GETTING DOWN TO BUSINESS

MAKING THE MOST OF THE WTO TRADE FACILITATION AGREEMENT

International Trade Centre

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Getting Down to Business

Making the Most of the WTO Trade Facilitation Agreement

About the paper

Implementing the World Trade Organization's Trade Facilitation Agreement is a unique opportunity for developing countries and least developed countries to simplify and modernize their trade and border procedures.

This report assists policymakers and traders to understand the benefits, legal obligations and key factors for successful implementation of each measure in the Agreement. It provides technical notes and guidelines for step-by-step national implementation plans and checklists to ensure compliance for each measure.

Publisher: International Trade Centre

Title: Getting down to business: Making the Most of the WTO Trade Facilitation Agreement

Publication date and place: Geneva, May 2020

Page count: 150

Language: English

ITC Document Number: TFBP-19-129.E

Citation: International Trade Centre (2020). *Getting down to business: Making the Most of the WTO Trade Facilitation Agreement.* ITC, Geneva.

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ITC is the joint agency of the World Trade Organization and the United Nations.

Foreword

There are many steps involved in the successful operationalization of the World Trade Organization (WTO) Trade Facilitation Agreement (TFA). The ratification process continues to show progress with the WTO reporting that of February 2020, 91% of the membership had ratified. We also see growing advances in the notification process and in the implementation of measures in the Agreement.

However, true success will be measured by the realization of significant trade gains for developing countries on the ground, by reducing cumbersome documentation, harmonization of regulations across borders and simplification of border procedures. Progress will also be measured by how micro, small and medium-sized enterprises are able to reap the benefits through reduced time and cost of trading their goods and services.

An essential component of sustained and sustainable implementation of the WTO TFA is partnership and collaboration between policymakers and business. This will happen by discussing – together – the necessary reforms and amendments of domestic rules; and by identifying where current border regulatory practices in WTO Member countries need to be better aligned to meet the requirements of the Agreement. A meaningful implementation of the TFA hence goes hand in hand with proper preparatory planning, and a robust architecture of comprehensive reform programmes.

We are proud to present this guide, developed with the United Nations Conference on Trade and Development and the United Nations Economic Commission for Europe. For each and every article of the Agreement – whether it is a binding obligation or a best-endeavour measure – this guide explains the legal nature of the measure in an easily and understandable manner, and sets out how the measure should be transposed into the national legal framework of WTO Members to take effect.

This guide goes beyond mere legal compliance, and supports trade facilitation reforms that anchor national development priorities. Accordingly, the guide provides practical step-by-step roadmaps for the monitoring of implementation of each measure using checklists and national action plans that take into account a country's financial and human resources as well as priorities of the business community.

The ratification of the TFA remains a landmark of recent multilateral trade negotiations. For it to realize its full potential as a tool for easing trade across borders, implementation must begin at home. This guide *Getting down to business: Making the Most of the WTO Trade Facilitation Agreement* can be a lodestar in that journey.

Dorothy Tembo
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Acknowledgements

The ITC expresses its gratitude to all parties involved in the development of this publication, prepared by independent consultant Mehnaz Bhaur and edited by Eleonora Salluzzi and Qasim Chaudry (both ITC). Rajesh Aggarwal, Chief, Trade Facilitation and Policy for Business Section and Mohammad Saeed, Senior Trade Facilitation Adviser (both ITC) provided the guidelines and structure for the manual.

Special thanks are also due to other trade facilitation experts including Jan Hoffmann, Poul Hansen, Pamela Ugaz, Peter Faust and Osvaldo Agatiello from UNCTAD; Maria Ceccarelli, Lance Thompson and Maria Teresa Pisani from UNECE; and independent consultant Shahid Bashir; for their technical support, peer review and valuable advice.

In addition, ITC would like to thank Valerie Wayte and Natalie Domeisen, Evelyn Seltier and Anne Griffin (ITC) who oversaw the editing, production and quality control; and Serge Adeagbo and Franco Iacovino (both ITC) who provided graphic and printing support.

This publication was developed with the financial support of the Governments of Denmark and Finland.

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Acronyms

Unless otherwise specified, all references to dollars ($) are to United States dollars, and all references to tons are to metric tons.

AEO	Authorized economic operator
ASEAN	Association of Southeast Asian Nations
CCC	Customs Cooperation Council
EU	European Union
GATT	General Agreement on Tariffs and Trade
GCMS	Ghana Customs Management System
GCNet	Single Window Facility, Ghana
ICT	Information and communications technology
ITC	International Trade Centre
NTFC	National Trade Facilitation Committee
PCA	Post-clearance audit
PSI	Pre-shipment inspection
SAFE	Framework of Standards to Secure and Facilitate Global Trade (WCO)
SME	Small and medium-sized enterprise
SW	Single window
TFA	Trade Facilitation Agreement
THAINSW	National Single Window, Thailand
UN/CEFACT	United Nations Centre for Trade Facilitation and Electronic Business
UNCTAD	United Nations Conference on Trade and Development
UNECE	United Nations Economic Commission for Europe
UN/EDIFACT	United Nations Electronic Data Interchange for Administration, Commerce and Transport
VUCE	Single Foreign Trade Window, Columbia
WCO	World Customs Organization
WTO	World Trade Organization

Executive summary

The World Trade Organization (WTO) Trade Facilitation Agreement (TFA) promises greater transparency and efficiency in international trade transactions by reducing the time and cost of trading across borders, bringing considerable benefits for traders in developing and least developed countries (LDCs). As it is a WTO multilateral agreement, the TFA legally binds WTO Members to implement the Agreement's provisions and ensure that their legal frameworks are compliant with WTO rules and able to transpose WTO measures into their domestic laws.

Implementation will require a systematic approach to design and implement trade facilitation reforms in a cost-effective manner. To assist WTO Members and policymakers to understand the legal provisions of the TFA and engineer the required trade facilitation reforms, these guidelines offer a detailed explanation of each of the 37 measures of the TFA.

For each measure, this guide provides:

- An introduction explaining the rationale for the measure, its relevance and suitability to tackle cross-border inefficiencies;
- A clear analysis outlining the legal nature of obligations and scope of action for WTO Members;
- An implementation checklist that can be used by public administrators to estimate compliance for the implementation of each measure.
- A template for a national implementation plan that describes the required national government actions and resources for each measure in three phases of implementation - preparation, set up; and management and follow up. The template also provides an estimated average time required for implementation and suggests a government agency who can take ownership of each TFA measure;
- An explanation of the intended benefits, potential challenges and key factors for successful implementation.

A common thread in each Article of the Agreement is the establishment of a national committee for trade facilitation. National Trade Facilitation Committees are envisaged to be multi-agency permanent forums where government agencies and representatives from the trading community consult and reach consensus on trade facilitation measures, enabling effective reforms for cross-border movement of goods.

Annex I offers the timeline and rules to ratify and implement the Agreement. This includes ground-breaking rules on special and differential treatment for developing countries, so that they link their implementation capacities to fulfilment of their obligations, with donor assistance.

CHAPTER 1 INFORMATION AVAILABILITY

Publication: Article 1.1

Transparency is one of the core pillars of the international trade system. Lack of transparency or restricted access to regulatory and procedural requirements usually leads to higher costs for business and governments to collect information and mitigate formalities, corrupt and discriminatory practices, and unpredictable rules.

Article 1.1 promotes equal and unfettered access to relevant information by requiring WTO Members to make available in published form a wide array of specific information on regulatory requirements related to the import, export or transit of goods.

Members shall promptly publish a set of trade-related information in a non-discriminatory and easily accessible manner.

The measure

ARTICLE 1 PUBLICATION AND AVAILABILITY OF INFORMATION

1 Publication

1.1 Each Member shall promptly publish the following information in a non-discriminatory and easily accessible manner in order to enable governments, traders, and other interested parties to become acquainted with them:

(a) procedures for importation, exportation, and transit (including port, airport, and other entry-point procedures), and required forms and documents;

(b) applied rates of duties and taxes of any kind imposed on or in connection with importation or exportation;

(c) fees and charges imposed by or for government agencies on or in connection with importation, exportation or transit;

(d) rules for the classification or valuation of products for customs purposes;

(e) laws, regulations, and administrative rulings of general application relating to rules of origin;

(f) import, export or transit restrictions or prohibitions;

(g) penalty provisions for breaches of import, export, or transit formalities;

(h) procedures for appeal or review;

(i) agreements or parts thereof with any country or countries relating to importation, exportation, or transit; and

(j) procedures relating to the administration of tariff quotas.

1.2 Nothing in these provisions shall be construed as requiring the publication or provision of information other than in the language of the Member except as stated in paragraph 2.2.

Understanding the measure

What is covered?

Scope and objective

Article 1.1 requires Members to publish specific data, such as applied rates of duties and taxes or fees and charges whether contained in rules and regulations, according to the legal system of each WTO Member. This provision concerns all competent agencies at the national and local level with functional authority over the listed items in Article 1.1.

Article X of the General Agreement on Tariffs and Trade (GATT) already requires WTO Members to publish trade-related laws and regulations but not information related to export and import procedures. The TFA adds a new obligation to publish all import and export procedures and requirements. It is worth noting that obligations arising from Article X of GATT 1994 are still valid and hold with equal and full force of law.

Core obligation

This measure sets a mandatory obligation for all WTO Members to 'promptly' publish trade-related information listed in Article 1.1 in a 'non-discriminatory and easily accessible manner.' The aim is to enable traders, governments and other stakeholders to know the rules and conditions applicable to the export, import or transit of goods. Publication means the act of making information or writing available, especially in a printed form, but can also include electronic publication.

Means of publication

Although the provision does not specify the means of publication, paragraph 2.3 of Article 1 encourages WTO Members to make available the relevant trade-related legislation and other items referred to in Article 1.1 through the internet.

Language of publication

WTO Members are not required to publish or provide the trade-related information in a language other than the language of the WTO Member.

What is not covered?

This measure is silent on the modalities and frequency of publication. Moreover, the measure does not specify whether the task to publish the information is entrusted to government agencies or whether it can be outsourced to private companies.

Benefits and opportunities for stakeholders

Quick and easy access to accurate and comprehensive export, import and transit procedures and requirements enables traders to improve planning for future trade activities and accurately estimate all import and export costs in advance, reducing overall delays and financial costs.

Transparency of information will also improve traders' confidence and compliance with customs procedures and reduce government agencies' time spent responding to individual inquiries from traders.

The measure will also foster a mindset change and a government organizational culture of openness, predictability and modernization, making the trade environment more appealing to foreign investments.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- A national implementation framework is in place that mandates publication of trade information and appointment of a national coordinator.

- Publication is carried out in a timely manner, especially when amendments to new import, export and transit procedures or regulations are enacted.
- A monitoring and review mechanism is in place to ensure that information is easily accessible to all interested stakeholders. This may be hosted in a National Trade Facilitation Committee (NTFC).

Preparing a national implementation plan

The following template may be used as the basis for a national implementation plan:

Implementation sequence	Actions suggested
	Preparatory phase
	Carry out a legal gap analysis to assess which are the legal/administrative acts to introduce or formalize the obligation to publish trade-related information.
	If needed, designate a focal ministry/department responsible for coordinating publication of required information.
	Set-up phase
	Implement identified legal and/or administrative changes to allow prompt publication of trade-related information.
	Create a knowledge management mechanism for coordination of publication of information.
	Assign appropriate financial and human resources.
	Management and follow-up phase
	Set up a national monitoring and review mechanism to ensure published information is up to date.
Average time for implementation	Between two to three years.
Leading implementation agency	The ministry in charge of trade is most commonly chosen as the leading implementation agency.

Key challenges

'Silos mentality' and reticence to share information among public agencies may hamper the implementation of this measure. This may be addressed through a NTFC where all agencies are represented and agree on an implementation plan, including their own responsibilities and tasks. Lack of political will and buy-in from senior government may also slow the effort to gather all the required information.

Key factors for success

Harmonious coordination between relevant border agencies will significantly contribute to successful implementation of this measure. Strong political will and a service-oriented staff culture within border agencies will be necessary. A systematic regular review and update of the knowledge management mechanism is another fundamental factor for success.

Information available through internet: Article 1.2

Practical steps for export, import, transit and appeal procedures, forms and contact details of enquiry points shall be made available online and updated.

Access to information on the internet is crucial for small and medium-sized enterprises (SMEs) to reduce the time and costs to obtain complete and updated information on export, import and transit procedural requirements. This is particularly true for rural SMEs, who often have to travel to access information.

The measure

ARTICLE 1 PUBLICATION AND AVAILABILITY OF INFORMATION

2 Information Available Through Internet

2.1 Each Member shall make available, and update to the extent possible and as appropriate, the following through the internet:

(a) a description1 of its procedures for importation, exportation, and transit, including procedures for appeal or review, that informs governments, traders, and other interested parties of the practical steps needed for importation, exportation, and transit;

(b) the forms and documents required for importation into, exportation from, or transit through the territory of that Member;

(c) contact information on its enquiry point(s).

2.2 Whenever practicable, the description referred to in subparagraph 2.1(a) shall also be made available in one of the official languages of the WTO.

2.3 Members are encouraged to make available further trade-related information through the internet, including relevant trade-related legislation and other items referred to in paragraph 1.1.

Understanding the measure

What is covered?

Scope and objective

WTO Members are required to publish a step-by-step description of the procedures for importation, exportation and transit of goods on the internet. The purpose of this provision is to ensure that domestic and foreign stakeholders can easily understand how to import to, export from, or transit through that territory.

A footnote to Article 1.2.1(a) clarifies that each WTO Member has the discretion to state on its website the legal limitations of these descriptions.

Core obligation

A descriptive explanation of all practical steps underlying the procedures for importation, exportation and transit of goods must be available on the internet as well as all forms and documents required to complete these procedures. In addition, contact details of enquiry points must be provided.

[1] Each Member has the discretion to state on its own website the legal limitations of this description.

Updating information

Members are requested to keep their website(s) updated, as procedures and requirements may change over time. The use of the wording 'to the extent possible' and 'as appropriate' brings some degree of flexibility regarding when and how information is published on the internet.

Language

Members are requested to make the required information available in one of the official languages of the WTO (English, Spanish or French). The use of the term 'whenever practicable' grants some flexibility to Members to determine how this can be implemented.

Other trade-related information

Although not mandatory, Members are encouraged to make available through the internet additional trade-related information, including relevant trade-related legislation and other items referred to Article 1.1.

What is not covered?

WTO Members are not required to publish the information on a single centralized website, although Members shall ensure that the information is identical in all websites in order to facilitate a predictable trade environment.

Benefits and opportunities for stakeholders

Traders will benefit from reduced time and costs to obtain accurate information online and increase their compliance with procedural requirements. Up to date information will also help traders understand the changing trends in legal provisions and regulations.

The availability of online information will reduce the time that government agencies spend in responding to individual enquiries from traders, making their work more efficient.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- All required information is published on the internet including practical steps needed for importation, exportation and transit of goods.
- The URL(s) of the website(s) where information is published are notified to the WTO Trade Facilitation Committee.
- Information is published within a reasonable time when changes in procedures and requirements occur.
- All required information items are in one of the three WTO official languages.
- The legal validity of information published on the internet is clear.

Preparing a national implementation plan

The following template may be used as the basis for a national implementation of this measure:

	Actions suggested
Implementation sequence	**Preparatory phase**
	Take legal or administrative measures to introduce and formalize the obligation.
	If needed, designate a focal ministry/department responsible for ensuring all required information is published on the internet.
	Set up an institution with appropriate membership to bring together all critical stakeholders and terms of reference. A NTFC is one option.
	Set-up phase
	Update/develop a comprehensive information and communications technology (ICT) strategy.
	Create/update the information management system for publishing information on the internet.
	Address issue of information cybersecurity.
	Address or clarify, if necessary, the legal validity of information published on the internet.
	Management and follow-up phase
	Ensure NTFC or equivalent reviews progress with periodic performance reports.
Average time for implementation	Between two to three years.
Leading implementation agency	Ministry in charge of trade is most commonly chosen as the leading implementation agency.

Key challenges

The lack of ICT capacity or dedicated webmasters to manage website(s) in government institutions are common challenges towards implementation.

Key factors for success

The use of ICT as a means of communication and operation in government agencies, supported by a legal framework, is crucial. A whole government approach to implementation is fundamental to deliver benefits. Synergies between the private sector and trade support institutions can advocate for greater use of ICT for sharing information.

Enquiry points: Article 1.3

The collection of trade information is a time-consuming and costly exercise for traders, particularly for SMEs with scarce resources.

In a comprehensive effort to enhance transparency of information and simplification of procedures for traders, the TFA requires the establishment of enquiry points to answer queries from governments, traders and other parties on specific trade-related information detailed in Article 1.1.

Members are requested to establish enquiry point(s) for providing answers to trade-related queries and documents within a reasonable time.

The measure

ARTICLE 1 PUBLICATION AND AVAILABILITY OF INFORMATION

3 Enquiry Points

3.1 Each Member shall, within its available resources, establish or maintain one or more enquiry points to answer reasonable enquiries of governments, traders, and other interested parties on matters covered by paragraph 1.1 and to provide the required forms and documents referred to in subparagraph 1.1(a).

3.2 Members of a customs union or involved in regional integration may establish or maintain common enquiry points at the regional level to satisfy the requirement of paragraph 3.1 for common procedures.

3.3 Members are encouraged not to require the payment of a fee for answering enquiries and providing required forms and documents. If any, Members shall limit the amount of their fees and charges to the approximate cost of services rendered.

3.4 The enquiry points shall answer enquiries and provide the forms and documents within a reasonable time period set by each Member, which may vary depending on the nature or complexity of the request.

Understanding the measure

What is covered?

Scope and objective

Article 1.3 confines the scope of queries to the items listed in Article 1.1. In addition, enquiry points are requested to provide forms and documents required for importation, exportation and transit procedures, if requested by an interested party.

The objective of this measure is to provide easily accessible, precise and complete information in a timely and cost-effective way to answer questions and prevent misunderstandings before the trade transaction takes place.

Core obligation

Each WTO Member is required to establish and maintain at least one enquiry point for specific trade-related enquiries at the national level. As export, import and transit procedures involve several border agencies, the Agreement leaves the decision to set up one centralized enquiry point or several enquiry points in different border agencies to WTO Members.

The enforcement of this obligation is diluted by the wording ‘within its available resources.’ This means that the extent of the implementation is conditional upon available financial, human, technical or technological resources of the WTO Member.

Beneficiaries

The measure specifies that stakeholders entitled to request information and documentation are either governments, traders or other interested parties.

Fees

The measure encourages WTO Members to provide enquiry points' services free of charge. Nonetheless, if a fee is applied for the service rendered, WTO Members are requested to ensure that the amount charged does not exceed the approximate cost of the services provided, avoiding the imposition of an unjustified high fee.

Timing

The measure states that enquiry points must provide answers and documents within a reasonable time period, depending on the nature and complexity of the request. WTO Members can use their discretion to set the extent of a 'reasonable time' period on a case-by-case basis.

Regional enquiry points

WTO Members who are part of regional trade arrangements or communities have the discretion to decide whether or not to implement regional enquiry points. Joint enquiry points would harmonize information about regional and national procedures, documents and restrictions in place by acting as 'one-stop shops' for information-sharing among governments and traders.

What is not covered?

The measure does not specify the nature and specific features of enquiry points, e.g. whether it is a dedicated government office, a helpline managed by existing trade institutions, an automated system or a non-public entity tasked to answer traders' queries. The measure does not mention whether the requested information and documentation should be provided in hard or soft copy and both may be used when replying to enquiries.

Language

The measure does not specify the language in which the enquiry points must reply or if they must provide a translation in one of the three WTO official languages, in addition or substitution of the local language in use.

Responsibility of specific shipments

This measure does not mention any responsibility of the WTO Member to respond to traders' enquiries pertaining to specific shipments. The enquiry points are only required to provide information on matters covered by Article 1.1.

Benefits and opportunities for stakeholders

Establishing efficient and responsive enquiry points will accelerate compliance with export and import procedures and assist traders to plan future operations. The staff of border agencies will also benefit from reduced demand for information from traders.

Offering efficient enquiry points at a minimum cost for the private sector will also build confidence and trust between border agencies and the private sector.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- There is a national implementation framework (i.e. a legislative or administrative provision) in place for establishing or maintaining an enquiry point.

- The enquiry point swiftly answers enquiries and provides forms and documents within a reasonable time period.
- The enquiry point provides exhaustive answers to queries covering all issues specified in Article 1.1 and provides forms on issues related to export, import and transit procedures, among others.
- Fees and charges, if any, are limited to the approximate cost of services delivered by the enquiry point.
- The contact information of the enquiry point is available and updated through the internet.
- The contact information of enquiry points is notified to the WTO Committee on Trade Facilitation as required by Article 1.4.c of the TFA.

Preparing a national implementation plan

The following template may be used as the basis for a national implementation plan:

	Actions suggested
Implementation sequence	**Preparatory phase**
	Determine the number and nature of enquiry points to be created/maintained.
	Depending on the type of enquiry point, designate a focal point responsible for coordinating with relevant agencies/officials to: • Ensure responses to queries regarding all matters specified in Article1.1; • Ensure that responses are provided in a reasonable time; • Ensure appropriate record-keeping.
	Set guidelines to determine the reasonable time period according to the nature and complexity of the request submitted.
	Allot sufficient budget to enable the daily operation of the enquiry point(s).
	Calculate the basis for fees and charges, if any, and ensure that they correspond to the cost of services rendered.
	Set-up phase
	Draft and approve legal or administrative frameworks to establish or maintain one or more enquiry points and make it operational.
	Put in place a coordination protocol between all relevant agencies, so that updated information is provided to submitted queries.
	Assign and train sufficient staff.
	Publish URLs of enquiry point(s) website(s), containing phone numbers and e-mails of the responsible person(s).
	Management and follow-up phase
	Establish a mechanism for periodic monitoring and evaluation of the system, in particular, the average response time, accuracy of the information provided by enquiry point(s) and fees charged.
Average time for implementation	Two years.
Leading implementation agency	The ministry in charge of trade is most commonly chosen as the leading implementation agency.

Key challenges

The lack of staff with relevant trade knowledge will compromise the ability of enquiry points to handle queries from traders. Moreover, lack of cross-sectoral knowledge and coordination between enquiry points – for

instance technical barriers to trade and sanitary and phytosanitary enquiry points – may result in the delivery of fragmented information and hinder trade. Collecting the necessary information from each agency and ensuring that queries are answered within a reasonable timeframe can be a challenge for government institutions.

Key factors for success

Coordination between organizations designated to act as enquiry points and other border agencies is vital to ensure that the measure is implemented successfully. The availability of infrastructure and financial resources is also another crucial factor. WTO Members should ensure that, once set up, enquiry points continue to have the necessary hardware and financial tools to perform their tasks.

A credible national monitoring mechanism should ensure that all enquiries are readily answered in a reasonable time period, and that updated information is shared among the relevant agencies. For example, enquiry points for sanitary and phytosanitary measures and technical barriers to trade should work together to ensure coherent information is shared.

Notification: Article 1.4

In line with a common practice in WTO to share information in committees and working groups, the TFA requires that Members notify the WTO Committee on Trade Facilitation the details regarding locations of publication, websites where information is made available, and contact information of enquiry points.

Members shall notify the WTO Committee on Trade Facilitation about the official location and contact information related to previous measures pertaining to (1) publication, (2) information through internet and (3) enquiry points.

The measure

ARTICLE 1 PUBLICATION AND AVAILABILITY OF INFORMATION

4 Notification

Each Member shall notify the Committee on Trade Facilitation established under paragraph 1.1 of Article 23 (referred to in this Agreement as the 'Committee') of:

(a) the official place(s) where the items in subparagraphs 1.1(a) to (j) have been published;

(b) the Uniform Resource Locators of website(s) referred to in paragraph 2.1; and

(c) the contact information of the enquiry points referred to in paragraph 3.1.

Understanding the measure

What is covered?

Scope and objective

The aim of this measure is to allow WTO Members – and all relevant stakeholders – to ensure fair and transparent access and exchange of relevant information pertaining to Article 1. Another objective is to oversee that each WTO Member is complying with the transparency measures enshrined in Article 1.

Core obligation

Article 1.4 requires that Members inform other WTO Members within the WTO Committee on Trade Facilitation the contact details and sources where information under Articles 1.1, 1.2 and 1.3 has been made available.

Benefits and opportunities for stakeholders

Information brought into the public domain will help traders to decrease the time and cost of accessing trade-related information and requirements in a non-discriminatory manner, improving compliance.

The requirement to notify the WTO Committee on Trade Facilitation will also pressure WTO Members to ensure that their systems are established and functioning well. This will benefit governments by enhancing the flow of information between Members.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- There is a national implementation framework (legislation, administrative, procedural) in place for the implementation of Articles 1.1, 1.2 and 1.3 of the TFA.
- The WTO Committee on Trade Facilitation has been notified with the relevant information.
- Subsequent changes are also notified.
- The timing of this obligation is contingent on the date of implementation of Articles 1.1, 1.2 and 1.3.

Preparing a national implementation plan

The following template may be used as the basis for a national implementation plan:

Implementation sequence	Actions suggested
	Preparatory phase
	Ensure that the requirements of Articles 1.1, 1.2 and 1.3 are fulfilled.
	Designate a focal point for notification and any future updates.
	Set-up phase
	Send notification to the WTO Committee on Trade Facilitation.
	Put in place a mechanism for updating notifications as necessary.
	Management and follow-up phase
	Establish a mechanism for periodic monitoring of updates to the WTO Committee on Trade Facilitation.
Average time for implementation	Two years, dependent on the implementation of Articles 1.1, 1.2 and 1.3.
Leading implementation agency	The ministry in charge of trade is most commonly chosen as the leading implementation agency.

Key challenges

A common challenge is the lack of effective collaboration between a large number of border agencies. Without a focal point or competent centralized authority with a clear set of responsibilities, collecting and sharing information with the WTO Committee on Trade Facilitation is challenging.

Key factors for success

Coordination between the relevant agencies – all equipped with the necessary human and financial resources – will successfully ensure that information is promptly shared and continuously updated with WTO. It is recommended that coordination and notification should be undertaken by the NTFC.

CHAPTER 2 CONSULTATIONS, AND ENTRY INTO FORCE

Opportunity to comment and information before entry into force: Article 2.1

When introducing or amending trade-related laws and regulations, very often legislators do not consult with traders to understand their views and problems.

As a result, traders and other stakeholders are neither informed nor they are given the opportunity to comment on new or amended rules which will affect their business operations.

Enabling traders to provide inputs at an early stage of the legal process and to access information on legislative proposals prior to the entry into force is crucial for tackling the challenges and constraints faced by traders.

Members must make publicly available new or amended trade-related laws or regulations and provide interested stakeholders opportunity to comment well before entry into force.

The measure

ARTICLE 2 OPPORTUNITY TO COMMENT, INFORMATION BEFORE ENTRY INTO FORCE AND CONSULTATION

1 Opportunity to Comment and Information before Entry into Force

1.1 Each Member shall, to the extent practicable and in a manner consistent with its domestic law and legal system, provide opportunities and an appropriate time period to traders and other interested parties to comment on the proposed introduction or amendment of laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit.

1.2 Each Member shall, to the extent practicable and in a manner consistent with its domestic law and legal system, ensure that new or amended laws and regulations of general application related to the movement, release, and clearance of goods, including goods in transit, are published or information on them made otherwise publicly available, as early as possible before their entry into force, in order to enable traders and other interested parties to become acquainted with them.

1.3 Changes to duty rates or tariff rates, measures that have a relieving effect, measures the effectiveness of which would be undermined as a result of compliance with paragraphs 1.1 or 1.2, measures applied in urgent circumstances, or minor changes to domestic law and legal system are each excluded from paragraphs 1.1 and 1.2.

Understanding the measure

What is covered?

Scope and objective

The measure applies to rules enacted by national legislative bodies (laws enacted by parliaments) as well as to secondary legal acts (regulations, rules, orders, etc.) issued by executive or administrative bodies.[2]

The measure does not specify which agency should issue the legal instruments thus they can be issued by any border or regulatory agency involved in the movement, release and clearance of goods, including

[2] http://www.tfafacility.org/article-2

customs, sanitary and phytosanitary authorities, among others. The only requirement is that such laws and regulations should be of general application.

Thus, relevant stakeholders will have the opportunity to comment on the following legislative proposals before entry into force:

1) New laws and regulations related to movement, clearance and release of import, export and transit goods;
2) Amendments to such laws and regulations.

Core obligation

Article 2.1 requires WTO Members to grant traders and other interested parties reasonable and adequate time to provide comments on new or amended trade legislation. In addition, Members are requested to publish the new and amended laws and regulations or to make information about them publicly available, as early as possible before these laws and regulations enter into force.

The use of the word 'shall' in each provision indicates that the implementation is mandatory for all Members. However, the addition of the double qualification, 'to the extent practicable' and 'in a manner consistent with its domestic law and legal system' grants flexibility in implementation.

Exemptions

Article 2.1 lists some items which are exempted from prior publication and discussion before the entry into force. The first exemption is changes to duty rates or tariff rates. This discourages rent-seeking behaviours of traders arising from the advantage of having prior knowledge and may lead to adverse impacts on the economy. For example, traders – knowing of an intended reduction in duty or tariff rates – may prefer to wait until the reduction in duty and tariff rates is fully in force before importing a good, causing revenue losses for the government. The other exemptions include changes that are non-detrimental to traders' interests (i.e. minor changes to domestic law and legal systems) or even a benefit (i.e. measures with relieving effect).

What is not covered?

It is not specified how many days, weeks or months should be provided to the traders and interested parties to comment, or should occur between the publication of laws and the entry into force. The timing is left to the discretion of each WTO Member to determine on a case-by-case basis.

The measure does not specify the mode of publication or the mechanisms through which traders and other interested parties can provide their comments. These may include online platforms, public hearings, ad hoc meetings and press releases, among others.

Benefits and opportunities for stakeholders

Businesses and other interested stakeholders can share their views and experience of trade constraints during the legislative phase of new or amended legislation, enabling proposals to address their real concerns.

Access to information regarding future changes in laws and regulations will also help traders to comply with new or amended laws and regulations. An early publication of the laws and regulations before the entry into force will also reduce incentives for corruption, as traders will be allowed appropriate time to be acquainted with the new norms and adapt and plan their operations in a timely manner.

Not least, more private sector participation in drafting legislation will improve relationships between traders and government agencies, fostering enhanced confidence and collaboration.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- A national implementation framework (legislative or administrative law, etc.) has been drafted and endorsed to:
  i. Provide the modalities and timeframes for notifying and giving opportunity to traders and interested parties to comment on new or amended laws concerning the movement, release and clearance of goods;
  ii. Ensure that all new or amended trade-related laws and regulations are published as early as possible before their entry into force.
- In practice, traders and interested parties have real opportunities to comment on new or amended trade-related laws and regulations in accordance with the domestic legal system.
- In practice, new or amended trade-related laws and regulations are published as early as possible before the new laws or regulations are enforced.

Preparing a national implementation plan

The following template may be used as the basis for a national implementation plan:

	Actions suggested
Implementation sequence	**Preparatory phase**
	Determine whether a national legal and administrative mechanism exists to facilitate the implementation of this measure.
	If one or various mechanisms exists, determine its characteristics and scope of action.
	If there is no existing mechanism, analyse country needs and decide which type of mechanism will be more suitable to ensure the implementation of this measure.
	Set-up phase
	If necessary, adopt a legal framework to implement the measure.
	Analyse and change existing workflows and business processes to find solutions and mechanisms for sharing information on new or amended laws and regulations prior to entry into force.
	According to the scope of action and responsibilities of the mechanism, assign appropriate financial and human resources.
	Management and follow-up phase
	Nominate an agency responsible for monitoring and evaluation.
	Periodically review and implement modification or upgrades to the system, including online platforms, where applicable.
Average time for implementation	Two years
Leading implementation agency	The ministry in charge of trade is most commonly chosen as the leading implementation agency.

Key challenges

Lack of government commitment and public-private dialogue can prevent setting up legal frameworks which allow information sharing and opportunities to provide feedback before new or amended laws become

enforceable. Lack of coordination among public institutions represents an additional challenge, as a large number of agencies need to collaborate, share information and responsibilities before the required trade information can be presented for public comment.

Key factors for success

A legal or administrative framework which allows laws and regulations to be published in the public domain prior to entry into force and open for comment from interested parties is an essential prerequisite for this measure. A robust mechanism of public-private dialogue and engagement should also be established to ensure that there is open exchange of ideas and collaboration. This dialogue could take place in the NTFC.

