

Agreement of Trade Facilitation of World Trade Organization- Efforts of WCO and Challenges for implementation in India

Trade facilitation refers to measures aimed at simplifying, modernising and harmonising merchandise imports, improving custom efficiency, border transit procedures, especially customs requirements and also those of the other agencies operating at borders. Broadly, these cover port efficiency; service sector infrastructure; customs administration/ enforcement; and transparency and corruption regulatory policies.

Trade facilitation approaches in regional trade agreements have gone through different stages of development. Largely absent from the early treaties, Facilitation became an increasingly important feature of subsequent agreements. By the late 1990s, regional trade agreements regularly incorporated a trade facilitation component, reflecting governments' growing awareness of the need to expand their trade policies to the cutting of red tape. The launch of the WTO negotiations on Trade Facilitation gave another impetus to these endeavors, leading to an acceleration of Trade facilitation reforms both at the multilateral and regional level. While Trade facilitation components of earlier agreements were largely limited to a narrowly defined range of customs issues, a new generation of regional trade agreements has increasingly started to absorb issues from the WTO's broader negotiating agenda

The TFA signed in December 2103 has effectively created binding commitments across 159(+) WTO members to expedite movement, release and clearance of goods; and improve cooperation among WTO members on custom matters, with special and differential treatment for developing country members and least-developed countries (LDCs) in terms of staging of implementation, but with the view that ultimately all members implement the same commitments. The TFA contains twelve articles regarding Trade Facilitation and

Customs Cooperation in Section I, ten articles on special and differential treatment for developing countries and least-developed countries in Section II and two articles on institutional arrangements and final provisions in Section III.

The key areas that are addressed in TFA are:

- Publication of laws, regulations and procedures
- Internet publication of practical steps to import, export and transit goods
- Enquiry point for trade information
- Information on new laws and regulations before their implementation
- Provision of advance rulings
- Enhanced right of appeal
- Notification of detained goods
- Disciplines on fees and charges
- Penalty disciplines to prevent conflicts of interest
- Pre-arrival processing of goods
- Use of electronic payment
- Use of guarantees to allow rapid release
- Promoting risk management
- Creation of authorised operator schemes
- Procedures for expedited shipments
- Quick release of perishable goods
- Reduced documents and formalities

- Utilising common customs standards
- Promoting use of single window
- Uniformity in border procedures and documents
- Temporary admission of goods
- Simplified transit procedures
- Customs cooperation
- Facilitate developing country implementation

Efforts of WCO

With decades of experience in implementing global Customs standards, the World Customs Organization (WCO) is an important source of expertise and support for its 179 Member countries, covering 98 percent of world trade. WCO standards and technical assistance delivery will support the global uniform implementation of the TFA.

Although, the instruments, tools and strategies for implementing trade facilitation measures already exist. Reforms require resources and technical capacity building, the Agreement ensures that those who need and ask for support will receive it.

The potential of the TFA in the Bali Package is significant. According to experts, these measures will boost prosperity by reducing administrative burden and transaction costs, and are expected to save developing countries around US\$325 billion a year and accelerate their integration into the global value chains. According to OECD, Developed countries also stand to gain with a 10 percent cut in their trade costs and easier trade flows for their operators. The potential new gains from trade facilitation are

considerable, especially for countries that have yet to come under its ambit.

Mercator Program

The WCO launched the Mercator Programme to support implementation of the WTO Trade Facilitation Agreement (TFA). The WCO Mercator Programme is aimed at assisting governments worldwide to implement the TFA expeditiously and in a harmonized manner by using core WCO instruments and tools.

The Mercator projection enabled mariners to plot straight courses and take correct compass readings, thus supporting trade. Just as the cartographer Gerardus Mercator provided the tools which became fundamental to understanding the world and which ultimately led to increased interconnectivity, so will the World Customs Organization (WCO) Mercator Programme increase global interconnectivity, expand trade volumes and enhance economic competitiveness by providing tailor-made assistance for implementing trade facilitation measures. The Mercator Programme also supports Members' preparation for implementing the World Trade Organization (WTO) Trade Facilitation Agreement (TFA).

