



BULLETIN

FACILITATION OF TRANSPORT AND TRADE IN LATIN AMERICA AND THE CARIBBEAN

The future of trade and transport facilitation: implications of the WTO Trade Facilitation Agreement

Introduction

The signing of the World Trade Organization (WTO) Trade Facilitation Agreement (TFA) in Bali has numerous implications that go well beyond its main subject of trade facilitation (TF), broadly defined by WTO as the removal of obstacles to the movement of goods across borders (e.g. by simplifying customs procedures).¹ It showed that the political will existed in WTO member States to address the impact of inefficient trade procedures on international trade. It was also a rare success for multilateral trade negotiations, and it introduced a novel and innovative approach to special and differential treatment for developing countries.

The failure of WTO to meet the 31 July 2014 deadline for adopting the Protocol on the Agreement makes the final destiny of the TFA uncertain, and much will depend on the importance attached by WTO members to its effective implementation.

In this context, as part of ongoing ECLAC research into transport facilitation, *FAL Bulletin* No. 333 aims to raise awareness of the significance and policy implications of the TFA for national and regional transport and logistics policies. In so doing, the Bulletin is meant to highlight the fundamental role that transport plays in TF reforms and thus reaffirm the need for active involvement and, on some issues, leadership by the public and private transport sector in advancing the TF agenda in the ECLAC region.

Section 2 offers insights on linkage between TF and transport issues. Section 3 presents the content of the TFA and identifies provisions of particular interest from the transport perspective. The concluding section

This *FAL Bulletin* analyses the implications for transport infrastructure services in the ECLAC region of the future Trade Facilitation Agreement (TFA) concluded under the auspices of the World Trade Organization (WTO). Particular attention is given to the role of transport ministries in facilitating international trade and the concrete obligations and opportunities that will arise with the WTO Agreement.

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Introduction



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Acknowledgements



Bibliography



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¹ WTO Glossary, accessed in July 2014.

highlights some strategic implications of the TFA for national transport policies and proposes a series of possible activities whereby ECLAC could help its member States to integrate their new TF obligations into national and regional logistics and mobility policies.

I. Facilitating transport to facilitate trade

While the relevance of TF to the transport sector, private or public, is rarely questioned, the exact contours of the relationship between transport issues and TF are not always clear. Frequent references to “trade and transport facilitation” as opposed to “trade facilitation” raise further questions, such as how far TF policy measures cover transport issues and what the scope of transport facilitation is. These questions became more important as TF negotiations progressed at WTO, and the goal of the present section is to offer a practical perspective on the relevance of TF for national and regional transport policies.

It is widely recognized that trade facilitation, like many seemingly self-explanatory concepts, lacks a single commonly accepted definition (Grainger, 2008). Various definitions are offered by international organizations active in TF, and their scope broadly corresponds to the particular mandate and activities of the organization concerned. These definitions usually converge on three main elements:

- TF focus: international trade formalities, procedures, documents and operations;
- TF goal: saving time and reducing costs;
- TF approach: simplification, harmonization and standardization.

The United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT), a specialized United Nations body that originated the first United Nations TF instruments, traditionally defined TF as “the simplification, standardization and harmonization of procedures and associated information flows required to move goods from seller to buyer and to make payment”.² This definition certainly included transport issues, but mainly insofar as transport-related information came up when trade information and procedures were shared and so that international codes could be provided for different modes of transport, transport locations and transport-related terms in international trade documents.³

² UN/CEFACT, Trade Facilitation Implementation Guide [online] <http://tfig.unece.org/details.html> [accessed September 2014].

³ This includes Recommendation No. 10 on Codes for the Identification of Ships, No. 11 on Documentary Aspects of the International Transport of Dangerous Goods, No. 12 on Measures to Facilitate Maritime Transport Documents Procedures, No. 16 on UN/LOCODE: Code for Trade and Transport Locations, No. 19 on Codes for Modes of Transport, No. 24 on Trade and Transport Status Codes and No. 28 on Codes for Types of Means of Transport [online] <http://www.unece.org/cefact.html>.

In parallel with the UN/CEFACT work, transport specialists at United Nations agencies and other international organizations have explicitly linked facilitation to transport, often choosing the term “trade and transport facilitation” or, more rarely, “transport facilitation”.⁴ This is an operational approach, based on recognition of the fundamental role of transport in the efficiency of international trade procedures. Indeed, goods cannot move without their means of transport and its crew and, in practice, it is transport operators who are confronted with obstacles to trade, such as extensive border controls and lengthy border crossing procedures.

