

Implementation of the WTO Trade Facilitation Agreement in the Asia Pacific Region: Analysis of Category A Submissions

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Highlights

As part of the preparation for the implementation of the WTO Trade Facilitation Agreement, 15 economies in the Asia-Pacific region have already submitted Category A notifications, i.e., the list of substantive provisions they have either already implemented or are committed to implement by the time the Agreement enters into force. Analysis of these notifications as of February 2015 reveals the following:

- On average, the 15 Asia-Pacific economies have fully notified nearly 70% of all substantive provisions in the TFA. While the sample of countries includes only three landlocked countries and no least developed countries as yet, the results support earlier analysis that most developing countries have already made good progress in implementing many of the measures included in the TFA.
- Category A notification rates suggest that the measures that will require most time and capacity building before implementation in the Asia-Pacific are those under Sub-Article 10.4 on **Single Window**; Sub-Article 5.1 on **Notifications for Enhanced Controls or Inspections**; Article 12 on **Customs Cooperation**; Sub-Article 7.6 on **Establishment and Publication of Average Release Times** and Sub-Article 7.7 on **Trade Facilitation Measures for Authorized Operators**.
- Low notification rates of provisions related to exchange of information between Customs and data protection and confidentiality, suggest a need for more capacity building and cooperation in these areas, in line with the on-going work at ESCAP on a regional arrangement for the facilitation of cross-border paperless trade.
- While the notifications are generally consistent with the results of the ESCAP Survey on Implementation of Trade Facilitation and Paperless Trade conducted in 2013/14, they are not fully reflective of the level of trade facilitation implementation, as economies have adopted different notifications strategies. Indeed, some economies with reportedly advanced trade facilitation programs appear to see little benefit from binding themselves through such notifications at an early stage.

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Introduction

Negotiation of the World Trade Organization (WTO) Trade Facilitation Agreement (TFA) concluded in December 2013. The TFA contains provisions for expediting the movement, release and clearance of goods, including goods in transit. The Agreement will enter into force once two-thirds of the WTO Member States have completed their domestic ratification processes. As countries prepare for the implementation of the TFA, 15 economies in the Asia-Pacific region have already submitted notifications of relevant WTO TFA provisions under Category A. The TFA provisions notified under Category A are those which Member States have either already implemented or have committed to implement by the time the Agreement enters into force (or in the case of the least-developed countries (LDCs) within a year of its entry into force). Provisions not notified under this category will presumably take longer to implement and/or require capacity building and technical assistance.

In that context, the Category A notifications of Asia-Pacific countries are analyzed and contrasted with the results of the ESCAP Survey on Implementation of Trade Facilitation and Paperless Trade (SITFAP) 2013/14 in an effort to highlight some of the most challenging WTO TFA provisions and to provide some insights on regional priorities for cooperation and capacity building.

A brief overview of the Trade Facilitation Agreement

Section I contains the **Substantive provisions** of the agreement. It covers areas on Transparency, Fees and Formalities, Transit and Customs Cooperation, and clarifies and improves Articles V, VIII and X of the 1994 General Agreement on Tariffs and Trade (GATT). The trade facilitation provisions (or measures) to be implemented are specified under 12 different articles.

Section II contains **Special and Differential Treatment (SDT) provisions** that allow preferential treatment for developing and least-developed countries (LDCs).

Section III contains **Institutional Arrangements and Final provisions** that establish a permanent committee on trade facilitation at the WTO, and require Members to have a national committee to facilitate domestic coordination and implementation of the provisions of the Agreement. To benefit from SDT, a Member State must categorize and notify each provision of the Agreement as either:

- **Category A:** implementation upon entry into force of the Agreement, or within one year after for LDCs;
- **Category B:** implementation after a transitional period following the entry into force; or
- **Category C:** implementation on a date after a transitional period following the entry into force and requiring the acquisition of assistance and support for capacity building.

Only provisions notified under **Category A** are included in this analysis.

Category A notifications in the Asia-Pacific: Overview by economy

Of the 51 circulated Category A notifications of the TFA as of January 2015, **15 or roughly a third belong to Asia-Pacific economies**. Figure 1 shows the economies which have already submitted notifications and the number of TFA articles (of 12) that they each have “Fully Notified” or “Partially Notified” under Category A. For reference, each economy’s overall trade facilitation and paperless trade implementation score based on the SITFAP Survey 2013/14 is also indicated.¹ Notably, SITFAP implementation scores do not necessarily match Category A notification patterns.

