



International
Trade
Centre

SMEs AND THE WTO TRADE FACILITATION AGREEMENT

A TRAINING MANUAL



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The training manual on the World Trade Organization Agreement on Trade Facilitation explains each of the measures of the Agreement, including the key elements of the measure, the intended benefits from a business perspective, an outline of the practical steps that businesses might take in order to take advantage of the measure and practical exercises and proposed questions for group discussion. It aims to assist the business community better understand the technical measures of this multilateral Agreement and the opportunities it offers to importers, and exporters in reducing delays and costs in moving goods and services across borders.

Descriptors: **Trade Facilitation, WTO, SMEs, Developing Countries, Manuals**

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English

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Foreword

The World Trade Organization (WTO) Agreement on Trade Facilitation is an important tool for economies to improve their business environment. Easing the cost, time and process of doing business and trading is no longer just a policy choice. It is fundamental to increasing the competitiveness of an economy and attracting investment.

For businesses, especially for small and medium sized enterprises (SMEs), operationalizing the Agreement on Trade Facilitation is a path to internationalization, which will allow them to access international value chains at lower cost and at greater speeds.

Concluded by WTO members in December 2013, the Agreement promises greater efficiency by targeting administrative barriers to trade – unnecessary border inspections, excessive document and data requirements, manual processes, lack of coordination among border authorities and complex and inefficient rules and procedures. All of these issues delay the movement of goods and services and increase trade costs, which are often passed to consumers.

Trade transaction costs are highest in the world's poorest countries, which are the least able to carry this additional burden. For instance, the average cost to move a container across the border is 43% higher in Least developed countries (LDCs) than in other developing countries.

These costs affect SMEs the most as they often lack the means and capacity to comply with complex rules. The high compliance costs with customs and border procedures and other non-tariff measures (NTMs) represent significant charges relative to their smaller volumes of trade. This makes them uncompetitive as suppliers and hampers their integration into regional and international value chains.

SMEs can benefit from the Agreement by having a sound understanding of how the new procedures and requirements will complement their business priorities. Like other WTO agreements, the degree to which the intended benefits of the Trade Facilitation Agreement can be actually realized will depend upon how it is implemented in national law and practice. While implementation is the primary responsibility of the WTO members, businesses play a critical role in the consultative process to advise authorities as to how the Agreement is best applied in the national environment.

The International Trade Centre (ITC) developed this manual to assist businesses to understand the terms, potential benefits and practical use of each of the technical measures of the new Agreement, as well as to suggest potential implementation choices. ITC will continue working with SMEs in developing countries and LDCs to increase their knowledge of the new rules and the benefits available to them.

In line with the importance of cooperation among institutions, this publication was produced by ITC, in collaboration with the United Nations Conference on Trade and Development (UNCTAD), the United Nations Economic Commission for Europe (UNECE) and International Chamber of Commerce (ICC). This is an example of the United Nations' system delivering as one in collaboration with the private sector.



Arancha González
Executive Director
International Trade Centre

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The idea of publishing a training manual for SMEs on the WTO Trade Facilitation Agreement was demand driven and conceived during interactions with private sector representatives in over 30 countries where ITC provided technical assistance in the area of trade facilitation.

Brian J. O'Shea, an independent consultant with over 15 years of experience in trade facilitation reforms in developing and least-developed countries, contributed to the publication of this manual. He acknowledges the support he received through consultations with other experts in the field of trade facilitation, particularly Sheri Rosenow at the WTO Secretariat, who gave valuable advice and help through discussions on the negotiation and text of the Trade Facilitation Agreement.

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Abbreviations

The following abbreviations are used:

DDA	Doha Development Agenda
EAC	East African Community
EU	European Union
FDI	Foreign direct investment
GATS	General Agreement on Trade in Services
GATT	General Agreement on Tariffs and Trade
GFP	Global Facilitation Partnership for Transportation and Trade
IBRD	International Bank for Reconstruction and Development
ICC	International Chamber of Commerce
IFC	International Finance Corporation
ITC	International Trade Centre
JBC	Joint Border Committee
LPI	Logistics Performance Index
MFN	Most-favoured nation
OECD	Organisation for Economic Co-operation and Development
OSBP	One-stop border post
PSI	Pre-Shipment Inspection
SADC	Southern African Development Community
SMEs	Small and medium-sized enterprises
TEU	Twenty-foot container equivalent unit
TFA	Trade Facilitation Agreement
UNECE	United Nations Economic Commission for Europe
UN/CEFACT	United National Centre for Trade Facilitation and Electronic Commerce
UNCTAD	United Nations Conference on Trade and Development
WCO	World Customs Organization
WTO	World Trade Organization

Introduction

This is a training manual on the World Trade Organization Agreement on Trade Facilitation (the Agreement). It was written to assist the business community better understand the technical measures of this new Agreement and the opportunities they might offer to importers, exporters or others involved in international trade in reducing delays and costs in moving goods across borders.

In these chapters you will find a plain language explanation of each of the measures of the Agreement, including the key or important elements of the measure; the intended benefits, from a business perspective; and an outline of the practical steps that businesses might take in order to take advantage of the measure. As this is a training manual, we have also included practical exercises to test your knowledge as well as proposed questions for group discussion that are intended to highlight some of the key implementation options and issues with respect to particular measures, from the point of view of the private sector.

Manual outline

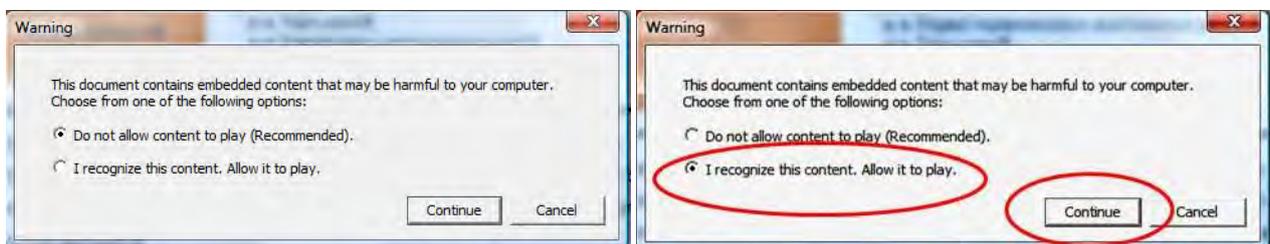
The WTO Trade Facilitation Agreement (TFA) contains more than 36 individual technical measures. To simplify its presentation, we have classified these measures into six themes, each of which is set out in a separate section in this manual.¹ You will find the training programme organized according to the following themes:

- Better access to trade information (Chapter 2)
- Faster, simpler and cheaper border clearance (Chapter 3)
- Fairness in resolving customs disputes (Chapter 4)
- Duty-free import procedures (Chapter 5)
- Measures in defense of your goods (Chapter 6)
- Customs and border agency control and administration (Chapter 7)

Embedded videos

This manual includes video clips. When you open this document in Microsoft Word, the following warning may be displayed:

In order to view the videos in this document, click on 'I recognize this content. Allow it to play.' and then click 'Continue'.



¹ Of course, some measures may illustrate more than one of these themes! Our scheme is not a legal description of the agreement but should be understood only as an aid to understanding.

Chapter 1 Scope and purposes of the Agreement

1. What is trade facilitation?

It may be surprising to know that there is no standard definition of trade facilitation in the WTO Trade Facilitation Agreement. Different international organizations have been working in the area and have developed their own understanding of the scope of the agreement in terms of what trade facilitation should encompass. These have been included in the Trade Facilitation Agreement Business Guide published by ITC.²

Trade facilitation, as a subject, became more visible after the WTO's Singapore Ministerial Conference in 1996 and could be described as simplification of trade procedures in order to move goods, more efficiently, across borders. According to the UN, *trade facilitation is defined as the systematic rationalization of procedures and documents for international trade (trade procedures being the activities, practices and formalities involved in collecting, presenting, communicating and processing data required for the movement of goods in international trade)*.³ However, the question of what the WTO Trade Facilitation Agreement should encompass was the subject of extended discussions among WTO members in the lead-up to the formal launch of the negotiations in 2004 as well as throughout the subsequent negotiations phase.

A wide variety of activities undertaken by governments and/or the private sector can facilitate trade. For example, the simplification and electronic exchange of trade documents and data, improvements in trade payment systems, modernized roads, ports and terminal facilities, simplified customs procedures and efficient trade logistic systems can all have a positive effect on the speed and cost of moving goods across borders. A threshold debate was whether these and other activities were an appropriate subject of WTO action, given the WTO's traditional role as the multilateral body responsible for setting and enforcing rules of trade between nations and not, for example, defining technical trade data elements.

Moreover, WTO members recognized that a number of other international organizations were already working in the trade facilitation field – such as the WCO, UNECE, UNCTAD, ICC and ITC – providing standards, best practice recommendations and other guidance for governments and businesses.

In the end, consistent with the WTO's traditional role and to avoid duplication of activity with other organizations, WTO members decided to act on trade facilitation on the basis of trade principles found in the WTO's foundation agreement, the General Agreement on Tariffs and Trade (GATT).

Box 1. WTO Trade Facilitation negotiations - statement of objectives

- Negotiations shall aim to clarify and improve relevant aspects of Articles V, VIII and X of the GATT 1994 with a view to further expediting the movement, release and clearance of goods, including goods in transit.
- Negotiations shall also aim at enhancing technical assistance and support for capacity building in this area.
- The negotiations shall further aim at provisions for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues.

Source: Doha Work Programme, WT/L/579 (2 August 2004) (commonly known as Annex D or July Package)

² <http://www.intracen.org/wto-trade-facilitation-agreement-business-guide-for-developing-countries/>

³ It appears that the WTO adapted the UN definition for the purposes of the Trade Facilitation negotiations. The source of the UN definition is: Facts about the Working Party on Facilitation of International Trade Procedures, TRADE/WP.4/INF.91; TD/B/FAL/INF.91

In particular, they agreed to extend or 'clarify and improve' trade facilitative principles found in three GATT articles:

- GATT Article V which provides for freedom of transit;
- GATT Article VII concerning limitations on fees and charges imposed on or in connection with imports or exports; simplification of import/export formalities and documentation requirements; and use of customs penalties for errors in import and export processing; and
- GATT Article X which outlines the requirements for publication of trade regulations as well as rights of appeal of adverse customs decisions.

This early decision on the scope of negotiations indicates the character of the final Agreement. Consistent with these objectives, it is an agreement that is focused on *administrative requirements related to the movement, release and clearance of import, export and transit goods*, such as the fees and charges, documentation requirements, and other rules, procedures or formalities applied by customs and other border authorities.

2. Structure of the Trade Facilitation Agreement

Section I

- Article 1: Publication and availability of information
- Article 2: Opportunity to comment, information before entry into force, and consultations
- Article 3: Advance rulings
- Article 4: Procedures for appeal or review
- Article 5: Other measures to enhance impartiality, non-discrimination and transparency
- Article 6: Disciplines on fees and charges imposed on or in connection with importation and exportation and penalties
- Article 7: Release and clearance of goods
- Article 8: Border agency cooperation
- Article 9: Movement of goods intended for import under customs control
- Article 10: Formalities connected with importation and exportation and transit
- Article 11: Freedom of transit
- Article 12: Customs cooperation

Section II

Special and differential treatment provisions for developing country members and least developed country members

Section III

Institutional arrangements and final provisions

As shown above, the Agreement is divided into three main sections. The following is a short precis of each section.

Section I comprises of 12 articles, which are further subdivided into approximately 36 separate technical measures. These technical measures are new rules, processes, and procedures that WTO member governments⁴ are required to implement. It is these technical measures that are the focus of this manual and are discussed in detail in the following chapters.

Section II of the Agreement contains the provisions and conditions concerning the flexibility in implementation arrangements for developing and least developed countries (otherwise known as 'special and differential treatment').

Section III establishes a WTO Committee on Trade Facilitation to oversee the operation and implementation of the Agreement. This committee is open for participation by all WTO members. In addition, Section III requires each WTO member country to establish a 'national committee on trade facilitation,' which is described further below.

Mandatory versus 'Best Efforts' obligations

It may be noted in the text of the agreement that certain technical measures set out in Section I are phrased as mandatory (a WTO member 'shall' or 'shall not' fulfill certain obligations), while others are phrased in terms of 'best efforts' or an aspiration (a WTO member is 'encouraged to' or 'shall to the extent possible' or 'shall to the extent practicable' take or refrain from taking certain actions).

The 'best efforts' provisions are not obligatory. Legally speaking, a country cannot be subject to a complaint by other WTO members if it fails to implement such a provision.

However, even if not obliged to do so, a country can choose to make such best efforts provisions obligatory in its national legislation and policy. In most cases, the business community may very well prefer that their government require that its border authorities apply these best efforts provisions as they are widely considered as internationally recognized best practices. An expansive and legally-binding implementation of the Agreement, applying best efforts provisions in full, would more likely provide a greater measure of trade facilitation.

Application to all border authorities

Many of the provisions of the Agreement are relevant to customs administrations as they concern primarily customs procedures, enforcement and operational issues.

However, it is important to understand that the Agreement is applicable to all relevant authorities of the country. In particular, all governmental agencies involved in the trade processes (import, export or transit of goods) have obligations under this Agreement.

Apart from customs, border agencies can include authorities such as the border police, the food safety authority, plant and animal health authorities, and the standards authority, among others.

Support for developing and least developed countries (Section II)

The Agreement contains detailed provisions to support developing and least developed WTO member countries in the implementation of the technical measures.

Under these provisions, each developing and least developed country is permitted to decide when it will implement each technical measure of the Agreement and what technical and/or financial assistance or other capacity building support, if any, it will need from external donors, such as the World Bank, the Asian Development Bank, or the U.S. Agency for International Development, in order to carry out the

⁴ Upon entry into force, there will be an obligation on governments of all WTO members to implement the Trade Facilitation Agreement. In this training manual, these are referred to as 'member governments'. The expressions 'governments', 'members' and 'member governments' may, therefore, be used interchangeably.

implementation. Under the terms of the Agreement, if the assistance is not provided, or if the country continues to lack the necessary capacity despite receiving assistance, it will not be obligated to implement the measure.

To take advantage of these provisions, each developing and least developed country must notify the WTO, within the prescribed timeframes, the plan of implementation of each of the technical measures and identify those measures which will require external support. These are the so-called category 'A', 'B' and 'C' notifications.

A critical and early task of each developing and least-developed country will be to prepare these notifications. This will usually require member governments to assess with their stakeholders, including all border authorities, their needs and priorities vis-à-vis each of the 36 technical measures of the Agreement. As we suggest in the chapters below, this is a task in which the private sector should have an important say.

Box 2. National Trade Facilitation bodies - best practices

“Facilitation activities must be approached in a coordinated manner to ensure that problems are not created in one part of the transaction chain by introducing solutions to another part. The needs of all parties, both private and public sectors, must be identified before solutions can be found and those best placed to explain their needs are those directly involved in the transaction chain. This requires an effective forum where private sector managers, public-sector administrators and policy makers can work together towards the effective implementation of jointly-agreed facilitation measures.

National trade facilitation bodies provide this important forum. Participants in such bodies should represent all companies and institutions that take part in international trade transactions: manufacturers, importers, exporters, freight forwarders, carriers, banks, insurance companies and public administrations, each with a joint and separate interest in the facilitation of trade. It is only with the active involvement of these participants that impediments can be analyzed meaningfully and cooperative solutions devised.”

Source: UNECE Recommendation No. 4

3. National Trade Facilitation Committee

The Agreement requires each WTO member to establish a national committee ‘to facilitate both domestic coordination and implementation’ of the Agreement. This obligation is not one that can be delayed; every WTO member must have such a committee when the Agreement enters into force.

The need for this national coordinating committee – a requirement unique in WTO practice - is due to the cross-cutting nature of this Agreement.

As noted above, many of the provisions of the Agreement apply not just to the customs administration but to all governmental authorities which have responsibilities at the border in movement, clearance and release of goods. Certain other provisions may also affect authorities behind the border, such as the Ministry of Justice with respect to measures on appeals or rule-making.

To ensure the member government’s compliance with provisions affecting multiple authorities, there will need to be a coordinated approach to implementation.

Moreover, Members will want to ensure that transition periods and requests for any external technical and/or financial assistance and capacity building support take into account the needs of all authorities affected by the measures. It is essential that some entity – a national trade facilitation committee, be formally established or designated to oversee and manage this process.

It was foreseen by the proponents of this measure that all governmental authorities affected by the Agreement would be represented on the national committee. Of equal importance is the inclusion of

representative voices from the business community, which will be directly impacted by the committee's planning and decisions. Their contribution will highlight the technical and/or financial assistance and capacity building needs of the business community. The private sector may thus wish to ensure that it is involved in the work of this committee (if not already included), whether through consultation or direct representation.

4. Role of the private sector

Participation of the private sector in the work of the national trade facilitation committee is essential to ensure that their needs and interests are taken into account in the implementation of the Agreement in national law and administrative practice.

It is also important to understand that the technical measures set out in the Agreement are written in broad, general terms, as a set of general principles, which permit each WTO member country some flexibility in national implementation. Moreover, a number of provisions of the Agreement are not strictly mandatory but require only that WTO member countries use their best efforts to implement the measure in their domestic legislation and practice.

The flexibility built into the Agreement is essential to allow member governments the possibility to design an implementation process appropriate to its particular national circumstances. The choices that the member government makes can have an important impact on the extent to which businesses will embrace the trade facilitation benefits that the Agreement can provide. It is therefore important for businesses to understand these implementation options (we have suggested some of the more important choices in these chapters) and to use the mechanisms provided by this Agreement – consultation, opportunity to comment, national trade facilitation committee – to ensure that their preferences are heard and taken into account.

Finally, the Agreement provides for establishment of certain 'optional' trade facilitation procedures that businesses may use on a voluntary basis. These include measures such as advance rulings (see pre-arrival processing, and additional facilitation for authorized operators. It is likely that a member government would not dedicate scarce human and budget resources to develop and operate these procedures unless there is high demand for them on the part of the business community. It is, therefore, important that the business community understands the benefits of these procedures (again, a purpose of this manual) so that they might be used to their intended advantage and given the appropriate priority by the government.

Chapter 2 Better access to trade information

Easy access to complete and accurate trade information can significantly reduce the delays faced in exporting and importing goods which result in high transaction costs for traders. The businesses will be able to plan their operations more efficiently due to the added transparency and predictability in the trading processes.

Studies and surveys have shown that a significant source of delays and high costs experienced by businesses when moving goods across borders in many countries is the time required to comply with trade documentation and formalities.⁵ At least in part this delay is due to the fact that the requirements of Customs and other relevant border authorities are not always clear or easily determinable by importers and exporters. Common complaints include a lack of transparency as to what documents, forms and information must be presented; what procedures must be followed; what fees must be paid; how goods will be treated at the border etc.. SMEs are particularly impacted in this regard as they do not have the resources or local representation to overcome the difficulties of insufficient access to information.

The Agreement contains a number of measures that are intended to ensure greater transparency and predictability in import and export processing. These measures impose new obligations on member governments as to what trade information they must provide to businesses and other interested parties, when the information must be provided, and the form in which it must be delivered.

1. Publication

Objectives

By the end of this chapter, you will be able to get clarity on the availability of information to help you comply with import/export requirements and determine your customs costs.

What does this measure require the government to do?

Member governments must promptly publish certain specified categories of trade information in an easily accessible and non-discriminatory manner, including;

- Importation, exportation, and transit procedures, restrictions and prohibitions;
- Required forms and documents;
- Applied duty and tax rates;
- Import and export fees and charges (including the reason(s) for the fees and charges, the responsible authority, and when and how payment shall be made);
- Penalties for violations of import, export or transit formalities;
- Appeal procedures.

How will this measure benefit me and my business?

You will spend less time searching for the trade requirements in your home as well as partner countries.

- Finding the rules and requirements applicable to a particular import or export transaction can be difficult for businesses, particularly SMEs, which typically do not have the time and resources for extensive research. For example, the relevant requirements might have been published

⁵ See, for example, the annual World Bank/International Finance Corporation Doing Business reports at www.doingbusiness.org/

piecemeal in various legal acts (set down in a general law, the implementing details of which appear in one or more administrative regulations, certain of which may have been interpreted by an administrative ruling) over a period of time and only in print form in official gazettes, journals or bulletins that may no longer be easily or widely available.

- Under this new requirement, member governments must make this information easily accessible to all interested persons – including businesses that are located inside and outside the country.
- Easy access to this essential information will mean that you will spend less time and resources in determining the rules in order to export to the markets in which you are interested.
- You will be able to estimate accurately your import/export costs in advance.
- Easy access to this information, including the amount of duties, taxes and fees that must be paid will provide you with the possibility to estimate your costs before you ship the goods as well as in connection with your negotiations with the buyer.

You will be better prepared to clear your goods and thereby avoid unnecessary delays, costs and penalties.

- Lack of easy access to customs and other border authorities' requirements unnecessarily increases costs and delays for businesses.
- Goods may be held at the border as the importer or exporter was not aware that a particular form, source of information or a fee was required for release. Where import or export formalities and requirements are not well known, traders may be penalized for unintended mistakes or may forego advantages of specialized procedures for duty-free/reduced duty treatment.
- Under this measure, access will be granted to all import and export requirements of customs and other border authorities relevant to your goods, information about applicable duties, taxes and fees and copies of required forms. The added predictability in how your goods will be treated at the border will allow you to plan your operations accordingly and compete more effectively in global and regional value chains (e.g. those requiring just-in-time operations).

What do I need to do to take advantage of this measure?

1. Find out where the relevant trade related information is published by the government of the country you are interested in.

Strictly speaking, the obligation under the Agreement requires only that member governments publish this information in an 'easily accessible' and 'non-discriminatory' manner. The Agreement encourages member governments to publish this information via the Internet, but they can equally comply if they publish in print form, as is traditionally done. Given the current and growing prevalence of the Internet, it is likely that many or most member governments will likely publish this information on one or more government websites. But alternatively (or in addition to), some member governments may continue to publish in official journals or gazettes, newspapers or other print publications.

To find where the information you are interested in is published, first search the relevant government website of the country of interest. General import/export procedures as well as duty and tax rates most likely will be found on the Customs authority's website, while import/export licensing, permits and other restrictions or prohibitions may be found with border authorities responsible for the product in question (such as the food safety authority and the standards authority).

Member governments must notify the WTO as to where they publish the information. Therefore, if you are experiencing difficulty finding where your required information is published, the WTO website (www.wto.org) will likely establish a special page to link to this information.

2. Contact the source for the information.

Trade information may be published on a government website, and if so, can be accessed directly with an Internet search or with the URL obtained from the WTO. As noted, it is expected that most member governments will use this manner of publication.

Trade information in print form would likely require a local representative or local contact to attain copies of the information on your behalf. Alternatively, you may contact the official enquiry point for assistance (please see the following point).

3. Contact the official enquiry point for other assistance in getting the requirements.

As per 'Enquiry Points', each member government is required to establish one or more enquiry points where businesses and other persons may have their questions answered and receive copies of required forms.

Any information not available through the Internet or print journals may be obtained by contacting the official enquiry point of the country of interest. The enquiry point should provide you with copies of any required forms and may provide copies of laws, regulations and procedures.

Information on each member's enquiry points (telephone number, physical or e-mail address, and/or URL) will be published on the relevant government's website as well as the WTO website.



SUMMARY OF THE KEY POINTS

- Member governments will be required to publish in an easily-accessible and non-discriminatory manner, information related to their trade procedures
- This publication will increase cross-border procedure's predictability and transparency and help you to determine more easily the import/export requirements of domestic and foreign markets in which you have an interest; allow you to better estimate your costs in advance; and reduce delays and costs in clearance due to unforeseen requirements.
- To determine where the official trade information is published, businesses can search the relevant government websites, contact the official enquiry points, or access the WTO website.



PRACTICE EXERCISES

Indicate whether the following statements are true or false

- | | True | False |
|---|--------------------------|--------------------------|
| 1. Governments must publish the rates of duties and taxes and the amount of fees and charges they assess on imported goods. | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Governments must publish information about their import and export procedures in English in addition to their national language. | <input type="checkbox"/> | <input type="checkbox"/> |

3. As long as Customs publishes information about a change to import or export procedures or to required forms or documents within six months, it complies with this measure.



QUESTIONS FOR DISCUSSION

The Agreement does not specify the means by which this information must be published, other than stating that it must be easily accessible to all interested parties, including other member governments, SMEs and other traders. The manner of publication must therefore be determined by each member government and should take into account the needs of businesses.

To ensure that information is easily accessible by all interested parties – including large and small businesses both within your country and in others - what method of publication would you urge your government to adopt? For example:

- Should the government publish the information in official journals, gazettes or in newspapers?
- Should the government publish the information on the Internet and, if so, on which website(s)?
- Are there any other methods that should be used?
- From the perspective of business and your government, what are the advantages and disadvantages of each method of publication?
- How should the government market these reforms to their own domestic traders as well as those in the partner countries?

2. Information available through the Internet

Objectives

By the end of this chapter, you will be able to:

- Explain the purposes and benefits of Internet publication
- Find the practical (online) guides to import and export procedures in different countries

What does this measure require the government to do?

The measure requires member governments to publish on the Internet:

- Practical guides or step-by-step descriptions of their import, export and transit procedures, as well as appeal procedures;
- Forms and documents required for import, export or transit; and
- The name, address or other contact details of their enquiry point, where questions about import or export requirements can be answered (enquiry points are discussed in Section 2.3, below)

In addition to this information, member governments are encouraged to publish other trade-related information on the Internet, such as their laws and regulations, decisions, procedures and other items mentioned in section 1 ('Publication'), above.

The Agreement encourages member governments to publish their practical guides in one of the WTO official languages (English, French or Spanish), where practicable, in addition to the national language.

Finally, the Agreement requires each country to provide the WTO Secretariat a formal notification of the URL of the website where the practical guides will be available.

How will this measure benefit me and my business?

You will be able to easily find accurate information, current forms and documents online that may be required by a country for import or export of your goods.

- In the words of one WTO member, this measure is intended to provide SMEs with 'an electronic portal to markets worldwide, presenting new opportunities not otherwise available.' It will provide you with immediate access to import/export requirements and forms from a distance, without the need to physically visit the government agencies' offices, and thereby reducing time and cost in obtaining information.
- Traditionally, governments published or distributed this information at the customs houses or via newspapers or official journals. These modes of publication are not always easily accessible, particularly to foreign businesses that may not have a local representative to collect the required information and forms. Moreover, official information may be published only in the national language or in the form of laws and regulations, posing difficulties for a business to have access without the aid (and additional cost) of a local specialist. Information about requirements may also be published in a piecemeal manner and not provide the potential importer or exporter with an end-to-end view of what must be done for goods to be cleared and released by customs and other border authorities.
- These difficulties are particularly acute for SMEs who do not have the same resources as larger companies to search for, verify accuracy, translate and utilize the information.

You may not need to incur costs of hiring local specialists to determine the basic import or export requirements in those countries where you intend to sell your goods.

- Access should be provided via the Internet in practical step-by-step guides that should be written in plain, easy-to-understand language. Moreover, countries are encouraged to publish these guides in English or one of the other WTO languages if possible and to provide contact details for follow-up questions you might have. This direct access to essential information may reduce the need to hire a specialist to collect and interpret the relevant technical and legal requirements for you.

You will be able to better understand your regulatory compliance requirements associated with shipping your goods to foreign markets or importing to your own country.

- The practical guides to import and export procedures may be sufficient for you to determine what documents you will be required to submit and what other measures you may be required to take to comply with the import or export requirements of the countries where you intend to sell your goods.

What do I need to do to take advantage of this measure?

- Search the Internet for the website of the relevant government authority.
- Member governments must notify the WTO as to where they publish the information. Therefore, to find out where the information you are interested in is published, you can check the WTO

website (www.wto.org) which will likely establish a special page and possibly links to this information.

- Obtain/download the relevant information (practical guides, copies of laws/regulations, import/export related forms) from the website.



SUMMARY OF THE KEY POINTS

- All member governments will be required to prepare and publish practical, step by step guides to their import and export procedures on the Internet. These will be published in the national language and may also be available in English, French, and/or Spanish.
- Member governments may choose to make available on the Internet all other information related to importing and exporting goods, such as copies of their laws, regulations and procedures.



PRACTICE EXERCISES

If you have Internet access, find the practical guides to import and export procedures published by the following authorities:

- United States Customs (hint, these are titled 'What Every Member of the Trade Community Should Know About ...')
- United Kingdom (hint, try a Google search for 'UK and import')
- Trinidad and Tobago (hint, try 'Trinidad and Tobago import duties')
- Zambia (hint, try 'Zambia import duties')



QUESTIONS FOR DISCUSSION

- Who should host the trade information website?

This measure applies to all border agencies and not just customs administration. Accordingly, the national food safety authority, the plant and animal health authorities, border police and similar agencies should also write and publish online practical guides to their import, export and transit requirements, as well as the forms and documents they require from traders.

Each border authority might publish and maintain its own requirements on its own website. A user-friendly alternative might be a single, comprehensive 'import-export.gov' website or portal where guides to the import, export and transit requirements and forms of all border agencies can be found.

- What should be the scope and content of practical guides?

The requirement that member governments publish practical guides for their import, export and

transit procedures is solely for the purpose and benefit of the private sector, particularly SMEs. A robust implementation of this measure would therefore require the governments to investigate and take into account the information needs of the private sector in design of these guides, in terms of form, scope and content.

For example, many countries publish step-by-step guides to their customs clearance processing. These provide important general information, but they may not respond to specific questions that businesses may have regarding import and export requirements. In addition to a general guide, businesses may find useful practical guides to importing or exporting particular goods (how to export agricultural commodities) or use of particular customs procedures (how to use temporary admission), or on particular customs technical issues (how to determine tariff classification of a particular category of goods).

3. Enquiry points

Objectives

By the end of this chapter, you will be able to:

- Explain the purpose and benefits of a trade enquiry point;
- Determine how to contact an enquiry point for information.

What does this measure require the government to do?

Member governments should set up one or more trade enquiry points to:

- Answer 'reasonable enquiries' by traders, foreign government agencies or other interested parties concerning import/export requirements;
- Provide copies of required forms and documents.

Member governments must answer these enquiries and provide the requested documents and forms within a 'reasonable period of time....which may vary depending on the nature or complexity of the request.'

Fees are discouraged, however, if a member government charges fees for answering questions or providing copies, the amount of the fee should be limited to that necessary to cover approximate costs; it should not be used to generate profit for the government or as a tax.

How will this measure benefit me and my business?

You will incur less time and costs in receiving answers to your questions about import or export requirements for your goods.

- 'I've read the laws, regulations, and all the information available on the government websites, but I still don't understand the import requirements for my goods. If only there was an expert I could contact to get these questions answered....'
- Enquiry points improve accessibility of information for traders, particularly SMEs. Traders often find that laws, regulations or other published requirements that are written in 'legalese' require additional explanation and elaboration. To have these questions answered – particularly where your questions are about requirements in foreign export markets which may have different legal and administrative systems and languages - often takes a business a significant amount of time.

- Under this measure, there will be a person or office that you can contact – by phone, in person, and/or by email. These official enquiry points will be established both in countries where you intend to export or transit your goods as well as by your own government.

Figure 1. Moldova customs call center

The screenshot displays the official website of the Customs Service of the Republic of Moldova. The header includes the national emblem, the text 'OFFICIAL PAGE CUSTOMS SERVICE OF THE REPUBLIC OF MOLDOVA', and navigation links for 'Site Map', 'Useful Links', and 'Contacts'. A search bar is located in the top right corner. Below the header, there are four main categories: 'INDIVIDUALS', 'BUSINESSES', 'CUSTOMS SERVICE EMPLOYEES', and 'PRESS'. The main content area features a 'CALL CENTER' section with a large image of a call center operator and the phone number '+373(022) 574111'. The text explains the purpose of the call center and lists two lines: the 'Anti-Corruption Line' and the 'Information Line'. A sidebar on the left contains a menu of general information and an order version of the website. The footer includes the website URL 'customs.gov.md' and a note about the user's opinion counts.

