

Technical note on the WTO Trade Facilitation Agreement

Article 5.2: Detention

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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:

Implementation sequence	Actions suggested
	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.