¹SITFAP Survey results for Brunei and Hong Kong, China are unavailable. It is worth noting that there is no one-on-one correspondence between the TF measures surveyed in SITFAP and the WTO TFA provisions: The ESCAP Survey 2013/14 covers most but not all TFA provisions and includes paperless and cross-border trade facilitation measures.

Figure 1: Category A notifications of 15 Asia-Pacific economies (article level)

Source: Authors' calculations, based on WTO Members' notifications and ESCAP SITFAP 2013/14.

In 2013, ESCAP noted that the Asia-Pacific region hosts both economies that are among the most-efficient at facilitating international trade transactions worldwide and economies that are least-efficient at doing so (ESCAP, 2013). In fact, three of the very few developing economies – world wide - to have **fully notified all 12 articles** of the TFA under Category A—both in the region and among all WTO Members that had submitted notifications as of January 2015—are ESCAP Members or Associate Members: Hong Kong, China; Republic of Korea; and Singapore. This is unsurprising, as they are also recognized global leaders in trade facilitation.

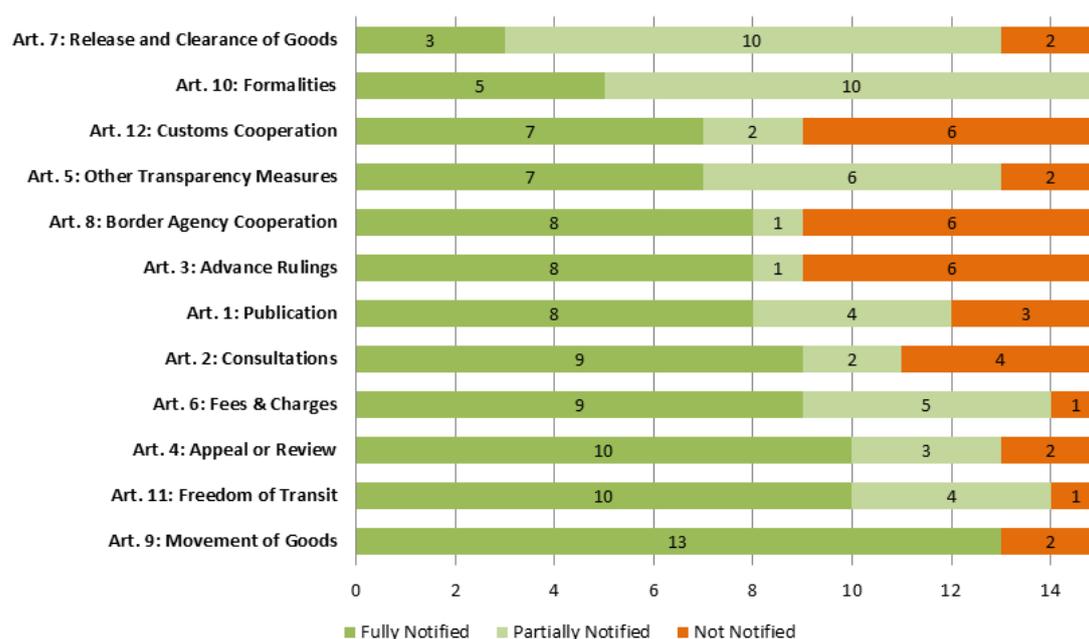
Most middle-income Members of the Association of Southeast Asian Nations (ASEAN), including Brunei, Malaysia, the Philippines, and Thailand, as well as China and Turkey have fully notified **at least half of the Articles in** the Agreement, and in general have also achieved a reasonable level of trade facilitation reform. In this context, Indonesia appears to have taken a very different notification strategy than that of its ASEAN peers, with not a single article fully notified despite being one of the leaders in implementation of complex measures such as Sub-Article 10.4 on Single Window (ESCAP, 2014).

Further referring to Figure 1, landlocked developing countries (Kyrgyzstan, Mongolia, and Tajikistan) have fully notified a smaller percentage of the Agreement than other economies. This is consistent with the fact that many of these countries remain at the beginning stages of trade facilitation reform, in particular in North and Central Asia where international trade costs stand at around twice those of ASEAN (ESCAP, 2012). Overall and with the exception of Indonesia, the figure shows that Asia-Pacific economies have at least partially notified a minimum of 5 out of 12 Articles, i.e., more than 40% of the agreement.