INFORMAȚII GENERALE

- Customs legislation
- About us
- ☐ Transparency in decision making
- ☐ Advisory Board
- ☐ Register of gifts
- ☐ Quality management within the Customs Service according to ISO 9001:2008
- ☐ **Call Center**
- ☐ Procurement

ORDER VERSION OF THE WEBSITE

customs.gov.md

CALL CENTER

To ensure an effective collaboration between the Customs Service and the civil society, and enhance transparency in its daily activity, the Customs Service has launched the Call Center with a single contact phone number **+373 22 574 111**. The Call Center receives information on corrupt behavior or abuse of authority, as well as provides public information.

People calling the Call Center of the Customs Service will have to select one of the two lines:

- 1. Anti-Corruption Line** – receives information on corrupt behavior and other abuse of authority committed by customs officers.
- 2. Information Line** – receives requests for information on customs-related activities.

The anti-corruption line can be reached 24/7. By using this service you can report any situation of conflict, corruption, fraud, including issues requiring urgent attention. The information received will be immediately sent to the management of the Customs Service in order to make appropriate decisions.

By calling the information line, you can receive professional and quick information and advice on border crossing rules for goods and means of transportation.

The information line can be reached during business hours, from 08.00 – 20.00. Calls will be received by a call operator. Outside the working hours and days, you can record a message and leave your name and phone number, in addition to the question you seek answer to. Operators will take all messages and will respond back to you to communicate the requested information.

When the question requires specialized information, the phone call will be immediately and automatically diverted to specialists in such fields as customs valuation, origin of goods, tariff classification, so as to give a timely response.

You can also reach the information line by **SKYPE: serviciul.vamal** or e-mail callcenter@customs.gov.md

Before calling the call center, please consult the Frequently Asked Questions on our page under Customs Consultant section.

Request regarding the grounds of a decision made by a customs officer or the Customs Service or complaints on decisions of the customs officers or the Customs Service can be filed by means of a claim.

Your opinion counts.

You will be able to find information and copies of any forms or documents that Customs or other border authorities may require to import or export your goods faster and at no or little cost.

- The measure requires enquiries and provide forms 'within a reasonable period of time' without payment of a fee (other than a fee limited in amount to cover costs).

You will have greater certainty about the accuracy of the information you receive.

- Rather than relying on interpretations and explanations of technical requirements from unofficial sources or your informal contacts that may not have the correct, complete or up-to-date understanding of requirements; you will be able to have your questions answered directly from the official source which will increase your level of compliance as you will be less prone to making errors in meeting the requirements.

What do I need to do to take advantage of this measure?

1. Get the address of the enquiry point of the relevant country/border authority.

The enquiry point could be a physical place, an email address and/or a phone number. Most commonly, the enquiry point can be contacted by email or phone.

As noted in section.2 ('Information Available through the Internet'), each country is required to publish the 'contact information of its enquiry point(s)' online. Accordingly, if you do an Internet search, you should be able to find this contact information for the enquiry point that you are interested in contacting.

In addition, member governments must provide the WTO with the contact information of the enquiry points by means of an official notification, which will then be made publicly available. Therefore, to find the enquiry point address, you can also check the WTO website (www.wto.org) which will likely establish a special page and possibly links to this information.

2. Make your request for information or copies to the designated address according to the designated form and manner.

The measure provides that members are required to answer 'reasonable enquiries.' On that basis, a member might refuse to respond to overly-broad requests (e.g., 'please provide me with a copy of all import laws and regulations') or requests for information protected from disclosure under national law, such as business confidential information or information related to national security. It might also require the enquirer to make the request in writing and provide certain information, such as his or her name and mailing address.

Instructions on how to make the enquiry, and any restrictions or conditions, should be available from the same source where the enquiry point contact information is found. This source should also indicate the fees that might be charged, if any, for provision of information or copies of requested documents and forms.

3. If no response is received within a 'reasonable period of time,' send a reminder or follow-up request

The measure requires enquiries to be answered with a 'reasonable period of time.' It would be good practice for the enquiry point to notify receipt of your request and, if not answered immediately, provide you with an estimated response time. Alternatively, the enquiry point might publish indicative response times. In any event, if a reasonable time period is exceeded without a response, you should contact the enquiry point concerning the status of your request.



SUMMARY OF THE KEY POINTS

- All member governments will be required to establish one or more trade enquiry points to respond to questions and requests for forms/documents related to their import and export requirements.
- A system of enquiry points will allow you to get information and required documents more quickly and at less cost than through unofficial or informal sources. Moreover, you will have greater assurance on the reliability of information obtained through the official enquiry point.
- The member government enquiry point contact information, the form and manner of making requests will be published on government websites and by the WTO.



PRACTICE EXERCISES

If you have Internet access, find and write below the contact information of the enquiry points for the following authorities:

- Moldova Customs enquiry point
Contact information: _____
- Nepal Department of Customs Client Service Desk
Contact information: _____
- UK Customs (HM Revenue & Customs) Imports and Exports: General Enquiries
Contact information: _____



QUESTIONS FOR DISCUSSION

- Should the government establish multiple trade enquiry points and/or a single national enquiry point?

Each border authority might establish its own trade enquiry point to respond to questions and provide required forms within its area of competence. Businesses would then be required to determine and approach the contact point relevant to their issue.

Alternatively, member governments might establish a single national enquiry point to which businesses could direct any and all enquiries regarding the import, export or transit of any goods. Single national enquiry points are staffed by experts competent to respond to all trade enquiries. Or it might act as a 'switchboard' and coordinate a response from the relevant authorities. Although more complex for a member government to implement, and not strictly required by the Agreement, a single national enquiry point can simplify and accelerate access to information and thereby potentially reduces time and costs for businesses.

- What mode of enquiry points should be established?

As already mentioned the members have flexibility to choose the model for enquiry points in terms of whether it is a physical helpdesk, online or call center. An online system will be most appropriate especially for businesses in smaller cities so they do not have to travel to the nearest location to get simple queries answered or to obtain forms. Even if it is not immediately established, the eventual goal should be discussed to move to a complete online system.

4. Consultation

Objectives

By the end of this chapter, you will be able to:

- Identify the action the private sector should take to be included in border agency's public consultations;
- Participate effectively in public consultations.

What does this measure require the government to do?

The border agencies – such as the customs, plant and animal quarantine, standards and health authorities, the border police, etc. – should hold 'regular consultations' with traders and other stakeholders located in the country.

How will this measure benefit me and my business?

You will have a regular opportunity and forum to discuss and resolve your concerns and issues with customs and other border agencies and other stakeholders.

- A regular consultation mechanism provides businesses with the possibility to bring to the attention of the relevant border authorities and other stakeholders any problems, issues or concerns they face relating to their day-to-day administration of the law, to receive feedback from these authorities and to discuss possible solutions.

Box 3. Consultation approaches: best practices

Consultation provides stakeholders the means to voice their viewpoints, clarify issues, and engage in meaningful dialogue. The basic principles of Consultations are: Partnership and Trust, Transparency, Managing differences of opinion and interests, Results oriented, Iterative process with respect for time and timing, Accountability and responsibility.

For the private sector it provides an opportunity to voice opinions and concerns and suggest solutions to existing challenges, while allowing for timely preparations for planned legislation or reform.

Consultations can be formal or informal. They can take many forms and are often combined in the continuous consultation process. For example, permanent consultative committees, centers of experience and expertise, network of subject matter experts, peer-to-peer groups, implementation of working parties, conferences

Source: UNECE Recommendation No. 40: Consultation approaches Best Practices in Trade and Government Consultation on Trade Facilitation matters

You can stay informed about customs and other border agencies' plans that may affect your business.

- Where there is regular consultation, you will have an opportunity to stay informed about customs and border authorities' activities and plans. This can give you advance warning of possible changes that can impact your business, as well as better understanding of the member government's reasons for making new or changing existing requirements, so that you will be better prepared to make the necessary adjustments.

You can give your opinions on proposed decisions and actions by customs and other border agencies.

- An important use of consultation is to allow businesses to provide feedback and advice to border authorities on any new or changed policies, practices or rules that the government may have

under consideration. Businesses can inform the member government of the practical impact and cost to them of these changes, which the authorities may not otherwise be aware of or fully appreciate. Where appropriate, businesses can play a key role in policy formulation by proposing alternative solutions to the problems, which may be more efficient or practical from their point of view.

- Through this on-going regular dialogue, businesses can raise the awareness of member government authorities about the business environment in which they operate, and improve the quality of rules and decisions to make them more 'trade efficient'.

Box 4. Public participation - core values' objectives

- Public participation is based on the belief that those who are affected by a decision have a right to be involved in the decision-making process.
- Public participation includes the promise that the public's contribution will influence the decision.
- Public participation promotes sustainable decisions by recognizing and communicating the needs and interests of all participants, including decision makers.
- Public participation seeks out and facilitates the involvement of those potentially affected by or interested in a decision.
- Public participation seeks input from participants in designing how they participate.
- Public participation provides participants with the information they need to participate in a meaningful way.
- Public participation communicates to participants how their input affected the decision.

Source: International Association for Public Participation

What do I need to do to take advantage of this measure?

1. Identify the consultation mechanism or procedures used by the border agency(ies) of interest.

The most common form of consultation used by government authorities is meetings with representatives of business associations (for example customs broker associations, sector-specific manufacturing or trade associations, chambers of commerce), on a periodic or ad hoc basis.

Other forms of consultation include meetings with permanent advisory bodies or groups of experts, general public hearings, on-line or telephone surveys, or solicitation of written comments and opinions.

Possibly, your border authorities use some combination of these methods. Moreover, your border authorities may consult with stakeholders through their central office, their local offices or both.

To better understand your rights and opportunities, it is important to be informed about the consultation rules and procedures actually applied by the border agency (or agencies) that regulate your business. In some countries, these procedures are defined in law; more commonly, consultation is developed as a matter of customary government practice or policy.

Information about consultation practices might be obtained from official gazette (if consultation is established by law), your trade association, or by contacting the relevant authority's 'consultation coordinator' (see next point).

2. Contact the relevant 'consultation coordinator'.

Good consultation practices require the member government to designate an office or person(s) responsible for overseeing consultation with stakeholders – a 'consultation coordinator'. This

consultation coordinator is responsible for identifying and notifying the relevant stakeholders (including by publication on the member government website), planning the consultation, distributing materials, collecting written inputs and so forth. Typically, this person or office would maintain a contact list of relevant stakeholders.

To ensure that your business is not overlooked, you should identify and contact this office to ensure that they are aware of your interest and that you are on the relevant contact lists. This may be particularly important for a small business that wishes to participate, as SMEs typically are not as well known to border authorities compared to trade associations or larger businesses.

3. Obtain consultation schedule (time, date and place) from relevant border agency/agencies.

The member government is obligated to provide for regular consultations (for example monthly or quarterly). Good practices would require your government to establish and distribute (or publish) a schedule in advance to stakeholders for their planning and preparation purposes. This advance scheduling would be particularly useful for trade associations, who would require time to confer with their members.

4. Review meeting agenda and supporting documents in advance.

For consultation to be effective, stakeholders need to have information about the matters that will be discussed. Good practice thus requires your government to make the agenda publicly available sufficiently in advance of the consultation session. Moreover, if the member government is considering a change in a policy or procedure, it should also make available an explanatory document, if necessary, in advance of the consultation, so that stakeholders can study and respond to proposals in a meaningful and timely way.

Where consultation is scheduled, you should obtain the agenda and background documents to prepare. Best practices would require that such documents be distributed via the relevant government authority's website.

5. Submit your comments/opinions in writing, where appropriate.

Where the border agencies consultation procedures allow, it would be useful to submit in writing your comments or proposals on the agenda items, either in advance or following the consultation session, to ensure that they are taken into account and understood by the relevant government authority.

6. Collaborate with other stakeholders.

An advantage of public consultation is that a stakeholder can find and collaborate with others businesses (e.g., an industry-specific coalition) on issues of common interest or concern. This might reduce the costs of your participation as well as provide you with a stronger voice vis-à-vis the government.

7. Monitor the results of the consultation.

An effective consultation process requires the government authorities to communicate to stakeholders what actions or decisions they have taken in response to stakeholder input. Best practices would require the member government to publish written feedback so that it is available to all stakeholders including via the customs and relevant border agencies website.

To assess whether your consultation inputs have been acted on, and to follow up with the government authorities, you should get and review the results of consultation.



SUMMARY OF THE KEY POINTS

In this chapter you learned that your border authorities will be required to hold regular consultations with their national stakeholders.

That the regular consultation provides businesses with:

- A forum to raise and discuss with other stakeholders and border authorities their particular concerns and problems about import and export processing;
- A regular source of information about border authorities plans; and
- An opportunity to provide feedback on and influence actions or decisions that border authorities may have under consideration.

You also learned what actions you should consider taking to ensure you are included and are able to participate effectively in your border authorities' consultations:

- Identify mechanism/procedures that are actually used by your border authorities to conduct public consultations;
- Contact the relevant person/office responsible for coordinating consultations
- Get the consultation schedule;
- Review consultation agenda and any supporting documents in advance
- Submit your comments/opinions in writing;
- Collaborate with other stakeholders; and
- Monitor the results.



PRACTICE EXERCISES

Indicate whether the following statements are **true** or **false**

	True	False
1. Under this measure, Customs and other border authorities should consult with their stakeholders on a monthly or other regular basis.	<input type="checkbox"/>	<input type="checkbox"/>
2. Both the border authorities AND private sector stakeholders should prepare for consultations to ensure that they are effective	<input type="checkbox"/>	<input type="checkbox"/>
3. Consultation is necessary only when a border authority is considering a new law or regulation.	<input type="checkbox"/>	<input type="checkbox"/>



QUESTIONS FOR DISCUSSION

A number of governments practice public consultation today. However, in some countries, stakeholders have reported that the consultation has not always been effective.

Box 5. Consultation procedures – common problems

- Government does not take into account the opinions provided by stakeholders.
- Government does not provide feedback after consultation.
- Consultation is a “check-the-box” exercise; the government has already made up its mind.
- Stakeholders (particularly SMEs) do not have expertise, time or financial or human resources to prepare for, or participate effectively, in consultations.
- Certain businesses (particularly SMEs) are excluded from, or overlooked in, consultations.
- Businesses are not given enough time and information to prepare or respond to government proposals.

Source: EU, World Bank

How do you think your government should design its consultation methods and procedures to reduce the possibility of these problems?

In the text above, we refer to a number of good practices for consultation. Do your border agencies apply these practices today? Do you think any of these good practices would reduce or eliminate the possibility of some of these common consultation problems?

What actions, if any, can the private sector itself take to make sure these problems do not arise?

5. Business participation in development of laws, regulations, formalities and documentation requirements

Objectives

By the end of this chapter, you will be able to: determine how to contribute, influence and provide business perspective on formulating new or changing existing rules, procedures or formalities proposed by Customs or other border authorities

What does this measure require the government to do?

Opportunities to comment on proposed laws and regulations

To the extent practicable, member governments must provide traders and other interested parties *opportunities and an appropriate period of time to comment* on any proposed new or amended laws or regulations concerning the movement, release or clearance of goods.

Exceptions are made for cases of urgency, minor changes, changes in tariff or duty rates, and changes that have a 'relieving effect.'⁶

Trade Impact Analysis

Member governments must conduct a trade impact analysis (Article 10.1: Review of formalities and documentation requirements) before adopting any import, export or transit formalities or documentation requirements.

In particular, member governments must consider and, where appropriate, ensure that any new requirements:

- Improve release and clearance times of goods (particularly for perishable goods); and
- Reduce time and cost of compliance for traders.

Where there are two or more reasonably available options to achieve the government's policy objective, the government must choose the 'least trade restrictive' option taking into account, for example, modern business practices, available techniques and technology, and international best practices.

This is an on-going obligation of member governments; it does not apply only to new requirements. Member governments should review on a periodic basis existing import and export formalities and documentation requirements for possible elimination (if no longer necessary), simplification or improvement.

These two measures are closely related. When considering the trade impact of new or existing formalities or documentation requirements, member governments should take into account comments of interested parties. And, when asked by the member government for comments on proposed laws or rules, businesses and other interested parties will be an important source of information about the trade impacts of the proposal.

How will this measure benefit me and my business?

You will be able to participate in the design of any new customs and trade laws or rules to make them more attuned to business needs.

- Businesses can provide information to improve rules and requirements that may not be otherwise available to member government. Businesses are a source of information for new trade and logistic practices, techniques and technology, which may provide more effective and less costly solutions to the problem that the government intends to regulate. Due to the direct impact of the proposed rule or requirement, businesses may be better positioned to identify and alert the government to possible unintended or unforeseen consequences and practical problems.

Customs and other border authorities will be required to consider and limit the negative impact on businesses due to proposed changes to the rules, regulations and/or procedures.

- The Agreement requires Customs and other border authorities to assess the trade costs and other impacts – such as release and clearance times – when considering introduction or changes to import or export rules, formalities or documentation.
- Essentially, this is a specific instance of the 'cost-benefit' analysis that many governments now use to assess the impact of proposed regulations ('regulatory impact analysis').

⁶ These are the same exceptions described under the measure on "information before entry into force." See section.6.

Figure 2. Regulatory impact analysis (video)

Source: https://www.youtube.com/watch?v=aGjRgkMdbm4&feature=youtube_gdata_player

- An important and common method by which governments assess impacts of regulatory proposals is through consultation with their stakeholders. You should therefore have the opportunity to bring to the government's attention any potential negative impacts on your business due to the proposed changes, and to suggest possible less burdensome alternatives.

You will be forewarned and better prepared to implement any changes to customs or other border authorities' laws and rules

- Because you will be alerted to proposed changes in advance, and may be involved in the development of the new requirements, you will be positioned to better understand the underlying rationale and better prepared to make necessary adjustments before the final rule or requirement takes effect.

What do I need to do to take advantage of this measure?

1. Monitor official publications and customs and other border authorities websites for proposed changes to rules and requirements.

The measure requires your government to provide you with a reasonable opportunity to comment on proposed rules and laws. This implies that you must be notified about the proposals.

Typically, this notification of proposed new laws and rules would appear in the member government's Official Gazette (or similar publication) or on the relevant ministry or authority's website.

Figure 3. South Africa revenue service: proposed rules published for public comment

Home | About Us | Types of tax | Legal & Policy | Contact Us | Consultation | Contact Centre 0800 00 7277

SARS

Individuals | Businesses and Employers | Tax Practitioners | Customs and Excise

SARS Home > Legal & Policy > Preparation of Legislation > Draft Documents for Public Comment

Discussion Papers | Draft Documents for Public Comment | Response Documents | Bills
Explanatory Memoranda | Workshops - Rules to the Customs Control Act, 2014

DRAFT DOCUMENTS FOR PUBLIC COMMENT

All comments received on drafts are considered in full, but due to time constraints, no individual correspondence will be entered into.

The draft documents are categorised according to their due date for comments and comments may be submitted per email to the address indicated in the last column.

Latest Additions are marked with "New!"
- Scroll Down and look under -
31 May 2015

Next Due Date for Comments	Legislation Category	Description	Send Comments to:
Comments due in January 2015			
9 January 2015	Customs & Excise Act, 1964	Draft Rules for section 47 <ul style="list-style-type: none"> Draft Rule Amendment re compulsory tariff determinations on alcoholic beverages Explanatory Note: The section 47(9)(a)(iv) amendment (ref. clause 15 in the Tax Administration Laws Amendment Bill, B14 of 2014) imposes compulsory tariff determinations for alcoholic beverages. These draft rules give effect to the amendment and provide clarity on the phasing in thereof	sauthar@sars.gov.za
30 January 2015	Income Tax Act, 1962	Draft Binding General Ruling <ul style="list-style-type: none"> Draft BGR on Unbundling Transactions: Meaning of "ac at the end of the day after" 	polycycomments@sars.gov.za

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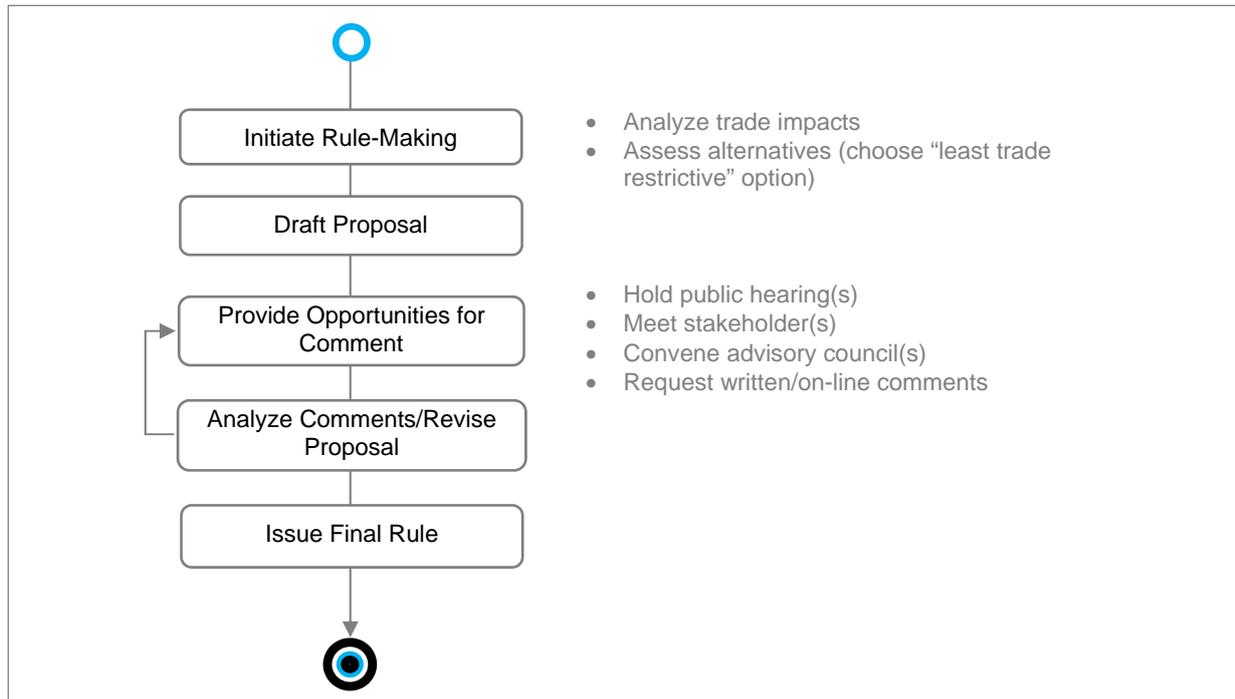
2. Analyse potential impact of proposal on your business operations.

This may require assistance of a legal specialist or, possibly, your trade association.

Following 'best practices', when your government publishes or distributes the proposed rule or requirement for comment, it should also prepare and provide stakeholders with a 'plain-language' summary or an explanatory memorandum of the proposed changes, so that you can more easily understand the reasons for the change and its impact.

3. Prepare and submit comments, in prescribed form and manner and within required time period.

The notification of the proposed rule or requirement will typically indicate where comments may be submitted, the manner and deadline for their submission, and the date/time/location of a public hearing (or hearings) on the proposal, if any.

Figure 4. ‘Notice and comment rule-making’ flow

4. Attend and present your views at public stakeholder meeting.

A public stakeholder meeting can be an important opportunity to discuss and clarify your comments and counterproposals with the decision makers, obtain their feedback, as well as better understand the reasoning behind the government’s proposals.

5. Consider coordination with your business/trade association or other businesses with aligned interests.

Your opinions and any counter-proposals will likely carry more weight and influence with the decision makers if your inputs are aligned and coordinated with those of other businesses.



SUMMARY OF THE KEY POINTS

- You will have an opportunity and reasonable time to comment on proposed new laws or regulations related to import/export movement and clearance of goods, or proposed changes to such existing laws and regulations, where practicable.
- Member governments must assess the trade impacts of their import/export formalities and documentation requirements.



PRACTICE EXERCISES

A customs administration publishes a notice in the Official Gazette requesting public comment on the following proposal.

Certificate of Origin Rule

Request for Public Comment on Proposed Amendment

Goods produced in certain small island states can be imported duty free under a trade preference arrangement.

Current Rule

Under the current customs rules, to obtain this duty benefit, the importer must present a certificate of origin (Form 3229) with each entry of goods and that certificate of origin must be certified by a customs officer in the island country from which the goods are exported.

The purpose of the rule is to prevent fraudulent claims for duty-free treatment.

Proposed Amendment

Customs proposes to amend this rule. The importer must still complete a Form 3229. However, the requirement that a customs official at the port of export verify and sign the form will be eliminated, and Customs will require that the importer present Form 3229 only if requested by the Customs Port Director or his delegate, rather than with each entry.

As with other customs documents, the importer must keep the Form 3229 in his records for audit purposes, and will be subject to penalties if he is unable to produce it to Customs on demand.

Time + Cost Savings

The proposed regulation would reduce the estimated time burden on shippers by two minutes per completed form. Shippers currently spend an estimated 22 minutes completing Form 3229. The proposed regulation would reduce this time to an estimated 20 minutes to complete the form. The anticipated time savings comes as a result of the elimination of the customs officer signature requirement on the form.

More importantly, the shipper's waiting time is also reduced. In practice, obtaining the customs officer's signature requires the shipper to deliver Form 3229 to the customs officer at the port of export and either wait for a signature or leave the form to be signed and retrieved at a later time.

Because importers will be required to present a completed Form 3229 to Customs only upon request by Customs rather than with each shipment, Customs estimates that an average importer may, at a maximum, print approximately 26 fewer Form 3229s annually. Customs estimates that it takes a shipper, on average, approximately one hour to obtain a customs official's signature and date of signature, in order to complete Form 3229. If this rule is promulgated, Customs estimates that shippers shipping goods from the island states, including any small entities, will realize time burden reduction (i.e., time savings) of one hour per shipment. Customs estimates the average wage of a shipper's employee who is responsible for the form to be approximately \$45.10 per hour. Thus, Customs estimates that each shipper, including any small entities, will save approximately \$45.10 per shipment.

Impact on SMEs

Over the last six years, on average there have been approximately 3,545 shipments of goods each year, imported by approximately 135 importers, from these island states. Any importer of goods from these island states would need to comply with this rule. Therefore, Customs believes that this rule has an impact on a substantial number of small importers.

In sum, Customs believes that these amendments would help to relieve the administrative burden on the shipper, by eliminating the need for the shipper to deliver the Form 3229 to a customs officer for signature and verification of the originating status of the goods; on Customs, by removing this task from the customs officer's duties; and on the importer, by removing the requirement that the form be presented with each entry. Also, the amendment would allow Customs to simplify Form 3229 by removing a data field and a signature block.

Assess this proposal based on the criteria described in this measure and answer the following questions:

What is the Customs policy objective for the current rule?

.....
.....
.....

Does the proposed rule decrease or simplify import documentation requirements? If so, how?

.....
.....
.....

The TFA requires Customs to choose 'the least trade restrictive measure...where two or more alternative measures are reasonably available for fulfilling the policy objective.'

Comparing the current rule and proposed change, which is the 'least trade restrictive' and why?

.....
.....
.....

Can you explain how the proposed rule will 'fulfill the policy objective' (the objective you identified in question 1) as well as the current rule?

.....
.....
.....



QUESTIONS FOR DISCUSSION

- What modes of participation in the development of rules and requirements will be made available to businesses?

Opportunity for comment may take different forms. It may take the form of a notification of the proposal published in the official journal or on the relevant government website, with an invitation and period of time for submission of comments in writing or electronically. It may take the form of a public forum. It may be through recognized advisory bodies. Or it may be some combination of these and other methods, perhaps depending on the importance of the proposal.

In any event, businesses may wish to ensure that the permissible method or methods for participation in government rulemaking and requirements are formally established in binding government policy or in legislation.

- How can businesses be sure that their views and comments will be taken into account?

Member governments are not required to accept comments made by stakeholders, and will often have important policy reasons for not doing so. However, businesses participation is meaningful and will continue only if they have confidence that their views and opinions will be fairly considered. In some countries, businesses are assured that their inputs are taken seriously by a requirement that, if rejected, the authority must give a reason. This treatment also should be reflected in the member government policy or legislation.

- How can businesses be sure that Customs or other border authority has properly conducted a trade impact analysis?

The practice in some countries is to require the authority to publish the results of its trade impact analysis when it issues its proposal or final rule.

6. Information before entry into force

Objectives

By the end of this chapter, you will be able to:

- Explain the purposes and benefits of allowing a gap (appropriate time period) between the publication of new or amended laws and regulations and their entry into force;
- Determine the time period before enforcement of a new or changed law or regulation.

What does this measure require the government to do?

Member governments should publish (subject to local laws and regulations) any new laws and regulations relating to movement, release and clearance of goods or changes to any such existing laws and regulations, or make information about such new or changed laws and regulations otherwise publically available, as early as possible before the new requirements take effect.

The same requirement applies to any new or changed import or export fees and charges.

There are some important exceptions to this requirement of advance publication of laws and regulations. These include:

- Changes in duty or tariff rates (these can take effect immediately on publication);
- Changes that have a 'relieving effect', that is, they improve the situation for traders, such as removal of restrictions or conditions (and therefore there should be no objection by businesses if they take effect immediately);
- Changes needed for 'urgent circumstances'.

How will this measure benefit me and my business?

You will have more time to get familiar with and understand new or amended rules and requirements before they are enforced so that you can plan accordingly.

- In many countries, laws and rules go into force directly upon their publication in an official journal and, as a result, businesses do not have any advance notice of the changes they must implement.
- Under this measure, where a customs administration introduces new import declaration requirements (for example additional information or documents for clearance) or a new fee (such as customs fee for overtime services), it must ensure that businesses who will be affected are informed as far as possible in advance (e.g. 30 or 60 days), before the change takes effect. This will give you more time to better understand the impact of the change and its potential consequences on your operations.

You will have more time to adjust your business operations to new or changed rules and requirements before they are enforced.

- Changes in laws or regulations often impact business practices. For example, when Customs changes rules on the data or documents required to be submitted to clear goods, businesses may need to modify their IT systems, procedures or workflows to ensure that the additional information or documents are collected from the relevant sources, maintained and presented properly in time and form. Providing advance notice of such changes will allow businesses the time to make the necessary adjustments.

You will be able to rely on the existing (published) rules, requirements, fees and charges etc. and plan your import and export transactions with negligible risk of sudden changes

- Since changes to rules and fees must be announced by publication in advance (e.g., 30 or 60 days), you will be able to plan your import and exports based on current rules. This reduces the level of uncertainty about the rules that will apply when the goods are actually imported and exported, and therefore minimize your risks and costs.

What do I need to do to take advantage of this measure?

1. Identify the publication in which government authorities publish rules and official notifications.

Typically, member governments are required by law to print laws and regulations and any amendments in an official journal or register and possibly in newspapers for general circulation. More recently, many governments have begun to publish changes to legislation and regulations on the Internet (although there may or may not be a legal requirement to do so).

2. Monitor the publications on a regular basis for new and amended rules.

You, or perhaps your trade association, should monitor the official publication regularly for changes in laws and regulations on import and export requirements. Often, the time period between publication of the law or regulation and enforcement will be defined in the legal act itself (for example 'this law shall enter into force x days following its publication in the Official Journal').

3. Participate in consultations with government authorities on proposed laws and regulations to ensure appropriate transition periods are incorporated.

In those countries that implement a delayed effective date, the legislation typically provides the border authorities flexibility in prescribing a different time period. For example, legislation may provide that no rule shall take effect 30 days prior to its publication; but a longer period can be allowed and is left to the discretion of the authority issuing the new rule. As you will learn in Chapter 5 ('Making Better Rules'), member governments will be required to provide stakeholders with an opportunity to comment on proposed new laws and rules, or changes to existing laws and rules, relating to import and export.

As a business, if you find that your adjustment to such a change proposed by the member government will require transition period longer than that usually given (or proposed), you should participate in consultations with the government on the new rule to ensure that your concerns are known and taken into account.



SUMMARY OF THE KEY POINTS

- With some exceptions, member governments are required to publish the proposed new or amended laws and regulations related to import and export 'as early as possible' before they enter into force.
- The trade facilitation purpose of prior publication is to provide affected businesses with sufficient time to understand and adjust to the new requirements.
- To take advantage of this benefit, you should monitor official publications and government websites for announcement of new and changed laws and regulations, which should also indicate the transition period.



