



## **Perceptive nature of trade facilitation agreement in India: An overview**

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### **Abstract**

Trade is one of the most crucial aspects for the development of the country. The speed and efficiency of development is depending most on the speed and efficacy of the trade. The role of World Trade Organisation is tremendous in the regulation of world class business. The Trade Facilitation Agreement is one of the aspects of that efficacy and speed in the growing worldwide business. The Trade Facilitation Agreement came into force in the year 2017 and was ratified by almost all the member nations of WTO. India was 193<sup>rd</sup> country to ratify the Trade Facilitation Agreement. Trade Facilitation Agreement is an outcome of Bali conference in 2013 and is first of its kind of agreements which aims and focuses to simplify the trade procedures on borders and speed up the process. But in order to understand the provisions of Trade Facilitation Agreement, it is important to know General Agreement on Trade and Tariffs. In simple terms, General Agreement on Trade and Tariffs is an older version of Trade Facilitation Agreement has improved and replaced some of the provisions of General Agreement on Trade and Tariffs. India's position in the international market needs to be analysed and then Trade Facilitation Agreement's role in Indian market can be studied. In the current article, the wide meaning and application of Trade Facilitation Agreement is discussed. In addition to this India's current trade facilities and laws are discussed. The impact of Trade Facilitation Agreement on India's trade facilities and procedures is discussed and analysed in detail. After these discussions and the study, the article is concluded with some suggestions.

**Keywords:** trade facilitation agreement, WTO, GATT, India, implementation

### **1. Introduction**

WTO <sup>[1]</sup> is a permanent forum where the member states address different issues affecting their multilateral trade relations as well as to supervise the implementation of the trade agreements negotiated in the Uruguay Round in the year 1994 <sup>[2]</sup>. The WTO is the organization which deals with regulations in goods, services and intellectual property of the member countries. This 24-year-old organization has a membership of 164 states. International Trade Law intends to promote economic growth and alleviate the poverty. It is inherently divisive both among the countries and within the countries. This trade law is tested by largest powers like USA and EU along with emerging powers like China, UAE and India. But this international Trade law is still taking a shape. It is in few economic sectors like agriculture, services and intellectual property. International Trade Law also ought to preserve the peace and aims for peaceful trade between countries.

Roots of international trade law can be found in General Agreement on Trade and Tariffs <sup>[3]</sup> in the year 1947. GATT which was a legal agreement between these countries who wants to promote international trade among the countries. In 1993, the GATT was updated and one of the significant changes was establishment of WTO. Though WTO replaced GATT but it still has its existence as a grund norm or a directing document for WTO. In the year 2013, the Bali Ministerial Conference was concluded with Trade Facilitation Agreement <sup>[4]</sup>. TFA came into force in the year 2017. In simple terms TFA, the agreement which concluded from the commencement of WTO and aims at simplification, harmonization and modernization of export and import processes. The detailed study of TFA carried

further in this paper.

Initially in 2014, India agreed to sign the agreement. But due to change in the government, the signing of the agreement left aside. But in 2016, India finally ratified the agreement and started implementing the provisions of TFA. India's take on TFA also discussed further in this article. But in order to learn India's role in implementing TFA, it is necessary to look into the history.

### **2. General agreement on trade and tariffs (GATT)**

GATT is an agreement signed by 23 countries including India on 30<sup>th</sup> October, 1947. The main objective of GATT is to reduce the trade barriers and encourage international trade. Since the birth of GATT there was different negotiations took place in order to reduce the trade barriers. They are also called as rounds of trade negotiations. In the last round of negotiations that is Uruguay Round of 1986 to 1994, certain remarkable changes took place. It was the round which gave birth to the current largest trade governing organization called WTO.

### **3. The role of world trade organisation in the development of the trade and its annexure**

WTO is an organization which is the result of Uruguay Round of negotiation from 1986 to 1994. The dispute resolution system of GATT was weak and facing challenges since its inception. Apart from this, there were other different problems faced by GATT. To overcome the problems faced by GATT, the Uruguay Round was launched in September 1986 with a ministerial declaration issued by trade ministers from the contracting parties. The main agenda of the Uruguay round was to negotiate the

tariffs.

