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## ***Facilitated Fiasco: India's Curious Case in the Global Trade Circus***

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### ***Abstract***

This research paper critically examines the Trade Facilitation Agreement (TFA) under the aegis of the World Trade Organization (WTO), with a particular focus on its implications for India. The study begins by exploring the concept of trade facilitation and the purpose behind the TFA, emphasizing its goal to simplify global trade processes. It then delves into the intricacies of the negotiation process, highlighting India's strategic role and challenges in aligning national interests with global commitments. The paper further evaluates the TFA's impact on India, presenting a balanced analysis of its benefits, such as streamlined customs procedures, and its drawbacks, including the strain on developing economies to meet compliance costs. A sharp critique underscores the disproportionate advantages reaped by developed countries, raising questions about the agreement's equity and inclusivity. The concluding section reflects on the broader criticisms of the TFA, arguing that while the agreement promised facilitation, it often amplified existing inequalities in global trade dynamics. With a satirical undertone, this paper calls for a re-examination of the TFA to ensure that it serves as a ladder for all nations, not just a select few.

***Keywords:*** *Trade Facilitation Agreement, WTO, India, global trade, developed vs. developing countries, negotiation process.*

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## Setting the Stage: The Great Global Trade Show and India's Unscripted Role

“Trade is not merely an exchange of goods and services but a complex interaction of economic, social, and political forces that shape the global order”. While such a dilated landscape for the mere nomenclature of ‘*trade*’, generously designated by Paul Krugman<sup>1</sup>, is much appreciated, trade facilitation opens another realm of descriptions altogether.

The OECD<sup>2</sup> renders a more mechanical definition for the phrase *trade*, by framing it to be a sheer addition or subtraction of goods to the rather material resources prevalent in an economy. Likewise, classic economist Adam Smith<sup>3</sup>, emphasizes on the elements of mutual benefit and self interests as the predominant and chief pursuits behind any international trade. Affixed to that, Joseph Schumpeter<sup>4</sup>, an economic historian defines it as a process of both competition as well as innovation which allows the transgression of both ideas and technology across borders.

Across such an assortment of elucidations propounded by both scholars and economists, one may easily perceive the quintessential role trade is to play in any economy, be it developed or developing. Yet, conducting the task may not be as simplified as counting its pearls may be, instead, trade to this day remains a rather arduous activity. It is for this simple reason, that such a fundamental activity<sup>5</sup> was disentangled, or rather attempted to, by the *Trade Facilitation Agreement* (hereinafter referred to as “TFA”) of the World Trade Organization.

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<sup>1</sup> Paul Robin Krugman is an American economist who serves as a Distinguished Professor of Economics at the Graduate Center of the City University of New York and also writes as a columnist for The New York Times.

<sup>2</sup> *Trade In Goods*, OECD, <https://www.oecd.org/en/data/indicators/trade-in-goods.html>.

<sup>3</sup> Adam Smith was a Scottish economist and philosopher who was a trailblazer in the field of political economy and a significant figure during the Scottish Enlightenment.

<sup>4</sup> Joseph Alois Schumpeter was an Austrian political economist who briefly held the position of Austria's Finance Minister in 1919.

<sup>5</sup> Karl Polanyi defined trade to be a fundamental activity. He is an Austro-Hungarian economic anthropologist, sociologist, and politician, is best known for his influential book ‘The Great Transformation’.

In order to competently comprehend the TFA, one must familiarize themselves with the World Trade Organization (hereinafter referred to as “WTO”). Historically speaking, the General Agreement on Tariffs and Trade (hereinafter referred to as “GATT”) operated as a predecessor of the WTO since 1948. However, with the advent of Uruguay Round of Trade Negotiations, which lasted from 1986 to 1994, the WTO was born on the 1st of January, 1995. The WTO borrowed a similar agenda to that of GATT, i.e. accelerating trade by virtue of reducing significant barriers and tariffs involved in the process.

Conversely, the lacunae prevalent in the operations and agenda of GATT emphasized the consistent need for a modified global body addressing trade related concerns in an advanced, efficient and larger scale. Muddles with GATT such as its limited spotlight on goods as opposed to intellectual property or the service domain, poor dispute resolution mechanism, limited membership, and the lack of comprehensive agreements plagued its credibility resulting in the creation of the WTO.

At present the WTO operates as the chief body in the international arena, having a two fold function of both facilitating and also regulating global trade. Headquartered in Geneva, the Ministerial Conference, General Council, coupled with the Secretariat provide a foundational podium to nations alike for addressing disputes, partaking in pertinent negotiations and ensuring the consistent application of trade rules. The world has translated into a global trading system with the advent of the WTO.

In the words of Robert Zoellick<sup>6</sup>, former World Bank President, “The WTO is not just an organization; it is the global institution that facilitates trade between nations and helps to resolve disputes in a structured and predictable manner.”.

As aforementioned, the WTO behaves through its ministerial conferences, conducted every two years. As participants to these conferences, the member states of the WTO attend through their respective trade ministers and representatives. Following a similar pattern of agreement negotiations and adaptations, the Ninth Ministerial Conference was held in Bali of Indonesia<sup>7</sup>,

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<sup>6</sup> Robert Bruce Zoellick is an American public official and lawyer who served as the 11th president of the World Bank Group from July 1, 2007, to June 30, 2012.

<sup>7</sup> *Ninth WTO Ministerial Conference*, WTO, [https://www.wto.org/english/thewto\\_e/minist\\_e/mc9\\_e/mc9\\_e.htm#:~:text=At%20the%20night%20Ministerial%20Conference,trade%20and%20helping%20development%20more](https://www.wto.org/english/thewto_e/minist_e/mc9_e/mc9_e.htm#:~:text=At%20the%20night%20Ministerial%20Conference,trade%20and%20helping%20development%20more).

from December 3rd to 7th in 2013, and is regarded as corner-stone conference of the WTO since its inception. The significance of this conference is resonated by the conclusion of a premier multilateral trade agreement, otherwise known as the TFA.