PRACTICE EXERCISES

Indicate whether the following statements are true or false

- | | True | False |
|--|--------------------------|--------------------------|
| 1. Customs has issued a new rule requiring importers to present certain documents with the customs declaration. The rule states that it shall take effect 30 days following its publication in the Official Gazette. This is consistent with this measure. | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. Any new customs rule concerning the clearance of imported or exported goods must be published <i>at least</i> 30 days before it takes effect. | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. On December 31, the government publishes a notice in the Official Journal announcing that customs duties on a number of goods will be increased by 5%. The notice states that the new rates apply to goods imported on or after January 1 (the day following the publication). This notification is consistent with this measure. | <input type="checkbox"/> | <input type="checkbox"/> |



QUESTIONS FOR DISCUSSION

- Which laws and regulations should be published in advance? Should Customs and other border authorities also be required to publish their lower-level administrative regulations, orders and instructions?

The WTO measure applies to ‘laws and regulations of general application’ related to the movement, release and clearance of goods.’

From the businesses’ perspective, they would presumably want this discipline to be applied as broadly as possible when incorporated in national legislation. Any general act that may have a potential impact on movement, release and clearance of goods should be subject to the advance notification obligation, including so-called ‘internal’ administrative rules, orders or instructions which may have an indirect impact on businesses.

Similarly, it would be in the interest of businesses that the exceptions to this requirement of advance notification – ‘urgent circumstances,’ changes in duty or tariff rates – are implemented in national legislation as narrowly as possible.

- Should changes in tariff rates be published in advance?

Duty and tariff rates obviously have significant impact on businesses in terms of planning and costs. For that reason, changes in these rates without prior warning is a source of complaint by businesses.

The WTO Agreement does not require member governments to publish changes in duty and tax rates in advance. However, the Agreement does not prohibit them from doing so. It would be fully consistent with the objectives of the Agreement and an opportunity to go beyond just its legal compliance, to offer a greater measure of facilitation to businesses if national law also required prior notification of such changes.

7. Advance rulings

Objectives

By the end of this chapter, you will be able to:

- Determine when an advance ruling may be advantageous to you
- Determine when and how you can apply for an advance ruling
- Write an application for an advance tariff classification ruling

What does this measure require the government to do?

Member governments must issue advance rulings to businesses on request.

An advance ruling is a written decision by the government concerning the customs treatment of goods that a person plans to import.

Member governments are required to provide rulings to traders on questions of tariff classification and the country of origin of imported goods. They are encouraged to provide rulings on other customs questions, such as customs valuation.

An advance ruling is legally binding: the customs authorities are required to clear the goods in accordance with the ruling (provided the goods imported are the same as those described in the ruling). Member governments may also make the ruling binding on the trader who requested it, so that the trader must use the ruling to clear the goods (it cannot be ignored if it is not favorable).

Certain rules for Customs are set down to ensure transparency and fairness in the administration of their ruling programmes, including:

- Rulings must be issued within a reasonable time of a request;
- Requirements for obtaining a ruling must be published;
- Rulings must remain valid for a reasonable period of time, unless there is a change in the underlying law, facts or circumstances;
- If Customs rejects a trader's application for a ruling, or revokes or modifies a previously issued ruling, they must provide the applicant with a written notice and reasons. They must also provide the trader with an opportunity to review the decision.

How will this measure benefit me and my business?

You will be able to determine with certainty how much duty and tax you will be required to pay before the goods are shipped.

- Advance rulings allow you to calculate your customs costs in advance. You might apply for a ruling in connection with your sales negotiations, to better inform you whether the sale at the price negotiated with the seller is feasible and what margin you can expect on resale.

You can be assured that the ruling will be honored by local Customs officials at any port where you choose to import the goods.

- Advance rulings issued by the Customs administration are legally binding on all customs offices. The possibility of inconsistent or arbitrary treatment by different local customs offices is eliminated with respect to matters covered by the ruling.

With an advance ruling, your goods should be cleared more quickly by Customs.

- Difficult, time-consuming questions concerning the tariff classification of goods and/or other customs matters covered by the ruling are determined by Customs prior to arrival of the goods. Port warehousing and demurrage charges can be reduced or eliminated, and deliveries to your customers accelerated. In addition to the added transparency and predictability, there will be a great reduction in the number of disputes concerning customs duty and tax assessment issues, which can be very time-consuming to resolve.

Box 6. Why request a ruling?

Advance rulings are optional and for your benefit: you are not required to obtain a ruling in order to import or export your goods. Typically, a business applies for a ruling where:

- The product is new or is being imported by this business for the first time;
- There are differences in Customs treatment of goods imported by the business at different ports;
- Significant amount of tax or duty is involved or profit margins are narrow, or
- Any other situation where the business wants to eliminate doubts in advance about customs costs

One advance ruling can be used to make multiple imports of the same goods over time.

- A ruling must remain valid for a reasonable period of time. It is not necessary to get a ruling for each import you make involving the same goods during that period. Some countries allow a ruling to be used for three to five years or even longer.
- Customs can revoke or amend the ruling only in limited circumstances. In those cases however, Customs must provide you with an opportunity to be heard so that you will be able to present your case. In this way, you will also receive advance warning of changes that might affect your business.

You may be able to research customs treatment of goods similar to yours that have been imported or exported by other parties.

- Member governments are encouraged to publish advance rulings they issue – except for confidential information.
- To that end, certain countries have implemented databases containing rulings they have issued (or summaries of such rulings) which are accessible to public through the Internet. Even if you do not apply for a ruling, this information about customs treatment of similar goods imported or exported by other businesses will provide useful guidance as to the likely treatment of your goods at the border.

Figure 5. EU public rulings database - sample record

The screenshot shows a web page from the European Commission's Taxation and Customs Union database. The page title is 'BTI Details' and it contains a table with the following information:

Field	Value
BTI Reference	GB501088484
Issuing country	GB
Start date of validity	03/01/2012
End date of validity	02/01/2018
Nomenclature code	9503001000*****
Classification justification	CLASSIFICATION HAS BEEN DETERMINED IN ACCORDANCE WITH THE FOLLOWING:- GENERAL INTERPRETATIVE RULES (GIR)S GIR 1 HAS BEEN USED TO CLASSIFY THIS PRODUCT BY THE TERMS OF HEADING 9503 - TRICYCLES, SCOOTERS, PEDAL CARS AND SIMILAR WHEELED TOYS; DOLLS' CARRIAGES; DOLLS; OTHER TOYS; REDUCED-SIZE (SCALE) MODELS AND SIMILAR RECREATIONAL MODELS, WORKING OR NOT; PUZZLES OF ALL KINDS CN CODE 95030010 - TRICYCLES,SCOOTERS, PEDAL CARS AND SIMILAR WHEELED TOYS; DOLL'S CARRIAGES, ALSO CLASSIFIED IN ACCORDANCE WITH:- HARMONISED SYTEM EXPLANATORY NOTE (A)(7) TO HEADING 9503.
Language	en
Place of issue	Southend
Date of issue	03/01/2012
Name and adress	HM Revenue & Customs Customs & International Alexander House 21 Victoria Avenue Southend-on-sea Essex SS99 1AA
Description of goods	CHILDS RIDE-ON QUAD BIKE. ASSEMBLY REQUIRED. MADE OF PLASTIC. 4 WHEELS. WITH HANDLEBAR. POWERED BY 6V4Ah*1 BATTERY. WITH SPEED OF 2.5Km/Hr. WITH EASY PUSH-BUTTON CONTROL. WITH INTEGRATED FOOT PLATFORM. WITH TOUGH TREADED ATV WHEELS. SUPPLIED WITH RECHARGEABLE BATTERY AND CHARGER. MAXIMUM WEIGHT 25KG (APPROXIMATELY 55lbs). SUITABLE FOR AGES 2-6. WITH DECORATIVE SELF ADHESIVE LABELS. DESIGNED FOR USE IN HOME OR GARDEN.
National keywords	TOYS WHEELED TOYS QUADRICYCLES BY BATTERY BY MOTOR ELECTRIC OF PLASTIC MULTICOLOURED FOR CHILDREN FOR LEISURE

- Customs administrations generally take the position that a ruling issued to another person is legally binding only with respect to that person's goods. Nevertheless, these publications are useful for your planning and estimation purposes.

What do I need to do to take advantage of this measure?

1. Determine that your question can be the subject to an advance ruling.

All countries are required to issue a ruling on questions about the tariff classification of goods, which is the most important factor in determining the duty and tax amount, as well as the country of origin of goods. Some countries may issue rulings on other customs matters.

To find out what matters can be the subject to a ruling, you should first check the Customs website. Alternatively, this information may be published in the government's Official Journal or register or similar legal gazette.

You should also note that if you or some other importer is already involved in a dispute before the courts or the customs authority regarding the tariff classification of the same goods, Customs can refuse to issue a ruling while that case is being litigated.

2. Ensure that you are eligible to make a ruling application.

Any person with a 'justifiable cause' can apply for a ruling.

If you are the importer/buyer of the goods, you can apply for a ruling from your own government (the country in which the goods will be imported).

If you are an exporter/seller, you can obtain a ruling concerning the goods from the government of the country where you intend to sell; however, that government may require that the application be submitted by your local representative.

3. Prepare a ruling application in the required form and content.

The customs administration may specify a particular format for the ruling application. It may allow for electronic submission of ruling applications.

Customs will normally require that certain information be provided depending on the type of ruling requested. For example, if you request a ruling on the proper tariff classification of goods you intend to import, you will normally be required to submit a description of the goods, with a level of detail necessary to enable Customs to determine the tariff category. Normally, Customs may also ask for a sample of the goods or a picture, product brochures and any other information deemed relevant. Compliance with these requirements is important to avoid delays in issuance of the ruling.

Member governments are also required to publish this information. To determine what information is required in the application and in what form, you should check the Customs website or print publications of the type mentioned above.

Box 7. Ruling application – typical content

Ruling requests contain a complete statement of all relevant facts relating to the transaction including:

- The name, address, email address and phone number of the requesting party.
- The names, addresses, email addresses and other identifying information of all interested parties (if known) and the manufacturer ID code (if known).
- The name(s) of the port(s) in which the merchandise will be entered (if known).
- A full and complete description of the good in its imported condition including, where relevant:
 - Component materials;
 - The good's principal use;
 - The commercial, common, or technical designation;
 - Illustrative literature, sketches, photographs, flow charts, etc;
 - Chemical analysis, flow charts, CAS number, etc.
- A statement that there are, to the importer's knowledge, no issues on the commodity pending before Customs or any court.
- A statement as to whether advice has been sought from a Customs office; and if so, from whom, and what advice was rendered, if any.

Source: US Customs Requirements for Ruling Applications

4. Protect your confidential business information.

A member government may publish rulings that are of significant interest to other interested parties, provided that it protects confidential information. All or part of a ruling issued to you may therefore be made publicly available.

To ensure that none of your confidential business information included in your application for a ruling is disclosed – such as cost or price information, names of suppliers or customers etc. – you should take the measures prescribed by your government to prevent disclosure. For example, you may be required to highlight or mark the information in your ruling application that you consider confidential. What steps you must take to protect confidential information should be published by the government, in the same sources as described above.

5. Submit application to the appropriate office.

Some member governments have designated one central office responsible for issuing rulings; others authorize one or more local offices to issue rulings. In some governments, tariff classification and origin rulings are issued by different offices; in other governments, the same office issues both types of rulings.

The office to which you must address your application, and its address (which may be an email or physical address) must be published by the member government in the same sources as those mentioned above.

6. Apply sufficiently in advance of your planned importation.

By its nature, an advance ruling applies to prospective transactions – to goods that have not yet arrived. For that reason, a government would normally not accept an application for goods that have already been imported and are undergoing customs processing.

In order to be sure to obtain the ruling prior to arrival of the goods, so that you can use it for customs clearance, you should determine the time period for issuance of rulings, and ensure that you make an application sufficiently in advance of arrival of the goods.

7. If you disagree with the ruling decision, request a review by the appropriate authority.

If you believe that the ruling is wrong – for example, that the tariff classification (and therefore the rate of duty) should be otherwise –you have the right to have the decision reviewed by appeal to a higher and independent authority to get the decision changed. The authority responsible for review is normally a higher-level official or office within the customs administration that issued the ruling. Different countries have different procedures – it could be the same office, another government authority, or a court that has this responsibility. You should check the rules and regulations to see where this request for review must be submitted.

8. Present or refer to the ruling at the time of clearance.

At the time of customs clearance, you should inform the customs office about the ruling; you may be required to attach a copy or simply refer to the ruling reference number in your declaration.

A ruling is binding on the member government, but the government may also make it legally binding on you. Should this be the case, you will have to use the ruling to clear the goods even if it is not favorable and, depending on national legislation, you may be subject to penalties if you fail to declare the goods in a manner consistent with the ruling.

It is also recommended to keep track of the time period for which the ruling is valid and ensure that your goods arrive before it expires. In case the ruling expires before the goods arrive, you should apply for a fresh ruling.



SUMMARY OF THE KEY POINTS

In this chapter you learned the legal definition, scope and conditions for issuance of an advance ruling. An advance ruling programme can be useful to

- Calculate your customs costs in advance;
- Clear your goods more quickly;
- Ensure your goods are treated consistently by Customs, regardless of port of entry; and
- Receive information about customs past treatment of similar goods.

8 practical steps that you should take if you wish to apply for and use a ruling to clear your goods

- Determine that your question can be the subject to an advance ruling;
- Ensure that you are eligible to make a ruling application;
- Prepare ruling application in required form and content;
- Protect your confidential business information;
- Submit application to appropriate office;
- Apply sufficiently in advance of your planned importation;
- Get decision reviewed, if you disagree; and
- Present or refer to ruling at time of clearance.



PRACTICE EXERCISES

You intend to import a shipment of electric toothbrushes 12 weeks from today. You believe that these toothbrushes should be classified under the tariff code 8509.80.00. This tariff code describes 'electromechanical domestic appliances, with self-contained electric motor.' The duty rate for goods classified under this tariff code is free. Therefore, you would like to request an advance ruling from Customs in order to confirm the tariff code to be sure of the free duty rate.

Your employee prepared the following draft ruling request for your review:

NATIONAL TOOTH COMPANY

AMMAN, JORDAN

#20 PROSPERITY PROSPECT

Today's date

Jordan Customs Department
Tariff and Agreements Directorate
Amman, Jordan

Dear Sirs,

I am writing to request a tariff classification ruling.

The goods I plan to import are 10,000 electric toothbrushes.

I will buy the product from a German company.

I believe that these electric toothbrushes should be classified under 8509.80.00

Sincerely,

Is this information sufficient?

What additional facts or other elements should you include that might improve this ruling request?

Are all the elements mentioned in this chapter included in your request? (hint: review the inset titled 'Ruling Application – Typical Content')



QUESTIONS FOR DISCUSSION

The WTO agreement will require member governments to provide rulings on questions of tariff classification and country of origin of imported goods only. Nevertheless, it encourages member governments to issue rulings on other subjects as well:

Box 8. Optional subjects of rulings

In addition to the advance rulings [on tariff classification and origin] ... Members are encouraged to provide advance rulings on:

- The appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts;
- The applicability of the Member's requirements for relief or exemption from customs duties;
- The application of the Member's requirements for quotas, including tariff quotas; and
- Any additional matters for which a Member considers it appropriate to issue an advance ruling.

Source: US Customs Requirements for Ruling Applications

Should the government be required to offer advance binding rulings on questions other than tariff classification and country of origin of goods?

What kinds of additional questions should be the subject of advance rulings and why?

Would there be sufficient demand or need by businesses for rulings on these other questions to justify the government's administrative costs in expanding its rulings programme?

How long are advance rulings valid for? For frequent importers of the same product, are these time periods feasible/acceptable?

Chapter 3 Faster, simpler and cheaper border clearance

Overview

The nine measures described in this chapter exemplify what is commonly understood to be the efficiency-related benefits of trade facilitation. That is, these measures generally concern streamlining the processing of documents and goods at the border by Customs and other regulatory authorities, and all have the common purpose of simplifying formalities and requirements, harmonizing procedures and accelerating release and clearance of goods. If properly implemented, these measures will have significant potential to reduce existing costs and delays in border processing that are extremely burdensome for businesses, particularly SMEs.

1. Pre-arrival processing

Objectives

By the end of this chapter, you will be able to:

- Determine whether the pre-arrival processing procedure may be useful to you;
- Determine how to make an import declaration under this procedure.

What does this measure require the government to do?

Customs and other border agencies will be required to implement a 'pre-arrival processing' procedure. This procedure allows carriers and importers to submit the documents required for import and clearance prior to the arrival of goods in order to expedite their release. Documents submitted for processing, prior to arrival, would include:

- Cargo manifest (typically submitted by the cargo carrier or his/her agent);
- Import goods declaration (typically submitted by the importer or his/her customs agent); and
- Required supporting documents (such as invoices, origin certificates and permits and licenses).

In addition, the measure will require authorities to permit these documents to be submitted in electronic form 'where appropriate.'

How will this measure benefit me and my business?

You will be able to move your goods more quickly through the port.

- Under traditional customs rules, Customs will not begin processing the import declaration and supporting documents until the goods are made available for physical examination; that is, only after the goods have arrived.
- This measure will allow you to submit all documents required for clearance to Customs before the goods arrive. The goal is to enable Customs to do whatever documentary checks and verifications it requires, assess and collect duty and tax and, unless it determines that a physical exam is needed, release the goods immediately on their arrival to the country.
- This pre-arrival procedure may be particularly important in expediting release where customs processing is not fully automated, given the inherent delays involved in paper and manual processes.

You will be able to reduce charges incurred in delays and handling goods at the port.

- Where import declarations are processed before the goods arrive, port or terminal charges that you may incur because of delays in customs processing and release can be reduced or eliminated altogether, such as demurrage, overtime charges, haulage within the port, or electricity charges to maintain refrigerated cargo.

You may be able to get a release decision from Customs before the goods arrive, allowing delivery direct from the ship side.

- As a further facilitation measure, customs administrations of some countries notify the importer or the agent that the goods are released prior to or immediately upon their arrival. Using this pre-arrival declaration procedure allows the importer to take the goods directly from the incoming flight or vessel.
- This kind of further facilitation might be offered to authorized operators (for example) or where Customs and other border agencies have fully implemented a risk-based system of control (see paragraph 3 and section 7, below).
- In defining the benefits to be made available under the national authorized operator programme, businesses may wish to keep this possibility in mind.

You may be able to submit all customs documents electronically, eliminating time and cost of paper and manual processing.

- The obligation to allow electronic submission of documents (where appropriate) is also important in reducing time and costs of clearance. Many customs administrations allow or require the electronic submission of the goods declaration. However, further efficiency can be created where customs and other border agencies allow electronic submission of the supporting documents, such as the invoice, bill of lading and licenses.

What do I need to do to take advantage of this measure?

1. Ascertain the particular terms/conditions of the pre-arrival procedure in your country.

Familiarize yourself with the requirements for use of the pre-arrival procedure. These should be published in the customs regulations. Generally, the rules should be the same as the normal procedure but with some variations due to the fact that the declaration is submitted in advance.

Typically, regulations require the importer to:

- Indicate that the declaration is made under the pre-arrival procedure;
- Provide certain additional information in the declaration that Customs may require to verify eligibility for use of the procedure (e.g. date of actual export, expected date of arrival);
- Submit the declaration and supporting documents within the specified time frames (e.g. not more than 10 days prior to arrival; not before departure of the vessel from the port of export); and
- Amend or resubmit the declaration if the goods do not arrive within the required time frame.

2. Collect and prepare the declaration and any documents required for clearance as soon as the information is available to you.

To take advantage of the pre-arrival procedure, you should collect and prepare the documents required for import – the goods declaration, seller's invoice, origin certificate and so forth – as early as possible, prior to arrival of the goods.

3. Submit declaration and supporting documents in required form within required time periods.

Submit the goods declaration and supporting documents as soon as possible prior to arrival of the goods but within the legal time-frame. The earlier the declaration and supporting documents are submitted, the more likely Customs will be in a position to complete processing and issue a release decision prior to, or immediately upon arrival of the goods.

Box 9. Pre-arrival processing - Japan's experience

Responding to the needs of effectively coping with the increasing volume of trade with limited human and financial resources, and to the request from the private sector to further expedite the movement of goods, Japan, in the area of customs procedures for example, introduced pre-arrival examination in 1991 and had gradually improved the regime through trial run. This regime has become one of the major trade facilitation measures in Japan while maintaining adequate customs control and has been widely used by traders. In 2010, the usage rates of pre-arrival examination in Japan were about 36% and about 52% for sea cargoes and for air cargoes, respectively. In addition, the regime of pre-arrival examination is being used in other trade procedures such as food sanitation.

A brief explanation of the pre-arrival examination in Japan Customs is as follows.

Type of cargoes covered

The pre-arrival examination can be applied to all types of imported cargo. The cargoes which benefit most from the use of the pre-arrival examination are those in need of quick processing.

Documents to be submitted

In order to use the pre-arrival examination, importers need to submit a pre-arrival declaration to customs, using the same form as a general import declaration form.

Documents to be attached to a pre-arrival declaration are the same as the documents attached to a general import declaration, unless the Director-General of customs decides some of them are unnecessary at the time of the pre-arrival declaration. The items to be entered in a pre-arrival declaration form are the same as the items to be filled in the import declaration form, unless the Director-General of customs decides some of them are unnecessary at the time of the pre-arrival declaration.

Timing of submission

Importers can submit a pre-arrival declaration at any time after the Bill of Lading (Airway Bill in the case of air cargo) related to the declared cargo is issued, and after the foreign exchange rate for the scheduled date of import declaration is announced.

Import declaration

When the cargo arrives and all requirements are met for the import declaration under the Customs Law, such as the completion of procedures required under other laws and regulations, importers inform customs of their intention for a formal import declaration, together with all the necessary items or documents with a deferred submission at the time of the pre-arrival declaration. Then customs treat the pre-arrival declaration as a formal import declaration, after confirmation, and provide immediately an import permit as long as physical examination is not required.

Source: WTO



SUMMARY OF THE KEY POINTS

- ☑ In this chapter you learned the definition and scope of the pre-arrival declaration procedure.
- ☑ You learned that the pre-arrival procedure can be used to expedite the release of imported goods on arrival, thereby reducing port or terminal costs and charges you may incur as a result of customs processing delays.
- ☑ You learned the practical steps you should take if you wish to use the pre-arrival procedure:
 - Obtain and review your customs administration's regulation or instruction on use of the pre-arrival declaration procedure;
 - Collect and prepare the goods declaration and supporting documents as soon as the information becomes available to you; and
 - Submit the declaration and documents to Customs as soon as possible in advance of arrival of the goods, but not earlier than the time period prescribed by the regulation.



PRACTICE EXERCISES

Indicate whether the following statements are true or false

	True	False
1. Pre-arrival processing procedures expedite the release of your goods by allowing Customs to check your declaration and assess duty and tax before the goods arrive.	<input type="checkbox"/>	<input type="checkbox"/>
2. Pre-arrival procedures extend to both the import declaration, submitted by the importer or customs agent, and cargo or manifest declarations, submitted by the carrier or shipping agent.	<input type="checkbox"/>	<input type="checkbox"/>
3. If you fully comply with the pre-arrival declaration procedures set out in your national rules, Customs will be required to release your goods before they arrive.	<input type="checkbox"/>	<input type="checkbox"/>



QUESTIONS FOR DISCUSSION

What conditions are placed on use of the pre-arrival procedure?

For customs control purposes, there may be a variety of conditions placed on this procedure. Governments may limit the period in advance of importation during which the documentation may be submitted (for example, deeming invalid a pre-arrival declaration if the goods do not arrive within 30

days). Customs may deem a pre-arrival declaration invalid or, alternatively, may allow amendment under some conditions if there is a change in declaration data prior to arrival. In some countries, additional documentation requirements may be applied (for example, submission of documentary proof that the goods were shipped aboard the exporting carrier).

Under the rules in your country, what limitations or conditions does Customs impose on the use of the pre-arrival declaration procedure? In your view, are these rules consistent with your commercial requirements? Is it easy or difficult to comply with these conditions?

What improvements in the rules do you think should be made to better facilitate the use of the procedure?

2. Separation of release from final determination of customs duties, taxes, fees and charges

Objectives

By the end of this chapter, you will be able to:

- Determine when the procedure for release prior to final determination of duty, taxes, fees and charges may be relevant and useful to you;
- Determine how you can request the procedure.

What does this measure require the government to do?

Where there is a delay in Customs determination of the duty, tax or other charges on imported goods, this measure will require that Customs release the goods, provided that the relevant regulatory requirements are met.

As a condition for release of the goods prior to final determination and payment of duty and tax, Customs may require that the importer pay a portion of duty and tax that has been determined and provide a guarantee for the rest or to simply provide a guarantee for the entire amount.

The measure also includes rules on Customs use of guarantees:

- The guarantee amount shall not be greater than the amount of tax and duty at stake;
- Where violations are detected, the guarantee can include an amount for penalties or fines; and
- Customs shall discharge the guarantee as soon as it is no longer required (i.e., the importer has paid the duty and tax determined by Customs).

How will this measure benefit me and my business?

You will be able to move your goods more quickly through the port.

- Like pre-arrival processing procedure, this measure is intended to reduce unnecessary delays at the border.
- The particular delays that are the focus of this measure are those that arise out of Customs duty assessment, which requires determination of the appropriate tariff classification, customs valuation and country of origin of the goods. These can be difficult and time consuming questions to resolve, and they often require you to collect and present additional documentation. However, because the resolution of these issues does not require the goods to be present (or if so, Customs can take a sample), the consignment can be released to you once Customs determines

that the goods can be admitted into the country (that is, the goods are not prohibited and you have presented any required licenses or permits).

You can reduce port and terminal charges.

- Because Customs needs to only verify whether the imported goods can be admitted in order to release them, you will avoid the costs of holding or storing goods at the port or terminal until the completion of all customs processing steps, particularly the time-consuming duty-assessment verification and collection procedures.

You will be able to better predict your delivery times.

- This measure reduces the possibility that goods will be delayed at the border for customs verification purposes. This means that you will be able to better predict when the imported goods will be available to you for distribution, use or manufacturing purposes.

The costs of a bank guarantee to use the procedure will be limited and predictable.

- If you choose to use this procedure, and get your goods released from Customs before the final determination and payment of duties and taxes, you may be required to provide a guarantee. The amount of the guarantee is limited to the amount of duty and tax payable (plus the amount of any fine, if a violation is found), and must be discharged by Customs as soon as the process is complete.
- These legal limitations on the amount of the guarantee should limit the costs the bank may charge you for provision of the guarantee.

What do I need to do to take advantage of this measure?

1. Ascertain the terms/conditions for use of the procedure in your country.

Familiarize yourself with the terms and conditions of the procedure, which should be published in Customs regulations, instructions or circulars. This procedure is sometimes called a 'provisional assessment', 'provisional release', 'incomplete declaration' or 'provisional declaration' procedure.

The customs rules should define or explain:

- The legal conditions under which the procedure can be used;

For example, under the customs rules of certain countries, the procedure may be used both (i) where the importer or exporter does not have all documents required for assessment at the time of clearance and (ii) where the importer or exporter presents all documents, but Customs requires additional time to complete its verification. Some countries may allow the procedure only in the latter situation but not the former.

- The required form and manner to request release under the procedure;

For example, the rules may require that you submit a particular declaration form to Customs (for example, a 'declaration for provisional release'), or they may require the same declaration form as the normal procedure but a different set of data. Or it may simply require that you make a written or oral request to a particular officer.

- The form of guarantee that you must provide and the amount;

Typically, a guarantee is required to ensure payment of duty that will be ultimately determined. The required form of the guarantee may be a bank guarantee, a cash deposit or a surety bond.

The amount of the guarantee depends on local rules. For example, you may be required to pay an amount of duty that Customs determines is likely to be owed on the consignment, and provide a guarantee to cover any additional amount that is in doubt (for example, where the consignment includes

multiple items and Customs is certain of the tariff classification and valuation of some but not all of them). Alternatively, you may be permitted to obtain release of the goods without payment under a guarantee for the full amount that Customs determines might be owed.

- The period of time in which the customs processing must be completed, and the consequences if not done so.

Customs rules will define when customs processing must be completed following provisional release, such as 90 days or 4 months, and when extensions might be allowed, if any. These will also define what duty and tax will be collected by Customs if processing is not completed within the required period. Often, the consequence is that the amount of the guarantee is taken by Customs as final settlement.

There may also be requirements concerning the payment of interest on the duty and tax not deposited at the time of release.

2. Determine reasons for delays in release of your goods.

The measure allows for release of goods only in cases where Customs determination of the amount of duty and tax owed is not made 'prior to, or upon arrival, or as rapidly as possible after arrival.'

Accordingly, if there is a delay in release, it is important to find out the reason. The procedure applies only where the reason for the delay is related to duty and tax assessment, such as tariff classification, customs valuation or origin of the goods.

If the delay is due to issues other than duty and tax - for example, other border authorities may have stopped the goods, or customs may have questions whether the goods require a license or permit – then the procedure does not apply.

3. If the delay is related to tax or duty assessment or verification, request that Customs release the goods under guarantee.

Typically, this procedure is applied at the discretion of the importer. Thus, you must request that Customs release the goods. As noted above, how that request must be made should be defined in the customs regulations.

4. If required to do so, pay the partial duty and tax owed as determined by Customs.

As noted above, rules may require you to pay duty and tax on those items in the consignment where Customs has no doubt about the assessment, and provide a guarantee for the balance.

5. Ask Customs what security must be provided and what amount.

Subject to the requirement that the amount of the guarantee should not exceed the duty and tax payable (plus any penalty, if there has been an offense). Customs will decide the appropriate amount of the guarantee you must provide to obtain release.

6. Provide Customs with any additional documents/information requested as required to finalize duty and tax.

As noted above, customs rules typically require any documents or information missing at the time of release of the goods to be submitted to Customs within a specified period of time following release. Under rules of some countries, this submission is to be made in a prescribed form, such as a 'supplementary declaration.' You should ensure that any such documents or information are provided within the prescribed period (or a request for an extension, if allowed, is made) and in the prescribed form.

7. After you pay the duty and tax determined by Customs to be owed, request that Customs cancel/discharge the security you provided.



SUMMARY OF THE KEY POINTS

- Where there is any delay in release of your goods at the border for reasons related to duty assessment (e.g. disputes concerning tariff classification, customs valuation, duty preferences or exemptions), you may have the goods released under guarantee, and settle the issue with Customs later.
- The procedure will reduce the time and expenses you may incur holding imported goods at the port or terminal pending resolution of customs payments issues. Your delivery times will be more predictable. And, the measure restricts the amount of guarantee that Customs can require for your use of this procedure thus limiting your bank charges.
- To take advantage of this procedure, you should
 - Familiarize yourself with the customs regulations or instructions in your country concerning use of the procedure;
 - If your goods are delayed at the border for reasons related to duty assessment (or, depending on rules in your country, you are not able to submit complete documents required for assessment purposes), request release under guarantee in the form and manner described in Customs regulations/instructions;
 - Provide a guarantee in the amount determined by Customs;
 - Submit any documents/information missing at the time of release and/or as requested by Customs, within the specified time period;
 - On notification by Customs, pay the final amount of duty and tax determined by Customs to be owed, and request cancellation of the guarantee.



PRACTICE EXERCISES

Indicate whether the following statements are true or false-

- | | True | False |
|--|--------------------------|--------------------------|
| 1. To obtain release of your goods under this procedure, Customs can require that you provide a bank guarantee or a cash deposit to cover the potential duty or tax. | <input type="checkbox"/> | <input type="checkbox"/> |
| 2. You import food products. You submit to customs authorities an import declaration and all supporting documents, other than the food safety certification from the foreign exporter required by your national health authority, which you expect to receive in 2 days. You should be allowed to use this procedure to obtain release of your goods pending receipt of the certificate. | <input type="checkbox"/> | <input type="checkbox"/> |
| 3. It is not necessary to check the customs rules/regulations before you apply to Customs to use this procedure, it is the same in all countries. | <input type="checkbox"/> | <input type="checkbox"/> |



QUESTIONS FOR DISCUSSION

How broadly will Customs apply this two-step procedure? Will it allow goods to be immediately released on arrival under guarantee in all cases? Or will it be limited to the exceptional case where release is delayed?

In the words of the WTO member who proposed this measure, this is ‘one of the most truly ‘trade facilitating’ proposals’ with the ‘potential to create significant savings for Members in terms of both time and costs.’⁷ Despite this, whether this measure actually fulfils that potential depends on how your country chooses to implement it.