The Uruguay Round Negotiations agreements mainly known as WTO agreement have total 4 annexure. These are as follows:

1. Annexure 1.A <sup>[5]</sup> - Multilateral Trade Agreements on Goods (GATS, 1994 which is incorporated with reference to GATT, 1947) <sup>[6]</sup>  
Annexure 1.B <sup>[7]</sup> - General Agreement on Trade Services (GATS) <sup>[8]</sup>  
Annexure 1.C <sup>[9]</sup> - Trade Relates Aspects of Intellectual Property Rights (TRIPS) <sup>[10]</sup>
2. Annexure 2- Understanding on Rules and Procedures Governing the Settlement of Disputes or Dispute Settlement Understanding or DSU <sup>[11]</sup>
3. Annexure 3- Trade Policy Review Mechanism (TPRM) <sup>[12]</sup>
4. Plurilateral Agreements
  1. Agreement on Government Procurements (GPA) <sup>[13]</sup>
  2. Agreement on Trade in Civil Aircraft

WTO is an agreement creates a forum for signed member states to address their issues related to the trade along with supervision of implementation of other negotiated agreements of Uruguay Round. One of the major highlights of WTO is the revised and effective dispute resolution system and better decision-making procedures. This agreement is also known as GATT, 1994. GATT, 1947 and GATT, 1994 are legally different and have different provisions. GATT, 1947 is the constitution for the establishment and the working of WTO. In simple understanding WTO is an organisation which is a getaway or a common place where its total 164 members can discuss the troubles and other aspects of international trade, imports or exports. The primary objective WTO is to open trade for all the nations. WTO also works for the negotiations on trade and tariffs. WTO is one common place where all the member states come together to discuss the problems, solve the issues and take the decisions together. Today, the WTO has completed 24 years of working as the largest economic organization in the world. In these 24 years, there are different negotiations, conferences and rounds took place. But only one agreement is concluded till now. That agreement is nothing but TFA

#### 4. Bali Conference 2013

Bali Conference of 2013 is the ninth ministerial conference by WTO from its inception in the year 1994 held at Bali, Indonesia. But this ninth conference has its history back from 1947 where the third ministerial conference of WTO at Seattle failed and the fourth conference took a turn and declared new rounds of negotiations called 'Doha development Agenda' in 2004. The main points of discussions were 'trade in agricultural and non-agricultural products, services, intellectual property rights, trade and environment, trade facilitation, dispute settlement, special and differential treatment to developing countries and aid for trade <sup>[14]</sup>. But no conclusion was drawn out of these discussions. Similarly, the next ministerial conventions took place in the upcoming years but no concrete decision was taken on agricultural and non-agricultural products. The developed countries were not ready to eliminate the export subsidies.

Finally, in the ninth ministerial conference at Bali, few

agendas of Doha Development Agenda were reached the conclusion. The conference concluded with following highlights

1. TFA: some important discussions and negotiations took place at Bali regarding trade facilitation and ease of trade. The intention was to accelerate the trade of goods in transit and simplify the procedures of trade of border management and other. All such related provisions were clubbed together and made in writing and resulted in a remarkable piece of negotiations.
2. Similarly, few other topics and areas were also discussed and negotiated. Agriculture was the main area and under which other topics were discussed. Market access, export subsidies and domestic support are few important topics which were discussed. In addition to these topics, the following topics were also discussed:
  - 2.1 General services: General services related to agriculture include rural development, and poverty alleviation. The conference discussed on these issues.
  - 2.2 Public Stockholding for Food Security- the conference discussed on certain interim measures for Public Stockholding for Food Security.
  - 2.3 Tariff rate quota: The conference concluded that there is a need to reform the agricultural tariffs.
  - 2.4 Export competition <sup>[15]</sup> - the main barrier in export of agricultural products is the export duty. The discussions were made with the goal of reducing the export duties.

#### 5. Trade facilitation agreement (TFA)

TFA is an agreement which was negotiated at the Bali Conference in the year 2013. It is the first and only agreement which came to the conclusion since the inception of WTO. Trade facilitation simply means that the process of trading is made simplified. When it comes to international trade, it includes hundreds of procedures, compliance, barriers etc. the negotiation was made at Bali Conference to remove the barriers and simplify the procedure of trade. In simple terms, TFA intends to achieve the very basic goal of WTO that is economic development. In the arena of trade, the economic development is possible by having a free trade or facilitated trade. This can further be achieved by simplifying the trade procedures and removing the trade barriers. TFA is one such step taken by all the member states of WTO in order to harmonize, simplify and modernize the trade procedures and remove the trade barriers. In order to reach the final conclusion of TFA, the major negotiations were made by developing and least developed countries. Whereas the developed countries were initially firm on their stand.