This approach is shared by the agencies which participate as core members in the Global Facilitation Partnership for Transportation and Trade (GFP).⁵ It is also the approach of transport experts at the United Nations regional commissions, including the Economic Commission for Latin America and the Caribbean (ECLAC). ECLAC’s comprehensive approach, combining integrated and comprehensive national logistics and mobility policies, has contributed to a general recognition of the need to facilitate transport in the region (Cipoletta Tomassian, Pérez Salas and Sánchez, 2010). A recent example of this was the adoption in 2012 by the Community of Latin American and Caribbean States of the Santiago Plan of Action, whose transport sub-chapter calls for a regional dialogue on logistics and transport facilitation and regulatory convergence on transport issues.

Regulatory convergence on transport issues is in fact highly relevant to TF. Many international transport agreements seek to harmonize, simplify and standardize national rules and standards on transport infrastructure, means of transport, cargo labelling and packaging and crew qualifications and working regimes and, by the same token, to exert a positive effect on transport times and costs and thence on trade operations. Table 1 provides instances of such agreements, with examples from the ECLAC region.

⁴ The UNECE Transport Division defines transport facilitation as simplification and harmonization of international transport procedures and the information and document flows associated with them [online] www.unece.org/transport [accessed August 2014].

⁵ The International Road Transport Union (IRU), the International Trade Center (ITC), the International Air Cargo Association (TIACA), the United Nations Conference on Trade and Development (UNCTAD), the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), the United Nations Economic Commission for Europe (UNECE), the United Nations Industrial Development Organization (UNIDO), the World Bank and the World Customs Organization (WCO). Based on [online] <http://www.gfptt.org/> [accessed August 2014].

Table 1
FACILITATING INTERNATIONAL TRANSPORT IN PRACTICE

Scope	Infrastructure	Means of transport, containers	Cargo	Transport crew	Other facilitation issues
Examples	European agreements on railway main lines and networks, roads, inland waterways and intermodal transport (AGR, AGC, AGTC, AGN); The 2003 Agreement on the Asian Highway Network.	The 1954 Customs Convention on the Temporary Importation of Private Road Vehicles; The 1972 Customs Convention on Containers; The 1958 Agreement concerning the Adoption of Uniform Technical Prescriptions for Wheeled Vehicles.	Recommendations on the Transport of Dangerous Goods, Model Regulations; Agreement on the International Carriage of Perishable Foodstuffs and on the Special Equipment to be Used for Such Carriage.	European Agreement concerning the Work of Crews of Vehicles Engaged in International Road Transport (AETR) of 1 July 1970; The 1978 International Convention on Standards of Training, Certification and Watchkeeping for Seafarers.	The 1975 Customs Convention on the International Transport of Goods under Cover of TIR Carnets; The 1965 Convention on Facilitation of International Maritime Traffic; The 1982 International Convention on the Harmonization of Frontier Controls of Goods.
Examples in the ECLAC region	Memorandum of Understanding on the International Network of Mesoamerican Highways; Andean Community Decision No. 271 on the Andean Highway System.	The 1958 Central American Agreement on Road Traffic; The 1956 Customs Convention on the Temporary Importation of Commercial Road Vehicles; The 1958 Central American Agreement on Uniform Road Signs and Signals.	Agreement on the Transport of Dangerous Goods in MERCOSUR, CMD/Dec. 02/94.	The 1991 Andean Community Agreement on International Transport of Passengers by Road.	The 1991 International Land Transport Agreement (ATIT) and related MERCOSUR decisions and initiatives.
Facilitation aspect	Coordination in the development of international transport corridors based on common infrastructure quality criteria, which helps planning and implementation of international transport operations.	Legal regime for vehicles and containers entering for the purpose (inter alia) of cargo transport and reduction or facilitation of technical inspections.	Standardized rules for labelling, packaging and goods transportation, including special cargos. Reduced/coordinated technical controls and mutual recognition of certificates.	Harmonization of rules on authorization and working conditions. Reduced/coordinated technical controls for vehicles and mutual recognition of certificates.	Introduction of international transit regimes or cross-border facilitation.

Source: Prepared by the author.

