic growth. As per the agreement, the US will support India's proposal at WTO that 'peace clause', crucial for uninterrupted implementation of India's food security program should continue indefinitely till a permanent solution is found.[10]

Benefit to Indian Pharmaceuticals by the TFA.

India exports to over 200 countries. Pharmaceutical exports clocked a CAGR of 10.3 per cent to US$ 15.5 billion during 2014–15 from US$ 10.4 billion during 2010–11. The US is the largest importer of Indian products. Exports to the UK grew at 11.9 per cent between 2009 and 2010, and 2013 and 2014. If we sign to the TFA we would definitely be benefit the Indian Exports of Pharmaceuticals making dominance over global pharma market. The Indian Pharmaceuticals are largely exported to majority of regulated & semi regulated countries and also to 60–80 % of non-regulated countries, by signing the TFA we would gain better & easy access to the remaining parts of the world. Not only gain better access Indian Manufacturers will also achieve better and easy trade with already existing countries. Currently we have a uniform excise duties at our ports but the excise costs and custom clearance at different borders vary considerable and making the trade for our Small & medium scale exporters difficult. An expected 2 fold rise in the trade of Pharmaceuticals can be forecasted if we agree to sign the TFA. It's expected that we may sign the TFA at any time from now in this December.

Conclusion:

Thus from the above discussions we understand that TFA is the agreement which is the need of time to enhance and promote better trade of Pharmaceuticals over the globe. Thus it is the agreement which will not only harmonize the trade practice at international borders, but also will create possibilities and environment for the developing countries to reach countries which were out of their trade reach before. The TFA is not only providing a platform to ease the trade but it is also going to reduce the trade related costs including the documentation process and custom clearance. Considering the Indian trade, it is clear that signing the TFA after the dispute settlement India will have great benefits and the trade of Pharmaceuticals of India will experience great boost.

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