Category A notifications in the Asia-Pacific: Overview by Article

In order to better understand which parts of the WTO TFA may be implemented soonest in the region, we examine the extent to which Asia-Pacific economies as a group have notified the various WTO TFA Articles under Category A. Figure 2 shows the number of Asia Pacific (out of 15) economies that have “Fully Notified”, “Partially Notified” or “Not Notified” each of the 12 TFA articles.

Figure 2: Extent of notifications of the 12 WTO TFA Articles to Category A in the Asia-Pacific region



Source: Authors' calculations, based on WTO Members' notifications

At the article level, the largest percentage of full notifications is associated with **Article 9 on Movement of Goods Intended for Import Under Customs Control** (fully notified by 87% of the Asia-Pacific economies), which allows internal transit of goods for import from one customs office to another within a Member's territory, followed by **Article 11 on Freedom of Transit** (67%), and **Article 4 on Procedures for Appeal or Review** (67%).

The fact that nearly 70% of the countries in the region for which data is available have already fully notified **Article 11 on Freedom of Transit** under Category A is particularly welcome news for inclusive regional development and the landlocked countries. Indeed, the provisions of Article 11 have been found to be more "facilitating" than those in many of the existing bilateral and regional transit agreements in force in Asia (Cousin and Duval, 2014). ESCAP's latest SITFAP report for 2013/14 suggests that progress has been made in facilitating international transit of goods, with 80% of Customs authorities in countries surveyed using some form of risk management systems to limit the physical inspection of transit goods, or having some form of border agency coordination for expediting the movement of goods in transit. At the same time, information on transit fees and charges is still seldom published online or made publicly available to shippers, freight forwarders and transport operators.

Likewise, the widespread notification of **Article 4 on Procedures for Appeal and Review** is also promising, as the availability of an independent appeal and review mechanism of customs and other regulatory agencies decision has long been acknowledged as essential to the consistent and transparent application of trade procedures. Country surveys conducted in Asia in 2006 found that while appeal procedures existed in many countries, they varied widely and were often complex, time consuming and expensive (ESCAP, 2006).

In contrast, the least fully notified articles are **Article 7 on Release and Clearance of Goods** (20%), which features a list of measures aimed at expediting release and clearance, and **Article 10 on Formalities Connected with Importation, Exportation and Transit** (33%), which includes a variety of measures aimed at streamlining the processes faced by traders in completing trade formalities,

including single window.² These two articles are discussed in more details in the next section, along with Articles 12 and 5, which have also been less frequently fully notified under Category A in the region.

Implementation of individual trade facilitation measures: Category A notifications at the sub-article level

Individual trade facilitation measures are often specified in the TFA at the sub-article level, and WTO Members have accordingly submitted Category A notifications at that level – as well at the paragraph level for some Articles. Accordingly, we provide in Table 1 the percentage of economies in the region that have fully notified the different substantive sub-articles and paragraphs of the TFA. On average, ESCAP economies have fully notified 67% of the TFA at the sub-article level.

For reference, we also show in that table the percentage of Asia-Pacific economies covered in the ESCAP SITFAP Survey 2013/14 that were found to have “fully implemented” the measure(s) related to a particular TFA sub-article. Interestingly, the rates of full implementation are much lower than the rates of full notification at the sub-article level. This may be explained by the difference in coverage between the ESCAP Survey (29 economies) and the Category A notifications received thus far (15) and by the fact that economies did not yet implement the measure as of 2013/14 but planned to have done so by the time of ratification (e.g., in the case of Article 1.3 on Enquiry Points). However, it may also be due to the actual WTO TFA text, which in many cases commits economies to implement a measure while providing a lot of flexibility in terms of scope and extent of implementation.

Category A notification rates are lowest for **Sub-Article 10.4 on Single Windows** (40%); **Sub-Article 5.1 on Notifications for Enhanced Controls or Inspections** (47%); **Article 12 on Customs Cooperation** (47%); and **Sub-Articles 7.6 on Establishment and Publication of Average Release Times** and **7.7 on Trade Facilitation Measures for Authorized Operators** (both 53%). Notably, these findings are consistent with the results of the ESCAP SITFAP Survey 2013/14 (ESCAP, 2014). We briefly discuss below all articles or sub-articles with a regional full notification rate below 50%.