At the same time, it is essential to bear in mind that facilitating trade is not the only or necessarily even the primary goal of many transport policy instruments. Safety, environmental performance and social protection are equally important objectives of national and regional transport policies. Moreover, a number of bilateral, regional and international transport agreements were actually designed to protect a specific (often domestic) transport industry, the effect being to impede economies of scale and raise transport costs and thence overall trade transaction costs. Bilateral and multilateral agreements on road transit quotas are a clear example of this (Arvis and others, 2011). Whether a specific transport measure, law or convention is in fact facilitating trade should therefore be established on the basis of a careful analysis of its specific goals and its intended or possible impact on the times and costs of transport operations.

One particular type of transport agreements, namely those dealing with international transit regimes, clearly falls within the TF category. A working international

transit system facilitates flows of goods, information and documents between customs and other relevant authorities in the countries where transit operations take place and reduces the need for physical and administrative controls at each border crossing, with a positive impact on international transaction times and costs. At the global level, the principles enshrined in article V of the General Agreement on Tariffs and Trade (GATT) provide a basis for implementing freedom of transit, i.e. the right of transit. In this context, the WTO TF negotiations, part of whose mandate was to clarify the provisions of article V, clearly reflected recognition of the importance of the transport component in the TF reforms.

The Customs Convention on the International Transport of Goods under Cover of TIR Carnets (TIR Convention) of 1975, implemented in Europe and parts of the Middle East, North Africa and Asia, is usually considered the most successful example of an international transit treaty. However, efforts have been made in almost all regions of the world, with varying degrees of success, to establish facilitated regimes



for international transit operations. In the ECLAC region, the best-known transit-related agreement is the International Land Transport Agreement (ATIT) implemented by the MERCOSUR countries (Arvis and others, 2011). Building on ATIT, MERCOSUR has adopted resolutions on procedures for the International Cargo Manifest/Customs Transit Declaration and the application of modern technologies to ensure the integrity and security of cargo. Transit, however, remains a challenge and an outstanding issue for the region to solve (ECLAC, 2014).

To conclude, explicit reference to “trade and transport facilitation” or “transport facilitation” is a useful reminder of the fundamental impact of transport performance on international trade transaction times and costs. It is true that not all transport policies do actually facilitate trade, even if they may be facilitating transport operations. At the same time, whether transport is explicitly mentioned or not, TF inevitably involves international transport procedures, and the future international legal TF regime under the auspices of WTO merits close examination from the transport perspective. An attempt at such an examination is offered in the next section.

II. Overview of TFA provisions of particular relevance to transport

The TFA, adopted by the Bali Ministerial Conference in December 2013, consists of two parts: section I, which contains member States’ obligations, and section II, which describes the special and differential treatment (SDT) provisions adopted for developing and least-developed countries.⁶

⁶ While Section II merits a detailed analysis for its ambition and innovativeness, that exceeds the scope and objectives of this document. For the purpose of our analysis, it is important to stress that, under the proposed SDT scheme, developing countries have the option of requesting and obtaining specific technical and financial assistance for measures which they are not in a position to implement. Cf. provisions 2-6 of section II, WT/MIN(13)/36.

Section I contains 12 substantive articles and 37 specific TF obligations for the WTO member States. An analysis of the obligations contained in section I identifies two sets of provisions of direct relevance to transport policymakers and transport operators. The first set are the TFA provisions on freedom of transit, the traditional area of interest of the transport community. The second set consists of more general provisions aimed at all national border agencies, including transport authorities. The following subsections, based on analysis of the TFA provisions, will illustrate these points.

A. New WTO provisions on freedom of transit

The new transit disciplines proposed at WTO represent a significant advance on the principles enshrined in GATT article V. The seven provisions of article V laid out a set of fundamental freedom of transit principles, such as the definition of goods in transit, non-discrimination and national treatment, freedom from unnecessary delays or restrictions, exemption from customs duties and other duties (except charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered) and reasonable transit duties and regulations.

TFA article 11 on freedom of transit contains 13 provisions, which can be grouped into five clusters: charges, regulations, and formalities; strengthened non-discrimination; transit procedures and controls; guarantees; and cooperation and coordination on transit issues. Table 2 presents the obligations set out in article 11, italicizing text which represents a significant advance on GATT article V in the level of details or obligations.