The key objectives of Mercator Program are:-

1. Harmonized implementation based on WCO's global standards

The Mercator Programme is aimed at assisting governments worldwide to implement trade facilitation measures expeditiously and in a harmonized manner by using core WCO instruments and tools such as the Revised Kyoto Convention (RKC). The Mercator Programme also ensures connectivity at borders and along international trade supply chains in order to provide a consolidated

platform for advancing the smooth flow of goods being traded around the world.

2. Tailor-made technical assistance and capacity building

With a wealth of expertise and experience in global Customs technical assistance and capacity building, including a network of accredited experts at its disposal and comprehensive donor engagement mechanisms, the Mercator Programme provides tailor-made support for implementing trade facilitation measures.

3. Effective coordination among all stakeholders

Based on a long-standing history of cooperation with the WTO, other international organizations and the private sector, the Mercator Programme provides a consolidated platform for coordinating needs and priorities of all stakeholders.

The benefits Mercator Program are:-

1. Benefits for developing and least developed countries

Developing and least developed countries (LDCs) may request and receive tailor-made technical assistance and capacity building according to their own needs for implementing trade facilitation measures. The Mercator Programme also provides necessary assistance to assess their needs with the WCO's expertise.

2. Benefits for donor institutions

The WCO has extensive experience in managing technical assistance and capacity building projects along results-based management principles. The Mercator Programme ensures tangible and evidence-based solutions which satisfy the interests of donor institutions.

3. Benefits for all government agencies

Customs administrations and all other government agencies may learn about existing WCO tools and Member practices and experiences of various measures for trade facilitation. It reduces the risk of a non-standardized approach which may lead to divergent implementation practices.

4. Benefits for the private sector

The Mercator Programme promotes trade facilitation measures of all Members, including developing countries and LDCs, in a harmonized manner. It will contribute to predictable and modernized trade procedures and reduce trade costs and clearance times at borders.

Dual-track approach

(1) Tailor-made track

The Mercator Programme matches needs of recipient Members and interested donor institutions. Taking into consideration the results of WCO, WTO and/or other organizations' needs assessments, as well as the results from self-assessments and Time Release Studies (TRS), developing countries and LDCs can submit their requests for assistance to the WCO Capacity Building Directorate. The WCO Regional Capacity Building Offices (ROCBs) may assist Members in this respect.

The WCO develops the tailor-made technical assistance projects together with donor institutions and recipient Members. The WCO will identify appropriate Customs-accredited experts from its Customs network.

The WCO ensures results-based management support activities in the area of TRS and Performance Measurement as part of the monitoring.

(2) Overall track

The Mercator Programme encompasses all relevant WCO instruments and tools in support of trade facilitation, such as the RKC, SAFE Framework of Standards, Time Release Study and WCO Data Model. Further tools like the Customs and Business Partnership Guidance and the new Transit Handbook will be released soon. It also provides Member trade facilitation practices and experiences.

The TFA Working Group

The WCO Working Group on the Trade Facilitation Agreement (TFAWG) serves as the Mercator Programme's support and monitoring vehicle. The TFAWG provides a link with relevant WTO Committees. It is also the platform for sharing experiences regarding the implementation of trade facilitation measures among the 179 WCO Members, and for enabling Members to coordinate with the donor community and engage with other international organizations and bodies, as well as with the private sector.

Challenges for implementation in India

On the face of it, many of the provisions of TFA appear to be under the “best endeavour” approach, giving enough flexibility to member countries to harmonise their custom procedures and practices at the pace decided by them. However, ultimately these commitments are binding and can be challenged under the WTO's dispute settlement mechanism. In terms of compliance of the above disciplines, although India has already initiated many of the required provisions, being a huge country with 12 major ports, 187 minor ports, many private notified ports and 36 functional international airports, implementing effective trade facilitation will be challenging. There are 138 land clearance stations (LCSs) along India's international borders, of which only 66 are functional. Although India is already compliant with proposed commitments on web-based publications;