For example, this measure may be implemented to allow goods to be released to the importer on request in those situations where the particular import transaction involves questions that Customs determines will require time to resolve. Under this implementation, the procedure would be available as an exceptional case.

On the other hand, a country might implement this measure more broadly, consistent with its intended purposes. It might allow immediate release of imported goods under guarantee in all cases once their admissibility has been determined, with subsequent assessment and payment of duty and tax. This is a more facilitative implementation option which might be permitted, for example, to all importers who can provide the required guarantee and financial reliability. Alternatively, this level of facilitation might be limited to those importers who qualify as ‘authorized traders’ (see ‘Additional Facilitation for Authorized Operators’).

3. Additional facilitation for authorized operators

Objectives

By the end of this chapter, you will be able to:

- Explain the purposes and benefits of authorized operator status;
- Determine how to assess whether you should apply for authorized operator status.

What does this measure require the government to do?

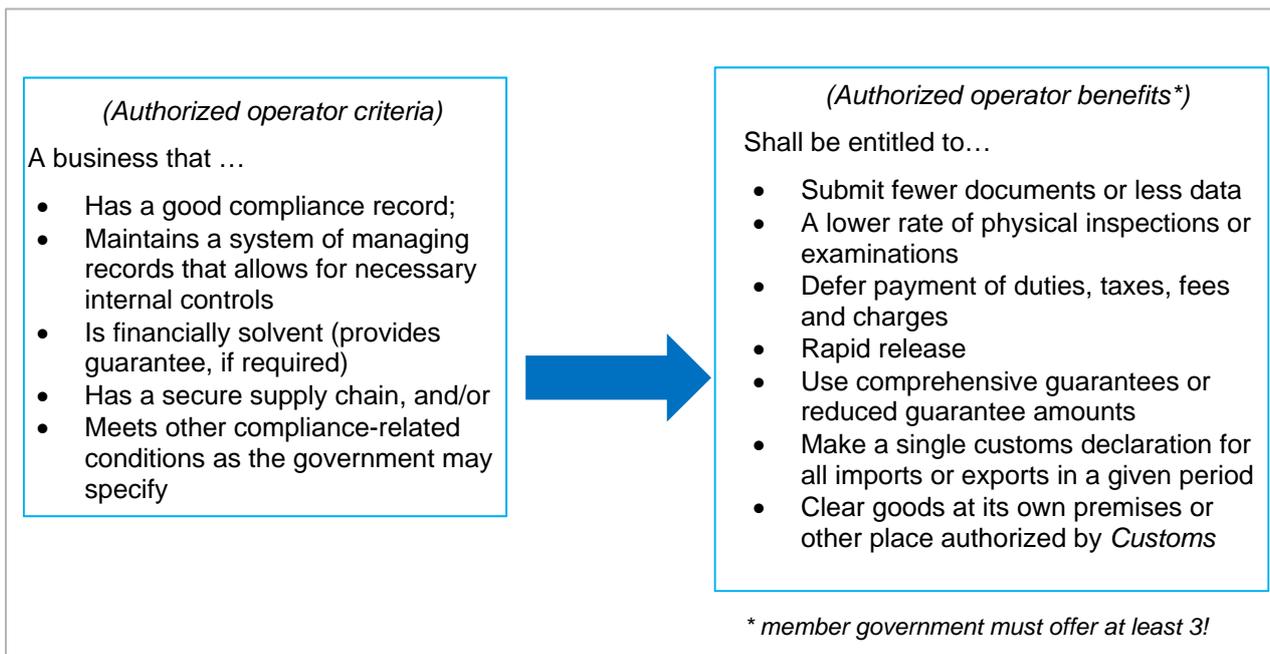
Member governments shall provide ‘additional trade facilitation benefits’ to businesses that meet certain ‘criteria.’

Member governments shall publish their eligibility criteria. These criteria must not, as far as possible, exclude possible participation of SMEs in the authorized trader programme (by strict financial requirements, for example) and should not result in unjustifiable or arbitrary discrimination between operators where the same conditions prevail.

Member governments are encouraged to develop their authorized trader programmes on the basis of relevant international standards.

Member governments are encouraged to negotiate mutual recognition of authorized operators with each other, such that a business that obtains authorized operator status in one country would receive the same benefits in the other country.

⁷ TN/TF/M/13 (15 May 2006) (statement of Canada).



Box 10. Authorized operator benefits – best practices

According to WCO, the benefits provided under authorized trader programs must be “meaningful, measurable and reportable” in the sense that it can be clearly demonstrated that authorized traders receive greater facilitation than non-authorized traders. Both government and business have an interest in success of these programs and therefore should ensure that the benefits are sufficiently worthwhile to encourage participation.

Many businesses consider the possibility of “mutual recognition” to be an important benefit of authorized trader programs, particularly for an efficient transit system at the regional level. To enable this mutual recognition, governments and businesses may wish to ensure (as the Agreement suggests) that the design of their authorized operator program accords with the international standards, and is harmonized with those applied by partner countries, if they exist.

How will this measure benefit me and my business?

If you qualify as an authorized operator then;

- **Your import and export transactions will be subject to fewer customs checks, reducing the time and cost of border clearance.**

Authorized operators are those businesses that have a proven history of compliance with customs rules and are more likely to present a lower risk of future violations; therefore they do not require the same level of control as compared to operators who have committed errors or who are unknown to Customs.

If you qualify as an authorized operator, you can expect to generally receive ‘green channel’ treatment from Customs. That is, with the exception of occasional random checks, your import and export transactions should generally pass through Customs without any documentary or physical controls.

- **You may be able use simplified procedures to clear your goods, with fewer customs formalities, to further reduce time and cost of customs processing**

The Agreement requires member governments to offer at least three facilitation benefits from the list above to authorized operators. This list of benefits includes the possibility to clear goods on the basis of simplified documents (for example, goods may be released on presentation of the bill of lading or a simplified declaration) or to allow you to take the imported goods directly to your premises or a warehouse from where you would then declare and clear the goods.

Your government might provide other simplifications to qualifying businesses in addition to those on the list above, such as a faster lane or window for declarations by authorized operators or a dedicated lane for authorized operator transit traffic or, if selected for control, prioritization in terms of the processing of data or inspections.

- **You may have more flexibility in how you pay customs duties and taxes.**

Your government might also offer certain payment-related simplifications to authorized operators, such as comprehensive guarantees (one guarantee used to cover multiple transactions) and periodic declaration (one declaration – and one payment – to cover all goods imported over a prior period of time, such as a month).

The payment simplification of perhaps greatest value is deferral. This would allow a business to pay customs duties and taxes some period of time after the goods have been released, often without payment of interest.

- **You will receive the same preferential treatment by the customs authorities in other countries with whom your government has reciprocity agreements.**

Your government may enter into an agreement with another country whereby the two agree to recognize and provide benefits to each other's authorized operators.

Under such an arrangement, if you obtain authorized operator status in your country, then you will receive the same or similar authorized operator benefits in the other country as well, without the need to undergo again the time and expense of qualification in that other country.

Reciprocity would allow you to be treated as a low-risk trader in both countries so that your goods would be subject to a lower rate of inspections by customs authorities both when exported from your country and when imported in, or transited through, the partner country, as they are coming from a trusted source.

- **You may realize reputational benefits that result from public certification as an authorized operator.**

When a country designates a business as an authorized operator, it essentially certifies that that the business is trusted and reliable. This recognition is often done in a public way, such as through publication on the customs administration website. This 'seal of approval' increases a company's marketability and overall brand equity, possibly leading to further business opportunities.

Figure 6. Hong Kong authorized economic operators

The screenshot shows the website of the Customs and Excise Department of the Government of the Hong Kong Special Administrative Region. The page is titled 'List of Hong Kong AEOs (in alphabetical order)'. The list of authorized economic operators (AEOs) is as follows:

- ▶ Asia Airfreight Terminal Company Limited
- ▶ Canon Hongkong Company Limited
- ▶ DHL Global Forwarding (Hong Kong) Limited
- ▶ Essence Metal (Asia) Company Limited
- ▶ Federal Express (Hong Kong) Limited
- ▶ Fortune Pharmacal Company Limited
- ▶ Fuji Xerox (Hong Kong) Limited
- ▶ IBM China / Hong Kong Limited
- ▶ Kerry Freight (Hong Kong) Limited
- ▶ KerryFlex Supply Chain Solutions Limited
- ▶ Lee Fung Metal Company Limited
- ▶ Lee Kee Metal Company Limited
- ▶ Lee Sing Materials Company Limited
- ▶ Lee Kum Kee (Hong Kong) Foods Limited
- ▶ Lee Kum Kee International Holdings Limited
- ▶ Lee Kum Kee (International) Trading Limited
- ▶ MOL Logistics (H.K.) Limited
- ▶ Molex Hong Kong / China Limited
- ▶ Murata Company Limited
- ▶ NNR Global Logistics (Hong Kong) Limited
- ▶ Richemont Asia Pacific Limited
- ▶ Sea-Air Logistics (Hong Kong) Limited
- ▶ Simmons Bedding & Furniture (HK) Limited
- ▶ Sony Corporation of Hong Kong Limited
- ▶ Sony Supply Chain Solutions (Hong Kong) Company
- ▶ The Janel Group of Hong Kong Limited
- ▶ Tradeport Hong Kong Limited
- ▶ UPS Parcel Delivery Service Limited

What do I need to do to take advantage of this measure?

1. Determine whether your business is eligible to apply for authorized operator status.

Persons eligible to apply for authorized operator status should be defined in the customs regulations of your country.

Generally, these programmes are open to any member of the trade community at large - importers, exporters, manufacturers, customs agents, freight forwarders and carriers – that is, any person or entity involved in import, export or transit operations. However, the more frequent or extensive the contact with Customs, the more useful the programme will be to you.

Applicants are generally required to be established in the country; that is, citizens, residents or legal entities registered in the country.

2. Determine what benefits are offered to authorized operators in your country as well as other countries as part of mutual recognition.

The authorized operator programme is voluntary; you choose whether you wish to participate or not. In making that decision, you should first determine what benefits might be available and useful to you.

The potential benefits should be published by your (and partner) government. These will likely appear in the form of a Customs regulation or other official notification and may appear on the customs website.

If you have difficulty in finding information about your government's authorized operator programme, you can contact the trade enquiry point for the list of authorized operator benefits.

3. Determine your compliance with Authorized Operator criteria (internal self-assessment).

Before going forward with the application, you should review the requirements and procedures to obtain authorized operator status and verify whether you can comply or what gaps would have to be resolved in order to meet the criteria. These requirements will also be published by the member government in the same manner as the benefits (likely, in the same regulation and notice!).

Typically, these requirements and procedures will require that;

- You demonstrate consistent compliance with customs rules over a prior period of time (e.g., 3 or 5 years) by, for example, no serious or repeated customs violations;
- You can show that you have established in your business the internal controls and systems that ensure your continued compliance with customs rules and the ability to detect and report any violations;
- You demonstrate financial solvency (e.g., you are not subject to bankruptcy; you have made complete and timely payment of customs duties and taxes over time);
- You have implemented in your business the accounting and recordkeeping systems that permit customs audit controls (e.g., an audit trail for imported and exported goods and related payments);
- You undergo a Customs audit to verify your application for authorized operator status.

4. Assess whether the benefits provided justify the time/cost of certification.

In determining whether to apply for authorized operator status, you should weigh the investment in time and expense you and your staff will be required to make to obtain and keep authorized operator status against the potential benefits you might receive.

Potential costs

- Application and documentation preparation
- Internal compliance review
- Customs site verification
- Rectify gaps in systems/controls
- Maintain and monitor internal controls and systems

Potential benefits

- Faster clearance
- Use of simplified clearance procedures
- Use of payment simplifications
- Enhanced reputation

Subject to the accommodations that your government should provide to SMEs, the certification process can be detailed, intensive and time-consuming. It typically requires you to complete and submit a detailed application describing your customs related business, accounting and compliance controls

systems; provide supporting documents, such as accounting and financial statements and undergo a customs on-site verification.

Figure 7. UK customs authorized economic operator application

The image shows a stack of 'AEO-Self Assessment Questionnaire' forms from HM Revenue & Customs. The top form is clearly visible, showing sections for company information, legal form, and details of the responsible person. The forms are slightly offset to show multiple copies.

HM Revenue & Customs
AEO-Self Assessment Questionnaire

0.1
Please note: It is recommended that you read the European Commission's Authorized Economic Operator (AEO) Guidelines, TAXUD/0472011-REV3 before applying for AEO status (you can access this via the European Commission's Europe website).

0.2
Which departments have you involved in the process to prepare your company for the AEO application including management?

Date of establishment

Legal form

1. Company information

1.1. General company information

1.1.1
State the name, address, date of establishment and legal form of the organisation of the applying company. Please include the URL of your company's website, if applicable

Name

Address

Website

If your company is part of a group, indicate if there are any other entities in the group:

a) already have an AEO certificate
No Yes

b) have applied for AEO status and are currently undergoing an AEO audit by a national customs authority
No Yes

1.1.2
Give the following details (if they apply to the legal form of your company):

a) Full details of the main shareholders including percentage shareholding held

b) Full details of the board members and/or managers

c) Full details of advisory board, if any and board of directors.

In the UK you need to supply the name(s) and NI number(s)

Details should include: full name and address, date of birth and National Identification Number (for example, National ID Card number or National Insurance number)

1.1.3
Indicate the name of the person responsible for customs matters in the applicant's administration in the UK (you need to supply the name(s) and NI number(s))

Details should include the full name and address, date of birth and National Identification Number (for example, National ID Card number or National Insurance number)

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If you import or export only occasionally, or your goods are consistently released and subject to few customs interventions because of their nature (such as duty-free, non-restricted goods), you might find that the costs of obtaining certification may not justify the expected benefits.

5. Prepare and submit an application to Customs.

The application form and instructions for its completion should be available from Customs, usually on its website.

6. Designate responsible person to oversee application.

Customs will typically require that you designate a contact person to whom they can direct questions and requests for information. The nominated point of contact should have sufficient authority and expertise within your business to collect and coordinate the necessary information and responses to Customs queries.

7. Cooperate with Customs in its verification/investigation of your application and in resolution of gaps.

8. If awarded authorized operator status, monitor and maintain your company's on-going compliance with authorized operator criteria.



SUMMARY OF THE KEY POINTS

- A business that is awarded authorized operator status receives trade facilitation benefits not available to other firms, such as faster clearance of goods, ability to use simplified procedures and possibility to defer payment of duty and tax.
- To obtain authorized operator status, you must apply to Customs and demonstrate that you meet selection criteria related to your historic level of compliance and reliability as a trader.
- Eligibility criteria and the potential benefits available to authorized operators will be published by your customs administration; these should be reviewed and assessed carefully to determine whether the costs of application justify the facilitation measures you might obtain in your particular circumstances.



PRACTICE EXERCISES

This measure lists seven 'benefits' that may be made available to businesses that qualify as 'authorized operators.' If you were to qualify as an authorized operator, which benefits from this list would be most important to you? Please choose 3 and list them below in the order of their importance to you (and be prepared to explain your choice!).

The most important trade facilitation benefits that can be offered to an authorized operator:

1. _____
2. _____
3. _____

Are there any other trade facilitation benefits important to you that Customs or other border authorities could provide and are not included in the list of 7? What are these?



QUESTIONS FOR DISCUSSION

- What are the authorized operator eligibility criteria and qualification procedures? How can they be best designed to allow SMEs to participate?

A criticism of some existing authorized operator programmes is that while they are neutral on their face, they do not allow the participation of SMEs as a practical matter, and that only larger or multinational companies can qualify. It may be that the qualification criteria (e.g. financial or record-keeping and reporting requirements) or the qualification process (which may involve Customs on-site reviews, pre-qualification audits or demands for documentation) is too burdensome or costly for businesses with limited resources.

- How do you think Customs could design its authorized trader programme to ensure that smaller compliant businesses will not be excluded?

4. Single window

Objectives

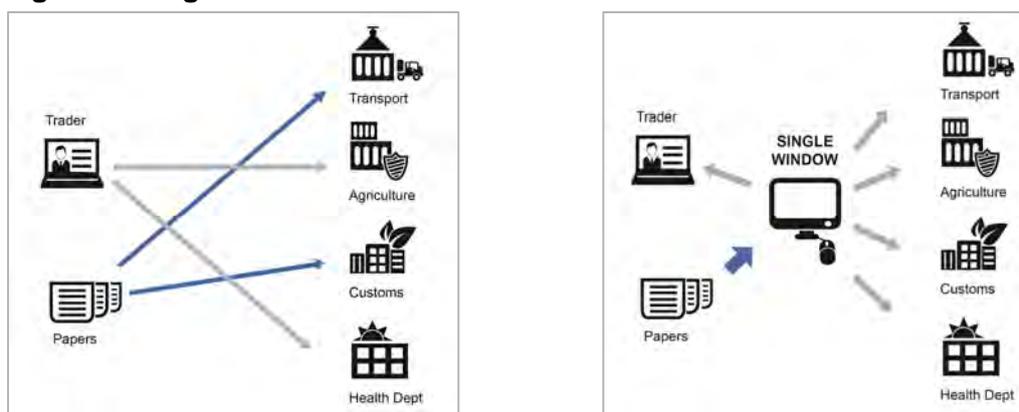
By the end of this chapter, you will be able to: explain the purposes and trade facilitation benefits of a single window.

What does this measure require the government to do?

Member governments shall endeavor to establish or maintain a single window.

A single window is a 'single entry point'⁸ where a business submits the information and documents required for import, export or transit by different border authorities – such as the customs, plant and animal quarantine, food safety and licensing authorities. When the different authorities process the information and documents, they return their response to the business through the same single window interface.

Figure 8. Single window scheme



⁸ U.N. Economic Commission for Europe, Recommendations and Guidelines on Establishing a Single Window: Recommendation No. 33 (2005)(single window allows "parties involved in trade and transport to lodge standardized information and documents with a single entry point to fulfill all import, export, and transit-related regulatory requirements").

How will this measure benefit me and my business?

You will be able to submit all information and documents required by different border authorities to one place or system, instead of making multiple submissions to multiple places/systems.

- In the absence of a single window, a business must approach each border authority separately – often physically at different offices or locations - and provide the information or documents that each authority requires using that authority’s particular forms, procedures and systems.
- A single window will allow businesses to submit all information and documents at one time to one place using one system. Information submitted to the single window can be exchanged or made accessible to all of the relevant government authorities for processing (or processed by the single window system itself), which eliminates the need for the business to make multiple submissions of the same information or documents. The authorities’ response(s) can be returned to the applicant via the same single entry point.

Box 11. Benefits of (automated) single window system - Senegal’s experience

- Offers traders the convenience of a single form, submitted electronically, replacing numerous steps and procedures.
- Reduces customs document collection and clearance times and costs as manual processes, document handling, and signatures are replaced by automatic electronic processes.
- Reduces corruption in customs clearance procedures by eliminating human interactions, allowing files to be traced and performance standards instituted.
- Improves the efficiency of government revenue collection due to increased duty and tax payment compliance among traders and decreased corruption.
- Provides clear and accurate trade data for policymaking.
- Increases the use of information technology at public agencies.
- Improves the trade and investment environment as transactions become more efficient, transparent, and predictable.

Source: World Bank Group/IFC (2010)

Documentation and information requirements of different authorities will be simplified and streamlined, reducing the time and cost incurred by business.

- Often, a business is required to submit the same piece of information or the same document to a number of different border authorities in order to clear imported or exported goods. For example, customs and quarantine typically require the transport document, or different authorities may require businesses to repeat the same information in their particular forms. This multiplicity of overlapping and redundant information requirements can be a significant cost on business, and can be itself a cause of delay.
- A single window project is typically implemented as part of a larger strategy to coordinate and rationalize more closely the activities and requirements of the different border authorities. Implementation of a single window would normally include definition of a single set of documents and harmonized data elements that could be shared and used by all the participating authorities based on, for example, the WCO data model.

Box 12. WCO recommendation - single window and data harmonization

It is recommended that governments considering the development or developing a Single Window environment should initiate the data harmonization and standardization process...

These guidelines set forth the steps governments should implement in the harmonization process as follows:

1. Identify the lead agency and dedicating staff to conduct the harmonization,
2. Inventory current trade agency data and information requirements from automated systems and forms,
3. Nationally harmonize data and information inventory
4. Identify redundancies by comparing data definitions
5. Harmonize the information and data requirements inventory to the international WCO Data Model standards.

Source: WCO Data Model: Single Window Harmonization (2007)

- Apart from saving you time in making and submitting multiple copies or entering the same information in different systems, harmonization and simplification of the different border authorities' information requirements reduces the possibility of clerical errors and transcription mistakes, and any consequential delays to make corrections or penalties for unintended document errors.

The import and export procedures of the different border authorities will be harmonized.

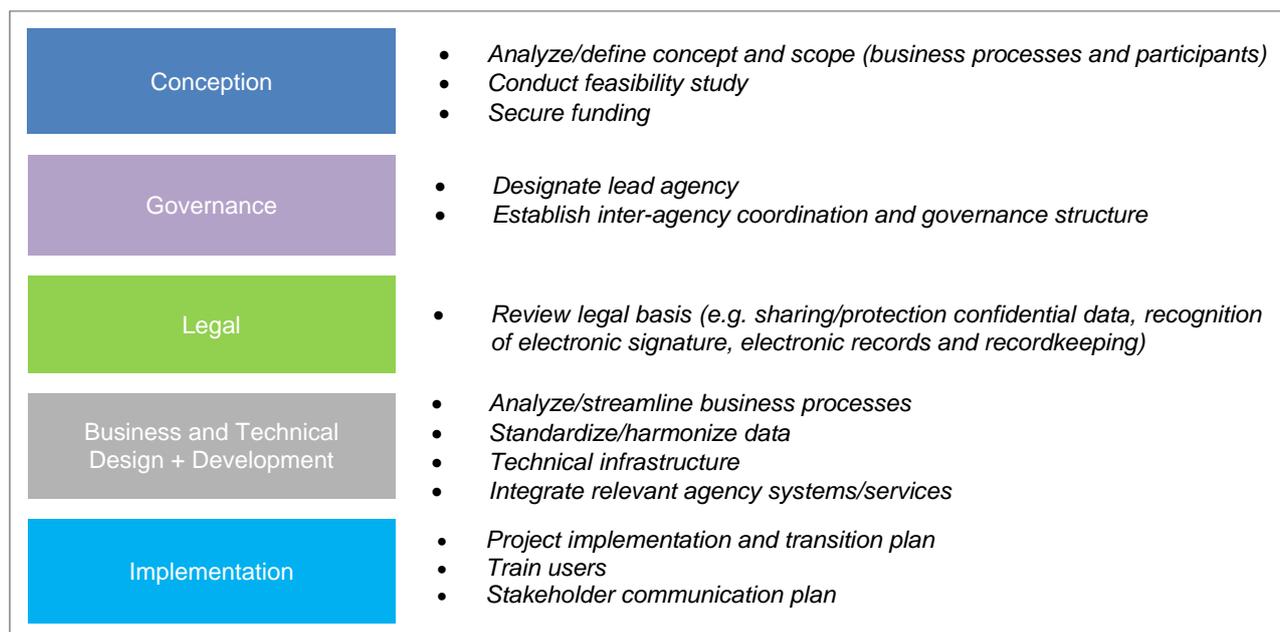
- From a government perspective, a single window provides technical means to share information, such as a common risk and selectivity system, and coordinate their control activities, such as physical inspections of imported or exported goods. This coordination among control authorities reduces complexity, time and costs for businesses in clearing goods.

What do I need to do to take advantage of this measure?

1. Participate in the design, development and implementation of the single window

Implementation of a single window is a complex project involving legal, policy, political and technical aspects, with multiple stakeholders in private and public sector, and potentially significant implementation costs and time frame.

As a primary user and beneficiary of the system, it will be important for the business community to provide input in all key stages of the project, from conception and design to development, roll-out and operation, in order to ensure that your requirements are known and taken into account.

Figure 9. Single window implementation – illustrative tasks*

*Source: Apostolov, Step-by-Step Establishment of a Single Window: The Need for Interagency Cooperation and a Master Plan, Key Role of International Standards (presentation) (2012)



SUMMARY OF THE KEY POINTS

- Member governments must endeavor to establish a single window system; that is, a single entry point where a business can submit all documents/data required to meet import or export requirements of different border authorities, and from which the business will receive a response.
- Once implemented, a single window system may allow businesses to make one submission to one place at one time to meet all requirements of all border authorities for import or export of goods, eliminating the time and cost incurred by business in making multiple and duplicate submissions to various offices/systems.
- As a consequence of a single window project, data/documentation requirements of different authorities and border control procedures may be rationalized, streamlined, and coordinated, which will further reduce costs of multiple/overlapping requirements to business.
- You should participate in the design, development and implementation of your government's single window system to ensure your requirements are met.



PRACTICE EXERCISES

Please watch the following video on Single Window

Figure 10. UNNExt single window (video)



<https://www.youtube.com/watch?v=bycfR-dt4bE&feature=youtu.be>

This video describes a number of benefits that a single window can provide the private sector. Note some of the benefits to the private sector here:

The video also mentions benefits to the government that can be obtained through implementation of a single window. Note some of those benefits to governments here:

5. Disciplines on fees and charges

Objectives

By the end of this chapter, you will be able to:

- Explain the purposes and trade facilitation benefits of restrictions on fees and charges;
- Find information on fees and charges.

What does this measure require the government to do?

In addition to duties and taxes, customs and other border authorities may charge fees for specific services they provide on or in connection with import or export of goods. For example, these fees and charges might include customs fees for clearance of goods outside normal business hours; port or land border authorities' fees for storage or parking; and quarantine authority's charges for testing or fumigation.

The Agreement will require member governments to:

- Publish all such fees and charges 'in accordance with Article 1' (that is, in an 'easily accessible manner'), including information about the reason for such fees, to whom they must be paid, and how payment is to be made;
- Provide an 'adequate' delay or transition period between publication and date of entry into force of any new fee or change to existing fees, except in cases of 'urgent circumstances'; and
- Review their fees and charges periodically in order to reduce their number and diversity, where practicable.

In addition to these general disciplines on fees, the Agreement imposes limits on the amount of a 'customs processing' fee. This customs processing fee is charged by certain customs administrations ostensibly for the purpose of recovering their costs of providing services to traders in connection with processing import, export or transit declarations.

Under the agreement, the amount of any such customs processing fees and charges may not exceed the 'approximate cost' incurred by Customs in providing the service.

How will this measure benefit me and my business?

You will be able to find more easily reliable information about fees that you will be charged in connection with your import or export transactions.

- The main benefit of the measure is greater transparency. Member governments will be required to publish information to enable businesses to determine when they will be subject to fees or charges in connection with imports and exports, the amount of any such fees or charges, and to whom they must be paid.
- This information allows you to better determine your border costs when importing from foreign suppliers, as well as such costs in your potential export markets.
- Recall that Article 1 requires member governments to publish their import duty and taxes. Taken together, that measure and this one will thus require member governments to publish their taxes, duties, fees and charges, providing you with a complete picture of your border related costs.

You will be forewarned about any new fees or changes to existing fees, and will be able to plan your costs with greater certainty.

- Member governments must provide an adequate time period between publishing any changes to their border fees and charges and their entry into force, except in urgent circumstances.
- With this advance warning of changes, you will be able to calculate your costs of importation and exportation with greater certainty.
- The customs processing fees will be limited to cost of services rendered and the agency will not be able to use it as a source of revenue
- The measure allows Customs to charge a fee for processing your import or export declaration, but the amount of any such fee must be limited to the approximate costs Customs incurs in providing that 'service.'
- One important benefit of this rule is that you should not be subject to customs processing fees that are based on value, such as customs fee of 1% of the value of imported goods. Such ad valorem-based fees result in charges which can greatly exceed the cost of the service provided by Customs, where higher value shipments are concerned. For that reason, they are generally disapproved.
- Over time, multiple border-related fees and charges should be reduced in number and simplified in structure.

Box 13. Customs processing fees - examples

U.S. Customs Merchandise Processing Fee

- 0.3464% of the value of the imported goods, but not more than \$485 and not less than \$25

Australia Electronic Import Declaration Fee (Home Consumption)

- Consignment value more than \$1,000 but less than \$10,000:
 - Sea: \$50.00
 - Air/Post: \$40.21
- Consignment value more than \$10,000:
 - Sea: \$150.60
 - Air/Post: \$122.10

What do I need to do to take advantage of this measure?

1. Find out where the information is published by the government of the country in which you are interested.

This measure concerning publication of fees and charges is closely related to section.1 (Publication); the same steps as described under that measure are also applicable here.

As was suggested, it is expected that most member governments will publish the information on fees and charges on one or more government websites. Alternatively (or in addition to), some member governments may publish in official publications or newspapers.

We also suggested that, if you have difficulty locating the information on the member government websites, you may check the WTO website (www.wto.org) which will likely establish a special page and possibly links to this information.

2. Contact/monitor the source for the information.

If the member government publishes fees and charges on the government website, you will be able to access it directly with an Internet search or with the URL obtained from the WTO. Should the publication be in print form, you will likely need a local representative or local contact to get copies of the information for you or you may contact the official enquiry point for assistance (see following point).

Because member governments may make changes to their fees and charges, you should periodically contact the information sources of the countries that are of interest to you to ensure that you have the latest information.

3. Contact the official enquiry point for other assistance in getting the requirements.

If you are not able to find the information following the methods described above, you can contact the official enquiry point of the country of interest for assistance.

Information on how to contact this enquiry point (telephone number, physical address, and/or URL) will be published on the relevant government's website as well as the WTO website.



SUMMARY OF THE KEY POINTS

In this chapter you learned that member governments:

- Must publish, in an easily accessible manner, information about the fees and charges they assess on or in connection with imports and exports;
- Must give businesses and other stakeholders advance notice on any changes they make to fees and charges (or introduce new ones);
- Must limit the amount of any customs processing fees to the cost of the service provided; and
- Should periodically review and reduce the number and complexity of their fees and charges, where appropriate.

You learned that this measure provides businesses with access to reliable information with which they can calculate potential costs in importing or exporting. Moreover, it will restrict the amount of fees Customs can charge businesses for processing their import or export declarations.

Finally, you learned the practical steps you should take in order to find and monitor information on fees and charges.



PRACTICE EXERCISES

- 1. List the fees and charges that are assessed by your customs and other border authorities in connection with importation or exportation of your goods.

With respect to each such fee or charge, answer the following questions.

- Where is the information about the fee or charge published?
- What is the amount of the fee or charge?
- What is the reason for the fee or charge?
- To which border authority do you pay the fee or charge?

	Fee Name	Published in:	Amount:	Reason:	Paid to:
1.					
2.					
3.					
4.					
5.					
6.					
7.					

- 2. Does your customs administration assess a customs processing fee as described in this measure? If so, does the fee comply with the requirements of this measure? Why or why not?



QUESTIONS FOR DISCUSSION

- What role can businesses play in limiting border authorities' fees and charges?

This measure requires member government to review their border fees and charges periodically in order to reduce the number and complexity.

Are there mechanisms provided under this agreement that provide the private sector with means to ensure its participation in the review? In the context of the periodic review, what information or other support can business provide to the government to assist in it?

6. Use of copies of supporting documents for faster processing

Objectives

By the end of this chapter, you will be able to:

- Determine the purposes and trade facilitation benefits of using copies of supporting documents in customs clearance;
- Determine the conditions under which a copy can be submitted.

What does this measure require the government to do?

Customs and other border agencies should 'endeavor' to accept copies (paper or electronic) of supporting documents required for import, export or transit in lieu of the original, where appropriate.

If the importer or exporter submitted the original document to one member government authority, then any other member government authority which requires the same document shall accept a paper or electronic copy from the authority holding the original.

Finally, customs and other border authorities in the country of importation shall not require the importer to present the original or a copy of the declaration that was submitted to customs authorities in the country of export for the goods.

Box 14. Required supporting documents

- Seller's invoice
- Bill of lading/air waybill
- Freight insurance certificate
- Certificate of origin
- Packing list
- Import license
- Health, veterinary, and/or plant health certificates

How will this measure benefit me and my business?

You will be able to clear your goods more quickly through Customs.