The TFA, apart from holding tremendous substance and gravity in the economic sphere of things, also demonstrates sincere global cooperation and support in bettering the climate for international trade, especially as the agreement was adopted by consensus of all WTO members. The colossal support rendered for the TFA was owing to its novel natured objectives such as the reduction in costs of international trade, incremented transparency, capacity building and technical assistance in favor of developing countries.

Although the agreement at a surficial level speaks leaps and bounds of the garnered support for developing nations by the developed members of the WTO, its subsequent implementation has however fallen short of such promises, and may even reek of the opposite.

Nonetheless, the TFA came into force nearly eight years post its adoption in Bali on the 22nd of February of 2021 upon ratification by two-thirds of the WTO members following their respective domestic ratifications of the agreement. The agreement differs from that of a mere declaration, as it remains mandatorily binding on all the member states of the WTO.

The TFA does not heavily impose itself through a multitude of sections and provisions, rather the agreement has been carefully crafted so as to specify responsibilities of member states with utmost ease and clarity. Section 1<sup>8</sup> of the agreement emphasizes ponderously precipitating the free flow, clearance and movement of goods (including goods in transit)<sup>9</sup>. For such purposes, customs and their requisite cooperation is tendered to in this Section of the agreement.

On the other end of the spectrum, as the agreement gained momentous applause for its proportional representation being granted to developing countries, as it seemingly illustrated the components of equity as opposed to equality, Section II of the agreement caters towards SDT ie.

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<sup>8</sup> *The Trade Facilitation Agreement; An Overview*, WTO, [https://www.wto.org/english/tratop\\_e/tradfa\\_e/tradfatheagreement\\_e.htm](https://www.wto.org/english/tratop_e/tradfa_e/tradfatheagreement_e.htm).

<sup>9</sup> Distinction between “Goods” and “Goods in Transit”

Goods may be referred to as the stationary tangible items, owned by any party, capable of being bought, used or even sold.

Goods in Transit refer to such goods en route, and not at their final destination. They bear the risk of loss, damage or destruction as they are physically being transported by any means of transportation.

Special and Differential treatment provisions. As the membership of the WTO does not restrict itself to solely the developed nations, and rightly so, as trade is as paramount for the developing nations as that of the developed nations, the least developed countries are therefore being treated at par given their circumstances, climate and resources in the agreement. Accordingly, such nations having been granted the autarky to calculate which provisions of the TFA they are both capable and competent enough to inculcate within their own sovereign parameters, and the remainder of which they would only be effectuating upon the reception of aid, technological and otherwise. In a means to ensure complete transparency, the poorly developed states are to notify the remainder of the members of their partial acceptance to the terms provided for therein. In ease of the aforementioned, the provisions of the agreement may be enlisted by nations as Category A<sup>10</sup>, Category B<sup>11</sup>, and Category C<sup>12</sup> provisions respectively.

Initially, it was stipulated that the realization and enactment of the TFA would prove more meritorious than the holistic eradication of the remainder of tariffs worldwide, reducing costs of global trade to diminish and subside by nearly 15%. On the other end of the spectrum, the World Economic Forum suggested that implementation of the agreement would result in the relaxation of custom rules and barriers which could significantly aid the sales statistics of the SME businesses by nearly 60-80%.

Ultimately, the agreement envisaged a utopia of trade efficiency, cohesive decimation of red-tapism prevalent at international borders, and the escalation of both transparency and technology.

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<sup>10</sup> Category A provisions represent those terms of the Agreement which ought to be implemented by the member states immediately upon the activation of the Agreement, or at the maximum, within a period of 1 year (such relaxation has only been granted to the least-developed countries).

<sup>11</sup> Category B provisions are symbolic of the terms that are to be implemented after a certain demarcation time frame, known as the transitional period, which would begin upon the agreement coming into force.

<sup>12</sup> Category C provisions symbolize those terms of the agreement that are to be implemented on a date post the transitional period mentioned above. In other words, in order to implement these provisions, the reception of technical assistance and capacity building aid from developed countries to the least developed countries is essential.

## **Bridging the Gaps: The Rationale Behind the Trade Facilitation Agreement; Need and Purpose**

As exemplary as trade can be, it also poses variant threats to geopolitics, national security risks and currency fluctuations; precisely why such innate transactions are, more often than not, heavily regulated. The need for the TFA stems from a variety of factors which overcomplicated the practice of trade by the imposition of redundant barriers- which the agreement seeks to abolish.

Primarily, the scale and potential at which international trade could have grown to has been considerably stubbed by the incommensurable and oppugnant custom procedures demarcated by each nation state. Not only are there excessive border controls and documentary requirements posing discouraging international trade, but also difficult to successfully meet. In light of the aforementioned, while tariff barriers such as import and export duties have seen significant reduction on a global scale following the tremendous economic growth brought by the way of such international trade, non-tariff barriers continue to pose a threat.<sup>13</sup>

There exists no mere straight jacket formula which may allow one to adequately and with finity define non-tariff barriers. However, one may understand them to be tortuous and impenetrable regulations and protocols which continue to impede the pace at which international trade grows. More than large conglomerates, such hurdles target small and medium sized business organizations, particularly found in developing nations. As a result, decreasing their attendance in international trade. Accordingly, developing countries are often served the less beneficial side of such deals. As per the statistics rendered by the WTO<sup>14</sup>, for developing nations, participating in trade increments their costs by 134% of the value of goods, as opposed to a mere 87% in their counterpart developed countries. Such additional costs can be accredited to the custom implications, and border control costs. Likewise, on account of a paramount lacunae in technological upgradation or infrastructure support, developing countries continued to face

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<sup>13</sup> *Non-Tariff Barriers To Trade*, Trade Barriers, [https://tradebarriers.org/ntb/non\\_tariff\\_barriers](https://tradebarriers.org/ntb/non_tariff_barriers).

*What Separates Tariff from Non Tariff Barriers*, Khatabook, <https://khatabook.com/blog/difference-between-tariff-and-non-tariff-barriers/>.