Once the measure has been implemented, it will be necessary to launch a public awareness campaign to reach as many traders and other interested stakeholders as possible.

Consultations: Article 2.2

Lack of engagement with traders and other stakeholders often leads to disconnection and mistrust between border agencies and traders. This impedes traders' access to border agencies for consultations on customs procedures, fees and charges, and other practical issues related to border trade.

Border agencies shall, as appropriate, hold regular consultations with traders or other stakeholders.

To overcome these challenges, Article 2.2 requires WTO Members to facilitate regular consultations between border agencies, traders and other stakeholders involved in customs and other border operational practices to obtain their views on matters directly affecting them.

Regular and constructive consultation enables border agencies and traders discuss the most efficient and least cumbersome measures to achieve regulatory objectives which in turn leads to higher compliance levels and better trade outcomes.

The measure

ARTICLE 2 OPPORTUNITY TO COMMENT, INFORMATION BEFORE ENTRY INTO FORCE AND CONSULTATION 2 Consultations Each Member shall, as appropriate, provide for regular consultations between its border agencies and traders or other stakeholders located within its territory.

Understanding the measure

What is covered?

Core obligation

Members are required to take all necessary steps to set up mechanisms for regular consultations between border agencies, traders and other stakeholders within the territory of the country.

Article 2.2 constitutes a mandatory provision for Members. However, the expression *'*as appropriate*'* not only provides flexibility on how but also on the frequency, scope of consultations, objectives and stakeholders invited to be part of the consultations.

The reference to other stakeholders can refer to a wide variety of interested parties including – but not limited to – traders, freight forwarders, authorized operators, business membership organizations, associations of traders, academics, professionals and civil society. Likewise, the reference to border agencies includes all government bodies involved in procedures related to cross-border trade.

What is not covered?

Specific issues that should be the subject of consultations are not mentioned in the measure. The organizational means and frequency of consultative meetings are also not mentioned, hence countries are left free to select any means or channels, as appropriate to their unique context.

The measure does not also require the adoption of any specific legislation for its implementation. This obligation can be achieved through an established practice or through the NTFC.

Benefits and opportunities for stakeholders

Regular consultations ensure that the private sector and other interested parties can have a consistent voice in institutional fora to discuss and effectively address challenges in cross-border trade. Consultations can also help streamline trade activities and improve traders' confidence regarding government procedures, increasing transparency and accountability. Traders will be better able to comply with new requirements as soon as new laws, regulations, procedures and systems enter into force, improving the competitiveness of their business.

A regular system of consultations also reduces incentives for corruption and informal practices, and improves the member country's reputation among stakeholders. Just as important, the longer-term benefit is a substantial mind-set change among border agencies and government authorities. Uncooperative and uncoordinated policies which do not fully take into account the private sector's views will be replaced by regular collaboration which aims to respond effectively to businesses' needs.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- There is in place a national implementation framework that ensures regular consultation between border agencies, traders and other stakeholders.
- In practice, border agencies and stakeholders within the territory of the member country hold regular consultations.

Preparing a national implementation plan

The following template may be used as a basis for the national implementation plan:

Implementation sequence	Actions suggested
	Preparatory phase
	Determine whether a national legal and administrative mechanism exists to facilitate the implementation of this measure.
	If one or various mechanisms exist, determine its characteristics and scope of action.
	If there is no existing mechanism, analyse the country's needs and decide which type of mechanism will be more suitable to ensure the implementation of this measure.
	Set-up phase
	If necessary, adopt an appropriate legal and administrative framework to implement the measure.
	Analyse and change existing workflows and business processes to find solutions and mechanisms for incorporating regular consultations into the administrative framework.
	According to the scope of action and responsibilities of the mechanism, assign appropriate resources (financial, human, etc.).
	Management and follow-up phase
	Nominate an agency responsible for monitoring and evaluation.
	Periodically review and implement modification or upgrades to the mechanism.
	Ensure that feedback from consultations are systematically incorporated into the administrative framework to address problems.

Average time for implementation	One year
Leading implementation agency	The ministry of trade is most commonly chosen as the leading implementation agency. The NTFC can also be the appropriate forum for these consultations.

Key challenges

Lack of coordination among border agencies can be a significant challenge. Moreover, some countries may not have the necessary ICT infrastructure and culture to implement this measure. Private sector's lack of awareness of consultative mechanisms will hinder engagement.

Key factors for success

Allocation of funds to facilitate meetings is critical to organize effective public-private consultations. Promoting coordination and regular communication on consultations between border agencies and the public sector is a key factor for successful implementation.

CHAPTER 3 ADVANCE RULINGS

Advance rulings: Article 3

Inconsistent treatment applied to imported goods raises uncertainties for traders who do not know how their goods will be treated at the border in terms of classification, rules of origin and/or customs value.

Article 3 on advance rulings enhances predictability and transparency of cross-border trade transactions. An advance ruling is defined as a written decision provided by the authorities to traders (upon request) prior to the transaction, which sets forth a transparent and formal process for treatment of goods with regards to the goods' tariff classification and rules of origin.

Each Member shall provide binding written decisions about admissible customs disciplines to traders before the importation of goods.

The ruling obtained is legally binding on the customs authority as well as, in some countries, on the trader over a fixed time period.

The measure

ARTICLE 3 ADVANCE RULINGS

1. Each Member shall issue an advance ruling in a reasonable, time-bound manner to the applicant that has submitted a written request containing all necessary information. If a Member declines to issue an advance ruling, it shall promptly notify the applicant in writing, setting out the relevant facts and the basis for its decision.

2. A Member may decline to issue an advance ruling to the applicant where the question raised in the application:

   (a) is already pending in the applicant's case before any government agency, appellate tribunal, or court; or

   (b) has already been decided by any appellate tribunal or court.

3. The advance ruling shall be valid for a reasonable period of time after its issuance unless the law, facts, or circumstances supporting that ruling have changed.

4. Where the Member revokes, modifies, or invalidates the advance ruling, it shall provide written notice to the applicant setting out the relevant facts and the basis for its decision. Where a Member revokes, modifies, or invalidates advance rulings with retroactive effect, it may only do so where the ruling was based on incomplete, incorrect, false, or misleading information.

5. An advance ruling issued by a Member shall be binding on that Member in respect of the applicant that sought it. The Member may provide that the advance ruling is binding on the applicant.

6. Each Member shall publish, at a minimum:

   (a) the requirements for the application for an advance ruling, including the information to be provided and the format;

   (b) the time period by which it will issue an advance ruling; and

   (c) the length of time for which the advance ruling is valid.

7. Each Member shall provide upon written request of an applicant, a review of the advance ruling or the decision to revoke, modify, or invalidate the advance ruling.

8. Each Member shall endeavour to make publicly available any information on advance rulings which it considers to be of significant interest to other interested parties, taking into account the need to protect commercially confidential information.

9. Definitions and scope:

(a) An advance ruling is a written decision provided by a Member to the applicant prior to the importation of a good covered by the application that sets forth the treatment that the Member shall provide to the good at the time of importation with regard to:

(i) the good's tariff classification; and

(ii) the origin of the good.

(b) In addition to the advance rulings defined in subparagraph (a), Members are encouraged to provide advance rulings on:

(i) the appropriate method or criteria, and the application thereof, to be used for determining the customs value under a particular set of facts;

(ii) the applicability of the Member's requirements for relief or exemption from customs duties;

(iii) the application of the Member's requirements for quotas, including tariff quotas; and

(iv) any additional matters for which a Member considers it appropriate to an advance ruling.

(c) An applicant is an exporter, importer or any person with a justifiable cause or a representative thereof.

(d) A Member may require that the applicant have legal representation or registration in its territory. To the extent possible, such requirements shall not restrict the categories of persons eligible to apply for advance rulings, with particular consideration for the specific needs of small and medium-sized enterprises. These requirements shall be clear and transparent and not constitute a means of arbitrary or unjustifiable discrimination.

Understanding the measure

What is covered?

Scope

If requested, WTO Members must provide advance rulings on tariff classification and the origin of goods. In addition, they are encouraged to provide advance rulings on:

a) The appropriate method or criteria used to determine the customs value under a particular set of facts;
b) The applicability of Member’s requirements for relief or exemption from customs duties;
c) The application of the Member’s requirements for quotas, including tariff quotas; and
d) Any additional matters for which a Member considers it appropriate to issue an advance ruling.

Core obligation

Each Member is required to set up procedures to issue written advance rulings in a reasonable, time-bound manner to applicants who submit written requests. The ruling will be binding on the Member that has issued it, in respect of the applicant that has sought a decision from that member country. In addition, it is optional for the Member to provide that the ruling is also binding on the applicant.

Legal standing to submit advance rulings requests

The advance ruling is to be issued upon request from an importer or exporter or any person with a justifiable cause. Thus, a carrier, a freight forwarder, a customs broker, or even a representative of any of the aforementioned individuals may request an advance ruling.

Members have the discretion to require that the applicant has legal representation or registration in its territory. However, this requirement should not restrict the categories of persons eligible to apply for advance rulings, in particular representatives from SMEs.

Publication

Each Member shall publish, at least:

a) The requirements needed to submit the application for an advance ruling, including the information to be provided and the format;
b) The time period within which it will issue an advance ruling; and
c) The length of time for which the advance ruling is valid.

In addition, Members should make publicly available any information on advance rulings, which it considers to be of significant interest to other interested parties, while protecting commercially confidential information.

Declining requests for advance rulings

A WTO Member may decline to issue an advance ruling to the applicant where the question raised in the application:

a) Is already pending in the applicant's case before any government agency, appellate tribunal, or court; or
b) Has already been decided by any appellate tribunal or court.

The use of the word 'may' means that the WTO Member can only refuse to issue an advance ruling in those specific cases listed above. If a Member declines to issue an advance ruling, it is required to promptly notify in writing the applicant.

Validity, revocation, modification or invalidation of advance rulings

Article 3.3 requests member countries to ensure that the ruling be valid for a reasonable period of time after its issuance – unless the laws, facts or circumstances supporting that ruling have changed – to ensure certainty and predictability of the treatment of goods at the time of import.

If a Member decides to revoke, modify or invalidate an advance ruling, the Member must promptly notify in writing the applicant, setting out the relevant facts and the basis for its decision. If a Member revokes, modifies or invalidates an advance ruling with retroactive effect, it may only do so where incomplete, incorrect, false, or misleading information was provided in the request for the advance ruling.

Members are also required to provide, upon written request of the applicant, a review of the advance ruling or the decision to revoke, modify, or invalidate the advance ruling. The review may be provided – either before or after the ruling has been acted upon – by the official, office or authority that issued the ruling, or by a higher or independent administrative authority, or by a judicial authority.

What is not covered?

The measure does not require the member country to have a dedicated facility issuing advance rulings at every customs office. In countries that have already implemented the measure, the best and most efficient practice is for a national level facility in the headquarters of the customs authority.

There is no obligation to create a separate functional unit that handles advance rulings. However, it is recommended to centralize technical competence in a specialized office to ensure consistency and accountability of decisions.

The measure does not also specify duration of validity of the advance ruling, or the time period by which Members will issue the decision. Each Member can decide and publish the time period to issue an advance ruling.

Benefits and opportunities for stakeholders

Advance rulings foster transparency and certainty of cross-border trade transactions. Prior knowledge of goods treatment at the border will enable traders to make a rational decision on the commercial viability of their operations, quantities to be imported or pricing in domestic markets.

Processing times, documentary requirements and costs of compliance for traders will reduce when they are able to prepare for compliance with regulatory requirements before importation.

Reduced workload and delays at the border will also mean that customs authorities will be able to accelerate clearance procedures and decrease the need for storage facilities.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- Advance rulings are issued in a timely manner, upon written request of an applicant.
- Advance rulings are valid for a reasonable period of time.
- Written notice is issued to the applicant when (and if) an advance ruling is refused, revoked, modified or invalidated with a clear explanation.
- The advance ruling is binding for the customs administration.
- Applicants are entitled to a review of the advance ruling and the decision to revoke, modify or invalidate it.
- Requirements for advance ruling application (information, format etc.), timeframe for issuance and period of validity are published.
- Efforts are undertaken to make information related to advance rulings publicly available.

Preparing a national implementation plan

The following template may be used as a basis for a national implementation plan:

	Actions suggested
Implementation sequence	**Preparatory phase**
	Identify a project team including legal, customs, border control, ICT, human resources experts as well as key decision makers within relevant ministries, government agencies and private sector.
	Formulate an advance ruling procedure that is acceptable for all parties and, if possible, follows international standards and best practices.
	Nominate a lead agency to lead the project.
	Carry out a needs assessment to identify changes needed to legal and institutional frameworks of the country.
	Carry out a needs assessment with the lead agency and other border control agencies to identify changes needed to workflows, business processes and procedures, human resources (organizational structures) and training needs.
	Set-up phase
	If necessary, adopt an appropriate legal and administrative framework to implement the measure.
	Analyse and change existing workflows and business processes to find solutions and mechanisms for incorporating regular consultations with the private sector into the administrative framework.
	According to the scope of action and responsibilities of the team dealing with advance rulings, assign appropriate financial and human resources.
	Management and follow-up phase
	Nominate an agency responsible for monitoring and evaluation.
	Periodically review and implement modification or upgrades to the advance ruling scheme.
	Ensure that feedback from consultations is systematically incorporated into the administrative framework to prepare advance rulings.
Average time for implementation	One year.
Leading implementation agency	The customs administration is most commonly chosen as the leading implementation agency

Key challenges

The lack of national legal frameworks for determining advance rulings and their amendment, revocation and appeal is a key challenge. In LDCs, it may be challenging to identify previous advance rulings, particularly in those countries with poor ICT capacity. Lack of collaboration between a large number of agencies is also a common challenge. The private sector may not be aware of provisions governing advance rulings. Samples of goods may be required to be assessed in laboratory facilities when it is difficult to determine the nature and origin of the goods.

Key factors for success

A clear legal framework for the regulation of advance rulings is crucial to ensure efficient implementation. Establishing a specialized team for advance rulings in customs headquarters, with improved ICT infrastructure, will also be a key factor. A national computer database – continuously updated – for rulings will enhance coherence, consistency and predictability of decisions. Use of a monitoring mechanism to ensure that all requests are readily answered in a reasonable time period would also be highly beneficial. A

robust public awareness campaign is vital to ensure that traders can benefit from this measure, strengthening relations between customs authorities, government officials and traders.

CHAPTER 4 APPEAL OR REVIEW PROCEDURES

Procedures for appeal or review: Article 4

Sometimes customs' administrative rulings are based on omissions which may not fully comply with the law. Affected traders may seek a review of the ruling, with recourse to an independent mechanism for review and/or appeal and, where appropriate, for the correction of administrative actions or omissions.

Article 4 creates an obligation that each WTO Member shall provide right of appeal and review to any person dissatisfied with an administrative decision issued by customs.

Members must provide any person within its territory the right to administrative review/appeal and/or to judicial appeal of decisions made by the customs authority.

The measure

ARTICLE 4 PROCEDURES FOR APPEAL OR REVIEW

1. Each Member shall provide that any person to whom customs issues an administrative decision[3] has the right, within its territory, to:

(a) an administrative appeal to or review by an administrative authority higher than or independent of the official or office that issued the decision;

and/or

(b) a judicial appeal or review of the decision.

2. The legislation of a Member may require that an administrative appeal or review be initiated prior to a judicial appeal or review.

3. Each Member shall ensure that its procedures for appeal or review are carried out in a non-discriminatory manner.

4. Each Member shall ensure that, in a case where the decision on appeal or review under subparagraph 1(a) is not given either:

(a) within set periods as specified in its laws or regulations; or

(b) without undue delay,

the petitioner has the right to either further appeal to or further review by the administrative authority or the judicial authority or any other recourse to the judicial authority.[4]

[3] An administrative decision: a decision with a legal effect that affects the rights and obligations of a specific person in an individual case. It covers an administrative action within the meaning of Article X of the GATT 1994 or failure to take an administrative action or decision as provided for in a Member's domestic law and legal system. To address such failure, Members may maintain an alternative administrative mechanism or judicial recourse, to direct the customs authority to promptly issue an administrative decision in place of the right to appeal or review under subparagraph 1(a).

[4] Nothing in this paragraph shall prevent a Member from recognizing administrative silence on appeal or review as a decision in favor of the petitioner in accordance with its laws and regulations.

5. Each Member shall ensure that the person referred to in paragraph 1 is provided with the reasons for the administrative decision so as to enable such a person to have recourse to procedures for appeal or review where necessary.

6. Each Member is encouraged to make the provisions of this Article applicable to an administrative decision issued by a relevant border agency other than customs.

Understanding the measure

What is covered?

Core obligation

This measure requires that WTO Members provide right of appeal and/or review to any person aggrieved by an administrative decision issued by the customs authority. A footnote to paragraph 4.1 clarifies that administrative decisions are those issued for an individual specific case, as opposed to administrative regulations which are generally applicable.

A footnote to paragraph 4.4 notes that Members can recognize a non-decision – an administrative silence – with regard to the appeal or review submitted, as a decision in favour of the petitioner, in case it is so provided in the domestic legislation.

The mandatory nature of this measure affects only administrative decisions issued by customs, however the expression 'is encouraged' in paragraph 4.5 suggests that Members make a 'best endeavour' effort to extend the provision to other border agencies' administrative decisions.

Two-track appeal or review

This measure provides for a two-track appeal and review process. Allowing for national legal frameworks, this measure obliges Members to allow affected persons to have recourse to:

- An administrative appeal or review; and/or
- A judicial appeal or review of the decision.

For the administrative track, the TFA specifies that the request of appeal or review must be addressed to an administrative authority higher than, or independent of, the official or office that issued the contested decision.

The double conjunction 'and/or' was introduced to allow the petitioner appeal to both administrative and judicial tracks or have direct access to just one channel.

Although legislation of some Members allow judicial appeal at any stage, other legislations stipulate that all stages of an administrative appeal must be exhausted before the right to judicial appeal can be used. This is why the TFA also refers to the scenario where administrative routes have to be exhausted first before having access to the judicial route.

Non-discriminatory processes of appeal or review

This measure requests WTO Members to ensure that appeal or review procedures are carried out in a non-discriminatory manner. To enhance transparency and fairness of rules, this measure also requires WTO Members to provide the petitioner with the rationale of the administrative decision issued, so as to enable recourse to appeal or review procedures.

Administrative decisions adopted by other border agencies

The measure also encourages WTO Members to apply the same provisions of appeal and/or review to administrative decisions issued by border agencies other than customs agencies.

What is not covered?

The measure does not explain how the procedures for appeal or review will be integrated within each Member's legal framework. As each Member has its own legal system in place, flexibility is provided regarding the means of implementation.

Benefits and opportunities for stakeholders

A functioning appeal and review system ensures a fairer and more transparent application of the laws administered and enforced by customs and – potentially – other border agencies.

In cases of delay in the appeal or review procedure, traders have recourse to the next higher level within the administrative or judicial body to shorten waiting times to obtain a decision.

With a well-functioning and fair legal system, this measure will not only improve traders' confidence regarding the application of regulatory requirements but would also signal a positive investment climate, attracting more inward investments in the longer term.

This multiple-stage appeal or review system will also encourage government authorities to take faster decisions, promoting better employment of time, human and financial public resources.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- Legislation provides rights to any aggrieved person within the country's territory for administrative and/or judicial appeal against administrative decisions made by customs and possibly other border agencies.
- Those procedures are laid down in a non-discriminatory manner.
- In case of undue delay or missed deadline, the appellant is provided with an opportunity to bring the case to the higher administrative level or judicial appeal.
- Customs or other border agencies provide, upon request, the reasoning of the decision to the appellant, as well as the applicable appeal procedures available.

Preparing a national implementation plan

The following template may be used as a basis for a national implementation plan:

	Actions suggested
Implementation sequence	**Preparatory phase**
	Enact a legal framework regulating the appeal and review procedures, if not yet established.
	If needed, take legal or administrative measures to allow for a two-track appeal or review system.
	Where this measure affects other border agencies in addition to customs, these agencies may need to review procedures and set up new processes to allow implementation.
	Conduct thorough business process analysis of existing procedures and test their user-friendliness and efficiency.
	Set-up phase
	Put in place a protocol of coordination with all relevant agencies so that the appeal or review system can work smoothly.
	Management and follow-up phase
	Train customs, border agencies and judiciary officials and provide them with necessary tools for implementation.
	Carry out a public awareness campaign to enable wider understanding of the benefits of the system.
	Carry out reasonable and regular reviews of formalities, business processes and documentation requirements relating to appeal and review.
	Enable users to give feedback and evaluation on the implementation of this measure.
Average time for implementation	Between 18 months to two years.
Leading implementation agency	Customs is most commonly chosen as the leading implementation agency. The ministry of justice can be engaged as an important stakeholder for the judicial appeal/review process.

Key challenges

Uncertainty in the national legal and/or administrative framework to define appeal and/or review procedures can hamper traders' access to this right. Lack of dedicated human and financial resources for customs' appeal or review offices can also affect the implementation of the measure, especially the lack of technical or financial resources to manage ICT-enabled systems.

Key factors for success

A clear national legal and/or administrative framework is crucial to ensure successful implementation. A clear definition of appeal/review procedures, legal requirements and filing procedures is fundamental, especially how and when it is possible to access the judicial track if administrative tracks must first be exhausted. Strong inter-agency cooperation will ensure that the simplest and quickest processes are adopted, allowing traders and other concerned stakeholders to obtain fast and fair appeals or review decisions.

CHAPTER 5 IMPARTIALITY AND TRANSPARENCY MEASURES

Notification for enhanced controls and inspections: Article 5.1

Documentation, inspections and other cross-border requirements often lack transparency. Lack of published information on the application of requirements can catch traders by surprise when a decision is taken or repealed.

To maintain sanitary and phytosanitary standards, WTO Members may introduce enhanced border controls or inspections for food, beverage and feedstuffs. However, the TFA mandates transparency in the issuance, termination or suspension of enhanced controls and inspections, without prejudice to the possibility of WTO Members to carry out such additional verifications.

Transparency in the issuance, termination, or suspension of notifications for enhanced control at the border on foods, beverages, or feedstuffs must be ensured.

The measure

Article 5 OTHER MEASURES TO ENHANCE IMPARTIALITY, NON-DISCRIMINATION AND TRANSPARENCY

1 Notifications for enhanced controls and inspections

Where a Member adopts or maintains a system of issuing notifications or guidance to its concerned authorities for enhancing the level of controls or inspections at the border in respect of foods, beverages, or feedstuffs covered under the notification or guidance for protecting human, animal, or plant life or health within its territory, the following disciplines shall apply to the manner of their issuance, termination, or suspension:

(a) the Member may, as appropriate, issue the notification or guidance based on risk;

(b) the Member may issue the notification or guidance so that it applies uniformly only to those points of entry where the sanitary and phytosanitary conditions on which the notification or guidance are based apply;

(c) the Member shall promptly terminate or suspend the notification or guidance when circumstances giving rise to it no longer exist, or if changed circumstances can be addressed in a less trade-restrictive manner; and

(d) when the Member decides to terminate or suspend the notification or guidance, it shall, as appropriate, promptly publish the announcement of its termination or suspension in a non-discriminatory and easily accessible manner, or inform the exporting Member or the importer.

Understanding the measure

What is covered?

Scope

Article 5.1 describes measures to enhance impartiality, non-discrimination and transparency with regard to the issuance, termination or suspension of notifications for enhanced controls of inspections imposed on food, beverages, and feedstuff at the border, with the aim of safeguarding human, animal or plant health within the territory of a Member.

Core obligation

Members must quickly terminate or suspend the notification of controls as soon as the underlying risk no longer exists, or if changed circumstances allow for a re-evaluation of the notification in a less trade-restrictive manner. It is important to clarify that this provision is only applicable when the WTO Member has set up or maintains a system of issuing notifications or guidance to enhance border controls for foods, beverages or feedstuffs. The TFA does not require WTO Members to establish rapid alert systems.

Prompt announcement of termination of notification or guidance

WTO Members must, as appropriate, readily publish the announcement of the termination or suspension of the notification or guidance of enhanced controls or inspections in a non-discriminatory and easily accessible manner or inform the exporting WTO Member or the importer. The use of the phrase 'shall, as appropriate' states that Article 5.1(d) is legally mandatory but with some degree of flexibility.

Risk-based notification or guidance recommended

Subparagraph (a) rules that WTO Members may, as appropriate, issue the notification or guidance based on risk criteria. The use of the verb 'may, as appropriate' does not impose a legally binding obligation but encourages the possibility and discretion of Members to issue the notification or guidance based on risk.

Application of notification or guidance to only affected entry points recommended

Subparagraph (b) states that the notification or guidance may apply uniformly only to those points of entry affected. As in the previous subparagraph, the use of the word 'may' reflects the absence of a mandatory obligation but gives WTO Members the discretion to decide whether to limit the issuance of notifications or guidance only to those points of entry where the sanitary and phytosanitary standards apply.

What is not covered?

This measure remains silent on the procedural aspects of notifications or alerts, including the specific means of announcement of termination or suspension.

Benefits and opportunities for stakeholders

Provisions addressed under this measure will enhance the quantity and quality of information available on enhanced controls or inspections, enabling traders to strengthen their capacity to comply with new cross-border requirements enforced to protect human, animal or plant health.

A prompt termination or suspension of notification of enhanced control will help traders to adapt and adjust their activities as soon as the announcement of termination is released. In addition, this measure will reduce unnecessary or redundant controls or inspections at the border, thus reducing time and financial cost of cross-border procedures for SMEs.

Availability of information – especially through the internet – will reduce the time and burden on government agencies to respond to traders' inquiries about any control-related issues. Moreover, transparency of information will create enhanced levels of confidence and trust among the private sector, fostering a climate of compliance and cooperation with border agencies.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- A system of notifications/alerts of enhanced border inspections has been conceived and implemented in the country.
- Such a system has been designed and made effective according to a risk criterion.
- Notifications are issued and applied uniformly only to those points of entry affected.

- Alerts are promptly terminated or replaced by a less trade-restrictive measure when circumstances giving rise to the enhanced control no longer exist.
- The announcement of termination of a notification for enhanced control is published promptly in a non-discriminatory and easily accessible manner.
- The competent authorities of the exporting country or the importer are notified if a consignment does not meet the objective quality standards.

Preparing a national implementation plan

The following template may be used as a basis for a national implementation plan:

Implementation sequence	Actions required
	Preparatory Phase
	Determine legal, procedural and technical needs for creating/improving the current notification system.
	Set-up phase
	Establish or improve the legal and institutional basis for an efficient notification system ensuring information exchange between border agencies for import control purposes.
	Designate an agency/department responsible for issuance of rapid alerts.
	Establish the procedural basis for the notifications system.
	Connect the notification system to a risk analysis system (or existing risk management system) for collecting positive evidence of enhanced inspections.
	Include a prompt, non-discriminatory and transparent termination mechanism for alerts, as well as notifications to exporting countries.
	Management and follow-up phase
	Set up a mechanism for monitoring results of inspections and allow prompt terminations of alerts when no longer needed.
Average time for implementation	Between two and three years.
Leading implementation agency	The ministry in charge of trade is most commonly chosen as the leading implementation agency.

Key challenges

Government institutions may lack human, financial and technical capacity to regularly review notifications for enhanced inspections to assess their relevance and eventual termination. Border agencies may also not be able to manage a prompt issuance (or revision) of enhanced controls, leading to uncertainty of inspection requirements to be applied at the points of entry. The lack of necessary ICT capacity and infrastructure to set up a rapid system of alerts could also be a challenge. Poor collaboration between a large number of agencies may also lead to challenges in implementation, especially when border agencies are not being promptly and fully informed about changes in the level of controls.

Key factors for success

The use of a risk-based assessment system to release regular risk-based notifications of enhanced inspections will determine the successful implementation of this measure. This will ensure that the rules of enhanced inspections are widely available for the benefit of stakeholders. A robust mechanism for raising public awareness will enable traders to have access to notifications as soon as these are issued.

Detention: Article 5.2

During detention of merchandise, the importer or the authorized operator cannot usually handle the goods and incurs several types of fees and charges, e.g. warehousing and storage fees and demurrages charges. In addition, detention for inspection at the border will delay the release of goods, causing a financial loss for the importer, especially for seasonal products.

WTO Members must promptly inform the importer or the carrier that detention of imported goods for inspection is taking place.

Article 5.2 sets out that WTO Members must rapidly inform the importer or their carrier of detention of goods for inspection by customs or any other competent authority in a transparent, non-discriminatory and legitimate manner.

The measure

ARTICLE 5 OTHER MEASURES TO ENHANCE IMPARTIALITY, NON-DISCRIMINATION AND TRANSPARENCY 2 Detention A Member shall promptly inform the carrier or importer in case of detention of goods declared for importation, for inspection by customs or any other competent authority.

Understanding the measure

What is covered?

Core obligation

The measure requests WTO Members to quickly notify the importer or carrier when customs or other border agencies, such as the sanitary and veterinary authority, are detaining imported goods for inspection or further investigation.

What is not covered?

This measure sets no obligation to inform the competent authorities of exporting countries when detention of goods is taking place. Moreover, the measure does not state the modalities through which the information has to be provided to the importer or the carrier.

The measure does not set out any obligation related to detention of goods declared for export.

Benefits and opportunities for stakeholders

Prompt information provided to the importer or their carrier will allow the trader to reduce costs of storage, demurrage and warehousing of imported goods. Enhanced accountability of customs and border agencies will improve private sector trust and compliance.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- There is a national implementation framework in place to ensure that importers (or carriers) are informed when goods are detained.
- In practice, importers are informed in a timely manner when their goods are detained for inspection by customs or any other competent authority.

Preparing a national implementation plan

The following template may be used as a basis for a national implementation plan:

	Actions suggested
Implementation sequence	**Preparatory phase**
	Determine legal, procedural and technical needs for creating or improving the current detention notification system.
	Set-up phase
	Establish or improve the legal and institutional basis for an efficient notification system ensuring that information exchange between border agencies for detention-related procedures are functioning efficiently.
	Designate an agency/department responsible for providing rapid alerts to importers/carriers.
	Establish procedural steps for the notifications system, in particular the timeframes for notification.
	Connect the system to a risk-based assessment system (or to an existing risk management system) to establish evidence for required detentions.
	Management and follow-up phase
	Set up a mechanism for monitoring results of inspections to allow the prompt termination of alerts when no longer needed.
Average time for implementation	Between one and a half to two years.
Leading implementation agency	Customs is most commonly chosen as the leading implementation agency with the ministry in charge of trade.

Key challenges

Existing laws, regulations, rules and procedures may need to be amended to allow issuance of prompt notifications about detention of goods to importers or carriers. If customs and border agencies lack capacity to fully implement or integrate a risk management system into their business processes, it can be challenging to apply detention in a transparent and predictable manner. Government institutions may also not have the required ICT capacity to create a rapid system of alerts to ensure efficiency and transparency.

Key factors for success

An enabling legal or administrative framework which enables the prompt issuance of notifications and the use of ICT for notifying detention cases is essential to implement this measure successfully. Regular staff training will guarantee that custom administrations and other border agencies have the necessary knowledge to carry out detention of imported goods for further inspections.

Test procedures: Article 5.3

In some cases, test results of sampled goods provide a different finding from the imported goods declaration and may not be acceptable to the importer.

Article 5.3 outlines obligations for WTO Members to re-test samples on the request of traders in a transparent and trade-facilitative manner. A second test would ensure or challenge the consistency of the first test and highlight any discrepancy that might have occurred between the first test and the declaration of goods for importation.

Provide, upon request, an opportunity for a confirmatory test in case of discrepancy between the first test and the declaration of goods for importation.

The measure

ARTICLE 5 OTHER MEASURES TO ENHANCE IMPARTIALITY, NON-DISCRIMINATION AND TRANSPARENCY

3 Test Procedures

3.1 A Member may, upon request, grant an opportunity for a second test in case the first test result of a sample taken upon arrival of goods declared for importation shows an adverse finding.

3.2 A Member shall either publish, in a non-discriminatory and easily accessible manner, the name and address of any laboratory where the test can be carried out or provide this information to the importer when it is granted the opportunity provided under paragraph 3.1.

3.3 A Member shall consider the result of the second test, if any, conducted under paragraph 3.1, for the release and clearance of goods and, if appropriate, may accept the results of such test.

Understanding the measure

What is covered?

Core obligation

The measure is applicable only when the results of the first test are different to the declaration of the goods at the time of import, described as an ‘adverse finding’ in the provision. The WTO Members may provide an opportunity to conduct a second confirmatory test, if requested by the importer or their authorized agent.