- The requirement of an original of a supporting document in itself can delay the release of goods.
- For example, the agent making clearance may have received from the importer only a fax or PDF copy by email of the required document. However, at the time of clearance of the goods, Customs or another border authority may request additional documents that were not previously anticipated. In such cases, if the hard copy original is elsewhere, release can be delayed while the document is retrieved.
- These delays may be unnecessary where the authority can be assured that the electronic or paper copy is an authentic reproduction of the original.

You will be able to submit the original of a document required by different border authorities just once, and avoid the time and cost of resubmitting to each authority separately.

Any existing requirement to present the export declaration as a condition of import will be eliminated, saving you time and cost.

- In certain countries, customs administrations require the importer to present the declaration made by your foreign supplier to export the goods in order to cross check your import declaration, particularly the valuation information. This practice must now be eliminated, saving you the time and difficulty of obtaining this document from your supplier.

What do I need to do to take advantage of this measure?

1. Ascertain the particular terms and conditions on use of copies of supporting documents in your country.

Familiarize yourself with the requirements for use of copies of supporting documents. These should be published in the customs or other relevant border authority regulations or administrative instructions.

These may contain specific conditions on use of copies of particular documents that should be understood and observed. For example, a member government might:

- Allow use of copies based on the importer's general attestation as to authenticity of all documents submitted (and imposition of penalty liability if not);
- Allow use of copies provided that the importer holds the original and if needed, can produce it for audit purposes; or
- Allow submission of copies subject to the provision of the original within a specified period following release.

Box 15. Regulation on the use of copies of supporting documents - an example

The port director may accept a copy of a required commercial invoice in place of the original. A copy, other than a photostatic or photographic copy, shall contain a declaration by the foreign seller, the shipper, or the importer that it is a true copy.

Source: U.S. Customs Regulations

In addition, border authorities may not accept submission of copies of certain documents, such as certificates or permits issued by foreign authorities. These restrictions also should be set out in regulations or administrative instructions published by the relevant border authority. This refusal to accept copies of certain documents is not inconsistent with the agreement, which requires only that authorities 'endeavor' to accept copies 'where appropriate.'

2. Submit copy of the supporting document with the goods declaration in accordance with the prescribed procedure.



SUMMARY OF THE KEY POINTS

- ☑ Border authorities should accept paper or electronic copies of supporting documents required for import, export or transit in lieu of the original, where appropriate, and one border authority shall not require you to produce the original of a document that you previously presented to another authority.
- ☑ The terms and conditions under which you may use copies of supporting documents should be set out in your regulations or administrative instructions of customs and the other relevant border authorities.



PRACTICE EXERCISES

- How useful will this measure be to you?

Make a list of the documents you are required to present to Customs or other border authorities (in addition to the goods declaration) and indicate whether the original is always, sometimes, or never available to you at the time of clearance.

Supporting Document	Original Available?		
	Always	Sometimes	Never
1. _____			
2. _____			
3. _____			
4. _____			
5. _____			
6. _____			
7. _____			
8. _____			
9. _____			
10. _____			

- Of those documents that you listed in the table above, indicate with a check mark which you are required to present in original form to more than one border authority.



QUESTIONS FOR DISCUSSION

The right to submit a copy in place of an original document may be useful or necessary to support other trade facilitation measures that are provided under the Agreement.

For example, in section 1, you learned about the pre-arrival procedure, which allows an importer to submit the goods declaration and supporting documents to Customs for processing before the goods arrive, so that the goods might be released directly upon arrival or soon thereafter.

- Discuss how the right to use copies of supporting documents might be necessary to enable that pre-arrival procedure?
- Are there any other trade facilitation measures under this Agreement that you have learned about where the right to use of copies of supporting documents would be important?

7. Offering the option of electronic payment

Objectives

By the end of this chapter, you will be able to:

- Assess whether electronic payment of customs duties and taxes may be useful to you.

What does this measure require the government to do?

To the extent practicable, member governments shall adopt procedures to allow businesses the option to pay customs duties, taxes, fees and charges electronically.

How will this measure benefit me and my business?

An electronic payment option will allow you to complete customs clearance processing more quickly.

- Unless the business has the right to defer payment, customs duties and taxes are generally required to be paid before goods are released.
- Paper and manual processing is involved in cash payments: printing the bill; collecting the required cash amount; physical transferring the money to a bank or customs cashier; generating and presenting proof of payment and so forth. This is a source of delay and expense in release of goods.
- By eliminating these manual and paper processes, electronic payment reduces time and cost in customs clearance and release and offers less chances of bribery. Your payment and Customs confirmation of receipt can be made in a matter of minutes.
- The electronic payment option can particularly speed up clearance where the payment system is integrated with the customs declaration processing system; for example, on registering payment receipt, the payment system automatically generates a message to the declaration system to allow release of the goods.

Electronic payment systems can reduce payment errors.

- Electronic payment systems typically include validations and automated checks of the information that you enter. This reduces the possibility of unintended or other clerical errors which, in a manual system, would cost you or your customs agent additional time – including another trip to the customs office - to correct.

Electronic payments systems can make your recordkeeping easier.

- When you (or your customs agent) pay duties and taxes electronically, you will have an electronic record for your use in the future. If a question comes up about your payment, you will not have to sort through filing cabinets or stacks of paper, but can retrieve the information on your computer and respond right away.

Electronic payment eliminates travel and waiting times and provides greater security against theft, loss or corruption.

- Electronic payments can be made remotely by you or your customs agent from own offices at any time (24/7), eliminating the need and costs to travel and wait in lines at the customs cashier. Moreover, cash must be protected from fraud, theft and corruption, which requires a high level of security. Electronic payment eliminates manual handling of payments and thereby reduces the threat of these kinds of losses.

What do I need to do to take advantage of this measure?

1. Find out the terms and conditions, including any technical requirements, for use of the electronic payment system(s) designated for payment of customs duties and taxes.

Electronic payment can take a number of different forms, including:

- Online payment (or automated telephone payment) using a credit or debit card, smart card or electronic check;
- An electronic fund transfer (Internet banking services whereby a business directs funds to be transferred from its account to the Customs account);
- An automated debit or credit of the importer's bank account.

The e-payment system might be sponsored by Customs or there may be a general government (or tax authority) e-payment portal.

Depending on the form of electronic payment that your country implements, different rules/procedures may apply, such as:

- Rules on your responsibility and liability for payment errors;
- Time/date customs duties/taxes will be deemed paid for customs release purposes;
- Costs (bank fees for automated debit/credit transactions or credit card fees).

2. Assess costs/benefits of use of the designated electronic payment systems.

Assess whether the benefits of the electronic payment system (which we described above) justify the costs and restrictions that might be applied.

If you import only occasionally, for example, the electronic payment may not be useful.

3. Make application to Customs for any required prior approvals/authorizations from Customs

Before joining the electronic payment system, you will need to register or obtain an authorization from Customs. Use of the system may also require opening an account at an authorized bank or use of a credit or debit card by a Customs approved issuer.



SUMMARY OF THE KEY POINTS

- Member governments must offer importers and exporters the option of electronic payment of their import duties and taxes, if practicable;
- Electronic payment offers businesses the advantages of faster clearance (by avoiding manual/paper payment processes and associated wait times); automated checks to reduce the possibility of payment errors; easier recordkeeping; and less risk of loss, theft and corruption inherent in cash handling; and
- Various modes of electronic payment are technically available; you must weigh the costs and benefits of the system offered by your government.

8. Limits on mandatory use of customs brokers

Objectives

By the end of this chapter, you will be able to:

- Explain what limitations this measure imposes on member governments with respect to customs brokers;
- Investigate whether you should forego the use of a customs broker in your customs transactions.

What does this measure require the government to do?

From the date of entry into force of the Agreement, member governments shall not introduce the mandatory use of customs brokers. That is, a business may use a broker if it wishes, but cannot be required to do so by law.

(Note that this measure applies prospectively only; member governments are prohibited only from 'introducing' mandatory use of customs brokers. This measure would not affect existing legislation that makes the use customs brokers mandatory.)

Member governments must publish its measures concerning the use of brokers and any broker licensing rules must be transparent and objective.

How will this measure benefit me and my business?

It can save you costs in connection with customs processing of your imports and exports.

- You pay a fee to a customs broker to prepare and submit the goods declaration and other clearance documents to Customs on your behalf. This measure would allow businesses the possibility to make declarations on their own behalf, without using a broker, thereby saving the costs of brokerage fees.

It can provide you with greater control over your customs operations.

- Conducting your own customs transactions can give you greater control over your customs operations. You will not be required to share information with, transfer payments to, or depend upon a third-party to carry out your customs business.

It can provide greater efficiency in compliance with customs formalities.

- As you and your employees have the expertise in your own products, your supply chain, and your financing and payments, you and your employees may be able to prepare import documents with greater efficiency and accuracy than a third party who may be a stranger to your business (assuming your employees also have some expertise in customs documents and processing). This might reduce duty assessment and import compliance errors, particularly where your business trades in technical products.

What do I need to do to take advantage of this measure?

1. Decide whether you have the need and sufficient 'in-house' customs expertise to make your own declarations.

Although this measure gives you right to make your own declarations, you should assess whether it is in fact more efficient or less costly to hire a customs broker to do so on your behalf.

If the business does not have sufficient expertise in customs matters – for example, it is a business that imports or exports only occasionally – it may find it more cost-effective simply to hire a broker in order to avoid delays and, possibly, customs penalties for errors made in ignorance.

On the hand, if you import or export frequently and have sufficient staff who are available and have gained experience and developed expertise in customs processing, then handling these transactions in-house may be justified. This may be particularly true for larger companies who import or export the same type of products.

Of course, if you choose to make declarations on your own without a broker, you will be solely responsible to Customs for ensuring compliance with customs rules, including accuracy of declarations, timely and correct payments and recordkeeping.

2. Find out what terms and conditions Customs may apply to persons who wish to make declarations on their own behalf.

Customs may impose requirements on those persons who wish to declare goods on their own behalf, such as:

- Residency

Persons who make customs declarations are typically required to be 'established in' the country; that is, a citizen or resident. This would normally preclude foreign persons and businesses from making declarations on their own behalf (some exceptions may be made for certain customs procedures, such as temporary admission).

- Professional competency

Customs regulations of some countries require the employee who makes the declaration for the business to demonstrate competence in customs matters. This may require that the employee obtain a certification from Customs, the issuance of which may be conditioned on passing a test and/or relevant work experience.

- Authority/power to act on behalf of the business

Where the business is a legal entity – a company, a partnership, or an association – the customs rules of certain countries will allow only specific, management-level officers of that legal entity to submit the customs declaration.

In any case, the officer or employee of the firm who makes the declaration is typically required to have a written power of attorney or formal statement from the firm evidencing that he or she is authorized conduct customs transactions on behalf of the firm.

Any such special requirements should be set out in the customs regulations or instructions, which should be published in official journals and, possibly, on the customs website.

3. Obtain the necessary prior authorizations or approvals from Customs.

As noted in the previous point, the employee or officer of your firm who will make the declarations to Customs may be required to meet certain professional competency requirements. Typically, under such regimes, once that person has demonstrated compliance with the competency requirements, he or she must register their details with Customs (such as name, tax id, name of company by whom they are employed) before making declarations for the business.

4. Implement in-house procedures/controls to ensure proper supervision of your customs transactions.



SUMMARY OF THE KEY POINTS

- Businesses can make their own declarations to Customs rather than being required to use a customs agent.
- The main advantage in conducting your own customs transactions is cost savings; namely, the customs brokerage fees you would otherwise pay to your agent.
- Other possible advantages include greater control over your customs business and improved accuracy/compliance in your customs transactions.
- Because you can make your own declarations to Customs does not mean you should. You should first assess whether, in your particular circumstances, you have the necessary expertise in customs clearance processing and whether it will be more cost-effective to hire an agent.
- Your customs administration may impose specific conditions on persons who wish to make their own declarations, such as residency, professional competence, and be officers/managers of the business.



PRACTICE EXERCISES

Write whether or not you agree with the following statements, and give your reasons.

1. Country A now requires any business who imports or exports to use a customs broker to clear its goods. When the Agreement enters into force, Country A will be required to allow businesses to make their own declarations.
2. Mrs. Z owns and operates a small grocery store and has two employees. Most of the food products sold in her store are sourced locally, but one or two times a year she imports a container of specialty food items from Europe. She would like to save as much cost as possible because her margins are low. She should therefore make the customs declaration herself, without using a broker.

9. Rapid release of express consignments

Objectives

At the end of this chapter, you will be able to:

- Explain the customs simplifications that this measure requires member governments to offer to express consignment operators and how they might benefit you.

What does this measure require the government to do?

Member governments shall establish procedures to allow release of expedited shipments as rapidly as possible after arrival, provided all required information has been submitted.

To accelerate this release, member governments are encouraged to establish de minimis rules (i.e., waiving collection of small amounts of duty and certain taxes) and simplified documentation and processing, such as clearance and release on the basis of the cargo manifest or air waybill alone, without need for a subsequent customs declaration.

Recognizing that the express business is not made up of just documents and small value parcels, the Agreement also encourages member governments to apply the rapid release procedures to express shipments of any weight or value (with the understanding that subsequent submission of customs declarations, supporting documents and duty and tax payments may be required in such cases).

The Agreement contemplates that persons who wish to take advantage of these procedures must apply to Customs for such treatment. It also allows member governments to limit the use of these rapid release procedures to those applicants who comply with certain conditions.

Box 16. Express delivery operator - conditions for expedited release

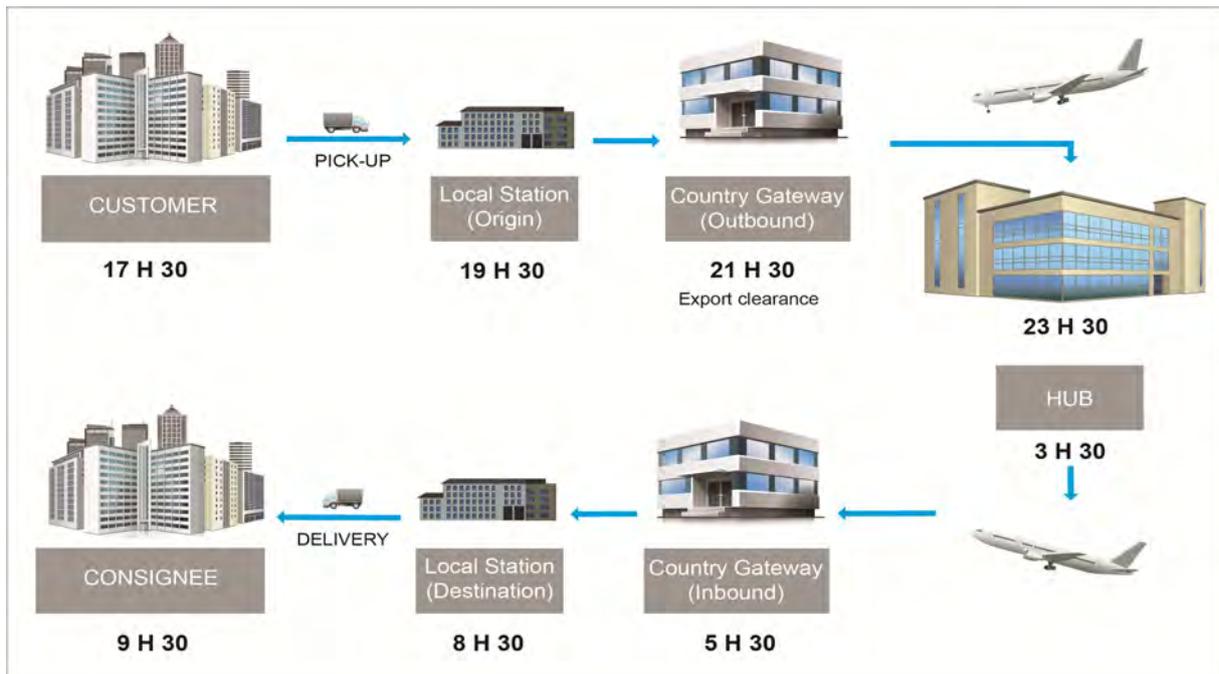
- Submits information necessary for release of the goods to Customs in advance of arrival;
- Maintains high degree of control over packages from pick-up to delivery (i.e. internal security, logistics and tracking technology);
- Assumes liability for payment of all duty and taxes on the goods;
- Has a good compliance record;
- Pays any fees Customs may charge for special services provided to support expedited delivery operations; and
- Provides adequate infrastructure and pays custom's expenses related to processing the shipments, where the operator has a dedicated facility (e.g. separate warehouse or hub airports).

Under the Agreement, the measure is required to be applied with respect to air cargo, but may also be used for express consignments delivered by other modes as well.

How will this measure benefit me and my business?

Consignments that you ship via express consignment operators will not be delayed at the border.

- The measure is intended to ensure rapid and simplified Customs processing of express consignments. Accordingly, the direct intended beneficiaries of this measure are the express delivery operators such as DHL, TNT, UPS, or Federal Express. However, if you are a user of such services – such as a business that competes for customers where meeting 'just-in-time' or tight delivery deadlines may be as important as cost – then you will benefit indirectly from this measure.
- Express operators provide door-to-door delivery of consignments – picking up the package at the shipper's office or facility and delivering it into the hands of the consignee - overnight or otherwise as rapidly as possible. Express goods are commonly shipped by air, but other transport modes also may be involved or used instead.

Figure 11. Express consignment

- Express goods typically consist of documents, parcels, or other high value/low weight consignments, although it is used for just-in-time or urgent delivery of larger consignments as well, such as perishable goods or replacement parts.
- As a door-to-door service, these operators take responsibility for customs clearance, including payments of any duties, taxes and charges, in both the exporting and the importing country. Many such operators have internal control systems to permit them (and their customers) to track and trace consignments en route.
- The raison d'être of express delivery services is speed. Accordingly, customs delays in moving the goods across borders can have direct and negative impacts on the industry and its users.

You will not pay duty on small value/low duty import consignments.

- The measure encourages member governments to waive the collection of small amounts of duty on imported goods shipped via express consignment (the amount of the duty that may be waived is a matter of national legislation). You will therefore save duty with respect to your low value shipments handled by express operators and, depending on how your government determines to implement this measure (see Discussion question below), by other routes as well.

Figure 12. How DHL works (video)⁹

<https://www.youtube.com/watch?v=axFjzSY0G1A>

What do I need to do to take advantage of this measure?

The air express industry is the sector most directly affected by, and which will be required to take the necessary steps to obtain, the facilitation benefits described by the measure. Of course, businesses that use express consignment services will benefit from these facilitations, as described above. Whether you wish to use express delivery services depends on your needs and constraints related to costs, speed of delivery, and reliability.

Box 17. Express services

- Enable companies to maximize the efficiency of their operations by reducing production shutdowns and allowing the implementation of best international techniques such as build-to-order.
- Allow companies to minimize their inventory costs.
- Wnable small companies to utilize high quality, rapid delivery services that they could not provide themselves, which is particularly important in facilitating participation in export markets.
- Contribute to regional development by linking geographically peripheral areas to the world's major centers.
- Support the knowledge based sectors, such as pharmaceuticals/biotechnology, financial and business services, and research & development, which are more-than-usually dependent on express services, reflecting the times sensitive, high-value products and services they provide.

Source: Oxford Economics

⁹ Source: Oxford Economics, The Impact of the Express Delivery Industry on the Global Economy (Sept. 2009)



SUMMARY OF THE KEY POINTS

- ☑ Customs will permit authorized express consignment operators to use simplified procedures that will expedite the release of goods, including simplified documentation, waiver of payment of small amount (de minimis) of duty and tax, and release of goods directly on arrival.
- ☑ Businesses that use express consignment services will benefit from these expedited release simplifications by having predictable and rapid clearance times for their goods, and no duty and tax payments on small value shipments.



QUESTIONS FOR DISCUSSION

The direct beneficiary of this measure is the express consignment industry. However, there are certain simplifications that member governments are encouraged to offer the industry that could be an important benefit to business generally. In particular-

- Will the government establish de minimis duty-exemptions? Will they apply generally?

De minimis duty rules require or allow Customs to waive payment of minimal amounts of duty and tax. The rationale for the waiver is that the administrative cost of billing and collection – for the government and the importer – exceeds the amount of duty recovered. The waiver may be based on the amount of tax and duty assessed or the value of the goods.

The Agreement encourages member governments to apply such rules in connection with express consignments; however, businesses may wish to ensure that such de minimis waiver rules apply more generally to other import transactions, given that the justification for the waiver is the same.

- What simplified formalities/documentation requirements will apply to import of low-value or non-dutiable goods? Will they apply generally?

Similarly, the Agreement encourages member governments to simplify documentation and formalities for low or non-dutiable goods in connection with express consignments (clearance and release on the basis of the air waybill or simplified declaration form); businesses may wish to ensure a broader application of such simplifications apply to imports generally and not restricted to air express consignments.

Chapter 4 Fairness in resolving customs disputes

Overview

Transparent and fair dispute settlement procedures facilitate trade. Disputes between individual traders and Customs, such as disputes about the tariff classification, customs valuation or other matters affecting duty and tax on imported goods, are a common or even a daily occurrence. The risks of doing business increase where firms may be subject to unfair or incorrect decisions by lower level officials on these or other matters, or to severe fines or penalties for minor or unintended violations of the customs regulations, without the possibility of an independent review and correction. Clear procedures that provide businesses with a means to resolve these kinds of disputes quickly and fairly reduce costs and build greater trust and confidence on the part of businesses in the integrity of trade system itself.

1. Right to appeal or review

Objectives

By the end of this chapter, you will be able to:

- Explain the purposes and benefits of the Customs administrative appeal procedure;
- Identify the practical steps you should take to make an administrative appeal.

What does this measure require the government to do?

When Customs issues a decision to an individual or business affecting their rights or obligations, it must provide the reasons.

The person or business has a right to appeal that decision. Ultimately, they shall have the right to appeal to a court, but the Agreement allows member governments to provide an administrative appeal or review procedure. This administrative review procedure can be implemented as an alternative to judicial appeal or the member government may require it as a mandatory first step before a court appeal.

An administrative appeal must be heard by an authority that sits at a higher level or is independent of the customs official that made the protested decision. If not satisfied with the decision of that administrative authority, or if the decision is unduly delayed, the person or business has the right to appeal to the next higher level administrative authority (if any) and then to a court.

WTO members are encouraged, but not required, to apply these same procedures to decisions by other border agencies in addition to Customs.

How will this measure benefit me and my business?

You will have access to a formal procedure to get adverse decisions made by Customs officers reviewed and corrected.

- The main objective of the measure is to provide businesses with the right and effective means to get decisions of lower-level customs officials reviewed and corrected.
- What types of decisions will you be able to appeal? This depends on your national legislation, but it could include any decision by a Customs officer that affects you in a negative way, such as:
 - Tariff classification or customs valuation of your imports, which require you to pay more duty and tax;
 - Assessment of administrative penalties for alleged errors in declarations; or

- Refusal or rejection of a claim for drawback or a refund.

You will have a remedy where Customs fails to act on your requests/transactions.

- Customs may fail to take a decision within a reasonable time, without explanation. For example, you may apply to Customs for a license to engage in some customs activity (such as a warehouse or customs agent), or request a decision on a customs question (such as an advance ruling), or request an authorization or permission to do a simplified procedure (such as release of goods prior to payment of duty and tax), and Customs simply fails to respond.
- More commonly, Customs may simply fail, without explanation, to release the goods that you declared for import or export.
- This measure allows you to appeal against these kinds of 'omissions' or failures to act. Under legislation of many countries, the decision maker on appeal has legal authority to order Customs to take a decision on the application/request/declaration without further delay.

You will be able to get from Customs, without delay, the reasons for their decisions against you.

- It is difficult to make an argument on appeal that a Customs officer's decision is wrong without knowing the underlying reasons for the decision. Also, if you have access to the officer's reasons and explanation, you may in fact agree with his decision, obviating the need for the appeal.
- This measure gives you the right to that explanation. Moreover, because the purpose of this explanation is to allow you to make an effective appeal, Customs must provide you with these reasons without delay in order to allow you to meet the deadline for the appeal.

If your government implements an administrative appeal procedure, you will be able to get disputes with Customs decided more quickly and at a lower cost.

- The measure gives member governments the choice to implement an administrative appeal or review procedure.
- If your government does so, there can be cost and time savings for businesses. Administrative appeals are typically less formal than court proceedings, and therefore do not require costs of legal representation. They can be more efficient than court proceedings because disputes are reviewed and processed by customs specialists who typically have greater technical expertise in the issues involved than a judge in a general civil or commercial court. The savings in time and cost may be particularly important to SMEs for whom a formal court proceeding is not realistic.

Your disputes with Customs will be heard and decided by an independent person or body, providing greater assurance of a fair result.

- In the case of judicial appeals, your dispute will be heard by a judge. If your government chooses to implement an administrative appeal, the appeal must be heard by an authority that sits at a higher level or is independent of the customs official that made the protested decision. Typically, this is a higher-level official or office within the customs administration (or, possibly, within Customs parent organization, such as a Ministry of Finance) but it may be an independent agency or authority, such as an administrative appeal board. The independence of this decision-maker provides greater assurance that your claims will be heard and considered fairly.

What do I need to do to take advantage of this measure?

The following are suggested practical steps to use an administrative appeal procedure. If your country does not provide an administrative appeal of Customs decisions, but requires such disputes to be submitted to the courts, you may wish to obtain the assistance of a lawyer to understand your national court's jurisdiction and procedures.

1. Get the reasons for Customs officer's decision.

Customs laws and rules may require that Customs on its own initiative provide the explanation with the decision. Alternatively, the legislation of a number of countries requires that Customs provides a written explanation of its decisions only if so requested, in writing, by the person affected.

Accordingly, if you are not given the reasons at the time you received a decision that you disagree with, you should make, without delay, a written request addressed to the person or office designated under the rules of your country.

2. Determine whether the decision is one that is subject to administrative appeal.

The customs laws and rules should define the types of customs decisions or omissions that can be subject to appeal through an administrative procedure.

You may need the assistance of a lawyer here. The legislation of certain countries contains a positive definition of the types of decisions that can be subject to an administrative appeal; the legislation of other countries sets out only a negative list of decisions that cannot be appealed through an administrative process. These excluded decisions typically include those related to customs civil and criminal fines and sanctions, which are often handled in a more formal court proceeding.

3. Determine to whom the appeal must be submitted.

You should refer to your customs legislation to determine to whom you must address your appeal.

The legislation of certain countries requires that the initial appeal be made to a higher authority within the same customs office where the original decision was made (such as the officer's supervisor or the head of that local Customs office); other countries require or allow the appeal to be made to the central Customs administration or to a regional office with authority over the local office; and still other countries provide for the appeal to be made to the parent authority of the customs administration, such as a Ministry of Finance. In some countries, the legislation provides for complaints on customs matters to be heard by an independent committee or panel which may include a representative from the private sector.

4. Determine the deadline for submitting an appeal.

All countries with administrative appeal procedures require that the person making the appeal submit it within a limited period (for example, 90 days). The time period given to register the complaint varies from country to country. This time period also should be set out in the customs legislation.

The law should also define the event that triggers the running of that appeal period. For example, legislation might provide that the specific event that triggers the administrative appeal period is the official notification by Customs to the importer of the final amount of duty it has calculated on a particular import transaction.

You should ensure that your appeal is made within that period; otherwise, you will likely forfeit your right to both an administrative and judicial appeal against the decision.

5. Prepare and submit the appeal documents.

You should check your national legislation which will specify the form and content of the information that must be included in the administrative complaint, and any required supporting documents.

Normally, the information requirements for the notice of appeal should be minimal, given that the person making the appeal may not have all documents needed to support his appeal in time to meet the deadline for registering the appeal.

Box 18. What should be in your appeal?

Include all information that is relevant and persuasive to your case, such as-

- Description of Relevant Facts

For example, if a tariff classification dispute, describe the product in detail relevant to the tariff nomenclature.

- Legal Argument

Refer to the relevant law or regulation and explain why your position is correct, and why Customs is wrong.

Include any supporting documents or references, such as product brochures; prior rulings/decisions by Customs, WCO advisory opinions, etc.

- Conclusion/Proposed Finding

For example, if a tariff classification dispute, state what the tariff code should be.

Depending on laws of your country, the judicial review of your case may be limited to the information presented in the administrative proceeding, so you should include all essential information.

For that reason, the rules of certain countries allow the person submitting the appeal the right to present additional documentation or arguments in favor of their position for some limited time after registering the appeal.

National legislation and practice typically allows the legal representative of such persons to submit and participate in the appeal, and may require submission of proof of such representation, such as a power of attorney.

6. Ensure that you comply with any pre-conditions for appeal.

Typically, legislation will require that you pay all duties and taxes that the Customs officer determined was due before making the appeal, even though you dispute the decision. The principle is that this does not harm you because you can be repaid, with interest, if your appeal is found to be valid and decided in your favor.

On the other hand, if the protested decision by the Customs officer is of a type that cannot be reversed as a practical matter (such as a decision to destroy imported goods or exclude the goods from entry into the country), then national legislation may allow suspension of the execution of decision until the appeal is decided.

7. Request a hearing.

National legislation will indicate whether, and under what conditions, you have a right to a hearing.

If a hearing is available to you, you should request one. A hearing with the decision maker can be useful both to provide an additional measure of transparency in the process, and to prevent misunderstandings, and therefore the need for further appeals.

Where it is provided, a hearing is typically not a formal hearing with rules, evidence and a written record; it can be simply a meeting between you, or your representative, and the Customs officer assigned to process the case.

8. If administrative appeal decision is unreasonably delayed, request further review.

It can happen that a decision on your case is unreasonably delayed by the administrative appeal body. Often, this occurs due to volume of appeals received by that body. In such cases, the Agreement provides you with the right to take your case directly to the next higher level of appeal (usually a court).

Under legislation of many countries, where the decision is not made within a period of time set out in the legislation (6 months, for example), the person who submitted the appeal can consider his appeal denied, 'deemed denial', which can be appealed to the court. In other countries, after the prescribed period of time, the person must make a demand for an immediate decision which, if not forthcoming within a short period of time, will then be treated as a denial for purposes of further review.

Again, because the purpose of this right is to allow you to bring your case into a court, you may wish to obtain the assistance of a lawyer at this point.

9. Review appeal decision.

Once the administrative appeal authority makes a decision, you (or your lawyer) should review the decision, and the reasons given, and determine whether further appeal to a court is warranted.

National legislation typically requires that Customs provides a formal notification of its decision on appeal with a reasoned explanation, if the decision is adverse to the person who submitted the complaint.

10. Determine whether further review by a court is permitted/warranted.

In all cases, the person who makes the administrative appeal should have the ultimate right of an appeal to a judicial body.

In the case of judicial review, the appeal would normally be made to civil or commercial courts with jurisdiction over customs matters; in some countries this may be a specialized trade court. If you wish to make a court appeal, then you should best consult a lawyer.

**SUMMARY OF THE KEY POINTS**

- Businesses that object to a decision by Customs will have the right to (i) get reasons for the decision and (ii) appeal that decision to an independent person or body for correction.
- Depending on the national legislation, this appeal may be made directly to a court. Alternatively, the legislation may allow or require the appeal to be made first to a higher level, independent official within the customs administration (or, possibly, an independent administrative appeal authority).



PRACTICE EXERCISES

Recall in section 'Advance Rulings' you wrote a request for an advance ruling for electric toothbrushes you intend to import from Germany. In that request, you claimed the tariff code for the goods should be 8509.80.00, the provision for 'electromechanical domestic appliances, with self-contained electric motor,' which has a free rate of duty.

Unfortunately, Customs issued a ruling to you classifying the electric toothbrushes under 9603.21.00, the provision for 'toothbrushes, including dental-plate brushes.' More unfortunate is that the duty rate for goods classified under this tariff code is 15%!

You think this decision is wrong. Luckily, you recently discovered a publication of the World Customs Organization concerning the proper classification of electric toothbrushes, as follows:

Box 19. WCO explanatory note - tariff classification of electric toothbrushes

"[Heading 8509] covers a number of domestic appliances in which an electric motor is incorporated. The term "domestic appliances" in this heading means appliances normally used in the household.

This group includes, inter alia:

(7) Electric tooth brushes." Depending on laws of your country, the judicial review of your case may be limited to the information presented in the administrative proceeding, so you should include all essential information.