<sup>14</sup> Committee on Trade and Development, *Participation of Developing Countries in World Trade: Overview of major trends and underlying factors*, WTO, [https://www.wto.org/english/tratop\\_e/devel\\_e/w15.htm](https://www.wto.org/english/tratop_e/devel_e/w15.htm).

alarming concerns over international trade, which limited their engagement in the activity altogether.

However, as history suggests, the needs and dire conditions of the lesser developed nations has hardly ever been of concern to the western countries. A more prudent argument urging for the TFA therefore stems in global supply chains<sup>15</sup>. In the event of stoppage and disarray at the border fronts, many domestic supply chains are impacted adversely and counter streamlined processes. The incremented inventory costs and need felt thereafter had created a more dominant appetite for the TFA. This inturn would also address the appalling need for global and international trade to be more inclusive in nature. The TFA would address this unconscious and passive discrimination towards the developing nations by swelling their capacity to engage in such trade.

It appears to be rather comical however, that despite the absolute advantage developing countries may hold tightly in their grasp, with regards to natural produce and resources, their needs and demands for participating in such trade are only *now* being addressed by the developed nations through the TFA. One must not, however, rule out the possibility of an ulterior larger objective of their own disguised under the veil of patronage to the developing world.

Keeping the aforementioned in mind, the TFA aims to strategically address the shortcoming experienced previously in international trade. Its purposes therefore are multifaceted. For starters, it highlights the need for bridging the gap between variant customs across differing nations, and harmonizing them to allow smoother and swifter navigation of goods. Not only does this inculcate the simplification of documentation but also reducing redundant formalities in the clearance processes. The agreement has also been applauded for its synchronization with modern day technologies and automation which have been inculcated by way of making the processes electronic and online.

At the end of the day the ambitions of the agreement can be classified as reducing the unnecessary impediments and postponements traditionally occurring in international trade. Meticulously, the pre-arrival formalities, tackling risk and authorized economic operating programmes are being targeted for this purpose. This objective moves hand in hand with incrementing the reliability of global supply chains. As the procedure channels efficiency, on time

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<sup>15</sup> *Resilience of Global Supply Chains*, EUROPARL,  
[https://www.europarl.europa.eu/thinktank/en/document/EPRS\\_BRI\(2021\)698815](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2021)698815).

deliveries may be expected which allow supply chains to run their course smoothly and bring about more transparency as well as predictability to international transactions. That being the case, business operators become capable of managing as well as planning their day to day operations.

Most elements of international trade follow a sequential order of things, and may be regarded as chronological in order. Such as where the global supply chains are stabilized, competition in the market significantly improves, and there is an enhanced reliance as well as resilience in the global trade market as disruptions are lessened and border protocols are reduced. As such factors begin to fall into place, the TFA envisages higher earnings accruing from exports and foreign exchange due to an increased volume of trade, especially for the developing countries.

Similarly, perhaps one of the most glamorous aspects of the agreement may be the differential treatment, and components of equity that have been seamlessly inculcated within the ambit of the agreement. Regarded as one of its most primary purposes, the TFA does include provisions which allow developing, as well as least developed countries to adopt a different treatment, from that of their developed counterparts. This encourages such nations to participate in the agreement, as sufficient liberty has been allocated to them in assigning their compliance to only select terms. Correspondingly, this entails that the benefits of this agreement (if any) are to be ideally distributed and shared widely, contributing to both poverty alleviation and sustainable development.

### **Navigating the Maze: India's Journey Through WTO Negotiations**

In order to ascertain and analyze the intricacies of the TFA, it is pertinent to comprehend the negotiation process and/or procedure adhered to at the WTO. The procedure is complex and involves meaningful contributions from member nations, as the phenomenon of sovereignty of nations cannot be sacrificed, thereby allowing states to negotiate, and settle their disputes in order to arrive at a mutual consensus.



The commencement of the negotiations at the WTO<sup>16</sup> initiate with the characterization and identification of the issues that demand such large scale consideration and address. Typically such issues are proposed by members of the WTO. However, merely upon such recommendations, the negotiation does not begin, as opposed to that, there is a period of time rendered and demarcated solely for the purposes of discussion and consideration by the members to postulate their respective concerns correlating to the matter at hand. Traditionally, such a time frame is notorious for hidden diplomacy and behind-the-scenes communication amongst majorities as a means to secure consensus.

Nonetheless, the negotiations commence soon after in the form of rounds. These rounds have not stringent time frame they ought to adhere to, instead they tend to replicate extensive time frames for laborious discussions. Narrowing perspective to a singular negotiation found, allows one to witness the distinct issues raised, and there subsequent solutions offered by committees formulated within the WTO. One of the most prominent negotiation rounds conducted by the WTO was the Uruguay Round<sup>17</sup>.

Akin to the TFA, other landmark and foundational decisions taken by the WTO are often agreed upon at ministerial conferences, which occur every two years. As the trade ministers of all nations are present, it acts as an ideal forum for the finalization of agreements. However, as a consensus-based approach is followed rigidly by the WTO, it often becomes a tedious task to secure the concord of all countries alike. Accordingly, once draft agreements are curated into legalese, not only is such a draft reviewed tirelessly by experts of the field, but it is also circulated across members for their revision. It is normally at this stage that members not only seek clarifications but may also seek changes, or even raise prominent concerns going forward.

It is only after the prior juncture of emendations that the agreement is adopted by the WTO formally at a Ministerial Conference. The organisation thereafter requisites each member state to hold itself accountable and responsible for the *bona fide* and prescribed implementation of the agreement so adopted. In other words, the municipal legal formalities and procedures now begin for the state to ratify the convention at a domestic level, so as to ensure compliance to the

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<sup>16</sup> *WTO Negotiations On Trade Facilitation*, SouthCentre (Mar. 4, 2014), <https://www.southcentre.int/question/wto-negotiations-on-trade-facilitation-development-perspectives/>.