Article 5 on Other Transparency Measures comprises three sub-articles on Enhanced Controls, Detention and Test Procedures, but it is **Sub-Article 5.1 on Notifications for Enhanced Controls or Inspections** (47%) that exhibits the lowest notification rate among all transparency measures and seems to be the most challenging in terms of implementation. This sub-article involves adopting a national notification system to disseminate in particular food safety information to concerned government authorities, aimed at enhancing border control and inspections. Transparency measures such as these involve developing substantial inter-agency coordination mechanisms through internet publications and online query points that need to be constantly updated to provide accurate and reliable information. Among all transparency measures, OECD cites this type as the most resource-intensive as confirmed by case studies in Burkina Faso and Lao PDR (Moïse, 2013).

² Only three (3) economies (Hong Kong China; Rep. of Korea and Singapore) have fully notified Article 7, and only five (5) economies (Hong Kong, China; Rep. of Korea, Malaysia, Singapore, and Turkey) have fully notified Article 10 out of 15 Asia Pacific economies.

Table 1: Category A notifications in the Asia-Pacific region (% of Full Notifications)

WTO Trade Facilitation Agreement						
Section I: Substantive Provisions						
Art.	Heading	Sub-Article		Scope ³	GATT Art.	
1	Publication and Availability of Information 53%	1.1 Publication 67%		Transparency 56%	Article X	
		1.2 Information Available Through Internet 60% [48%]				
		1.3 Enquiry Points 67% [7%]				
		1.4 Notification 73%				
2	Opportunity to Comment, Information before Entry into Force, and Consultations 60%	2.1 Opportunity to Comment and Information before Entry into Force 67% [31%]				
		2.2 Consultations 67% [21%]				
3	Advance Rulings (9 paragraphs) 53% [24%]	Par. 1 Conditions for issuance 60%				
		Par. 2 Conditions for declining issuance 60%				
		Par. 3 Validity 60%				
		Par. 4 Conditions for revocation, modification or invalidation 60%				
		Par.5 Binding statement 53%				
		Par. 6 Publication of information 53%				
		Par. 7 Review 60%				
4	Procedures for Appeal or Review (6 paragraphs) 67% [31%]	Par. 1 Right to appeal/review 87%				
		Par. 2 Legislation 73%				
		Par. 3 Non-discrimination 73%				
		Par. 4 Further appeal 67%				
		Par. 5 Justification 73%				
		Par. 6 Jurisdiction 73%				
5	Other Measures to Enhance Impartiality, Non-Discrimination and Transparency 47%	5.1 Notifications for Enhanced Controls or Inspections 47%				
		5.2 Detention 87%				
		5.3 Test Procedures 60%				
6	Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation and Penalties 60%	6.1 General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation 80% [17%]		Fees and Formalities 51%	Article VII	
		6.2 Specific Disciplines on Fees and Charges for Customs Processing Imposed on or in Connection with Importation and Exportation 80% [17%]				
		6.3 Penalty Disciplines (7 paragraphs) 73%	Par. 1 Definition 80%			
			Par. 2 Scope 80%			
			Par. 3 Commensuration 80%			
			Par. 4 Exclusions 73%			
			Par. 5 Justification 80%			
Par. 6 Considerations 80%						
Par. 7 Transit Penalties 73%						
7	Release and Clearance of Goods 20%	7.1 Pre-arrival Processing 67% [14%]				
		7.2 Electronic Payment 60%				
		7.3 Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges 67% [34%]				
		7.4 Risk Management 67%				
		7.5 Post-clearance Audit 60% [21%]				
		7.6 Establishment and Publication of Average Release Times 53% [3%]				
		7.7 Trade Facilitation Measures for Authorized Operators 53% [28%]				
		7.8 Expedited Shipments 73% [41%]				
		7.9 Perishable Goods 60%				
8	Border Agency Cooperation	Par. 1 Definition 60% [41%]				

³ At the broadest level, the TFA can be broken down into four (4) thematic groups according to scope of coverage: Articles 1-5 focus on Transparency, Articles 6-10 focus on Fees & Formalities, Article 11 focuses on Transit, and Article 12 focuses on Customs Cooperation. The regional rates of Category A notifications of the various articles under each category suggest that implementation readiness of the Asia-Pacific is highest in terms of Transit (67%), followed by Transparency (56%), and Fees and Formalities (51%). Customs Cooperation is the area that has the lowest average rate of notification at 47%.