The expression ‘may grant’ means that it is not mandatory to grant a second confirmatory test and that this decision is left to the discretion of the member country, on a case by case basis.

Publish in a non-discriminatory manner

If granting a second test, WTO Members must make public the name and address of any laboratory where the second test can be conducted in an open, transparent and non-discriminatory manner. Members are requested to provide this information directly to the importer.

Consider test results

Members must take into consideration the results of the second test for the release or clearance of goods and, if appropriate, accept the result. However, the measure does not oblige the member country to accept the results of the second test.

What is not covered?

The measure does not provide any obligation to carry out the second test in accredited laboratories and there is no obligation to undertake the second test in a different laboratory than the one where the first test was conducted.

Benefits and opportunities for stakeholders

The option to request a second confirmatory test – and the granting of such test by the member country – can be helpful in addressing an adverse finding in the first test. The obligation to make information about testing laboratories public in an easily accessible manner also ensures transparency and certainty when a trader is granted a second confirmatory test and needs access to a laboratory for testing. Publishing names and addresses of laboratories will reduce public authorities' time spent responding to inquiries from traders.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- There is a national implementation framework in place which provides opportunities to traders to request a second test.
- Contact information of any laboratory where the second test can be done is published and easily accessible.
- The findings of confirmatory tests are taken into consideration for the release and clearance of goods.
- If appropriate, findings of the confirmatory test may be accepted.

Preparing a national implementation plan

The following template may be used as a basis for a national implementation plan:

Implementation sequence	Actions suggested
	Preparatory phase
	Determine legal, procedural and technical needs for creating/improving current testing procedures systems.
	Identify the border agencies predisposed to request for samples and tests.
	Set-up phase
	Establish or improve the legal, technical and institutional basis for an efficient system of publishing information about testing procedures, including contact information about laboratories.
	Set up mechanisms for inter-agency cooperation when more than one ministry or agency are involved with testing procedures.
	Establish guidelines/criteria/regulations for conducting second tests.
	Link the system with risk analysis (or to an existing risk management system), to evaluate future risks.
	Management and follow-up phase
	Set up a mechanism for monitoring and evaluating results of testing procedures to improve the import testing process.
Average time for implementation	Between one and a half to two years.

Implementation sequence	Actions suggested
	Preparatory phase
	Determine legal, procedural and technical needs for creating/improving current testing procedures systems.
	Identify the border agencies predisposed to request for samples and tests.
	Set-up phase
	Establish or improve the legal, technical and institutional basis for an efficient system of publishing information about testing procedures, including contact information about laboratories.
	Set up mechanisms for inter-agency cooperation when more than one ministry or agency are involved with testing procedures.
	Establish guidelines/criteria/regulations for conducting second tests.
	Link the system with risk analysis (or to an existing risk management system), to evaluate future risks.
	Management and follow-up phase
	Set up a mechanism for monitoring and evaluating results of testing procedures to improve the import testing process.
Leading implementation agency	Customs is most commonly chosen as the leading implementation agency, with the ministry of trade.

Key challenges

Existing laws, regulations and procedures may need to be amended to allow second tests. Government institutions may not have the required ICT capacity to ensure that information is published on the internet.

Key factors for success

An enabling legal/administrative framework is crucial to ensure that second tests are granted to traders, as well as an efficient, reliable testing system put in place.

CHAPTER 6 DISCIPLINES ON FEES AND CHARGES

General disciplines on fees and charges imposed on or in connection with importation and exportation: Article 6.1

Informal payments and unusually high fees represent one of the major barriers to cross-border trade.

To ensure that the business community thrives in a predictable, transparent and conducive environment, Article 6.1 of the TFA requires that all the relevant information regarding fees and charges relating to export or import are published widely.

Members are required to publish fees and charges related to importation and exportation in a transparent and predictable manner, and to periodically review them according to the cost-recovery principle.

The measure

ARTICLE 6 DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION AND PENALTIES

1 General Disciplines on Fees and Charges Imposed on or in Connection with Importation and Exportation

1.1 The provisions of paragraph 1 shall apply to all fees and charges other than import and export duties and other than taxes within the purview of Article III of GATT 1994 imposed by Members on or in connection with the importation or exportation of goods.

1.2 Information on fees and charges shall be published in accordance with Article 1. This information shall include the fees and charges that will be applied, the reason for such fees and charges, the responsible authority and when and how payment is to be made.

1.3 An adequate time period shall be accorded between the publication of new or amended fees and charges and their entry into force, except in urgent circumstances. Such fees and charges shall not be applied until information on them has been published.

1.4 Each Member shall periodically review its fees and charges with a view to reducing their number and diversity, where practicable.

Understanding the measure

What is covered?

Scope

WTO Members are requested to publish information on all fees and charges – other than import and export duties and other than taxes within the purview of Article III of GATT 1994 – imposed by Members on or in connection with importation and exportation.

Specifically, the information made public must include:

- The fees and charges that will be applied;
- The reason for the imposition of such fees and charges;
- The responsible authority who will collect the fees and charges;
- Information about when and how payment is to be done.

Publication of fees and charges

When publishing information on fees and charges, Members must specify at least the applicable fees and charges that traders are requested to pay, the reasons for their existence and imposition, the responsible levying authority within their territory and the modalities of payment as a minimum requirement.

Reasonable period of time

Except for urgent circumstances, Members must ensure that an adequate period of time is available between the official publication of a new or amended fee or charge and their entry into force. This provision enables traders to get acquainted with the new or amended fee before it can have full legal effects and be enforceable.

Periodic review

Members must undertake a periodic review of fees and charges imposed with the purpose of reducing these as much as possible. Whereas the review is mandatory, the reduction in the number and diversity of fees should take place 'where practicable'.

What is not covered?

This measure does not apply to import and export duties and taxes within the purview of Article III of GATT 1994, and does not specify the period of time that should exist between publication of new or amended fees and charges and their entry into force.

Benefits and opportunities for stakeholders

Prompt access to relevant information on the imposition of fees and charges levied for importation and exportation will increase transparency, legal certainty and predictability for traders. Allowing a period of time between the publication of new or amended fees and charges and their entry into force will provide traders with an opportunity to better understand and adjust to upcoming changes that will affect them.

A continued review of fees and charges will reduce trade costs for traders. In particular, SMEs will reap the greatest advantage from lower fees and charges, building on much needed economies of scale and contribute to their success in international markets.

Where available, dissemination of information on the internet will also reduce the time government institutions spend in responding to inquiries from traders about fees and charges.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- Fees and charges for customs processing are only imposed for services rendered.
- The required information on fees and charges connected to importation, exportation and transit is published.
- The amount of fees and charges for customs processing is based on the approximate cost of the service rendered.
- *Ad valorem* fees and charges for customs processing, if they exist, are limited to the approximate cost.
- Fees and charges are applied at a reasonable time after publication.
- Fees and charges are applied only after information on them has been published.
- Fees and charges are regularly reviewed to reduce their number and diversity.

Preparing a national implementation plan

The following template may be used as the basis for a national implementation plan:

Implementation sequence	Actions suggested
	Preparatory phase
	Conduct a review of existing fees and charges related to importation and exportation.
	Categorize services charged in different ranges and categories.
	Ascertain costs for each of these services rendered, based on relevant cost factors, and analyse if current charges comply with the cost-recovery principle.
	Using these findings, prepare a proposal to revise existing charges, consolidating, where possible, fees and charges to increase efficiency of administration and collection.
	Set-up phase
	Update legislation and administrative actions listing fees and charges and their amount.
	Introduce the obligation to publish required information on fees and charges.
	Introduce the principle of reasonable interval between publication and application of new fees and charges.
	Introduce the obligation to periodically review fees and charges with the goal to reduce their number and diversity.
	Publish information on fees and charges, including: • Applicable fees and charges. • Reasons for their existence. • Responsible authority. • Modalities of payment.
	Management and follow-up phase
	Set up a mechanism for monitoring prompt publication of information on fees and charges and allowing an adequate time interval between publication and entry into force.
	Periodically review fees and charges with the goal to reduce their number and diversity.
Average time for implementation	Three and a half years.
Leading implementation agency	Ministries in charge of trade and finance are most commonly chosen as the leading implementation agency.

Key challenges

Lack of a centralized hub to handle regular publication and review of fees is a common challenge in many WTO Members' administrations. Ensuring that the publication takes place before fees and charges are applied is also critical for the success of this measure. Poor collaboration between border agencies can also hinder exchange of information. Border agencies, in particular, may not be fully informed about changes in fees and charges when they occur.

Key factors for success

Coordination between the relevant agencies, ideally within a NTFC, will help implementation of this measure. A robust monitoring mechanism of fees and charges is also a key factor.

Specific disciplines on fees and charges for Customs processing imposed on or in connection with importation and exportation: Article 6.2

Governments usually levy some fees and charges on import and export transactions to cover the cost of customs processing. However, especially when determining fees and charges on *ad valorem* rates, the final amount of such fees and charges may not reflect the true cost of the service rendered.

The amount of fees and charges for customs processing must be limited to the costs of services rendered.

Article 6.2 sets out some key principles that guide determination of the amount of fees and charges to be levied by government agencies commensurate to the cost of services provided. The purpose of this measure is to make the charges and fees limited to the approximate cost of services rendered and transparent, predictable and reliable.

The measure

ARTICLE 6	DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION AND PENALTIES
2	Specific Disciplines on Fees and Charges for Customs Processing Imposed on or in Connection with Importation and Exportation
Fees and charges for customs processing:	
(i)	shall be limited in amount to the approximate cost of the services rendered on or in connection with the specific import or export operation in question; and
(ii)	are not required to be linked to a specific import or export operation provided they are levied for services that are closely connected to the customs processing of goods.

Understanding the measure

What is covered?

Core obligation

Article 6.2 requires WTO Members to limit the amount of fees and charges for customs processing to the approximate cost of the service rendered imposed on or connected to the specific export or import operation concerned.

Fees and charges levied for services connected to customs processing

Subparagraph (ii) specifies that fees and charges levied by a WTO Member do not necessarily need to be associated with a specific import or export transaction; nonetheless, such fees and charges should be collected for services which are closely related to customs processing of goods.

What is not covered?

The measure does not specify which are the relevant factors in determining the amount of fees and charges levied and is also silent on how payments should be made.

Benefits and opportunities for stakeholders

The requirement to anchor fees and charges to the commensurate cost of the services provided will ensure that no undue fees and charges are imposed on customs processing of goods. This will reduce the overall cost imposed on traders for exportation and importation, especially benefiting SMEs.

When fees and charges are calculated on the approximate cost of the service without any attempt to impose unnecessary and unjustified costs, traders are better able to understand the rationale behind their imposition, justify their existence and understand any change in the amount of fees and charges levied.

Implementation of this measure will enhance accountability in government agencies, improve the image of customs authorities and reputation of the member country among key stakeholders.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- Fees and charges for customs processing are only imposed for services rendered.
- The amount of fees and charges for customs processing is based on the approximate cost of the service rendered.

Preparing a national implementation plan

The following template may be used as a basis for a national implementation plan:

Implementation sequence	**Actions suggested**
	Preparatory phase
	Conduct a review of existing fees and charges related to importation and exportation.
	Categorize services charged by range and category.
	Ascertain costs for each of these services, based on relevant cost factors, and analyse if current charges comply with the cost recovery principle.
	Using the findings, prepare a proposal to revise existing charges, consolidating, where possible, fees and charges to increase efficiency of administration and collection.
	Set-up phase
	Update legislation and administrative instruments/actions listing fees and charges and their amount.
	Introduce the obligation to determine the cost of fees and charges on the principle of cost recovery for services rendered.
	Management and follow-up phase
	Set up a mechanism for monitoring application of specific fees and charges.
	Periodically review fees and charges with the goal to reduce their number and diversity.
Average time for implementation	Three and a half years.
Leading implementation agency	Customs is most commonly chosen as the leading implementation agency.

Key challenges

Lack of an appropriate national legal or administrative framework regulating the determination of fees and charges, and their amendment, is a key challenge. In such cases, new procedures need to be devised and institutionalized to ensure regular review of fees and charges. Government agencies may lack technical skills and financial resources to re-calculate fees and charges according to the cost recovery principle. Some countries may not have the required ICT capacity to secure a transparent and efficient system where all fees and charges levied are recorded and available to the general public.

Key factors for success

An enabling legal or administrative framework, which allows a regular review of fees and charges, is a key factor for success. A robust monitoring mechanism is essential to ensure that all fees and charges are collected according to the principles enshrined in this article, supported by ICT infrastructure where possible. Training may be required to equip staff with necessary tools and knowledge.

Penalty disciplines: Article 6.3

Often the rationale behind the nature and amount of penalties for breaches of customs laws, regulations and procedures is unclear and unjustified, leading to conflicts of interest and corruptive behaviour.

Recognizing that penalties are an important aspect of the administration of trade regulations, the TFA aims to reduce the arbitrary imposition of penalties and avoid any conflict of interest in their assessment and collection, requiring that such penalties are imposed on the person responsible for the breach in a fair and transparent manner.

Penalties imposed for legal or administrative breaches must be fairly grounded on objective facts and must be commensurate with the severity of the infringement.

Information on imposed penalties must be provided to the person responsible for the breach.

The measure

ARTICLE 6 DISCIPLINES ON FEES AND CHARGES IMPOSED ON OR IN CONNECTION WITH IMPORTATION AND EXPORTATION AND PENALTIES

3 Penalty disciplines

3.1 For the purpose of paragraph 3, the term ‘penalties’ shall mean those imposed by a Member's customs administration for a breach of the Member's customs laws, regulations, or procedural requirements.

3.2 Each Member shall ensure that penalties for a breach of a customs law, regulation, or procedural requirement are imposed only on the person(s) responsible for the breach under its laws.

3.3 The penalty imposed shall depend on the facts and circumstances of the case and shall be commensurate with the degree and severity of the breach.

3.4 Each Member shall ensure that it maintains measures to avoid:

(a) conflicts of interest in the assessment and collection of penalties and duties; and

(b) creating an incentive for the assessment or collection of a penalty that is inconsistent with paragraph 3.3.

3.5 Each Member shall ensure that when a penalty is imposed for a breach of customs laws, regulations, or procedural requirements, an explanation in writing is provided to the person(s) upon whom the penalty is imposed specifying the nature of the breach and the applicable law, regulation or procedure under which the amount or range of penalty for the breach has been prescribed.

3.6 When a person voluntarily discloses to a Member's customs administration the circumstances of a breach of a customs law, regulation, or procedural requirement prior to the discovery of the breach by the customs administration, the Member is encouraged to, where appropriate, consider this fact as a potential mitigating factor when establishing a penalty for that person.

3.7 The provisions of this paragraph shall apply to the penalties on traffic in transit referred to in paragraph 3.1.

Understanding the measure

What is covered?

Core obligation

Members are required to impose fair penalties, proportionate and in a transparent way, for any breach of a customs law, regulation, or procedural requirement. It also requires Members to impose the penalty only on the person(s) responsible for that violation. There shall be no breach of trust and an incentive for imposition of penalty.

Modalities for imposing penalties

The penalties are determined on a case by case basis using only those specific facts and circumstances in which the breach arose. They must be proportionate with the magnitude and severity of the infraction and not disproportionately determined on arbitrary criteria.

Conflict of interest

Measures to avoid conflict of interest in assessment of duties and penalties must be maintained. Imposition of unduly harsh penalties must not become an incentive for cash rewards for the customs official.

Providing complete information to the person

Members have an obligation to provide the following information in writing to the person(s) who has breached customs laws, rules, regulations or procedures:

- The nature of the breach and applicable law; and
- The amount or range of penalty prescribed for the breached law.

Voluntary disclosure by the person committing the breach

When the person causing the breach voluntarily discloses the infringement before it is detected by the authorities, the TFA encourages Members to consider this as a potential mitigating factor in the process of determining the penalties. This specific provision is not mandatory but leaves the decision to Members.

Penalties on traffic in transit

The last paragraph of Article 6.3 makes clear that all the provisions contained in the Article must also apply to penalties imposed for breaches committed during traffic in transit.

What is not covered?

The text is silent on the criteria for defining the facts and circumstances which should determine the amount and range of penalties. The text is also silent on the processing times of penalties.

Benefits and opportunities for stakeholders

This measure will strengthen traders' understanding of the nature of breaches in customs rules and the reasons for imposing penalties, encouraging better compliance in future operations and reducing their overall costs of doing business. An explanation in writing will not only enhance the quantity and quality of information available to traders but will also constitute the basis for any appellate purpose of traders. It will also enhance credibility and accountability of customs authorities.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- Penalties are only imposed on the persons responsible for the breach.
- Penalties are proportionate with the specific facts and circumstances which gave rise to the breach.
- Measures preventing any conflict of interest in the assessment and collection of penalties are devised and implemented.
- Written explanations are provided to the offender regarding the nature of the breach and the applicable law, regulation or procedure under which the amount or range of the penalty has been prescribed.
- Substantive efforts are undertaken to ensure that voluntary disclosure of a breach is accepted as a potentially mitigating factor.

Preparing a national implementation plan

The following template may be used as the basis for a national implementation plan:

Implementation sequence	**Actions suggested**
	Preparatory phase
	Conduct a review of existing laws, regulations and procedures and range of penalties.
	Ascertain whether the processes in place identify legal breaches and impose penalties as established under the country's legal system, in a way which does not encourage conflicts of interest or personal gains.
	Ascertain if a system for providing written information on the penalties imposed to the person in question is in place. If not, envisage a system/mechanism to provide written explanations.
	Using these findings, prepare a proposal to revise the process for collection of penalties.
	Set-up phase
	Update legislation and administrative instruments to determine the amount of penalties commensurate with the severity of the breach.
	Implement the legal or administrative mechanism which provides written information to the affected person.
	Management and follow-up phase
	Set up an internal mechanism for monitoring application of penalty disciplines.
	Periodically review penalties imposed and, where possible, assess information for future compliance, using ICT-enabled-systems
Average time for implementation	Three and a half years.
Leading implementation agency	Customs is most commonly chosen as the leading implementation agency.

Key challenges

Lack of an appropriate legal or administrative framework which determines fair penalties and provision of written explanations to the offender is a key challenge. Customs officers might not have the capacity to determine the correct facts and circumstances of the infringement for imposition of the penalties. Absence

of policies against conflicts of interest in determining penalties may reflect an inclination of customs authorities to maintain the status quo.

Key factors for success

The availability of human resources management policies and tools will assist governments to train staff on criteria and methods to determine penalties, including the adoption of ethical behavior to identify and reject any conflicts of interest. An ICT-enabled system that ensures a reasonable period of time between case detection, determination of the penalty and finalization of the case will also have a positive impact. A review mechanism is also essential to monitor whether the amount and range of penalties imposed are proportionate with the breach committed and reduce the number of penalties over time.

CHAPTER 7 MAKING RELEASE OF GOODS MORE EFFICIENT

Pre-arrival processing: Article 7.1

Traditionally, documents for the clearance of imported goods are submitted to customs after the arrival of vessels and processing of documents begins when the goods are already at the port. However, this normally entails long delays, which translate into higher trade costs and loss of competitiveness.

Article 7.1 binds WTO Members to adopt or maintain procedures allowing the submission of documents, including manifests, prior to the arrival of goods. Customs and other departments at the port can complete processing of documents for release of goods on arrival, where possible.

Members shall adopt procedures to allow the submission of import documentation and other required information prior to the arrival of goods.

The measure

ARTICLE 7 RELEASE AND CLEARANCE OF GOODS

1 Pre-Arrival Processing

1.1 Each Member shall adopt or maintain procedures allowing for the submission of import documentation and other required information, including manifests, in order to begin processing prior to the arrival of goods with a view to expediting the release of goods upon arrival.

1.2 Each Member shall, as appropriate, provide for advance lodging of documents in electronic format for pre-arrival processing of such documents.

Understanding the measure

What is covered?

Scope

WTO Members must adopt or maintain procedures to allow pre-arrival submission of the following documents to enable authorities to release goods on arrival:

- Import documentation;
- Other required information pertaining to the trade transaction;
- Manifests.

Core obligation

All Members are required to set up or keep in place a mechanism that allows traders to submit import documents and other required information ahead of arrival of goods at the port of entry to enable a quicker release of goods on arrival.

Electronic advance lodging of documents

This measure also requires WTO Members to set up a mechanism for the advance lodging of import documents in an electronic format. However, this mandatory provision is mitigated by the use of the words ‘as appropriate’ to allow some degree of flexibility in implementation.

What is not covered?

WTO Members are not required to establish a separate functional unit with dedicated staff to handle pre-arrival processing. The measure does not affect in any way a Member's right to examine, seize, detain, confiscate or deal with goods in any manner. Although not specifically provided for in the measure, Members may also require additional import documents and data necessary or useful for the purpose of risk management.

Benefits and opportunities for stakeholders

Advance lodging of import documents in electronic format reduces delays at border crossings and entry points for the release of goods. Economic operators – especially SMEs – can save time on customs clearance and release, and minimize risks and costs. For example, storage and insurance fees will be reduced as a direct consequence of pre-arrival processing of documentation.

Reduced bottlenecks at the points of entry will make government agencies more productive and encourage a public mindset of efficiency. The advance electronic lodging of documents will also facilitate risk management systems (see Article 7.4) and implementation of the single window system (see Article 10.4).

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- There is a national implementation framework that allows the submission of import documents, manifests and other information required by customs or other borders agencies to begin processing documents prior to arrival.
- The legislation, if considered appropriate, may allow electronic submission of goods declarations and required supporting documents.
- The established procedures of customs and other border agencies for pre-arrival processing ensure that such pre-arrival declarations are actually processed.

Preparing a national implementation plan

The following template may be used as the basis for a national implementation plan:

Implementation sequence	**Actions suggested**
	Preparatory phase
	Determine whether a national legal and administrative mechanism exists to facilitate implementation of advance submission of documents and information to customs and other agencies.
	If one or various mechanisms exist, determine its characteristics and scope of action.
	If there is no existing mechanism, analyse the country's needs and decide which administrative body can ensure coordination and implementation of this measure.
	Set-up phase
	If necessary, adopt a legal and administrative framework to implement the measure.
	If required, analyse and change existing workflows and business processes to allow submission of documents in advance, and, if considered appropriate, in an electronic format.
	Allocate appropriate financial and human resources to the administrative body and mechanism responsible for implementation.
	Undertake publicity to inform all traders and stakeholders about the benefits and requirements of the new system.
	Management and follow-up phase
	Monitor and evaluate procedures to ensure compliance with the obligation.
	Periodically review and implement modification or upgrades to the electronic mechanism, where applicable.
Average time for implementation	Two years.
Leading implementation agency	Customs is most commonly chosen as the leading implementation agency.

Key challenges

As pre-arrival processing is best applied in a partial or fully automated environment in customs administrations and other agencies, lack of standardized documents in electronic format will represent a challenge. Inadequate funds and skills to train government staff to implement this measure is a risk. Lack of or poor inter-agency coordination can also lead to challenges, as a large number of agencies need to work together to ensure all the required information and documents for each agency can be presented and processed ahead of arrival of the goods.

Key factors for success

An appropriate legal framework and an automated system which enables customs authorities to receive the required information and documents in an electronic format is a key factor for success. Sufficient allocation of funds for system management and staff training is also essential.

Box 1: International best practices for pre-arrival processing of goods

Nigeria and Japan offer two excellent examples of how advance examination of import documents and information is carried out in a timely and efficient manner without investing too many resources.

The **Nigeria Customs Service** allows the advance processing of clearance documents through a tripod software system – the Nigeria Integrated Customs Information System – introduced by an Act in October 2010. It includes:

- E-manifest: shipping companies are required to send manifests to the Nigeria Customs Service server electronically before arrival of ship or aircraft;
- E-declaration**:** traders can make a self-declaration of imports through Direct Trader Input, an automated facility that interfaces with the Nigeria Customs Service server. This platform works 24,7;
- E-payment**:** electronic payment of custom duties is required and includes an electronic remittance to the Central Bank of Nigeria and electronic reconciliation of payments to the Federation Accounts (Nigerian government financial system). Confirmation of e-payment allows the trader to make an electronic request for release of goods from customs control.

Expanded facilities such as cyber cafés support the electronic transmission of documents by traders. In addition, training courses for the trading community and clearing agents on automation, e-procedures and improved documentation facilitates fast issuance of risk assessment reports.

Since 1991, **Japan** has enabled the pre-arrival examination of trade documents using existing facilities with minimal costs for legislation and training. The pre-arrival processing can be applied to all types of imported cargo and usually consists of the following steps:

- Importers can submit a pre-arrival declaration to customs, using the same form as a general import declaration form;
- Importers can submit a pre-arrival declaration at any time after the bill of lading (or airway bill for air cargo) is issued, and after the foreign exchange rate for the scheduled date of import declaration is announced;
- When the cargo arrives and all requirements are met for the import declaration under customs law, 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 pre-arrival declaration;
- After confirmation, customs treat the pre-arrival declaration as a formal import declaration and provide an immediate import permit as long as physical examination is not required.

Source: UNECE Trade Facilitation Implementation Guide. Available at http://tfig.unece.org/contents/case-studies.htm

Electronic payment: Article 7.2

In many developing countries and LDCs, traders are required to pay in person duty, taxes and other levies on import, export or transit of goods. This mode of payment results in many logistical challenges for traders and creates a business environment where security concerns, corruption and inefficient business practices are common.

The measure enables traders to make payments electronically and also provides an opportunity for customs to modernize processes, increase accountability and make procedures more efficient.

Members shall provide the option of electronic payment for duties, taxes, fees and charges related to importation and exportation collected by customs authorities.

The measure

ARTICLE 7 RELEASE AND CLEARANCE OF GOODS

2 Electronic Payment

Each Member shall, to the extent practicable, adopt or maintain procedures allowing the option of electronic payment for duties, taxes, fees, and charges collected by customs incurred upon importation and exportation.

Understanding the measure

What is covered?

Scope

WTO Members are required, 'to the extent practicable', to adopt or maintain procedures to allow the option of electronic payment of duties, taxes, fees and charges collected by customs authorities on importation, exportation or transit of goods.

Core obligation

Article 7.2 imposes a legal obligation on WTO Members to arrange the electronic payment of import and export duties, taxes, fees and charges to customs authorities.

However, the nature of the obligation is softened by the use of the words 'shall, to the extent practicable', which means that each Member can assess their capacity to adopt or maintain this measure and implement what is practical.

What is not covered?

It is left to the discretion of Members to decide which methods and channels to use for electronic payments. These may include payments through credit or debit cards, online bank transfers and mobile application payments among others.

Benefits and opportunities for stakeholders

The simplification of payment procedures to customs authorities will improve businesses' cross-border trade transactions. Transparency and certainty of the due amount to pay electronically will also decrease illegal practices, such as bribery and informal payments at the border.

When facilities for online payments and electronic bank transfers are provided, traders will no longer be required to visit government agencies' offices, reducing delays at the time of clearance of goods. Introducing electronic payments also represents an opportunity for border agencies to integrate with other TFA measures, such as the single window (Article 10.4), risk management systems (Article 7.4), trade information portals and other ICT solutions.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- A national legal, administrative and ICT-enabled implementation framework is in place for adopting electronic payments for duties, taxes, fees and charges to customs authorities upon import and export of goods.
- The electronic payment implementation framework takes into account legislation for late payment restrictions, simplification and standardization of payment procedures, and accessibility to trade finance instruments.

Preparing a national implementation plan

The following template may be used as the basis for a national implementation plan:

Implementation sequence	**Actions suggested**
	Preparatory phase
	Nominate a lead agency that will coordinate implementation of the measure. Identify relevant agencies, ministries, private sector representatives and form a project team with representation from each agency.
	Review existing procedures and business processes to identify bottlenecks and devise new procedures with enhanced cooperation and coordination between agencies, ministries and financial institutions.
	Identify barriers in legal, regulatory and institutional frameworks that may hinder implementation. Also determine changes required to the organizational structure and ICT infrastructure of different agencies to enable successful deployment.
	Set-up phase
	Establish a central clearing house with the central bank to facilitate payments between the traders' bank and customs' bank.
	Set up an electronic payment system.
	Implement changes required to organizational structures, other infrastructure (e.g. setting up joint border controls), ICT infrastructure and train staff.
	Management and follow-up phase
	Set up mechanism for monitoring the system, e.g. collect data to check average types of transaction and number of users monthly.
	Regularly review and audit business processes to seek continuous improvements.
	Seek feedback on traders' experiences and use of system.
Average time for implementation	Three years.
Leading implementation agency	Ministries in charge of trade, in cooperation with a NTFC, are most commonly chosen as the leading implementation agency.

Key challenges

Lack of an appropriate legal framework and national ICT infrastructures are a common challenge. In such cases, a new legal framework and procedures need to be devised and institutionalized so that payments can be processed electronically. Poor ICT capacity within the government and private sector will also affect implementation. The organizational culture of customs authorities may resist the introduction of new systems.

Key factors for success

The appropriate legal framework and adoption of technological solutions in national infrastructures will lead to successful implementation of this measure. Appropriate partnerships between financial institutions and government treasury is vital to enhance collaboration and smooth functioning of the system.

Separation of release from final determination of customs duties, taxes, fees and charges: Article 7.3

In many cases, customs authorities do not release goods until the clearance procedure has been completed, when all transactions have been terminated and due taxes and duties have been paid.

However, it often happens that the final clearance is delayed for various reasons, such as decisions pending on the classification and valuation of the goods, laboratory testing, missing documents or disputes against a customs decision. Such delays have a negative impact on traders' supply chains, as the goods are withheld from traders in customs-controlled facilities.

Members must establish or maintain procedures allowing the release of goods prior to the final determination of customs duties, taxes, fees and charges.

To tackle this issue, Article 7.3 requires Members to allow the release of goods prior to the final determination of customs duties, taxes, fees and charges. Separating release from clearance means the goods can be released by customs prior to the payment of duties, taxes, fees and charges where the final classification of the goods, assessment of value or other transactions are pending.

The measure

ARTICLE 7 RELEASE AND CLEARANCE OF GOODS

3 Separation of Release from Final Determination of Customs Duties, Taxes, Fees and Charges

3.1 Each Member shall adopt or maintain procedures allowing the release of goods prior to the final determination of customs duties, taxes, fees, and charges, if such a determination is not done prior to, or upon arrival, or as rapidly as possible after arrival and provided that all other regulatory requirements have been met.

3.2 As a condition for such release, a Member may require:

(a) payment of customs duties, taxes, fees, and charges determined prior to or upon arrival of goods and a guarantee for any amount not yet determined in the form of a surety, a deposit, or another appropriate instrument provided for in its laws and regulations; or

(b) a guarantee in the form of a surety, a deposit, or another appropriate instrument provided for in its laws and regulations.

3.3 Such guarantee shall not be greater than the amount the Member requires to ensure payment of customs duties, taxes, fees, and charges ultimately due for the goods covered by the guarantee.

3.4 In cases where an offence requiring imposition of monetary penalties or fines has been detected, a guarantee may be required for the penalties and fines that may be imposed.

3.5 The guarantee as set out in paragraphs 3.2 and 3.4 shall be discharged when it is no longer required.

3.6 Nothing in these provisions shall affect the right of a Member to examine, detain, seize or confiscate or deal with the goods in any manner not otherwise inconsistent with the Member's WTO rights and obligations.

Understanding the measure

What is covered?

Core obligation

WTO Members are requested to establish or maintain a mechanism whereby the goods can be released prior to the final determination of customs duties, taxes, fees and charges.

Conditional release

To release goods before the final determination of duties, taxes, fees and charges, Members may prescribe the following conditions:

(a) The payment of customs duties and other dues, determined prior to the arrival of goods or at the time of the arrival of the goods, and a guarantee for any amount not yet determined; or

(b) A guarantee in the form of surety, deposit or other instruments, as provided in their laws and regulations.

The use of the verb 'may' indicates that Members have the discretion to make the release of goods conditional upon the two requirements listed above but it is not mandatory.

Scope of the guarantee

If a guarantee is requested, the amount of such guarantee must not be greater than the amount that would be required to pay any dues for the goods.

Once customs duties, taxes, fees and charges have been finally determined and paid – thus making the guarantee no longer necessary – the measure requires Members to promptly discharge such guarantee.

Members may also require a guarantee for penalties and fines which are imposed when an offence has been discovered. Again, the use of the verb 'may' indicates this is not mandatory.