<sup>17</sup> *An Overview of The Uruguay Round*, ELibrary-IMF, <https://www.elibrary.imf.org/display/book/9781557756213/C10.xml>.

agreement as legally binding. This concludes the cardinal tread towards adoption of an agreement by the WTO. Despite this, the organisation continues to superintend the implementation of the agreement, identify any discrepancies and take corrective measures wherever necessary, for this purpose varying reporting and reviewing mechanisms are in place.

Having ascertained the negotiation approach adopted by the WTO, it becomes rather necessary to ascertain India's stance, role, position and contribution during and throughout the TFA negotiations. To say the least, India occupied a significant role, which can be categorized as nearly resistant and cautious as opposed to adventurous<sup>18</sup>. This predisposition came as a result of fearing the agreement might favor and predominantly benefit developed nations further at the expense of developing ones.

The Indian government primarily expressed their concerns with respect to the interplay between the TFA and the agricultural sector<sup>19</sup>. The Indian economy continues to remain largely agrarian in nature, even today. Meaning, a significantly large portion of the Indian population continues to derive their livelihood from farming and other forms of agriculture. Not only that, food security has remained a predominant concern for the government since independence. Accordingly, a large number of Indians remain dependent upon government subsidies, programmes and/or initiatives to be able to access food in an affordable manner. To cater towards such a pressing concern, the Indian government continues to implement stockholing programs, wherein, the purchases of agricultural produce is done by the government from the farmers at a *Minimum Support Price*<sup>20</sup>. After having acquired the goods, they are thereafter distributed through the *Public Distribution System* at subsidized rates so as to cater simultaneously towards both the public (below poverty line) as well as the financial needs of farmers.

As the negotiations for the TFA commenced, India's concerns with regards to the limitation on amount of permitted subsidies under the agreement grew. India grew worried that with the ratification of the TFA domestically, the government might have to withdraw the scale at which the subsidies were being offered to its citizen farmers. In other words, in an attempt to facilitate

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<sup>18</sup> Vijay Singh Chauhan, *India's Trade Facilitation Journey; Viewed Through The Lens of National Time*, WCO, <https://mag.wcoomd.org/magazine/wco-news-104-issue-2-2024/india-trs/>.

<sup>19</sup> Surendar Singh, Utkarsh Kumar Mishra and Harleen Singh Sandha (2018), 'The trade facilitation agenda of the WTO and India's commitments: Where does India stand?', International Trade Working Paper 2018/01, Commonwealth Secretariat, London.

<sup>20</sup> *Minimum Support Price*, BYJU, <https://byjus.com/free-ias-prep/minimum-support-price-msp/>.

and promote international trade, the Indian government did not however want to pull back on its stockholding initiatives, which were welfare schemes to serve the agrarian sector. Not only would this impact the government politically, but also affect farmers who are monetarily supported by such initiatives, and those relying on the public distribution systems.

That being the case, India advocated such concerns at the global platform, demanding that it shall, despite ratification to the agreement, continue with its stockholding programs. Additionally, such actions shall not attract any penalties or plausible disputes at the WTO. As a result, WTO members agreed to inculcate a “*Peace Clause*”<sup>21</sup>. The inculcation of this clause took place during the final leg of the negotiations in Bali.

Apart from the aforementioned, many developing countries coupled with India expressed sincere doubts in light of the costs of implementing such an expansive and novel agreement. Although the ambitious objectives of this agreement were impressive, their financial feasibility could not be ignored. As the agreement involved the upgradation and renovation of customs costs, procedures, infrastructure and technology, India demanded more brace and aid in the financial, technological and capacity related aspects. This is where India's role as the largest growing economy was realised in the international arena. As resourceful as India is to developed economies, its demands could not be ignored. It is in lieu of the same, that developing as well as least-developed nations were permitted to perform the agreement in their domestic peripheries without a stringent timeline, and rather at their own pace. Correspondingly, were distributed into three categories, as mentioned earlier.

As India insisted and requisitioned for encouragement, assistance, and commitment from the developed nations in order to comply with the agreement financially, on account of infrastructure gaps, limited financial resources and the lack of technical expertise as requested by the TFA, such support was ultimately secured. Meticulously speaking, India consistently debated for the need of both knowledge transfer, alongside consultative and advisory services. Moreover, it demanded institutional strengthening whilst maintaining a stark compliance with the sustainable development goals of 2030, as well as financial support in the form of cost-sharing mechanisms and funding upgrades.

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<sup>21</sup> *Agricultural Issues*, WTO, [https://www.wto.org/english/thewto\\_e/minist\\_e/mc11\\_e/briefing\\_notes\\_e/bfagric\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/mc11_e/briefing_notes_e/bfagric_e.htm).

With international bodies such as the WTO, World Bank, UNCTAD<sup>22</sup> and the developed nations committing themselves towards addressing and meeting such financial, institutional and technological challenges, India and the developing world at large were successful in ratifying the TFA as per their preferences. The WTO also agreed to perform consistent and repetitive monitoring and transparency practices so as to ensure supervision over the mannerism in which such support was being provided.

All in all, it can be witnessed that India played a pivotal role in curating the final draft of the TFA. Not only did India's demands address the developing world at large, but the acceptance of such modifications and considerations by the WTO, enabled the agreement to be far more comprehensive and solicitous. India's demands symbolized unity and prioritized the interests of many member states, instead of merely itself. India advocated as a welfare state, at a global platform, for all states.

### **The Double-Edged Sword: Weighing India's Gains and Pains**

As Stephen Covey<sup>23</sup> rightly demarcated, "What you do has a greater impact than what you say.". While the TFA may have given scores of fanciable vows and assurances, the actualisation of what was intended, and what in fact has occurred, truly stands as the only measure as to how righteous and principled this agreement candidly was.

India, as a nation, and Indians, as its people, have been regarded as key components of global economic affairs since time immemorial. Naturally, the ramifications and reverberations of the TFA have been experienced by this nation at plausibly, what may be, the highest magnitude.

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<sup>22</sup> United Nations Conference on Trade and Development.

<sup>23</sup> Stephen Richards Covey was an American educator, author, businessman, and speaker, best known for his popular book *The 7 Habits of Highly Effective People*.