improving the speed of clearance of goods through systems like risk management, post-clearance audit, accredited client programme, coordination between various border agencies; and institution of appeal mechanisms, certain proposed disciplines will still need to be put in place. These include advance ruling to all concerned, use of single window and lowering of fees and charges. In India, a tribunal takes an average of minimum two years for making final decisions. Further, surveys of exporters and importers bring out the ground realities in terms of implementation of these provisions, which require much more dedicated efforts. Thus, although these disciplines provide a good framework for improving customs efficiency, binding commitments at the WTO, especially as they are eventually subject to the Dispute Settlement Mechanism of the WTO, can lead to costly international litigations. 5

India's Performance in Trade Facilitation It may be argued that many of these practices and provisions have already been initiated in India and introducing others may not be too costly. However, effectively implementing these provisions and disciplines within an internationally agreed time frame may be much more challenging for India. One way to judge India's preparedness on trade facilitation commitments is to examine India's performance with respect to trade facilitation indicators. Apart from many traders' survey studies which indicate a low performance of India in trade facilitation procedures, according to the OECD's Trade Facilitation Indicators (country analysis), India is an underperformer in areas of appeal procedures; fees and charges;

International trade also provides an opportunity for leveraging the growth of the manufacturing sector. Even though the Indian manufacturing sector's growth has never been export-led growth, both exports and imports have played an important role with respect to inducing growth in many organised manufacturing industries.

There is a need to identify areas in multilateral trade forums like the WTO, which can help in boosting the competitiveness of India's manufacturing exports. While under the NAMA negotiations and "sectoral" initiatives import tariffs on manufacturing products are in the process of declining, the agreement on trade facilitation can further increase imports of both finished as well as processed products. In the post-Bali Agenda, developing countries like India will benefit by raising those issues which can help in boosting the export competitiveness of their manufacturing products. In place of having stand-alone agreements like TFA, the post-Bali Doha development agenda should focus on lowering subsidies in developed countries, getting technical as well as financial aid from developed countries in developing trade infrastructure in developing countries and ensuring greater market access in big markets. There is a need to give priority to building capacities of Indian manufacturers and preparing them for a much higher and rising competition not only globally but also in their own domestic markets. Linking into GVCs may increase the quantum of exports but in the process may delink exports from domestic value addition. In order to improve competitiveness and gain from GVCs, there is a need to strengthen domestic value chains so that Indian manufacturing products are able to link into GVCs at a much higher end with high value addition. Initiating India's own global/regional value chains under Indian brands to increase the competitiveness of finished manufactured products needs to be encouraged, especially in traditional export-oriented industries like textiles and clothing and leather and leather products. Agreements like the TFA will have only limited benefits for Indian manufacturing industries if Indian manufacturing products are not concurrently made globally competitive. In fact, the implementation time which will be identified by India for meeting the trade facilitation commitments should also include the time required to build the export-competitiveness of its manufacturing products.

Article wise status of implementation in India

- [Article 1](#)

Publication and availability of information

OVERVIEW

The WTO TFA asks Members to promptly publish information regarding Customs procedures, such as importation, exportation and transit procedures, applied rates of duties and taxes, and fees and charges, in a non-discriminatory and easily accessible manner.

Chapter 9 of the General Annex to the Revised Kyoto Convention is the Chapter most relevant to transparency and predictability. The provisions of this Chapter are set out in three sub-sections based on the nature of the information, i.e., information of general application, information of a specific nature, and decisions and rulings.

The following WCO tools are also useful for the implementation of the TFA:

- Recommendation (1999) on the Use of World Wide Web sites by Customs administrations
- Recommendation (2001) on the application of HS Committee decisions
- Revised Arusha Declaration.

INDIA'S PREPAREDNESS:

We are complying with the provision as the relevant trade related information is published. CBEC website under –Customs – Application forms provide baggage, refund, appeal, drawback, B/E, S/B and other forms.