The right to examine, detain, seize or confiscate goods

The last provision of Article 7.3 clarifies that the TFA does not touch upon Members' rights to examine, detain, confiscate or seize goods in a manner which is not inconsistent with WTO obligations. Members continue to have legitimate rights to examine or confiscate goods, if compatible with WTO commitments.

What is not covered?

No time limits have been prescribed, e. g. to finalize assessment of the final payable amount. Procedural details have been left to the relevant authorities. The measure does not also specify the amount of time for determining the dues 'as soon as possible' after the arrival of the goods, nor does it make clear the timing for discharging the guarantee.

Benefits and opportunities for stakeholders

The separation of release from clearance of goods will allow traders to avoid costly delays resulting from storage charges, demurrage, decay of perishable goods and loss of business for not being able to supply in time, etc. Reducing bottlenecks at entry points will enable a higher number of trade transactions to take place, increase customs revenues and lead to a more productive use of human and financial resources.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- There is a national implementation framework that provides for the release of goods in case of delay in the final determination of duty, taxes, fees and charges.

- The national implementation framework specifies that the amount of guarantee required must be equivalent to the amount of dues for the goods covered by the guarantee.
- A system whereby the guarantee is discharged without delay when it is no longer required is set up.

Preparing a national implementation plan

The following template may be used as the basis for a national implementation plan:

Implementation sequence	Actions suggested
	Preparatory phase
	Determine whether a national legal and administrative mechanism exists to facilitate release of goods prior to the determination of all dues imposed on goods.
	If one or various mechanisms exist, determine its characteristics and scope of action, and align with the scope of this measure.
	Set-up phase
	If necessary, adopt a legal or administrative framework to implement the measure.
	Analyse and change existing workflows and business processes to allow release of goods upon submission of a sufficient guarantee.
	According to the scope of action and responsibilities of the mechanism, assign appropriate financial and human resources and, where possible, adopt ITC-enabled systems to manage records and provide for release of guarantees.
	Train staff and build capacity to comply with the measure.
	Undertake publicity to inform all traders and stakeholders about benefits and requirements of the new system.
	Management and follow-up phase
	Set up mechanisms to monitor and regularly evaluate efficient functioning of the system.
	Periodically review and implement modifications to the mechanism, where applicable.
Average time for implementation	Two years.
Leading implementation agency	Customs is most commonly chosen as the leading implementation agency.

Key challenges

Customs officials with a control mindset may consider the release of goods before the final determination of dues as very risky. This attitude not only impedes successful implementation of this measure but also hinders the implementation of other correlated trade reform measures, such as pre-arrival processing and risk management. Traders can struggle to obtain credible financial instruments to serve as guarantees especially in LDCs where access to finance might be extremely difficult.

Key factors for success

Changing customs authorities' work practices and attitudes are crucial to set up an efficient system which enables the release of goods before payment of dues. A robust monitoring mechanism will be beneficial to ensure continued review of the procedures in order to identify and set forth improvements.

Risk management: Article 7.4

Customs risk management is an integral part of the customs clearance process and is necessary to detect risky consignments and fraud, protecting both revenues and security of citizens.

Customs administrations in many WTO Members still maintain a stringent physical inspection regime, where every shipment is stopped and partially or completely examined, causing significant delays at border crossings, ports and airports. As a consequence, bribery and informal payments to speed up the process can be common practices.

Members must, to the extent possible, adopt or maintain a risk management system for customs control.

As the complexity and volumes of international trade have exponentially increased, customs administrations are called to improve and modernize techniques to separate low-risk consignments to those requiring more detailed examination. In line with the World Customs Organization (WCO) Framework of Standards to Secure and Facilitate Global Trade (SAFE Framework), many customs administrations have adopted the use of automated risk management systems to improve their capacity to identify high-risk shipments and support trade facilitation.[5] The application of a risk management approach and the use of risk-based selectivity criteria thus allows customs administrations to allocate their resources to high-risk consignments while increasing the efficiency of the clearance process for low-risk shipments.

The measure

ARTICLE 7 RELEASE AND CLEARANCE OF GOODS

4 Risk Management

4.1 Each Member shall, to the extent possible, adopt or maintain a risk management system for customs control.

4.2 Each Member shall design and apply risk management in a manner as to avoid arbitrary or unjustifiable discrimination, or a disguised restriction on international trade.

4.3 Each Member shall concentrate customs control and, to the extent possible, other relevant border controls, on high-risk consignments and expedite the release of low-risk consignments. A Member also may select, on a random basis, consignments for such controls as part of its risk management.

4.4 Each Member shall base risk management on an assessment of risk through appropriate selectivity criteria. Such selectivity criteria may include, inter alia, the Harmonized System code, nature and description of the goods, country of origin, country from which the goods were shipped, value of the goods, compliance record of traders, and type of means of transport.

Undestanding the measure

What is covered?

Core obligation

Members must undertake the implementation of a risk-based management system for carrying out customs controls on all imports, exports and transit transactions. Customs administrations are required to systematically apply risk management principles to ease the release of goods while at the same time ensuring the safety of the released merchandise.

[5] http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/frameworks-of-standards/safe_package.aspx

However, the use of the expression 'to the extent possible' gives a certain degree of flexibility for Members to comply with the provision, depending on available resources, capacity and geographic coverage.

Ensuring a non-discriminatory approach to risk management

The risk management system must be adopted in a way that does not allow unjustifiable discretion, arbitrariness or restrictions to international trade. This provision seeks to limit discretionary behaviour of customs officials.

Treatment of high-risk and low-risk consignments

Members are required to focus customs controls, and to the extent possible, other relevant border controls, on high-risk consignments, while facilitating the release of low-risk ones. Combining assessment of customs information and risk-profiling methods, customs authorities can allow a faster release of goods labeled for the green channel, whereas red channel consignments that present a high degree of risk and threat may require mandatory physical inspections.

The measure also specifies that – to the extent possible – WTO Members are called to apply the same high/low risk approach to other relevant border controls to expedite the whole customs clearance and release process. This will require consistent inter-agency consultations.

Finally, in subparagraph 4.3, there is also the option for member countries to inspect consignments on a random basis as part of their risk management systems. Therefore, customs authorities have the discretion to apply random customs controls to any inspection should they wish to act more cautiously.

Selectivity criteria

Lastly, the measure requires WTO Members to base their risk management systems on a set of selectivity criteria. Although not mandatory, the measure suggests that such criteria may – among others – include:

- The Harmonized System code;
- Goods' nature and description;
- Country of origin;
- Country from which the goods are shipped;
- Value of the goods;
- Compliance record of traders;
- Type of means of transport.

What is not covered?

Although a modern, efficient and reliable risk management system is enhanced using ICT tools, the measure does not require Members to put in place an automated customs risk-processing system. WTO Members are also not required to establish a separate functional unit with dedicated trained staff to administer the risk management process.

Benefits and opportunities for stakeholders

The business community will significantly benefit from enhanced transparency and credibility of risk-based customs procedures. Enhanced levels of accountability and predictability of government procedures will foster compliance and reduce informal payments and corruption. A modern, fast and efficient risk-based clearance system will bring lower costs for traders when low-risk goods are cleared more quickly.

Implementation of a risk management system – ideally fully automated – will reduce bottlenecks in ports of entry, enabling a higher number of trade transactions and increase in government revenues while ensuring a safe environment for the community.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- The legislation requiring customs (and other border agencies) to apply controls on traded and transit goods on the basis of risk management selectivity principles is in place.
- The legislation/policy allow customs (and other border agencies) the discretion to exercise controls on a selective basis.
- Risk management is designed and applied to avoid arbitrary or unjustifiable discrimination or disguised restrictions to international trade.
- Any provisions in the national implementation framework which requires the inspection of low-risk consignments would be inconsistent with this provision except a consignment randomly selected for inspection and audit.

Preparing a national implementation plan

The following template may be used as the basis for a national implementation plan:

	Actions suggested
Implementation sequence	**Preparatory Phase**
	Determine whether a national legal and administrative mechanism exists to facilitate implementation of this measure and set up/maintain a risk management system.
	If one or various mechanisms exist, determine its characteristics and scope of action and align with this measure.
	Set-up phase
	If necessary, adopt legal frameworks to implement the measure.
	If necessary, set up mechanisms for developing a robust multi-variable selectivity criteria system for risk assessment.
	Analyse and change existing workflows and business processes to allow efficient implementation of the risk management system, including fast clearance and release of low-risk goods.
	According to the scope of action and responsibilities of the mechanism, assign appropriate financial and human resources.
	Train staff how to implement the risk management system.
	Undertake publicity to inform all traders and stakeholders about benefits and requirements of the new system.
	Management and follow-up phase
	Periodically review and implement modifications to the system to make it more efficient, where applicable.
	Regularly update the risk management system based on lessons learned.
Average time for implementation	Two years.
Leading implementation agency	Customs is most commonly chosen as the leading implementation agency.

Key challenges

A critical challenge can be lack of buy-in from senior government and a traditional control mindset of border agencies officials who consider clearance of goods without 100% physical inspection as very risky. Inadequate ICT infrastructure and absence of an enabling legal framework that lays the foundation of an efficient risk management system can also hamper implementation. Government authorities may not have adequate funds to train customs staff to have the necessary capacity and skills to implement a risk management system. Implementation of both a risk management system and a post-clearance audit system (see Article 7.5) can be difficult, if not effectively coordinated with other TFA measures.

Key factors for success

A successful risk management system requires the support of appropriate legal frameworks to identify high-risk consignments from those which present lower risk, and the readiness to carry out fast track clearance of low-risk consignments.

Setting up a dedicated system that uses multiple selection criteria to identify high-risk and low-risk goods will enable customs authorities to clear low-risk goods quickly in a non-discriminatory manner. Adequate allocation of resources to the development of ICT tools and staff training is also essential. The adoption of a robust post-clearance audit system is also an integral part of the risk management approach (see Article 7.5).

Strong public engagement should be undertaken to ensure that there is an open exchange of ideas and recommendations on risk management practices, including addressing obstacles.

Box 2: International best practices for customs risk management systems

New Zealand and Cameroon illustrate two examples of international best practice for risk management systems, implemented as part of overall customs reform programmes.

New Zealand initiated the Customs Modernisation programme for inspection-based customs functions in the 1990s, when risk management became an integral part of customs practice and was incorporated within the administration's culture. The customs administration reviewed its entire operations, including strategies, types of staff required, processes for improvements and required technology. Customs also adopted new legislation in 1996 (*The Customs and Excise Act*) to provide an effective regulatory framework for the management of risk and to support a range of key measures which have been introduced over time to facilitate trade and ensure effective compliance.

The New Zealand Customs Service's risk management system enables it to manage large volumes of trade at border crossings with limited resources while significantly improving performance. This system embraces a culture of problem solving and accountability to apply a standard methodology for identifying and assessing risk. Risk assessments are linked to New Zealand's Integrated Targeting Operations Centre, which applies intelligence assessments at a tactical level to identify specific border transactions and ensures there is a strong connection between the customs administration's strategy and operations. As a consequence, only a small proportion (less than 5%) of import transactions are subject to further compliance checks or inspection, while 99% of compliant transactions are now processed by customs within 30 minutes of completion of an import declaration.

In a similar manner, **Cameroon** introduced a new measure in 2006 to implement a risk management system as part of an overall reform programme undertaken by the customs administration to halt lengthy time release periods and arbitrary and excessive controls. This included the replacement of the semi-automated customs operating system with a fully automated programme (Automated System for Customs Data++) and the purchase of a container scanner.

The measures introduced by the new legislation regulated how consignments with different levels of risk could be treated:

- Automatic release for lowest risk – green channel;
- Documentary controls only for medium risk – yellow channel;
  Documentary controls coupled with physical inspection (non-intrusive scanner used first, then inspection depending on scan results) for the highest risk – red channel.

At the operational level, the most significant organizational change was the creation of a Risk Management Unit, attached to the office of the Director General of Customs. This unit has the prerogative to collect all data and information necessary for risk analysis. A staff performance monitoring system called 'Gazing into the Mirror' was also put in place. This module generates periodic indicator reports on staff activities and raised the level of governance and voluntary compliance.

All relevant stakeholders have been kept informed through the Customs Enterprise Forum where they have the opportunity to comment on customs reforms and legislation.

Source: UNECE Trade Facilitation Implementation Guide. http://tfig.unece.org/contents/case-studies.html

Post-clearance audit: Article 7.5

The documentation required for importation may not provide the complete picture and context of a commercial transaction to customs officials.

To achieve the twin objectives of collecting legitimate revenue and releasing goods without delay, customs (and other agencies) now concentrate their controls after importation. With the application of a post-clearance, risk-based approach, customs are able to target their resources more effectively and work in partnership with the business community to improve compliance levels and facilitate trade.[6]

Members must adopt post-clearance audits to ensure compliance with customs and other related laws and regulations.

The measure

ARTICLE 7 RELEASE AND CLEARANCE OF GOODS

5 Post-Clearance Audit

5.1 With a view to expediting the release of goods, each Member shall adopt or maintain post- clearance audits to ensure compliance with customs and other related laws and regulations.

5.2 Each Member shall select a person or a consignment for post-clearance audit in a risk-based manner, which may include appropriate selectivity criteria. Each Member shall conduct post-clearance audits in a transparent manner. Where the person is involved in the audit process and conclusive results have been achieved, the Member shall, without delay, notify the person whose record is audited of the results, the person's rights and obligations, and the reasons for the results.

5.3 The information obtained in post-clearance audit may be used in further administrative or judicial proceedings.

5.4 Members shall, wherever practicable, use the result of post-clearance audit in applying risk management.

Understanding the measure

What is covered?

Scope

The overall intent is to allow for quicker clearance of goods and save time and costs to businesses while ensuring that due compliance is achieved through an audit mechanism that can be more effectively conducted after the release of goods.

A post-clearance audit (PCA) is a critical control methodology that can be used for all customs activities, e.g. temporary importation, inward processing, duty free zones, etc. A PCA can be conducted on a case by case basis focusing on targeted operators or set out in an annual audit programme.

PCA can take place at the premises of the trader and may take into account individual transactions or cover imports and/or exports undertaken over a certain period of time.

[6] WCO Guidelines for Post-Clearance Audit. http://www.wcoomd.org/~/media/wco/public/global/pdf/topics/enforcement-and-compliance/tools-and-instruments/pca-guidelines-volume-1.pdf?db=web

Core obligation

Members have the obligation to adopt or maintain a risk-based PCA to ensure compliance with customs and other related laws and regulations. Consignments, companies or persons must be selected for a PCA in a transparent manner.

After completion of the audit, the results and the reasons of such results shall be communicated to the audited person without delay. Members are permitted to use the information in further administrative or judicial proceedings.

When deemed practicable, Members shall also use the findings, results and lessons of the audit to further improve the risk management system.

What is not covered?

The measure does not prescribe the modalities or methods for undertaking the audit. Members have discretion to choose selection criteria for the PCA and risk management system.

Benefits and opportunities for stakeholders

Traders can promptly receive their goods when the goods arrive in the country. As a direct consequence of the expedited clearance process, storage and warehouse fees, together with insurance costs for goods under storage, will be reduced.

PCA will allow WTO Members to improve border control mechanisms and risk assessment systems. It will also allow customs officials to detect tax evasion, fraud or false declarations and take appropriate actions.

A successful implementation of PCA will remove bottlenecks at entry points by reducing clearance delays. This will improve government revenues by enabling a higher number of trade transactions and lead to a more productive use of government agencies' resources. The measure may also reduce the burden of building and maintaining expensive public infrastructure (warehouses, storage) while improving customs control and compliance.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- There is a legislation which authorizes and requires customs to conduct PCA.
- The criterion used to select person/consignment for post-clearance audits are risk-based.
- Audits are conducted in a transparent manner.
- A mechanism is in place which allows sharing of audit results, its basis and the respective rights and obligations of the persons/consignments subjected to audit.
- Procedures are established to ensure that audit results are incorporated in overall risk management.

Preparing a national implementation plan

The following template may be used as a basis for a national implementation plan for this measure:

	Actions suggested
Implementation sequence	**Preparatory phase**
	Determine whether a national legal and administrative mechanism exists to implement PCA.
	If one or various mechanisms exist, determine its characteristics and scope of action and align with the measure's objectives.
	Ensure that a working risk-based system exists or is set up for identification of consignments or persons for PCA.
	Ensure other customs procedures have been/are being modernized in parallel. For example, automation, pre-arrival clearances, risk-based systems and separation of duty payment from clearance are some of the prerequisites for the functioning of a modern PCA.
	Set-up phase
	If necessary, adopt a legal framework to implement the measure.
	Analyse and change existing workflows and business processes to enable a risk-based PCA mechanism.
	According to the scope of action and responsibilities of the mechanism, assign appropriate financial and human resources. Where possible, adopt ICT-enabled systems to manage records.
	Train staff on PCA systems. This expertise may not exist within the customs authorities and will need to be built.
	Undertake publicity to inform all traders and stakeholders about the benefits and requirements of the new system.
	Management and follow-up phase
	Monitor and evaluate the measure's compliance.
	Periodically review and implement modifications to the mechanism, where applicable.
Average time for implementation	Two years.
Leading implementation agency	Customs is the leading implementation agency.

Key challenges

The PCA system is often part of a comprehensive customs modernization package which includes automation, pre-arrival clearances, risk-based management systems and separation of duty payment from clearance of goods. Inability to implement a comprehensive package can create substantial challenges. The government staff may not have capacity and skills needed for financial and forensic audits of documents. Audits need to be completed within a reasonable period of time.

Key factors for success

Setting up systems which enable customs authorities to conduct PCA as part of a comprehensive package of customs modernization will be a critical factor for success. Training of customs authorities to conduct detailed audits in the most time efficient manner is necessary. Appropriate funding should be secured to build requisite systems and train staff.

Establishment and publication of average release times: Article 7.6

The release of goods is a critical step in the clearance process undertaken by customs authorities. Often the process involves coordination among multiple agencies such as the port authority, ministry of health, departments of agriculture and veterinary, national committee of standards, etc. and it is not unusual to witness inefficiencies and unjustifiable delays at the border due to lack of agency cooperation.

Within this context, the WTO TFA encourages WTO Members to measure and publish the average release times of goods at the border to provide traders the time usually taken to release the goods.

Members are encouraged to publish periodically, and in a consistent manner, the average release time of goods.

The measure

ARTICLE 7 RELEASE AND CLEARANCE OF GOODS

6 Establishment and Publication of Average Release Times

6.1 Members are encouraged to measure and publish their average release time of goods periodically and in a consistent manner, using tools such as, *inter alia*, the Time Release Study of the World Customs Organization (referred to in this Agreement as the WCO).

6.2 Members are encouraged to share with the WTO Committee on Trade Facilitation their experiences in measuring average release times, including methodologies used, bottlenecks identified, and any resulting effects on efficiency.

Understanding the measure

What is covered?

Core obligation

Fulfilling Article 7.6 is not obligatory and relies on best endeavor efforts. Members are encouraged to set up a system to measure and publish the average release time of goods. WTO Members are to do so periodically and consistently, so that the average release times remain current and valid for trade transactions at all times.

The Time Release Study methodology of WCO is the recommended tool to measure the average release time. According to this tool, the average release time of goods could cover the entire period between the arrival of the goods and their departure from the border crossing point. The scope and methodology to measure average release time is at the discretion of the member country.

In addition, Members are also encouraged to share with the WTO Committee on Trade Facilitation their national experiences and best practices on measuring average release times, including methodologies used, bottlenecks identified and any outcomes which have positively affected the efficiency of customs procedures.

Successful implementation may include the following measurements:

- Time taken between arrival of goods at the border and their release;
- Calculation of average time required for release of goods by customs clearance point, type of transport and customs regime;
- Average time taken for release of goods in respect of intervention of other agencies;
- Average time taken for release of goods under duty exemption;
- Average time taken for release of goods selected according to the type of test procedures.

What is not covered?

The measure does not mention how to publish this information and leaves it to the discretion of Members to use the most effective means of publication on a case by case basis. It is implied that the principles of transparency and efficiency are the basis of this measure.

Benefits and opportunities for stakeholders

The publication of release times will benefit business operators, intermodal carriers, cargo industry and other intermediaries who will have access to statistical evidence on identified bottlenecks and possible areas of improvement to be made. Ideally, the evidence of lengthy release times will help advocate for reducing unnecessary delays at the border, especially benefitting SMEs.

Quick access to accurate information on average release times will also improve traders' compliance and capacity to predict arrival times for imported goods thus improving efficacy and efficiency of their trade performance and supply value chains.

Conducting this kind of study will also give customs authorities the opportunity to better understand the operating environment, identify bottlenecks in the clearance and release processes, and improve the quality of services provided.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- A methodology has been devised to estimate the entire period between the arrival of goods and their departure from the border crossing point.
- The information on average release times pertaining to importation is published.
- A review of average release times is conducted regularly.
- Best practices on measuring and reducing release times are shared with other WTO Members within the WTO Committee on Trade Facilitation.

Preparing a national implementation plan

The following template may be used as the basis for a national implementation plan:

	Actions suggested
Implementation sequence	**Preparatory phase**
	Review the country's legal and regulatory frameworks to determine if any change is required.
	Establish a working group responsible for the project, involving as many stakeholders in the supply chain.
	Devise the frequency, scope and methodology of a study to measure average release times.
	Incorporate ICT systems to support processes and assess the user-friendliness and accessibility of information provided.
	Set-up phase
	Train the working group on how to conduct the study.
	Introduce changes in legal and regulatory frameworks and business processes.
	Collect and record data from relevant sources.
	Carry out data analysis and publish a public report.
	Notify the WTO Committee on Trade Facilitation regarding methodologies used, issues identified and any improvement in release times since measurement of release times.
	Management and follow-up phase
	Periodically monitor and evaluate the methodology of the study and implement improvements, if any.
	Evaluate if the publication of the study is done in a user-friendly manner for stakeholders.
Average time for implementation	Between 2 and 3 years.
Leading implementation agency	Customs is most commonly chosen as the leading implementation agency.

Key challenges

Lack of technical skills to carry out the study and absence of strong inter-agency coordination can hamper implementation. Government institutions may not have the required ICT capacity, including publication on the internet. Appropriate staff training and tools to manage coordination may be required.

Key factors for success

Coordination between relevant agencies and building capacity in government authorities will determine the success of this measure.

Trade facilitation measures for authorized operators: Article 7.7

In complex global supply chains, it is essential to prevent and contain trade risks in a way that does not reduce the speed and intensity of trade flows.

Operators who meet specified criteria to qualify as authorized operators are entitled to additional trade facilitation measures.

As part of the SAFE Framework, WCO established the Authorized Economic Operator (AEO) programme that allows certain economic operators to benefit from preferential measures, such as fewer physical inspections, more rapid release times and reduced documentation and data requirements, provided that these operators comply with specific requirements. Like all other instruments and tools devised by WCO, these arrangements are advisory in nature.

Building on this international practice, Article 7.7 binds Members to allow customs authorities to provide additional trade facilitation measures to selected operators who are deemed to be low-risk, based on specified criteria, and can be classified as authorized operators.

The measure

ARTICLE 7 RELEASE AND CLEARANCE OF GOODS

7 Trade Facilitation Measures for Authorized Operators

7.1 Each Member shall provide additional trade facilitation measures related to import, export, or transit formalities and procedures, pursuant to paragraph 7.3, to operators who meet specified criteria, hereinafter called authorized operators. Alternatively, a Member may offer such trade facilitation measures through customs procedures generally available to all operators and is not required to establish a separate scheme.

7.2 The specified criteria to qualify as an authorized operator shall be related to compliance, or the risk of non-compliance, with requirements specified in a Member's laws, regulations or procedures.

(a) Such criteria, which shall be published, may include:

(i) an appropriate record of compliance with customs and other related laws and regulations;

(ii) a system of managing records to allow for necessary internal controls;

(iii) financial solvency, including, where appropriate, provision of a sufficient security or guarantee; and

(iv) supply chain security.

(b) Such criteria shall not:

(i) be designed or applied so as to afford or create arbitrary or unjustifiable discrimination between operators where the same conditions prevail; and

(ii) to the extent possible, restrict the participation of small and medium-sized enterprises.

7.3 The trade facilitation measures provided pursuant to paragraph 7.1 shall include at least three of the following measures:

(a) low documentary and data requirements, as appropriate;

(b) low rate of physical inspections and examinations, as appropriate;

(c) rapid release time, as appropriate;

(d) deferred payment of duties, taxes, fees, and charges;

(e) use of comprehensive guarantees or reduced guarantees;

(f) a single customs declaration for all imports or exports in a given period; and

(g) clearance of goods at the premises of the authorized operator or another place authorized by customs.

7.4 Members are encouraged to develop authorized operator schemes on the basis of international standards, where such standards exist, except when such standards would be an inappropriate or ineffective means for the fulfilment of the legitimate objectives pursued.

7.5 In order to enhance the trade facilitation measures provided to operators, Members shall afford to other Members the possibility of negotiating mutual recognition of authorized operator schemes.

7.6 Members shall exchange relevant information within the WTO Committee on Trade Facilitation about authorized operator schemes in force.

Understanding the measure

What is covered?

Core obligation

WTO Members must provide additional trade facilitation measures related to import, export or transit formalities and procedures to operators – including traders and providers of logistics services such as customs agents and freight forwarders – who qualify as authorized operators according to a set of specified criteria.

WTO Members who offer these additional trade facilitation measures to all operators through customs procedures will not be required to set up a separate scheme.

Selection criteria

Prior to granting the status of authorized operator, Members are required to ensure that the beneficiaries meet some specific criteria associated with the compliance of requirements set in Members' laws, regulations or procedures.

Members may use the following selection criteria to identify authorized operators, as provided in paragraph 7.2:

- Appropriate record of compliance with customs and other related laws and regulations;
- Record management system for necessary internal controls;
- Financial solvency and, where necessary, provision of sufficient security and guarantees;
- Supply chain security.

In meeting these criteria, authorized operators are classified as low risk, as they show a track record of full compliance with laws and regulations.

Members shall publish these criteria in a non-discriminatory manner and ensure not to restrict the participation of SMEs in the scheme.

Additional facilitation benefits

WTO Members are required to ensure that the additional trade facilitation measures provided to authorized operators shall include at least three of the following seven measures:

- Reduced documentary and data requirements as appropriate;
- Fewer physical inspections and examinations as appropriate;
- Rapid release time as appropriate;
- Deferred payment of duties, taxes, fees and charges;
- Use of comprehensive or reduced guarantees;
- A single goods declaration of all imports or exports in a given period, and
- Clearance of goods at the premises of the authorized operator or another place authorized by customs.

Members can grant more than three measures to authorized operators.

Use of international standards

Paragraph 7.4 encourages WTO Members to develop authorized operator schemes on the basis of international standards, except when such standards are inappropriate or ineffective for the fulfilment of the legitimate objectives pursued. The recourse to international standards ensures a consistent and harmonized approach in the development of authorized operator schemes and would enable Members to achieve mutual recognition based on common understandings.

Mutual recognition

Paragraph 7.5 contains an obligation that Members shall agree to negotiate when approached for mutual recognition of authorized operator schemes to enhance the effect of these schemes. Previously, the non-binding WCO SAFE Framework only encouraged customs administrations to agree on mutual recognition of authorized operator schemes – on a voluntary basis. With the entry into force of the TFA, WTO Members are instead required to use mechanisms that recognize another Member's authorized operator scheme.

Exchange of information

WTO members are obliged to share the full details of authorized operator schemes in force with the WTO Committee on Trade Facilitation to ensure effective coordination and transparency.

What is not covered?

The measure does not restrict a Member's discretion to select authorized operators solely on the basis of the published criteria. Members are free to select authorized operators according to their unique national capacity and strategic priorities.

Moreover, the measure does not provide specific details on the degree of procedural simplification that should be achieved by Members, leaving to their discretion, for example, to decide to what extent customs documentation is to be reduced.

Benefits and opportunities for stakeholders

Fewer documents and controls, less time taken to clear goods and significant decrease in the overall cost of trade are the biggest benefits. The recognition of authorized economic operators as secure and safe business partners will also improve relations with customs authorities and other government agencies. Enhanced levels of transparency and predictability of the regulatory regime will also improve operators' compliance, enhancing the efficiency of their performance in supply chains. Increased supply chain security

will also enable customs authorities and border agencies to better allocate their time and resources on risky shipment inspections and more complex procedures.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- The legislation authorizing customs to provide authorized operators with additional trade facilitation is enacted.
- The selection criteria to qualify as authorized operators are published and are ideally aligned to international best practices.
- The legislation is inclusive and does not facilitate unjustifiable discrimination based on nationality, size or volume of trade (i.e. the programme should be accessible to SMEs).
- The conditions and procedures for granting, modifying or terminating authorized trader status are defined and published.
- Procedures to extend specified facilities to authorized operators are established.
- The legislation allows Members to negotiate mutual recognition of authorized operator schemes with other Members.
- Information about authorised operator schemes has been shared with the WTO Committee on Trade Facilitation.

Preparing a national implementation plan

The following template may be used as a basis for a national implementation plan for this measure:

	Actions suggested
Implementation sequence	**Preparatory phase**
	Nominate a lead agency that will coordinate implementation of the measure. Identify relevant agencies, ministries and private sector representatives; and form a project team with representation from each agency.
	Review existing procedures and business processes to identify bottlenecks and devise new processes using enhanced cooperation and coordination between agencies.
	Identify shortcomings in legal, regulatory and institutional frameworks that may hinder implementation of the measure. Also, determine changes required to the organizational and ICT structures of different agencies to enable successful deployment.
	Set-up phase
	Ensure implementation of identified changes to legal, regulatory and institutional frameworks.
	Design and implement an authorized operator programme, which specifies the criteria by which an operator can be certified as safe.
	Implement changes required to organizational and ICT structures and train staff.
	Management and follow-up phase
	Periodically monitor and evaluate implementation of mechanism which grants authorized status to trade operators, as well as the effective provision of benefits.
	Regularly review and audit business processes to seek continuous improvement.
	Invite feedback from private sector to include traders' experiences and perspectives.
	Raise awareness in the private sector.
Average time for implementation	Two and half years for LDCs and less than two years for non-LDCs.

Implementation sequence	**Actions suggested**
	Preparatory phase
	Nominate a lead agency that will coordinate implementation of the measure. Identify relevant agencies, ministries and private sector representatives; and form a project team with representation from each agency.
	Review existing procedures and business processes to identify bottlenecks and devise new processes using enhanced cooperation and coordination between agencies.
	Identify shortcomings in legal, regulatory and institutional frameworks that may hinder implementation of the measure. Also, determine changes required to the organizational and ICT structures of different agencies to enable successful deployment.
	Set-up phase
	Ensure implementation of identified changes to legal, regulatory and institutional frameworks.
	Design and implement an authorized operator programme, which specifies the criteria by which an operator can be certified as safe.
	Implement changes required to organizational and ICT structures and train staff.
	Management and follow-up phase
	Periodically monitor and evaluate implementation of mechanism which grants authorized status to trade operators, as well as the effective provision of benefits.
	Regularly review and audit business processes to seek continuous improvement.
	Invite feedback from private sector to include traders' experiences and perspectives.
	Raise awareness in the private sector.
Leading implementation agency	Customs is most commonly chosen as the leading implementation agency.

Key challenges

Lack of an appropriate national legal framework which can regulate the implementation of a two-tier system of clearance – one tier for authorized operators and the second tier for all other traders – may represent a challenge. Government staff may not have capacity to carry out identification of authorized operators against selection criteria established. Appropriate staff training will be needed to effectively implement the authorized operator scheme.

Operationalization of authorized operator schemes often excludes SMEs. In fact, obtaining authorized operator status is a burdensome process for SMEs and they often do not succeed in being accredited. It is crucial to design a mechanism which encourages SMEs participation in authorized operator schemes.

A system of regular review of authorized operators is also necessary to ensure the measure is not misused or abused. It can happen that – once an operator is recognized as authorized – they may abuse their status to lessen compliance with security measures in place.

Key factors for success

A legal framework that enables the identification of authorized operators and a two-tier implementation process is vital to ensure the effective and successful implementation of the measure. Innovative and regular staff training on correct identification of authorized operators will ensure that relevant authorities are effectively able to put the scheme in practice.

A public campaign is required to raise awareness of the scheme's benefits in the business community including documents required, processes involved and selection criteria.

Box 3: International best practices for authorized operator schemes

Hong Kong and the Dominican Republic offer two examples of international best practices for AEO schemes.