As India ratified<sup>24</sup> the agreement on the 22nd of April, 2016, it stepped foot into a number of economic ripples, both positive and negative<sup>25</sup>.

### **The Double-Edged Sword: Weighing India's Gains**

Primarily as the fundamental and primemost ambition of the agreement was to streamline, standardize and harmonize the varying custom procedures across nations, the objective was naturally met in India as well. Not only were the electronic translations of such formalities resulting in massive cost reductions for the state, but also deducted the time ordinarily elapsed for the fulfillment of such tasks. Such a paramount ease that has been inculcated into India's international trading mechanism, serves as an encouragement to other nations, inviting more of the already appreciated international, cross-border trade.

Not only that, prior to the advent of the TFA, pre-arrival processing of goods was only plausible upon the arrival of the goods, previously in transit. However, in a means to expedite such pleasantries, the protocol is now available to be followed even prior to the arrival of such expected goods. As the documents now are available to be processed beforehand, there remain virtually no hindrances, barriers or delays at trading ports and/or borders from where such goods may be retrieved.

Naturally, the easing of such requirements, and the subsequent relaxation on their timely completion, contemporaneously gives rise to security and risk management issues. To counter such probabilities adequately, India has since implemented high end risk managerial systems which target the authorities present at customs. These authorities have now been assigned the task to streamline their energy towards high-risk consignments as opposed to the low risk ones. Previously, no such demarcation existed, this led to increment time intervals even for the trading

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<sup>24</sup> Once any international agreement has been signed it is thereafter presented before the Union cabinet for their approval. The constitution does not specifically require parliamentary approval of any international treaties. However, it is to be noted that in order to bring effect to such an international commitment, a new legislation or amendments to an existing municipal law are typically required, and hence the matter may be brought up as a concern before the parliament. Thereafter, the president formally will ratify the treaty (Article 74 of the constitution of India, ie. the President is to function on the aid and advice of the council of ministers).

<sup>25</sup> INDIA CONST. art. 74, cl. 1.

which posed little to no risk. However, with such division in place, low risk trading has witnessed sincere efficiency of time for both imports and exports abroad.

While the aforementioned merits of the TFA are symbolic of the nugatory advancements made locally, it is only such paltry changes that have resulted in economically denting transpositions for India. For starters, the improvement in the efficiency of customs and transportation has not only resulted in a reduction of time, but also led to the efficiency and effectiveness with which authorities in India are now operating. As their focus is now streamlined and tasks organized, sectors such as textiles, pharmaceuticals and automation are gravely improving. Reason being, such industries operate primarily on prompt and timely deliveries, which are nearly guaranteed owing to the TFA.

As previously stipulated, the TFA weighs its provisions tremendously on values such as transparency. A natural consequence of transparency is predictability. When such values inculcate themselves into the Indian market and economy, India appears to be even more appealing and inviting of a destination for goods to reach the market, and for one to supply them to global markets<sup>26</sup>. Accordingly, multinational corporations and smaller entities are making India their operating home. Likewise, Indian businesses are able to make their mark, by supplying their goods to previously unexplored markets, such as Latin America, or Africa, ie. nations where the penetration of Indian goods in domestic markets was negligible in comparison to other regions.

Furthermore, owing to the easier access, and lesser formalities persisting upon the entry of goods within Indian territory, the access to the Indian market has never been easier. This particularly benefits small and medium enterprises, both Indian and foreign. Primarily, for the Indian small and medium business, their access to global markets has incremented owing to the lesser costs and bureaucratic red tape involved in their efforts to have their goods reach the global market. International trade is now financially and politically well within their reach and allows Indian businesses to prosper. Such success stories naturally have chain reactions of encouraging others in the country to begin their own businesses and obtain fundings. On the other end of the spectrum, when smaller businesses abroad face the same set of advantages as their Indian

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<sup>26</sup> Akshay Kankre, *Top 10 Reasons Why India Is The World's Most Attractive Investment Destination*, LinkedIn (Oct. 25, 2022), <https://www.linkedin.com/pulse/top-10-reasons-why-india-worlds-most-attractive-akshay-kenkre>.

counterparts, not only do the consumers benefit from such additional goods in the market, but also decrease costs owing to stagnant demand and an increment in supply. This in turn, also creates healthy competition in the market, and introduces smaller Indian businesses to novel technological advancements<sup>27</sup>.

One of the leading concerns of the 161 members of the WTO at the time of negotiating this landmark and foundational agreement was the constantly bickering global supply chain, which did not indicate to be reliable nor sturdy. Today nations alike, are content to have seen the consistent strengthening of the global supply chain owing to the TFA. Industries where punctual deliveries of goods are quintessential, such as electronics or manufacturing, are now blooming in foreign markets as the trade has become predictable and somewhat more reliable.

As promised on the onset, India has been the recipient of support in a multitude of mannerisms from global banks and developed nations. Such aid and support is not only necessary but largely allows India to fulfill its commitment towards the TFA. The Trade Facilitation Agreement Facility has granted India assistance on the technical side of things, which primarily aimed to support the endeavors relating to customs reforms<sup>28</sup>. The World Bank is also known to have supported India in their improvement of trade logistics and efficiency, mainly to bring about consensus between Indian policies and the agreed upon international standard. For customs automation, the United Nations Conference on Trade and Development proved useful, while the Asian Development Bank introduced regional initiatives to support the cause<sup>29</sup>. The United States of America, particularly their Agency for International Development<sup>30</sup>, allowed India to borrow their best practices in trade facilitation. Finally the European Union aided Indian initiatives of

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<sup>27</sup> Harry Suharman, Erlane Ghani, Slamet Soesardono, Sofic Handoyo, *A business strategy, operational efficiency, ownership structure, and manufacturing performance: The moderating role of market uncertainty and competition intensity and its implication on open innovation*, Science Direct, <https://www.sciencedirect.com/science/article/pii/S2199853123001415>.

<sup>28</sup> *Trade Facilitation Support Programme*, World Bank, <https://www.worldbank.org/en/programs/trade-facilitation-support-program>.