It can be seen that article 11 goes much further than article V where transit procedures, guarantees and transit cooperation are concerned, contributing to a further clarification of the international legal regime for transit operations. Given the obligations set out in the article, the role of transport ministries in implementing freedom of transit would appear to include a variety of aspects, such as:

- Setting charges for transportation and transport-related administrative expenses entailed by transit;
- Helping to make available, where practicable, physically separate infrastructure (such as lanes, berths and similar) for traffic in transit;
- Ensuring that transport-related transit formalities and other legal requirements for transit are applied in a manner consistent with the WTO principles;
- Allowing and providing for advance filing and processing of transit documentation and data related to transport prior to the arrival of goods;
- Appointing or coordinating with the national transit coordinator;
- Negotiating and signing regional and bilateral transit agreements.

Table 2
TRANSIT-RELATED OBLIGATIONS IN ARTICLE 11

Area	Obligations
Disciplines on charges, regulations, and formalities	<ol style="list-style-type: none"> 1. <i>Any regulations or formalities in connection with traffic in transit [...] shall not:</i> <ol style="list-style-type: none"> 1.1 <i>be maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a reasonably available less trade-restrictive manner;</i> 1.2 <i>be applied in a manner that would constitute a disguised restriction on traffic in transit.</i> 2. Traffic in transit shall not be conditioned upon collection of any fees or charges imposed in respect of transit, except the charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered. 3. Members shall not seek, take or maintain any voluntary restraints or any other similar measures on traffic in transit. This is without prejudice to existing and future national regulations, bilateral or multilateral arrangements related to regulating transport consistent with WTO rules.
Strengthened non-discrimination	<ol style="list-style-type: none"> 4. Each Member shall accord to products which will be in transit through the territory of any other Member treatment no less favourable than that which would be accorded to such products if they were being transported from their place of origin to their destination without going through the territory of such other Member.
Transit procedures and controls	<ol style="list-style-type: none"> 5. <i>Members are encouraged to make available, where practicable, physically separate infrastructure (such as lanes, berths and similar) for traffic in transit.</i> 6. <i>Formalities, documentation requirements and customs controls, in connection with traffic in transit, shall not be more burdensome than necessary to:</i> <ol style="list-style-type: none"> a. <i>identify the goods; and</i> b. <i>ensure fulfilment of transit requirements.</i> 7. Once goods have been put under a transit procedure [...], they will not be subject to any customs charges nor unnecessary delays or restrictions until they conclude their transit [...]. 8. <i>Members shall not apply technical regulations and conformity assessment procedures within the meaning of the Agreement on Technical Barriers to Trade on goods in transit.</i> 9. <i>Members shall allow and provide for advance filing and processing of transit documentation and data prior to the arrival of goods.</i> 10. <i>Once traffic in transit has reached the customs office where it exits the territory of the Member, that office shall promptly terminate the transit operation if transit requirements have been met.</i>
Guarantees	<ol style="list-style-type: none"> 11.1 <i>Where a Member requires a guarantee [...], such guarantee shall be limited to ensuring that requirements arising from such traffic in transit are fulfilled.</i> 11.2 <i>Once the Member has determined that its transit requirements have been satisfied, the guarantee shall be discharged without delay.</i> 11.3 <i>Each Member shall [...] allow comprehensive guarantees which include multiple transactions for same operators or renewal of guarantees without discharge for subsequent consignments.</i> 11.4 <i>Each Member shall make available to the public the relevant information it uses to set the guarantee [...].</i> 11.5 <i>Each Member may require the use of customs convoys or customs escorts for traffic in transit only in circumstances presenting high risks or when compliance with customs laws and regulations cannot be ensured through the use of guarantees [...].</i>
Cooperation and coordination on transit issues	<ol style="list-style-type: none"> 12. <i>Members shall endeavour to cooperate and coordinate with one another with a view to enhance freedom of transit. Such cooperation and coordination may include, but is not limited to an understanding on:</i> <ol style="list-style-type: none"> i. <i>charges;</i> ii. <i>formalities and legal requirements; and</i> iii. <i>the practical operation of transit regimes.</i> 13. <i>Each Member shall endeavour to appoint a national transit coordinator to which all enquiries and proposals by other Members relating to the good functioning of transit operations can be addressed.</i>

Source: Prepared by the author based on WTO/MIN (13)/36.