	(2 paragraphs) 53%	Par. 2 Common Borders 53% [alignment of procedures at border crossings: 14%]; [alignment of working days at border crossings: 33%]		
9	Movement of Goods Intended for Import Under Customs Control 87%			
10	Formalities Connected with Importation, Exportation and Transit 33%	10.1 Formalities and Documentation Requirements 73%		
		10.2 Acceptance of Copies 80%		
		10.3 Use of International Standards 67%		
		10.4 Single Window 40% [21%]		
		10.5 Preshipment Inspection 73%		
		10.6 Use of Customs Broker 87%		
		10.7 Common Border Procedures and Uniform Documentation Requirements 87%		
		10.8 Rejected Goods 67%		
		10.9 Temporary Admission of Goods and Inward and Outward Processing 60%		
11	Freedom of Transit (17 paragraphs) 67%	Par. 1 Conditions 87%	Transit 67%	Art. V
		Par. 2 Exceptions 93%		
		Par. 3 Restraints 93%		
		Par. 4 Equal treatment 93%		
		Par. 5 Infrastructure 80%		
		Par. 6 Formalities 80%		
		Par. 7 Unnecessary delays 80%		
		Par. 8 Technical Barriers to Trade 73%		
		Par. 9 Advance filing 67% [10%]		
		Par. 10 Transit controls at the border 80%		
		Par. 11 Guarantees 73%		
		Par. 12 Guarantee discharge 80%		
		Par. 13 Comprehensive guarantees 80%		
		Par. 14 Public availability of guarantee information 80%		
		Par. 15 Customs convoys 80%		
		Par. 16 Cooperation 80%		
		Par. 17 National transit coordinator 80%		
12	Customs Cooperation 47%	12.1 Measures Promoting Compliance and Cooperation 53%	Customs Cooperation 47%	Addition to GATT
		12.2 Exchange of Information 47%		
		12.3 Verification 53%		
		12.4 Request 53%		
		12.5 Protection and Confidentiality 47%		
		12.6 Provision of Information 47%		
		12.7 Postponement or Refusal of a Request 60%		
		12.8 Reciprocity 53%		
		12.9 Administrative Burden 53%		
		12.10 Limitations 53%		
		12.11 Unauthorized Use or Disclosure 53%		
		12.12 Bilateral and Regional Agreements 53%		

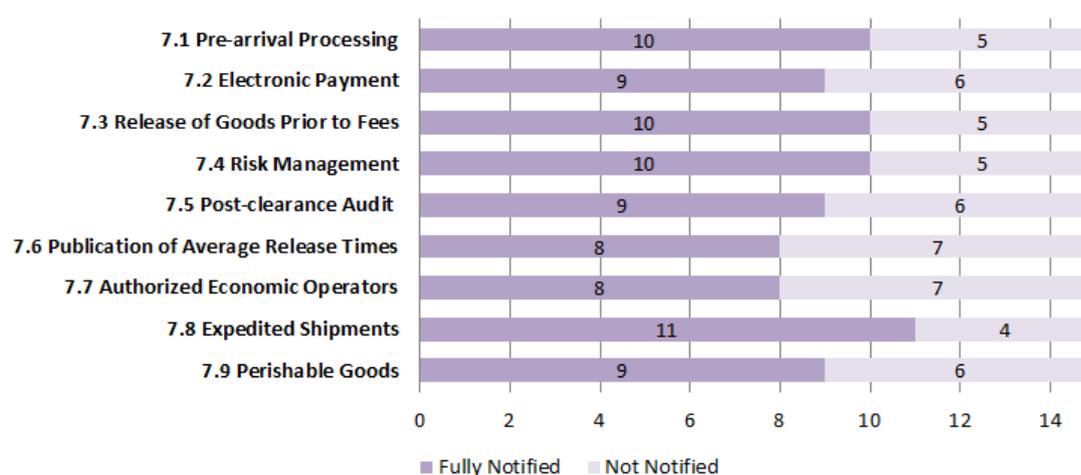
Source: Authors' calculations, based on WTO Members' notifications

Notes: 1. Full Notification rates are indicated besides each article/sub-article/paragraph and are calculated as the percentage of economies (among 15) who notified the entire article/sub-article/paragraph under Category A. In some cases such as in Article 1 or 2, the article level figure is actually lower than at the sub-article level, as economies decided not to notify different sub-articles. Percentages reported in the column "Scope" are simple average of Full Notifications rates at the Article level.

2. Numbers in square brackets are regional average Full Implementation rates of the trade facilitation measures most related to the sub-article, as per ESCAP SITFAP Survey 2013/14.