Write an appeal against this Customs ruling decision. Include all the elements in your appeal letter that are described in this chapter to make your case for the proper tariff classification.

NATIONAL TOOTH COMPANY

AMMAN, JORDAN

#20 PROSPERITY PROSPECT

Today's date

Jordan Customs Department
Tariff and Agreements Directorate
Amman, Jordan

Dear Sirs,

I am writing to appeal your ruling dated _____

FACTS:

ARGUMENT:

CONCLUSION:

Sincerely,

Is this information sufficient?

What additional facts or other elements should you include that might improve this ruling request?

Are all the elements mentioned in this chapter included in your request? (hint: review the inset titled 'Ruling Application – Typical Content')



QUESTIONS FOR DISCUSSION

Key Implementation Questions for Business

- Should the government establish an administrative appeal procedure?

An effective administrative appeal or review procedure can reduce the time and costs of resolving disputes for businesses, particularly for SMEs who might otherwise be foreclosed as a practical matter from review of their disputes with lower level customs officials.

Do you agree? What disadvantages to business would you foresee if any, to going first to a higher level or independent official within Customs to resolve your dispute before going to court?

- Should the administrative appeal procedure be mandatory or optional?

An optional administrative appeal - where the business can choose to skip the administrative procedure and go directly to court - may provide businesses the possibility for choosing the forum appropriate for a particular dispute. This may be useful where, for example, a negative outcome in a particular case on administrative appeal is certain.

- Who should act as the administrative appeal authority?

The critical factor is the independence of the decision-maker or makers. Where administrative appeal procedures can fail, from the perspective of business, is when the administrative appeal authority is not sufficiently independent and therefore appears to simply 'rubber-stamp' (that is, never or rarely overturns) the lower-level customs officer's decision.

What measures do you think the government should take to ensure that appeals are heard by an independent decision maker? How should the appeal procedure or authority be organized to best provide independent decisions?

2. Customs penalty disciplines

Objectives

By the end of this chapter, you will be able to:

- Appeal/petition for relief from a customs administrative penalty claim;
- Prepare a voluntary disclosure of a customs violation.

What does this measure require the government to do?

When Customs assesses a penalty for breach of customs laws or requirements, it must give the person penalized a written explanation specifying the nature of the breach and the legal authority under which the penalty amount is or will be determined.

Only the person responsible for the breach shall be penalized.

Penalty amounts shall be proportionate: the amount shall depend on the facts and circumstances of the specific case and shall be commensurate with the degree and severity of the breach. A particular aim of the measure is to ensure that minor errors by businesses, such as clerical errors or errors made in transcribing documents, will not result in excessive penalties.

In deciding customs penalties, member governments are encouraged to consider a 'voluntary disclosure' to be a mitigating factor (for example, by reducing or waiving the penalty altogether). This is where the person informs Customs of the violation before Customs has discovered it.

Finally, member governments shall ensure that their penalty regimes do not create conflicts of interest for Customs officers' assessment or collection of penalties or duties and do not create incentives for assessment or collection of penalties. For example, a scheme that awards individual customs officers with a percentage of each penalty they recover would create such a forbidden incentive.

How will this measure benefit me and my business?

You will not be subject to disproportionate or arbitrary customs penalty amounts.

- Under legislation of many countries, Customs is authorized to impose monetary penalties or fines for violations of customs laws and procedures, such as false or erroneous declarations. Typically, the legislation defining customs offenses allows Customs discretion to impose penalties within a range of amounts ('a penalty not more than ...').
- This measure will require greater fairness by Customs in determining the penalty amounts. It will require the amount of penalty assessed to be commensurate with the severity of the offense. In deciding the appropriate penalty, Customs will be required to take the circumstances of individual cases into account; for example, a lower penalty amount should be applied when the offense was found to be due to unintentional error than if due to an intentional act or fraud.

If you are assessed a penalty, Customs must give you a written explanation so that you can make an effective appeal or petition to reduce or cancel the penalty.

- If there is a penalty assessed against you for breach of the customs laws, Customs will be required to specify the law or regulation under which the penalty is assessed and provide you with a written explanation as to what you did (or did not do) that they consider to be a breach.
- Apart from providing greater transparency of customs actions, this information enables you to respond to Customs claim. For example, you may feel that no penalty should be assessed or that the amount of the penalty is not justified given the particular facts and circumstances of your case and therefore should be reduced.
- Depending upon the procedures defined the customs laws of your country, you should be able to make this response to a penalty claim in the context of an administrative appeal (see section1, above) or in a separate administrative penalty proceeding.

If you discover and disclose that you made errors, you will be able to avoid (or be subject to a reduced) penalty that Customs might otherwise impose.

- A 'voluntary disclosure' to Customs of a violation demonstrates that you are an honest trader. It should be taken into account by Customs to reduce or cancel any potential penalty that might otherwise be imposed.

What do I need to do to take advantage of this measure?

1. If you are assessed a penalty by Customs:

- Determine your rights and the procedures for appeal under the customs laws and regulations.

Your rights of appeal against customs penalties should be set out in the customs regulations.

As you learned in section1 ('Publication'), member governments are required to publish, in an 'easily accessible manner', their 'penalty provisions for breaches of import, export and transit formalities' as well as their 'procedures for appeal or review.'

As you further learned in section 2 ('Information Available through the Internet'), member governments are required to publish on the Internet a description of the practical steps you can take to make an appeal.

Accordingly, you should be able to find the necessary information concerning these procedures on the customs website as well as in official publications.

- Review Customs penalty notice and explanation

As explained above, this measure requires Customs to provide you with a written explanation of the penalty specifying the nature of the breach and the applicable law.

- If you disagree, prepare an appeal/petition in the form and manner specified in the customs regulations, including all mitigating facts and circumstances

Customs regulations or instructions may require that you use a particular form or that you include certain types of information in your appeal or petition (for example the penalty claim reference number). Often, customs administrations allow the petition or appeal to be made in a simple letter format.

In making your appeal or petition, you should describe all mitigating factors; that is, the reasons why you believe that the penalty should not be assessed or that the penalty amount should be reduced in the particular circumstances of your case.

- Submit the appeal or petition within the specified deadline and to the designated Customs office/person

Deadlines will be specified in the customs law or regulations.

- Request a hearing/submit additional supporting information

The relevant appeal procedures may allow you an opportunity to meet with the officials in person to discuss your case. A hearing with decision makers is often useful to clarify facts or provide additional information that the officials might not be aware of.

- Review Customs decision for possible further appeal

As you learned in section.1 ('Right to Appeal or Review'), whenever Customs issues a decision to a person that affects his/her rights or obligations – such as denial of a penalty petition or appeal – it must provide that person with the reasons for the decision.

You should review those reasons to decide whether to pay the penalty or seek further review (see section1 for information about review or appeal).

2. If you discover that you made an error in a declaration you previously submitted that Customs did not yet find:

- Get the procedures for making a voluntary disclosure under the customs laws and regulations

In determining whether to make a voluntary disclosure, it is very important to fully understand your rights and obligations.

Conditions and procedures for voluntary disclosure should be set out in the customs laws and regulations.

- Determine whether you meet the conditions for a voluntary disclosure under the applicable rules, and ensure that you understand the consequences of the disclosure

It is important to understand what conditions you must meet to make a valid prior disclosure and what consequences will follow when you make the disclosure of the violation to Customs.

Typically, the conditions for a prior disclosure might include:

- Time limit for making the disclosure;
- Obligation to fully disclose all relevant facts and circumstances;
- Obligation to submit a corrected declaration;
- Obligation to pay duties and taxes (and possibly interest), where the violation resulted in an underpayment;
- Requirement that the disclosure be received by Customs before it has discovered the violation itself.

Depending on national legislation, the consequence of a valid disclosure may be that no penalty will be assessed or that the penalty amount will be reduced by a certain percentage, for example.

- Prepare a full and complete written disclosure of the error

Depending on national legislation, Customs may treat your disclosure as invalid if you do not provide full information about the violation. You may then be subject to a full penalty for the violation.

- Submit the voluntary disclosure to the designated Customs office/person

This person or office should be specified in the national customs laws or regulations.



SUMMARY OF THE KEY POINTS

- Any customs administrative penalty assessed against you must be proportionate in amount: it must be commensurate with the severity and degree of the breach.
- Where a penalty is assessed, Customs will be required to give you a written explanation.
- Through administrative appeal or penalty mitigation procedures defined in national legislation, you may present facts and circumstances of your specific case to Customs to justify cancellation or reduction of the penalty.
- If you discover that you may have committed a customs violation that is not yet known to customs officials, you may limit your penalty liability by making a voluntary disclosure.



PRACTICE EXERCISES

1. You have been assessed a penalty by Customs for 'misdescription' of imported goods in a customs declaration. The legal provision cited by Customs in its penalty notice states that the penalty amount can be as much as \$5,000. The notice states that you have the right of appeal.

The following is a list of some of the important circumstances of your case. Which of these, if any, would Customs consider 'mitigating' factors (reducing the potential penalty) and which would Customs consider 'aggravating' factors (increasing the potential penalty). If neither, leave blank.

Circumstances	Mitigating Factor?	Aggravating Factor?
1. Your employee ordered the foreign seller to include the misdescription of the goods in the invoice	<input type="checkbox"/>	<input type="checkbox"/>
2. There was a significant underpayment of duty as a result of the misdescription	<input type="checkbox"/>	<input type="checkbox"/>
3. You are an experienced importer (you import goods regularly)	<input type="checkbox"/>	<input type="checkbox"/>
4. You are a small business with extremely limited financial resources	<input type="checkbox"/>	<input type="checkbox"/>
5. You have been assessed two Customs penalties in the last 5 years for similar errors in your import declarations	<input type="checkbox"/>	<input type="checkbox"/>
6. There are no prohibitions on the importation of the goods	<input type="checkbox"/>	<input type="checkbox"/>
7. Importation of the goods requires a license from the Ministry of Health, which you obtained	<input type="checkbox"/>	<input type="checkbox"/>
8. You made a voluntary disclosure	<input type="checkbox"/>	<input type="checkbox"/>
9. You fired the employee	<input type="checkbox"/>	<input type="checkbox"/>
10. You cooperated with Customs	<input type="checkbox"/>	<input type="checkbox"/>

2. You make the appeal against the penalty notice. Based on your assessment of the mitigating and aggravating factors in the previous question, what do you think the appropriate penalty amount should be and why? Should some mitigating or aggravating factors be given more weight than others?



QUESTIONS FOR DISCUSSION

How will the government ensure the uniform application of customs penalties?

Customs penalty amounts must reflect the facts and circumstances of individual cases and be commensurate with the severity of the particular violation. How will the government ensure that their customs penalties consistently comply with this principle?

Some customs administrations develop penalty assessment or mitigation guidelines or instructions for the use of its officers. These might, for example, instruct officers how to calculate the appropriate penalty amounts where a voluntary disclosure is made; where the violation is committed by a first-time offender; where the error results in minimal duty or tax loss and so forth.

Moreover, to provide businesses with greater degree of transparency and predictability in customs penalty matters, any such instructions or guidelines might be made publicly available.

Chapter 5 Duty free import procedures

Overview

The five measures included in this chapter are customs procedures that allow goods to be imported without payment of import duties and taxes for certain prescribed purposes or under certain conditions.

Despite that commonality, the measures do vary in their particular trade facilitation purposes and benefits.

The measure on 'freedom of transit,' which is a major component of the Agreement, is primarily intended to lower costs and reduce delays for businesses in landlocked countries – many of which are LDCs – in connecting with international markets.

The measure on domestic transit allows importers to choose where (that is, the customs office) they will clear their goods.

The remaining procedures – temporary admission, inward and outward processing – are sometimes referred to as 'economic' procedures - promote national development and provide firms with greater flexibility in sourcing their production inputs and supplies.

1. Freedom of transit

Objectives

By the end of this chapter, you will be able to explain the main elements and trade facilitation benefits of the Agreement's transit provisions.

What does this measure require the government to do?

The Agreement's provisions on transit are quite extensive (16 subparagraphs!). However, for purposes of easier understanding, these transit provisions can be considered under the following four general categories:

- **Transit processing**

These provisions concern customs processing of transit movement, from the point where the goods enter the country, while the goods are en route through the country, and at point of exit, as follows:

- Customs formalities, documentation requirements, and controls must be limited to those necessary to identify the goods and ensure fulfillment of transit requirements;
- The use of customs escort – where the transit can be made only under customs supervision, possibly as part of a larger convey – is discouraged: it may be used only in cases of high risks or where a guarantee does not provide Customs with sufficient assurance that the transit will be carried out properly;
- Fees and charges on transit traffic are prohibited, other than charges for transportation (where goods are carried by state railway, for example) or commensurate with administrative expenses entailed by transit (e.g., cost of sealing transit truck) or with cost of service rendered;
- Once Customs releases the goods for transit, the goods shall not be subject to any customs charges or unnecessary delays or restrictions while en route to the exit point (e.g., delayed at roadblocks or internal checkpoints without justification);

- Customs shall terminate the transit operation promptly, once the carrier reaches the exit point, if all requirements are satisfied.

- **Transit guarantees**

Customs typically require the transit operator to provide a guarantee (such as a bank guarantee, cash deposit, or pledge of property) to ensure that the goods do not go 'missing' while en route and the transit is otherwise properly completed.

The Agreement contains important limitations on Customs requirements and use of such guarantees:

- The amount of the guarantee should be limited to the degree of risk presented;
- Information used to set guarantee amounts shall be published;
- Customs shall discharge the guarantee as soon as it determines transit requirements are satisfied; and
- 'Comprehensive' guarantees should be allowed. For example, a single guarantee that a transit operator can use to cover multiple transactions over a period of time, so the operator does not incur the time and cost of obtaining a new guarantee for every transit operation.

- **Transit infrastructure**

WTO member countries are 'encouraged' to provide, where practicable, separate infrastructure for transit traffic, such as lanes and berths dedicated to transit trucks at the Customs office of arrival or exit from the country.

- **Transit instance of general principles**

The transit provisions contain a number of measures that are transit-specific application of principles and procedures generally provided elsewhere in the Agreement, and which we have discussed in other chapters of this manual. These include:

- An obligation on the part of the member government to implement pre-arrival processing of transit declarations and data (see section.1);
- An obligation on the part of member government to eliminate or revise transit regulations and formalities, if they are no longer necessary or if the objectives can be achieved by less trade-restrictive means (see Chapter 5);
- An encouragement that WTO member countries cooperate and coordinate with one another to enhance freedom of transit (see Chapter 7). Each WTO member should designate a 'national transit coordinator' to which other countries may direct their questions and concerns, as well as any proposals to improve transit operations.

How will this measure benefit me and my business?

- **It can reduce your direct inland transport fees and charges and delays when shipping goods to/from international markets**

The transit measures are intended to reduce or eliminate the excessive inland transport costs and unnecessary delays that you might now experience when exporting or importing goods to international markets via a transit country.

Box 20. Landlocked countries - challenges of distance and dependence

Businesses in landlocked countries – countries that do not have direct access to the sea – incur far higher export and import costs than those of coastal countries.

The average costs to export a container from a developing landlocked country is approximately USD\$3,380, or more than 2½ times the average cost to export from other countries. This impacts competitiveness: developing landlocked countries are said to trade 30% less on average than coastal countries.

Landlocked countries' higher transport cost due to greater distances from international markets is one factor. However, also important is the dependence on, and vulnerability to, the conditions of the transit countries through which the goods must pass. A number of policy, regulatory, and even physical impediments to freedom of transit drive up costs. Some of the more important of these, which were in the background of the TFA negotiations, include-

- poor physical infrastructure, such as bad roads over which transit trucks travel or substandard customs facilities, leading to long wait times at the border;
- internal roadblocks, apparently set up by police or other authorities for purposes of taking fees off of transit drivers;
- unreasonably high and unpublished charges for transit;
- lack of co-ordination between different authorities involved in transit (for example different opening and closing times of border offices);
- unjustifiable restrictions on means of transport, on drivers and goods in transit, including requirements for consignments to be transported under escort;
- requirements for guarantees in disproportionate amounts; difficulties with the return, at the point of exit, of cash guarantees posted at the point of entry;
- lack of standardization in transit documentation requirements; that is, different types of documents and data required by different countries on the same transit route;
- lack of willingness or refusal on the part of transiting countries to co-operate with exporting or importing countries, including with regard to the application of regional transit regimes or corridors.

Sources: World Bank/IFC Doing Business 2014; UNDP, Trade, Trade Facilitation and Transit Transport Issues for Landlocked Developing Countries (2008); TN/TF/W/35 (29 April 2005).

For example, under the TFA transit measures:

- The kind and amount of fees that a transit country can charge on your goods will be restricted;
- Customs documentation requirements and controls on transit goods must be kept to the minimum necessary, which will simplify and speed up border processing;
- Use of internal checkpoints in the transit country, and therefore the associated administrative or 'informal' payments that must be paid, is restricted;
- The disciplines imposed on transit guarantees (the amount; the obligation to discharge the guarantee promptly upon completion of the operation; the possibility to use comprehensive guarantees) should reduce the financing charges that the road transporter must pay the bank or surety to obtain the guarantee and which the transporter is likely to pass on to you, the shipper.

- **Faster and more reliable inland transit reduces transport insurance costs**

Businesses in landlocked countries pay higher insurance premiums due to uncertainty of conditions in transit countries.¹⁰ The longer that the goods are on the road or waiting in queues at the border or internal checkpoints, the greater the risk of theft, damage, or loss due to atmospheric or climatic conditions, particularly where perishable goods are involved.

- **Faster and more reliable inland transit reduces inventory carrying costs**

Inventory carrying costs will be higher where transit times are longer or uncertain. Businesses that depend on foreign suppliers are forced to hold excess inventory as a buffer against delivery delays. As an exporter, there is a cost of the capital that is tied up in the inventory while it is in transit, which restricts overall cash flow and can reduce the amount of liquid capital available.

- **Faster and more reliable inland transit brings you ‘closer’ to your customer/supplier by reducing lead times between order and delivery**

‘In competitive markets, being the first to offer a new product secures important market share before similar products are offered by competitors. Sourcing goods close to their final markets allows for new products to have smaller production and transit cycles. For some products, it also allows firms to design, modify, and adjust products almost at will, while also enabling them to scale production according to demand and to avoid waste. Longer supply chains can decrease this flexibility. Companies can expect to wait a month or more between the time components are shipped from foreign factories and the time they arrive in the United States. For high value consumer items, this is often an uncompetitive strategy. According to one study, each day a desired consumer product is stuck in transit is equivalent to an ad-valorem tariff of 0.6 to 2.3 percent.’

Source: <http://acetool.commerce.gov/>

What do I need to do to take advantage of this measure?

Generally, the business sectors that will be most directly affected by the Agreement’s transit measures are the transport operators, particularly road transport, and freight forwarders, who carry out or arrange the transit operation on behalf of the shipper or importer. Typically, the transporter or freight forwarder provides the transit guarantee to the customs authority, submits transit documentation at entry and exit points, is subject to customs controls, and has ultimate legal responsibility to ensure proper completion of the transit operation.

Of course, businesses who export and import to international market via transit countries are indirectly impacted as a result of transit fees, charges, and delays incurred by transporters who carry their goods, as noted above.



SUMMARY OF THE KEY POINTS

- The Agreement requires or encourages transit countries to
 - facilitate transit movements through their countries by
 - limiting/simplifying their customs formalities, documentation requirements and controls;
 - restricting their use of customs escort to high-risk situations or cases where a guarantee will not be sufficient to ensure compliance;

¹⁰ UNDP, Trade, Trade Facilitation and Transit Transport Issues for Landlocked Developing Countries (2008); 22

- eliminating fees and charges on transit traffic, other than transport or other justifiable fees for services or expenses incurred related to transit;
 - eliminating any unnecessary delays or restrictions on the movement of the goods as they pass through the country;
 - promptly terminating the transit operation when the goods reach the exit office;
 - adopt transparent and risk-based practices with respect to setting transit guarantee amounts; allow use of comprehensive transit guarantees, and discharge transit guarantees promptly; and
 - improve their transit-related infrastructure, where practicable.
- The Agreement's transit measures also include 'transit-specific' instances of general TFA disciplines, such as requirements for pre-arrival processing, elimination of unnecessary transit regulations and formalities, and cross-border coordination between member government authorities.
- Unnecessary transit fees and delays, the target of this measure, particularly and detrimentally affect businesses in land-locked countries, drive up direct and indirect costs to businesses, and reduce ability to compete for customers in foreign markets.



PRACTICE EXERCISES

Indicate whether or not you believe that the following statements are **true** or **false**, and explain your answer:

- | | True | False |
|--|--------------------------|--------------------------|
| 1. For all transit operations, Transit Country X requires a cash deposit equal to three times the amount of potential duty and tax on the goods. This requirement is consistent with the Agreement. | <input type="checkbox"/> | <input type="checkbox"/> |
| <i>Explanation:</i> | | |
| _____ | | |
| 2. The Agreement requires all WTO member countries to build separate transit lanes at each entry and exit point in order to speed up border clearance of transit trucks. | <input type="checkbox"/> | <input type="checkbox"/> |
| <i>Explanation:</i> | | |
| _____ | | |
| 3. Transit Country Y allows goods in transit to be moved across its territory <u>only</u> in convoys of not less than 25 trucks, on a specified route, during daylight hours, and accompanied by a customs officer. This is consistent with the Agreement. | <input type="checkbox"/> | <input type="checkbox"/> |
| <i>Explanation:</i> | | |
| _____ | | |

2. Movement of goods under customs control intended for import

Objectives

By the end of this chapter, you will be able to:

- Determine whether the 'domestic transit' procedure might be useful to you and, if so,
- Take the necessary actions to use the procedure.

What does this measure require the government to do?

To the extent practicable, member governments shall allow imported goods to be moved under customs control from the customs office of entry (such as the land border entry point) to the customs office where the goods will be released or cleared. This procedure is sometimes called 'domestic transit' or 'in bond' movement.

This movement shall be subject to compliance with all regulatory requirements such as phytosanitary or animal quarantine requirements.

How will this measure benefit me and my business?

You will have the option of conducting your customs clearance operations closer to your inland business location.

- Imported goods may arrive – whether by road, rail, sea or air – at an entry point to your country that is distant from the place where you maintain your offices or facilities, where all records needed for customs are kept and your support staff is situated. This measure would allow you the option of moving the goods, without payment of duty and tax, for clearance to an inland customs office that may be more convenient to you.

You may be able to reduce your customs clearance related costs.

- If required to clear the goods at a distant land border office, a business will more likely require and depend on the services of customs agents; its employees cannot be easily present to assist in Customs examinations or inquiries concerning the goods or transaction; and it may suffer delays in clearance if required to transfer documents or other communications. The option of clearance closer to your facility allows you to reduce or avoid some or all of these costs and delays.

What do I need to do to take advantage of this measure?

Instruct the shipper/carrier to deliver consignment to the inland customs place of delivery (or instruct your customs broker to transit goods from port to the inland office)

In certain countries this measure is implemented as a 'national transit' procedure (applying requirements applicable to transit operations generally, such as a transit declaration and guarantee) and in other countries it is described as an 'in-bond' movement.

Simplifications may also be available: for example, the customs authority may allow goods to be carried from the port to the inland destination on the basis of the international multi-modal carrier's manifest declaration and under its responsibility.

There may also be variation in requirements depending on the mode of transport (road, rail or air).



SUMMARY OF THE KEY POINTS

- ☑ The customs 'domestic transit' or 'in bond' procedure allows goods to be moved without payment of duty and tax from port of arrival to inland point for customs clearance.
- ☑ The procedure allows you the convenience of clearing goods where your business or facility is located, rather than at a distant port of arrival.
- ☑ Depending on national rules, use of the procedure would require the carrier to move the goods in bond (under guarantee) from the port to your facility, if they provide such multimodal services; otherwise, your customs broker may arrange for a transit operation.



PRACTICE EXERCISES

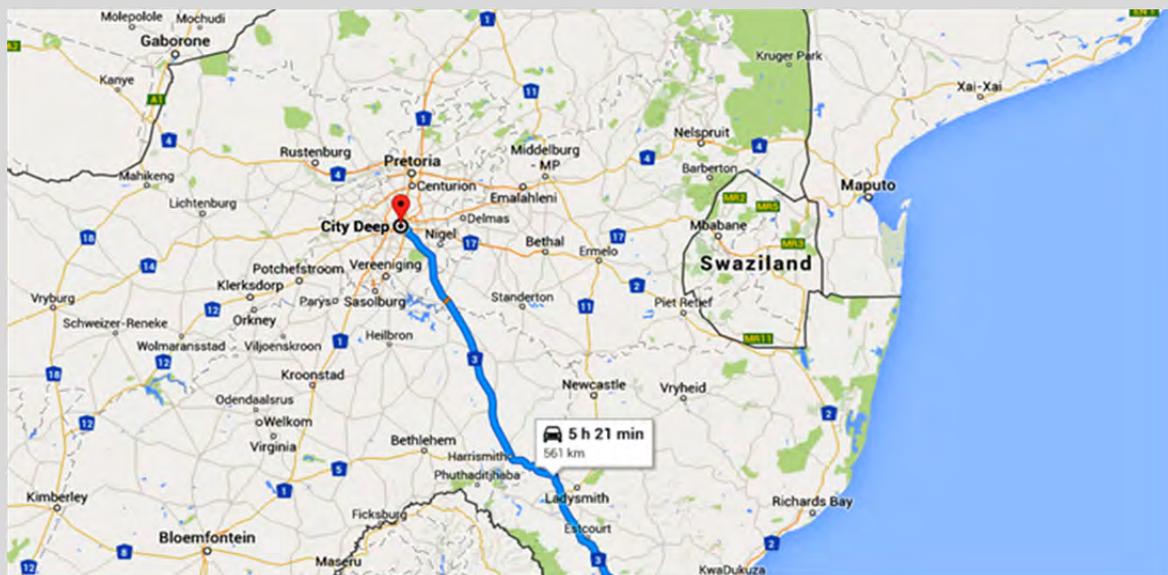
Please read the case study on the South Africa's new Customs Control Act, 2014, and answer the questions that follow.

Box 21. South Africa customs control act, 2014 - national transit - case study

In 2014, South African Revenue Authority (SARS) conducted stakeholder consultations on a proposed Customs Control Bill.

Perhaps the most controversial provision of the proposed bill concerned movement of imported containers from Durban, the country's main seaport, to "City Deep", an inland container station located close to the country's largest city and commercial center, Johannesburg.

Under the existing law, Customs allows container operators to move containers in bond from the port of arrival, Durban, to City Deep without submitting a customs clearance declaration. The containers are moved to the inland terminal on the authority of the sea vessel manifest alone. In other words, if the manifest indicates that the goods are consigned to City Deep, the container passes straight through Durban.



(A manifest is a summary of cargo on board a vessel that provides only a general description of the goods which could include descriptions such as “said to contain,” “freight of all kinds,” “electrical goods,” and “foodstuffs”).

No security is required under the existing law, and liability for the removal rests with the container operator. Once the container arrives at City Deep, the importer clears the goods on a customs clearance declaration for home use and pays the duties.

The proposed law would change this practice. The importer would now be required to make a customs declaration in Durban, the port of arrival. The customs declaration would include information on the tariff, value and origin of goods. Importers could declare the goods for transit to City Deep or directly clear the goods for home use in Durban.

The reason given by SARS for requiring a customs declaration at Durban is that the manifest information is not sufficient for effective risk management.

“Allowing goods to move from the port of entry to an inland terminal on a manifest can expose our people to safety and security risk and our economy to fiscal risk. This is because the risk indicators to determine tariff, valuation and origin risk are not declared on a manifest. The information on a manifest is, furthermore, based on information supplied to the carrier by a person in a foreign jurisdiction, who cannot be held accountable for the information supplied.”

Also, SARS noted that technological improvements reduce the impact of the change on the trade

“The current policy originated in the late 1970s when communication was manual. Today, information is available electronically in seconds. Because of the access to information electronically importers can clear goods in advance before they have landed, preventing any unnecessary delays in the ports or increased logistical costs.”

The private sector, on the other hand, strongly objected to the change:

“Business has expressed concern that the requirement of the Customs Control Bill that they submit a national in-transit declaration of goods at the first port of entry before they are sent to inland terminals, or depots such as City Deep, would cause delays.

Business has argued that [under current practice] the manifest allowed goods to move seamlessly from the exporting country to the inland port or depot, and would change the contractual relationships between exporter and importer in terms of when duty is paid.”

“[The proposal] ... would add costs, increase unreliability and induce “hassles”, as the Durban port did not have the capacity to handle the extra volumes and its productivity and efficiencies were “questionable” compared with other ports.”

In the end, SARS offered the following compromise to deal with stakeholders concerns about possible backup and delays at the port of Durban:

- A customs clearance declaration for a permissible customs procedure must be submitted for containerized goods consigned for delivery to a licensed inland container terminal or depot. This declaration will, inter alia, provide full details regarding tariff, value, origin and the importer or the importers agent.
- This declaration must be submitted by at least three calendar days before arrival at the first place of entry. SARS will then provisionally release the containers before arrival of the goods at the first place of entry to allow trade to plan the supply chain.
- SARS will send the provisional release as an electronic message and will include information regarding the relevant terminal or depot to which the goods may be removed.
- The provisional release notification will be followed up with a final release notification.
- The implementation may be delayed by 12 months to allow trade sufficient time to prepare for the change.

With this compromise, the Customs Control Act was enacted in 2014.

Sources: Mike Poverello, What Happened to the Portcullis?, <http://mpoverello.com/>; SAR's Response to Standing Committee on Finance on Customs Bills on 4 February 2014; Republic of South Africa Act No. 31 of 2014: Customs Control Act, 2014.

1. This case study describes two different procedures to move goods ‘from a customs office of entry to another customs office... from where the goods would be released or cleared.’ One procedure is established under the existing law, the other procedure is proposed under the new law. What are the differences between these two?

2. In the consultation, stakeholders claimed that SARS’s proposal would not comply with the TFA measure on ‘movement of goods under customs control intended for import’ (that is, the measure we just described in this chapter). Do you agree? Why or why not?

3. As noted in the case study, a compromise was made between SARS and stakeholders and the new law was enacted. The compromise relies upon certain measures of the TFA that were previously described in this manual.

Can you identify which TFA measures SARS incorporated in the new law to deal with the stakeholders’ concerns?

3. Customs ‘suspense’ procedures

Objectives

By the end of this chapter, you will be able to:

- Determine whether any of the three customs ‘suspense’ procedures might be useful to you;
- Take the necessary actions to use the procedures.

What does this measure require the government to do?

Member governments shall provide for temporary admission, inward processing and outward processing.

- **Temporary admission** – goods imported for temporary use without undergoing any change while they remain in the country, other than normal depreciation
- **Inward processing** – imported parts, materials, or components required for use in manufacturing goods for export
- **Outward processing** – locally-produced goods or goods that were previously imported and duty paid, that are temporarily exported for repairs or other processing abroad

Member governments shall exempt goods imported under such procedures (or, in the case of goods temporarily exported for outward processing, re-imported) from import duty and tax, in part or in whole.

How will this measure benefit me and my business?

You will not have to pay import duty and taxes on goods that you require for temporary use in your sales and marketing operations or for export manufacturing purposes.

- The customs legislation of many countries provides full or partial relief from import duty and taxes on goods that are not intended to remain in the country, but are required for specified commercial or manufacturing purposes. The purpose is to promote economic development and investment.
- For example, temporary admission typically allows temporary use of imported tools, testing or checking equipment, or replacement parts in manufacturing operations, or allows product samples from foreign suppliers to be temporarily imported for use in commercial sales presentations.
- Inward processing allows manufacturers engaged in export manufacturing operations to source their production inputs without regard to cost of tariffs and taxes.

You will be able to return goods to foreign suppliers for repair at a lower cost

- An important use of the outward processing procedure is to permit businesses that purchase goods from foreign suppliers to send them back for repair under warranty, and then have them returned without payment of duty and tax.
- In this way, you do not have to pay tax and duty twice on the same item (when you first imported the goods and then when they are returned to you after repair abroad).

You will have fewer customs costs, and therefore have greater flexibility, in sourcing inputs and supplies for your business operations.

- As import duties and taxes are reduced or waived on goods placed under these procedures, businesses will have greater flexibility in sourcing decisions.