Hong Kong Customs and Excise Department initiated an AEO programme in 2012, after completion of a satisfactory pilot experiment. Implemented without requiring legislative amendments or changes in existing business practices, the programme is a free accreditation scheme for local companies that satisfy certain pre-determined security requirements. A company accredited by Hong Kong Customs as an AEO enjoys additional trade facilitation benefits, such as:

- Less cargo inspections;
- Prioritized customs clearance if their goods are selected for inspection;
- Reduced stock loss and theft as a result of improved security and safety of their supply chains; and
- Benefits granted by other customs administrations under mutual recognition arrangements, such as reduced customs inspections, expedited clearance, deferred payment or priority treatment.

The major success factor is the flexibility demonstrated by customs administration in the accreditation process. As the majority of local industries are SMEs, Hong Kong Customs has a free and voluntary two-tier accreditation programme, whose criteria are designed to apply to local companies. To date, recognized AEOs (including SMEs) have met accreditation criteria without requiring changes.

A dedicated team implements the programme and works closely with applicants throughout the accreditation process to review their security profiles. Officers responsible for accrediting AEO applicants are trained on International Organization for Standardization security management concepts and audit inspection. To ensure a wide coverage, Hong Kong Customs conducted a series of briefing sessions to different trade associations and outreach visits to potential applicants.

Similarly, the Dominican Republic introduced its AEO Programme (OEA in Spanish) in 2012 as part of a government general reform initiative. The programme was introduced as a completely new measure through a presidential decree and later included in the customs law. The preparation of an internal AEO procedure manual was also conceived to guide end users through the implementation of the scheme.

The government established a dedicated AEO department with a team of experts. It also established a part-time team of experts from other bodies that regulate foreign trade (Ministry of Public Health, Ministry of Agriculture, Ministry of the Environment, National Drug Control Directorate, Special Port Security Unit, Special Airport Security Unit, etc.). The coordination of public sector agencies was the key success factor in implementation. The government has appointed staff from each institution, provided them with training, and signed an inter-institutional agreement on the operation of the AEO Programme.

Awareness raising and empowerment of the private sector through participation in the preparation of requirements, legislation, documents and issues relating to the programme, as well as constant interaction and training with customs administrations have contributed to a successful and meaningful implementation of the AEO Programme.

Source: UNECE Trade Facilitation Implementation Guide. http://tfig.unece.org/contents/case-studies.htm

Expedited shipments: Article 7.8

Just-in-time delivery is crucial to keep business costs down and increase the competitiveness of logistic chains serving the requirements of manufacturing, retail and service industries. Particularly important for global value and supply chains, just-in-time delivery is an essential feature of trade transactions due to growing demands posed by e-commerce.

Members must set up special procedures to expedite the release of goods entered through air cargo for those persons who apply for such treatment.

However, delays in clearing consignments at entry points can be detrimental to businesses that rely on air cargo to deliver express parcels, as well as to express delivery operators whose competitiveness depends on their ability to offer just-in-time delivery.

To help maintain express delivery of goods, the TFA requires customs authorities to develop a preferential programme that provides for the fast-tracking clearance of goods imported through air cargo for persons who have applied for such benefit.

The measure

ARTICLE 7 RELEASE AND CLEARANCE OF GOODS

8 Expedited Shipments

8.1 Each Member shall adopt or maintain procedures allowing for the expedited release of at least those goods entered through air cargo facilities to persons who apply for such treatment, while maintaining customs control.[7] If a Member employs criteria[8] limiting who may apply, the Member may, in published criteria, require that the applicant shall, as conditions for qualifying for the application of the treatment described in paragraph 8.2 to its expedited shipments:

(a) provide adequate infrastructure and payment of customs expenses related to processing of expedited shipments in cases where the applicant fulfils the Member's requirements for such processing to be performed at a dedicated facility;

(b) submit in advance of the arrival of an expedited shipment the information necessary for the release;

(c) be assessed fees limited in amount to the approximate cost of services rendered in providing the treatment described in paragraph 8.2;

(d) maintain a high degree of control over expedited shipments through the use of internal security, logistics, and tracking technology from pick-up to delivery;

(e) provide expedited shipment from pick-up to delivery;

(f) assume liability for payment of all customs duties, taxes, fees, and charges to the customs authority for the goods;

[7] In cases where a Member has an existing procedure that provides the treatment in paragraph 8.2, this provision does not require that Member to introduce separate expedited release procedures.

[8] Such application criteria, if any, shall be in addition to the Member's requirements for operating with respect to all goods or shipments entered through air cargo facilities.

(g) have a good record of compliance with customs and other related laws and regulations;

(h) comply with other conditions directly related to the effective enforcement of the Member's laws, regulations, and procedural requirements, that specifically relate to providing the treatment described in paragraph 8.2.

8.2 Subject to paragraphs 8.1 and 8.3, Members shall:

(a) minimize the documentation required for the release of expedited shipments in accordance with paragraph 1 of Article 10 and, to the extent possible, provide for release based on a single submission of information on certain shipments;

(b) provide for expedited shipments to be released under normal circumstances as rapidly as possible after arrival, provided the information required for release has been submitted;

(c) endeavor to apply the treatment in subparagraphs (a) and (b) to shipments of any weight or value recognizing that a Member is permitted to require additional entry procedures, including declarations and supporting documentation and payment of duties and taxes, and to limit such treatment based on the type of good, provided the treatment is not limited to low value goods such as documents; and

(d) provide, to the extent possible, for a *de minimis* shipment value or dutiable amount for which customs duties and taxes will not be collected, aside from certain prescribed goods. Internal taxes, such as value-added taxes and excise taxes, applied to imports consistently with Article III of GATT 1994 are not subject to this provision.

8.3 Nothing in paragraphs 8.1 and 8.2 shall affect the right of a Member to examine, detain, seize, confiscate or refuse entry of goods, or to carry out post-clearance audits, including in connection with the use of risk management systems. Further, nothing in paragraphs 8.1 and 8.2 shall prevent a Member from requiring, as a condition for release, the submission of additional information and the fulfilment of non-automatic licensing requirements.

Understanding the measure

What is covered?

Core obligation

This measure requires Members to adopt or maintain procedures to allow the expedited release of *at least* goods entered through air cargo for those persons who apply for such treatment, while maintaining customs control. The obligation is limited to goods entered through air cargo facilities. However, Members may extend the measure to cargo imported through land or sea.

Qualifying criteria to apply for expedited shipments

With the use of the word ‘may’ the measure opens up the possibility for Members to require applicants to meet certain conditions (published criteria).

List of facilitative procedures for qualifying applicants

Paragraph 8.2 lists the procedures that Members must set up for the processing of expedited shipments. In particular, Members are required to:

- Minimize the documentation required for the release of expedited shipments and – to the extent possible – enable the release of goods based on a single submission of information on certain shipments;

- Release the expedited shipments as quickly as possible after arrival, conditional upon the prior submission of information required for release;
- Make efforts to minimize documentation and quickly release shipments of any weight or value;
- Provide – to the extent possible – for a *de minimis* shipment value or dutiable amount for which customs duties and taxes will not be collected.

Rights of Members

With the expression 'nothing shall affect the right of a Member', paragraph 8.3 specifies that Members still retain their legitimate right to examine, detain, seize, confiscate or refuse entry to any goods when deemed necessary.

What is not covered?

The measure does not prescribe in detail the procedures for application of this provision. Each WTO Member can determine a set of procedures and criteria that apply to expedited shipments.

Benefits and opportunities for stakeholders

The measure will reduce unnecessary delays for air cargo, decreasing delays and financial costs of cross-border procedures, particularly for SMEs. The provision of a *de minimis value* on which duty and taxes will not be charged will also help traders to reduce the cost of business.

The publication of selection criteria to apply for expedited shipments helps to significantly enhance transparency, enabling courier delivery service companies to better understand the application requirements for the special treatment.

Supply chain security will be enhanced as customs officers will concentrate their controls on riskier shipments, while quickly releasing air cargo that complies with minimum requirements.

The simplification of business processes will also reduce the workload of authorities and allocate resources on more critical tasks. Advance submission of documents will also help customs in advance planning of goods release.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- A national implementation framework which provides for the expedited release of goods entered through air cargo facilities on the request of an operator is in place.
- The qualifying criteria (if any) for applicants are consistent with the measure and published.
- The legislation or administrative acts provide for all simplified procedures.
- The legislation or administrative acts allow for customs processing and controls to be carried out at a dedicated facility.

Preparing a national implementation plan

The following template may be used as a basis for a national implementation plan:

Implementation sequence	**Actions suggested**
	Preparatory phase
	Review existing legal frameworks as well as release procedures and business processes to determine bottlenecks.
	Identify shortcomings in legal, regulatory and institutional frameworks and business processes that may hinder implementation. Using findings, devise new procedures in cooperation with border control agencies.
	Determine which are the changes required to organizational and ICT infrastructures and business processes.
	Set-up phase
	Implement changes identified in legal, regulatory and institutional frameworks and train border agencies staff accordingly.
	Ensure and improve implementation of newly designed business processes and procedures.
	Implement changes required to organizational structures, air cargo facilities and ICT infrastructure.
	Undertake a public awareness campaign to inform relevant stakeholders.
	Management and follow-up phase
	Periodically monitor and evaluate implementation.
	Regularly review and audit business processes to seek continuous improvements.
	Seek feedback from private sector to include traders' experiences and perspectives.
Average time for implementation	Between two and three years.
Leading implementation agency	Customs is most commonly chosen as the leading implementation agency.

Key challenges

Government staff may not have the technical capacity to establish specific conditions and provide facilities for goods which qualify for expedited shipment. Appropriate training may be required for relevant agencies' staff. Inefficient procedures and lack of ICT to identify and fast track air cargo after application of selection criteria for expedited shipments can also hamper implementation of the measure.

Key factors for success

Government staff may need to be trained on how to apply this measure in a transparent and consistent manner. Using ICT as the key means of communication and operations in government institutions will ensure successful implementation. A strong mechanism for public-private engagement will enable an open exchange of ideas and solutions.

Perishable goods: Article 7.9

Inadequate customs and logistics services at the border can hamper countries' connectivity to global value chains. This is particularly true for enterprises exporting perishable goods, as delays in clearance and inappropriate storage facilities at the border can lead to significant economic and product quality losses.

Members must provide for a quick release of perishable goods and provide appropriate storage for them pending their release.

As many developing countries and LDCs rely heavily on trade in agricultural products and other perishable goods, fast tracking the release and clearance of these goods is vital to increase their exports and linkages with regional and global value chains. Giving appropriate priority to their examination and adequate storage facilities at the border will prevent unnecessary damage.

Article 7.9 provides a framework for customs treatment of perishable goods and expands the scope of GATT Article VIII by providing specific rules pertaining to perishable goods.

For the purpose of the WTO TFA, perishable goods are goods that rapidly decay due to their natural characteristics, particularly in the absence of appropriate storage conditions. They may be more vulnerable to external shocks and require special storage conditions. Perishable goods include agricultural products, fruits and vegetables, fresh meat, fisheries, etc.

The measure

ARTICLE 7 RELEASE AND CLEARANCE OF GOODS

9 Perishable Goods

9.1 With a view to preventing avoidable loss or deterioration of perishable goods, and provided that all regulatory requirements have been met, each Member shall provide for the release of perishable goods:

(a) under normal circumstances within the shortest possible time; and

(b) in exceptional circumstances where it would be appropriate to do so, outside the business hours of customs and other relevant authorities.

9.2 Each Member shall give appropriate priority to perishable goods when scheduling any examinations that may be required.

9.3 Each Member shall either arrange or allow an importer to arrange for the proper storage of perishable goods pending their release. The Member may require that any storage facilities arranged by the importer have been approved or designated by its relevant authorities. The movement of the goods to those storage facilities, including authorizations for the operator moving the goods, may be subject to the approval, where required, of the relevant authorities. The Member shall, where practicable and consistent with domestic legislation, upon the request of the importer, provide for any procedures necessary for release to take place at those storage facilities.

9.4 In cases of significant delay in the release of perishable goods, and upon written request, the importing Member shall, to the extent practicable, provide a communication on the reasons for the delay.

Understanding the measure

What is covered?

Core obligation

WTO Members must allow the quick release of perishable goods, provided all the regulatory requirements have been met, within the shortest possible time. This means granting perishable goods appropriate priority when scheduling examinations and allowing for proper storage prior to release, including release at storage facilities where practicable.

Fast-tracking the release of perishable goods

Within regular business hours and normal circumstances, the process of releasing perishable goods must be completed as fast as possible by the relevant national authorities to prevent any loss in the goods' quality and characterizing features. Perishable goods must also be released outside normal business hours *under exceptional circumstances*, *where it would be appropriate to do so*. This means that – if deemed necessary – customs and other border control authorities must make efforts to ensure that perishable goods are released outside customs' business hours to prevent damage.

Prioritizing examination of perishable goods

WTO Members must give appropriate priority to perishable goods when scheduling any examination that may be required. In practical terms, this means that national border authorities would need to assess and provide for the release of perishable goods before any other merchandise waiting at the border.

Providing storage of perishable goods

Two options for the storage of perishable goods are available to WTO Members:

(1) Members provide for storage of perishable goods pending their release, which implies storage facilities be made available near customs posts at borders or building new facilities dedicated to perishable goods; or

(2) Allowing an importer to organize storage of perishable goods pending their release. In this case, each WTO Member has the discretion to require – that is, *may require* – that storage facilities arranged by the importer have to be approved or designated by its relevant national authorities.

In all cases, the movement of goods to storage facilities and authorization of the operator moving the goods may require approval by WTO Members' relevant authorities.

In addition, WTO Members have a binding obligation to allow the procedures for release to take place at storage facilities, if requested by the importer. However, this requirement is made flexible by use of the qualifying language 'where practicable' and 'consistent with domestic legislation.' This means that actual implementation of this specific provision depends on two factors:

i. Whether the Member considers implementing the procedures for release of goods is feasible, i.e. whether the action can actually be performed by the relevant national authorities.

ii. Whether the realization of the provision is consistent and compatible with domestic legislation.

Members are nonetheless expected to undertake some steps towards the implementation of this provision. The condition of consistency with domestic law is especially challenging in the case of federated states or other multi-layered government structures, in which central government may not be the sole authority.

Communicating reasons of delays

The importing Member 'shall, to the extent practicable' communicate on the reasons for any significant delay. This provision explicitly notes that the obligation to provide a communication on the reasons of the delay is subject to receipt of a written request.

What is not covered?

This measure remains silent on the definition of 'exceptional circumstances'; therefore it is open to various and possibly diverging interpretations by different Members.

Even when exceptional circumstances exist and the release of perishable goods is made outside the business hours of customs and other relevant authorities, this provision does not mention whether extra fees apply or whether they need to be paid by the importer.

Benefits and opportunities for stakeholders

Faster procedures to release perishable goods will contribute to prevent or reduce unnecessary delays at the border, decrease the risk of damages, prevent business losses and increase the business competitiveness of traders, especially SMEs. Adequate storage facilities will also contribute to reduce avoidable product quality deterioration due to delays during clearance time at the border. This will help traders to preserve the products' quality and improve relations with the buyers.

Traders and other economic operators will strengthen their ability to predict and plan for future trade activities, factoring in accurate times for clearance and release of perishable goods under a fast-track release system. This provision also offers an opportunity to improve storage facilities at the border for importers of perishable goods, or to launch new investments to build quality storage facilities at the border where perishable goods can be detained without losing quality.

Implementation

Preparing a national implementation plan

The following template may be used as a basis for a national implementation plan:

	Actions suggested
Implementation sequence	**Preparatory phase**
	Ascertain whether additions or amendments to legal and/or administrative frameworks are necessary to permit a facilitated procedure for speedy release of perishable goods.
	Hold preliminary consultations with all agencies involved in the examination and release of perishable goods to efficiently plan facilitated procedures.
	Practically identify paramount 'exceptional circumstances', e.g. probability of occurrence, functioning of offices outside working hours, required staff, estimated costs, etc.
	Set-up phase
	Implement within relevant border agencies the devised procedures for: • Facilitated release of perishable goods under 'normal' and 'exceptional' circumstances. • Working outside business hours under exceptional circumstances. • Authorizing storage and movement of perishable goods to arranged storage infrastructure provided by the importer. • Providing explanations for significant delay in release of perishable goods.
	Provide or improve customs storage facilities for perishable goods.
	Prepare and undertake a robust public awareness campaign to inform the business community of the benefits of the measure.

	Management and follow-up phase
	Train staff and provide them with necessary equipment/infrastructure.
	Follow up on compliance of the measure.
Average time for implementation	Between one to two years, depending on current status of infrastructure in the Member's territory.
Leading implementation agency	Customs is most commonly chosen as the leading implementation agency. The animal, plant and health agencies may also be expected to play a role in quality assurance.

Key challenges

Lack of robust inter-agency coordination among relevant agencies – customs, health, food, plants and other border control authorities – can jeopardize the implementation of the measure. Public authorities may charge a disproportionate and unjustifiable high fee for services rendered, impacting on the sustainability of the services provided.

The government staff may also face challenges on providing appropriate storage facilities with the necessary temperature control systems or the equipment needed for testing the quality of perishable goods.

Key factors for success

Harmonious coordination among the relevant agencies is the top success factor for the implementation of this measure. Staff training on changes in legislative/administrative frameworks and a system for regular monitoring are also essential to achieve success.

CHAPTER 8 BORDER AGENCY COOPERATION

Border agency cooperation: Article 8

Members shall enhance cooperation among domestic agencies and between bordering countries' control agencies to facilitate trade.

Traders have to comply not only with at-the-border regulations for each jurisdiction they enter and exit (including the borders of their home country) but also with behind-the-border procedures with each domestic agency involved in the international trade process.

The difference in the regulations between countries, coupled with the lack of coordination between regulatory bodies within the same country or neighbouring countries, harms the business environment and makes doing business unduly burdensome, particularly for SMEs. This often results in delays in the completion of formalities, duplication of efforts and paperwork (both for traders and government agencies) and additional costs for traders.

Article 8 aims to facilitate coordination between border regulatory agencies (at both national and international levels) resulting in lower costs, faster processing and improved customer satisfaction for traders.

The measure

ARTICLE 8 BORDER AGENCY COOPERATION

1. Each Member shall ensure that its authorities and agencies responsible for border controls and procedures dealing with the importation, exportation, and transit of goods cooperate with one another and coordinate their activities in order to facilitate trade.

2. Each Member shall, to the extent possible and practicable, cooperate on mutually agreed terms with other Members with whom it shares a common border with a view to coordinating procedures at border crossings to facilitate cross-border trade. Such cooperation and coordination may include:

(a) alignment of working days and hours;

(b) alignment of procedures and formalities;

(c) development and sharing of common facilities;

(d) joint controls;

(e) establishment of one stop border post control.

Understanding the measure

What is covered?

Core obligation

Article 8 requires Members to ensure cooperation between border regulatory agencies at both the national and international level.

National cooperation

All national authorities and agencies responsible for border controls and procedures dealing with importation, exportation and transit of goods (such as those issuing licences and certificates, testing laboratories etc.) must cooperate with one another and coordinate their activities in order to provide a better end-to-end experience for traders.

Shared border cooperation

The Agreement also requires Members sharing a common border to cooperate, *to the extent possible and practicable*, with one another with the overarching aim of facilitating trade. While the following list of cooperation and coordination steps may be used as a starting point, countries are encouraged to explore other areas where they can contribute to improve traders' experience:

- Alignment of working days and hours;
- Alignment of procedures and formalities;
- Development and sharing of common facilities;
- Joint controls;
- Establishment of one stop border post controls.

The 'shared border obligation' does not apply to Members who do not share a common border with a neighbouring country, e.g. independent island states such as the Pacific Island nations.[9]

What is not covered?

There is no manifest requirement for harmonization of procedures and documentation requirements for different agencies that are involved in importation, exportation and transit of goods.

Under the shared border obligation, the examples of cooperation given are only indicative and countries can agree on what additional measures are needed to ensure that trade facilitation is optimized.

Benefits and opportunities for stakeholders

Border agency cooperation is crucial to traders to help them predict and plan their operations and future trade activities, factoring in accurate times and process documentary requirements.

There is also an opportunity for government agencies to use cooperation mechanisms to simplify processes and reduce documentary requirements to improve the efficiency and effectiveness of trade transactions, reduce the burden of compliance on traders and increase trade volumes.

The reduction of bottlenecks will also improve supply chain security and limit the burden on existing infrastructure, including storage facilities and testing laboratories. Successful implementation will also yield greater transparency and credibility to customs services, leading to reductions in delays and transaction costs at the border. Fostering transparent, consistent and predictable processes reduces bribes and informal payments to officials and enhances border agency accountability.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- There is a national implementation framework in place ensuring all national agencies responsible for border controls and procedures cooperate and coordinate with each other.
- There is a minimum (required) level of cooperation with other countries, who share common border crossing points, whenever possible and practicable.
- Members are obliged to ensure coordination at the national level.
- There is a harmonization of procedures and documentation requirements by all national agencies dealing with importation, exportation and transit of goods.

[9] Such WTO members include Australia, Fiji, New Zealand, Papua New Guinea, Samoa, the Solomon Islands, Tonga and Vanuatu.

Preparing a national implementation plan

The following template may be used as a basis for a national implementation plan:

	Actions suggested
Implementation sequence	**Preparatory phase**
	Nominate a lead agency that will coordinate implementation of the measure. Identify national and international relevant agencies, ministries, private sector representatives and form a project team with representation from each agency.
	Identify shortcomings in national legal, regulatory and institutional frameworks that may hinder implementation and address them.
	Review existing procedures and business processes to identify bottlenecks and devise new processes using enhanced cooperation and coordination between agencies and neighboring countries.
	Determine changes required to organizational structures and ICT infrastructures of agencies to enable successful deployment.
	Set-up phase
	Implement changes identified to legal, regulatory and institutional frameworks of the countries and train staff on the changes.
	Ensure/improve implementation of newly designed business processes and procedures and train staff.
	Implement changes required to organizational structures, other infrastructure (e.g. setting up joint border controls), ICT infrastructure and train staff.
	Prepare and undertake a robust public awareness-raising campaign.
	Management and follow-up phase
	Train staff and provide them with the necessary equipment/infrastructure.
	Follow up to ensure compliance of the measure.
	Regularly review and audit business processes to seek continuous improvements. Seek feedback from private sector to include traders' experiences and perspectives.
Average time for implementation	Between three and five years, depending on circumstances in each member country.
Leading implementation agency	Customs is most commonly chosen as the leading implementation agency. The animal, plant and health agencies may also be expected to play a role in quality assurance.

Key challenges

There may be no existing procedures for sharing information across agencies at the national or international level. New processes will need to be devised and institutionalized. Moreover, government agencies may not have the necessary ICT capacity to develop new protocols for document management, simplification of procedures, co-location, joint examinations and inspections or other coordination management systems.
At the national level, inter-agency coordination is typically required from a large number of agencies (customs, health, food, animal and plants, other border control authorities) who often have competing interests.

Key factors for success

It is recommended that all national agencies start with mapping and analysing their respective business processes, existing documentation, procedures, operational functions and infrastructure. Private sector involvement in this mapping exercise will be crucial in identifying bottlenecks and key problems areas. The results should be shared with the corresponding agencies on both sides of the common border.

CHAPTER 9 GOODS UNDER CUSTOMS CONTROL

Movement of goods intended for import under customs control: Article 9

Countries usually have selected points of entry and release for imported goods, normally seaports, airports or land borders. However, in some cases, businesses are located inland and prefer clearing imported goods at inland locations, in places usually called dry ports, which act as logistics centres where goods are duly released or cleared.[10]

Article 9 provides for imported goods arrived at one customs office (for example, an international airport or a seaport) to be delivered to an inland final destination where the importer will declare and clear the goods.

Members must provide the possibility to transport imported goods from the point of entry to an inland customs office, where the goods will be cleared.

This measure is intended to allow goods to be moved under a simplified procedure to inland customs offices, permitting the importer to clear the merchandise at destination rather than at the point of entry, thus speeding the flow of goods at the border.

The measure

ARTICLE 9 MOVEMENT OF GOODS INTENDED FOR IMPORT UNDER CUSTOMS CONTROL
Each Member shall, to the extent practicable, and provided all regulatory requirements are met, allow goods intended for import to be moved within its territory under customs control from a customs office of entry to another customs office in its territory from where the goods would be released or cleared.

Understanding the measure

What is covered?

Core obligation

This measure requires Members to allow imported goods under customs control to be transported from the entry point to another customs office located within its territory, where the goods will be ultimately cleared. Transporting goods under customs control means that the goods are in the safe custody of customs staff, with appropriate controls including the customs seal and security, and they are not handed over to business before they reach the dry port.

The use of the verb ‘shall’ suggests that the implementation of this provision is mandatory for Members. However, the addition of the qualifying words ‘to the extent practicable’ and ‘provided all regulatory requirements are met’ gives Members some room for flexibility.

What is not covered?

The TFA remains silent on whether additional fees and charges could be imposed on movement of goods under customs control. Moreover, the measure does not include any provision regarding facilities to trans-ship cargoes.

[10] A dry port refers to an inland location which serves as a logistics centre connected to one or more modes of transport for the handling, storage and regulatory inspection of goods and the execution of applicable customs control and formalities. See United Nations 2013: Inter-Government Agreement for Dry Ports. http://www.unescap.org/ttdw/common/Meetings/dry_ports/Signing/Agreement-on-Dry-Ports-E.pdf

Benefits and opportunities for stakeholders

Importers will competitively benefit from easier access to the point of clearance, as they can receive imported goods cleared from a location closer to their business operations. Similarly, there will be a significant reduction in transaction costs and delays at the border.

Improved advance planning of customs clearance will reduce the burden on existing infrastructure at the seaports/airports, including storage facilities and testing laboratories, ultimately reducing costs while delivering improved services to traders.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- A national implementation framework is in place to allow movement of goods from point of entry to customs office of destination.
- Processes and systems are available for clearing goods at inland customs stations.
- Systems for secure movement of goods under customs control are enhanced.
- Wider publicity is undertaken to raise awareness of the scheme's benefits with private sector stakeholders.

Preparing a national implementation plan

The following template may be used as a basis for a national implementation plan.

	Actions suggested
Implementation sequence	**Preparatory phase**
	Review existing legal and/or administrative frameworks, business processes and assess capacity of existing infrastructure facilities.
	Identify shortcomings in legal, regulatory and institutional frameworks and infrastructure.
	Review existing customs procedures to identify bottlenecks and devise new procedures, if needed, to allow the trans-shipment of goods.
	Determine changes required to organizational structures and ICT infrastructure of different agencies, if required.
	Set-up phase
	Implement changes identified to legal, regulatory and infrastructural frameworks.
	Ensure or improve implementation of newly designed business processes and train staff accordingly.
	If needed, equip and enable staff in inland customs offices and dry port infrastructures to clear goods throughout the country.
	Prepare and undertake a robust public awareness-raising campaign.
	Management and follow-up phase
	Regularly review and audit business processes to verify reduced delays at seaports and improved efficiency of customs clearance in inland customs offices.
	Seek feedback from private sector to include traders' experiences and perspectives.

Average time for implementation	Between two and three years, depending on the national implementing capacity of each Member.
Leading implementation agency	Customs is most commonly chosen as the leading implementation agency.

Key challenges

Members may lack adequate infrastructure for fully equipped dry ports, as well as human, financial and technical resources, to manage transportation of goods under customs control and subsequent in-country clearance of imported goods. Government staff may not have the capacity to develop new protocols for the transportation of the goods under customs control. Lack of inter-agency coordination and poor use of ICT to modernize dry port infrastructures and handle transportation, tracking and the clearance of goods is also a key challenge.

Key factors for success

Efficient coordination among customs authorities, relevant border agencies, logistics services providers and traders is the key success factor. Additionally, quality facilities for in-country customs release is critical to allow importers to clear their goods in a cost- and time-effective manner. Allocation of appropriate funds and stimulation of foreign investment in public infrastructure will thus be fundamental to equip existing local customs offices and develop new logistic hubs.

CHAPTER 10 SIMPLIFYING FORMALITIES FOR IMPORTS, EXPORTS, AND TRANSIT

Formalities and documentation requirements: Article 10.1

Traders need to comply with various formalities and requirements including submitting documents, completing administrative procedures and exchanging information.

Cumbersome cross-border procedures represent a major barrier to SMEs. An excessive amount of paperwork significantly increases the time dedicated to complying with import, export and transit procedures and compliance costs for traders.

Members shall periodically review formalities and documentation requirements to minimize their incidence, complexity, time, and cost.

The need for simplified and easily accessible documents and formalities to facilitate cross-border transactions has been recognized in a number of international legal instruments, including the Revised Kyoto Convention of the WCO and in Article VIII 1(c) of GATT 1994 (Fees and Formalities connected with Importation and Exportation).

Article 10.1 encourages WTO Members to hold periodic reviews to simplify both trade formalities and documents and their alignment to international standards.

The measure

ARTICLE 10 FORMALITIES CONNECTED WITH IMPORTATION, EXPORTATION AND TRANSIT

1 Formalities and Documentation Requirements

1.1 With a view to minimizing the incidence and complexity of the import, export and transit formalities and simplifying import, export, and transit documentation requirements and taking into account the legitimate policy objectives and other factors such as changed circumstances, relevant new information, business practices, availability of techniques and technology, international best practices, and inputs from interested parties, each Member shall review such formalities and documentation requirements and, based on the results of the review, ensure, as appropriate, that such formalities and documentation requirements are:

(a) adopted and/or applied with a view to a rapid release and clearance of goods, particularly perishable goods;

(b) adopted and/or applied in a manner that aims at reducing the time and cost of compliance for traders and operators;

(c) the least trade restrictive measure chosen where two or more alternative measures are reasonably available for fulfilling the policy objective or objectives in question; and

(d) not maintained, including parts thereof, if no longer required.

1.2 The Committee shall develop procedures for the sharing by Members of relevant information and best practices, as appropriate.

Understanding the measure

What is covered?

Core obligation

WTO Members are required to periodically review formalities and documentation requirements for the release of imported, exported and transited goods to minimize complexity of laws and procedures.

The periodic reviews should ensure that measures are geared towards the rapid release and clearance of goods and to reduce compliance costs and time for traders.

In addition, Members are required to use the least trade-restrictive measures available and to eliminate those measures that are no longer needed, if circumstances have changed or if they can be addressed in a less trade-restrictive manner.

Scope

The reviews will ensure that trade documentation and formality requirements are:

(a) Minimized in incidence and complexity of operations;

(b) Decreased and simplified;

(c) Adopted and applied for quick release of goods;

(d) Applied in a manner aimed at reducing time and cost of compliance for traders;

(e) The least trade restrictive measure chosen; and

(f) Not maintained if no longer required.

What is not covered?

WTO Members can decide on the time frame and frequency of reviews. The TFA remains silent on which institutions or agencies should lead the review, and the means and mechanisms for completing the process.

Benefits and opportunities for stakeholders

Reducing unnecessary documentary requirements can have the following significant economic benefits:

- Fewer documents and forms that are easier to complete;
- Simpler, clearer border procedures that reduce the burden of compliance;
- Reduction in time, financial, and human resources resulting in lower transaction costs;
- Harmonization of forms and processes allowing smooth document transmission between countries and agencies;
- Easier reproduction and reduced risks of errors resulting in less cases where traders have to go through multiple iterations of submitting and correcting documentation;
- Smoother transition to automation and electronic document submission; and
- Reduction in the need to hire agents for complex requirements and fines imposed due to incorrect documentation which are especially burdensome for SMEs.

There are many benefits for government agencies as well as this is an opportunity to harmonize forms and processes; allow smooth transmission of information between countries and agencies; capture and analyse information requirements; remove duplication and standardize data; and map data to international standards in order to help improve administration controls and private sector compliance.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- Make an executive decision to simplify and standardize import/export procedures and documentary requirements.
- Survey and assess existing commercial practices and official procedures among all stakeholders in trade facilitation.
- Raise awareness among all stakeholders about plans to introduce simplification measures, explaining its benefits.
- Take action to simplify the process by first eliminating outdated and redundant procedures and documentation requirements.
- Refer to international standards when reviewing essential documentation and formalities.
- Publish and make widely available new documentation and procedural requirements.