<sup>29</sup> Vijay Singh Chauhan, Sruti Vijayakumar, *Measuring Trade Facilitation; Evidence from India*, Carnegie Endowment (May. 17, 2021), <https://carnegieendowment.org/research/2021/05/measuring-trade-facilitation-evidence-from-india?lang=en>.

<sup>30</sup> *Fact-Sheet: US-India Agreement on Trade Facilitation*, USTR, <https://ustr.gov/about-us/policy-offices/press-office/fact-sheets/2014/November/US-India-Agreement-on-Trade-Facilitation>.

foreign trade with the western region by supporting Indian practices to amalgamate well with the EU standards of international trade<sup>31</sup>.

On a more municipal note, the “Make in India” campaign can also be vividly imagined to have benefited with the advent of the TFA<sup>32</sup>. Both raw materials and finished exported goods are now easier to be imported into the country for their use by smaller businesses, and *vice versa*.

### **The Double-Edged Sword: Weighing India's Pains**

Antagonistically, while India has been on the receiving end of various encouragement and cooperation from international banks and developing countries, there continues to be a lacking in financial and monetary support, which compliance to the agreement demands. The implementation costs of new facilities, technological improvements, infrastructure support and training personnel present in India as per the novel requirements has placed a stringent strain on the Indian government to meet. While the infrastructural, technological and know-how support rendered by such foreign elements is much appreciated and valued, there hardly resembles any guidance on meeting the monetary constraints posed by the agreement.

Apart from the financial inability or lack thereof, it is rather crucial for one to denote the size and population of a country like India. Unlike many of the other member states of the WTO, India is as wide in its population, as it is territorially speaking, and perhaps even more. Therefore, as the implementation and administration of the TFA goes into existence, there is hardly any equivalence of applicability that may be noted across the country's various regions. So much so, that there exist stark discrepancies or rather disparities in its implementation. There exist metropolitan cities which have been equipped with far better and advanced industrial and technological abilities, as opposed to the more rural segments of the country. Therefore, while the

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<sup>31</sup> *EU Trade Relations With India*, European Commission, [https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/india\\_en](https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/india_en).

<sup>32</sup> *Trade Facilitation*, Ministry of Commerce and Industry, <https://www.commerce.gov.in/international-trade/india-and-world-trade-organization-wto/trade-facilitation/>.



formal have been able to avail the benefits of this new agreement, and implement its requisite provisions with more proficiency, the latter continue to struggle with its compliance and costs.

There also exists disparity between the types of entities that have gained from the TFA. Without a doubt, the larger entities have thoroughly enjoyed the cutting of costs and ease of movement of goods to and from India. The same however cannot be said about the smaller businesses who have found the novel requirements to be challenging. It is pertinent herein to denote, that while the cost effective benefits of the TFA exist, they only come into existence upon significant expenditure having already been incurred for the purpose of facilitating them at the outset of the ratification itself. Requirements such as the electronic modules, adherence to timelines and the adoption and familiarization of new technology has proved rather difficult for the smaller businesses in India, and even more so if they are located rurally.

As previously mentioned, one upside to the TFA is the healthy competition it promotes with the advent of foreign goods entering the Indian market in larger quantities. While healthy competition is appreciated, for some entities there fails to be any competition at all. In other words, few domestic industries are unable to compete with their foreign counterparts. The advanced technology, economies of scale, higher quality products, have single handedly narrowed down demand largely in the favor of foreign goods. The stereotypical Indian mindset which tends to glorify “imported” goods, also does not help the cause.

Likewise, stability of the global supply chain has also led to an increment on the dependency India now has over it, and the lesser attention being paid to the substitute alternatives in the event the chain is disrupted. In other words, vulnerability to the stability of the global supply chain has posed a dangerous comfort zone. This disadvantage was visible in the advent of the Covid-19 virus, wherein despite complete efforts by nations, the global supply chain was inevitably affected in a rather dramatic and drastic manner. In such a spectrum, it became difficult for India to gather raw materials not otherwise available domestically. Simply put, the TFA creates a sense of overdependence on global supply chains, which are subject to a multitude of external and internal disturbances, very rarely in one's control.

Finally, although India was able to successfully negotiate a peace clause, which essentially allowed it to continue with its minimum support price and public distribution system thereafter, it was not able to shield its farmers against the growing competition. Farmers in India, can be, and are, regarded as a vulnerable sector. With the advent of the TFA, and the large inflow of imports, there has been more competition for Indian farmers, particularly in the fields of dairy<sup>33</sup>.

### **The Global Trade Ladder: How the Developed Climbed While the Developing Held the Rungs**

Granted that the TFA, posed itself to be an agreement aiming towards the equitable benefit of all nations alike, irrespective of their financial, infrastructural and technological benefits, and even perhaps contending more merits to come the way of the developing nations, it is shortly thereafter understood and comprehended that such was merely an illusion. Out of the 161 nations that formulate the WTO, it becomes absolutely pertinent to draft, argue and thereafter sell the agreement in such a manner that it appears agreeable to the developing nations, as they formulate somewhat of a majority therein. Without the green signal from the developing nations, not only is the agreement resembling mere ridicule to the developed nations, but also fails to concur a majority at the international forum. Therefore, while the benefits to result from this agreement ideally ought to have been distributed evenly throughout the member countries, the reality paints a different picture.

Primarily, in such an analysis, it becomes pertinent to denote the climate with which the nations entered into and/or ratified the agreement domestically. As far as the developed nations are concerned, they were able to enter into the TFA with an already well established infrastructure system in place, alongside advanced customs<sup>34</sup>. Not only that but owing to their financial stability, they also had a surplus of capital that could be allocated to any remaining discrepancies or

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<sup>33</sup> Malini L Tantri, *Doing Business, Trade Facilitation and Agricultural Exports in India- The Case of Select Agricultural Products*, Institute of Social Economic Change (May, 2023), <https://www.isec.ac.in/wp-content/uploads/2024/04/WP-559-Malini-L-T-Final.pdf>.