What do I need to do to take advantage of this measure?

1. Ascertain the conditions for use of the customs procedures.

The particular terms and conditions for use of these procedures are determined by national policy and legislation, and should therefore be found in the customs law and implementing rules. Typical conditions include:

- Provision of a guarantee, to secure the duty and tax in the event that the goods are not used for the permitted purposes (inward processing; temporary admission);
- Limitations on types of goods that may be placed under the procedure;
- Period of time during which the imported goods may remain in the country (inward processing; temporary admission) or must be returned from abroad (outward processing);
- Limitations on persons who may use the procedures (e.g. only residents; only non-residents);
- Prior authorization – that is, an approval or license from customs for use of the procedures. This is most typically required for use of the inward processing procedure.

Figure 13. Temporary admission procedure: typical conditions

EUROPEAN COMMUNITY				
ORIGINAL FOR THE OFFICE OF ENTRY	1	1 Declarant Holder of authorisation	Temporary Importation Inventory/Document to support an oral customs declaration (Articles 229(1), 497(3), second subparagraph and 499, third subparagraph of Regulation (EEC) 2454/93)	
		Authorization may be required to use the procedure		
		2 Goods to be placed under temporary importation		
		Trade/technical description	Quantity	Value (and currency)
		a)		
		b)		
		c)		
		d)		
		e)	Goods eligible for temporary admission defined in customs rules. Typically include: <ul style="list-style-type: none"> • professional equipment • commercial samples • goods for use or display at trade fairs, meetings, exhibitions • goods imported for educational/scientific purposes • traveler's personal effects 	
	1	3 Nature of use of the goods and place of use		
	4 Length of stay of the goods (Days or months)	5 Additional information Maximum period of stay defined in customs rules. Typi- cally, 6 months or 1 year.		
	6 Date: _____ Name: _____ Signature _____			
FOR CUSTOMS USE ONLY				
Remarks of the office of entry				
Period for discharge		Date of acceptance	Relevant Article of CCIP	
Means of identification				
Office(s) of discharge		Security Bank guarantee or other security required		
Other remarks:				
Date: _____	Name: _____	Signature _____	Stamp/Address _____	
Remarks of the office of discharge				
The goods have been re-exported on :		Procedure prescribed for release of the bank guarantee or other security		
Other remarks:				
Date: _____	Name: _____	Signature _____	Stamp _____	
Notes:				
Boxes with a bold order number must be completed by the declarant. After the arrangements for temporary importation has been discharged, e.g. by re-exportation, the declarant/holder of authorisation shall send back the copy to the office of entry in order to get the security released.				

- The proposed operation (inward processing) meets certain economic conditions, such as a determination that it would not harm competing domestic producers.

Rules for use of the inward processing procedure can be particularly complex because they are intended to ensure that imported raw materials are properly accounted to manufactured finished products (e.g., rules concerning permissible rates of yield, inventory record-keeping, disposition of waste). Guidance and assistance of an expert may be warranted if a business intends to use this procedure.

2. Apply to the designated customs office for prior authorization for use of the procedures, where required.

As noted above, a prior authorization from Customs may be required for use of certain of these procedures, particularly inward processing. Customs rules may designate the office to which an application for prior authorization must be made as well as the form, manner and content of any such application.

Often, where inward processing authorization is sought, customs authorities may visit the factory to view the manufacturing operation and verify that recordkeeping is sufficient to allow audit of the operation.

3. Obtain and provide the prescribed guarantee for use of the procedure, where required.

The required amount of the guarantee, the forms of guarantees permitted (e.g., bank guarantee, cash deposit, bond with surety, etc.); the authorized issuers, and any other conditions should be defined in Customs rules.

4. Submit the customs declaration and prescribed supporting documents required to place the imported goods under the procedure.

Import clearance of goods under the procedures may require submission of supporting documents in addition to or different than those required for a normal declaration for home use. For example, provision of a copy of the authorization may be required at the time of clearance.

5. Implement the necessary internal procedures/controls to ensure compliance with proper use and discharge of the procedure.

The business should establish the necessary internal controls, and appoint the persons responsible, to ensure that the terms and conditions of the procedure and authorization are completely and timely fulfilled. These would include proper accounting and recordkeeping to allow the business to track where the imported goods are located, how they are being used, and when they must be re-exported.



SUMMARY OF THE KEY POINTS

- Three customs procedures will allow you to use foreign parts, materials, and goods without payment of customs duty and tax, for certain defined purposes. These customs procedures are-
 - Temporary admission: allows you to import foreign goods for temporary use in your sales and marketing operations;
 - Inward processing: allows you to import foreign parts, materials, components, for use in your export manufacturing operations;

- Outward processing: allows you to send goods abroad for repair, reworking or other processing, and return them paying reduced or no duty.
- You should consult the customs laws and regulations to determine the specific terms and conditions for use of these procedures. Typically, these would require
 - Provision of a guarantee to ensure eventual exportation of goods imported under temporary admission or inward processing procedures;
 - Prior authorization or permission from the Customs authority to use certain of these procedures.



PRACTICE EXERCISES

What procedure is this? Check the appropriate box.

	Temporary Admission	Inward Processing	Outward Processing	Other
1. Ready-Made-Garment (RMG) Factory in Bangladesh imports fabric, thread, buttons from various countries to make shirts for export to the EU and the USA	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. You travel with a lap-top computer, video projector and samples of your company's product to the USA where you plan to make sales presentations to potential customers	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. On your business trip to the USA just mentioned you are also carrying small gifts for potential clients and product brochures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. RMG Factory in Bangladesh purchased 10 automatic flat jacquard knitting machines from a supplier in China for its manufacturing operations. Two of the machines have broken down. The warranty provides for free repair and replacement parts. RMG returns the machines to the supplier in China, where they are repaired and the defective parts are replaced. The machines are now being returned to Bangladesh.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>



QUESTIONS FOR DISCUSSION

The Agreement only requires that member governments allow these procedures; it does not specify how they should be implemented. Many implementation variations are possible, some of which may be more favorable to businesses than others.

For example, inward processing can take the form of 'drawback' (the business pays duty and tax when the goods are imported, and claims a refund on export of the finished product) or 'suspension' (the business makes no duty or tax payment on the goods). Some countries allow suspension but not drawback (or vice versa); other countries allow both forms of inward processing for all or certain types of goods or transactions

Drawback

- Duty/tax paid on imported goods; refunded, if finished goods are re-exported
- Guarantee not required (usually)
- Imported goods may be used in export manufacturing operation or resold on local market
- Finished goods may be re-exported or may be sold in local market
- Records must be kept for customs
- Prior authorization required (usually)

Suspension

- Duty/tax not paid on imported goods
- Guarantee required (usually)
- Imported goods must be used in export manufacturing operation (usually)
- Finished goods must be re-exported (usually)
- Records must be kept for customs
- Prior authorization required (usually)

1. In your opinion, which is the better inward processing option for your business – drawback or suspension?
2. From a business perspective, what are the advantages and disadvantages of the two types of inward processing?
3. From the perspective of customs or the government, what do you imagine the advantages or disadvantages of each of these two types of inward processing?
4. If you have used inward processing (drawback or suspension) in the past, what issues or difficulties have you found? How do you think the system could be improved?

Chapter 6 Measures available in defense of your goods

Overview

This chapter is written in general terms and applies to all goods in trade; however these measures will be particularly beneficial to traders in the food/agriculture sector. The Agreement contains a collection of measures that were primarily motivated by difficulties faced by exporters of agricultural goods and food products in clearance of goods. In comparison with general trade, such products are typically subject to intervention by authorities in addition to Customs – namely, the food safety or plant and animal quarantine authorities – and are more prone to sampling and testing for compliance with product specific regulatory requirements. This group of measures is generally intended to improve transparency and fairness of such border interventions, as well as accelerate and simplify the release of goods which may be susceptible to spoilage in the case of agricultural goods and food products.

1. Requesting opportunity for a second test

Objectives

By the end of this chapter, you will be able to determine how to challenge results of tests conducted by border authorities on your imported goods.

What does this measure require the government to do?

To determine compliance with regulatory requirements, border authorities may sample and conduct laboratory tests or analysis of goods declared for import.

For example, food safety authorities may test to determine presence of contaminants or pesticide residue levels in food products; agriculture authorities may test to identify pests in imported produce or seeds; and, less commonly, Customs may analyse samples drawn from the import consignment to determine the proper tariff classification of the goods for duty assessment purposes.

Under this measure:

- The relevant border authority (Customs, food safety, animal or plant health authorities, etc.) may grant the importer the opportunity for a second test, where there was an adverse finding in the first test;
- The border authority shall consider and, if appropriate, may accept the results of that second test for purposes of release and clearance of the goods; and
- Member governments must publish or provide the importer with the contact details of any laboratory where the test can be carried out.

How will this measure benefit me and my business?

You will be able to verify the border authority's test results to avoid unwarranted actions against your imports.

- The results of a laboratory test by the border authority can determine whether the consignment will be allowed entry or, possibly, confiscated and destroyed. However, false positives in testing do occur. For example, there may be errors in results due to lack of sensitivity of equipment, the particular test methods or procedures used, human error, or a problem in size of the sample.
- This measure provides you with the means to ensure that a refusal of entry by border authorities is justified rather than due to such technical errors. In effect, it is a means for you to appeal or obtain review of suspect test results.

You will have greater certainty concerning the conformity of goods with regulatory requirements for contractual purposes with your supplier.

- A second, confirmatory test provides you with stronger evidence concerning conformity of goods with required standards, which may be useful to you with respect to potential claims against your supplier for refunds or costs.

You may be able to get an independent, third-party laboratory review of border authorities' test results.

- Under the measure, member governments may allow third-party, independent laboratories to test for compliance with regulatory standards. Where available, use of an independent laboratory may provide greater assurance of objective results. An independent laboratory also may be better resourced than the government laboratory, with specialized equipment and technical staff, which may provide greater degree of certainty and a faster turn-around than a government laboratory.

What do I need to do to take advantage of this measure?

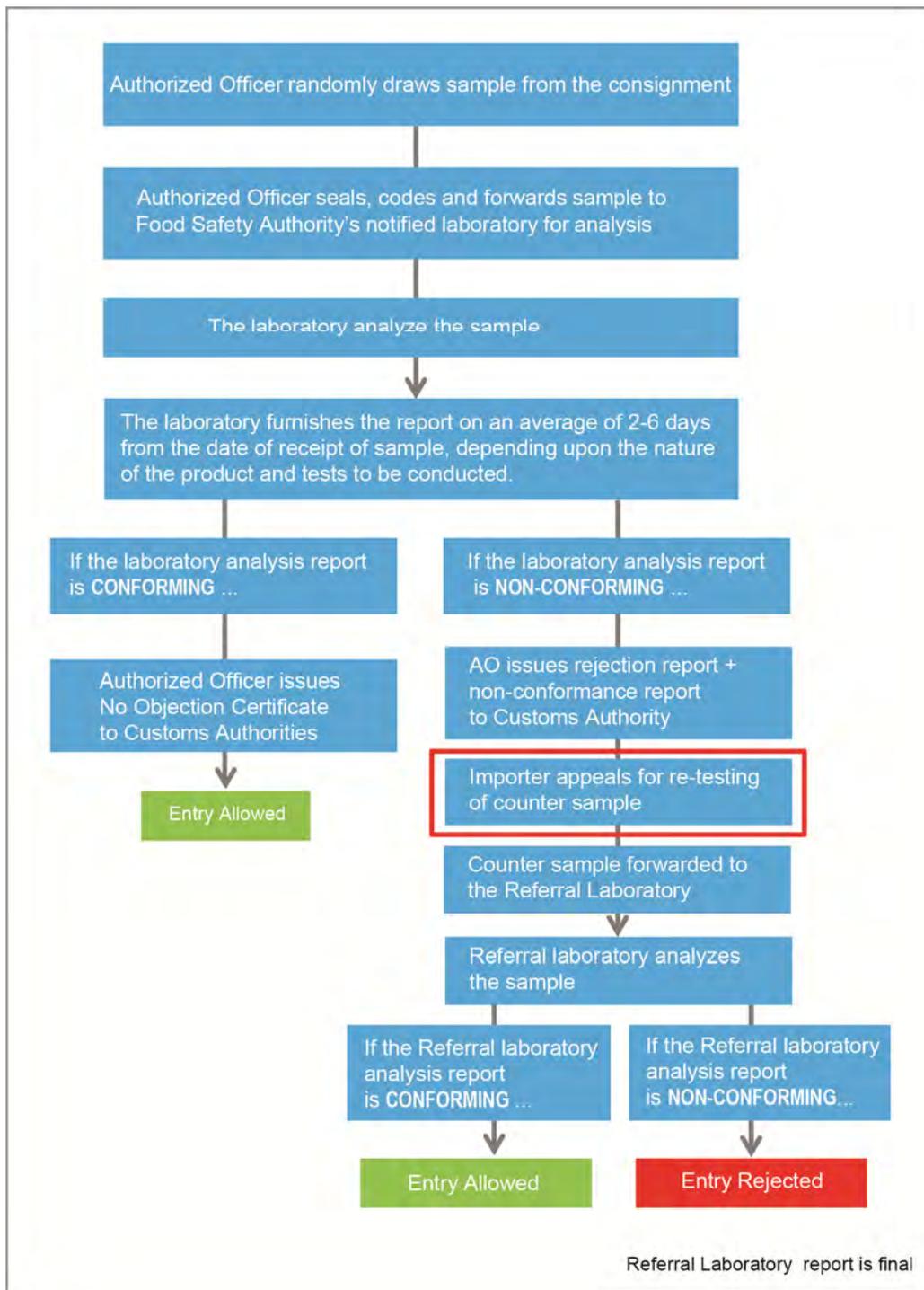
1. Ascertain the rules/procedures for requesting a second test of goods examined by border authorities.

There are various ways that this measure can be implemented by member governments.

For example, the same laboratory may do a confirmatory test on request. Or, on request, the authority may send the sample to another laboratory (including another member government laboratory or an accredited independent laboratory) to conduct the second test. Or, a country's legislation may allow an importer to present any countervailing evidence he or she wishes when notified that an entry is rejected, including test results by an accredited third-party laboratory of the importer's choice on a sample drawn by the importer from the same consignment.

As an importer, you should be able to find the procedures for requesting a second test (or use of test results from an independent laboratory) in your national laws and regulations of customs and/or the food safety authorities. Often, you may find these procedures included in more general rules or regulations concerning rights to contest or appeal the food safety authority's decision to reject an import entry.

As you learned in section 'Information Available Through the Internet', countries should publish practical guides to their import procedures, including appeal procedures, on the Internet. A number of countries in fact publish practical manuals online for the benefit of food importers (see inset below). You should be able to find this information on the website of the food safety or the customs authority.

Figure 14. India imported food clearance procedure

Source: Food Safety and Standards Authority of India, Manual on Food Import Clearance System

2. Receive the adverse test results.

In order to assess the need for a second test, and determine whether you have a valid basis to make an appeal, it will be important to obtain the results of the first test conducted by the member government laboratory (or private laboratory acting for the government), as well as methodology and procedures used by that laboratory to conduct the test.

Your rights to this information and procedures for obtaining it should also be defined in the national legislation.

3. Get list of accredited laboratories that can be used for the second test, if any.

The member government is required to publish the list of laboratories where the second test can be carried out or provide the list on request. Depending on national rules, the laboratory where the second test may be carried out may be a government laboratory, an independent accredited laboratory in the same country, or possibly an accredited regional or international laboratory located outside the country.

If you are considering using an accredited independent laboratory, you should confirm its competency, procedures, timeframes, and fees to do the test.

4. Make request for a second test following prescribed procedure.

If, after considering the initial adverse test results, you wish to obtain a second test, make the request following the procedure set out in national laws or regulations.

5. Present results following prescribed procedure.

6. If rejected, get written reasons and determine appeal procedures.

It is important to note that this measure does not require the border authority to accept the results of second test, if it contradicts the initial test. The weight that the border authority must give to the second test results, and/or the procedures it must use to resolve discrepancies between the two results, is a matter of national rules.

Ideally, there would be formal, transparent and objective process in your national laws and procedures to resolve discrepancies between the first and second test. An example of such a process is described in the following inset (you may wish to work with your government to implement a formal appeal process of this kind).

Box 22. Settling disputes over test results*

Pre-Conditions

1. Border authority takes at least one representative sample from same lot.
2. Border authority splits sample into three identical parts (one for primary analysis and two reserve samples for confirmatory analysis).
3. Laboratory complies with quality assurance provisions and the relevant Codex guidelines on competency for testing food imports/exports
4. Laboratory records quantitative analytical results with measurement uncertainty calculated and stated in a consistent manner
5. Laboratory records the sampling plan and analytical results, including any information necessary to interpret the results
6. Laboratory uses analysis methods consistent with Codex

Process

1. Border authority shares information with importer to allow comparison/evaluation of results and procedures of the testing laboratory, including :
 - Validation status of the methods of analysis used (including method-specific sample handling and preparation procedures within the laboratory)
 - Raw data (including spectral data, calculations, chemical standards used)
 - Results of repeat analysis
 - Internal quality assurance/control
 - Performance in relevant proficiency testing or collaborative studies
2. If, after evaluation of the information supporting the authority's results, the importer continues to dispute the border authority's laboratory results, then a reserve sample is analyzed.
3. Depending on national legislation/procedures, analysis is conducted by
 - The border authority's laboratory in the presence of an expert representative of the importer, or
 - A laboratory accredited by the border authority following approved procedures for methods of analysis of the sample.
4. If the first and second test results differ by less than the critical difference that would be expected from measurement uncertainty of the results, the border authority's first test results shall stand, and the dispute is thus resolved.
5. If the dispute still exists, the remaining reserve sample should be analyzed by a suitably qualified, laboratory agreed on by the border authority and the importer (or designated by the authority), and a final assessment of conformity is based on the results from this laboratory. If possible this laboratory should be independent of the laboratory or laboratories which conducted the first and second tests.

**Adapted from: FAO Guidelines for Settling Disputes over Analytical (Test) Results (CAC/GL 70-2009)*

**SUMMARY OF THE KEY POINTS**

- You will have a right to request a second laboratory test of your import consignment, where the first test by the border authority – plant/animal quarantine, food safety, standards authority, or Customs – is adverse.
- The list of laboratories where such second test can be conducted will be published or provided to you by the relevant authority.



QUESTIONS FOR DISCUSSION

Will the government recognize or accredit independent laboratories to conduct confirmatory testing?

The member government is not required by this measure to allow independent laboratories to conduct confirmatory testing. That is, a country might comply with this measure by providing opportunity for a second test by the same government laboratory that conducted the original test.

Do you think that it is important to have access to independent laboratories for confirmatory tests? What are the advantages and disadvantages in using independent laboratories for this purpose?

Do your government authorities accept test results from independent laboratories (whether national, regional or international)?

2. Prompt notice of detention of goods for inspection

Objectives

By the end of this chapter, you will be able to:

- Explain the circumstances under which a detention notice is issued;
- Explain the benefits to the importer of a detention notice.

What does this measure require the government to do?

Customs or other relevant border authority shall inform the carrier or importer promptly when goods declared for import are detained for inspection.

How will this measure benefit me and my business?

You will be able to have timely information about the status of your goods undergoing customs clearance.

- The requirement is intended to provide you with greater visibility concerning the status of your goods that are undergoing import processing.
- This measure was in response to a complaint of certain WTO members that when Customs or other border authorities in some countries stop goods declared for import for testing or examination, the importer is not informed. That complaint was made in particular with respect to food products or other perishable goods that border authorities detained for testing or examination for compliance with sanitary or phytosanitary standards.

With timely information about reasons for clearance problems, you will be better positioned to take the necessary remedial actions more quickly.

- Prompt notification of status information means that the importer has the possibility to contact the exporter immediately for additional information that may more quickly resolve the issue or to arrange for other disposition of the goods (such as re-export). For example, the exporter may have faced the same issue with other customers and customs authorities, and may have independent laboratory tests or explanations to assist in establishing compliance with import requirements.

What do I need to do to take advantage of this measure?

Coordinate with your broker and/or logistics provider to ensure your prompt receipt of official notifications

The form and manner of the notification is to be determined by each country in its implementation. The proponents of this measure suggested that the notification can be done through different methods such as the issuance of a detention memo to the importer or his authorized agent or by having an on-line system of indicating the status of clearance of a consignment.

To ensure that you receive the notification in a timely fashion, inform your customs broker to forward any such messages/notifications directly to you.



SUMMARY OF THE KEY POINTS

- You will be promptly notified by customs or other relevant border authority if your goods are detained for inspection.
- The detention notification is intended to provide you with greater visibility as to the clearance status of your goods, as well as take action to expedite release or other disposition of goods.
- You should coordinate with your broker and/or logistic provider to ensure that you promptly receive through them the detention notification.



PRACTICE EXERCISES

1. The content and manner of the detention notification are to be determined by each country. What information do you require the border authority include in the notification in order to allow you to take appropriate action? List your requirements (the types/categories of information) here.

DETENTION NOTICE

Must include the following information:

1. _____
2. _____
3. _____
4. _____
5. _____

2. You have specified your requirements for a detention notice. Now, you want the appropriate authorities to adopt these requirements. Explain the means available to you under the Agreement that you have learned whereby you can exchange information with government authorities regarding import and export requirements and formalities, such as a proposal for the content of a detention notice.



QUESTIONS FOR DISCUSSION

Should this notification be required only in cases of potential rejection of imported goods by the food safety authorities?

The background to this measure concerns food and agriculture products detained for testing by food safety authorities for compliance with SPS requirements. Businesses may however wish to see it also applied when Customs or any border agency intends to sample or physically examine or inspect goods for any purpose, routine or otherwise.

Do you think that it is important to receive these notifications in all cases where any border agency intends to examine your goods, or do you think it is sufficient to have these notifications only in cases of potential rejection of entry of goods by food safety authorities?

3. Handling and release of perishable goods

Objectives

By the end of this chapter, you will be able to:

- Explain the simplified procedures for the handling and expedited release of perishable goods;
- Determine what simplified procedures may be available in your country for the expedited release of perishable goods.

What does this measure require the government to do?

Perishable goods are those ‘that rapidly decay due to their natural characteristics, in particular in the absence of appropriate storage conditions.’

The Agreement contains two obligations with respect to such goods:

- First, the Agreement imposes certain requirements on authorities regarding the handling of perishable goods pending their release. In particular, the member government must arrange a suitable storage facility (for example, a cold-storage customs public bonded warehouse at the port) or it must allow the importer to arrange storage (that is, at the importer’s own facility or a third party). Movement of the goods to these facilities may be subject to authorization and approvals by Customs and/or other relevant authority.
- Second, Customs and other relevant authorities will be required to adopt procedures to ensure expedited processing and release of perishable goods. In particular, these authorities must:
 - Release perishable goods in normal circumstances ‘within the shortest possible time;
 - Provide for release of perishable goods, in exceptional and appropriate cases, outside official business hours;
 - Provide for any procedures required for release of perishable goods at the importer’s or other storage facility to which they have been moved, at the request of the importer and where practicable and consistent with legislation;
 - Give priority to perishable goods when scheduling any required examinations;
 - In cases of significant delays, give the importer the reasons on written request, ‘to the extent practicable.’

How will this measure benefit me and my business?

Your risk of loss or deterioration in value of perishable goods will be reduced.

- Given their nature, any delays in the delivery of perishable goods, particularly where they are exposed to adverse temperature, humidity or other environmental conditions, can significantly reduce their quality and value.
- By requiring accelerated border processing of perishable goods, and ensuring their proper storage pending release, the measure reduces the risk of loss to businesses that trade in these goods.
- As the proponents of this measure recognized, these include many SMEs located in developing countries which are relatively less able to absorb these kinds of unnecessary losses resulting from administrative delays.
- The risk of loss can also be particularly significant for high value perishables, such as cut flowers and seafood. In order to speed up delivery, such goods are often shipped as air cargo, the additional cost and value of which is also forfeited if the goods are spoiled due to delays at the point of importation.

Your costs of insurance related to transport of perishable goods may be reduced.

- If risk of loss due to delays and handling at border crossings is reduced, cost of insuring against such losses may also be reduced.

Your port/terminal handling and storage costs can be reduced.

- To the extent that Customs and other relevant border authorities expedite release of your goods, costs of demurrage, temporary storage warehousing, reefer container service and related handling charges can be avoided.

You will be able to move imported perishable goods more quickly to the market.

- This is a critical concern if you import goods with a very limited shelf life.

You can have fewer customer complaints and incur less cost due to returns and replacements for spoiled goods.

You can assure the quality of high-value perishable goods through appropriate or self-supervised storage conditions.

- The measure requires your government to arrange, or allow you to arrange, appropriate facilities for storage of your goods. This provides the possibility that goods can be moved to a facility of your choosing under your supervision pending clearance.

You can receive a formal explanation from Customs or other border authorities for delays or refusal to release your goods.

- With this explanation, you will be better able to determine what additional information or assistance you might provide to unblock the release of the goods.
- A written record of reasons for the delay or the refusal to release the goods may also be helpful in discussions with your supplier regarding conformity of the goods.
- Finally, an explanation will be important in order to take advantage of your right of appeal to a higher level official within the customs administration, as discussed in section 1 (Right to Appeal or Review).

What do I need to do to take advantage of this measure?

1. Find out the requirements, including any fees, for clearance processing outside official business hours of your Customs and SPS authorities.

In some countries, Customs and SPS authorities (e.g. food safety, plant and animal quarantine) work hours are 24/7.

In contrast, authorities in other countries keep regular business hours. You therefore may be required to submit an application to Customs and/or other authorities to obtain clearance outside business hours, and there may be overtime fees that are charged.

Any such requirements concerning overtime services, including fees, should be published.

2. Ascertain terms and conditions for simplified or provisional release of perishable goods by your customs and SPS authorities.

Different customs procedures are used by countries to expedite release of imported perishable goods.

One common procedure used for perishables is 'immediate delivery.' The importer, on written application to Customs (and possibly submission of a bond or other guarantee), is permitted to move the goods directly on importation to his facility, subject to the condition that the goods declaration is submitted and duty and tax paid subsequently.

Approval by the relevant SPS authority may be a condition of granting immediate delivery.

To provide further facilitation for these types of goods, some countries allow a blanket or general authorizations to move all goods imported by the authorized importer directly to the designated facility on their arrival, rather than require the importer to apply for and obtain the approval for each shipment, which can itself be a source of delay.

National procedures may allow the goods to be moved to the importer's facility pending release via the same truck that brought the goods to the border, rather require transfer to a national truck.

Alternatively, under the rules of some countries, perishable goods may be released under the two-step procedure that you learned about in Chapter 3 (e.g. release on basis of a simplified customs declaration, subject to obligation to submit the full or supplementary declaration).

Figure 15. East African Community customs: immediate delivery procedure**Immediate Delivery Procedure-
Sample regulation**

Goods delivered in special circumstances.

49. (1) Where in any special circumstances, an owner of bullion, currency notes, coins, perishable goods or any other goods, intends to take delivery of the goods prior to passing entry, the owner shall apply to the proper officer on Form C12 and furnish a bond using the Customs Bond Form or any other security as may be required by the proper officer.

(2) The owner of goods referred to in sub-regulation (1) shall enter the goods within forty-eight hours of taking delivery of the goods.

Source: East African Community Customs Regulations

EAST AFRICAN COMMUNITY C.12
CUSTOMS

Regulation 49 (1)
APPLICATION FOR RELEASE OF PERISHABLES OR OTHER GOODS PRIOR TO
PAYMENT OF DUTY

To The Proper Officer, Port
at, Date 20

I request permission to remove, the under-mentioned goods imported in aircraft/vessel/vehicle on 20 prior to payment of duties and other taxes.

Marks and numbers

Number and description of packages

Description of goods

Value in dollars

RELEASE APPROVED Importers/Agent

*Bond given on CB1. NO. /Cash Deposited on Receipt

Dated 20

Released, Proper officer

Signature

Stamp of releasing officer

*Delete whichever is inapplicable

To take advantage of expedited release procedures, you should ascertain from Custom authorities the conditions for use of the applicable procedure. These should be published, typically in the form of a rule or instruction.

3. If release of your goods is unreasonably delayed, make a written demand on Customs for reasons

You should consult your customs laws and regulations for any conditions on making this request. For example, under customs laws of some countries, the demand for reasons cannot be made prior to expiration of a certain number of days following submission of the goods declaration and/or must be made to a specified officer.



SUMMARY OF THE KEY POINTS

- Border authorities must develop procedures to ensure expedited release of perishable goods, including priority in scheduling examinations and, 'in exceptional circumstances and where appropriate,' processing outside of normal business hours.
- Border authorities must provide suitable storage facilities for perishable goods, or allow the importer to move the goods to suitable facilities, pending their release.
- Expedited and simplified procedures and arrangements allow you to get your imported perishable goods more quickly to market; reduce the risk of loss or deterioration of value of perishable goods resulting from border delays; and can reduce your port, handling, and insurance charges.
- Border authorities must provide you with a written explanation on request for delays in the release of perishable goods; this gives you information you may need to resolve the situation, communicate with your supplier, or make an appeal.

To take advantage of the special treatment for perishable goods, you should consult your customs regulations.



PRACTICE EXERCISES

1. Circle any of the following imports that should be treated as 'perishable goods':
 - a. Cut flowers
 - b. Frozen or chilled meat
 - c. Fresh vegetables
 - d. Blood and pharmaceuticals
 - e. Christmas ornaments
 - f. Live animals
 - g. Newspapers and periodicals
 - h. Late model cars
 - i. Hatching eggs
 - j. Humanitarian relief supplies

2. List all border authorities in your country that are involved in the import of perishable goods and (if you know) the types of goods that they each regulate:

Name of Authority	Goods

Have these authorities established any procedures to allow expedited release of perishable goods? If so, what are they?

4. Option to return rejected goods

Objectives

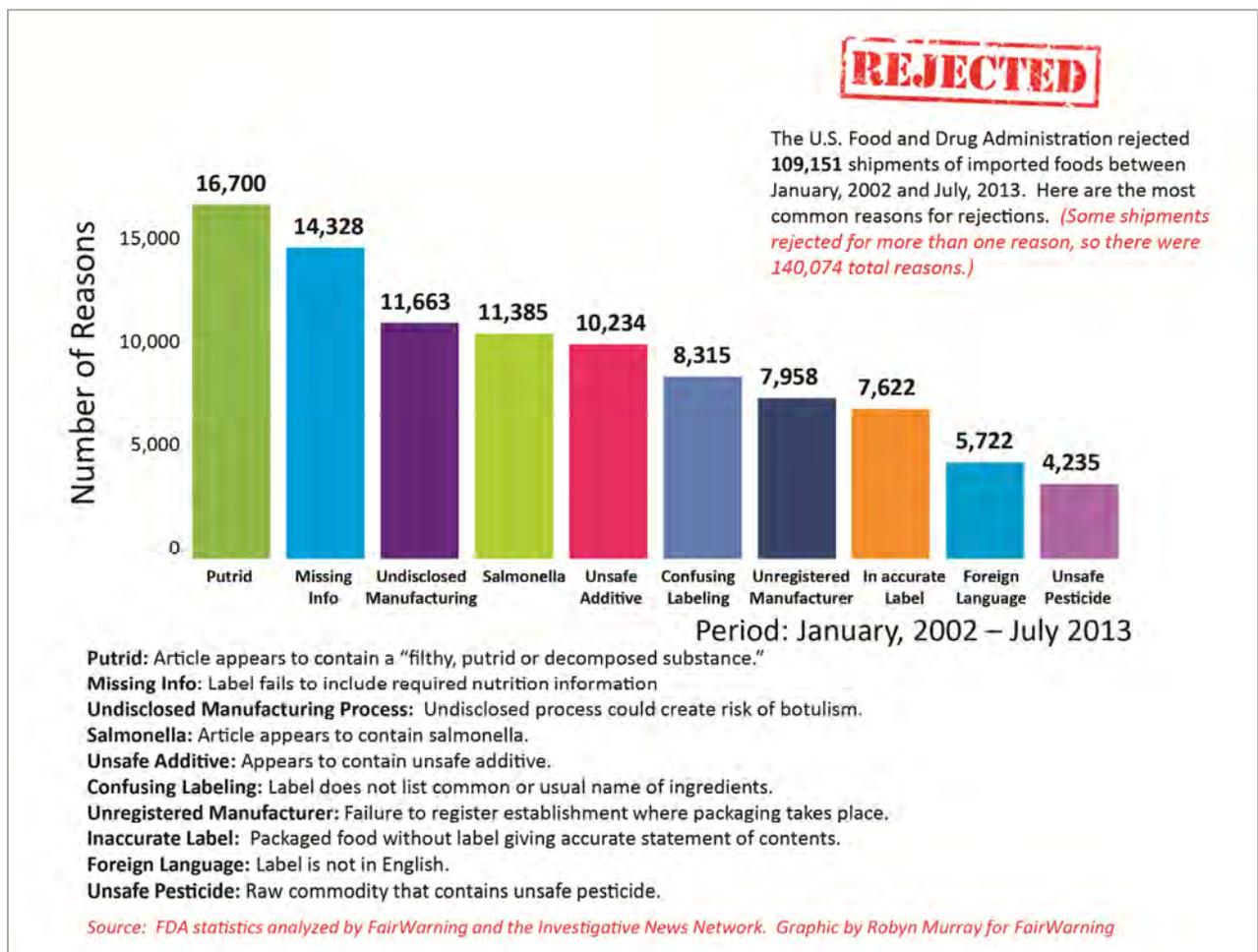
By the end of this chapter, you will be able to:

- Explain who can benefit from the option to return rejected goods, and under what circumstances;
- Explain the practical steps an exporter should take to benefit from the option to return rejected goods.