Preparing a national implementation plan

The following template may be used as a basis for a national implementation plan:

	Actions suggested
Implementation sequence	**Preparatory phase**
	If needed, adopt legal or administrative measures to support the obligation to review formalities and documentation.
	Designate a focal ministry to share responsibility (with NTFC) for overseeing simplification and harmonization of underlying processes, regulations and procedures.
	Set-up phase
	Conduct thorough business process analysis of existing procedures and documentation to create streamlined user-friendly documents. Standardize document design and data requirements.
	Harmonize trade data and documentation to international standards.
	Put in place a protocol of coordination with all relevant agencies so that documents and data may be shared.
	Assign sufficient trained staff.
	Conduct a public awareness campaign. Make documents available and transferable in electronic form.
	Management and follow-up phase
	Train staff and provide them with the necessary equipment/infrastructure.
	Follow up compliance of the measure.
	Conduct a reasonable and regular review of formalities, business processes and documentation requirements relating to import, export and transit.
	Encourage users to give feedback and evaluation on the documentation.
Average time for implementation	Between two and three years.
Leading implementation agency	Ministry of trade (with NTFC) is most commonly chosen as the leading implementation agency.

Key challenges

Harmonization of documents and processes can be a complex undertaking for those Members who do not have the required ICT capacity or a high degree of inter-agency coordination. Appropriate training for agencies' staff can be required to tackle development of new protocols for document management and simplification of procedures.

Key factors for success

In a cooperative environment, coordination among border agencies to review formalities and documentation requirements is crucial. Adequate ICT skills to put in place a monitoring mechanism is also essential to a successful implementation of the measure.

Acceptance of copies: Article 10.2

Given the large number of documents required to import, export or transit goods, it is burdensome for traders to provide the original record of all documents to all agencies. In some cases, the same documents are required by more than one authority.

Article 10.2 requests WTO Members to accept electronic and paper copies of requested documents. This measure builds on Article 10.1 which requires WTO Members to simplify and reduce the number of documents and trade formalities necessary to trade.

Members shall accept paper or electronic copies of supporting documents required for import, export or transit formalities.

The measure

ARTICLE 10 FORMALITIES CONNECTED WITH IMPORTATION, EXPORTATION AND TRANSIT

2 Acceptance of copies

2.1 Each Member shall, where appropriate, endeavour to accept paper or electronic copies of supporting documents required for import, export, or transit formalities.

2.2 Where a government agency of a Member already holds the original of such a document, any other agency of that Member shall accept a paper or electronic copy, where applicable, from the agency holding the original in lieu of the original document.

2.3 A Member shall not require an original or copy of export declarations submitted to the customs authorities of the exporting Member as a requirement for importation.

Understanding the measure

What is covered?

Scope

Members are required to reduce the burden of compliance for traders by requesting their border agencies to accept:

- Paper or electronic copies of required documentation; and
- Paper or electronic copies from other authorities to which the original has already been submitted.

The measure also requires Members not to request from the importer an original or copy of the export declaration already submitted to the customs of the exporting Member.

Core obligation

Article 10.2 requires WTO Members to make arrangements to accept paper or electronic copies of required documentation imposed on export, import and transit formalities. However, the use of qualifying words – 'shall, where appropriate, to endeavour' – indicates that while Members are required to make efforts to undertake certain steps towards compliance, they are not obliged to achieve a specific outcome.

Transmission of documents between agencies

When a government agency holds the original copy of a document that has been submitted by a trader, any other agency of the country must accept a paper or electronic copy of that document from the agency that

possesses the original one. The copy, in this case, must be considered as having the same legal effect as the original document.

However, the use of the words 'where applicable' gives some flexibility by allowing each Member to evaluate in which specific cases the operationalization of this action is deemed admissible.

Export declarations

Members are also required not to request original or copies of export declarations submitted to customs authorities of an exporting member country as a prerequisite to process the import of goods in their territory.

In this case, the use of words 'shall not require' obliges Members to fully implement this provision.

Importation of controlled or regulated goods

A footnote to paragraph 2.3 specifies that nothing prevents Members from requesting documents such as certificates, permits or licenses from traders as a requirement for the importation of controlled or regulated goods. Therefore, authorities in the importing member country have the absolute right to request these documents to clear controlled or regulated goods in their territory.

Benefits and opportunities for stakeholders

Acceptance of copies – both paper and electronic – of supporting documents significantly reduces the time and cost of completing import and export transactions, and reduces the burden of compliance for businesses, especially for SMEs. In particular, rural SMEs will not have to be physically present to deliver requested supporting documents.

This measure will also improve the efficiency of public administration procedures, leading to a reduction in bottlenecks and duplications resulting from multiple documentary and other requirements from different agencies.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- All government agencies accept paper or electronic copies of supporting documents required for import, export and transit transactions.
- Government agencies accept paper or electronic copies from another government agency if the latter holds the original of the required document.
- Government agencies do not require originals or copies of export declarations submitted to customs authorities of the exporting country as a requirement for importation.
- Government agencies publish and make widely available new documentation and procedural requirements.

Preparing a national implementation plan

The following template may be used as a basis for the national implementation plan:

Implementation sequence	**Actions suggested**
	Preparatory phase
	If needed, adopt legal, administrative and ICT-related measures to introduce acceptance of paper and electronic copies.
	Designate a focal ministry, with the NTFC, responsibility for overseeing the adoption of this measure.
	Set-up phase
	If required, introduce legal, regulatory and administrative amendments.
	Conduct business process analysis of existing procedures and documentation to create/improve streamlined systems for accepting paper and electronic copies and test their user-friendliness and efficiency.
	Put in place a protocol of coordination with all relevant agencies so that documents and data may be shared.
	Assign sufficient staff and train them.
	Undertake a robust public awareness-raising campaign.
	Management and follow-up phase
	Conduct regular review of formalities, business processes and documentation requirements relating to import, export and transit.
	Encourage users to give feedback and evaluation on implementation.
Average time for implementation	Between two to three years.
Lead implementation agency	Ministry of trade, with the NTFC, is most commonly chosen as the leading implementation agency.

Key challenges

Lack of an appropriate national administrative framework that can allow paper-based or electronic acceptance of copies is a critical challenge for the implementation of this measure. Lack of existing procedures or systems for sharing information – especially using ICT tools – across agencies at the national level is also a key challenge.

Key factors for success

An appropriate legal and/or administrative framework which allows the paper and electronic exchange of documents is the necessary pre-condition to make this provision work successfully. Harmonious coordination among relevant border agencies and more confident use of ICT tools are also critical success factors.

Use of international standards: Article 10.3

National and international businesses, traders and transport operators have to comply with numerous formalities and documentation requirements (sometimes up to 40 originals), often containing redundant and repetitive data (200 data elements on average) according to an UNCTAD study.

Simplification and standardization of trade documents, and alignment to international standards, is therefore crucial to ease trade. Some examples of standardized documents include certificates of origin, bills of lading, universal airway bills and freight forwarding instructions.

National export, import or transit formalities, procedures and data/documentation requirements may be based on international standards.

Likewise, standardized message protocols are also being used in some countries. The United Nations Electronic Data Interchange for Administration, Commerce and Transport (UN/EDIFACT, ISO 9735) comprises internationally agreed standards, directories and guidelines for the electronic interchange of structured trade data between independent computerized information systems. Further, the United Nations Centre for Trade Facilitation and Electronic Business (UN/CEFACT) provides business processes and other message protocols for the equivalent of paper documents in electronic format.

The measure

ARTICLE 10 FORMALITIES CONNECTED WITH IMPORTATION, EXPORTATION AND TRANSIT

3 Use of International Standards

3.1 Members are encouraged to use relevant international standards or parts thereof as a basis for their import, export, or transit formalities and procedures, except as otherwise provided for in this Agreement.

3.2 Members are encouraged to take part, within the limits of their resources, in the preparation and periodic review of relevant international standards by appropriate international organizations.

3.3 The Committee shall develop procedures for the sharing by Members of relevant information, and best practices, on the implementation of international standards, as appropriate.

The Committee may also invite relevant international organizations to discuss their work on international standards. As appropriate, the Committee may identify specific standards that are of particular value to Members.

Understanding the measure

What is covered?

Core obligation

Article 10.3 encourages Members to use international standards to facilitate trade, including import, export and transit transactions.

This is a ‘best endeavour measure’ which means it is not mandatory but encourages Members to adopt new techniques and technology, tested and used through binding or non-binding international instruments, to facilitate trade and reduce costs of doing business.

Periodic review of standards

The measure encourages Members to work with the relevant international organizations to take part in preparing periodic reviews of international standards, where possible and within their resources. The purpose is to create ownership and acceptability amongst stakeholders.

What is not covered?

Matters beyond import, export and transit formalities, procedures and data/documentation requirements are not covered by this measure.

The measure does not make it mandatory to follow particular international standards. The standards could be tailored to countries' international trade policies and cooperation in relation to their trading partners.

Benefits and opportunities for stakeholders

Government agencies can design, plan and implement trade procedures and formalities based on best international practices and do not have to re-engineer new solutions to reduce and modernise trade requirements. WTO Members can also have the opportunity to share ideas, experiences and information to ensure that the lessons learnt by one can be applied by the other. This is particularly useful for developing countries and LDCs to minimize their research and development costs and ensure effective implementation.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- There is a national implementation framework ensuring that export, import and transit formalities and procedures are based on international standards.
- Steps are taken to participate at forums regarding periodic review of relevant international standards by appropriate international organizations.

Preparing a national implementation plan

The following template may be used as the basis for a national implementation plan:

Implementation sequence	Actions suggested
	Preparatory phase
	If needed, take legal or administrative measures to standardize documentation.
	Designate a focal ministry, with NTFC, responsibility for overseeing adaptation of documents to align with international standards.
	Set-up phase
	Conduct thorough business process analysis of existing procedures and documentation to ensure implementation of international standards.
	Harmonize import, export and transit documentation and data to international standards.
	Put in place a protocol of coordination with all relevant agencies so that documents and data may be shared.
	Assign sufficient staff and train them.
	Where possible, support standardization of documents with ICT-enabled solutions.
	Conduct a public awareness campaign.
	Management and follow-up phase
	Train staff and provide them with necessary equipment/infrastructure.
	Follow up compliance of the measure.
	Participate in periodic reviews of standards with international organizations.
	Conduct reasonable and regular reviews of formalities, business processes and documentation requirements to ensure compliance with international standards are undertaken.
	Encourage users to give feedback and evaluate documentation. Ensure documents are easily available for businesses and the public.
Average time for implementation	Between two to three years.
Leading implementation agency	Ministry of trade, with NTFC, is most commonly chosen as the leading implementation agency.

Key challenges

Lack of knowledge, understanding of international standards, sufficient resources and ICT-enabled processes are all key challenges that can hamper implementation.

Key factors for success

Capacity of government authorities to adopt and implement standards is critical. In some cases, technical assistance may be required to enable authorities to understand the standards in detail. A thorough public awareness campaign will be instrumental in raising awareness of the benefits with the business community and build their understanding of international best practices.

Single Window: Article 10.4

Adopting a system that allows traders to submit documentation and data requirements at a single-entry point – either physical or electronic – to fulfil all import or export-related regulatory requirements is a fundamental trade facilitation reform. A single window (SW) facility will expedite and simplify procedures to submit documents and data requirements to government agencies.

Members are required to establish or maintain a single window (SW) to allow traders to submit documents and data requirements through a single entry point just once.

The SW concept is a practical application of trade facilitation principles to reduce procedural obstacles. It can deliver immediate benefits to the business community by easing the burden of compliance, as well as reducing the time and cost of clearance and release processes.[11]

The measure

ARTICLE 10 FORMALITIES CONNECTED WITH IMPORTATION, EXPORTATION AND TRANSIT

4 Single Window

4.1 Members shall endeavor to establish or maintain a single window, enabling traders to submit documentation and/or data requirements for importation, exportation, or transit of goods through a single entry point to the participating authorities or agencies. After the examination by the participating authorities or agencies of the documentation and/or data, the results shall be notified to the applicants through the single window in a timely manner.

4.2 In cases where documentation and/or data requirements have already been received through the single window, the same documentation and/or data requirements shall not be requested by participating authorities or agencies except in urgent circumstances and other limited exceptions which are made public.

4.3 Members shall notify the Committee of the details of operation of the single window.

4.4 Members shall, to the extent possible and practicable, use information technology to support the single window.

Understanding the measure

What is covered?

Scope

Article 10.4 requires WTO Members to attempt to establish or maintain a SW system, which allows traders to submit through a single entry point documentation and/or data requirements connected to importation, exportation or transit of goods.

Once submitted to the single-entry point, the documents are available to all relevant government authorities for evaluation, the results of which must be notified to the applicants through the system in a timely manner.

[11] UNECE: The Single Window Concept. http://tfig.unece.org/contents/single-window-concept.htm

Core obligation

This measure requires Members *at least* to attempt – 'shall endeavour' – to implement this provision. Nonetheless, Members are not legally bound to establish or maintain a SW system. When a SW system is in place, however, Members must process received documentation and communicate results of evaluations to applicants through the SW in a timely manner to ensure that traders do not incur bureaucratic delays.

Avoidance of redundancies and exception to the rule

Paragraph 4.2 requires Members to ensure their agencies do not request traders to provide second copies of documents or data requirements that have already been submitted through the SW.

However, Members are allowed to request traders to re-submit documents and data requirements under 'urgent circumstances and other limited exceptions which are made public.' However, these conditions should not undermine the purpose and function of the SW. Thus the requirement to make public the urgent circumstances will limit their occurrence to only reasonable, justifiable and demonstrable causes, while at the same time ensuring the highest degree of transparency.

Informing the WTO Committee on Trade Facilitation

Members are required to notify the WTO Committee on Trade Facilitation of their SW operation.

Use of information technology

The last paragraph of Article 10.4 requires Members to use information technology to support the establishment and maintenance of the SW. However, the use of the qualifying words 'to the extent possible and practicable' introduces a wide degree of flexibility in terms of scope, coverage and technical capacity.

What is not covered?

The measure does not detail how to establish a fully-fledged SW, providing flexibility for Members to progressively guide transition of all procedures and agencies to a SW system, depending on available resources.

Similarly, the timeline for setting up an operational SW mechanism is not specified and depends on the capacity of participating agencies to integrate ICT. The use of relevant international standards is not mandatory when setting up SW schemes.

Benefits and opportunities for stakeholders

A single entry point to submit required documentation will benefit traders by allowing faster clearance and release of goods across borders, particularly if the SW allows for electronic lodgement of data and documents. A SW system will deliver transparency and predictability to economic operators, who can better plan processes and comply more quickly with procedural requirements.

Border agencies will be able to coordinate information sharing and processing operations in the SW system, expediting the clearance and release of goods. Enhanced inter-agency cooperation through the SW system will allow agencies to share best practices and experiences and find innovative solutions to bottlenecks faced by traders.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- A substantive effort is underway to establish a single entry point for traders to submit required documentation and/or data requirements for importation, exportation or transit of goods only once and to receive responses from all agencies within the SW system.
- A concrete and official plan has been established to progressively integrate participation of all appropriate agencies in the national SW system.
- Details of the national SW system are notified to the WTO Committee on Trade Facilitation.

- Appropriate ICT is used to support the national SW, to the extent possible.
- A legal definition of 'urgent circumstances and other limited exceptions' has been formulated.

Preparing a national implementation plan

The following template may be used as the basis for a national implementation plan:

	Actions required
Implementation sequence	**Preparatory phase**
	A comprehensive feasibility study is required to develop a roadmap that caters to the needs of all stakeholders in submitting export, import or transit documentation and information within a SW system. The study would identify the following requirements to implement the single entry point: ○ Legal, institutional, infrastructure, management and resources reforms; ○ Simplification and harmonization of the framework regulating the national trade and transit documentation; ○ Incorporation of a risk management system; ○ Gradual integration of all agencies in the system, and ○ Phased integration of ICT in supporting the SW system. Other cross-cutting issues and practices should be addressed, including change management, promotion and communication of the system, use of best practices and international standards, capacity building and extensive use of ICT.
	Nominate a lead agency that will coordinate implementation. Identify relevant national and cross-border agencies, ministries and private sector representatives, and form a project team with representation from each agency/sector.
	Identify shortcomings in legal, regulatory and institutional frameworks that may hinder implementation of the measure and address those issues. If necessary, establish/amend legal frameworks to facilitate establishment or maintenance of a SW and obtain necessary approvals.
	Review existing procedures and business processes to identify bottlenecks and devise new processes using enhanced cooperation and coordination between agencies.
	Determine changes required to organizational structures, ICT infrastructures of different agencies to enable successful deployment.

Implementation sequence	**Set-up phase**
	Select a suitable SW model based on the results of feasibility study.
	Ensure that necessary changes in national legal, institutional, administrative and ICT frameworks are progressing in timely manner.
	Harmonize trade and transit documentation and data towards international standards.
	Progressively integrate the use of information technology.
	Carry out a public awareness campaign to raise awareness of benefits.
	Management and follow-up phase
	Train staff and provide them with the necessary equipment/infrastructure/technical skills.
	Follow up compliance of the measure.
	Keep the WTO Committee on Trade Facilitation informed about the structure of the national SW and any future improvements.
	Share with other countries relevant information and best practices and ensure a positive and efficient inter-agency coordination among countries.
	Periodically review and implement upgrades to the SW system.
Average time for implementation	Three and a half years.
Leading implementation agency	The ministry of trade or customs service, under the authority of the ministry of finance, are most commonly chosen as the leading implementation agency.

Key challenges

Governments may not have capacity to harmonize documents and processes across multiple agencies and develop new protocols for setting up and managing a SW system. There may not be existing procedures for sharing information across agencies at the national level. Lack of ICT capacity will hamper efficient operationalization of the SW system, making it difficult to inter-connect border agencies and streamline exchange of data.

Key factors for success

A comprehensive mapping of existing documentation, procedures, operational functions and infrastructure capacity from all relevant national agencies will ensure the development of a SW system that caters for all stakeholders' needs. Building capacity of government agencies to implement the measure through technical assistance, including ICT capacity, will also contribute to the successful operationalization of the system. A thorough public campaign is required to raise awareness of the benefits in the business community including how they can contribute to the development of the scheme (documents required, processes involved, related agency requirements).

Box 4: International best practices for single window systems

Colombia, Ghana and Thailand provide three examples of best practice in the establishment of efficient SW facilities.

In **Colombia**, the establishment of a SW was motivated by excessive document duplication and lack of coordination among agencies involved in foreign trade formalities. The resulting high transaction costs increased cost structures of businesses, negatively affecting the prices of goods.

Colombia issued a government decree in 2004 to operate a Single Foreign Trade Window (VUCE), which enabled trade-related administrations to exchange relevant information and allowed users to obtain prior authorizations, permits and licenses to carry out import and export operations. It guarantees technological and legal probity of trade procedures by integrating electronic signatures and online payments. VUCE consists of three modules:

- Electronic processing of import registration and licenses;
- Electronic processing of prior authorizations for export;
- Electronic processing for prior registration through a Single Foreign Trade Form.

VUCE is arranged in a series of web services connected to the National Tax and Custom Directorate with the Single Tax Registry (*Registro Único Tributario*) database and the Single Business Registry (*Registro Único Empresarial*), managed by the Chambers of Commerce, which allows consultation and validation of applicants' basic tax and trade information[12].

Workshops and conferences were held to inform the business sector on availability and functions of the facility. Government officers were trained to use the system. Since the establishment of the single window in Colombia, an average of 1,400 transactions have taken place daily.[13]

The SW facility (GCNet) in **Ghana** was set up following stakeholders' concerns regarding slow and cumbersome clearance procedures plus the government's intention to make Ghana a trade and investment hub in West Africa. To manage the development of the facility, a public-private joint venture was established in November 2000.

Designed to facilitate secure customs clearance of goods and reduce transactions costs and delays faced by trade operators, GCNet follows all relevant international standards and consists of two complementary systems:

1. TradeNet – an electronic data interchange platform for transmission of electronic messages between trade operators and customs; and other regulatory bodies;
2. Ghana Customs Management Systems (GCMS) – an automated system for processing all customs operations, which is hosted at customs headquarters and maintained by customs officers.

Once data is submitted to TradeNet electronically, the platform interfaces with GCMS and all stakeholders by exchanging electronic files. GCMS enables customs to perform all necessary customs-related processing. Importers/exporters have experienced faster clearance times, more transparent and predictable processes and less cumbersome bureaucracy. Customs authorities have greatly benefitted from improved staff working conditions and increases in customs revenues. There was a substantial increase in government revenues in the first year of implementation with import revenue growth of almost 50% and an average growth of 23% in subsequent years.

[12] The entire system is supported on WORK_FLOW architecture, leveraged by security provided by VPN (SSL) and digital certificates (electronic signatures with PKI standards, certified with standard X.509).

The robust inter-agency collaboration for the implementation of the National Single Window (THAINSW) in **Thailand** is an example of international best practice. In accordance with the agreement to establish and implement an Association of Southeast Asian Nations (ASEAN) Single Window, THAINSW is a national flagship project launched in 2008 to introduce trade facilitation reforms in Thailand, with a vision to become an efficient logistics hub of Indochina.

THAINSW allows full electronic submission of documentation from government agencies and traders through a value-added service provider channel, as well as fully automated customs clearance and release at 660 customs stations within the country's territory. A national router, providing a streamlined and regulated environment for routing of data among agencies and business, and an international gateway acting as a single point of access to the ASEAN Single Window and other single window systems outside the region, hold the architecture of THAINSW. An online repository of THAINSW documents and information systems of participating agencies and business complement the facility.

Successful inter-agency collaboration for SW implementation owes much to the roles of the National Economic and Social Development Board, Royal Thai Customs and Ministry of Information and Communication Technology. The Thai case demonstrates that formalization of inter-agency collaboration using a top-down approach is essential to ensure effective collaboration in a large scale e-government project involving many stakeholders from government agencies across ministries and the private sector.

Since its operationalization, THAINSW has saved Thailand logistics costs of about $1.5 billion per year. It has also considerably improved customs clearance processes through reduced documentation and time needed to release goods.

Sources: UNECE Trade Facilitation Implementation Guide. http://tfig.unece.org/contents/case-studies.htm; UNECE case stories: Ghana. http://tfig.unece.org/cases/Ghana.pdf; UNECE case stories: Thailand. http://tfig.unece.org/cases/Thailand.pdf.

Pre-shipment inspection: Article 10.5

Many countries operate pre-shipment inspection (PSI) procedures through private companies that perform a quantitative and qualitative examination of imports before they are shipped from the exporting country. However, mandatory inspections can represent an unnecessary and costly non-technical barrier to trade and adds to the cost doing business.

Members must quit the mandatory use of pre-shipment inspections for tariff classification and customs valuation.

Article 10.5 aims to reduce this practice as much as possible by prohibiting the use of PSI in relation to tariff classification and customs valuation, and by encouraging Members not to apply new requirements for other types of PSI.

The measure

ARTICLE 10 FORMALITIES CONNECTED WITH IMPORTATION, EXPORTATION AND TRANSIT

5 Pre-shipment Inspection

5.1 Members shall not require the use of pre-shipment inspections in relation to tariff classification and customs valuation.

5.2 Without prejudice to the rights of Members to use other types of pre-shipment inspection not covered by paragraph 5.1, Members are encouraged not to introduce or apply new requirements regarding their use.[14]

Understanding the measure

What is covered?

Core obligation

This measure requests WTO Members not to require the use of PSI for tariff classification and customs valuation. If a PSI system exists, legal review for aligning domestic laws with obligations arising from this measure will be required.

Discipline on the introduction or application of new requirements to use PSI

In recognizing that Members can have rights to use other types of PSI which do not deal with tariff classification and customs valuation (e.g. PSI related to sanitary and phytosanitary measures to test the shelf life of products), the TFA nonetheless encourages Members not to introduce or apply new rules and requirements regarding their use. Thus, paragraph 5.2 does not impose a legal obligation but encourages the best endeavours of Members to reduce or ideally eliminate PSI.

What is not covered?

The measure does not discipline the use of PSI other than customs control.

[14] This paragraph refers to PSI covered by the GATT/WTO Agreement on Pre-shipment Inspection, and does not preclude PSI for sanitary and phytosanitary purposes.

Benefits and opportunities for stakeholders

Elimination of PSI for customs valuation and tariff classification will reduce the time and costs of customs controls and valuation. As a result, compliance of traders will be enhanced.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- Any requirements in the national implementation framework to require PSI for tariff classification and customs valuation is abolished.
- Steps are also undertaken to reduce the use of PSI in other circumstances other than tariff classification and customs valuation.

Preparing a national implementation plan

The following template may be used as the basis for a national implementation plan:

Implementation sequence	**Actions suggested**
	Preparatory phase
	Review existing legal and/or administrative frameworks to determine changes needed, if any.
	Determine changes required to legal instruments, procedures and business processes to eliminate the use of PSI for tariff classification and customs valuation.
	Highlight commitments not to introduce new measures related to other types of PSI in legal and/or administrative frameworks.
	Set-up phase
	Implement necessary changes in national legal, regulatory and administrative frameworks.
	Foster change management among government authorities by providing appropriate training and opportunities for learning.
	Update business processes to comply with the measure.
	Conduct a public awareness-raising campaign.
	Management and follow-up phase
	Periodically review and monitor the application of the measure.
	Encourage feedback from private sector to be incorporated into review mechanisms.
Average time for implementation	One year.
Leading implementation agency	Customs is most commonly chosen as the leading implementation agency.

Key challenges

A non-facilitative controlling mindset of customs authorities who insist continuing PSI for customs valuation, tariff-related information and to ensure compliance represents a major challenge.

Key factors for success

Appropriate staff training to learn new ways of managing valuation and tariff classification without PSI is essential. Adoption of an ICT-enabled risk management system (see Article 7.4) and post-clearance audits (See Article 7.5) will eliminate any need for PSI for customs valuation and tariff classification, as assessment errors can be addressed through post-clearance audits.

Use of customs brokers: Article 10.6

In many countries, the use of customs brokers is mandatory to facilitate the process of import, export and transit, and to assist traders in ensuring compliance. However, practice shows that – apart from the high cost of their service – customs brokers are often part of vested interest groups, presenting obstacles rather than facilitating trade.

In many other countries where laws do not require the use of customs brokers, their use for clearance operations has also become a common practice.

To help reduce this burdensome practice, the TFA obliges WTO Members not to make the use of customs brokers mandatory from entry into force of the Agreement.[15] Moreover, it requires Members to apply transparent and objective licensing rules.

Members are requested not to make the use of customs brokers mandatory.

When Members have measures in place on, or introduce changes to, the use of customs brokers, they must promptly publish them.

The measure

ARTICLE 10 FORMALITIES CONNECTED WITH IMPORTATION, EXPORTATION AND TRANSIT

6 Use of Customs Brokers

6.1 Without prejudice to the important policy concerns of some Members that currently maintain a special role for customs brokers, from the entry into force of this Agreement Members shall not introduce the mandatory use of customs brokers.

6.2 Each Member shall notify the Committee and publish its measures on the use of customs brokers. Any subsequent modifications thereof shall be notified and published promptly.

6.3 With regard to the licensing of customs brokers, Members shall apply rules that are transparent and objective.

Understanding the measure

What is covered?

Core obligation

From the date of entry into force of the TFA (22 February 2017), WTO Members must not introduce or continue the mandatory use of customs brokers in their national legislative framework.

However, this requirement is not retroactive. Members whose legislation on the use of customs brokers was issued prior to the entry into force of the Agreement are allowed to keep it in place.

Publish and notify the WTO Committee on Trade Facilitation about the use of customs brokers

Members must notify the WTO Committee on Trade Facilitation on measures regulating the use of customs brokers, as well as any further modification occurring to such measures. Members are also required to publish promptly any subsequent amendments to the measures governing the use of customs brokers, within a reasonable period of time, to ensure quick access for businesses.

[15] This discipline is contained in standards 8.1 through 8.7 of the Revised Kyoto Convention of June 1999, which entered into force, for WCO members, on 3 February 2006.

http://www.wcoomd.org/en/topics/facilitation/instrument-and-tools/conventions/pf_revised_kyoto_conv/~/link.aspx?_id=82FA2162B4854C889840E503CD881FA3&_z=z

Licensing requirements

Members must put in place objective and transparent rules for the licensing of customs brokers. This provision is aimed at overcoming weak regulatory regimes in many LDCs where legal instruments regulating the use of customs brokers are either absent or not applied in a full and consistent manner.

What is not covered?

The measure does not require the elimination of the customs brokers profession altogether. Instead, it implies that the use of customs brokers can be optional. The measure does not determine the criteria for the licensing of customs brokers; it only requires that these rules be transparent and objective in order to avoid any misuse or abuse.

Benefits and opportunities for stakeholders

Eliminating the mandatory use of customs brokers can help businesses reduce the time and cost of trade transactions based on 'value for money' considerations. Public availability of information regarding the use of customs brokers will enhance transparency and predictability, allowing traders to have easy access to information without losing time. This measure will also help the government to increase efficiency of processing times and accountability by eliminating the blame for non-performance when customs brokers hinder a quick clearance of customs formalities for vested interests.

Implementation

Implementation checklist

The following checklist may be used to guide compliance with the measure:

- No legislation subsequent to the entry into force of the TFA makes the use of customs brokers mandatory.
- The legislation or administrative acts does not forbid traders to fill in and submit their customs declaration themselves.
- No practical issue or obstacle exists that in practice renders the use of customs brokers inevitable.
- Existing rules and amendments on the use of customs brokers are published and notified to the WTO Committee on Trade Facilitation.
- Licensing rules of customs brokers are formulated in an objective and transparent manner.

Preparing a national implementation plan

The following template may be used as the basis for a national implementation plan:

	Actions suggested
Implementation sequence	**Preparatory phase**
	Review existing legal frameworks, including the regulatory regime governing the licensing of customs brokers, procedures and business processes, to determine how to implement this measure.
	Determine changes required to legal instruments, procedures and business processes to enable successful implementation.
	Set up a committee with a clear terms of reference to implement the measure.
	Set-up phase
	Implement necessary changes in national legal, regulatory, administrative frameworks.
	Notify the rules and regulations pertaining to the use of customs brokers as soon as possible.
	Foster change management in government authorities by providing appropriate training.
	Update business processes to bring these in compliance with the measure.
	Carry out a public awareness campaign.
	Management and follow-up phase
	Implement periodic review and monitor prompt publication and notification of modifications.
	Incorporate feedback from private sector into a review mechanism.
Average time for implementation	Two years.
Leading implementation agency	Customs is most commonly chosen as the leading implementation agency.

Key challenges

Lack of an appropriate national regulatory and administrative framework that can facilitate the clearance of goods without the use of customs brokers is a major challenge. In the absence of an electronic SW system, the trader may find the process of clearing goods particularly cumbersome without the assistance of customs brokers.

The mindset of customs authorities can also be a key challenge. Over time, customs brokers have become part of the port 'ecosystem' and customs staff may be more comfortable working with professional customs brokers.

Another challenge may be the inability of governments to identify transparent and objective criteria for the licensing of customs brokers.

Key factors for success

An enabling regulatory and administrative framework which encourages a mindset change among government authorities, especially customs officials, is a key factor which will determine successful implementation.

The adoption of automated risk management, post-clearance audits and SW systems will also contribute to success, fostering a transparent disclosure of information while, at the same time, allowing traders to manage procedural formalities.

Common border procedures and uniform documentation requirements: Article 10.7

Some countries apply different procedures or require different documents for clearing goods at different border posts in their territory. This practice raises costs for businesses that have to comply with multiple border requirements within the same national jurisdiction.

Article 10.7 calls for procedural consistency, requiring WTO Members to apply common border procedures and uniform documentation requirements for release and clearance of goods throughout their territory to minimize the costs born by business.

Members are requested to apply the same procedures and documents for the release and clearance of goods at border points throughout their territory.

The measure

Article 10 Formalities connected with Importation, Exportation and Transit

7 Common Border Procedures and Uniform Documentation Requirements

7.1 Each Member shall, subject to paragraph 7.2, apply common customs procedures and uniform documentation requirements for release and clearance of goods throughout its territory.

7.2 Nothing in this Article shall prevent a Member from:

(a) differentiating its procedures and documentation requirements based on the nature and type of goods, or their means of transport;

(b) differentiating its procedures and documentation requirements for goods based on risk management;

(c) differentiating its procedures and documentation requirements to provide total or partial exemption from import duties or taxes;

(d) applying electronic filing or processing; or

(e) differentiating its procedures and documentation requirements in a manner consistent with the Agreement on the Application of Sanitary and Phytosanitary Measures.

Understanding the measure

What is covered?

Scope

The scope of this measure covers the border control procedures and documents across all borders of WTO Members.

Core obligation

As a general rule, the measure requires WTO Members to apply the same customs procedures and uniform documentation requirements for the release and clearance of goods at all border points across their territories. However, this obligation is mitigated by specific derogations listed in the Article.