<sup>34</sup> Joann Peterson, *The WTO Facilitation Agreement: Implementation Status and Next Steps*, USITC (Nov. 2022), [https://www.usitc.gov/staff\\_publications/jice/wto\\_trade\\_facilitation\\_agreement\\_implementation](https://www.usitc.gov/staff_publications/jice/wto_trade_facilitation_agreement_implementation).

formalities that had to be met for the purposes of showcasing compliance with the agreement. This essentially implied that while developing nations secured finances from a variety of sources and deliberately allocated them towards risk management systems, technological changes, automation activities and other customs procedures, the developed countries already had many of these requirements in place. Where any lacking was felt, resources were abundantly already available to be used for meeting those needs. This led to an uneven playing field.

This ultimately resulted in the pace at which nations would bear the fruits of their seeds. While the developing nations had made generous and intentional contributions towards fulfillment of the TFA requisites, developed countries could enjoy the benefits accruing from the agreement almost immediately, or at least without any large summation of additional investment. Countries such as India however had to allocate significant chunks of their financial resources for the purposes of uplifting their infrastructure in order to meet the standards laid down by the agreement. It becomes doubtful as to whether the return on such investment has been able to meet the break-even point.

There are two sides to every coin. Yet, there appear to only have been positives and meritorious sides for a coin of this agreement, for the developed nations. Prior to the TFA, the tariff barriers were already being tackled for the purposes of improving international trade. Now with the eradication of non-tariff barriers, developed nations now were greeted with a red carpet to trade with utmost ease in the developing nations. Not only did that benefit the economies of such superpowers, but also negatively impacted the domestic producers and manufacturers. As the summation of exports being made by such developed nations to the developing ones, healthy competition soon resulted in no competition in many of the developing economies. It became difficult for the domestic producers to match with the cheaper, yet higher-quality produce being imported at extremely low prices from developed countries. Out of all sectors, the Indian agrarian sector was most affected. Small and medium sized enterprises also depicted difficulty in adhering to such high production costs and global standards. It is evidently visible that the benefits intended by the TFA catered more towards multinational corporations operating in the international arena, as opposed to local businesses prevalent in the lesser developed countries.

Moreover, it is quintessential to recognise that many of the benefits offered by the TFA accrued at a secondary stage, and demanded certain prerequisites to already have been in place. This essentially implies that while the TFA is undoubtedly and singlehandedly credited for the purposes of reducing and nearly eliminating high costs of trade, developing nations were unable to exploit such reductions in costs. Where entities wished to supply their produce to a developed country from a developing one, not only did they have to meet stringent and difficult quality standards, but also bring about mass-production in order to merely co-exist in such markets. Where the prerequisites now became difficult to achieve, the benefits offered at a secondary stage, were outside developing countries' reach. India particularly, showcased a lacking in such production capacity and scarcity for a diversified export base<sup>35</sup>.

While the developed nations may impulsively and inadvertently paint the picture of having supported and assisted the developing nations by leaps and bounds, it is hardly the reality. Rather, the support rendered to developing countries, such as India, was not of monetary assistance, and barely aided in meeting their needs to fulfill the commitments made under the agreement. The cooperation rendered failed to address the structural and fundamental challenges in complying with the agreement, and were more superficial in nature than required. Nonetheless, the technological and knowledge-based support rendered by a few countries was appreciated, irrespective of how bureaucratically slow it arrived.

Although not the case for India, smaller developing countries were unable to secure any aid at all, be it of technological nature, knowledge-based nature or even infrastructural. The procedure for obtaining such aid often demands cruising across an entangling procedure, which was not adequately completed by such countries<sup>36</sup>.

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<sup>35</sup> Shibananda Nayak, Vani Aggarwal, Preeti Mann, *India particularly, showcased a lacking in such production capacity and scarcity for a diversified export base*, WTO Centre IIFT, <https://wtocentre.iift.ac.in/workingpaper/Technology%20Intesity%20of%20Indian%20Manufacturing%20Exports-WP.pdf>.

<sup>36</sup> Countries such as Malawi, Lesotho, Bhutan, Honduras, Nepal and Cambodia were victim states to such inequality.

Additionally, from a legal standpoint, compliance with the TFA demanded structural reforms at municipal levels. For example India was required to make amendments, both legal and administrative, in its functioning, which further occupied time. While this burden was shared by all ratifiers of the agreement, the distinction between developed and developing countries was again highlighted when compliance to novel requirements was posed. Not only is it financially difficult to meet these new legal requirements, but doing so in a timely manner, especially for the smaller municipal businesses of developing countries is a different ball game altogether. Most of these downfalls, consequently result in the developing nations being unable to even participate adequately in the international trade intended to distribute benefits.

When glancing over the TFA from a bird's eye perspective, one can also easily identify that the agreement was framed by the WTO with the very objective of serving the needs of the developed countries. Developing countries tend to hold an absolute advantage over certain produce, highly in demand in the developed nations. Yet, owing to their geographical location, or availability of labor, they are unable to produce such goods within their own domain. Yet, having an abundance of capital, these nations are able to mold international trade terms to their favor. The TFA might be regarded as another tool to accomplish the same. Throughout the negotiations of the TFA, the developed countries had a far sturdier position, and were therefore capable of advocating their terms and conditions in a more convincing and precise manner before the remaining membership.

This has resulted in the agreement having been shaped and cultivated in such a way that it allows the needs of the developed nations to be met seamlessly. One may argue that the simplification of procedures for the transfer of goods, or the reduction in timely delays has been incorporated into the agreement to allow the developed countries to expand their exports to the developing nations. It would be highly improbable that such provisions were inculcated keeping in mind the economical development growth of the developing countries, as evidenced from the results the agreement has borne; which have seldom flown in the direction of the developing nations.