Though the rates of duties and notifications are all published but we cannot categorise this in A as it is not in an easily accessible manner. We would seek transition time to put in systems to make such information available for “*duties and taxes of any kind imposed on or in connection with importation or exportation.*” While CBEC website provide ONLINE customs duty calculator for various items under all tariff entry based on CTH, description and country of origin, it does not factor in all kinds of duties administered by CBEC.

The Merchant Overtime (MOT) charges are available on website(Circular 68/98)

Cost recovery charges are also published in circular 16/2013.

Charges are also displayed in Service centres providing data entry for B/E. S/B on behalf of customs and pre paid vouchers also given.

Customs charges are notified in regulations.

Customs legislation and rules, notifications issued in respect of Rules Origin are also displayed in CBEC website

Customs Act and rules, Notification of Sec.11 or FTP restrictions are displayed/linked (DGFT) in CBEC website

Notifications relating to FTA agreement, Nepal treaty are available in CBEC/other Govt. Deptl. website

Enquiry Points: There is no institutional and systematic arrangement of Enquiry Points currently. Could take time to implement-5 years or more as this involves establishing and empowering the enquiry points which would require putting in systems for the same. These would be telephonic, as well as web-based and have a dedicated portal.

It requires 5 years period for Administrative changes and development of IT system.

We would be requiring 3 Years period to collate all the information and specify where it is published.

Article 2

Opportunity to comment, information before entry into force and consultations

OVERVIEW

The WTO TFA asks Members to provide traders and other interested parties with opportunities and an appropriate time period to comment on the introduction or amendment of laws and regulations. Members are also required to make new or amended laws and regulations available before their entry into force.

Standard 1.3 of the General Annex to the Revised Kyoto Convention requires that formal consultative relationships be maintained with the trade. Standard 9.2 of the General Annex to the Revised Kyoto Convention requires that revised information be made available sufficiently in advance of the entry into force of the changes

INDIA'S PREPAREDNESS:

Though we do follow this in some cases by way of informal discussions with trade bodies but not as mandatory norm .

Therefore if we categorise it in A then we may have to have some instructions and circulars to make it the norm.

5 years would require administrative circular and IT system changes

Article 3

Advance rulings

OVERVIEW

Article 3 of the WTO TFA requires Members to issue advance rulings regarding the tariff classification and the (non-preferential) origin of goods in accordance with the provisions of that article. Members are also encouraged to issue advance rulings for other areas such as Customs valuation and requirements for relief or exemption from Customs duties. The provisions of TFA set rules regarding the issuance of advance rulings including cases where an application may be declined by Members and the validity of advance rulings for a reasonable period.

Standard 9.9 of the General Annex to the Revised Kyoto Convention states that binding rulings shall be issued at the request of the interested person. The RKC Guidelines to this standard cover many aspects of binding rulings, including their scope, notification, time-limits and use.

The following WCO tools are also useful for the implementation of the TFA:

Recommendation (1996) on the Introduction of programmes for binding pre-entry classification information

Recommendation (1998) on the Improvement of tariff classification work and related infrastructure

Technical Guidelines on Binding Origin Information

Practical Guidelines for Valuation Control.

Comparison of the provisions of Article 3 of the WTO TFA with relevant WCO tools

INDIA'S PREPAREDNESS:

Section 28 E to 28 M of Customs Act already provides for the same,

All the information relating to advance ruling is published in public domain on the website www.cbec.gov.in/aar/aar.htm

- Article 4

Procedures for appeal or review

- OVERVIEW

The WTO TFA requires Members to provide that any person to whom Customs issues an administrative decision has the right to administrative appeal or review, and/or judicial appeal or review. The administrative and judicial review should be carried out in a non-discriminatory manner.

Chapter 10 of the General Annex to the Revised Kyoto Convention concerns appeals in Customs matters. The standards provide for a transparent and multi-stage appeal process, the intention being to prevent the perception of victimization by those affected by Customs decisions. Furthermore, the availability of an independent judicial review as a final avenue of appeal should instill confidence, by the public and the trade, in government institutions and in particular in the Customs administration.