Derogations

With the qualifying language 'Nothing in this Article shall prevent a Member from', Members are allowed to differentiate their procedures and documentation requirements for the release and clearance of goods throughout their territory under the following conditions:

- Based on the nature and type of goods, or their means of transport;
- Based on risk management;
- To provide total or partial exemption from import duties or taxes;
- To apply electronic filing or processing;
- In a manner consistent with the Agreement on Sanitary and Phytosanitary Measures.

Members are nonetheless encouraged to ensure compliance with the core obligation as much as possible in order to foster consistency and predictability.

What is not covered?

The measure does not specify which common procedure requirements should be adopted. Moreover, this provision does not entail any requirements for all border points to offer the same range of services.

Benefits and opportunities for stakeholders

Harmonization of documentation and procedural requirements throughout the territory of a country will enable traders to move their goods faster and more efficiently, avoiding uncertainties and costly delays. Simplified and predictable rules will also improve traders' compliance record and confidence in customs procedures.

Governments will experience improved supply chain security due to reduction in bottlenecks and more effective controls. This will reflect in increased trade volumes and higher revenues for governments.

When the implementation of this measure is accompanied by transition to automation and electronic submission of documentation, this provision can serve as a building block to more sophisticated trade facilitation measures, including the establishment of a SW and the use of a risk management system.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- There are no major variations in procedures of the same nature between different crossing points at the borders.
- Steps are taken towards a periodic review of relevant processes to ensure compliance with the measure and future improvements.
- Steps are taken to allow for derogations.
- Monitoring and evaluation are carried out to evaluate if any misuse, abuse or derogation of the measure has taken place.

Preparing a national implementation plan

The following template may be used as the basis for a national implementation plan:

	Actions suggested
Implementation sequence	**Preparatory Phase**
	If needed, take legal or administrative measures to standardize documentation and process requirements across all borders.
	Create an enabling legal and administrative framework for allowing derogations listed in the measure.
	Create an inter-agency forum to foster cooperation in standardizing documentation. The NTFC can play a coordination role.
	Set-up phase
	Conduct thorough legal, administrative and business process analysis of existing procedures and documentation to ensure uniformity of requirements for all points of entry in the country.
	Harmonize import, export and transit documentation and data at all borders.
	Set up systems and procedures to allow for derogations.
	Assign sufficient trained staff.
	Where possible, support standardization of documents with ICT-enabled solutions.
	Carry out public awareness campaigns and make available information regarding required documentation to businesses and general public.
	Management and follow-up phase
	Carry out reasonable and regular reviews of formalities, business processes and documentation requirements for ensuring compliance.
	Enable users to give feedback and evaluation on harmonized documentation.
Average time for implementation	Between two to three years.
Leading implementation agency	The ministry of trade, working with the NTFC, is most commonly chosen as the leading implementation agency.

Key challenges

Absence of an appropriate national legal framework which sets forth standardized cross-border procedures and uniform documentary requirements is a critical challenge. Lack of inter-agency cooperation, deficit of trust and a culture of non-sharing of information among agencies may represent another challenge.

Key factors for success

An enabling legal framework and harmonious coordination between border agencies are crucial factors to accomplish successful implementation of the measure. Capacity building of government authorities is critical. In some cases, technical assistance may be required to equip government authorities with technical knowledge on how to ensure uniform documentation and common procedures throughout their country's territory.

Rejected goods: Article 10.8

The rejection of merchandise due to unmet standards is a common issue faced by traders. When goods are found not in compliance with safety regulations, they often get confiscated and destroyed by customs.

However, this is seen as an unfair practice, as both the importer and the exporter are denied the opportunity to dispose of the goods and decide how to alternatively place them in other markets with less stringent safety regulations.

Article 10.8 seeks to limit the discretion of border authorities to destroy goods against traders' will by allowing non-compliant goods to be re-consigned or returned to the exporter.

Members must allow the importer to re-consign or return to the exporter the goods rejected on grounds of failure to comply with technical or sanitary and phytosanitary standards.

The measure

ARTICLE 10 FORMALITIES CONNECTED WITH IMPORTATION, EXPORTATION AND TRANSIT

8 Rejected Goods

8.1 Where goods presented for import are rejected by the competent authority of a Member on account of their failure to meet prescribed sanitary or phytosanitary regulations or technical regulations, the Member shall, subject to and consistent with its laws and regulations, allow the importer to re-consign or to return the rejected goods to the exporter or another person designated by the exporter.

8.2 When such an option under 8.1 is given and the importer fails to exercise it within a reasonable period of time, the competent authority may take a different course of action to deal with such non-compliant goods.

Understanding the measure

What is covered?

Core obligation

For goods rejected by competent authorities because of non-compliance with technical or sanitary and phytosanitary requirements, WTO Members are required to allow the importer to re-consign the merchandise or return the same to the exporter or another person who has been designated by the exporter.

The expression 'shall, subject to and consistent with its laws and regulations' indicates that implementation of this provision is mandatory in principle; however, it is conditional upon consistency with national laws and regulations of the importing Member.

Failing to return the goods within reasonable time

If the importer fails to return or to re-consign the rejected goods to the exporter within a reasonable period of time, the competent authority has the discretion to undertake a different course of action.

The provision to return the goods within reasonable time will depend on each case. Goods cannot remain at a port or a warehouse for an unlimited period of time. Thereafter, the Member will take action to dispose of the goods in accordance with national laws and regulations.

What is not covered?

The measure does not specify what is a 'reasonable period of time', leaving the expression to the interpretation of Members. There are no details on treatment of rejected goods if these are not returned or re-consigned within such reasonable period of time.

Furthermore, the text is silent on whether the exporting country has an obligation to accept the goods rejected by the competent authorities of the importing country.

Benefits and opportunities for stakeholders

The measure limits the discretion of border authorities to destroy goods against the importer's/exporter's wishes by providing a right of re-export or return of the goods. This means that traders have an opportunity to salvage the shipment rather than taking a total loss.

Moreover, this measure allows trans-shipment of goods that do not meet national technical regulations to a third country with different standards, enabling traders to be able to place their goods on other markets where national regulations do not impede importation of goods.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- A national implementation framework is in place ensuring that importers have the opportunity to return rejected goods or re-consign them to the exporter within a reasonable period of time.
- Steps are taken towards periodic review of relevant processes to ensure compliance and future improvements.
- Regular monitoring and evaluations are carried out to assess if the measure is correctly implemented.

Preparing a national implementation plan

The following template may be used as the basis for a national implementation plan:

Implementation sequence	**Actions suggested**
	Preparatory phase
	Undertake review of legal and administrative frameworks to assess if amendments are needed to allow return or re-consignment of rejected goods.
	If needed, take specific legal or administrative measures to introduce the obligation across all borders.
	Create a forum for inter-agency cooperation to coordinate implementation of the measure.
	Set-up phase
	Conduct thorough legal, administrative and business process analysis of existing procedures and required documentation to ensure standardization across all borders.
	Set up systems and procedures for systematically implementing the measure, linked with risk management systems, if possible.
	Assign sufficient trained staff.
	Carry out public campaigns to raise awareness of the measure.
	Management and follow-up phase
	Conduct regular reviews of formalities and customs procedures to ensure compliance.
	Enable users to give feedback and evaluation.
Average time for implementation	Between one to two years.

Implementation sequence	**Actions suggested**
	Preparatory phase
	Undertake review of legal and administrative frameworks to assess if amendments are needed to allow return or re-consignment of rejected goods.
	If needed, take specific legal or administrative measures to introduce the obligation across all borders.
	Create a forum for inter-agency cooperation to coordinate implementation of the measure.
	Set-up phase
	Conduct thorough legal, administrative and business process analysis of existing procedures and required documentation to ensure standardization across all borders.
	Set up systems and procedures for systematically implementing the measure, linked with risk management systems, if possible.
	Assign sufficient trained staff.
	Carry out public campaigns to raise awareness of the measure.
	Management and follow-up phase
	Conduct regular reviews of formalities and customs procedures to ensure compliance.
	Enable users to give feedback and evaluation.
Leading implementation agency	Customs, with the NTFC, is most commonly chosen as the leading implementation agency.

Key challenges

Lack of inter-agency cooperation and lack of trust among border agencies are key challenges as approval or rejection of goods requires compliance checks by a number of agencies at entry points. In some instances, countries may not be familiar with testing and compliance-checking provisions.

Border agencies may face difficulties to develop new protocols to regulate the return or re-consignment of rejected goods. Appropriate training, as well as additional financial and human resources, may be required to ensure full application of the measure.

Key factors for success

A system of regular review and monitoring to verify whether competent authorities facilitate the return or re-consignment of rejected goods to the exporter will contribute to the successful implementation of the measure. Monitoring and responsible advocacy from the business community will help maintain pressure on border agencies to comply with this TFA provision.

Temporary admission of goods and inward and outward processing: Article 10.9

Many WTO Members maintain procedures to allow temporary admission of goods fully or partially exempt from customs duties and taxes, imported for a specific purpose and intended for exportation.

Temporary admission is a useful mechanism for businesses to temporarily import goods such as samples, professional equipment or items for auction, exhibition or demonstration.[16]

Members must allow the release of goods, without payment of duties and taxes, for importation for a predefined period and predefined purpose of use.

Inward processing is a facility provided by Members for importation of certain goods conditionally, fully or partially exempt from customs duty and taxes, or eligible for duty drawback. Such goods are intended for manufacturing processing, or repair and exportation.

Outward processing means that goods are temporarily exported from a customs territory in order to undergo processing or repair operations in another customs territory. The processed products resulting from these goods can then be re-imported and released for free circulation with total or partial relief from import duties and taxes. Outward processing is designed to give businesses the possibility to take advantage of externalities, such as lower labour costs or specific technical expertise available in other jurisdictions.[17]

Article 10.9 sets out general rules for temporary import and export of goods.

The measure

ARTICLE 10 FORMALITIES CONNECTED WITH IMPORTATION, EXPORTATION AND TRANSIT

9 Temporary Admission of Goods and Inward and Outward Processing

9.1 Temporary Admission of Goods

Each Member shall allow, as provided for in its laws and regulations, goods to be brought into its customs territory conditionally relieved, totally or partially, from payment of import duties and taxes if such goods are brought into its customs territory for a specific purpose, are intended for re-exportation within a specific period, and have not undergone any change except normal depreciation and wastage due to the use made of them.

9.2 Inward and Outward Processing

(a) Each Member shall allow, as provided for in its laws and regulations, inward and outward processing of goods. Goods allowed for outward processing may be re-imported with total or partial exemption from import duties and taxes in accordance with the Member's laws and regulations.

[16] https://www.gov.uk/guidance/temporary-admission

[17] https://ec.europa.eu/taxation_customs/sites/taxation/files/outward-processing_en.pdf

(b) For the purposes of this Article, the term 'inward processing' means the customs procedure under which certain goods can be brought into a Member's customs territory conditionally relieved, totally or partially, from payment of import duties and taxes, or eligible for duty drawback, on the basis that such goods are intended for manufacturing, processing, or repair and subsequent exportation.

(c) For the purposes of this Article, the term 'outward processing' means the customs procedure under which goods which are in free circulation in a Member's customs territory may be temporarily exported for manufacturing, processing, or repair abroad and then re-imported.

Understanding the measure

What is covered?

Core obligation

The Article aims to regulate the system of imports and exports for specific purposes, including temporary import, goods imported for inward processing and outward processing.

This provision is mandatory, subject to and consistent with the laws and regulations of the importing Member country. In specific cases, this will mean that domestic laws and procedures will be considered compliant.

Temporary importation

The release of goods, without payment of duties and taxes fully or partially, for importation for a predefined period of time and a predefined purpose, and export within a specific period, is allowed.

Examples include samples or goods imported for exhibition that have to be returned home or large machinery imported for building a factory and returned after completion of works. It is imperative that these goods do not undergo any change while in the country of import.

Goods imported for further processing

This measure enables the conditional release of goods, without payment of duties and taxes, fully or partially eligible for drawback, imported for manufacturing, processing or repair and then for subsequent exportation. Examples of import inward processing include importation of accessories, zips and buttons to be attached to garments, which are meant for export.

Temporary export

The temporary export of goods for the purpose of manufacture or repair that are subsequently re-imported without payment of customs duties, in full or in part, is enabled. This applies to domestically produced or earlier imported goods.

What is not covered?

The measure does not require Members to allow such releases without any conditions or security and does not specify the type of conditions/guarantees upon which temporary admission, inward processing or outward processing may be allowed.

The time lag for goods under inward processing or outward processing schemes or between the temporary import and the subsequent export of imported goods is not specified.

Benefits and opportunities for stakeholders

This measure provides businesses with options and flexibility to meet their business needs and be competitive by importing goods temporarily or for inward/outward processing. In some regimes, the processes are set up in such a way that businesses can claim a refund, or drawback, of duties paid for goods which are subsequently processed and exported.

A more effective and efficient deployment of government resources will impact on the quality of government interventions, administrative controls and private sector compliance. Moreover, transparent, consistent and predictable processes for goods imported for special purposes reduce the attractiveness of bribes and informal payments to officials and enhances border agency accountability.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- Legislation and procedures to clear goods, without payment of duties/taxes, fully or partial, imported for a specified purpose are in place.
- Legislation and procedures to allow temporary export of goods for specified purpose and their re-importation without payment of duty/ taxes in full or partial are in place.
- The legislation and procedures to clear goods, without lesser or full payment of duty/taxes imported for a specified period and use conditionally are in place.
- Steps are taken towards periodic review of relevant processes to ensure compliance and future improvement.
- Monitoring and evaluation to check for any misuse or abuse of the measure.

Preparing a national implementation plan

The following template may be used as the basis for a national implementation plan:

Implementation sequence	**Actions suggested**
	Preparatory phase
	Undertake review of legal and administrative frameworks to check compliancy with requirements of this measure.
	Create a forum for inter-agency cooperation and public-private dialogue to standardize and implement the measure. NTFC can play this role.
	Set-up phase
	Conduct thorough legal, administrative and business process analysis of existing procedures and documentation to ensure standardization across all borders.
	Set up systems and procedures for systematically implementing the measure, linked with a risk management system, if possible.
	Assign sufficient trained staff.
	Conduct public campaigns to raise awareness with business community.
	Management and follow-up phase
	Conduct reasonable and regular review of formalities, business processes to ensure compliance.
	Enable users to give feedback and evaluation.
Average time for implementation	Between one to two years.
Leading implementation agency	Customs, with NCTF, is most commonly chosen as the leading implementation agency.

Key challenges

Most countries already have special legal and administrative procedures in place to facilitate exporting and importing goods under special circumstances. These may need to be reworked to ensure full compliance with the measure.

Often duties and value-added tax are first collected and then refunded. The refund process typically takes a long time and requires elaborate procedures and documents. This can be extremely challenging for businesses, particularly SMEs, who do not have the economies of scale and financial resources to make such transactions and prefer to pay lesser amounts through guarantees. Changing legal and administrative procedures to assist traders in this way may be a challenge for governments.

Key factors for success

It is recommended that all national agencies start with mapping and analysis of relevant business processes, existing documentation, procedures, operations and infrastructure. Private sector involvement will help gather additional perspectives in identifying bottlenecks and key problem areas. Capacity of government authorities to plan, implement and adhere to new procedures is critical. In some cases, technical assistance may be required to enable government authorities to understand the procedures in detail. A robust public campaign may be required to raise awareness of the measure's benefits in the trading community and how they can use the special facilitative procedures.

CHAPTER 11 FREEDOM OF TRANSIT

Freedom of transit: Article 11

Goods usually cross multiple border crossings before reaching their destination. The cost of transporting cargo containers and following various procedures and requirements of multiple customs administrations is a major share of the value of goods. In spite of Members' obligation in terms of Article V of GATT (1994, Freedom of Transit), transit procedures can still be trade-restrictive.

For landlocked countries and regions, transit across other states' territories to access international markets and transport services is an essential condition for their connection to global and regional supply chains.

Members must not condition the traffic in transit upon the collection of fees or charges and must not maintain voluntary restrictions on transit.

However, freedom of transit is limited by the sovereign right of countries over transit across their territories. In fact, the transit state can set specific requirements for granting access or transit rights which regulate the terms and modalities of transit and are subject to bilateral or multilateral negotiations.[18]

Building on the obligations under Article V of GATT, Article 11 of the TFA addresses the regulations and formalities imposed by Members on traffic in transit to ensure that they are not applied in a trade-restrictive manner.

The measure

ARTICLE 11 FREEDOM OF TRANSIT

1. Any regulations or formalities in connection with traffic in transit imposed by a Member shall not be:

   (a) maintained if the circumstances or objectives giving rise to their adoption no longer exist or if the changed circumstances or objectives can be addressed in a reasonably available, less trade restrictive manner;

   (b) applied in a manner that would constitute a disguised restriction on traffic in transit.

2. Traffic in transit shall not be conditioned upon collection of any fees or charges imposed in respect of transit, except the charges for transportation or those commensurate with administrative expenses entailed by transit or with the cost of services rendered.

3. Members shall not seek, take, or maintain any voluntary restraints or any other similar measures on traffic in transit. This is without prejudice to existing and future national regulations, bilateral or multilateral arrangements related to regulating transport, consistent with WTO rules.

4. Each Member shall accord to products which will be in transit through the territory of any other Member treatment no less favorable than that which would be accorded to such products if they were being transported from their place of origin to their destination without going through the territory of such other Member.

[18] UNCTAD Trust Fund for Trade Facilitation Negotiations. Technical Note 8 http://unctad.org/en/Docs/TN08_FreedomofTransit.pdf

5. Members are encouraged to make available, where practicable, physically separate infrastructure (such as lanes, berths and similar) for traffic in transit.

6. Formalities, documentation requirements, and customs controls in connection with traffic in transit shall not be more burdensome than necessary to:

(a) identify the goods; and

(b) ensure fulfilment of transit requirements.

7. Once goods have been put under a transit procedure and have been authorized to proceed from the point of origination in a Member's territory, they will not be subject to any customs charges nor unnecessary delays or restrictions until they conclude their transit at the point of destination within the Member's territory.

8. Members shall not apply technical regulations and conformity assessment procedures within the meaning of the Agreement on Technical Barriers to Trade to goods in transit.

9. Members shall allow and provide for advance filing and processing of transit documentation and data prior to the arrival of goods.

10. Once traffic in transit has reached the customs office where it exits the territory of a Member, that office shall promptly terminate the transit operation if transit requirements have been met.

11. Where a Member requires a guarantee in the form of a surety, deposit or other appropriate monetary or non-monetary instrument for traffic in transit, such guarantee shall be limited to ensuring that requirements arising from such traffic in transit are fulfilled.

12. Once the Member has determined that its transit requirements have been satisfied, the guarantee shall be discharged without delay.

13. Each Member shall, in a manner consistent with its laws and regulations, allow comprehensive guarantees which include multiple transactions for same operators or renewal of guarantees without discharge for subsequent consignments.

14. Each Member shall make publicly available the relevant information it uses to set the guarantee, including single transaction and, where applicable, multiple transaction guarantee.

15. Each Member may require the use of customs convoys or customs escorts for traffic in transit only in circumstances presenting high risks or when compliance with customs laws and regulations cannot be ensured through the use of guarantees. General rules applicable to customs convoys or customs escorts shall be published in accordance with Article 1.

16. Members shall endeavor to cooperate and coordinate with one another with a view to enhancing freedom of transit. Such cooperation and coordination may include, but is not limited to**,** an understanding on:

(a) charges;

(b) formalities and legal requirements; and

(c) the practical operation of transit regimes.

17. Each Member shall endeavor to appoint a national transit coordinator to which all enquiries and proposals by other Members relating to the good functioning of transit operations can be addressed.

Understanding the measure

What is covered?

Scope

Freedom of transit was already disciplined in Article V of the GATT (1994) which outlined a set of fundamental principles related to freedom of traffic in transit. However, Article 11 goes much further by setting forth the establishment of physically separate infrastructure for traffic in transit, the limitation of formalities, documentation, customs controls and guarantee requirements, and stronger cooperation and coordination among WTO Members.

Core obligation

This measure aims to ensure movement of traffic in transit through the application of rules, regulations and processes in a non trade-restrictive manner, eliminating all unnecessary regulations and formalities, prohibiting any voluntary restraints to traffic in transit and securing a non-discriminatory treatment of goods in transit.

Trade-restrictive regulations

Paragraph 1 requires Members to examine their traffic in transit formalities and regulations to determine if they have out-lived their purpose or if less trade-restrictive alternatives are available, and if so, the Member shall not maintain the formalities. Nor should the regulations be applied in a manner that would constitute a disguised restriction on traffic in transit.

Cost of transit

Paragraph 2 mandates governments not to condition traffic in transit upon collection of fees or charges, except for transportation charges or those charges imposed for administrative expenses, commensurate to the cost of the service rendered.

Restraints and barriers

Members must not apply any voluntary restraints or barriers to traffic in transit. Members must also accord the same treatment to the goods in transit as if these were not passing through a third country while moving from the country of origin to the country of destination.

It is also provided that the goods in transit in one Member's territory will not be subjected to any customs charges or unnecessary processes that may delay the movement of the goods. Moreover, this Article specifies that the goods in transit will not be subjected to the requirements of the Agreement on Technical Barriers to Trade.

As soon as the goods in transit reach the point of exit of a Member's territory, customs must not delay their exit if transit requirements have been complied with, by promptly completing necessary procedures to conclude the transit operation.

Documentation and formalities requirements

Members are required not to apply cumbersome requirements for submission of documents other than those which are sufficient to identify the goods in transit and to ensure fulfilment of transit process requirements. Members must also allow and provide for advance submission and processing of documents for goods in transit, ahead of the arrival of goods.

Guarantees and customs convoys

The TFA does not prohibit Members to seek guarantees for transit. However, when a guarantee is sought, Article 11 states that this instrument must be limited to ensure that the requirements arising from the traffic

in transit are fulfilled. Moreover, once the transit requirements have been fulfilled, the guarantee must be immediately discharged without any delay by the transit country authorities.

Article 11 also requires Members to allow the submission of comprehensive guarantees covering multiple transactions for the same operator, or renewal of guarantees without discharge for subsequent consignments. However, the use of qualifying language 'in a manner consistent with its laws and regulations' means that if the guarantee is not consistent or not provided for in national legislation, the obligation to implement this TFA provision would not be required. To ensure transparency and predictability, the TFA obliges Members to publish relevant information regarding requirements and processes for setting and discharging guarantees.

Paragraph 15 provides for the use of customs convoys or escorts only in specific circumstances. Members can only demand the use of customs convoys or escorts for high risk traffic in transit or when guarantees provided are not sufficient to ensure compliance with customs laws and regulations. Members have a binding obligation to publish general rules applicable to custom convoys or escorts in accordance with Article 1 of the TFA, which sets forth the principle of access to information and transparency.

Physical infrastructure

Paragraph 5 encourages WTO Members to set up separate physical infrastructure – including separate berths, lanes and corridors – to facilitate traffic in transit 'where practicable'. Members are not obliged to enforce this specific provision but are encouraged to do so if there is national capacity and resources.

Coordination and cooperation among Members

The last requirements of Article 11 call WTO Members to attempt to cooperate with each other to enhance traffic in transit. This could be achieved by strengthening reciprocal understanding of the charges that apply to traffic in transit, formalities and legal requirements, and practical aspects of transit management. The legal language 'shall endeavour to' means that Members are not bound to mutual cooperation but have to demonstrate that they have at least made some effort to reach an understanding.

The closing provision states that Members must 'endeavour' to appoint a focal point for transit coordination to whom all queries and information regarding traffic in transit may be directed. Again, this is not mandatory.

Benefits and opportunities for stakeholders

The implementation of this measure will reduce the time and cost of transit operations and enhance volumes of transit due to simplification of transit procedures and formalities.

Use of comprehensive guarantee schemes will accelerate movement of goods, remove bottlenecks at ports of entry and reduce the risk to businesses. Advance submission and processing of trade documents will also help reduce delays in the clearance of goods and will enable smoother document transmission between countries and agencies.

The publication of information on transit procedures (guarantees, customs convoys) will ensure transparency and predictability for businesses. Not least, improved understanding of government procedures will improve traders' confidence and compliance.

Inter-agency cooperation among countries will lead to mutual learning and knowledge exchange to find innovative solutions to common problems faced by traders.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- Procedures, regulations and formalities for transit are no less favourable than those for import or export.

- Restrictions affecting transit are not higher than necessary and they are withdrawn by justifiable changes in circumstances and/or objectives.
- Transit is exempt from customs and other duties except for reasonable charges for transportation and administrative expenses.
- Goods in transit are not subject to quality control or control of compliance with technical standards.
- Once the goods have been authorized to proceed from the point of origin, they are not subject to further charges, formalities and customs inspections until they conclude their transit at their point of destination within the country.
- Where goods in transit exit the country, the customs office promptly concludes the transit operation, if transit requirements are met.
- Guarantees for goods in transit are allowed and promptly discharged.
- A national transit coordinator has been appointed.

Preparing a national implementation plan

The following template may be used as the basis for a national implementation plan:

Implementation sequence	**Actions suggested**
	Preparatory phase
	If needed, take legal or administrative measures to reduce restrictions to traffic in transit and support free transit trade.
	Nominate a transit coordinator as a focal point.
	Conduct business process analysis of existing procedures and documentation to ensure the implementation of the measure.
	Set-up phase
	Put in place a protocol of coordination with all relevant agencies so that documents and data may be shared.
	Assign sufficient trained staff.
	Where possible, implement processes with ICT-enabled solutions.
	Undertake a robust public awareness campaign. Specific requirements related to transit are published.
	Management and follow-up phase
	Set up a monitoring mechanism to ensure compliance of the measure.
	Perform reasonable and regular reviews of formalities, business processes and documentation requirements to ensure compliance with laws and procedures.
	Encourage users to give feedback and evaluation on the procedures.
Average time for implementation	Between two to three years.
Leading implementation agency	Customs is most commonly chosen as the leading implementation agency with the ministry of trade or the NTFC.

Key challenges

There may be no existing procedures for streamlining traffic in transit and institutionalizing new processes can be challenging. The financial sector in some countries may not be able to provide guarantees and other appropriate financial instruments to reduce risk of transit trade. Moreover, SMEs may not be able to provide sufficient financial instruments to cover the risks.

A lack of trust and a culture of not sharing information can hamper genuine inter-agency cooperation as agencies may not want to work together, share data or harmonize their information requirements.

Key factors for success

Harmonious coordination between relevant national agencies is a key factor for success. It is recommended that all agencies work together to map existing documentation, procedures, operations and infrastructure, with the private sector to gather their perspectives in identifying bottlenecks and key problem areas.

Setting up a monitoring system of regular review that ensures governments do not introduce voluntary restrictions to traffic in transit or burdensome new documentation and formalities will successfully contribute to implementation.

CHAPTER 12 INSTITUTIONAL ARRANGEMENTS

Customs cooperation: Article 12

The WCO, known as the Customs Cooperation Council (CCC) until 1994, is one of the oldest multilateral institutions established to streamline trade flows. The CCC Convention was ratified and came into force in 1952 with the objective of studying and resolving all questions relating to cooperation in customs matters.[19] The Harmonized System of tariff classification; development and adoption of the Automated System for Customs Data; and standard formats for documentation are all achievements of CCC/WCO which have enhanced trade flows through country cooperation in customs matters.

Members shall improve cooperation among customs services of Members to foster compliance by businesses and enable freer trade.

One of the objectives of the WCO Council is to formulate provisions, standards and best practices for effective cooperation between customs or any other appropriate authorities on trade facilitation and customs compliance issues. Other objectives are to clarify and improve relevant aspects of GATT 1994 Articles V, VIII and X, and enhance technical assistance and support for capacity building in trade facilitation.

Customs cooperation at the international level improves control of trade flows and enforcement of applicable laws and regulations through exchange of information on export and import declaration data, trader-related information, origin and valuation-related information.[20] Examples of customs cooperation include customs unions and regional trade agreements.

The measure

ARTICLE 12 CUSTOMS COOPERATION

1 Measures Promoting Compliance and Cooperation

1.1 Members agree on the importance of ensuring that traders are aware of their compliance obligations, encouraging voluntary compliance to allow importers to self-correct without penalty in appropriate circumstances, and applying compliance measures to initiate stronger measures for non-compliant traders.[21]

1.2 Members are encouraged to share information on best practices in managing customs compliance, including through the Committee. Members are encouraged to cooperate in technical guidance or assistance and support for capacity building for the purposes of administering compliance measures and enhancing their effectiveness.

2 Exchange of Information

2.1 Upon request and subject to the provisions of this Article, Members shall exchange the information set out in subparagraphs 6.1(b) and/or (c) for the purpose of verifying an import or export declaration in identified cases where there are reasonable grounds to doubt the truth or accuracy of the declaration.

[19] http://www.jus.uio.no/english/services/library/treaties/09/9-04/wco_customs_council.xml

[20] http://tfig.unece.org/contents/custom-cooperation.htm

[21] Such activity has the overall objective of lowering the frequency of non-compliance, and consequently reducing the need for exchange of information in pursuit of enforcement.

2.2 Each Member shall notify the Committee of the details of its contact point for the exchange of this information.

3. Verification

A Member shall make a request for information only after it has conducted appropriate verification procedures of an import or export declaration and after it has inspected the available relevant documentation.

4. Request

4.1 The requesting Member shall provide the requested Member with a written request, through paper or electronic means in a mutually agreed official language of the WTO or other mutually agreed language, including:

(a) the matter at issue including, where appropriate and available, the number identifying the export declaration corresponding to the import declaration in question;

(b) the purpose for which the requesting Member is seeking the information or documents, along with the names and contact details of the persons to whom the request relates, if known;

(c) where required by the requested Member, confirmation[22] of the verification where appropriate;

(d) the specific information or documents requested;

(e) the identity of the originating office making the request;

(f) reference to provisions of the requesting Member's domestic law and legal system that govern the collection, protection, use, disclosure, retention, and disposal of confidential information and personal data.

4.2 If the requesting Member is not in a position to comply with any of the subparagraphs of paragraph 4.1, it shall specify this in the request.

5. Protection and Confidentiality

5.1 The requesting Member shall, subject to paragraph 5.2:

(a) hold all information or documents provided by the requested Member strictly in confidence and grant at least the same level of such protection and confidentiality as that provided under the domestic law and legal system of the requested Member as described by it under subparagraphs 6.1(b) or (c);

(b) provide information or documents only to the customs authorities dealing with the matter at issue and use the information or documents solely for the purpose stated in the request unless the requested Member agrees otherwise in writing;

(c) not disclose the information or documents without the specific written permission of the requested Member;

[22] This may include pertinent information on verification conducted under paragraph 3. Such information shall be subject to the level of protection and confidentiality specified by the Member conducting the verification.

(d) not use any unverified information or documents from the requested Member as the deciding factor towards alleviating the doubt in any given circumstance;

(e) respect any case-specific conditions set out by the requested Member regarding retention and disposal of confidential information or documents and personal data; and

(f) upon request, inform the requested Member of any decisions and actions taken on the matter as a result of the information or documents provided.

5.2 A requesting Member may be unable under its domestic law and legal system to comply with any of the subparagraphs of paragraph 5.1. If so, the requesting Member shall specify this in the request.

5.3 The requested Member shall treat any request and verification information received under paragraph 4 with at least the same level of protection and confidentiality accorded by the requested Member to its own similar information.

6. Provision of Information

6.1 Subject to the provisions of this Article, the requested Member shall promptly:

(a) respond in writing, through paper or electronic means;

(b) provide the specific information as set out in the import or export declaration, or the declaration, to the extent it is available, along with a description of the level of protection and confidentiality required of the requesting Member;

(c) if requested, provide the specific information as set out in the following documents, or the documents, submitted in support of the import or export declaration, to the extent it is available: commercial invoice, packing list, certificate of origin and bill of lading, in the form in which these were filed, whether paper or electronic, along with a description of the level of protection and confidentiality required of the requesting Member;

(d) confirm that the documents provided are true copies;

(e) provide the information or otherwise respond to the request, to the extent possible, within 90 days from the date of the request.

6.2 The requested Member may require, under its domestic law and legal system, an assurance prior to the provision of information that the specific information will not be used as evidence in criminal investigations, judicial proceedings, or in non-customs proceedings without the specific written permission of the requested Member. If the requesting Member is not in a position to comply with this requirement, it should specify this to the requested Member.