What does this measure require the government to do?

Subject to laws and regulations, the importer shall have the option to return to the exporter (or a third-party designated by the exporter) goods that have been rejected entry due to failure to comply with sanitary or phytosanitary requirements (food products containing pesticides, additives or contaminants exceeding prescribed levels) or technical regulations (product labeling or packaging requirements).

Only if the importer does not exercise the option in a reasonable period of time, Customs or other relevant authority may destroy or take other action to deal with the goods.



How will this measure benefit me and my business?

It limits the discretion of foreign authorities to destroy your goods that have been rejected without consideration of your wishes for return.

- Under laws of most countries, the food safety and plant and animal quarantine authorities typically have the discretion to exercise a range of remedial measures against imported goods found not to conform to standards, such as return or removal, re-conditioning under supervision or destruction of the goods. However, some exporters have found that, in practice, certain countries 'routinely' order destruction of these goods without allowing the possibility of other options.
- This measure would limit the discretion of these authorities to destroy your goods against your wishes by providing a right of re-export.

As an exporter, you will be able to reduce or limit your potential losses on goods rejected entry in foreign markets.

- The measure provides an option to the exporter to salvage his shipment rather than taking a total loss if the goods were simply confiscated and destroyed at the point of importation.
- For example, it may be possible that, if the rejected goods are returned to you, you may be able to recondition the goods or segregate the contaminated items from those that are not or otherwise treat the goods to bring them into compliance (through re-labeling or where the goods are rejected for failure to meet such standards) for return to the same customer or possibly sell to another market.
- The option to return rejected goods may be particularly important for SME exporters, for whom the impact of such losses will be relatively more significant than larger companies.

As an exporter, you will have flexibility to redirect goods that do not meet standards in one country to a third country where they do comply.

- The measure provides you with flexibility to transship goods that do not meet national technical regulations in one country to a third country with different standards.

What do I need to do to take advantage of this measure?

1. Require your customer/logistics provider to notify you immediately if goods are rejected entry by border authorities.

You may wish to consider including this obligation in your contract with your customer and/or logistics operator.

2. Through your customer or otherwise, familiarize yourself with the rules/restrictions imposed by the importing country on the option to return rejected goods and other options for disposition.

The right to return rejected goods under the Agreement is explicitly subject to 'laws and regulations' of the country. These might include, for example:

- A time limit for re-exportation and/or placement of the goods under a customs procedure for re-export, possibly with the requirement of a guarantee that would be discharged upon submission of proof of export;
- Conditions that re-export will be permitted only to the country of origin or to those countries which have stated in advance that they are prepared to accept the consignment knowing that it has been refused entry elsewhere; and

- A prohibition against re-export if the goods are determined to present serious health risks.

Codex alimentarius

“When food is rejected because it fails to meet national standards of the importing country but conforms to international standards, the option of withdrawing the rejected consignment should be considered.”

Source: *Guidelines for Food Import Controls Systems CAC/GL 47-2003*

In order to be able to assess your options concerning the disposition of rejected goods, and to negotiate responsibilities between you and your customer, you should familiarize yourself with these restrictions.

3. Familiarize yourself with your country’s rules/restrictions on return of goods rejected entry in another country.

Your country also may impose restrictions or prohibitions on return of goods that have been rejected entry by another country.

4. Establish the necessary internal procedures and controls to ensure assessment of options and priority handling of goods rejected by your customer’s border authorities.

You will have a limited time to act if you wish to return or redirect the goods, so it will be important that rejection notifications are handled by your staff with priority.



SUMMARY OF THE KEY POINTS

- Importers have the option to return, to the exporter or a third-party, food and other imported products for which the entry has been rejected by border authorities.
- This option is subject to regulations of the importing country, and must be exercised within a reasonable period of time.
- Exporters - particularly exporters of food and agricultural products – should
 - ensure that their customers communicate immediately any detention and rejection notifications;
 - familiarize themselves with conditions/restrictions on return of rejected goods, both in export markets and their own country; and
 - establish the necessary internal procedures to ensure proper handling of rejected entries.



PRACTICE EXERCISES

You have exported to your customer in the EU fish paste valued at \$15,000. Your customer notifies you that EU authorities have rejected the entry of the goods (see screenshot below). The reason given is that a sample taken from the consignment was found to have 'insufficient labeling.'

The screenshot shows the RASFF Portal interface. The notification details are as follows:

Notification details - 2009.AIA	
insufficient labelling of grey featherback fish paste from Vietnam	
Reference:	2009.AIA
Notification date:	10/02/2009
Last update:	11/01/2010
Notification from:	United Kingdom (GB)
Classification:	border rejection
Notification type:	food - border rejection - border control - consignment detained
Action taken:	????????????????
Distribution status:	no distribution
Product:	grey featherback fish paste
Product category:	fish and fish products

Hazards

Substance / Hazard	Category	Analytical result	Units	Sampling date
insufficient labelling	labelling absent/incomplete/incorrect			

Distributed to

Origin

Vietnam

You have the option to return the goods or allow EU authorities to destroy the goods at the place of importation.

In deciding whether to return the goods or allow them to be destroyed, what factors should you take into account? What additional information would you need to take a decision? If you decide to return the goods, what steps should you take to do so?

5. Food and animal feed 'import alert' systems

Objectives

By the end of this chapter, you will be able to:

- Explain the restrictions on member government's use of import alert systems;
- Determine how to access and benefit from such systems.

What does this measure require the government to do?

The measure applies to those countries that adopt or maintain an import alert system with respect to food, beverage or animal feed for purposes of protection of human, animal, or plant life or health.

There is no requirement that a country establish such a system.

If the food safety authority does operate an import alert system, then the authority's administration of the system will be subject to disciplines concerning when alerts may be issued and the conditions under which they must be lifted.

In particular, a country:

- May issue alerts based on risk;
- Ensure that the alert applies uniformly only to those points of entry where SPS conditions on which the alert is based apply;
- Promptly terminate or suspend the alert when circumstances giving rise to it no longer exist or, as a result of changed circumstances, threat can be addressed in less trade restrictive manner; and
- When the alert is terminated or suspended, promptly publish the announcement in a non-discriminatory and easily accessible manner or inform the exporting country or the importer.

Box 23. What is an import alert system?

Food safety authorities in a number of countries have developed "import alert" systems to ensure that their field officers are quickly informed about specific threats that may require some immediate or urgent action.

For example, where the authority finds that goods shipped by a particular producer contain contaminants in unacceptable levels – as a result of tests on an import shipment, inspections in the local market, information from the exporting country, etc. – the authority will broadcast a notification alerting all border offices of the threat.

Typically, the border office acting on the alert will detain all subsequent shipments of the same goods of the same origin for examination or testing until the authority is satisfied that the threat has been resolved.

The leading example is the EU's Rapid Alert System for Food and Feed (RASFF), an on-line system by which the EU Commission communicates alerts to EU member countries. The RASFF information is also made available to the public via an internet portal.

Other countries have implemented similar systems, such as U.S. Food and Drug Administration Import Alerts system. Import alert systems are not necessarily internet-based, and different levels of technology to broadcast the information may be used, such as telephone, fax or email messages.

Import alert system might also be established for purposes of broadcasting alerts about goods violating regulatory requirements other than food safety, such as products suspected of violating technical regulations, consumer safety, or animal health requirements.

How will this measure benefit me and my business?

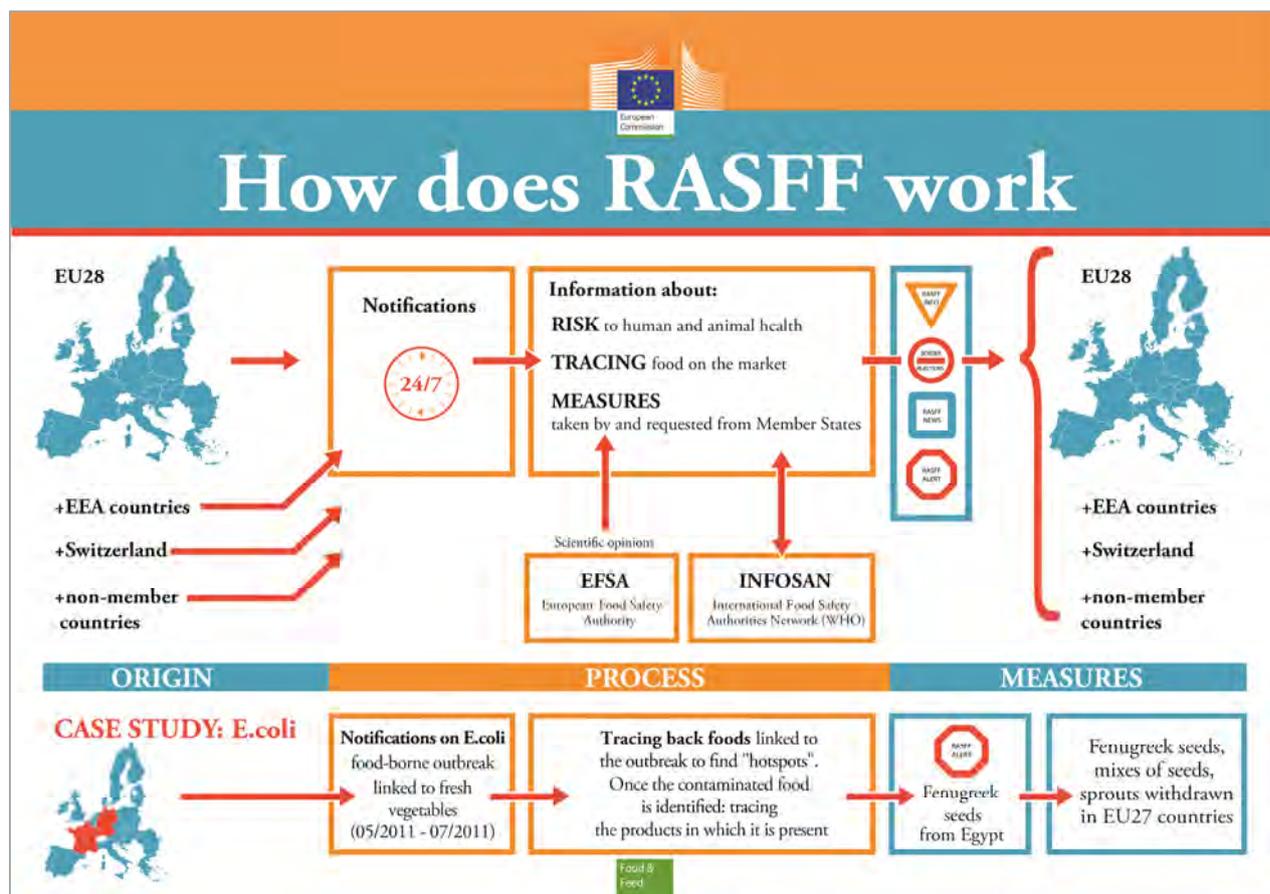
As an exporter, you will avoid time and costs of unwarranted detention or rejection of your goods by food safety authorities.

- India proposed this measure in the WTO negotiations in response to complaints of its exporters regarding certain unfairness in the administration of the EU RASFF system, such as:
 - Where an import alert is issued, a prescribed number of subsequent shipments at each border office are subject to 100% examination (rather than, for example, a prescribed number of shipments by the producer to all offices within the EU); this did not take into account the reality that different volumes of imports were made at different offices of the EU.

- The different border offices of the EU used different standards to determine whether goods under the same import alert comply with requirements (e.g. different methods and procedures for sampling, analysis and documentation requirements).

These types of problems should be eliminated by this measure. Any import alerts must be based on risk. They must be terminated promptly when the conditions that gave rise to the alert have been resolved.

Figure 15. EU RASFF system



You can provide your export customers with greater confidence that goods will be delivered without delays or difficulties.

- A public import alert system can be a selling point to demonstrate to your customers that your goods are not, and have not been, subject to border rejections by food safety authorities (if that is the case!). The EU - and perhaps other countries - makes this information publicly available via an on-line system that your customers can consult to verify.
- On the other hand, if you have been subject to an import alert in the past, your potential customers naturally may be concerned. In the words of the proponent of the measure, such alerts have a 'chilling' effect on trade because they typically lead to 100% examination of that exporter's subsequent shipments for some period of time.
- However, under this measure, when the alert is over, the member government is required to 'promptly publish' the notification of termination in an easily accessible manner, or provide your importer or your government with that notification. This notification can be used with your customers to give confidence that past issues have been resolved and the goods will not be rejected at the border.

You will be forewarned about potential delay and rejection of goods by border authorities of your export markets.

- A publicly available import alert system provides you with information that goods of the kind you sell may be subject to detention or rejection in particular markets. You might also find opportunities where your competitor's products are subject to such alerts.

What do I need to do to take advantage of this measure?

1. Determine whether the governments of your export markets have established an import alert systems for food and foodstuffs.

Not all countries have established such systems of import alert notifications. If such a system exists in your potential export market, it is typically managed by the food safety authority of that country. Because a purpose of such systems is to put consumers on notice about potential risks in the food supply, the food safety authority also typically provides public access to these notifications, including making the notifications available on the authorities' website or by fax or email.

See, for example:

- EU RASFF portal (<https://webgate.ec.europa.eu/rasff-window/portal/>)
- U.S. Food and Drug Administration Import Alerts (<http://www.fda.gov/Forindustry/ImportProgramme/ImportAlerts/default.htm>)
- Hong Kong Rapid Alert System (http://www.cfs.gov.hk/english/whatsnew/whatsnew_rasi.html)

2. Monitor the import alert system for actions against your goods (or competing goods of other suppliers).

You should periodically check the import alert system of the countries in your export markets. This provides you with important and often detailed information about potential issues you may face in clearance of your goods and, perhaps, sales opportunities where competitors' goods from other countries have been detained or rejected.

3. Ascertain appeal mechanisms to contest unwarranted import alerts against your goods.

To be prepared, you should ascertain the appeal mechanisms available to you in the export markets. As you learned in section 1 (Publication) and 2 (Information Available through the Internet), member governments are required to publish their appeal procedures and are encouraged to do so via the Internet. These appeal procedures will become important in the event that you wish to contest the rejection of your goods by the food safety authority (rejection will typically give rise to an import alert, blocking your future shipments) or object that the food safety authority's continuation of an import alert against your goods is unwarranted.



SUMMARY OF THE KEY POINTS

- ☑ Member governments that operate food/animal feed import alert systems must ensure that alerts are based on risk, are applied uniformly to all points of entry where the same SPS conditions prevail, and are promptly lifted when no longer justified. They must also promptly publish or notify the importer or exporting country when the alert is terminated.
- ☑ This measure benefits exporters of food and animal feed products who can be assured of greater fairness and transparency in the administration of import alerts affecting their goods.
- ☑ Exporters of food and animal feed products should ascertain whether food safety authorities in potential export markets maintain import alert systems; regularly monitor any such systems for actions by the authorities against their (or their competitor's) products; and apprise themselves of the appeal procedures available to them in such markets, in the event a rejection or continuation of an import alert concerning their goods is unwarranted.



QUESTIONS FOR DISCUSSION

The following video describes the EU import alert system:

Figure 16. EU RASFF system (video)



https://www.youtube.com/watch?v=F3cmxu3uIPo&feature=youtu_gdata_player

Do you think such a system should be implemented in your country by your government?

What do you think the advantages of such a system to businesses, such as food and animal feed importers? What risks or costs to businesses do you foresee if the government implemented such a system in your country?

Chapter 7 Customs and border agency control and administration

Overview

In this final chapter, we have summarized 8 measures that are mainly concerned with the control and verification methods used by Customs and other border authorities (risk management, post clearance audit, customs-to-customs cooperation) or good administrative principles or practices to be applied by such authorities when carrying out their functions (common border procedures, uniform documentation requirements, use of international standards).

We have grouped these measures separately because they primarily impose internal or administrative requirements on the border authorities rather than, for example, offer new procedures to the business community of the kind described in the previous chapters. The business community may not be directly involved in the development or implementation of these measures. Nevertheless, we thought it important to include some discussion of these measures because the private sector will benefit from the facilitations that they can produce if properly and fully implemented by the member government.

1. Risk management

Background

In the modern trade environment, it would be enormously inefficient and practically impossible if Customs attempted to verify the compliance of each and every import or export transaction: inefficient because every transaction does not present the same level of threat; impossible because of the limited human and financial resources available to Customs to deal with ever-increasing volumes of trade. Given that in reality, modern customs administrations adopt risk management systems to determine which people, transactions or goods should be controlled and how, when and where control should be exercised.

In general terms, a system of risk-based control means that Customs will focus its attention and control resources on those transactions that are determined to present a higher risk of non-compliance with customs rules, and allow transactions presenting low risk ('green channel') to pass with less or perhaps no control at all.

Traders who have demonstrated high levels of compliance should be subject to fewer interventions and therefore experience reduced costs and time in clearance. In that way, a risk-based system facilitates legitimate trade and provides incentives for traders to voluntarily comply.

Requirement

Customs administrations shall, to the extent practicable, use a risk management system for control.

Customs controls shall concentrate resources on high risk consignments and expedite release of low risk consignments. Border controls exercised by customs or other authorities for other purposes, such as verification of compliance with technical regulations, or plant or animal health requirements, shall also be concentrated on high risk consignments to the extent possible (that is, risk-based control is mandatory for customs controls and 'best efforts' for other border authorities and purposes).

Goods shall be selected for control based on appropriate risk criteria, such as the nature, origin, value and/or country of export of the goods; compliance record of the traders involved; and/or type of transport.

2. Use of customs post clearance audit

Background

Modern customs administrations use post-clearance audit to verify an importer or exporter's compliance through examination of his or her financial and accounting records and systems. This control technique shifts the traditional focus of customs verification away from the border, where and when the goods arrive, to review after release of the goods and typically undertaken at the premises of the business. Moreover, while traditional border control is conducted on a transaction by transaction basis, the post-clearance audit allows Customs to develop a broader view of the trader's systems, methods and practices to determine whether they are sufficient to ensure future compliance.

The benefit of post clearance audit to business should be faster release of goods at the border. Rather than intervention in individual transactions at the time of clearance, Customs verification can be carried out at a later stage. Moreover, because the administration should 'feedback' the PCA results to its risk management system, those traders found to be reliable should be subject to fewer customs controls.

Requirement

With a view to expedite release of goods, member governments are required to use post-clearance audit to ensure compliance with customs and related laws and regulations.

Persons subject to audit are to be selected on the basis of risk. Audits are required to be carried out in a transparent manner, which includes the requirement that the person being audited shall be informed of the audit results, his or her rights and obligations (for example, right of appeal), and the reasons for the audit results.

Results of post-clearance audit should be used, whenever practicable, in applying risk management.

3. Establishment and publication of average release times

Background

A metric used by many customs administrations to assess their performance in import and export processing is the average time required to release a consignment. This might measure, for example, total average time required to release an import consignment at a certain port from the moment the cargo manifest is registered to the exit of the goods from port. The World Customs Organization has developed a methodology – the WCO Time Release Study – to assist customs administrations design and conduct this measurement.

In addition to determining progress on implementation of trade facilitation measures, periodic time release studies are useful to customs and other border authorities in identifying where the bottlenecks lie and what process improvements should be made. They may also be useful to business for the same reason.

Requirement

WTO member countries are 'encouraged' to measure and publish their average release times periodically and in a consistent manner using tools such as the WCO Time Release Study.

4. Border agency cooperation

Background

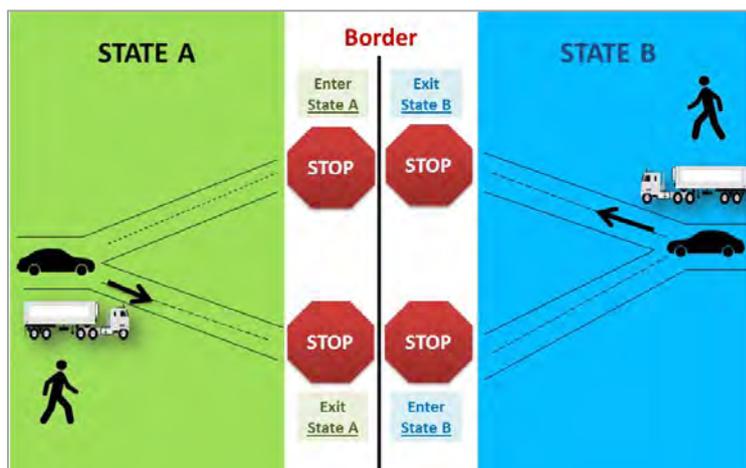
Border agency cooperation has two aspects: national and international.

Nationally, there can be a number of government agencies that have border responsibilities, such as Customs, the food safety authority, plant and animal quarantine and border police. The failure of these

border authorities to coordinate or cooperate is itself a cause of additional cost and delay to importers and exporters. The most common case is where goods declared for import must be examined by two or more authorities. The importer incurs unnecessary costs and delay where the examinations are not carried out at the same time and place.

The international aspect of border coordination primarily affects those countries that share a common land border. Without coordination, a truck that crosses such borders must stop twice at the same border (once at the country it is departing, again at the country where it arrives); present customs documents twice; and undergo customs and other controls, possibly including unloading of cargo, twice. There can be additional delays where the two border posts have different working times.

Figure 17. Shared border

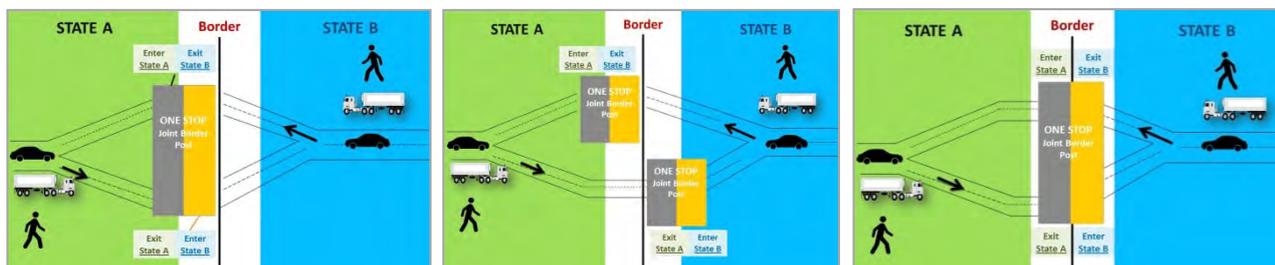


Requirement

Member governments shall ensure that their national border authorities cooperate and coordinate their activities to facilitate trade.

In addition, countries that share a common border should, to the extent possible and practicable, cooperate to facilitate cross-border trade by, for example, aligning working days and hours, sharing common facilities, conducting joint controls, or establishing one-stop border post controls.

Figure 18. One stop border posts¹¹



¹¹ Source: JICA, One Stop Border Post Source Book (2011)

5. Common border procedures and uniform documentation requirements

Background

This measure is in response to complaints by exporters that the application of import requirements in certain countries – the documentation and data requirements or customs clearance procedures – varied between one point of entry and another, even though the goods were identical and other relevant conditions are the same (same mode of transport and same country of production and export).

This adds unnecessary costs to business. It requires, for example, the exporter to arrange for different formats or data elements of a document such as certificate of origin depending on the final destination of the product.

In fact, this complaint was made against the EU (which, as an entity, is itself a WTO member), where different requirements were apparently being applied by the different countries making up the customs union. However, it is possible that the unjustified differences in application of trade laws and requirements may appear in different ports of entry of a single country, particularly where there is not strong central administrative oversight and control of field operations.

Requirement

Member governments are required to apply common customs procedures and uniform documentation requirements for release and clearance of goods throughout their territory.

This does not preclude the member government from different treatment for certain justifiable reasons, such as where there are differences in the nature or type of goods or means of transport; where the risks presented vary; or where claims are made for partial or total duty exemptions in one shipment and not another.

6. Mechanism for customs cooperation (exchange of information)

Background

Under WTO customs valuation rules, which are applied by all WTO members for purposes of calculating import duties, a customs administration is generally required, subject to certain exceptions and conditions, to appraise imported goods on the basis of their transaction value or the price actually paid or payable for the goods.

In general, this requires Customs to base its valuation of the goods on the importer's invoice price for the goods, unless it has some reasonable doubt as to the truth or accuracy of that invoice. Validity of declared prices or declared values is therefore a concern for Customs administrations, particularly where customs duties are important source of revenue.

Certain customs administrations have sought a solution to this problem whereby they might compare, for verification purposes, the price declared by the importer to customs in the country of importation of the goods to the price or value for the same goods that was declared by the exporter to customs in the country of exportation. However, this requires an arrangement to be in place for exchange of customs information and documents between the respective customs administrations.

Requirement

The Agreement contains detailed rules and procedures to allow one customs administration to obtain from another copies of the import or export declaration (or the data), and the supporting documents (commercial invoice, packing list, certificates of origin, and bill of lading) in specific cases where the requesting administration has reasonable doubts about the truth or accuracy of the declaration made to it.

These rules and procedures include requirements to ensure that confidential information of businesses is protected and properly used only for the verification purposes requested.

7. Use of international standards**Background**

A number of international organizations are involved in setting 'best practices' and standards for trade procedures and trade documentation and data requirements. Some better known standards developed by, or under the auspices of, these organizations include the Revised Kyoto Convention (WCO), the WCO data model, and the United Nations Layout Key for Trade Documents (UNECE).

Use of these international standards by customs and other border authorities in the design of their import and export formalities increases transparency and predictability. Business – particularly SMEs – has greater difficulty completing a non-standardized import declaration or other required forms, particularly where there is a language difference. Where national trade documentation and procedures are harmonized or aligned to the known international standards, business costs of compliance, such as costs to prepare these trade documents, are reduced. In the words of a proponent of this measure:

*'Obviously, if each Member or regional grouping were to introduce their own (varying) standards, the result would be a proliferation of incompatible requirements in different markets, adding to traders' costs.'*¹²

Requirement

Member governments are 'encouraged' to use the relevant international standards when developing their import, export or transit formalities and procedures, except to the extent that the Agreement prescribes some other standard.

Member governments are also encouraged to participate in the work of international standards-setting organizations, to the extent their resources allow.

8. Limitation on use of pre-shipment inspection**Background**

In terms of the WTO agreements, pre-shipment inspection or 'PSI' refers to the services provided by private companies to member governments, such as SGS SA, Bureau Veritas, or Intertek, to verify 'the quality, the quantity, the price, including currency exchange rate and financial terms, and/or the customs classification of goods' destined for the client country.

¹² TN/TF/W/46 (9 June 2005)

PSI services are typically used in place of, or to support new or developing customs administrations. The inspection is carried out in the country of export before the goods are shipped. In the past, there have been complaints by exporters and their governments about the additional delays and costs PSI can entail. As of 2014, approximately 20 countries only continue to use PSI for revenue protection or otherwise to support customs administration.¹³

Requirement

The Agreement will prohibit WTO countries from requiring the use of PSI for tariff classification and customs valuation purposes.

WTO member countries are not prohibited from continuing the use of PSI for other purposes – such as verifying compliance with quality standards – but are ‘encouraged’ not to introduce or apply new requirements regarding their use.

¹³ G/VAL/W/63/Rev.16 (8 May 2014).

WTO Trade Facilitation Agreement (TFA) article reference sheet

SECTION MEASURES EXPLAINED	CORRESPONDING WTO TFA ARTICLE
CHAPTER 2: BETTER ACCESS TO TRADE INFORMATION	
1. PUBLICATION	Article 1.1: Publication
2. INFORMATION AVAILABLE THROUGH THE INTERNET	Article 1.2: Information Available Through The Internet
3. ENQUIRY POINTS	Article 1.3: Enquiry Points
4. CONSULTATION	Article 2.2: Consultation
5. BUSINESS PARTICIPATION IN DEVELOPMENT OF LAWS, REGULATIONS, FORMALITIES AND DOCUMENTATION REQUIREMENTS	Article 2.1: Opportunity to Comment and Information Before Entry into Force
6. INFORMATION BEFORE ENTRY INTO FORCE	Article 2.1: Opportunity to Comment and Information Before Entry into Force
7. ADVANCE RULING	Article 3: Advance Ruling
CHAPTER 3: FASTER, SIMPLER & CHEAPER BORDER CLEARANCE	
1. PRE ARRIVAL PROCESSING	Article 7.1: Pre-arrival Processing
2. SEPARATION OF RELEASE FROM FINAL DETERMINATION OF CUSTOMS DUTIES, TAXES, FEES AND CHARGES	Article 7.3: Separation of release from final determination of customs duties, taxes, fees and charges
3. ADDITIONAL FACILITATION FOR AUTHORIZED OPERATORS	Article 7.7: Trade Facilitation Measures for Authorized Operators
4. SINGLE WINDOW	Article 10.4: Single Window
5. DISCIPLINES ON FEES AND CHARGES	Article 6: Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation
6. USE OF COPIES OF SUPPORTING DOCUMENTS FOR FASTER PROCESSING	Article 10.2 Acceptance of Copies
7. OFFERING THE OPTION OF ELECTRONIC PAYMENT	Article 7.2 Electronic Payments
8. LIMITS ON MANDATORY USE OF CUSTOMS BROKERS	Article 10.6 Use of Customs Brokers

SECTION MEASURES EXPLAINED	CORRESPONDING WTO TFA ARTICLE
9. RAPID RELEASE OF EXPRESS CONSIGNMENTS	Article 7.4: Risk Management
CHAPTER 4: FAIRNESS IN RESOLVING CUSTOMS DISPUTES	
1. RIGHT TO APPEAL OR REVIEW	Article 4: Procedures For Appeal or Review
2. CUSTOMS PENALTY DISCIPLINES	Article 6.3 Penalty Disciplines
CHAPTER 5: DUTY FREE IMPORT PROCEDURE	
1. FREEDOM OF TRANSIT	Article 11: Freedom of Transit
2. MOVEMENT OF GOODS UNDER CUSTOMS CONTROL INTENDED FOR IMPORT	Article 9: Movement of Goods Intended for Import Under Customs Control
3. CUSTOMS 'SUSPENSE' PROCEDURES	Article 10.9: Temporary Admission of Goods and Inward and Outward Processing
CHAPTER 6: MEASURES AVAILABLE IN DEFENSE OF YOUR GOODS	
1. REQUESTING OPPORTUNITY FOR A SECOND TEST	Articles 5.3: Test Procedures
2. PROMPT NOTICE OF DETENTION OF GOODS FOR INSPECTION	Article 5.2: Detention
3. HANDLING AND RELEASE OF PERISHABLE GOODS	Article 7.9: Perishable Goods
4. OPTION TO RETURN REJECTED GOODS	Article 10.8: Rejected Goods
5. FOOD AND ANIMAL FEED 'IMPORT ALERT' SYSTEMS	Article 5.1: Notifications for enhanced controls or inspections
CHAPTER 7: CUSTOMS AND BORDER AGENCY CONTROL AND ADMINISTRATION	Article 8 & 12: Border Agency Cooperation



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