INDIA'S PREPAREDNESS:

Chapter XV of Customs Act deals with Review and appeal (Sections 128 to 131)

However We do not have corresponding provisions for clause 4.1.4 in our Customs Act. Therefore we need to categorise it in B. Necessary changes in the Customs Act will be required.

5-8 Years as legislative change will be required. Administrative instructions and circulars will be required to be issued

- [Article 5](#)

Other measures to enhance impartiality, non discrimination and transparency

- [OVERVIEW](#)

Where a Member adopts or maintains a system of notifications for enhancing controls or inspections in respect of foods, beverages or feedstuffs, the Member should follow certain principles such as risk-based and uniform application.

Chapter 6 of the General Annex to the Revised Kyoto Convention sets out standards on Customs control, risk management and co-operation with other Customs administrations. These provisions do not relate directly to the notification system, but may help with implementation.

The following WCO tools are also useful for the implementation of the TFA:

- SAFE Framework of Standards
- Risk Management Compendium
- Single Window Compendium

INDIA'S PREPAREDNESS:

India has well defined procedure in this regard.

Ordinarily DGFT and other Allied Acts Implementing Authorities issues such notifications, Guidelines and also publish names of certified /approved test labs

- [Article 6](#)

Disciplines on fees and charges imposed on or in connection with importation and exportation and penalties

- [Overview](#)

The TFA requires the publication of information on fees and charges imposed on or in connection with importation and exportation.

Members should also review fees and charges periodically with a view to reducing their number and diversity.

Several RKC standards stipulate that fees and charges shall be limited to the approximate cost of the services rendered.

INDIA'S PREPAREDNESS:

MOT, Cost recovery Charges published time to time

But require comprehensive compilation and user friendly Publication

- [Article 7](#)

Release and clearance of goods

- OVERVIEW

The TFA requires Members to adopt or maintain procedures allowing for the submission of import documentation prior to the arrival of goods. Members are also required, as appropriate, to allow electronic lodgement of such documents.

The RKC covers prior lodgement and registration of the goods declaration. The relevant RKC standard provides for an advanced lodgment procedure that strikes a balance between the interests of traders and the actions of Customs.

The following WCO tools are also useful for the implementation of the TFA :

- SAFE Framework of Standards
- Immediate Release Guidelines

INDIA'S PREPAREDNESS:

Electronic Clearance available in all 141 EDI locations. Manual locations do not have the facility

Provisional assessment is available under Section 18 of the Customs Act

But it is available at the discretion of the assessing officer in certain cases only

5-8 years would be required for legal change.

Will also require making provision in the IT system

RMS: Available in 107 EDI Locations for Import and 117 EDI Locations for Export.

LCS EDI sites and other EDI sites with low Bill load to be covered soon

Does not cover Manual locations/ courier clearance/Precious cargo clearance, transit, etc.

8 years period is required for legal and administrative changes.

- [Article 8](#)

Border agency cooperation

- OVERVIEW

The TFA requests all national border authorities/agencies to cooperate with each other and coordinate border control and procedures to facilitate trade. Such cooperation and coordination may include alignment of working days and hours, alignment of procedures and formalities, development and sharing of common facilities, joint controls and establishment of one stop border post control.

Standard 3.35 of the Revised Kyoto Convention lays down the principle that the Customs inspection of goods should take place in coordination with other competent authorities. The SAFE Framework of Standards takes the same approach as the TFA text.

INDIA'S PREPAREDNESS:

There are legal, procedural, I.T., infrastructural, political and security issues involved. Hence transition time is required for implementation

- [Article 9](#)

Movement of Goods Intended for Import Under Customs Control

OVERVIEW

The TFA obligates Members, to the extent practicable and all regulatory requirements are met, to allow goods intended for import to be moved to customs office where the goods would be released or cleared.

The movement of goods stipulated in the TFA can be categorized as national transit procedure under the Revised Kyoto Convention (RKC). Specific Annex E of the RKC is about Customs transit, which may cover the national transit procedures.