TFA contains the provision for releasing the goods in transit and reduce the cost by reducing the paperwork. It also deals with the measures for effective cooperation and provides guidelines for better implementations. Other details of the agreement are discussed further in this article. TFA is segmented in three sections. The first section deals with the provisions related to accelerate, release and clearance of the goods. It also deals with release of goods in transit. In addition to this, the section highlights certain provisions of GATT, 1994 and clarifies the same. It further gives certain provisions for customs co-operation. The second section specifies the provisions for developing and least-developed countries which are termed as Special and Differential

Treatment provisions. These provisions allow developing and least-developed countries to determine the time period for implementing the provisions of the agreement. Therefore, these provisions have to be categorized and TFA has made three categories of provisions. They are as follows:

1. "Category A: It contains the provisions that the member will implement by the time the Agreement enters into force or in the case of a least-developed country within one year after entry into force;
2. Category B: It provides the provisions that the member will implement after a transitional period following the entry into force of the Agreement;
3. Category C: It contains the provisions that the member will implement on a date after a transitional period following the entry into force of the Agreement and requiring the acquisition of assistance and support for capacity building <sup>[18]</sup>."

In case of the provisions contained in category B & C, the member states must provide the dates for the implementation.

Third section deals with the provisions of which establish a permanent committee on trade facilitation at WTO.

#### 6. Aims and Objectives of TFA

TFA aims at achieving free trade in the entire world by mutual agreement between all the nations and promote the trade and gain economic development. The objectives of TFA are as follows:

1. To ease the flow of goods across the borders and abolish the hard import quotas.
2. To achieve the economic development.
3. To reaffirm the relevant provisions of GATT, 1994
4. To recognize the particular economical needs of developed and least developed nations related to trade.
5. To improve the old principles of trade to maximize the efficiency and facilitate the trade.
6. To reduce the trade barriers and ease the trade relations between nations.
7. To accelerate and release the goods in transit by reducing the compliance
8. To bring effective coordination and cooperation among all the states by introducing different schemes.
9. To reduce the costs of imports and exports by simplifying and modernizing the border procedures.
10. To focus on the development of developing and least developed nations in terms of trade.
11. To bring transparency by harmonizing all the procedures related to trade in domestic as well as international region.
12. To implement all the articles and provisions given in this TFA.

#### 7. Implementation Support under TFA

Developed countries followed and agreed to implement the TFA upon the enforcement of the same. Whereas developing and least developed countries have an advantage or a provision created for them that they can start implementing the provisions of the agreement. Further as per section 1 of the agreement the least developed countries are given additional one year for implementation. The implementation of TFA is an easier task for developed countries than for developing and least developed nations.

Therefore, for developing and least developed nations certain leverages and advantages are given.

#### 8. Flexibilities for developing and least developed countries

1. **Easy warning mechanism:** A member state can be given an extension if the TFA committee finds a difficulty in implementing the provisions given under category B or C. this extension shall not be more than 3 years <sup>[19]</sup>.
2. **Expert Group:** In case of failure to grant an extension and a member state is not in a capacity to implement then an Expert Group is established which will help the member state to solve the issue <sup>[20]</sup>
3. **Shifting between Categories:** Members may shift provisions between Categories B and C <sup>[21]</sup>.
4. **Grace Period:** following entry into force of the Agreement, Least Developed Countries will not be subject to the Dispute Settlement Understanding for a period of 6 years for Category A provisions and for 8 years for Categories B and C <sup>[22]</sup>.

#### 9. India in international trade

India has observed a slow and steady growth in its international markets since its independence. But in the recent decades it is been observing a significant growth in a foreign market. India's FDI has increased and the numbers of Indian businesses entering in the international markets are also increased. But this increasing scope in the international market requires a proper legal framework. The legal framework before TFA mainly includes domestic acts and policies such as The Foreign Trade (Development and Regulation) Act of 1992, The Foreign Trade Policy (EXIM POLICY), the Customs Act of 1962. The objective of this legislation is to facilitate imports and augment exports.