While all of these elements are significant, the task of negotiating and signing regional and bilateral transit agreements is of particular importance. Even though article 11 provides much more detail than GATT article V, by itself it does not resolve all transit issues. A working transit system involves many legal and technical requirements applicable to a wide range of subjects, i.e. transport operators, transit documents, transit controls, financial guarantees, connection between customs IT systems, vehicle equipment and security, containers, etc. By way of example, the TIR Convention contains more than 50 articles and 10 technical annexes dealing with the security of vehicles and containers, international guarantees, TIR carnets, mutual recognition of customs controls and controlled access to the TIR System.⁷

⁷ For a detailed explanation of the TIR Transit System, consult the TIR Handbook, tenth revised edition, United Nations, New York and Geneva, 2013, accessible at [online] http://www.unece.org/fileadmin/DAM/tir/handbook/english/newtirhand/TIR-6Rev10_En.pdf.

The obligation for Members to endeavour to coordinate and cooperate with one another, set out in paragraph 13 of the article, is an explicit recognition of the need to make use of regional and/or bilateral agreements to render the transit system fully functional.

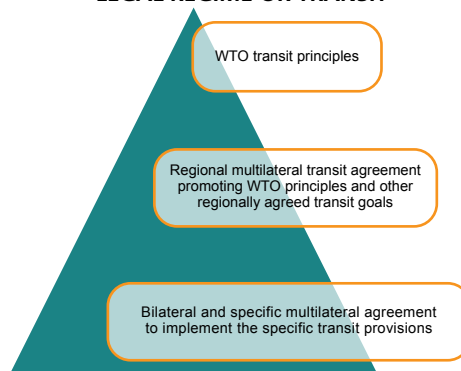
In other regions of the world, such as Europe and Asia, assessments have been made as to what extent existing regional and bilateral transit and transport agreements facilitate trade and/or promote the transit principles discussed at WTO. These assessments generally recognize that, while multilateral international agreements are fairly consistent with WTO and can provide a general framework for transit activities, more specific agreements are needed at the regional and even bilateral level

to establish and implement concrete provisions such as common procedures, border post opening hours, requirements for transit vehicles and crew members. The assessments also find that bilateral agreements are still the main tool for transit, even in regions where multilateral conventions exist. They also establish that many of these bilateral agreements, in practice, add another layer of complexity to the procedures, owing to the lack of a comprehensive or harmonized approach (Kunaka and others, 2013; Cousin and Duval, 2014).

To accommodate simultaneously the application of universal transit principles, regional specificities (specific transit goals and challenges and/or solutions) and specific practical implementation needs, a structure like that shown in diagram 1 may be advisable as a way of providing the necessary legal framework for international transit, based on the assumption of compatibility and complementarity between the provisions agreed upon at each level.

The WTO TFA provides a valuable opportunity to re-examine how far the existing global, multilateral and bilateral legal framework in the ECLAC region is compatible with the principles proposed at WTO and is actually conducive to freedom of transit.

Diagram 1
STRUCTURE OF THE INTERNATIONAL LEGAL REGIME OR TRANSIT



Source: Prepared by the author.

As can be seen in table 3, some ECLAC countries are contracting parties to several global transport agreements of relevance to transit, and two ECLAC Countries (Chile and Uruguay) are Contracting Parties to the TIR Convention.

At the regional level, various transport agreements and initiatives have been launched under the auspices of regional integration mechanisms. Table 4 shows the most important in terms of scope and geographical coverage.

Table 3
ECLAC COUNTRIES' MEMBERSHIP OF GLOBAL TRANSPORT AGREEMENTS

Convention	Contracting parties in the ECLAC region
The 1949 Convention on Road Traffic	Argentina, Bolivarian Republic of Venezuela, Chile, Cuba, Dominican Republic, Ecuador, Guatemala, Haiti, Jamaica, Paraguay, Peru, Trinidad and Tobago
The 1954 Convention concerning Customs Facilities for Touring	Argentina, Chile, Cuba, Ecuador, El Salvador, Haiti, Jamaica, Mexico, Peru, Trinidad and Tobago
The 1954 Customs Convention on the Temporary Importation of Private Road Vehicles	Chile, Costa Rica, Cuba, Ecuador, El Salvador, Haiti, Jamaica, Mexico, Peru, Trinidad and Tobago
The 1975 Customs Convention on the International Transport of Goods under Cover of TIR Carnets	Chile, Uruguay
The 1956 and 1972 Customs Conventions on Containers	1956: Antigua and Barbuda, Cuba 1972: Cuba, Jamaica, Trinidad and Tobago
The 1982 Convention on the Harmonization of Frontier Controls of Goods	Cuba

Source: Prepared by the author on the basis of data from the United Nations Treaty Database and United Nations Economic Commission for Europe (UNECE), accessed August 2014.