Article 7 on Release and Clearance of Goods (20%) is from far the least fully notified article, although the higher full notification rates of individual substantive provisions within it (all 53% or higher) suggest that economies in the region picked different sub-articles and paragraphs to leave out of their Category A notifications. Figure 3 indicates that, within **Article 7, Sub-Articles 7.6 on Establishment and Publication of Average Release Times** (53%), which encourages the monitoring and publication of the time taken by authorities to inspect and release goods, and **7.7 on Trade Facilitation Measures for Authorized Operators** (53%), which aims to provide qualified and compliant trade operators with special facilitation measures, are the measures that are least often notified. Interestingly, these were also cited by ESCAP as the least fully implemented trade facilitation measures in the region in 2013/14.

Figure 3: Category A notifications of Article 7 provisions in the Asia-Pacific region



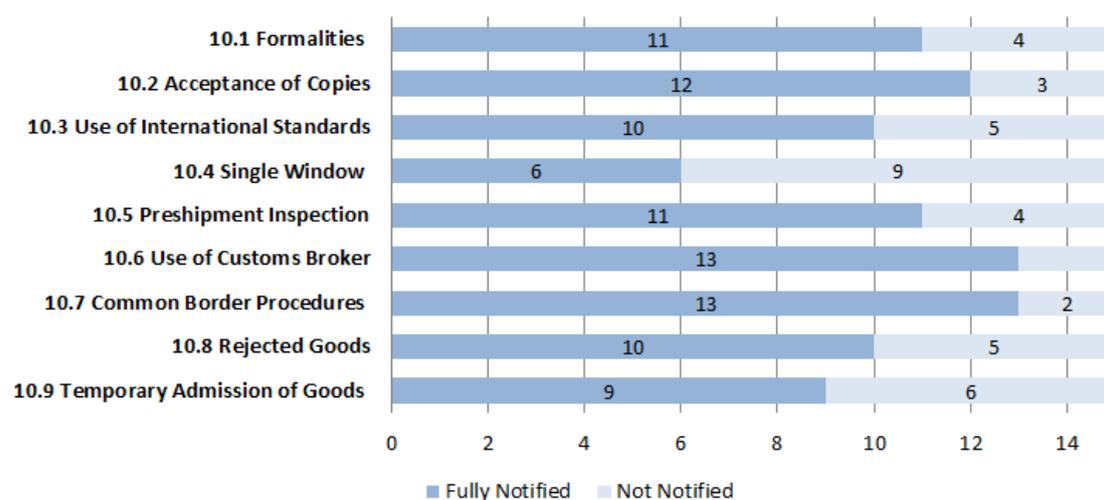
Source: Authors' calculations, based on WTO Members' notifications

The low rate of notification of **Sub-Article 7.6 on Publication of Average Release Times** is of some concern as it suggests a lack of readiness – and likely willingness, given the limited cost and complexity of implementing the underlying measures – in measuring and monitoring trade facilitation performance in a transparent manner.⁴ The low level of commitment to immediately implement **Sub-Article 7.7 on Authorized Economic Operators (AEOs)** is more readily understandable, as special procedures to regulate AEOs rely on an economy's technical capacity in risk assessment and audit techniques, and pose the unique challenge of balancing trust and impartiality in the relationship between operators and government agencies.⁵

Article 10 on Formalities includes 9 sub-articles which have, on average, been listed in Category A by nearly 70% of the Asia-Pacific economies so far. Figure 4 shows that **Sub-Article 10.4 on Single Windows** (40%) has a significantly lower full notification rate than other sub-articles in Article 10 – or indeed in the whole agreement. This is not unexpected, however, as only about 20% of the 29 economies included in the ESCAP SITFAP survey have “fully implemented” Single Window facilities. A Single Window is usually expected to provide a single entry point for traders to submit to regulatory agencies all information and documents needed for a trade transaction. It is generally considered the most sophisticated trade facilitation measure featured in the TFA.

⁴ESCAP and ADB have together developed a sustainable and integrated trade and transport facilitation monitoring mechanism (TTFMM). See <http://www.unescap.org/resources/towards-national-integrated-and-sustainable-trade-and-transport-facilitation-monitoring>.

⁵Ibid.

Figure 4: Category A notifications of Article 10 provisions in the Asia-Pacific region

Source: Authors' calculations, based on WTO Members' notifications.