INDIA'S PREPAREDNESS:

Chapter VIII of Customs Act provides for the Goods in Transit and Trans-Shipments (Section 53 to 56)

Goods Imported (Conditions of Transshipment) Regulations, 1995

Vide Notification No. 61/95-Cus. (N.T.),dated 28-9-1995

amended by Notification No. 31/98-Cus.(N.T.) dated 2-6-1998 and

Notification No. 59/2000 Cus. (N.T.) dated 10-10-2000

Simplified online procedure of SMTP

- [Article 10](#)

Formalities connected with importation and exportation and transit

OVERVIEW

The TFA requires the regular review of formalities and documentation requirements, with a view to minimizing the incidence and complexity of import, export and transit formalities and simplifying their documentation requirements. Members should also ensure that such formalities and documentation requirements are as fast and efficient as possible.

Chapter 3 of the General Annex to the Revised Kyoto Convention sets a series of standards on the clearance of goods and other Customs formalities.

INDIA'S PREPAREDNESS

Modalities to be worked out in consultation with other partner departments.

Requires major legal, procedural, regulatory changes for all departments. Requires harmonisation of procedures, formalities and documentation between the various agencies concerned.

Costs in terms of infrastructure, IT, etc.

Modalities for either developing a common platform for receiving & dissemination results or for exchanging information/ documentation/ instructions through messages would need to be finalised.

All the agencies where certificates/ clearances are required would need to come on the EDI platform. Each agency is likely to be at a different level of commitment, connectivity and data sharing capabilities.

- [Article 11](#)

Freedom of transit

OVERVIEW

The TFA requires that regulations or formalities in connection with traffic in transit should be eliminated or reduced if they are no longer required, or a less trade restrictive solution becomes available. Fees or charges may be imposed on transit only for transportation or if commensurate with administrative expenses entailed by transit or with the cost of services rendered.

The TFA includes several measures that facilitate transit procedures, including the pre-arrival declaration, and prohibit restrictive measures in relation to customs charges, formalities, and inspections other than at the offices of departure and destination. It contains several provisions relating to guarantees.

Chapter 1 of Specific Annex E to the Revised Kyoto Convention sets out principles concerning Customs transit. It covers procedures such as formalities at the office of departure, Customs seals,

formalities en route and termination of Customs transit. Moreover, Chapter 2 to Specific Annex E to the Revised Kyoto Convention concerns transshipment. The RKC Guidelines offer more technical and detailed information on transit.

INDIA'S PREPAREDNESS: Broadly compliant except

Inter ministerial consultation required if freedom of transit were to be extended to all countries. For e.g transit to Pakistan goods through India to Nepal.

Appointing National Transit Co-Ordinator

physically separate infrastructure (such as lanes, berths and similar) for traffic in transit.

- [Article 12](#)