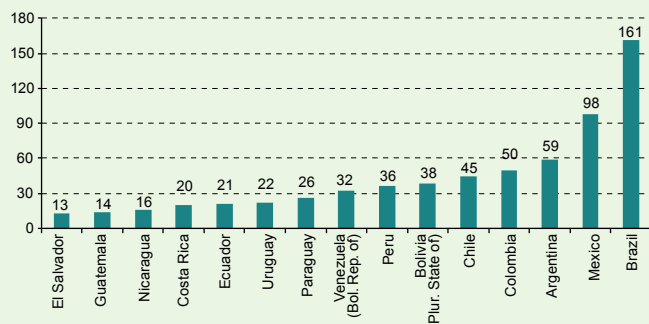
Table 4
REGIONAL INITIATIVES OF RELEVANCE TO TRANSIT IN THE ECLAC REGION

Organization	Agreement or initiative	Members
Latin American Integration Association (LAIA)	The 1990 LAIA Agreement on International Land Transport	Argentina, Brazil, Chile, Paraguay, Peru, Plurinational State of Bolivia and Uruguay
Andean Community	Decisions of the Andean Committee of Land Transport Authorities on trade and transport facilitation	Colombia, Ecuador, Peru and Plurinational State of Bolivia
Mesoamerica Project	International Network of Mesoamerican Highways (RICAM), Mesoamerican procedures for international transit of goods	Belize, Colombia, Costa Rica, Dominican Republic, El Salvador, Guatemala, Honduras, Mexico and Panama
MERCOSUR	International road freight transport regulations and transit initiatives	Argentina, Bolivarian Republic of Venezuela, Brazil, Paraguay, Plurinational State of Bolivia, Uruguay
Union of South American Nations (UNASUR)	Strategic Action Plans 2012-2022 and activities aimed at promoting physical regional integration and regulatory harmonization of logistics services	Argentina, Brazil, Bolivarian Republic of Venezuela, Chile, Colombia, Ecuador, Guyana, Paraguay, Peru, Plurinational State of Bolivia, Suriname, Uruguay
Secretariat for Central American Economic Integration (SIECA)	Central American agreements on road transport and on road signs	Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua

Source: Prepared by the author on the basis of data from the relevant regional integration mechanisms. The countries named are members of the particular agreement or initiative concerned.

Lastly, as in other regions of the world, bilateral transport agreements remain a major vehicle for regulating international transport operations, although their use varies from one country to another, as shown in figure 1, which is based on preliminary figures from the United Nations Treaty Database.

Figure 1
NUMBER OF BILATERAL TRANSPORT AGREEMENTS
IN SELECTED ECLAC COUNTRIES



Source: Prepared by the author on the basis of data from the United Nations Treaty Database, accessed August 2014.

It is thus essential to note that implementation of the future article 11 would not put an end to the necessity of maintaining existing regional and bilateral transport agreements and concluding new ones. It would, however, entail a need to assess the existing legal framework at the bilateral and regional levels to ensure its compatibility with the transit principles established by WTO. Responsibility for this clearly falls on transport ministries and, while each national case has its own specificities, this work would invariably entail analysis and actions at the regional level.

However, article 11 is not the only one to prescribe a clear role for national transport authorities. As will

were made applicable only to customs services in the final text, most of the WTO TF provisions also concern other border agencies.

These certainly include transport ministries, given their responsibility for issuing and monitoring the transport documents required for export, import and transit procedures. The best illustration of this are border controls on vehicles and crews, which fall within their purview.⁸

It can be seen from the summary in table 5 that the national agencies in charge of transport issues, in their capacity as one of the border agencies, are or may be co-responsible for the proper implementation of half of the TFA obligations.

Undoubtedly, the extent to which transport authorities need to concern themselves with these obligations depends on how much of a presence they have at the border. The quantity and nature of transport-related documents and procedures at border crossings largely depend on the form of transport and the level of harmonization and mutual recognition of requirements related to the means of transport and transport crews. While transport procedures are not generally considered to be a bottleneck at borders, it is interesting to note that among the few documents whose use participants at the WTO TF negotiations explicitly advised should be discontinued were shipping notes, made compulsory in some parts of the world by transport ministries.⁹

The advent of TFA gives transport ministries and transport operators the opportunity and indeed obliges them to make sure that the various transport-related documentary and procedural requirements do not hinder or slow down international trade operations. Beyond that, it also gives them the opportunity to encourage other border agencies

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