7. Postponement or Refusal of a Request

7.1 A requested Member may postpone or refuse part or all of a request to provide information, and shall inform the requesting Member of the reasons for doing so, where:

(a) iIt would be contrary to the public interest as reflected in the domestic law and legal system of the requested Member;

(b) its domestic law and legal system prevents the release of the information. In such a case it shall provide the requesting Member with a copy of the relevant, specific reference;

(c) the provision of the information would impede law enforcement or otherwise interfere with an ongoing administrative or judicial investigation, prosecution or proceeding;

(d) the consent of the importer or exporter is required by its domestic law and legal system that govern the collection, protection, use, disclosure, retention, and disposal of confidential information or personal data and that consent is not given; or

(e) the request for information is received after the expiration of the legal requirement of the requested Member for the retention of documents.

In the circumstances of paragraphs 4.2, 5.2, or 6.2, execution of such a request shall be at the discretion of the requested Member

8. Reciprocity

If the requesting Member is of the opinion that it would be unable to comply with a similar request, if it was made by the requested Member, or if it has not yet implemented this Article, it shall state that fact in its request. Execution of such a request shall be at the discretion of the requested Member.

9. Administrative Burden

9.1 The requesting Member shall take into account the associated resource and cost implications for the requested Member in responding to requests for information. The requesting Member shall consider the proportionality between its fiscal interest in pursuing its request and the efforts to be made by the requested Member in providing the information.

9.2 If a requested Member receives an unmanageable number of requests for information or a request for information of unmanageable scope from one or more requesting Member(s) and is unable to meet such requests within a reasonable time, it may request one or more of the requesting Member(s) to prioritize with a view to agreeing on a practical limit within its resource constraints. In the absence of a mutually agreed approach, the execution of such requests shall be at the discretion of the requested Member based on the results of its own prioritization.

10. Limitations

A requested Member shall not be required to:

(a) modify the format of its import or export declarations or procedures;

(b) call for documents other than those submitted with the import or export declaration as specified in subparagraph 6.1(c);

(c) initiate enquiries to obtain the information;

(d) modify the period of retention of such information;

(e) introduce paper documentation where electronic format has already been introduced;

(f) translate the information;

(g) verify the accuracy of the information; or

(h) provide information that would prejudice the legitimate commercial interests of particular enterprises, public or private.

11. Unauthorized Use or Disclosure

11.1 In the event of any breach of the conditions of use or disclosure of information exchanged under this Article, the requesting Member that received the information shall promptly communicate the details of such unauthorized use or disclosure to the requested Member that provided the information and:

(a) take necessary measures to remedy the breach;

(b) take necessary measures to prevent any future breach; and

(c) notify the requested Member of the measures taken under subparagraphs (a) and (b).

11.2 The requested Member may suspend its obligations to the requesting Member under this Article until the measures set out in paragraph 11.1 have been taken.

12. Bilateral and Regional Agreements

12.1 Nothing in this Article shall prevent a Member from entering into or maintaining a bilateral, plurilateral, or regional agreement for sharing or exchange of customs information and data, including on a secure and rapid basis such as on an automatic basis or in advance of the arrival of the consignment.

12.2 Nothing in this Article shall be construed as altering or affecting a Member's rights or obligations under such bilateral, plurilateral, or regional agreements, or as governing the exchange of customs information and data under such other agreements.

Understanding the measure

What is covered?

Core obligation

This measure aims at improving cooperation among customs administrations of WTO Members. The measure sets out the scope of cooperation and principles on which such cooperation must be provided.

Compliance and cooperation

This measure will raise traders' awareness of rules and regulations of trade transactions so that businesses become more compliant through self-correction. It is intended that strict enforcement measures are applied only in cases of strong non-compliance.

This measure also sets out the need for cooperation among customs organizations, to share information on best practices in managing customs compliance and to cooperate in technical guidance or assistance in capacity building.

Exchange of information and documents

Members must notify the WTO Committee on Trade Facilitation on details of their contact points for exchange of information. When there are reasonable grounds to doubt the truth or accuracy of an import or export declaration, the Member would make a request through the contact points.

The requested Member must exchange the information, subject to other provisions of Article 12. Members' obligations are limited to provide only specific information, to the extent it is available, as set out in declarations filed with customs including invoices, packing lists, certificates of origin and bills of lading.

Members shall carry out appropriate internal verification procedures for declarations and other relevant documents before making the request to ensure that the information being requested is not already available with the requesting customs administration.

Request

Each Member will submit a written request in one of the official WTO languages (English, French or Spanish) or a mutually acceptable language to both countries with the following information:

- Matter at issue and reasons for the request;
- Specific information and/or documents requested;
- Purpose of information requested;

- Identity and the legal mandate of the official making the request;
- Applicable legal provisions in its domestic law, including provisions relating to confidentiality.

This part of the measure is mandatory and has to be implemented as described in the Article text.

Protection and confidentiality

Each Member is required to treat any received information as confidential:

- Provide at least the same level of protection and confidentiality as that provided under the domestic law and legal system of the requested Member;
- Not disclose information to third parties without the specific permission of the requested country;
- Use the information received in reply solely for the requested purposes unless mutually agreed otherwise and only share information with the authority concerned.

This is a mandatory provision and is required to be implemented as described in the Article text.

Provision of information

The requested Member shall provide a response in writing, on paper or electronically. The measure identifies the following documents which can be provided in original or copy, to the extent available:

- Declaration
- Commercial invoice
- Packing list
- Certificate of origin
- Bill of lading

The requested Member must confirm that the documents provided are true copies of the documents, and must, to the extent possible, respond to the request within 90 days from the date of the request. The requested Member may require an assurance that the information provided will not be used as evidence in criminal investigations, judicial proceedings, or in non-customs proceedings without the specific written permission of the requested Member. If such use is expected, then the requesting Member shall set this out in the request.

Postponement or refusal of a request

The requested Member may postpone or refuse part or all of the request in the following cases:

- If its domestic law and legal system prevents release of the information or legislation (e.g. information confidentiality);
- If contrary to the public interest as reflected in domestic law or legislation;
- If it impedes law enforcement or otherwise interferes with an ongoing administrative/judicial proceeding, prosecution or proceedings;
- If the consent of the importer or exporter is required to waive confidentiality of information, and consent is not given;
- If the request is submitted after expiration of the legal requirement for retention of documents.

Reciprocity

The requesting Member must only submit requests it would be able to comply with if similarly requested. If not, the requesting Member should state this fact in the request. The requested Member can choose to execute the request or not. This is a mandatory provision and should be implemented as described in the Article.

Administrative burden

When submitting a request, the requesting Member should balance its fiscal interest and the effort to be made by the requested Member to gather relevant information.

If a Member receives an unmanageable number of requests for information or information of unmanageable scope from one or more requesting Members, and the requested Member cannot meet such requests within a reasonable time, they may request one or more of the requesting Members to prioritize requests. In the absence of an agreement, the executions of requests shall be at the discretion of the requested Member.

This is a mandatory provision and should be implemented as described in the Article.

Limitations

The requested Member shall not be required to meet the following requests:

- Modify the format of their declarations or procedures;
- Call for documents other than those submitted with the declaration;
- Initiate inquiries to obtain the information;
- Modify the period of retention of such information;
- Introduce paper documentation where electronic format has already been introduced;
- Provide any information for which disclosure is not permissible under their domestic laws and regulations; or
- Translate the information and/ or documents.

Unauthorized disclosure

In the event of any breach of the condition of use or disclosure of information exchanged, the requesting Member must:

- Inform the requested country about the breach in detail;
- Take necessary measures to remedy the breach; and
- Take measures necessary to prevent any future breach.

The requested Member may suspend its obligation to the requesting Member until the remedy/prevention measures are in place. This is a mandatory measure.

Bilateral and regional agreements

Members have the option to enter into or maintain bilateral, plurilateral or regional agreements to share or exchange customs information and data, in a secure and rapid basis such as on an automatic basis or in advance of arrival of the consignment.

The TFA cannot affect the Members' rights and obligations under these agreements. This is a mandatory measure and has to be implemented as described in Article 12.

Benefits and opportunities for stakeholders

Improving customs cooperation by clearly outlining the roles and responsibilities of both the requesting and requested Members and providing opportunities for exchange of data and information can play a key role in improving the credibility and predictability of trade transactions.

Notification of a contact point to WTO provides clarity about the appropriate channel in each country for this measure. The principle of reciprocity is helpful in ensuring mutually agreeable transactions for exchange of information, documents and data. Ensuring confidentiality and protection of information is critical and the measure does not force a requested country to share information in the event of any breach of the conditions of use or disclosure of information.

Streamlining trade traffic will lead to more effective and efficient deployment of government resources and transactions.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- A contact point for exchange of information and/or documents is notified to WTO.
- The procedure for responding to other customs administration is clearly defined.
- Confidentiality issues are clearly addressed.

Preparing a national implementation plan

The following template may be used as the basis for a national implementation plan:

Implementation sequence	**Actions suggested**
	Preparatory phase
	Review legal and administrative measures to identify what needs to change in existing systems to implement this measure fully
	Align all legislation to support customs cooperation.
	Information on compliance obligations are easily available for businesses and the public.
	Nominate and publish a contact point for customs cooperation.
	Set-up phase
	Conduct thorough business process analysis of existing procedures and documentation to ensure implementation.
	Put in place protocols for coordination among all relevant national/domestic agencies so that documents and data may be shared with international customs agencies.
	Assign sufficient trained staff, if required.
	Where possible, implement processes using ICT-enabled solutions.
	Undertake a robust public awareness campaign.
	Management and follow-up phase
	Conduct reasonable and regular reviews of formalities, business processes and documentation requirements for ensuring compliance.
Average time for implementation	Between two to three years.
Leading implementation agency	Customs is most commonly chosen as the leading implementation agency, working with NTFC.

Key challenges

Lack of an appropriate legal and administrative framework at the national level is a key challenge. The nature of diplomatic relations between countries may impact on the successful implementation of this measure.

Lack of trust and a culture of not sharing information among national agencies and customs agencies across countries is also a critical challenge. The agencies may not want to work together, share data, documents or information. There may be no existing procedures for information sharing with customs agencies of other Members. In such cases, new legal instruments, business processes and systems need to be devised and institutionalized.

Government staff may not have the capacity to implement the measure, including development of new protocols for coordination.

Key factors for success

Positive diplomatic relations between neighboring countries will contribute to successful implementation. A system of positive engagement among all national stakeholders to address political economy or diplomatic challenges among the countries is essential.

An enabling legal and administrative framework which embraces and encourages implementation of the measure in a transparent and consistent manner is another key success factor. The nomination of a focal person can help address the challenges of working with multiple agencies. Using existing structures and fora such as the Joint Committee of Customs Cooperation may be helpful.

Building the technical capacity of customs to implement the measure is critical. A culture of accepting ICT as a key means of communication and operation in government institutions is important. Allocation of appropriate funds for building requisite systems and staff training will be necessary. In some cases, technical assistance may be required. A system of regular review and monitoring of implementation progress also needs to be put in place so that the measure is not misused or abused.

National Trade Facilitation Committee: Article 23.2

To facilitate implementation, the TFA mandates the establishment of a National Trade Facilitation Committee (NTFC), an important platform for institutional coordination and stakeholders' consultation, where private and public sector participation is effectively balanced. All WTO Members must establish a NTFC which serves the purpose of coordinating and supervising implementation of trade facilitation measures contained in the Agreement.

Members must establish a national committee on trade facilitation to facilitate domestic coordination and implementation of the TFA.

NTFCs are multi-agency permanent forums where relevant stakeholders from the public and private sectors propose, discuss, consult, coordinate and reach, where possible, consensus on trade facilitation measures at the national level, enabling the effective implementation of trade facilitation solutions for cross-border movement of goods.

The measure

ARTICLE 23 INSTITUTIONAL ARRANGEMENTS

2 National Committee on Trade Facilitation

Each Member shall establish and/or maintain a national committee on trade facilitation or designate an existing mechanism to facilitate both domestic coordination and implementation of the provisions of this Agreement.

Understanding the measure

What is covered?

Core obligation

WTO Members have an obligation to establish or maintain (if a similar mechanism already exists) a national committee on trade facilitation which coordinates domestic trade facilitation reforms and implements the provisions of the TFA. The implementation of this measure is mandatory for all Members without any exception.

In order to comply with this measure, Members *may* not need to adopt any specific legislation. A national administrative act to create and/or maintain a National Trade Facilitation Committee may suffice. Some Members may want to maintain two or more committees to deal with all technicalities and issues of trade facilitation reform.

Composition of the committee

WTO Members have the right to choose the membership of their NTFC as they deem fit. There is no obligation to maintain an equal representation from the public and private sectors on the committee but it is highly recommended to do so, because implementing trade facilitation measures demands coordination and cooperation among all public and private stakeholders involved in import, export and transit procedures.

Furthermore, trade facilitation measures such as single window or risk management are highly complex and require both participation and inputs from public and private stakeholders. In fact, public-private partnerships are the driving force towards establishment and operation of trade facilitation reforms.

What is not covered?

The Article does not provide details on the formal aspect, nature, type and composition of the National Trade Facilitation Committee and any requirement to establish formal multi-agency working groups. The text is also silent on the committee and/or its members' decision-making powers and mode of operation.

There is no indication on the relation and interaction, if any, between the NTFC and the WTO Committee on Trade Facilitation, how these committees should share tasks and duties and how often they should communicate to keep track of trade facilitation progress in member countries.

Benefits and opportunities for stakeholders

The NTFC helps facilitate inter-agency collaboration and private sector coordination. Improving inter-agency coordination on operations conducted jointly by different agencies can help reduce complexity and eliminate duplication of requirements and process redundancies. This will significantly reduce the time and cost of clearances to the benefit of traders, particularly SMEs.

When private sector representatives are included, the NTFC provides a single authoritative forum for open debate and collaborative discussion addressing business challenges and finding concrete solutions towards implementation of trade facilitation reforms. Without direct private sector representation, the NTFC can still provide opportunities for public-private engagement through dedicated sessions, seminars and workshops, led by the NTFC.

By working towards greater transparency and efficiency, the NTFC will increase competitiveness of businesses, strengthen business confidence and compliance using simplified inter-agency trade requirements. A successful implementation will foster the credibility and predictability of government institutions and a positive investment climate.

Implementation

Implementation checklist

The following checklist may be used to estimate the level of compliance with the measure:

- A NTFC has been established or a similar existing mechanism has been designated to serve as the NTFC.
- The NTFC or similar mechanism facilitates both the coordination and implementation of trade facilitation provisions under the TFA.
- The NTFC or similar mechanism meets on a regular basis.
- The NTFC or similar mechanism acts with clear terms of references.
- The NTFC or similar mechanism follows an action plan and supervises the smooth progress of the national implementation plan.

Preparing a national implementation plan

The following template may be used as the basis for a national implementation plan:

Implementation sequence	**Actions suggested**
	Preparatory phase
	Determine whether a national mechanism exists to facilitate the coordination and implementation of trade facilitation measures in the WTO TFA.
	If one or various mechanisms exist, determine its characteristics and scope of action.
	If there is no existing mechanism, analyse country needs and decide which type of mechanism will be appropriate to coordinate and implement TFA measures.
	Set-up phase
	If necessary, adopt legal and institutional frameworks to implement the measure.
	According to the scope of action and responsibilities of the mechanism, assign appropriate financial and human resources.
	Make the committee operational.
	Management and follow-up phase
	Monitor and evaluate compliance, including impact of the committee on domestic coordination and implementation of TFA measures, with particular attention to reduced delays, bottlenecks and duplications.
	Periodically review and implement trade facilitation changes, with private sector participation in the reform process.
Average time for implementation	Between one to two years.
Leading implementation agency	The ministry of trade is most commonly chosen as the leading implementation agency.

Key challenges

Lack of political will and buy-in from senior levels of government may be a critical challenge, especially when this does not allow for inter-agency cooperation among a large number of agencies. Lack of clarity in the terms of reference and scope of work of the NTFC may also be a challenge. The government may also not have capacity to implement the measure, including rationalization of joint protocols, co-location, joint examinations and inspections or other coordination management systems among agencies.

Public and private sector stakeholders may not maintain positive and regular engagement, leading to lack of trust and stalemate. Lack of public sector awareness on the scope and opportunities of this measure will reduce the benefits of implementation.

Key factors for success

Harmonious coordination among border agencies is one of the main success factors for the implementation of this measure. Engagement at the highest levels of government will help create understanding and buy-in.

A robust mechanism of public-private dialogue and engagement is vital to allow an open exchange of ideas and collaboration to make it easier to trade. A public campaign to raise awareness of the measure's benefits in the trading community is important. Encouraging responsible traders to be part of trade facilitation reforms and advocate for their rights is an important role of the NTFC.

ANNEX I: RATIFICATION, CATEGORIZATION AND IMPLEMENTATION TIMELINE

The TFA is the first multilateral trade agreement concluded under the WTO umbrella in 21 years. The TFA has entered into force on 22 February 2017, when it was ratified by two-thirds of the WTO membership. Following its entry into force, WTO Members implement the TFA on a Most-Favoured-Nation basis.

The full implementation of the TFA is expected to reduce total trade costs by more than 14% for low income countries and more than 13% for upper middle income countries (OECD, 2013). It is further expected to decrease trade costs of manufactured goods by 18% and of agricultural goods by 10.4%. The TFA could also generate up to $1 trillion of gains around the world annually (WTO, 2015). Developing countries and LDCs, particularly African countries, are expected to see the greatest reductions in trade costs.

What about countries that have not ratified the TFA by the entry into force?

The Agreement takes effect only for the WTO Members that have ratified it. Thereafter, the TFA shall apply to each of the remaining WTO Members as they ratify the agreement. WTO Members that ratify the TFA after its entry into force shall implement its Category A commitments immediately on ratification, and Category B and C commitments counting the relevant periods from the date of entry into force of the agreement (Article 24.4 of the TFA), thus having reduced periods for the implementation (see Box 5).

Special and differential treatment

As well as expediting import, export and transit procedures, the TFA also sets forth ground breaking rules on special and differential treatment, linking implementation by developing and LDCs to their acquisition of technical assistance and capacity building.

Box 5: Ratification, categorization and implementation of the WTO Trade Facilitation Agreement

The concepts of ratification, categorization and implementation plays a pivotal role towards the entry into force and full implementation of the TFA by all WTO Members.

Ratification is the domestic approval procedure of each WTO Member in accordance with their constitutional/legal requirements. WTO Members will indicate their consent to be bound by the TFA through the acceptance of the Protocol Amending the WTO Agreement. All WTO Members, whether developed or developing countries, must comply with this procedure in order to become a signatory party of the TFA.

Categorization allows developing countries and LDCs to determine when they will implement individual provisions of the TFA and to identify provisions that they will only be able to implement with technical assistance and support for capacity building. Pursuant to Section II of the TFA, if developing countries and LDCs wish to seek support, they must categorize each provision of the TFA, as defined below, and notify other WTO Members of these categorizations in accordance with specific timelines outlined in the agreement:

Under Section II of the TFA, developing countries and LDCs shall self-determine the time and means required to implement measures in Article 1 to 12 of the TFA as per the following categories:

> **Category A***:* Measures that the WTO Member will implement by the time the Agreement enters into force (LDCs may implement up to one year thereafter);
>
> **Category B:** Measures for which the WTO Member will need additional time; and
>
> **Category C:** Measures for which the WTO Member will need additional time to define the technical and/or financial assistance or capacity building needed to implement.

Implementation is to undertake the necessary steps to ensure the full application of the obligations contained in the agreement. The implementation stages will take place at different times for developed and developing countries, including LDCs.

a*)* **Developed countries:** The full implementation of the TFA should be completed at the moment of entry into force of the TFA, after their ratification and acceptance of the Protocol.

b) **Developing countries and LDCs**: The benefits from the special and differential treatment provision are enshrined in Section II of the TFA. Thereby, developing countries and LDCs will decide on the gradual implementation of the provisions contained in the TFA, linking them to the receipt of technical assistance and support for capacity building.

Ratification, acceptance and entry into force of the TFA

Ratification is a means of expression for a Member to consent to be legally bound by a treaty. This stage involves relevant procedures that need to be pursued at the national level before a WTO Member can notify its acceptance of the TFA.

Ratification stage

Step 1: Looking at the domestic legal requirements for the approval of international agreements

a) Each WTO Member should first look at its domestic law (i.e. constitutional and/or other legal requirements) for approving international agreements. For those WTO Members with special rules for trade agreements, they may only need to focus on these requirements.

b) Constitutional and other legal requirements typically contemplate one of the following two procedures for approving international agreements:

i) The executive branch may approve the agreement if the issues covered by it fall under the exclusive power of the executive; or

ii) The legislative branch may approve the agreement, e.g. if its implementation will need that the Parliament enacts a new law or amends an existing one, or if the issues covered by the agreement fall under the legislative's power.

In either case, a legal assessment of the agreement may need to be carried out.

Step 2: Elaboration of the domestic instrument approving the Protocol Amending the WTO Agreement

Once WTO Members approve either through its executive or legislative branch the TFA pertaining to Step 1 above, the following actions would be applicable for elaborating the instrument of approval of the Protocol Amending the WTO Agreement:

a) To elaborate a draft of the required constitutional/legal approval instrument (whether a law, act, decree or decision);

b) Depending on the procedural requirements, issuing an accompanying note or report explaining/justifying the approval and ratification of the Protocol, containing advantages, economic impact, risk analysis and recommendations; and

c) To submit the draft of the instrument of approval along with the report to:

i) The Cabinet and/or President/Prime Minister in case of executive approval; or

ii) The Parliament in case of legislative approval.

The Decision adopted by the General Council on 27 November 2014 (WT/L/940) explicitly requests WTO Members to notify the acceptance to the 'Protocol'. Likewise, this decision clearly states that the 'Protocol' shall enter into force in accordance with Article X.3 of the WTO Agreement. Thereby, the instrument of approval may follow one of the two following approaches:

- ✓ The approval/ratification of the Protocol; or
- ✓ The approval/ratification of the Protocol and the TFA annexed to the Protocol.

Step 3: Approval of the Protocol Amending the WTO Agreement

Depending on their domestic legal requirements (e.g. constitutional) of each WTO Member, the approval of the WTO TFA can happen in two different instances:

a) Executive branch: if all the issues covered by the TFA are exclusively part of the executive's powers, the executive alone, without parliamentary intervention, can approve the agreement;

b) Legislative branch: the Parliament may be the appropriate body to approve the WTO TFA when:

i) The implementation of agreement requires enacting new or amending existing legislation; and/or

ii) The issues covered by the TFA are within the Parliament's powers.

Note that neither the TFA (Article 24.9) nor the Protocol (paragraph 2) allows entering reservations in respect of any of the provisions.

Step 4: Ratification

a) WTO Members express their consent to be bound to the TFA through ratification;

b) In the case of Parliamentary approval, usually the executive branch ratifies the agreement thereafter;

c) The instrument of ratification has to be signed on behalf of the State. Usually, either the Head of the State, Head of Government or Minister of Foreign Affairs has the legal capacity to represent the State with their signature. Anyone else needs full powers in order to sign the instrument.

It is worth noting that ratification does not mean that the concerned WTO Member should immediately apply the TFA. In the case of developing and least developed WTO Members, as a result of the Special and Differential provisions of the Agreement (Section II of the TFA), provisions that have been self-designated under Categories B and C will be applicable according with their respective schedules.

Acceptance stage

This stage refers to the required procedure at the multilateral level that Members need to follow to become a signatory party to the WTO TFA.

Step 5: Elaboration of the instrument of acceptance of the Protocol

a) Once domestic procedures have been successfully completed, WTO Member need to individually prepare an instrument of acceptance;

b) This instrument indicates to the rest of the WTO membership the consent of each individual WTO Member to be bound by the Protocol;

c) The instrument of acceptance shall contain the following information:

i) Full identification of the Protocol i.e. 'the Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization done at Geneva on 27 November 2014' or, alternatively, reproduce the Protocol as an attachment to the instrument of acceptance;

ii) A formal statement that the concerned WTO Member formally accepts the Protocol and expresses its consent to be bound by it;

iii) The date and place when the instrument of acceptance was issued;

iv) The signature of the person who has the legal capacity to sign the acceptance instrument; and

v) The name and title of the person signing the instrument.

Step 6: Deposit of the instrument of acceptance to the WTO Secretariat

The acceptance to the Protocol should be deposited with the WTO Director-General. In practice, the instrument of acceptance will be deposited with the Depositary Assistant in the WTO Legal Affairs Division. The transmission of the acceptance is typically undertaken by the Mission to the WTO.

Timeline of TFA implementation

Developed country Members

A. *Upon entry into force*

a) Implement all measures upon entry into force.
b) Submit information on technical assistance and capacity building upon entry into force and annually thereafter (Article 22 (1.) of Section II).
c) Notify contact information of their agencies responsible for technical assistance and capacity building and contact points within the country or region of intended assistance (Article 22 (2.a) of Section II).
d) Submit the process and mechanism of requesting assistance (Article 22 (2.b) of Section II).

B. *After one year of entry into force*

e) Inform the WTO Committee on Trade Facilitation on arrangements made or entered into for implementation of Category C provisions for developing countries (Article 16 (1.d) of Section II).

C. *Within two and a half years after entry into force*

f) Provide information to the WTO Committee on Trade Facilitation on the progress made on provision of assistance and support to the developing countries (Article 16 (1.e) of Section II).

D. *Within four years of entry into force*

g) Notify technical assistance arrangements made with LDCs to enable implementation of Category C provisions (Article 16 (2.e) of Section II).

E. *Within five and a half years of entry into force*

h) Inform the WTO Committee on Trade Facilitation on the progress made in delivery of technical assistance to LDCs (Article 16 (2.f) of Section II).

Developing country Members

A. *Upon entry into force*

a) Implement Category A provisions (Article 15 (1.) of Section II).

b) Notify Category B and C provisions along with indicative dates of implementation. (Article 16 (1.a and c) of Section II).

c) Inform the WTO Committee on Trade Facilitation on arrangements required for implementation of Category C provisions (Article 16 (1.c) of Section II).

B. *Within one year of entry into force*

a) Notify definitive dates for implementation of Category B provisions. In case of difficulty, there is the possibility to request WTO Committee on Trade Facilitation for extension in time for notification as soon as possible prior to expiration of deadlines (Article 16 (1.b) of Section II).

b) Inform the WTO Committee on Trade Facilitation on arrangement made or entered into for implementation of Category C provisions (also by donor members) *(*Article 16 (1.d) of Section II).

C. *Within two and a half years after entry into force (18 months after notification of assistance 'required' for Category C)*

a) Provide information to the WTO Committee on Trade Facilitation on the progress made on provision of assistance and support (also by donor members) *(*Article 16 (1.e) of Section II).

b) Notify the definitive dates for implementation of Category C provisions. In case of difficulty there is the possibility to request the WTO Committee on Trade Facilitation for extension in time for notification as soon as possible prior to expiration of deadlines (Article 16 (1.e) read with Article 16 (3.) of Section II).

LDC Members

A. *Within one year of entry into force*

a) Notify Category A provisions to the WTO (Bali Ministerial Decision Article 3.2 of Section II).
b) Notify Category B provisions and may notify indicative dates of implementation (for the dates, the expression used is 'may' not 'shall') (Article 16 (2.a) of Section II).
c) Notify the Category C provisions (Article 16 (2.c) of Section II).

B. *Within two years of entry into force (one year after notification of Cat C)*

d) Inform the WTO Committee on Trade Facilitation on assistance and support required for implementation of Category C provisions (Article 16 (2.d) of Section II).

C. *Within three years of entry into force (Two years after the notification date of Category B)*

e) Notification to confirm Category B provisions and dates for implementation. In case of difficulty, there is a possibility to request the WTO Committee on Trade Facilitation for extension in time for notification (Article 16 (2.b) of Section II).

D. *Within four years of entry into force (Two years after the notification of assistance 'required')*

a) Provide information on the arrangements entered for provision of assistance and support (also for donor Members) (Article 16 (2.e) of Section II).

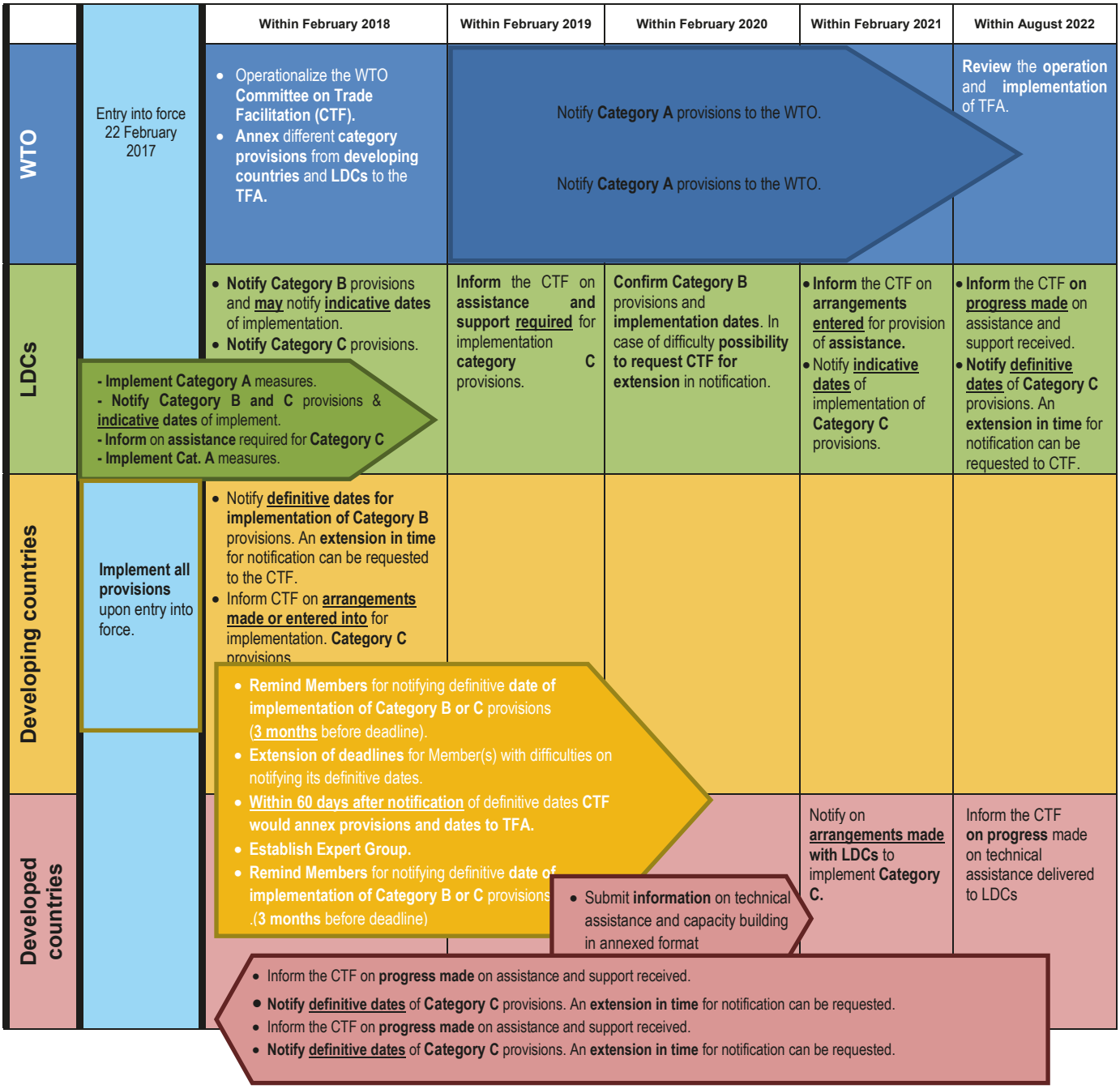
b) Notify indicative dates for implementation of Category C provisions (Article 16 (2.e) of Section II).

E. *Within five and a half years of entry into force (18 months after the notification of indicative dates of Category C)*

a) Provide information to the WTO Committee on Trade Facilitation on the progress made on provision of assistance and support (also by donor members) (Article 16 (2.f) of Section II).

b) Notify the definitive dates for implementation of Category C provisions. In case of difficulty, there is the possibility to request WTO Committee on Trade Facilitation for extension in time for notification as soon as possible prior to expiration of deadlines (Article 16 (2.f) of Section II).

Figure 1: WTO Members' implementation commitments and timeline



What should be borne in mind?

The TFA offers for the first time in the history of the multilateral trade system the opportunity for developing countries and LDCs to link the fulfilment of their obligations in the Agreement with their implementation capacities. In compliance with the spirit of the Agreement, developing countries and LDCs should undertake commitments that are consistent with their needs and capacities, and on the condition of receiving the assistance required. Accordingly, countries wishing to take advantage of the special and differential treatment provisions must categorize each measure of the TFA in accordance with the specific timelines outlined above.

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