### **Closing the Deal: Critiquing the Fine Art of Global Trade ‘Facilitation’**

Perfection can seldom be measured from afar. As distant as the objects may be, the finer they appear, the more holistic and complete they appear. It is only upon a closer glance that one becomes capable of discovering its flaws. While the TFA is appealing to all senses when heard remotely, as one continues to delve deeper into the agreement and reverberations, its truth begins to unfold. Initially, the agreement was praised tirelessly and globally for its potential, which was hardly realized by the developing countries (as aforementioned). Although it would not be fair to disregard the positive aspects of the agreement, and perhaps the naive intentions with which it was drafted, the TFA cannot go unnoticed without discerning and dissecting its criticism; which only becomes visible to the naked eye upon having studied the agreement in totality.

As previously mentioned, the merits of the agreement were unable, either accidentally or intentionally, to have been distributed equally amongst the member states of the WTO. On one end of the spectrum, there existed the developed countries, enjoying paramount gains from their ratification of the agreement owing to their negotiating positions, uneven playing field and abundance of capital. On the other hand, developing nations were unable to reap the benefits as implementation of the agreement itself posed difficulties. Naturally, a more balanced approach would have been ideal for the better implementation of the said agreement. Unfortunately, the list of catastrophes disguised in the agreement do not stop there.

For starters, the TFA demonstrates a furthering divide between the urban and the rural, as its benefits are likely to remain concentrated in the urban areas of developing countries such as India. This is owing to the fact that urban cities are equipped with more infrastructure and technology as opposed to their rural counterparts.

Irrespectively, such a demerit can be tolerated, in circumstances where other, and perhaps more crucial, benefits were being realized. Yet, it can be observed that as the compliance costs of the agreement are so overbearing and financially pressing for the developing nations, one cannot help but worry as to whether this may be the right utilization for such limited financial resources. In the event where developed nations choose to allocate and employ such large monetary funds towards their adherence to such international agreements, the decision is rather sound and rewarding. The same cannot be said for developing nations, where a return on such hefty investment is not guaranteed. The agreement's stringent and demanding nature, may be perceived as manipulating the scarce funds of developing countries towards tasks of lesser priority. Countries such as India may have more fundamental and pedestal municipal objectives, such as food security or poverty alleviation, which could benefit far more with the same quantum. Such initiatives also degrade the ability of a country to prioritize its domestic policies and implement those tailored specifically for its citizens. It may be only a matter of time before the TFA is regarded as a mere distraction for the developing nations from their long-term objectives.

The TFA, its subordinate bodies or various spokespersons have also failed to address any supervisory or monitoring mechanism in place that has been utilized since the inception of the agreement. Despite having promised a consistent and guarding evaluation mechanism or impact assessments at the negotiation stage of the agreement, developed countries continue to enjoy the liberty of choosing to abide by or otherwise sideline the commitments made by them under the agreement. Where comprehensive and adequate impact assessments had been conducted by the WTO, the struggles and challenges being faced by the developing nations in following through with promises made under this agreement would come to surface. Likewise, the technological or infrastructural support being granted by such countries to the developing world is also not being taken into account formally, and can be depicted as unsatisfactory or insufficient. Accountability and transparency therefore fail to have been realized in all actuality.

The TFA also appears seemingly ignorant of the demerits associated with the availment of foreign aid by developing countries from the developed ones. As foreign aid sets foot into municipal territory, not only is the concept of territorial sovereignty compromised in a larger sense, but it also creates a pathway for the developing nations to agree to terms not necessarily crafted in

their best interest. In other words, developed nations may oppress developing nations to abide by and agree with policies that do not align with the country's municipal objectives. In such an event, the domestic nations would have no choice but to comply by such conditions posed before them, as non-compliance of the TFA would also not come without its consequences.

Despite being a relatively novel international agreement, the TFA also seems to have completely omitted considerations of digital trade and e-commerce. In today's day and age, trade of goods is consistently moving online as opposed to offline. The failure to have entertained such a discussion at an earlier stage is sure to gather the member states once again in the coming years. Particularly, matters such as digital transactions, the flow of data transgressing borders or e-commerce guidelines demand undivided attention. This omission again in turn affects developing nations adversely more than the developed countries. Although the latter are well equipped and better suited to benefit from online trade, developing countries have yet to secure the foundational aspects of it, such as internet connectivity, e-commerce regulations, or cyber security measures.

The precariousness of the TFA does not end there. Its repetitive and consistent pivot on amalgamating custom procedures, standardizing and harmonizing them may encourage *regulatory arbitrage*<sup>37</sup>. In other words, business entities anywhere in the world may look for inadequacies, apertures or escape clauses between the custom procedures across countries for the purposes of making undue gains and exploitation. While the immediate occurrence of such an event would not pose itself as a pressing danger or concern, its long term and continued usage can negatively impact the sanctity of the global trading system.

Finally, the pertinacious and indefatigable emphasis on increasing the volume of trade, being made by such an agreement may act as a catalyst for developing nations to dilute their customs procedures. This may be done for a variety of postulations, such as attracting trade tourism. Not only would this have lasting ramifications on national security, but also on quality of the products, labor rights and may even raise environmental concerns.

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<sup>37</sup> Pollman, Elizabeth, "Tech, Regulatory Arbitrage, and Limits" (2019). All Faculty Scholarship. 2567. [https://scholarship.law.upenn.edu/faculty\\_scholarship/2567](https://scholarship.law.upenn.edu/faculty_scholarship/2567)



Albeit, the inner intent, and bonafide efforts of the TFA have penetrated deeply into the global economy, and strengthened global unity in understanding and comprehending that gain for one, is gain for all, in the game of trade. Nonetheless, the shortcomings of the agreement are evident, discernible and unprecedented. Regardless of the threads of praise one may knit for the TFA and its parent organization ie. the WTO, the corporeality of the agreement, and its forces in action have been dispiriting and underwhelming. The blatant disregard for nuances, scope of the agreement and developing nations is sure to catch up to the benefits- which the agreement has to offer, sooner or later. The costly affairs the agreement mandates, pure oblivion of deeper domestic concerns, regulatory arbitrage, disregard to e-commerce, amongst many others highlight only the tip of the iceberg, of what is unerringly to come.