Customs cooperation

- **OVERVIEW**

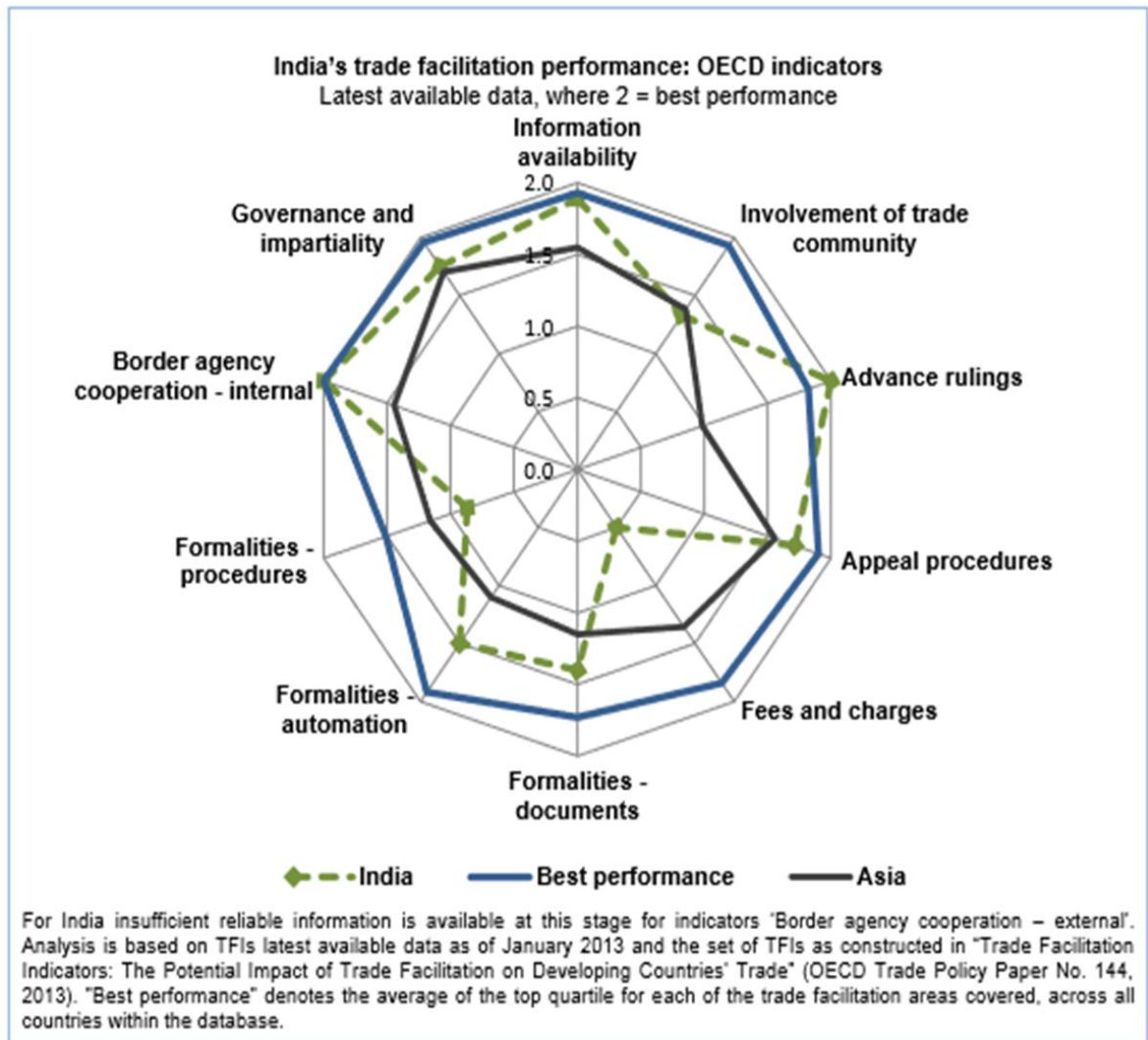
Article 12 of the WTO Agreement on Trade Facilitation (TFA), which concerns Customs Cooperation, sets out the terms and requirements for Members to share information in order to ensure effective customs control, while respecting the confidentiality of the information exchanged. Article 12 allows Members flexibility in terms of establishing the legal basis for information exchange. Members may enter into or maintain bilateral, plurilateral or regional agreements for sharing or exchanging customs information and data, including advance information.

The Revised Kyoto Convention (RKC) provides, in the General Annex (Standard 6.7), that the Customs shall seek to co-operate with other Customs administrations and seek to conclude mutual administrative assistance agreements to enhance Customs control.

The WCO SAFE Framework of Standards (FoS) requires Members to establish and enhance Customs-to-Customs network arrangements to promote seamless movement of goods through secure international trade supply chains. The WCO Model Bilateral

Agreement and the Model Memorandum of Understanding on Mutual Administrative Assistance in Customs Matters are used extensively by WCO Members as the basis for concluding bilateral agreements. The Globally Networked Customs (GNC) Utility Blocks are useful in providing standard templates for bilateral and multilateral agreements.

INDIA'S STATUS



TFI Scores

INDIA : 16.15

KOREA : 17.93

SINGAPORE : 19.68

USA	: 18.24
CHINA	: 15.51
PAKISTAN	: 13.98
MALAYSIA	: 15.95
THAILAND	:17.76