#### 10. TFA and India

TFA was negotiated along with other agreements. India initially agreed to sign TFA in 2014. But later due to political and governmental change, India denied to sign the agreement at the first instance. In July, 1994, India made a statement that "that the adoption of the TF Protocol must be postponed till a permanent solution on public stockholding for food security is found <sup>[23]</sup>." India was never against TFA. The issue was regarding another agreement related to food and agricultural goods and not directly with TFA. According to the stand taken by NDA government, both the food security and TFA will stand together and collectively be signed upon the resolution of one issue. In simple terms, if the food security issue is solved, then only TFA will be signed. At the Bali Conference, the issue of food security was negotiated by all the nations. But the conclusion was not drawn. India's concern was that once the TFA is ratified and implemented, none of the developed nation would come upon the platform of WTO to discuss the issue of food subsidy and any other non-binding outcome. In simple terms, India was demanding for an amendment regarding stockpiling of food grains which is a critical issue for India's food security. The norms subsidies set by WTO were age old as they were fixed in 1980s. India was asking for a change by considering the inflation and currency fluctuations. If the rate of subsidy is not changed then that will affect the Minimum Price Policy. If Minimum Price Policy comes into conflict then that will affect 90% of the

farmers in the country as they lack in resources and owns irrigated land in a small portion. Developing countries like India has a duty towards the farmers to provide them food security.

During the initial negotiations, India had a clear stand as according to Indian trade negotiators, the developed countries will have enhanced market access due to early adoption of TFA. After which, a meeting was held by the committee but no conclusion was made. India stood firm on its stand and stood with the poor farmers who cultivates for the country. Other developing countries also started supporting India on its stand. Hence in order to address India's concern WTO had agreed to amend the Bali Agreement and provide India an indefinite reprieve on food stockholdings. India then ratified TFA in April, 2016 and started implementing the provisions as notified under category A. Since India is a developing nation, India has time to implement the provisions of category B till 2022. While implementing the provisions of category B, India highlighted the already existing provision of Advance Ruling under the Customs Act, 1962. Advance ruling is nothing but a mode or a provision through which a trader can know the custom duty on their proposed amount of import and export in advance. This provision is of great importance because a trader can estimate his custom liability in prior and be prepared.

Another such mode is Customs Electronic Commerce or Electronic Data Interchange System which was launched in 2009. This provides an online portal called ICEGATE for filing services to the trade and cargo carriers electronically. This includes filing of documents which are processed by Indian Customs EDI System. This portal is a fully fledged portal which provides not only for registration but also for online payment, verification, licensing. These measures are steps towards compliance with the TFA's obligations pertaining to the release and clearance of goods, as well as formalities and documentation requirements. Exact after the ratification of TFA, customs SWIFT initiative which means Single Window Interface for Facilitating Trade was launched. It was launched to provide a common platform for integrated declaration. The most important part of implementation of TFA in India is the formation of National Committee on Trade Facilitation (NCTF). The main objective of this committee is to facilitate domestic coordination and implementation of the agreement. It is a national level body to facilitate effective domestic cooperation and implementation of TFA provisions. To bring coordination between all the laws and policies existing in the country, the establishment of NCTF was a milestone which India has achieved.

## 11. Conclusion

TFA is an agreement which is one of its kinds passed by the member states of WTO since its establishment. It is entered by the parties with an intention to simplify the trade procedures, harmonize and modernize the border management procedures. It aims to accelerate and clear the goods in transit and stockpiling of the goods. India had a strong view on signing TFA. It initially agreed to sign the agreement but with the change in the government in 2014, India's stand on TFA also changed and by putting certain conditions for signing the agreement, it achieved solution on all kind of problems and conditions put forth. After signing the agreement India started implementing the provisions and

till now is successful in achieving the targeted goal. But for a developing country like India, agreements like Trade Facilitation are of the most use as it will help them to organize internal as well as external trade and expand the trade.

## References

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5. Hereinafter GATT
6. Hereinafter TFA
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8. Koul, Autar Krishen. Guide to the WTO and GATT, 1<sup>st</sup> Edition, 2005.
9. Annexure 1-B is nothing but has provisions, principles and guidelines for trade in service.
10. Ibid
11. Annexure 1-C talks about the principles related to intellectual property rights.
12. Ibid
13. Annexure 2 has the provisions for dispute resolution system if in any case there arises a dispute between two or more than two states.
14. Annexure 3 has provisions made with an objective of reviewing the policies and adhere to the policies made
15. Annexure 4 had total 4 agreements earlier but two agreements were terminated in, 1997.
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