Single Windows have been found to be both the most expensive to setup and the most rewarding in terms of cost savings once in operation (ADB-ESCAP, 2013; ESCAP, 2006). Single window implementation has been estimated to save the Government and traders \$US 1.5 billion annually in Thailand and over \$US 3 billion in the Republic of Korea (ESCAP/UNECE 2010 and 2012). Effective single window implementation however typically require significant planning and a phased step-by-step approach, including review of legal and institutional frameworks, business process analysis (BPA) and re-engineering and data harmonization, underpinned by strong inter-agency and business-government cooperation as well as an adequate information and communication technology (ICT) infrastructure (ESCAP/UNECE, 2012).

Article 12 on Customs Cooperation is arguably one of the most complex articles in the agreement and features 12 sub-articles outlining how Customs authorities from different economies may develop cooperation while also meeting requirements in terms of information protection and confidentiality. It for example encourages trade facilitation knowledge sharing and also allows economies the possibility to enter or maintain bilateral or regional agreements for the exchange of Customs information outside of the TFA framework. An overwhelming 11 out of 12 sub-articles under this section are only around 50% fully notified, implying that much work needs to be done on Customs cooperation.

Three sub-articles in particular have been notified by less than 50% of the Asia-Pacific economies, including **12.2 on Exchange of Information**, **12.5 on Protection and Confidentiality**, and **12.6 on Provision of Information**. Although the TFA only relates to Customs-to-Customs information exchange, these low notification rates highlight both the complexity and sensitivity of cross-border data and information exchange issues and the need for both capacity building and innovation to enable efficient and effective information and document exchange among the many actors involved in a given international transaction and located in two or more economies.

Conclusions

A detailed analysis of the Category A notifications already submitted by 15 economies in the Asia-Pacific region as part of the WTO TFA implementation suggested that, on average, countries had already implemented - or were ready to implement on relatively short notice - nearly 70% of the substantive provisions featured in the agreement. The measures that may require most time and capacity building before they are fully implemented in Asia-Pacific are those related to: Single window (Sub-Article 10.4); National notification systems for dissemination of food safety information (Sub-Article

5.1); Monitoring of average release times (Sub-Article 7.6); and Authorized Economic Operators programs (Sub-Article 7.7).

Low notification rates of provisions related to cross-border exchange of information and data protection and confidentiality – under the Article on Customs Cooperation-, also suggest a need for more capacity building in these areas. This may be particularly timely given that countries of the region have repeatedly stressed the importance of “*Enabling [...] cross-border exchange and legal recognition of trade data and documents for [...] trade facilitation*”, with all 63 ESCAP Members and Associate Members adopting several Resolutions on that issue since May 2012.⁶ In that context, the on-going negotiation at ESCAP of a regional arrangement on the facilitation of cross-border paperless trade may provide a useful framework for countries to “better implement”⁷ relevant measures under the WTO TFA as well as to develop legal and technical solutions needed to make the safe and seamless exchange of data and documents along international supply chains a reality.

Overall, Category A notifications provide a reasonably good picture of the implementation status and challenges in the region: They are generally consistent with the results of the ESCAP implementation survey 2013/14. The content of the notifications, however, may not be representative of a particular economy’s achievements as some countries may be wary of binding themselves when the TFA gives them the flexibility not to. The extent to which a particular trade facilitation measure has been implemented may also vary widely regardless of whether it has been notified, given the “best endeavor” nature of several of the TFA Articles. Therefore, it is hoped that the on-going Global Survey of Trade Facilitation and Paperless Trade Implementation conducted by the UN Regional Commissions in cooperation with OECD, UNCTAD, ITC and a growing number of regional organizations will soon provide a more complete and detailed picture of trade facilitation implementation – and associated challenges.⁸

⁶ For the latest Resolution and related documents, please see <http://www.unescap.org/events/first-meeting-intergovernmental-steering-group-cross-border-paperless-trade-facilitation> .

⁷ The term is borrowed from a presentation by Japan Customs at the WCO Regional Workshop on the WTO TFA and the Mercator program in Jakarta, 16-18 March 2015, which emphasized the need for countries who really want to benefit from the TFA to not just try to meet the requirements by amending their laws and regulations, but focus on “better implementation”, i.e., take an ambitious approach focusing on actually improving processes using best practices.

⁸ The Global Survey may be found at: <http://unnex.unescap.org/tfforum14-survey.asp>.

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